

Gunfire killed all 58 victims of Las Vegas shooting, says coroner

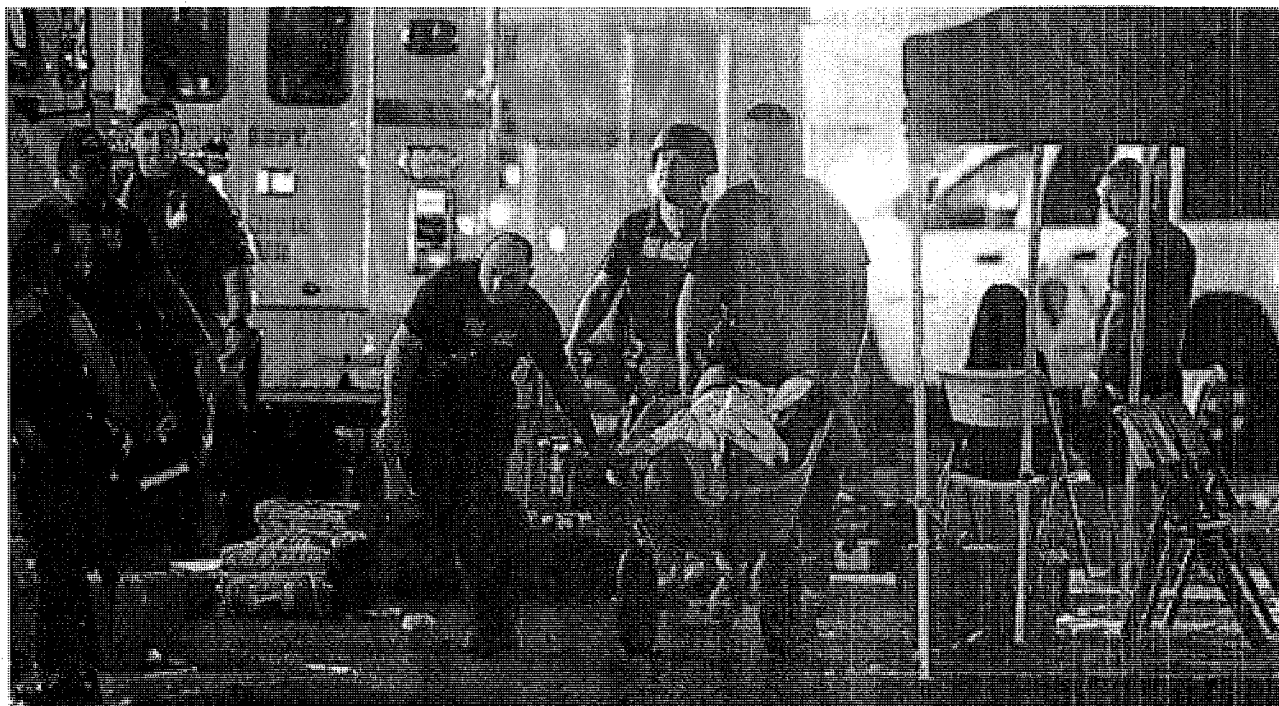


Friday, December 22, 2017 - 08:16 am

All 58 victims of the Las Vegas mass shooting died of gunshot wounds, a coroner said on Thursday, revealing that no one was killed trying to escape from the massacre.

The deaths in the deadliest mass shooting in modern US history were all ruled homicides, Clark County Coroner John Fudenberg told The Associated Press.

The only wound to the shooter, Stephen Craig Paddock, 64, was a self-inflicted gun shot to the mouth, Fudenberg said. His death was ruled a suicide.



Twenty-one people were shot in the head, 36 died with chest and back wounds and one died of a shot to the leg, according to a chart released by the coroner.

Four victims had multiple gunshot wounds.

Authorities have said more than 500 people were injured when Paddock, a high-stakes gambler, unleashed gunfire from an upper floor of a high-rise casino hotel onto an outdoor country music festival below.

Police and the FBI have not disclosed a motive for the shooting.

Fudenberg said he waited to release post-mortem findings until all the families had been given the information.

AP

EXHIBIT C

Declaration of Laura Rehfeldt

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DECLARATION OF LAURA C. REHFELDT, ESQ.

LAURA C. REHFELDT, ESQ. hereby declares that she has personal knowledge and is competent to testify to the following facts:

1. I am an attorney at law duly licensed and authorized to practice before this Court and have been since 1993. I am the Deputy District Attorney assigned to this case.

2. This case involves a public records request for autopsy reports. On October 3, 2017, the Las Vegas Review Journal ("RJ") made a records request to the Coroner for autopsy reports and investigation notes of all of the victims of 1 October tragedy and the shooter, Stephen Paddock. Email from RJ Reporter Art Kane to Coroner dated October 3, 2017, attached hereto as Attachment 1.

3. On October 9, 2017, I replied on behalf of the Coroner and informed the RJ that under NRS 239.0107 the reports would not be disclosed. Specifically, the RJ was informed that the reports would not be considered for release until 1) the Coroner investigation is complete; and 2) law enforcement agencies have completed all investigation into this matter and it has been determined that there is no potential jeopardy to the investigation, law enforcement or others as a result of the release. Due to the timing of the request and status into the 1 October investigation, the legal authority for the denial was based on Donrey of Nevada v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (Nev. 1990) which applied a balancing test to determine whether privacy or special interests outweighed public disclosure of a criminal investigation report under Nevada public records law. The RJ was provided a thorough legal analysis applying the policy issues in justifying the withholding of information requested (even though the reports did not exist at this time). Email from Rehfeldt to Art Kane dated October 9, 2017, attached hereto has Attachment 2.

4. Later that day, on October 9, 2017, counsel for the Petitioners (Margaret A. McLetchie) emailed me a supplemental request seeking: 1) with respect to Stephen Paddock "the status of the various records that had been or will be completed now that the examination is complete"; 2) copies of all other media records for records pertaining to Stephen Paddock

1 or the victims and Ms. Rehfeldt's responses to those requests;¹ and 3) a "standard protocol"
2 in a case such as this that indicates what reports to create. Email from McLetchie to Rehfeldt
3 dated October 9, 2017, attached as Attachment 3.

4 5. The next day, on October 10, 2017, Ms. McLetchie contacted me and stated that
5 the RJ "would be fine with redacted versions of the victims' autopsies if that would resolve
6 the coroner's privacy concerns on that front." Email from McLetchie to Rehfeldt dated
7 October 10, 2017, attached as Attachment 4.

8 6. During this time, Ms. McLetchie and I exchanged phone discussions. Ms.
9 McLetchie admitted that the reason for the victim autopsy reports was to itemize which
10 victims died of gunshot and which victims died of another causes, such as a stampede or
11 trampling.

12 7. On October 13, 2017, I substantively responded to Ms. McLetchie's emails
13 dated October 9 and 10, 2017. That response reminded Ms. McLetchie that the Coroner's
14 Office was deeply inundated with the aftermath of the 1 October incident. I also relayed to
15 Ms. McLetchie that I did not know the status of the investigation into the death of Stephen
16 Paddock, did not know if records had been created and which ones had yet to be completed,
17 or whether or not there was standard protocol with respect to these types of cases. As for the
18 redaction issue, I suggested that issue be revisited after completion of the investigations. Ms.
19 McLetchie was also informed that the death investigations were underway and that the
20 autopsy reports were not complete. Email from Rehfeldt to McLetchie dated October 13,
21 2017, attached as Attachment 5.

22 8. The RJ did not follow up or make a subsequent inquiry into this matter. In
23 fact, I did not hear from Ms. McLetchie again until she filed the lawsuit in this case on
24 November 16, 2017 on behalf of the RJ and the Associated Press. Email from McLetchie to
25 Rehfeldt dated November 16, 2017, attached as Attachment 6.

26 9. As of the date of this Declaration, it is my understanding that the autopsy reports
27 of the 1 October decedents have not been finalized.

28 _____
¹ These were provided on October 13, 2017 and are attached as Exhibit 7 to Petitioner's Public Records Act Application.

10. On December 27, 2017, I asked Ms. McLetchie if the Petitioners would be pursuing this case in light of the fact that the public release of information by the Coroner of the cause and manner of death occurred the week prior. Email from Rehfeldt to McLetchie, attached hereto as Attachment 7. See Declaration of Daniel Kulin.

11. After an exchange of communications with Ms. McLetchie on December 28-29, 2017, it was relayed to me that the Petitioners determined that they would be pursuing the case as to the autopsy reports of the 1 October victims and the shooter, Stephen Paddock. Ms. McLetchie stated that a new basis for its continued request for the victims' autopsy reports was to determine if there was a "secondary cause of death."

EXECUTED this 2nd day of January, 2018, in Las Vegas, Nevada.

By: Laura C. Rehfeldt
LAURA C. REHFELDT

ATTACHMENT 1

From: Arthur Kane <akane@reviewjournal.com>

Sent: Tuesday, October 3, 2017 5:51 PM

To: Nicole Charlton

Cc: Karisa King; maggie

Subject: OPEN RECORDS REQUEST

This is a request under state open records laws.

I am looking to inspect all the autopsies from the Mandalay Bay shooting of Oct. 1, 2017 as they are completed, including the full report and the investigator's notes. Please include all the victims in the case as well as the suspect.

As you know, state law requires a government agency to produce a record immediately if they are readily available so please email the autopsies as they are complete. Please let me know if there will be a cost for the records.

art

--

Thanks,

Arthur Kane
Investigative Reporter
Las Vegas Review-Journal
702-383-0286
@arthurmkane

ATTACHMENT 2

Laura Rehfeldt

From: Laura Rehfeldt
Sent: Monday, October 09, 2017 2:53 PM
To: 'Arthur Kane'
Cc: Nicole Charlton; John Fudenberg
Subject: 1 October records request from Coroner

Dear Art,

This email is in response to the public records request you submitted to the Coroner on Tuesday, October 2, 2017 for inspection of all autopsies from the Mandalay Bay shooting of October 1, 2017, including the full reports and the investigator's notes.

These reports will not be considered for release until: 1) the Coroner investigation is complete; and 2) law enforcement agencies have completed all investigation into this matter and it has been determined that there is no potential jeopardy to the investigation, law enforcement or others as a result of the release.

The legal authority for this position is based on the case of Donrey of Nevada v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (Nev. 1990). In that case, the Nevada Supreme Court applied the balancing test to determine whether privacy or special interests outweighed public disclosure of a criminal investigation report under Nevada public records law.

In applying the balancing test, the Court considered policy issues that would justify the withholding of investigative information. The criteria it considered included: 1) whether there was a pending or anticipated criminal proceeding; 2) whether there were confidential sources or investigative techniques to protect; 3) whether disclosure could deny a fair trial; and 4) whether release could potentially jeopardize law enforcement. Bradshaw, 106 Nev. at 148.

Based on the particular facts of Bradshaw, the Court determined that the interests of nondisclosure did not outweigh public access. However, in applying the Bradshaw criteria to your request (and under current interpretation of the balancing test as articulated in Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873, 880, 266 P.3d 623,628 (2011) -- whether privacy interests in nondisclosure clearly outweigh public access), the opposite would be concluded. While Bradshaw applied the policy criteria to a criminal investigation report, the same criteria is applicable to the requested reports in the present situation. Law enforcement agencies, including the Las Vegas Metropolitan Police Department, the FBI and other agencies, are currently immersed in the investigation of 1 October and the requested documents are directly linked to that investigation. At this time, it is too early

to rule out the possibility of a criminal proceeding, as well as the need to protect confidential sources. Further, at this point, the release could jeopardize law enforcement or the ongoing investigation. Also important is the fact that the Coroner has not completed its own investigation and documents with respect to this matter. Thus, the policy considerations and legal analysis in Bradshaw, clearly weigh against disclosure of the requested records.

Freedom of Information Act 5 USC Section 552(b)(7) further demonstrates policy against disclosure at this time. Specifically, 5 USC Section 552(b)(7) states the following are exempt from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

In addition to the Bradshaw analysis, the criteria listed in 5 USC Section 552(b)(7) supports the analysis that nondisclosure at this time clearly outweighs public access, and, based on present circumstances, applies to the requested documents as they are directly linked to the 1 October investigation. Specifically, the release of the documents you request could be reasonably expected to interfere with enforcement proceedings (5 USC Section 552(b)(7)(A)), could reasonably be expected to endanger the life or physical safety of any individual (5 USC Section 552(b)(7)(F)), or constitute an unwarranted invasion of personal privacy (5 USC Section 552(b)(7)(C)). The concern of an unwarranted invasion of privacy is also reflected in A.B. 57, 79th Sess. (Nev. 2017), an amendment to NRS 259.045, which enumerates certain specific individuals related to the decedent who may receive a copy of a Coroner's report.

1 October occurred just barely a week ago. At this time the requested reports are directly linked to an active criminal investigation. The Coroner has not completed its

investigations, local and federal law enforcement agencies have not completed their investigations, and families that lost loved ones are grieving and deserve privacy. At this time, policy considerations would not warrant the disclosure of the requested reports, and, therefore, the interests of nondisclosure clearly outweigh public access.

Therefore, based on the legal authority and analysis articulated above, your request is denied.

Sincerely,

Laura C. Rehfeldt
Deputy District Attorney | Senior Attorney
Laura.Rehfeldt@clarkcountynvda.com
Clark County District Attorney | Civil Division
500 S. Grand Central Parkway, Las Vegas, NV 89106
T: 702-455-4761 | F: 702-382-5178

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ATTACHMENT 3

From: maggie [mailto:maggie@nvlitigation.com]
Sent: Monday, October 09, 2017 5:02 PM
To: Laura Rehfeldt <Laura.Rehfeldt@clarkcountyda.com>
Cc: Alina <Alina@nvlitigation.com>; pharan@nvlitigation.com
Subject: LVRJ - Follow up request to coroner's office re Paddock and victims
Importance: High

Laura,

Thanks again for speaking with me about the LVRJ's request for autopsy records pertaining in particular to Stephen Paddock. I really appreciate it and my office looks forward to hearing back from you tomorrow about the status of the various records that have been or will be completed now that the examination is complete. I understand that the final report itself is not complete, but would like to know what records have already been created. I also understand that the toxicology has been sent out to a lab and that, generally, that process takes 6-8 weeks. However, as we discussed, this case may be expedited. I look forward to having some clarity about what records exist, and which records have yet to be completed.

I understand the sensitive nature of this case. However, that does not change the applicable burden or the fact that the presumption is that the records requested (both regarding Stephen Paddock and the victim) are public. Further, the factors discussed in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144, 148 (Nev. 1990) do not support withholding record: (1) there is no pending or anticipated criminal proceeding; (2) there are no confidential sources or investigative techniques; (3) there is no impact on any fair trial; and (4) disclosure would not jeopardize law enforcement. While you indicated there might be a law enforcement concern once the report is complete, speculation does not merit non-disclosure. Moreover, these records are not law enforcement records. Finally, as discussed, there is a strong public interest in the public assessing the facts concerning Stephen Paddock.

On behalf of the LVRJ, I would also like to formally request copies of all other media records for records pertaining to Stephen Paddock or the victims, and your responses to those requests. I would also like copies of any records that pertain to or reflect the types of records that would be prepared by the coroner's office in a case such as this and the general process that is followed. For example, if a standard protocol is being followed that indicates which reports to create, I would like a copy of that protocol. In light of the importance of this matter and to assist us in resolving this matter, I would like those records as soon as possible but the other pending request is obviously more important.

Thanks again for your attention to this important matter, and I look forward to speaking with you.

Maggie

<image001.jpg>
ATTORNEYS AT LAW
701 East Bridger Ave., Suite 520
Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

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ATTACHMENT 4

From: maggie [<mailto:maggie@nvlitigation.com>]
Sent: Tuesday, October 10, 2017 1:00 PM
To: Laura Rehfeldt <Laura.Rehfeldt@clarkcountyda.com>
Cc: Alina <Alina@nvlitigation.com>; pharan@nvlitigation.com
Subject: Re: LVRJ - Follow up request to coroner's office re Paddock and victims

Laura, thanks and understood. Wanted to also let you know that, in this case, the RJ would be fine with redacted versions of the victims' autopsies if that would resolve the coroner's privacy concerns on that front. The priority is still the information about Paddock. Please give me a call to discuss when you can.
Thanks.

Maggie

Maggie McLetchie
McLetchie Shell, LLC
701 E. Bridger Ave., Suite 520
Las Vegas, NV 89101
(702) 728-5300

ATTACHMENT 5

Laura Rehfeldt

From: Laura Rehfeldt
Sent: Friday, October 13, 2017 3:43 PM
To: maggie
Cc: Alina; pharan@nvlitigation.com
Subject: RE: LVRJ - Follow up request to coroner's office re Paddock and victims

Dear Maggie,

This is in response to your email, dated, Monday, October 9, 2017.

As you are aware, the Coroner's Office has been extremely busy and inundated with work the past couple of weeks. I do not know the status of the investigation into the death of Stephen Paddock. I do not know if any records have been created, and I do not know whether any toxicology would be expedited or not, and I do not know what records have yet to be completed. Additionally, I do not know if there is a standard protocol to follow with respect to these types of cases. Further, if one does not exist, the Coroner's Office is under no obligation to create one.

With respect to your inquiry as to the status of records created, I remind you that the Coroner is involved in its investigation and refer you to the legal analysis and legal citation to Donrey v. Bradshaw, as submitted to Art Kane on October 9, 2017 in response to the request for the autopsy reports of the 1 October decedents.

With respect to a standard protocol in a case such as this, again, I do not know if one exists. I would need more time to find that answer, and do not know if there are security issues associated with such information.

Per your request, I will send the other media requests that I responded to in separate emails. There will be four of them, and a request and my response will be included in each one.

With respect to your request on October 10, 2017 for redacted versions of the autopsy reports of the victims, I suggest that we revisit that issue after completion of the investigations. It is my understanding that those death investigations are still underway, as well as the overall law enforcement investigations. Further, the autopsy reports are not complete. I respectfully refer you to the legal analysis and authority I submitted to Art Kane on October 9, 2017 in response to his request for the autopsy reports of the 1 October decedents, as it is applicable to this request as well.

Laura

Laura C. Rehfeldt
Deputy District Attorney | Senior Attorney
Laura.Rehfeldt@clarkcountydade.com

Clark County District Attorney | Civil Division
500 S. Grand Central Parkway, Las Vegas, NV 89106
T: 702-455-4761 | F: 702-382-5178

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From: maggie [mailto:maggie@nvlitigation.com]
Sent: Tuesday, October 10, 2017 1:00 PM
To: Laura Rehfeldt <Laura.Rehfeldt@clarkcountyda.com>
Cc: Alina <Alina@nvlitigation.com>; pharan@nvlitigation.com
Subject: Re: LVRJ - Follow up request to coroner's office re Paddock and victims

Laura, thanks and understood. Wanted to also let you know that, in this case, the RJ would be fine with redacted versions of the victims' autopsies if that would resolve the coroner's privacy concerns on that front. The priority is still the information about Paddock. Please give me a call to discuss when you can. Thanks.

Maggie

Maggie McLetchie
McLetchie Shell, LLC
701 E. Bridger Ave., Suite 520
Las Vegas, NV 89101
(702) 728-5300

On Oct 10, 2017, at 12:20 PM, Laura Rehfeldt <Laura.Rehfeldt@clarkcountyda.com> wrote:

Maggie,

Just confirming that I received your voice mail from earlier this morning as well as the draft order that you sent yesterday.

Unfortunately, I have not yet had a chance to review the draft order or an opportunity to address the issues in your email. Like your schedule, mine is full the next few days. I will be sure to get back to you on both matters at the end of the week.

Thanks,

Laura

From: maggie [mailto:maggie@nvlitigation.com]
Sent: Monday, October 09, 2017 5:02 PM
To: Laura Rehfeldt <Laura.Rehfeldt@clarkcountyda.com>
Cc: Alina <Alina@nvlitigation.com>; pharan@nvlitigation.com

Subject: LVRJ - Follow up request to coroner's office re Paddock and victims
Importance: High

Laura,

Thanks again for speaking with me about the LVRJ's request for autopsy records pertaining in particular to Stephen Paddock. I really appreciate it and my office looks forward to hearing back from you tomorrow about the status of the various records that have been or will be completed now that the examination is complete. I understand that the final report itself is not complete, but would like to know what records have already been created. I also understand that the toxicology has been sent out to a lab and that, generally, that process takes 6-8 weeks. However, as we discussed, this case may be expedited. I look forward to having some clarity about what records exist, and which records have yet to be completed.

I understand the sensitive nature of this case. However, that does not change the applicable burden or the fact that the presumption is that the records requested (both regarding Stephen Paddock and the victim) are public. Further, the factors discussed in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144, 148 (Nev. 1990) do not support withholding record: (1) there is no pending or anticipated criminal proceeding; (2) there are no confidential sources or investigative techniques; (3) there is no impact on any fair trial; and (4) disclosure would not jeopardize law enforcement. While you indicated there might be a law enforcement concern once the report is complete, speculation does not merit non-disclosure. Moreover, these records are not law enforcement records. Finally, as discussed, there is a strong public interest in the public assessing the facts concerning Stephen Paddock.

On behalf of the LVRJ, I would also like to formally request copies of all other media records for records pertaining to Stephen Paddock or the victims, and your responses to those requests. I would also like copies of any records that pertain to or reflect the types of records that would be prepared by the coroner's office in a case such as this and the general process that is followed. For example, if a standard protocol is being followed that indicates which reports to create, I would like a copy of that protocol. In light of the importance of this matter and to assist us in resolving this matter, I would like those records as soon as possible but the other pending request is obviously more important.

Thanks again for your attention to this important matter, and I look forward to speaking with you.

Maggie

<image001.jpg>

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ATTACHMENT 6

From: pharan@nvlitigation.com

Sent: Thursday, November 16, 2017 3:30 PM

To: Laura.Rehfeldt@clarkcountyda.com; Mary-Anne.Miller@clarkcountyda.com

Cc: [maggie <maggie@nvlitigation.com>](mailto:maggie@nvlitigation.com); [Alina <Alina@nvlitigation.com>](mailto:Alina@nvlitigation.com);

patricia.villa@clarkcountyda.com

Subject: New Coroner Case

Good afternoon, Ms. Rehfeldt and Ms. Miller.

I am writing on behalf of Ms. McLetchie. Attached please find a courtesy copy of the Public Records Act Application Pursuant of NRS 239.001/ Petition for Writ of Mandamus in the *Las Vegas Review-Journal and the Associated Press v. Clark County Office of the Coroner/ Medical Examiner*. This Petition was filed today. A courtesy copy will also be provided via Odyssey. Please contact the office at (702) 728-5300 with any questions or concerns.

Thank you,

Pharan Burchfield

Paralegal



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701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

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ATTACHMENT 7

From: Laura Rehfeldt [<mailto:Laura.Rehfeldt@clarkcountyda.com>]
Sent: Wednesday, December 27, 2017 11:11 AM
To: maggie <maggie@nvlitigation.com>
Cc: pharan@nvlitigation.com; Alina <Alina@nvlitigation.com>
Subject: RE: LVRJ v Coroner 2 - Oct 1 records

Maggie –

In light of the cause and manner of death information released last week for each victim, and the Review Journal and Associated Press stories that followed, are you still pursuing this case? It would seem to be a moot issue. Please let me know.

Thanks,
Laura

EXHIBIT D

AB 57

Assembly Bill No. 57-Committee
on Government Affairs

CHAPTER.....

AN ACT relating to coroners; requiring coroners to make a reasonable effort to notify the next of kin who is authorized to order the burial or cremation of a decedent of the decedent's death; authorizing a coroner to notify certain other persons of the death of the decedent; authorizing a coroner to provide a coroner's report to such persons; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a coroner to notify the next of kin of a decedent of the decedent's death. (NRS 259.045) Existing law also establishes the order of priority of persons authorized to order the burial or cremation of the human remains of a deceased person. (NRS 451.024) **Section 3** of this bill requires a coroner to make a reasonable effort to notify the next of kin who is authorized to order the burial or cremation of the human remains of a decedent of the death of the decedent. **Section 3** also authorizes a coroner to notify the parents, guardians, adult children or custodians of the decedent of the decedent's death and provide a copy of the report of the coroner to the parents, guardians, adult children or custodians, as applicable. **Sections 1 and 2** of this bill make conforming changes. This bill is known as "Veronica's Law" after Veronica Caldwell.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 244.163 is hereby amended to read as follows:

244.163 1. The boards of county commissioners in their respective counties may create by ordinance the office of the county coroner, prescribe the qualifications and duties of the county coroner and make appointments to the office.

2. Any coroner so appointed is governed by the ordinances pertaining to such office which may be enacted by the board of county commissioners, and the provisions of NRS 259.025 , 259.045 and 259.150 to 259.180, inclusive.

3. The boards of county commissioners shall require that the county coroner *make a reasonable effort to* notify a decedent's next of kin *who is authorized to order the burial or cremation of the human remains of the decedent pursuant to NRS 451.024 of the fact of the decedent's death* without unreasonable delay.

4. For any offense relating to the violation or willful disregard of such duties or trusts of office as may be specified by the



79th Session (2017)

respective boards of county commissioners, all coroners holding office by appointment pursuant to this section are subject to such fines and criminal penalties, including misdemeanor penalties and removal from office by indictment, accusation or otherwise, as the ordinance prescribes. This subsection applies to all deputies, agents, employees and other persons employed by or exercising the powers and functions of the coroner.

Sec. 2. NRS 259.010 is hereby amended to read as follows:

259.010 1. Every county in this State constitutes a coroner's district, except a county where a coroner is appointed pursuant to the provisions of NRS 244.163.

2. The provisions of this chapter, except NRS 259.025 , 259.045 and 259.150 to 259.180, inclusive, do not apply to any county where a coroner is appointed pursuant to the provisions of NRS 244.163.

Sec. 3. NRS 259.045 is hereby amended to read as follows:

259.045 1. The coroner shall *make a reasonable effort to* notify a decedent's next of kin *who is authorized to order the burial or cremation of the human remains of the decedent pursuant to NRS 451.024* of the fact of *the* decedent's death without unreasonable delay.

2. *The coroner may notify the parents, guardians, adult children or custodians of a decedent of the fact of the decedent's death and provide a copy of the report of the coroner to the parents, guardians, adult children or custodians regardless of whether they are the next of kin authorized to order the burial or cremation of the human remains of the decedent pursuant to NRS 451.024.*

3. *As used in this section, "custodian" has the meaning ascribed to it in NRS 432B.060.*

Sec. 4. This act becomes effective on July 1, 2017.



EXHIBIT B

Reporter's Transcript of Hearing

1 CASE NO. A-17-764842-W

2 DOCKET U

3 DEPT. XVI

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6

DISTRICT COURT

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CLARK COUNTY, NEVADA

8

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THE LAS VEGAS REVIEW JOURNAL,

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Plaintiff,

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vs.

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CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

)

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Defendant.

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REPORTER'S TRANSCRIPT
OF
HEARING

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

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DISTRICT COURT JUDGE

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DATED TUESDAY, JANUARY 30, 2018

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1 LAS VEGAS, NEVADA; TUESDAY, JANUARY 30, 2018

2 9:31 A.M.

3 P R O C E E D I N G S

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6 THE COURT: The Las Vegas Review Journal
7 versus Clark County Office of the Coroner/Medical
8 Examiner.

9 MS. REHFELDT: Good morning, your Honor.
09:31:54 10 Laura Rehfeldt representing the Clark County Coroner.

11 MS. MONJE: Good morning, your Honor. Ofelia
12 Monje here on behalf of the Clark County Coroner's
13 Office.

14 MS. MCLETCHE: Good morning, your Honor.
09:32:03 15 Maggie McLetchie for the Las Vegas Review Journal and
16 the Associated Press.

17 THE COURT: All right. Counselor, good
18 morning.

19 MS. MCLETCHE: Good morning, your Honor.

09:32:13 20 THE COURT: Okay. And so for the record we
21 have plaintiff's request for expedited treatment
22 pursuant to Nevada Statute 239.011. And that would be
23 the Nevada Public Records Act; is that correct,
24 Counsel?

09:32:32 25 MS. MCLETCHE: That is correct, your Honor.

09:32:33 1 THE COURT: All right. You have the floor.

2 MS. MCLETCHE: Thank you, your Honor. I
3 would want -- I want to start with some updates to the
4 broader context regarding October 1 and the related
09:32:44 5 investigation.

6 As the Court may be aware, there was a
7 separate petition to unseal search warrant materials
8 which was heard by Judge Cadish. And I have -- if I
9 may approach, I have her -- your Honor, a copy of the
09:32:57 10 order that was just issued this morning.

11 THE COURT: Okay.

12 MS. MCLETCHE: And I provided a copy to the
13 counsel for the coroner's office.

14 And while that wasn't a public records case,
09:33:11 15 it dealt with a less clear right to records, one
16 derived from the common law in the First Amendment.
17 But, like, a public records case, it addressed whether
18 or not materials regarding October 1 were subject to
19 public review and access.

09:33:27 20 And in that case, which actually dealt with
21 direct investigation materials, your Honor, Judge
22 Cadish ruled that the warrants and the supporting
23 materials should all be released, save pertinent
24 paragraphs on, I think, three warrants that pertain to
09:33:47 25 only an ongoing investigation.

09:33:49 1 So that's what she ruled in that case, your
2 Honor.

3 THE COURT: And for the record, and it's my
4 understanding this is a much different scenario here.

09:33:58 5 We're specifically seeking the reports from the
6 coroner's office as it relates to -- and autopsies that
7 were performed on many of the victims.

8 MS. MCLETHIE: That is correct, your Honor.
9 What we're -- what we're seeking are autopsy reports
09:34:13 10 and related documents that pertain not just to the
11 victims, and we have -- we have conceded that those
12 could be provided to redact identities. But we've also
13 sought a few other categories of information.

14 Importantly we've also sought the autopsy
09:34:27 15 reports and toxicology reports for the shooter,
16 Paddock, and we have also sought -- the Review Journal
17 initially sought copies of all other media requests.

18 Finally, we also sought copies of any
19 protocols that the coroner's office uses to -- when
09:34:44 20 they're performing autopsies in preparing the types of
21 reports that we're -- that we -- that we're looking to
22 get in this case.

23 But while they are different, your Honor, it
24 is -- the case is of some interest because they did
09:34:58 25 compare the interest in the investigation with the

09:34:59 1 public right to access.

2 If anything, this case is different because we
3 have a clear statute that explicitly provides for
4 presumption that the autopsy and related records that
09:35:11 5 the petitioners in this case are seeking are public
6 records.

7 Throughout most of their response, the
8 coroner's office --

9 THE COURT: Well, I'd like to know --

09:35:22 10 MS. MCLEATCHIE: Sure.

11 THE COURT: -- first and foremost why it
12 wouldn't be a public record, an autopsy report.

13 MS. MCLEATCHIE: Well --

14 THE COURT: I'm trying to figure that out, and
09:35:27 15 I can't see a basis for that.

16 MS. MCLEATCHIE: That's absolutely correct,
17 your Honor. It is not expressly made public, not a
18 public record by statute. And I don't think any of the
19 arguments that the coroner's office has set forth
09:35:41 20 overcome that presumption in favor of access. For

21 example, they claim that because another bill, AB57,
22 clarified the coroner's obligation to provide next of
23 kin death notifications that because they didn't

24 explicitly say in AB579 -- AB57, I apologize, that the
09:36:08 25 autopsies are also public records that, therefore, this

09:36:11 1 Court should assume that the legislature intended that
2 they not be public records.

3 THE COURT: Well, I think it's important to
4 point out, and I want counsel to address this. I don't
09:36:20 5 concern myself with legislative intent unless I
6 determine there's an ambiguity in the statute. That's
7 how I look at that. And I think the case law from a
8 historical perspective supports that.

9 MS. MCLETCHE: That's absolutely correct,
09:36:34 10 your Honor. I think what's important, though, with
11 regard -- not with regard to AB57, and I think their
12 argument -- just to finish that point, their argument
13 flips the presumption in the analysis that the Nevada
14 Supreme Court has set forth and the legislature has set
09:36:48 15 forth in the statute on its head. Because they're
16 saying -- their argument is essentially because they
17 didn't explicitly say they're public records, they're
18 not.

19 The default, as the Court is well aware, is
09:37:00 20 that records are public unless they, and it's a heavy
21 burden they bear, prove otherwise, which, they can't
22 and haven't done.

23 With regard to legislative history, we did
24 include some legislative history in our brief, and we
09:37:14 25 included that and the discussion of that legislative

09:37:17 1 history in the Gibbons case to explain that the
2 coroner's office rely -- the coroner's office's
3 reliance on just Donrey to suggest there's some sort of
4 broad balancing, Look, the work the coroner's office
09:37:31 5 does is important. We're just telling you it's
6 interfering, so therefore -- and there might be privacy
7 interests at stake, so, therefore, Donrey, no records,
8 that that test has changed substantially through the
9 legislative history. Explicitly now in the statute it
09:37:45 10 sets forth their burden and explains that they have
11 to -- they have to meet their burden by a preponderance
12 of the evidence. And it's -- the case law and the
13 statute as amended makes very clear that it's a heavy
14 burden.

09:37:59 15 Turning to their other attempts to overcome
16 that burden, the coroner, internal policy they rely on
17 was not even provided in their briefs -- in their -- in
18 their briefs. But in any case an internal policy
19 cannot trump the plain text of the NPRA that provides
09:38:19 20 that all records are public unless the law says
21 otherwise. And the Nevada Supreme Court has also
22 addressed whether or not an informal internal policy of
23 an agency can trump the public records -- public
24 records law in the Gibbons court -- in the Gibbons case
09:38:36 25 Reno Newspapers v Gibbons, and explicitly rejected it.

09:38:40 1 Turning to their -- another of their
2 arguments, they rely on an AGO opinion. That opinion
3 is, of course, not law. And that opinion predated even
4 the Donrey case. It was from 1982, and it certainly
09:38:57 5 can't be relied upon.

6 THE COURT: It's my recollection that it
7 specifically involved the interpretation of a 1962
8 version of the Nevada Public Records Act.

9 MS. MCLEATCHIE: That's correct.

09:39:06 10 THE COURT: And as we well know that's been
11 amended. So as a matter of law, I would think how can
12 you rely upon an interpretation of the statute that is
13 no longer in force and effect.

14 MS. MCLEATCHIE: Exactly, your Honor. And they
09:39:22 15 applied a much less -- less exacting standard of the
16 public -- of the public records law and the balancing
17 test.

18 I'll also point out that when there isn't --
19 when there isn't a direct statute on point they, of
09:39:35 20 course, from the burden of establishing by a
21 preponderance of the evidence that there's some claim
22 of confidentiality and that that claim of
23 confidentiality overcomes with regard to those specific
24 records the interest and public access. And so just
09:39:49 25 relying on sort of a blanket AGO opinion argument, I

09:39:54 1 don't think works.

2 For example, turning to another of their
3 arguments, they rely on a nebulous claim of privacy to
4 assert that the records can't be released. And that
09:40:05 5 argument fails for a few reasons. First of all,
6 certainly with regard to Steven Paddock it cannot be
7 the case that the public interest in obtaining access
8 to this information, the presumption in favor of access
9 is less important than any right that Paddock might
09:40:22 10 have, which under the law a deceased person does not
11 have a right to privacy.

12 But certainly, the coroner's office cannot be
13 saying that Mr. Paddock's privacy rights are more
14 important. And so you can't just do a blanket
09:40:35 15 analysis.

16 And with regard to the victims -- the victim's
17 autopsies. While Judge Crockett in another sensitive
18 case, and we realize that's not binding on this Court,
19 but Judge Crockett in another sensitive case that
09:40:48 20 involved autopsy records of child victims, he -- he
21 rejected privacy arguments in that case as well.

22 With regard to victims, though, in this case,
23 we have said, Look, we'll take them in redacted -- in
24 redacted form. And so any legitimate privacy issue --

09:41:05 25 THE COURT: So I want to make sure I'm clear

09:41:07 1 on that because when you say the request will take the
2 autopsy reports in redacted form, I want to make sure I
3 specifically understand what you mean by that.

4 MS. MCLEATCHIE: I mean the names and the --
09:41:22 5 the names redacted. Identifying names and information
6 redacted. But very, very small redactions.

7 THE COURT: So that would be the names of the
8 victims.

9 MS. MCLEATCHIE: Correct.

09:41:33 10 THE COURT: All right.

11 MS. MCLEATCHIE: With regard to Mr. Paddock's
12 records, we absolutely think that nothing should be
13 redacted. Obviously, we're going to know whose autopsy
14 it is. And we don't think that there's any sort of
09:41:43 15 concern at stake with regard to his records.

16 With regard to their other -- other
17 privacy-type arguments, they're not a HIPAA covered
18 entity. They concede as much. There is no
19 patient-doctor confidentiality for deceased persons.
09:41:55 20 They cite to a whole chapter. That doesn't meet their
21 obligations under the NPRA. It's the healing arts
22 chapter. I wasn't sure how to respond to that.

23 Another --

24 THE COURT: Well, I mean the bottom line is
09:42:06 25 essentially this. There's no physician-patient

09:42:09 1 relationship that would be the basis of HIPAA. We're
2 not talking about the health insurance carrier that
3 would also potentially be the basis for HIPAA. So
4 those specific issues are really not germane to
09:42:23 5 specifically the contents and the purpose of an autopsy
6 being performed by a governmental entity, i.e., the
7 coroner's office.

8 MS. MCLETCHE: Exactly, your Honor. It's an
9 investigation into the cause of death.

09:42:35 10 With regard to one of their -- their final
11 arguments, I believe, the ongoing investigation.
12 First, Donrey preceded some of the amendments that we
13 talk about in our briefs. But second, that case made
14 clear not that any ongoing investigation means that
09:42:51 15 records are even direct -- indirectly related to the
16 investigation are to be kept secret. They have a
17 burden not using hypothetical scenarios or speculation.

18 THE COURT: I need specific facts to support
19 that. Because I don't mind setting forth this for the
09:43:09 20 record. It's no different than any other case. The
21 Nevada statutory scheme as it relates to the Public
22 Records Act places a burden on the governmental
23 entities to establish by a preponderance of the
24 evidence the need for confidentiality. And that's what
09:43:26 25 the standard is.

09:43:28 1 MS. MCLETCHE: That's correct, your Honor.
2 And I think a lot of the interests that are cited in
3 the Donrey case are inapplicable here. Because while
4 there's an ongoing federal investigation, which Metro
09:43:38 5 has made clear, there -- if there are no additional
6 state charges that are going to be filed. And so there
7 are -- there isn't even an ongoing state criminal
8 investigation that could lead to charges. The
9 interests in the Donrey case were things like the Fifth
09:43:53 10 Amendment rights of a defendant. So, your Honor, all
11 of their arguments fail.

12 In addition there's a few other issues. One
13 is they did -- with regard to the AP request and with
14 regard to any of the arguments that they've made that
09:44:07 15 they didn't make initially to the Review Journal,
16 they -- they have waived those. They have waived
17 those. 239.0107(d) does require a meaningful response
18 within five days. And we, obviously, understand and
19 respect the work that the coroner is doing, but
09:44:27 20 there -- that doesn't obviate their obligations under
21 the Public Records Act. In fact, transparency is
22 arguably --

23 THE COURT: Well --

24 MS. MCLETCHE: -- even --

09:44:36 25 THE COURT: I think, and is what's overruled

09:44:39 1 as far as this act is concerned, and this isn't my
2 first rodeo as far as this act is concerned. If you
3 take a look at NRS 239.0107, it talks about the duties
4 of a governmental entity, specifically as it relates to
09:44:54 5 the Nevada Public Relations -- I mean, Public Records
6 Act.

7 And if you take a look at the -- paragraph 1,
8 it talks about what the agency must do or the
9 governmental entity must do. And there's no discretion
09:45:12 10 given there. And it provides as follows:

11 "No later than the end of the fifth
12 business day after the date which the person
13 who has legal custody or control of the public
14 book or record of a governmental entity
09:45:26 15 receives written notice from a person to
16 inspect or copy public book or record, a
17 government entity shall do one of the
18 following."

19 And there's -- they can respond in a couple of
09:45:43 20 ways. Really, three ways. Four ways. But they have
21 to do something, right? It doesn't say "may do." It
22 "shall." It's mandatory.

23 MS. MCLEITCHIE: Absolutely, your Honor. And
24 if they're going to withhold records, they have to do
09:45:57 25 more than just cite to Donrey. In fact, a lot of the

09:46:00 1 legislative history talks about trying to get
2 government officials to do more than just cite Donrey
3 and part of the reasons it was amended --

4 THE COURT: They have to do more. They do.
09:46:09 5 Because, I mean, you look at it. It's -- this is a
6 mandate by the Nevada legislature as to what has to be
7 done.

8 MS. MCLEATCHIE: Absolutely, your Honor.

9 THE COURT: And, for example, if I have a
09:46:19 10 mandate from the Nevada legislature regarding how I
11 rule on a specific case, or as it relates to statute of
12 limitations and many other issues, I can't sit back and
13 say, Well, I don't know if that's what I really want to
14 do. I got to follow the law.

09:46:32 15 MS. MCLEATCHIE: Absolutely, your Honor. And
16 another thing that they have to do is do more than also
17 just say that they don't know if records exist, and
18 kind of shrug their shoulders. I kind of see it like a
19 discovery obligation. An attorney gets a discovery
09:46:45 20 request that's directed at their client. They can't
21 just say, Look, I don't know if my clients have
22 responsive records. They have to actually -- they have
23 to actually say whether the documents -- they have the
24 documents and they're withholding them and why. Or
09:46:58 25 they have to say, We don't have them or some other

09:47:01 1 governmental entity has them.

2 But in -- with regard to a number of these
3 requests, we -- we frankly have been getting not very
4 clear information about what the status is. I've been
09:47:14 5 told, for example, by counsel for the coroner's office
6 that -- that she's unclear as to whether or not any
7 protocol documents exist. Her obligation in the
8 coroner's office is obligation --

9 THE COURT: I mean, if that's true, either
09:47:30 10 they exist or they don't.

11 MS. MCLEATCHIE: Correct.

12 THE COURT: If they don't, that's a fine
13 response. But if they do, potentially identify them.
14 And if they're confidential, tell us why.

09:47:39 15 MS. MCLEATCHIE: Exactly, your Honor. You can
16 say there's -- there are no responsive records --

17 THE COURT: Right.

18 MS. MCLEATCHIE: -- but you can't say I don't
19 know if there are responsive records.

09:47:45 20 THE COURT: Right.

21 MS. MCLEATCHIE: The other thing they can't
22 do --

23 THE COURT: I mean, here's the thing. I mean,
24 I truly get this. Potentially, who could have foreseen
09:47:51 25 such -- such an act, right, so maybe there's no

09:47:54 1 protocol records in place for this. In the future,
2 potentially, there might be. Hopefully, there will
3 never be the need for that. I mean, I get that, you
4 know. It was unforeseen.

09:48:04 5 But a response saying, Look, we don't have
6 protocol records in place for an incident like this
7 because we didn't foresee it, that's okay. I think.

8 MS. MCLEITCHIE: And we also --

9 THE COURT: Just say it.

09:48:14 10 MS. MCLEITCHIE: And we also understand that
11 the coroner's office itself was inundated and --
12 inundated after this horrific event took place, but the
13 counsel for the coroner's office could, you know, could
14 easily have said, Look, I need to confer further with
09:48:29 15 my client. I'll provide a clear answer within ten
16 days. And with regard to legal argument, certainly the
17 attorney for the coroner's office could have made clear
18 what their legal arguments exactly were.

19 We still don't even know whether or not --
09:48:41 20 I've asked over and over. I asked about a week ago
21 what the status was with Paddock's autopsy. About a
22 month ago, counsel for the coroner's office represented
23 to me that his autopsy was almost done. And tried to
24 see if -- if we would accept a copy of the autopsy
09:48:58 25 through Mr. Paddock's brother so that they wouldn't

09:49:02 1 have to be in a position of providing it due to some
2 additional litigation that's now on appeal at the
3 coroner's office. But the representation over a month
4 ago was that his autopsy was almost done.

09:49:14 5 I also have with me a copy, if I may approach.
6 I have a copy of LVMPD's preliminary investigation
7 report regarding 1 October. And we flagged and
8 highlighted the pertinent -- or flagged, at least, the
9 pertinent pages. And there is extensive information in
09:49:38 10 here about the autopsies of the victims and of the
11 suspects, not all of the information, and certainly it
12 doesn't moot what has -- what our requests are because
13 we're entitled to the records themselves. But I think
14 it shows two things.

09:49:53 15 One, while the coroner's office hasn't given
16 me a clear answer, some reports must be done. They are
17 done enough that they've issued information about the
18 victims directly. And they're done enough that Metro
19 could do this report. But I think in order to argue
09:50:07 20 that there's an ongoing investigation and not have to
21 provide the records, they haven't told me whether the
22 reports are done. Even if they're not done, some
23 documents must be done, and we're entitled to the
24 records regarding the autopsies, your Honor.

09:50:22 25 The final point I just want to make is that

09:50:25 1 while the coroner's office spends a fair amount of time
2 arguing the unique and horrific nature of this event,
3 and we were willing to work with them in the immediate
4 aftermath to try to figure out how to resolve some of
09:50:38 5 these issues, and I certainly engaged in that process
6 with counsel for the coroner's office, the fact that
7 there's a horrific tragedy doesn't excuse any public
8 entity from the requirements of transparency and the
9 Public Records Act.

09:50:49 10 Dealing with access to court files, the United
11 States Supreme Courts explained this in Richmond
12 Newspapers. The Court also explained it in the case
13 regarding access to warrants and the Jared Loughner
14 case. And it explained that the important therapeutic
09:51:04 15 value in getting actual access to information, the
16 public and the media are entitled and should be able to
17 assess how well government agencies, including the
18 coroner's office, including response agencies, they are
19 allowed to assess how well they responded and what
09:51:23 20 actually transpired with regard to the October 1 events
21 and law enforcement response, your Honor.

22 THE COURT: Okay. Thank you, ma'am.

23 MS. MCLETCHIE: Thank you, your Honor.

24 MS. REHFELDT: Good morning, your Honor. I
09:51:42 25 just want to clarify a few things that Ms. McLetchie

09:51:47 1 addressed. And Ms. Monje is going to go into the
2 merits of the matter.

3 With respect to the RJ's initial request on
4 October 3 and the following days after, the RJ
09:52:03 5 initially made a request to the Clark County Coroner on
6 October 3 which was two days after this incident
7 occurred.

8 Because of the situation of the coroner's
9 office as a result of this incident, I was tasked with
09:52:22 10 doing some initial response to media requests. And
11 that I did. I responded personally to the RJ. And
12 additionally, I responded to a handful of other media
13 requests. Ms. McLetchie referenced them at the
14 beginning of her argument where she mentioned that she
09:52:42 15 had asked for copies of all other media requests,
16 insinuating that she didn't get everything she
17 requested. For clarification purposes she only asked
18 for the ones I responded to, of which I provided, and I
19 provided those timely.

09:52:59 20 The other thing she, Ms. McLetchie, asked of
21 me, the attorney for the coroner, was that she was
22 asking for protocol of the types of records that would
23 be produced for this type of case. Understand that
24 while I am counsel for the coroner, I work in the DA's
09:53:23 25 Office. The coroner is one of my many assignments. I

09:53:26 1 have a lot of other legal matters and assignments and
2 other agencies that I represent. And I am not
3 immersed, and I do not -- I'm not involved in the
4 day-to-day operations and activities of the coroner's
09:53:42 5 office. I'm not part of their investigations. I'm not
6 part of identifying next of kin. So I am not aware of
7 the status of such investigations or reports as they
8 are completed.

9 THE COURT: And so, ma'am, I understand that.
09:53:59 10 And I want to be make sure everyone understands this
11 one issue. This was -- October 1 was unforeseen. It
12 was a horrific event. I get that. I do. But
13 notwithstanding that fact, we do have the Nevada Public
14 Records Act, and it's there.

09:54:16 15 And -- and it places a specific obligation on
16 the governmental entities for the State of Nevada to
17 have open access to public records. And that is what
18 it is.

19 Now, I'm listening to you. And -- and I
09:54:32 20 understand potentially the dilemma you faced. And I
21 realize you now -- you don't work for the coroner's
22 office. But I look back, and as a litigator I worked
23 for my clients. I wasn't involved in their day-to-day
24 operations of their businesses. Nonetheless, if I got
09:54:51 25 a discovery request, I would call them up and say,

09:54:53 1 Look, can you answer this. And this is your obligation
2 to do so.

3 So when -- so when -- when I'm talking
4 specifically about protocol. For example -- and I do
09:55:00 5 understand there could be delays in getting things
6 done, I get that, under the facts of this case.

7 But if there is a protocol in place or any
8 documents regarding protocol when it comes to issues
9 regarding mass shootings, number one, I think the
09:55:18 10 requesting individual should have been -- there should
11 have been a response as to whether that exists or not.
12 Either it does or it doesn't.

13 And then, number two, the question should be
14 either it's produced or if there's a specific issue
09:55:32 15 regarding confidentiality, then that should be lodged
16 in the record, and so on. So that's kind of how I look
17 at that.

18 MS. REHFELDT: If I may, I was unable to
19 ascertain that information before this case was filed.
09:55:46 20 And we have since then been able to address that issue,
21 and it is addressed in the affidavit of -- affidavit of
22 John Fudenberg who is the Clark County Coroner Medical
23 Examiner. And he has -- he has confirmed that there
24 isn't any protocol that is any different from then what
09:56:03 25 they would do in an ordinary -- an ordinary case that

09:56:06 1 happened on -- in a more routine matter.

2 THE COURT: I understand that. And I don't
3 know -- I'm not here to judge whether they should have
4 had a protocol in place or not. But I think that
09:56:18 5 simple fact probably illustrates maybe one of the
6 reasons why there was a request for that, because maybe
7 there needs to be a protocol in place. I don't know.
8 That's for someone else to decide.

9 But nonetheless, I look at it from this
09:56:30 10 perspective: Number one, is it -- is that a legitimate
11 request under the Nevada Public Records Act? Probably,
12 yes.

13 Number two, if there is a protocol in place,
14 should it have been identified? Yes. If it's not, say
09:56:46 15 there isn't one in place. And then they kind of move
16 on, and we're not here in court. That's kind of how I
17 look at that. If you understand what I mean.

18 MS. REHFELDT: I understand what you mean.

19 THE COURT: Yeah. You know, because, once
09:56:57 20 again, this was unforeseen, and it takes events like
21 this for everyone to learn.

22 MS. REHFELDT: I understand.

23 THE COURT: Right. Anything else, ma'am?

24 MS. REHFELDT: I don't have anything else at
09:57:07 25 this time. Thank you.

09:57:08 1 THE COURT: Thank you, ma'am.

2 MS. MONJE: Good morning, your Honor. Ofelia

3 Monje here on behalf also of the coroner's office.

4 THE COURT: Good morning.

09:57:15 5 MS. MONJE: And I wanted to kind of start off

6 with the idea that this was an unforeseen incident. In

7 fact, your Honor, this was the largest mass shooting in

8 the history of this country, and I believe that that

9 becomes important especially when arguments are raised

09:57:26 10 about bad faith and about waiver.

11 So, your Honor --

12 THE COURT: I -- you know, I understand that.

13 And I want you to understand I'm very sensitive to

14 those issues. And if you take a look at the statutory

09:57:40 15 scheme, if there's not a response, it doesn't

16 specifically address what the penalty is, right?

17 MS. MONJE: Oh, absolutely, your Honor.

18 THE COURT: So I think that is all contingent

19 upon the circumstances --

09:57:49 20 MS. MONJE: Correct.

21 THE COURT: -- and give the Court some

22 discretion.

23 MS. MONJE: And that's absolutely what I'm

24 trying to pose to the Court, and I appreciate that,

09:57:55 25 your Honor, because I think that this is a unique case

09:57:57 1 with unique circumstances that I don't think should be
2 ignored as the Court has correctly pointed out.

3 The Gibbons case, which is actually a 2011
4 case, outlines the framework for testing claims of
09:58:10 5 confidentiality, your Honor. And under the backdrop of
6 the NPRA's declaration of its provisions --

7 (Court Reporter interrupts)

8 MS. MONJE: Nevada Public Records Act.

9 Ms. McLetchie is correct that it must be
09:58:24 10 liberally construed. In fact, your Honor, we -- we
11 agree that this is a public record. However, we submit
12 that it's not for public dissemination. And that's
13 where the balancing test comes in.

14 And Ms. McLetchie has stated that this idea of
09:58:39 15 redacting the records, and only omitting the names, but
16 leaving all of this other sensitive confidential health
17 information, collateral health information --

18 THE COURT: Well, I have a question for that.

19 MS. REHFELDT: Yes, your Honor.

09:58:50 20 THE COURT: And I'm looking at it from this
21 perspective. Number one, typically confidentiality as
22 it relates to the health information, HIPAA, and all
23 those -- and the federal laws, and I don't know for
24 sure if there's a state law that specifically regulates
09:59:05 25 that because it's covered comprehensively based upon

09:59:09 1 HIPAA and the federal law. When you look at it from
2 that perspective, once a person dies, doesn't the
3 confidentiality of that point no longer apply?

4 MS. MONJE: And, your Honor, I believe that it
09:59:22 5 was in the petitioner's brief where they quoted a
6 nonbinding district court opinion from Connecticut that
7 says "A dead person has no cognizable right of action
8 when his privacy is invaded."

9 I think that the dilemma that we are in, your
09:59:36 10 Honor, is, again, going back to this is a tragic
11 incident, they are requesting all of this confidential
12 information. Yes, for the shooter Paddock, which I
13 will submit to the Court, that report is not ready.

14 THE COURT: But the question for you --

09:59:48 15 MS. MONJE: Yes.

16 THE COURT: -- if it's confidential, right,
17 there has to be a specific Nevada statute that I look
18 at or federal law that would determine that this is
19 confidential. And so we're making an argument that
10:00:00 20 it's confidential. But when I looked at the Nevada
21 Public Records Act as it relates to confidentiality, it
22 appears that the requested documents don't come under
23 that statutorily definition as to what is confidential.

24 MS. MONJE: And correct. And, your Honor,
10:00:14 25 it's the coroner's position that the records are either

10:00:18 1 confidential pursuant to NRS 259.045.

2 THE COURT: Is that the notification
3 requirement?

4 MS. MONJE: That is -- if I may, your Honor.

10:00:27 5 THE COURT: Yes, you may.

6 MS. MONJE: Thank you. And I will be looking
7 at Exhibit D attached to our response.

8 THE COURT: Okay. Let me see. I got
9 responses everywhere.

10:00:38 10 MS. MONJE: And I'm looking at Section 2 of
11 that statute as it was amended by AB57, your Honor.

12 THE COURT: That's the mandate or requirement
13 that you notify next of kin.

14 MS. MONJE: And also talks about who can
15 receive the autopsy reports.

16 THE COURT: I understand.

17 MS. MONJE: And so -- and that's -- the first
18 part of our argument is that so under the NPRA, if a
19 statute deems information confidential, that ends the
10:01:09 20 inquiry. They're confidential by statute. However, if
21 there's not a statute on point, that's when you get to
22 this narrowly construed balancing test. And that's
23 where we submit that if the Court does not agree with
24 us that this applies, then in looking at the balancing
10:01:22 25 test, the privacy interests outlined here in the

10:01:26 1 reports outweigh the public's need to know or the need
2 to disclose.

3 THE COURT: How about this?

4 MS. MONJE: Yes, your Honor.

10:01:31 5 THE COURT: All -- all records are -- all
6 public records are subject to the disclosure unless the
7 Nevada legislature specifically deems them
8 confidential. Why wouldn't that be the appropriate
9 analysis? Because if you take a look at the statute,
10:01:46 10 and I'm going to NRS 239.010, and it sets forth as
11 follows:

12 "Except as provided otherwise -- except as
13 otherwise provided in subsection 3, all public
14 books, public records of a governmental entity,
10:02:10 15 the content, which are not otherwise declared
16 to be confidential, must be open at all times
17 during office hours to inspections -- to
18 inspection by any person."

19 That's pretty broad. And it specifically
10:02:28 20 limits what is confidential as defined under the
21 statute. And just as important too, when it comes to
22 issues regarding the interpretation of this statute,
23 what does our Nevada legislature say? What does it
24 instruct me as a trial judge to do?

10:02:41 25 MS. MONJE: I --

10:02:43 1 THE COURT: It says the provisions of this
2 chapter must be construed liberally to carry out an
3 important purpose. That's what it says. Right? And
4 it goes further. It says, Any exception -- I'm sorry
10:02:58 5 exemption, exception, or balancing of interests which
6 limits or restricts access to public books or records
7 by members of the public must be construed narrowly.
8 And that's the law.
9 And -- and -- and they actually tell the
10:03:12 10 purpose for this. They said it's to foster democratic
11 principles by providing members of the public access.
12 And so when I look at it from that perspective, unless
13 it's specifically set forth that this is a exception,
14 an exemption, or confidential, I think the public has a
10:03:27 15 right to know.

16 MS. MONJE: And, your Honor, if I may. In
17 looking at the Gibbons opinion again from 2011, it
18 states: "In the absence of a statutory provision that
19 explicitly declares a record to be confidential."

10:03:39 20 And our position is that components of the
21 report are confidential. Any limitation on disclosure
22 must be based upon a broad balancing of the interests
23 involved, and the state entity bears the burden to
24 prove that its interest in nondisclosure clearly
10:03:52 25 outweigh the public's interest and access. So in the

10:03:55 1 absence of a statutory --

2 THE COURT: Why wouldn't the public have an
3 interest in access? And, you know, when you look at it
4 from this perspective, I think Ms. McLetchie brought up
10:04:05 5 an important point, and I was listening to her. For
6 example, there was request -- request made for
7 protocol. And I do understand that there -- there --
8 it appears to be that there wasn't a protocol in place.
9 Well, maybe the public has a right to know that there
10:04:21 10 wasn't one and feel that maybe there should be. I
11 don't know. It's not my decision.

12 MS. MONJE: Correct.

13 THE COURT: But I think that's the point she
14 was making there. And I can see why the public might
10:04:32 15 want to know that.

16 MS. MONJE: I don't disagree, your Honor. I
17 was specifically stating this in terms of the
18 confidential health information, the components of the
19 autopsy reports as to the 58 victims of the October 1
10:04:46 20 shooting, that we are stating that that information is
21 confidential. Such as toxicology. Such as whether
22 they had an STD. Such as whether somebody was
23 pregnant.

24 And, your Honor, I haven't looked at these
10:05:00 25 reports. This is just what I know to be in this

10:05:01 1 report -- these reports based on Coroner Fudenberg's
2 [sic] affidavit attached to our response.

3 THE COURT: I understand, ma'am. I do.

4 MS. REHFELDT: Thank you, your Honor.

10:05:11 5 THE COURT: Okay.

6 MS. MCLEITCHIE: Your Honor, just a few
7 additional points. In terms of the timing, it's not as
8 if we filed a request three days after the incident and
9 then filed a lawsuit five days later when they failed
10:05:25 10 to respond adequately.

11 While the original request was made three days
12 after the incident, we didn't file the lawsuit until
13 November 16. And it's now over three months later.
14 And they have had ample time to explain specifically
10:05:41 15 what's confidential in the records and why. And they
16 have not met their burden. And this is explicitly now
17 in the statute, 239.0113. It says the governmental
18 entities has the burden of proving by a preponderance
19 of the evidence that the public book or record or a
10:06:03 20 part thereof is confidential.

21 And while counsel for the coroner's office is
22 correct that despite the fact that it may not quite
23 match explicitly with the text of the NPRA, the Nevada
24 Supreme Court continues to recognize that there may be
10:06:20 25 circumstances in which a governmental entity asserts a

10:06:23 1 nonstatutory claim of confidentiality or privilege like
2 the deliberative process privilege, for example, in
3 this --

4 THE COURT: Well, for -- and this doesn't
10:06:32 5 appear to be the case, but I know there have been cases
6 where there might be specific things that are noted in
7 an autopsy report based upon an ongoing criminal
8 investigation that the district attorney's office
9 criminal division and/or the police might not want
10:06:53 10 released in the public domain because they don't want
11 the focus of the investigation to know what they know.

12 If you understand me.

13 MS. MCLETCHE: Absolutely, your Honor.

14 THE COURT: And so I would expect if that type
10:07:06 15 of information was contained in an affidavit from --
16 from the Las Vegas Metropolitan Police Department
17 investigator and/or the DA's office or something like
18 that, I would be very sensitive to that type of issue.
19 Because there's certain circumstances upon which I can
10:07:21 20 foresee that could be a significant problem if that
21 information is released.

22 It doesn't appear to me that based upon what I
23 have in front of me that happens to be the case under
24 these facts.

10:07:35 25 MS. MCLETCHE: That's correct, your Honor.

10:07:36 1 And interestingly, while the Nevada Supreme Court has
2 recognized -- has recognized the possible limitation on
3 access, I don't think there's a seminal NPRA case from
4 the Nevada Supreme Court where they've done the
10:07:49 5 balancing test and say, Hey, you don't get the records.

6 Every time --

7 THE COURT: That's why we perform the
8 balancing test.

9 MS. MCLEITCHIE: Right. There is a balancing
10:07:54 10 test. But the balancing test -- under the balancing
11 test they haven't -- they haven't met their burden
12 which they should have met within five days. And at
13 least in their response to our petition, they have to
14 show by a preponderance of the evidence that the
10:08:08 15 records are confidential.

16 Rather than doing that, they've relied on
17 broad sweeping -- broad sweeping conclusory arguments
18 that there are privacy interests at stake. Counsel for
19 the coroner's office concede that she hasn't looked at
10:08:22 20 these documents. They're obligated to look at these
21 documents and determine whether or not redaction is
22 possible to satisfy their interests. They haven't done
23 any of those things.

24 And with regard to sensitive health
10:08:38 25 information, again, once the identifying information

10:08:41 1 for the victims is redacted, any claim or concern about
2 privacy is resolved.

3 And while -- and while I actually think that
4 under the law we might be entitled to the records in
10:08:53 5 unredacted form, out of sensitivity to the victims and
6 the victims' families in this case, we've said, Look,
7 any privacy -- we've tried to work with the coroner's
8 office. And said, Hey, out of a concern for the
9 victims and the victims' family in this case, we're
10:09:06 10 willing to take the autopsies of the victims in
11 redacted form to protect identifying information.

12 And with regard to specific sensitive
13 information, they should have addressed what specific
14 additional sensitive information could somehow
10:09:23 15 identify -- be identified -- be identified or linked to
16 specific people, and they have failed -- they have
17 failed to do that, your Honor.

18 And finally, AB57, you can't read into one
19 statute that deals with the process for next of kin a
10:09:41 20 desire to exclude the public for the reasons the Court
21 was pointing out with the explicit language of the
22 NPRA. Unless expressly declared by law to be
23 confidential, the records are public, your Honor.

24 And I think another thing that's important in
10:09:56 25 these cases, is expeditious access. And I appreciate

10:10:00 1 that the Court scheduled this hearing as quickly as it
2 did. I know it was a busy January. This kind of fell
3 over the holidays, but I would request that these
4 records be produced without delay. With regard to be
10:10:11 5 clear about what records I think we're entitled to,
6 some form of reports have been created for all their
7 victims. We -- they keep saying they're not complete;
8 they're not complete. And they can't just keep
9 asserting that forever.

10:10:23 10 And I think they were -- we didn't ask for
11 only absolutely completed public records. The AP's
12 request, for example, was not limited to that.

13 With regard to the media requests, we're not
14 particularly interested in those at this case, your
10:10:37 15 Honor. But I think it does reflect a problematic way
16 that the coroner's office goes about responding to
17 those requests, which is in their brief. They've said
18 there's hundreds and hundreds of media requests. I did
19 not ask Ms. Rehfeldt for only the request that she
10:10:51 20 responded to personally. My letter -- my email letter
21 to her does not state that. She interpreted that
22 request narrowly. Only provided a few requests. And
23 then in her response indicates, of course, which we all
24 would expect to be true, that they've had hundreds of
10:11:06 25 media requests. They should have produced those.

10:11:08 1 They're not, obviously, the urgent and
2 important records. The urgent and important records
3 are the protocol. While they said that they didn't
4 have a specific protocol for mass events like this, I
10:11:21 5 asked for whatever protocol that pertains to how they
6 handled this case. They must have blank report forms.
7 They must have standard operating procedures. They
8 must have a time in which they send out a toxicology
9 report. They -- they don't just do autopsies in a
10:11:36 10 vacuum. It's hard to imagine that they just kind of
11 wing it.

12 And so Mr. Fudenberg's declaration says that
13 he just used the normal procedures. And then he goes
14 on to describe them. I want the records. I want to
10:11:48 15 see the coroner's office procedures because it will
16 help us do a better job, the media, in making requests
17 and narrowing requests in the future.

18 With regard to the autopsies and related
19 documents, especially for Steven Paddock, the
10:12:00 20 toxicology report that we requested for him, they have
21 them. They have enough that Metro made an -- included
22 a lot of detail in the report. And according to
23 counsel for the coroner's office they were almost done
24 a month ago. And we want the records in whatever form
10:12:15 25 they're at right now. We want the current version of

10:12:18 1 the reports, the associated notes, and for Mr. Paddock,
2 the toxicology reports without delay.

3 While this isn't a First Amendment case, this
4 is a public records case. Courts have held, for
10:12:29 5 example, in the context of unsealing search warrants
6 that once -- once a court determines that there's a
7 right of public access, that any delay in getting the
8 requester the documents violates the First Amendment.

9 Here we have a media. We have media entities,
10:12:43 10 the Review Journal and the Associated Press, who want
11 to get access to information to report to the public.
12 As the Court is probably aware there's conspiracy
13 theories floating out there in the vacuum with some of
14 the lack of information. And I would respectfully
10:12:58 15 request that they be required to produce this
16 information without delay.

17 Thank you, your Honor.

18 THE COURT: All right. This is what I'm going
19 to do. And I just have a couple of comments. It's
10:13:11 20 going to be my ruling that based upon my review that
21 the Nevada Public Records Act, it specifically does not
22 set forth any exceptions and/or exemptions for autopsy
23 reports. If it -- if it did provide for that, of
24 course, I would look at this issue in a different
10:13:32 25 light.

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10:13:35 1 As a result, I'm going to rule that autopsy
2 reports are a public record when prepared by the
3 coroner's office in its public capacity. And I think
4 that's important to point out because that's -- that
10:13:47 5 covers the thrust and focus of the Nevada Public Rights
6 Act.

7 Regarding, I guess it's Nevada Revised Statute
8 244.163, that provides no exception as far as, you
9 know, the duty or responsibility to notify the next of
10:14:12 10 kin. That has no application to this case.

11 I guess, at the end of the day as it relates
12 to the request and the moving papers, number one,
13 we've -- we've handled this in an expedited manner, and
14 that was one of the requests.

10:14:31 15 Secondly, regarding the request for injunctive
16 relief ordering the coroner's office to immediately
17 make available complete copies of the requested records
18 or make them available for inspection, I'm going to
19 grant that. I'm going to grant the declaratory relief.

10:14:51 20 Regarding an issue of finding in bad faith,
21 I'm going to deny that. And I think it's -- to me it
22 appears to be fairly clear that this was an unforeseen,
23 unfortunate event. And -- and I realize that under the
24 circumstances as presented create -- create a lot of
10:15:14 25 angst, anxiety, pressures and the like, I get that.

10:15:22 1 Just as important too we're going to redact the names
2 on the autopsy reports.

3 Ma'am, you have a question.

4 MS. MONJE: I just have one brief thing, your
10:15:28 5 Honor. As to the shooter, Steven Paddock.

6 THE COURT: Yes.

7 MS. MONJE: That autopsy report is not
8 complete. And if I just may really quick, your Honor.
9 It's my understanding that the coroner is awaiting for
10:15:38 10 an outside party not with Clark County, a forensic
11 consultant to provide additional information. I am
12 unsure as I stand here what the report will contain.
13 Again, this is a unique and unprecedented case. So I'm
14 not exactly sure when the report will be ready, but I
10:15:53 15 did want to apprise the Court of that fact as it's
16 making its ruling.

17 THE COURT: As soon as it's ready, it's ready;
18 right?

19 MS. MCLETCHIE: I think that it sounds like
10:16:00 20 they're waiting for additional information to be
21 included. I think the draft of the report is a public
22 record, your Honor. And or -- and there must be some
23 version of this report. Because they know enough to
24 have given it to Metro to make Metro's report to the
10:16:13 25 public. There's specific information that is already

10:16:16 1 fixed and is out there in the public domain. And the
2 public -- the public has a right to see what Metro's
3 report is based on. They have a right to see the
4 underlying facts for themselves. And that, frankly,
10:16:28 5 gives -- gives the public confidence when -- when it's
6 just a press release, or whether it's just information
7 that's conveyed through a prepared report through
8 Metro's public information office, not even through the
9 coroner's office, there's not trust in that
10:16:41 10 information. And there's nothing -- there's nothing in
11 the law that says that the version that they have in
12 place right now is not a public record.

13 And my concern is they indicated the record
14 was almost ready a month ago. They haven't provided
10:16:56 15 evidence that the report is not done other than a
16 declaration that -- from January 2, I believe, and a
17 month ago they said the report was almost done. We
18 think we're entitled to that draft report.

19 THE COURT: Wasn't there a draft report
10:17:09 20 submitted to Metro?

21 MS. MONJE: And, your Honor, that was what I
22 was going to propose. I can obtain that from the
23 Coroner Fudenberg.

24 THE COURT: Yes.

10:17:15 25 MS. MONJE: What I was going to say, your

10:17:15 1 Honor, as an officer of court, I met with Coroner
2 Fudenberg last Thursday. That's what he represented to
3 me. I can obtain that draft that was provided to
4 Metro. And I just wanted to apprise the Court and
10:17:25 5 Ms. McLetchie that that final report is not ready.

6 THE COURT: Any problem with that, ma'am?

7 MS. MONJE: Okay.

8 THE COURT: She'll give you the draft as
9 provided.

10:17:30 10 MS. MCLEATCHIE: That would be wonderful.

11 THE COURT: As provided to Metro.

12 MS. MCLEATCHIE: I very much appreciate that.

13 One other question.

14 THE COURT: And the final report will be
10:17:36 15 supplied once it's received.

16 MS. MCLEATCHIE: That sounds perfect, your
17 Honor. And I appreciate that.

18 With regard to the toxicology report, we also
19 had done -- we also requested that. And I don't know
10:17:45 20 what the additional report that's outstanding is.

21 THE COURT: Well, I will say this, and I don't
22 know what the report is, but if there's a toxicology
23 report regarding Mr. Paddock, I'm going to have that
24 produced.

10:17:55 25 MS. MCLEATCHIE: Okay.

10:17:56 1 THE COURT: If there's any supplement, they'll
2 produce it. If there's not, there's not.

3 MS. MCLEATCHIE: Understood, your Honor.

4 THE COURT: That's how I look at it.

10:18:03 5 Is there anything else we've overlooked?

6 MS. MONJE: Your Honor, and I apologize. I
7 didn't hear. Did you state that we were to redact the
8 names of the victims, as to the 58 victims?

9 THE COURT: Yes.

10:18:12 10 MS. MONJE: Okay.

11 THE COURT: I sure did, ma'am.

12 MS. MONJE: Thank you, your Honor.

13 THE COURT: You're welcome.

14 And I think the requesting party had no

10:18:20 15 objection to that. In fact, they suggested that, is
16 that correct, ma'am?

17 MS. MCLEATCHIE: That is correct, your Honor.

18 And just to clarify -- for the purposes of drafting the

19 order, to clarify, the Court -- the Court indicated

10:18:30 20 because there is no exception in the NPRA or its

21 statutes for these reports, they're public records, but

22 I also wanted to make clear that the Court also engaged

23 in the balancing test discussed by the Nevada Supreme

24 Court --

10:18:41 25 THE COURT: I did.

10:18:42 1 MS. MCLEATCHIE: -- in Donrey and its progeny.
2 THE COURT: I did. And I looked at the time
3 issues regarding confidentiality. And I looked at all
4 those issues. And at the end of the day, especially
10:18:50 5 under the facts of this case, the public has a right to
6 know.
7 MS. MCLEATCHIE: Thank you for that
8 clarification.
9 THE COURT: I think it's compelling.
10:18:55 10 MS. MCLEATCHIE: Thank you for that
11 clarification, your Honor.
12 THE COURT: All right.
13 All right. Everyone enjoy your day.
14 MS. MONJE: Thank you, your Honor.
10:19:02 15 MS. REHFELDT: Thank you.

16
17
18 (Proceedings were concluded.)
19

20 * * * * *
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

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21/9 21/20 22/5 23/2 23/17 23/18 23/22 24/12 24/13 27/16 30/7 31/3 32/12</p> <p>understanding [2] 5/4 39/9</p>
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<p>U</p> <p>understands [1] 21/10</p> <p>Understood [1] 42/3</p> <p>unforeseen [5] 17/4 21/11 23/20 24/6 38/22</p> <p>unfortunate [1] 38/23</p> <p>unique [4] 19/2 24/25 25/1 39/13</p> <p>United [1] 19/10</p> <p>unless [6] 7/5 7/20 8/20 28/6 29/12 34/22</p> <p>unprecedented [1] 39/13</p> <p>unredacted [1] 34/5</p> <p>unseal [1] 4/7</p> <p>unsealing [1] 37/5</p> <p>unsure [1] 39/12</p> <p>until [1] 31/12</p> <p>up [2] 21/25 30/4</p> <p>updates [1] 4/3</p> <p>upon [9] 9/5 9/12 24/19 25/25 29/22 32/7 32/19 32/22 37/20</p> <p>urgent [2] 36/1 36/2</p> <p>us [3] 16/14 27/24 36/16</p> <p>used [1] 36/13</p> <p>uses [1] 5/19</p> <p>using [1] 12/17</p>	<p>victims' [2] 34/6 34/9</p> <p>violates [1] 37/8</p> <p>W</p> <p>waiting [1] 39/20</p> <p>waived [2] 13/16 13/16</p> <p>waiver [1] 24/10</p> <p>want [19] 4/3 4/3 7/4 10/25 11/2 15/13 18/25 19/25 21/10 24/13 30/15 32/9 32/10 36/14 36/14 36/24 36/25 37/10 39/15</p> <p>wanted [3] 24/5 41/4 42/22</p> <p>warrant [1] 4/7</p> <p>warrants [4] 4/22 4/24 19/13 37/5</p> <p>was [45]</p> <p>wasn't [6] 4/14 11/22 21/23 30/8 30/10 40/19</p> <p>way [1] 35/15</p> <p>ways [3] 14/20 14/20 14/20</p> <p>we [51]</p> <p>we'll [1] 10/23</p> <p>we're [17] 5/5 5/9 5/9 5/21 5/21 8/5 11/13 12/1 18/13 18/23 23/16 26/19 34/9 35/5 35/13 39/1 40/18</p> <p>we've [7] 5/12 5/14 34/6 34/7 38/13 38/13 42/5</p> <p>week [1] 17/20</p> <p>welcome [1] 42/13</p> <p>well [15] 6/9 6/13 7/3 7/19 9/10 10/21 11/24 13/23 15/13 19/17 19/19 25/18 30/9 32/4 41/21</p> <p>were [10] 4/18 5/7 13/9 17/18 19/3 35/10 36/23 42/7 43/18 44/8</p> <p>what [38] 5/1 5/9 5/9 11/3 12/24 14/8 15/6 15/13 16/4 17/18 17/21 18/12 18/12 19/19 21/17 22/24 23/17 23/18 24/16 24/23 26/23 28/20 28/23 28/23 29/3 30/25 32/11</p>	<p>32/22 34/13 35/5 37/18 39/12 40/2 40/21 40/25 41/2 41/20 41/22</p> <p>what's [3] 7/10 13/25 31/15</p> <p>whatever [2] 36/5 36/24</p> <p>when [21] 5/19 9/18 9/19 11/1 22/3 22/3 22/3 22/8 24/9 26/1 26/8 26/20 27/21 28/21 29/12 30/3 31/9 38/2 39/14 40/5 40/5</p> <p>where [6] 20/14 25/13 26/5 27/23 32/6 33/4</p> <p>WHEREOF [1] 44/13</p> <p>whether [12] 4/17 8/22 15/23 16/6 17/19 18/21 22/11 23/3 30/21 30/22 33/21 40/6</p> <p>which [18] 4/8 4/20 7/21 10/10 13/4 14/12 20/6 20/18 25/3 26/12 28/15 29/5 31/25 32/19 33/12 35/17 35/23 36/8</p> <p>while [14] 4/14 5/23 10/17 13/3 18/15 19/1 20/24 31/11 31/21 33/1 34/3 34/3 36/3 37/3</p> <p>who [5] 14/13 16/24 22/22 27/14 37/10</p> <p>whole [1] 11/20</p> <p>whose [1] 11/13</p> <p>why [9] 6/11 15/24 16/14 23/6 28/8 30/2 30/14 31/15 33/7</p> <p>will [9] 11/1 17/2 26/13 27/6 36/15 39/12 39/14 41/14 41/21</p> <p>WILLIAMS [1] 1/19</p> <p>willing [2] 19/3 34/10</p> <p>wing [1] 36/11</p> <p>withhold [1] 14/24</p> <p>withholding [1] 15/24</p>	<p>within [3] 13/18 17/15 33/12</p> <p>without [3] 35/4 37/2 37/16</p> <p>WITNESS [1] 44/13</p> <p>wonderful [1] 41/10</p> <p>work [6] 8/4 13/19 19/3 20/24 21/21 34/7</p> <p>worked [1] 21/22</p> <p>works [1] 10/1</p> <p>would [18] 3/22 4/3 9/11 11/7 12/1 12/3 17/24 20/22 21/25 22/25 26/18 32/14 32/18 35/3 35/24 37/14 37/24 41/10</p> <p>wouldn't [4] 6/12 17/25 28/8 30/2</p> <p>written [1] 14/15</p> <p>X</p> <p>XVI [1] 1/3</p> <p>Y</p> <p>Yeah [1] 23/19</p> <p>yes [10] 23/12 23/14 25/19 26/12 26/15 27/5 28/4 39/6 40/24 42/9</p> <p>you [52]</p> <p>You're [1] 42/13</p> <p>your [64]</p>	
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EXHIBIT C

Order

Steven D. Grierson

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DISTRICT COURT

CLARK COUNTY NEVADA

9 LAS VEGAS REVIEW-JOURNAL and
10 THE ASSOCIATED PRESS,

Case No.: A-17-764842-W

Dept. No.: XVI

Petitioners,

11 vs.

**[PROPOSED ORDER] GRANTING
PETITIONERS' PUBLIC
RECORDS ACT APPLICATION
PURSUANT TO NEV. REV. STAT.
§ 239.001/ PETITION FOR WRIT
OF MANDAMUS**

13 CLARK COUNTY OFFICE OF THE
14 CORONER/MEDICAL EXAMINER,

15 Respondent.

16 The Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition
17 for Writ of Mandamus submitted by Petitioners the Las Vegas Review-Journal and the
18 Associated Press, having come on for hearing on January 30, 2018, the Honorable Timothy
19 Williams presiding, Petitioners Las Vegas Review-Journal and the Associated Press
20 ("Petitioners") appearing by and through their counsel, Margaret A. McLetchie, and
21 Respondent Clark County Office of the Coroner/Medical Examiner ("Coroner's Office")
22 appearing by and through its counsel, Laura C. Rehfeldt and Ofelia Monje, and the Court
23 having read and considered all of the papers and pleadings on file and being fully advised,
24 and good cause appearing therefor, the Court hereby grants the motion in part and makes the
25 following findings of fact and conclusions of law:

26 ///

27 ///

28 ///

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

1. On October 3, 2017, Petitioner the Las Vegas Review-Journal ("Review-Journal") submitted a public records request to Clark County Coroner/Office of the Medical Examiner (the "Coroner's Office") pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the "NPRA") for autopsy reports for the 58 victims of the mass shooting that occurred on October 1, 2017 at the Route 91 Harvest Country Music Festival ("1 October"), as well as the autopsy report for the shooter, Stephen Paddock.

2. The Coroner's Office responded to this request on October 9, 2017.

3. The Coroner's Office denied the Review-Journal's records request, citing *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990), the Freedom of Information Act, 5 U.S.C. § 552(b)(7) ("FOIA"), and Assembly Bill 57, 79th Sess. (Nev. 2017) as the bases for its refusal.

4. Also on October 9, 2017, the Review-Journal requested the Coroner's Office produce the following records:

- Information regarding "the status of the various records that have been or will be completed" related to Stephen Paddock;
- "[C]opies of any records that pertain to or reflect the types of records that would be prepared by the [C]oroner's [O]ffice in a case such as this and the general process that is followed"; and
- Copies of all other media requests for records pertaining to Stephen Paddock or the victims, as well as the Coroner's Office's responses to those requests.

5. On October 10, 2017, counsel for the Review-Journal emailed counsel for the Coroner's Office and stated the Review-Journal was willing to accept redacted versions of the victims' autopsy reports to resolve the Coroner's Office privacy concerns and facilitate receipt of the records.

1 of this chapter is to foster democratic principles by providing members of the public with
2 access to inspect and copy public books and records to the extent permitted by law"); *see*
3 *also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011)
4 (holding that "the provisions of the NPRA are designed to promote government transparency
5 and accountability").

6 17. To fulfill that goal, the NPRA must be construed and interpreted liberally.
7 Government records are presumed public records subject to the Act, and any limitation on
8 the public's access to public records must be construed narrowly. Nev. Rev. Stat. §§
9 239.001(2) and 239.001(3); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that
10 the Nevada legislature intended the provisions of the NPRA to be "liberally construed to
11 maximize the public's right of access").

12 18. The Nevada Legislature has made it clear that—unless they are explicitly
13 confidential—public records must be made available to the public for inspection or copying.
14 Nev. Rev. Stat. § 239.010(1); *see also Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80,
15 266 P.3d 623, 627 (2011).

16 **A. The Records Sought Are Public Records.**

17 19. Nev. Rev. Stat. § 239.010(1) provides in pertinent part that, unless provided
18 otherwise in enumerated statutes or "otherwise declared by law to be confidential, all public
19 books and public records of a governmental entity must be open at all times during office
20 hours to inspection by any person and may be fully copied or an abstract or memorandum
21 may be prepared from those public books and public records." Here, the records sought were
22 prepared by or on behalf of the Coroner's Office and the Coroner in the performance of his
23 official duties, and they are public records. *See Swickard v. Wayne Cty. Med. Exam'r*, 438
24 Mich. 536, 545, 475 N.W.2d 304, 308 (1991) (Autopsy report and toxicology test results
25 prepared by the county medical examiner's office were prepared "in the performance of an
26 official function" and were "public records" for purpose of the Michigan Freedom of
27 Information Act).

B. The Coroner's Office Did Not Comply With Nev. Rev. Stat. § 239.0107.

20. Nev. Rev. Stat. § 239. 0107(1)'s provisions are mandatory. They provide that, within five (5) business days of a receiving a request for public records, a governmental entity "shall" take certain steps: (a) allow access to the record; (b) notify the requester that it does not have the record sough and direct the requester to the entity with possession of the record; (c) identify a date certain for production or inspection if the public entity cannot do so within five (5) days; or (d) "if the governmental entity must deny the person's request because the public book or record, or a part thereof, is confidential, provide to the person, in writing: (1) Notice of that fact; and (2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential." Here, with regard to some of the documents requested, the Coroner's office indicated that it did not know whether records existed, which is not permitted under Nev. Rev. Stat. § 239.0107.

21. Further, the Coroner's Office was required to include a privilege log in connection with its response. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623, 629 (2011). (holding that "[A]fter the commencement of an NPRA lawsuit, the requesting party generally is entitled to a log" and explaining that a log enables the requester to meaningfully request the claim of confidentiality).

C. The Coroner's Office Did Not Act In Bad Faith.

22. Petitioners assert that the Coroner's Office acted in bad faith. However, while the Coroner's Office should have identified which records existed, which it was withholding and specifically why it was withholding those records within five (5) business days, in light of the specific and unprecedented nature of the 1 October events, the Court does not find that the Coroner's Office acted in bad faith and also does not deem any arguments against disclosure made after the five (5) day deadline waived.

D. The Records Are Not Deemed Confidential By Law.

23. The Coroner's Office cites to Assembly Bill 57, a bill amending Nev. Rev. Stat. § 244.163 and adopted during the 2017 legislative session. Assembly Bill 57 made

changes to next-of-kin notification provisions as evidence that the privacy interest in autopsy reports outweighs the public's right of access.

24. Assembly Bill 57 does not address whether autopsies are public records. However, the Coroner's Office argues that, if the Legislature wished to expressly make autopsies public records, it would have done so. However, there need not be a statute declaring a record public to make it so. Instead, as noted above, all records are assumed to be public records unless declared otherwise by law. Moreover, as also noted above, the NPRA must be construed and interpreted liberally and any limitation on the public's access to public records must be construed narrowly. Nev. Rev. Stat. §§ 239.001(2) and 239.001(3). Reading a restriction on access to records into Assembly Bill 57 would run afoul of these legislative mandates, which are binding on public entities and this Court when interpreting the NPRA.

25. Thus, Nev. Rev. Stat. § 244.163 (as amended by The Coroner's Office) does not render autopsies non-public records and take them out of the reach of the NPRA.

E. This Matter Is Not Mooted or "Unwarranted."

26. The Coroner's Office argued that the Petition was mooted by the release of a list of the cause of death for the 58 victims of the 1 October shooting and that requiring it to release redacted sample autopsy reports is "unwarranted" because Petitioners' request is moot. However, a governmental entity cannot pick and choose which records a requester is entitled to and cannot prepare a report to avoid producing underlying public records.

F. The Coroner's Office Has Not Met Its Burden in Withholding Records.

27. The NPRA "considers all records to be public documents available for inspection unless otherwise explicitly made confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure." *Reno Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010).

28. If a statute explicitly makes a record confidential or privileged, the public entity need not produce it. *Id.*

29. If a governmental entity seeks to withhold a document that is not explicitly

1 made confidential by statute, it must prove by a preponderance of the evidence that the
2 records are confidential or privileged, and must also prove by a preponderance of the
3 evidence that the interest in nondisclosure outweighs the strong presumption in favor of
4 public access. *See, e.g., Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also Donrey of*
5 *Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990).

6 30. In balancing those interests, “the scales must reflect the fundamental right
7 of a citizen to have access to the public records as contrasted with the incidental right of the
8 agency to be free from unreasonable interference.” *DR Partners v. Bd. of Cty. Comm’rs of*
9 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or.
10 27, 359 P.2d 413, 421–22 (1961)).

11 31. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court
12 hereby finds that the Coroner’s Office has not established by a preponderance of the evidence
13 that the withheld records are confidential or privileged such that withholding the autopsy
14 records in their entirety is justified, nor has it established by a preponderance of the evidence
15 that any interest in nondisclosure outweighs the strong presumption in favor of public access.

16 32. Further, the Court finds that the Coroner’s Office’s concerns regarding the
17 decedents’ privacy interests are addressed by redacting names and identifying information
18 from the autopsy reports as proposed by Petitioners.

19 ***The Attorney General Opinion Does Not Justify Non-Disclosure.***

20 33. In its January 2, 2018 response to Petitioners’ Opening Brief, the Coroner’s
21 Office relied on a 1982 Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 as a
22 basis for its refusal to produce the requested autopsy reports.

23 34. The Court finds that, consistent with Nevada Supreme Court precedent,
24 Attorney General Opinions are not binding legal authority. *See Univ. & Cmty. Coll. Sys. of*
25 *Nevada v. DR Partners*, 117 Nev. 195, 203, 18 P.3d 1042, 1048 (2001) (citing *Goldman v.*
26 *Bryan*, 106 Nev. 30, 42, 787 P.2d 372, 380 (1990)); *accord Redl v. Secretary of State*, 120
27 Nev. 75, 80, 85 P.3d 797, 800 (2004).
28

35. Because it is not binding legal authority and because it addressed a different version of the NPRA than the current version, the legal analysis contained in AGO 82-12 is inapplicable and does not satisfy the Coroner's Office's burden of establishing that the records are confidential and that the interest in non-disclosure outweighs the presumption in favor of access.

The Coroner's Policy Does Not Justify Non-Disclosure

36. The Coroner's Office did not provide a copy of the policy and, thus, did not provide evidence as required. Moreover, pursuant to Clark County Ordinance 2.12.330, one may obtain a copy of an autopsy report for \$30.00, and nothing in the fee schedule limits who may obtain a copy of an autopsy report. (Id.) Thus, even if a "policy" limiting dissemination of autopsy reports exists, it would conflict with Ordinance 2.12.330.

37. In any case, any internal policy of the Coroner's Office (or other Coroner's Offices) cannot satisfy its burden under the NPRA. An agency's internal policy does not have the force of law. *See Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 885, 266 P.3d 623, 631 (2011).

38. Moreover, the individual practices of local municipalities cannot trump the Nevada legislature's intent in adopting the NPRA. *See, e.g., Lamb v. Mirin*, 90 Nev. 329, 332, 526 P.2d 80, 82 (1974) ("Whenever a legislature sees fit to adopt a general scheme for the regulation of particular subject, local control over the same subject, through legislation, ceases."); *accord Crowley v. Duffrin*, 109 Nev. 597, 605, 855 P.2d 536, 541 (1993). This "plenary authority of a legislature operates to restrict and limit the exercise of all municipal powers." *Lamb*, 90 Nev. 329, 333, 526 P.2d 80, 82 (citation omitted). Thus, once the legislature has adopted a scheme to regulate a particular subject—in this case, a general scheme for accessing public records—"in no event may a county enforce regulations which are in conflict with the clear mandate of the legislature." *Lamb*, 90 Nev. 329, 333, 526 P.2d 80, 82 (citing *Mabank Corporation v. Board of Zoning Appeals*, 143 Conn. 132, 120 A.2d 149 (1956)).

1 39. The NPRA is an expression of the Nevada legislature's intent to develop a
2 comprehensive statutory scheme to facilitate access to public records and provides that
3 absent statutory or legal authority to the contrary, governmental records are presumptively
4 public records. The Nevada legislature also provided clear and specific guidance regarding
5 the timing and manner for responding to public records request. Thus, the practices of the
6 Coroner's Office and other municipalities cannot subvert the legislative intent in the NPRA.

7 ***The Coroner's Office Has Not Established that an Ongoing Investigation Justifies***
8 ***Non-Disclosure***

9 40. The Coroner's Office also asserted that release of the records would harm
10 an ongoing investigation, without providing evidence or specific information. The Nevada
11 Supreme Court had held that a "mere assertion of possible endangerment does not 'clearly
12 outweigh' the public interest in access" to public records." *Reno Newspapers v. Sheriff*, 126
13 Nev. 211, 218, 234 P.3d 922, 927 (2010). Thus, the reference to an investigation does not
14 satisfy the Coroner's Office's burden under the NPRA to prove by a preponderance of
15 evidence that a claim of confidentiality applies and outweighs the public's presumptive right
16 of access.

17 ***Paddock's Purported Privacy Rights Cannot Outweigh Access, and Redactions Satisfies***
18 ***Privacy Concerns for Victims***

19 41. The Coroner's Office has asserted that privacy rights outweigh the right of
20 access. The Court finds no privacy interests applicable to records concerning Stephen
21 Paddock, and that any potential privacy concerns with regard to the victims' autopsies is
22 satisfied by redacting the names, as offered by Petitioners.

23 ***The Coroner's Office Is Not Covered By HIPAA***

24 42. The Coroner's Office is not covered by HIPAA. Pursuant to 45 C.F.R. §
25 160.103, a covered entity is defined as: (1) a health plan; (2) a "health care clearinghouse;"
26 or (3) "[a] health care provider who transmits any health information in electronic form in
27
28

connection with a transaction covered by [HIPAA].” Moreover, 42 C.F.R. § 160.102 specifically states that HIPAA only applies to those three categories of health care entities.

The Coroner’s Office’s Other Claims of Confidentiality Are Inapplicable

43. None of the other asserted interests against disclosure apply in this case.

44. *Nev. Rev. Stat. § 49.225 does not apply.* This statute recognizes that privilege attaches to communications between a patient and a “doctor or persons who are participating in the diagnosis or treatment under the direction of the doctor, including members of the patient’s family.” However, even if a coroner is a licensed physician, this privilege is not relevant here the coroner is not providing “diagnosis or treatment” to a decedent. *See People v. Leach*, 2012 IL 111534, ¶ 71, 980 N.E.2d 570, 582 (holding that an autopsy record is an admissible business record and noting that “the deceased person brought to the medical examiner’s office for determination of cause of death is not a patient and the medical examiner, although she is trained as a physician, is not the deceased person’s doctor”).

45. *NRS Chapter 629 is inapplicable.* Nev. Rev. Stat. § 239.0107(1)(d)(2) requires a governmental entity to cite to a “specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.” Citing to an entire chapter of the Nevada Revised Statutes—in this case, a chapter pertaining to the “Healing Arts Generally”—does not comport with this requirement. Additionally, as noted above, because a coroner is not a decedent’s doctor, an autopsy report is not a “health care record.”

46. *Nev. Rev. Stat. § 440.170 is inapplicable.* This statute applies to “vital statistics,” which Nev. Rev. Stat. § 440.080 defines as “records of birth, legitimation of birth, death, fetal death, marriage, annulment of marriage, divorce and data incidental thereto.” An autopsy report does not fit within this statutory definition.

47. *Nev. Rev. Stat. § 440.650(2) and NAC § 440.02(1)(b) are inapplicable.* A death certificate is a specific document that serves as a legal record of death that is required for accessing pension benefits, claiming life insurance, settling estates, getting married (if a

1 widow or widower needs to prove that their previous partner has passed), or arranging for a
2 funeral. An autopsy report, by contrast, is a public record created by a coroner in the course
3 of his or her official duties.

4 48. *Nev. Rev. Stat. § 441A.220 is inapplicable.* Nev. Rev. Stat. § 441A.220 is
5 included in a section of Chapter 441A of the Nevada Revised Statutes pertaining to the
6 duties “provider of health care” has regarding reporting occurrences of communicable
7 diseases. See Nev. Rev. Stat. § 441A.150 et seq. A coroner is not a “provider of health care.”
8 See *People v. Leach*, 2012 IL 111534, ¶ 71, 980 N.E.2d 570, 582.

9 **G. The Records Should Be Provided Directly to Petitioners.**

10 49. Petitioners filed suit to obtain access to records. Nev. Rev. Stat. 239 §
11 239.011(1)(a) allows for a requester to seek from the Court an order (a) Permitting **the**
12 **requester** to inspect or copy the book or record; or (b) Requiring the person who has legal
13 custody or control of the public book or record to provide a copy **to the requester**, as
14 applicable.” (Emphasis added.) It would be inconsistent with this provision and the
15 legislative mandate in favor of access and provisions incentivizing requesters to seek court
16 access to enforce the terms of the NPRA if, rather than first providing records directly to
17 the Petitioners, the Coroner’s Office sends out records via an email to all requesters,
18 including those who did not file petitions at the same time. Such actions would also deny
19 Petitioners of the benefit of litigating this matter. Further, the Coroner’s Office did not
20 provide copies of all requests for records (as sought by the Review-Journal) and it does not
21 appear from the records it did produce that any other requesters sought all the information
22 the Petitioners sought.

23 50. Accordingly, the Coroner’s Office cannot meet its obligations by sending
24 out records via email to all requesters.

25 51. Thus, the Coroner’s Office must provide the records sought and ordered
26 produced by this Court to counsel for Petitioners at least eight (8) business hours in advance
27 of providing the records to any other requesters.

28 52. Moreover, the Coroner’s Office must immediately make the records

1 available for inspection to Petitioners.

2 53. Further, with respect to the autopsy report for Stephen Paddock, the
3 Coroner's Office indicated during the January 30, 2018 hearing on this matter that a final
4 autopsy report is not complete because the Coroner is waiting for a forensic consultant to
5 provide additional information. However, the Coroner's Office stated during the January 30
6 hearing that it would provide Petitioners with a draft version of the report.

7 54. Thus, to the extent that such a report exists, the Coroner's Office must
8 make it immediately available to Petitioners.

9 55. If a draft autopsy report does not exist, the Coroner's Office must
10 immediately make any records pertaining to Stephen Paddock's autopsy available to
11 Petitioners for copying and inspection.

12 III.

13 ORDER

14 56. Based on the foregoing findings of fact and conclusions of law, the Court
15 hereby orders as follows:

16 57. Petitioners' request for a finding that the Coroner's Office acted in bad
17 faith is hereby DENIED.

18 58. Petitioners' requests for declaratory relief is hereby GRANTED in full.

19 59. Petitioners' request for injunctive relief is GRANTED in full.

20 60. Accordingly, the Coroner's Office must make all records sought in the
21 Petition (and listed below) immediately available for inspection and copying, or must
22 immediately provide a copy to Petitioners:

- 23 • All documents reflecting the protocol that was used to perform the
- 24 autopsies of Stephen Paddock and the 58 victims;
- 25 • All autopsies for the victims of the 1 October, with only the names and
- 26 identifying information of the decedents redacted;
- 27 • The current version of the autopsy report for Stephen Paddock as follows:
- 28 ○ The Coroner's Office represented at the hearing on the Petition that

it would provide the version of the report provided to the LVMPD;
in the alternative, the Coroner's Office must make the current
version of the report, which the Coroner's Office represented was
complete, other than a portion being performed by an outside
entity.

○ When the report is finalized, the Coroner's Office will immediately
provide it to Petitioners.

- The toxicology report pertaining to Stephen Paddock;
- Any and all other any records pertaining to the autopsy of Stephen Paddock; and
- Copies of all media requests pertaining to the autopsies of Stephen Paddock and/or the 58 victims;

Further, the Coroner's Office must provide copies to Petitioners (via their counsel) eight (8)
business hours in advance of providing them to other questers or posting them publicly, or
otherwise publicly disseminating them.

It is so ORDERED this 6th day of February, 2018.


DISTRICT COURT JUDGE

Prepared and submitted by:

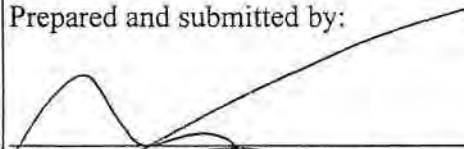

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EXHIBIT D

Declaration of Laura C. Rehfeldt

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DECLARATION OF LAURA C. REHFELDT

LAURA C. REHFELDT, Esq., hereby declares that she has personal knowledge and is competent to testify to the following facts:

1. I am an attorney at law duly licensed and authorized to practice before this Court and have been since 1993. I am a Deputy District Attorney assigned to the case of *Las Vegas Review Journal and Associated Press v. Clark County Coroner Medical Examiner*, Case No. A-17-764842-W, which involves a petition for writ of mandamus for release of autopsy records of the 1 October decedents.

2. I am familiar with the above stated case and, on January 30, 2018, I attended a hearing held on the petition filed in that case.

3. That the Court's ruling required the Coroner to immediately release the autopsy reports of the victims of the 1 October tragedy, and, therefore, on January 31, 2018, those reports were released, with the names, Coroner case number, age and race redacted, to the attorney for the Las Vegas Review Journal and the Associated Press.

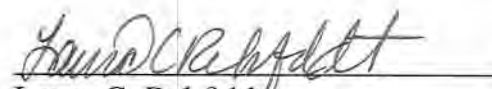
4. It is my understanding that, subsequently, the Clark County Office of Communications released the redacted autopsy reports of the 1 October victims to other media outlets.

5. It is also my understanding that a copy of Plaintiff's Ex Parte Application for a Temporary Restraining Order and Motion for Preliminary Injunction was filed on February 2, 2018, and that a copy was emailed to the Coroner's Office on February 2, 2018. It is also my understanding that the Coroner's Office was not served until February 6, 2018.

6. The Coroner intends to fully comply and cooperate with the Court on this matter.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045)

EXECUTED on this 7 day of February, 2018.


Laura C. Rehfeldt

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAS VEGAS REVIEW-
JOURNAL, and THE ASSOCIATED
PRESS,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE RICHARD SCOTTI,
DISTRICT JUDGE

Respondent,

VERONICA HARTFIELD, A
NEVADA RESIDENT AND THE
ESTATE OF CHARLESTON
HARTFIELD, and OFFICE OF THE
CLARK COUNTY
CORONER/MEDICAL EXAMINER,

Real Parties in Interest.

Electronically Filed
Feb 12 2018 10:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.:

Dist. Case No.: A-18-768781-C

PETITIONERS' APPENDIX
VOLUME I TO
EMERGENCY PETITION
FOR WRIT OF
PROHIBITION OR IN THE
ALTERNATIVE
MANDAMUS PURSUANT
TO NRAP 21 AND 27(e)

ACTION REQUIRED:
IMMEDIATELY

MCLETSCHIE SHELL LLC
Margaret A. McLetchie (Bar No. 10931)
Alina M. Shell (Bar No. 11711)
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Counsel for Petitioners,
The Las Vegas Review-Journal and The Associated Press

INDEX TO PETITIONERS' APPENDIX

<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
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II	Court Minutes	02/09/2018	PA324
I	Email Communication from Chief Deputy District Attorney, Mary-Anne Miller	01/31/2018	PA001
II	Email Communication from Deputy District Attorney, Laura Rehfeldt	02/09/2018	PA327 – PA355
I	Las Vegas Review-Journal Article “Coroner Releases Autopsy Reports of 58 Victims From Las Vegas Shooting”	01/31/2018	PA002 – PA007
II	Notice of Entry of Emergency Counter-Motion to Dissolve Temporary Restraining Order Immediately on Order Shortening Time [Immediate Action Required]	02/08/2018	PA249 – PA281
II	Opposition to Ex Parte Application for Temporary Restraining Order/Motion for Preliminary Injunction	02/07/2018	PA220 – PA248
I	Plaintiff’s Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time	02/02/2018	PA013 – PA023

<u>VOL.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
II	Plaintiffs' Opposition to Defendant Las Vegas Review Journal and Associated Press' Emergency "Counter-Motion" to Dissolve Temporary Restraining Order and Reply to Opposition to Ex Parte Application for Temporary Restraining Order/Motion for Preliminary Injunction	02/09/2018	PA282 – PA323
II	Register of Actions (Case No. A-18-768781-C)	02/09/2018	PA325 – PA326
I	Response in Non-Opposition	02/07/2018	PA024 – PA219

CERTIFICATE OF SERVICE

I certify and affirm that I am an employee of McLetchie Shell LLC and that on this 9th day of February, 2018 the PETITIONERS' APPENDIX VOLUME I was served by First Class United States Mail, postage fully prepaid to the following:

Anthony P. Sgro
SGRO & ROGER
720 South Seventh Street, Third Floor
Las Vegas, NV 89101

David Roger
Las Vegas Police Protective Association
9330 W. Lake Mead Blvd., Suite 200
Las Vegas, NV 89134
Counsel for Veronica Hartfield and the Estate of Charleston Hartfield

Laura Rehfeldt
Clark County District Attorney's Office
500 S. Grand Central Pkwy., Ste. 5075
Las Vegas, NV 89106
Counsel for Clark County Office of the Coroner

Honorable Judge Richard F. Scotti
Eighth Judicial District Court, Department II
200 Lewis Avenue, Eleventh Floor
Las Vegas, NV 89101

Nevada Supreme Court Clerk
201 South Carson Street, Suite 201
Carson City, NV 89701-4702

/s/ Pharan Burchfield
Employee, McLetchie Shell LLC

From: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Sent: Wednesday, January 31, 2018 2:37 PM
To: maggie; Alina; pharan@nvlitigation.com
Cc: Laura Rehfeldt; Ofelia Monje
Subject: Coroner's stuff

Hello all,

I think the Court's transcript backs up the understanding of our office that we were to produce what had been given to Metro. Nothing has been given to Metro. I do not agree that documents that are not in final form are public records. I do not agree that this is an emergency meriting a call to the Court or an OST, but that, of course, is your call.

The Coroner's estimate for release of the final report, including toxicology, is 14 days. As I mentioned earlier, this estimate is not being publicly disseminated.

As a further head's up, the following will be redacted from the documents being provided to you today:

Coroner's case numbers, since the LVMPD preliminary report, beginning at page 15, contains essentially a key between CCN and the names of the victims

Age of victim, since if only one victim is a particular age or only one of a sex is a particularly age, that becomes an identifier.

Race, for the same reason. The terms that are being omitted are: White, Black, Asian, Hispanic, and Caucasian.

Seal numbers or toe tag numbers, as they can be traced to CCNs.

I can't guarantee you a two hour window. On the other hand, the PIOs haven't even contacted us today, so they might not even be around when we send it up to them.

MARY-ANNE MILLER
COUNTY COUNSEL
OFFICE OF THE DISTRICT ATTORNEY | CIVIL DIVISION
CLARK COUNTY, NEVADA
702.455.4761
MARY-ANNE.MILLER@CLARKCOUNTYDA.COM

LAS VEGAS SHOOTING UPDATES ([HTTPS://WWW.REVIEWJOURNAL.COM/LAS-VEGAS-SHOOTING/](https://www.reviewjournal.com/las-vegas-shooting/))

THE FALLEN: THOSE WHO DIED ([VICTIMS-OF-THE-LAS-VEGAS-ROUTE-91-HAR VEST-FESTIVAL-SHOOTING/](https://www.reviewjournal.com/victims-of-the-las-vegas-route-91-har-vest-festival-shooting/))

Connect with other survivors of the Las Vegas shooting > [Click Here \(https://www.reviewjournal.com/survivorsconnection/\)](https://www.reviewjournal.com/survivorsconnection/)

Home (/) >> Crime (<https://www.reviewjournal.com/.crime/>) >> Shootings (<https://www.reviewjournal.com/.crime/shootings/>)

Coroner releases autopsy reports of 58 victims from Las Vegas shooting



Police tape blocks a section of West Reno Avenue and Las Vegas Boulevard on Monday, Oct. 2, 2017, outside Mandalay Bay in Las Vegas. (Benjamin Hager/Las Vegas Review-Journal) @benjaminhphoto

By Anita Hassan and Rachel Crosby Las Vegas Review-Journal
January 31, 2018 - 4:50 pm



(<https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fwww.reviewjournal.com>)



(<https://twitter.com/intent/tweet?url=https%3A%2F%2Fwww.reviewjournal.com>)



(mailto:?&subject=[Shared Post]
Coroner releases autopsy reports of 58
victims from Las Vegas
shooting&body=You may be interested
in the following post:
<https://www.reviewjournal.com/post/12>

Updated January 31, 2018 - 9:06 pm

The Clark County coroner's office complied with a court order late Wednesday and released the autopsy reports of 58 people killed in the Oct. 1 mass shooting (<https://www.reviewjournal.com/local/the-strip/it-was-a-horror-show-mass-shooting-leaves-at-least-59-dead-527-wounded-on-las-vegas-strip/>) on the Strip.

District Judge Timothy Williams also ordered the agency on Tuesday to release the autopsy report of the shooter, 64-year-old Stephen Paddock, but that report has not been made public. Clark County Coroner John Fudenberg indicated that he would not release Paddock's autopsy report until it was "finalized."

Paddock, a high-stakes gambler, opened fire from his 32nd-floor Mandalay Bay suite onto the Route 91 Harvest festival grounds, just east of the the hotel-casino.

Authorities said (<https://www.reviewjournal.com/crime/shootings/las-vegas-police-clear-up-details-about-gunmans-oct-1-death/>) Paddock turned a gun on himself before police entered the suite. He died from a gunshot wound to the head that entered through the mouth. The coroner's office has ruled his death a suicide.

Names of the victims, which officials previously released, were redacted from the 58 reports made public Wednesday.

The coroner's office has fought to keep autopsy reports confidential. The reports contain such information as location of wounds, the time and date of death, and the time and date the autopsies were performed.

A December report issued by the coroner's office (<https://www.reviewjournal.com/crime/homicides/causes-of-death-released-for-58-killed-in-las-vegas-shooting/>) confirmed that all of the victims died from at least one gunshot wound. Six died from multiple gunshot wounds, and each of the deaths was ruled a homicide. Most people were shot in the head, chest or back.

The last victim was pronounced dead on Oct. 3. All of the examinations of the victims' bodies were completed by Oct. 5. At least six forensic pathologists performed the autopsies, which took place during all hours.

Medical examiners often are able to determine how a bullet struck a person and the path it made through his or her body. Some reports of the Oct. 1 victims noted that the wounds showed "no evidence of close-range firing."

Bullet fragments were recovered from many victims' bodies. Some of the autopsy reports indicate that these fragments were submitted to police.

Advertisement

Many of the reports also reveal whether victims had drugs or alcohol in their systems at the time of death. They do not detail the location of death or note whether victims were transported to hospitals. Many of the victims' bodies showed signs of medical intervention, such as those left by intravascular catheters in their arms.

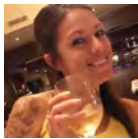
According to a Metropolitan Police Department report released Jan. 19, 20 victims died near the festival stage, four victims died at the festival's medical tent, and seven were found dead at locations off the festival grounds. The remaining victims were pronounced dead at area hospitals.

As of Wednesday, it remained unclear when Paddock's autopsy report would be released.

Three weeks ago, a judge ordered the coroner (<https://www.reviewjournal.com/investigations/coroner-must-pay-rjs-legal-fees-for-withholding-public-records/>) to pay about \$32,000 in legal costs to the Las Vegas Review-Journal for refusing to release public records to the newspaper.

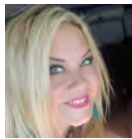
Contact Anita Hassan at ahassan@reviewjournal.com (<mailto:ahassan@reviewjournal.com>) or 702-383-4643. Follow @anitasnews (<https://twitter.com/anitasnews>) on Twitter. Contact Rachel Crosby at rcrosby@reviewjournal.com (<mailto:rcrosby@reviewjournal.com>) or 702-387-5290. Follow @rachelacrosby (<https://twitter.com/rachelacrosby>) on Twitter. Review-Journal staff writers Jeff German, Mike Shoro and Madelyn Reese contributed to this report.

REMEMBERING THE VICTIMS



Hannah Ahlers, 34

(<https://www.reviewjournal.com/crime/homicides/las-vegas-shooting-victim-hannah-ahlers-murrietta-california/>)



Heather Alvarado, 35

(<https://www.reviewjournal.com/crime/homicides/las-vegas-shooting-victim-heather-warino-alvarado-cedar-city-utah/>)



Dorene Anderson, 49

(<https://www.reviewjournal.com/crime/homicides/las-vegas-shooting-victim-dorene-anderson-anchorage-alaska/>)



Carrie Barnette, 34

(<https://www.reviewjournal.com/crime/homicides/las-vegas-shooting-victim-carrie-barnette-riverside-california/>)



Jack Beaton, 54

(<https://www.reviewjournal.com/crime/homicides/las-vegas-shooting-victim-jack-beaton-bakersfield-california/>)

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TOP NEWS

HOMICIDES ([HTTPS://WWW.REVIEWJOURNAL.COM/.//CRIME/HOMICIDES/](https://www.reviewjournal.com/crime/homicides/)) >>

Coroner IDs homeless man killed in Las Vegas (<https://www.reviewjournal.com/crime/homicides/coroner-ids-homeless-man-killed-in-las-vegas/>)

By Blake Apgar (<https://www.reviewjournal.com/staff/blake-apgar/>) / RJ

HOMICIDES ([HTTPS://WWW.REVIEWJOURNAL.COM/.//CRIME/HOMICIDES/](https://www.reviewjournal.com/.//crime/homicides/)) >>

North Las Vegas police seek leads in slaying of man during ... (<https://www.reviewjournal.com/crime/homicides/north-las-vegas-police-seek-leads-in-slaying-of-man-during-robbery/>)

By Rio Lacanlale / RJ

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HOMICIDES ([HTTPS://WWW.REVIEWJOURNAL.COM/.//CRIME/HOMICIDES/](https://www.reviewjournal.com/crime/homicides/)) >>

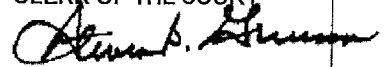
Coroner IDs man killed in western Las Vegas drive-by shooting (<https://www.reviewjournal.com/crime/homicides/coroner-ids-man-killed-in-western-las-vegas-drive-by-shooting/>)

By Blake Apgar (<https://www.reviewjournal.com/staff/blake-apgar/>) / RJ

CRIME ([HTTPS://WWW.REVIEWJOURNAL.COM/.//CRIME/](https://www.reviewjournal.com/crime/)) >>

Widow of Las Vegas police officer sues over autopsy records (<https://www.reviewjournal.com/crime/widow-of-las-vegas-police-officer-sues-over-autopsy-records/>)

By David Ferrara / RJ



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14 Las Vegas, Nevada 89134

15 Telephone: (702) 384-8692

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17 droger@lvppa.com

18 *Attorneys for Plaintiff*

19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 VERONICA HARTFIELD, A Nevada Resident,
22 and THE ESTATE OF CHARLESTON
23 HARTFIELD,

24 Plaintiffs,

25 vs.

26 OFFICE OF THE CLARK COUNTY
27 CORONER, AN AGENCY OF THE STATE
28 OF NEVADA; LAS VEGAS REVIEW
JOURNAL, A Nevada Corporation, and THE
ASSOCIATED PRESS, A New York
Corporation; and DOE DEFENDANTS 1
THROUGH 10, and ROE DEFENDANTS 10
THROUGH 10,

Defendants.

Case No.: A-18-768781-C

Dept. No.: Department 2

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

ARBITRATION EXEMPTED

COMES Now, Plaintiffs, Veronica Hartfield, A Nevada Resident, and The Estate Of
Charleston Hartfield by and through their attorneys of record, SGRO & ROGER, Complains

1 and alleges against Defendants, Office Of The Clark County Coroner, an Agency of The State
2 of Nevada; Las Vegas Review Journal, a Nevada Corporation, and The Associated Press, a New
3 York Corporation; and Doe Defendants 1 through 10, and Roe Defendants 1 through 10, as
4 follows:

5 **PARTIES AND JURISDICTION**

6 1. Plaintiffs, Veronica Hartfield, and The Estate Of Charleston Hartfield ("Plaintiffs"), are
7 Nevada residents, residing within Clark County, Nevada.

8 2. Defendants, Office Of The Clark County Coroner, is An Agency of the State Of Nevada;
9 the Las Vegas Review Journal, a Nevada Corporation Doing Business in Clark County, Nevada,
10 and other locations within the State Of Nevada, and the Associated Press, an Association of
11 news publishers and reporters, doing business within the State of Nevada.

12 3. Doe Defendants 1 through 10 are persons, and Roe Defendants 1 through 10 are
13 corporations or business entities, whose true names and identities and capacities are unknown to
14 Plaintiff at this time. The Roe Defendants may be corporations, associations, partnerships,
15 subsidiaries, holding companies, owners, predecessor or successor entities, joint ventures, parent
16 corporations, or related business entities of the named Defendants, or any of them, or any other
17 Roe Defendant. The Doe Defendants are individual persons acting on behalf of or in concert
18 with, or at the direction of any of the named Defendants or Roe Defendants or who may be
19 officers, directors, employees, or agents of any of the named or Roe Defendants. Plaintiff will
20 ask leave of this Court to insert the true names and capacities for such Doe and Roe Defendants
21 when discovered to substitute those true names as defendants to these proceedings for the Doe
22 and Roe Defendants.

23 **GENERAL ALLEGATIONS**

24 4. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

25 5. Plaintiffs hereby bring causes of action for Intrusion of Privacy and Breach of
26 Confidentiality relating to the dissemination of plaintiff Charleston Hartfield's ("Charleston")
27 confidential and private medical information.

28 6. Plaintiff Veronica Hartfield ("Veronica") is the widow of deceased Metropolitan Police

1 Officer Charleston Hartfield ("Charleston").

2 7. On October 1, 2017 both Plaintiffs Veronica and Charleston Hartfield were attendees at
3 the Route 91 Mustic Festival, at which 59 people were murdered, including Charleston, and
4 over 500 people were injured at the worst mass-shooting in our Nation's History.

5 8. Defendants Las Vegas Review Journal ("RJ"), the Office of the Clark
6 County Coroner ("Coroner"), the Associated Press ("AP"), have obtained an Order for the
7 release of the coroner's report(s) relating to the autopsy(ies) of the Route 91 Festival victims
8 pursuant to the Nevada Public Information Act.

9 9. Pursuant to NRS 239.001, the defendants, and each of them, Applied to the court for an
10 Order compelling the coroner to release the autopsy results following the coroner's denial to
11 release the same. The matter is presently on Appeal before the Nevada Supreme Court in
12 Docket number: 74604, Clark County Office of the Coroner/Medical Examiner vs. Las Vegas
13 Review Journal.

14 10. Upon information and belief, the Defendants RJ and AP intend to use the information
15 contained in the coroner's report to sell and publish world-wide their publications, reports,
16 stories, opinions, conclusions, and other matters of mass communication to the detriment of the
17 plaintiffs and in complete disregard for their rights to privacy.

18 11. Plaintiffs further maintain that the vast majority of the subject matter of an autopsy
19 report consists of confidential medical and health information and that the release of such
20 information contained in the coroner's Report would violate Charleston's rights under the
21 Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and NRS Chapter 629,
22 and therefore law and public policy supports the nondisclosure of these reports to the public.

23 12. It is further alleged that other laws restrict access to information which may be
24 addressed in autopsy reports, for example NRS 440.650(2) and NAC 440.021(b) which limits
25 access to a death certificate to persons with direct interests to avoid unwarranted invasion of
26 privacy; and NRS 440.170(2), relating to children born out of wedlock.

27 13. Additionally, the Nevada legislature intended to protect privacy interests in autopsy
28 reports by enumerating specific individuals to whom the reports may be released through AB57,

1 which amended NRS 250.045.

2 14. Other jurisdictions have also limited the dissemination of coroner reports in an effort to
3 respect the rights to privacy and confidential information contained in coroner reports.

4 15. If the information contained in the coroner reports in this case is disseminated, then the
5 Confidential information will be published and broadcast worldwide, therefore destroying the
6 confidential and protected nature of said documents.

7 16. Once the Defendants publish and broadcast the coroner's autopsy results there will be
8 no possibility for the plaintiff to regain their privacy and confidential information.

9 17. The Plaintiffs' rights to privacy and confidential health records and information
10 contained in the coroner's reports far outweighs the public interests in the confidential and
11 private information.

12 **FIRST CAUSE OF ACTION**

13 **(Declaratory Relief NRS 239.0115)**

14 18. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

15 19. Plaintiff is seeking declaratory relief in form of an Order by this Court that the coroner
16 Reports/Autopsies be deemed Confidential, and therefore not accessible and or made public or
17 viewed by the public.

18 20. The decedent, Charleston Hartfield, is the victim of a violent criminal act that
19 occurred on October 1, 2017, and therefore pursuant to NRS 239.0115 any information
20 contained in the coroner report/autopsy, coroner notes and or work product, should not be
21 disseminated or made public in any way.

22 21. Plaintiffs request that this Court declare that the coroner not release to the public any
23 information relating to the autopsy(ies) and or any of plaintiff's confidential and private
24 information.

25 22. Plaintiffs have been forced to retain legal counsel to prosecute these claims, and are
26 Therefore entitled to an award of reasonable attorneys' fees and costs associated with this
27 matter.

1 SECOND CAUSE OF ACTION

2 (Injunctive Relief)

3 23. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

4 24. Pursuant to NRS 33.010, an injunction may be granted when it shall appear by the
5 Complaint that the Plaintiffs are entitled to the relief demanded, and such relief or any part
6 thereof consists of restraining the commission or continuance of the act complained of, either
7 for a limited period or perpetually.

8 25. Defendants are either in the process of obtaining or have obtained copies of the
9 coroner's reports/autopsies relating to the victims of the Route 91 Festival on October 1, 2017.

10 26. Plaintiffs have no adequate remedy at law for the injuries that will be suffered if the
11 Defendants are allowed to disseminate worldwide the private and confidential information in the
12 coroner's reports/autopsies and or work product resulting from the the Route 91 tragedy.

13 27. As a direct result of the actions of Defendants, Plaintiffs have incurred and will continue
14 to incur attorneys' fees and court costs associated with this matter.

15 **WHEREFORE**, Plaintiffs pray for relief as follows:

- 16 1. For declaratory relief;
17 2. For injunctive relief;
18 3. For an award to Plaintiffs for costs and attorneys' fees; and
19 4. For such other and further relief as this Court may deem just and proper.

20 Dated this 1 day of February, 2018.

21 SGRO & ROGER

22   #8968
23 ANTHONY P. SGRO, ESQ. FOR

24 Nevada State Bar No. 3811

25 SGRO & ROGER

26 720 S. Seventh Street, 3rd Floor

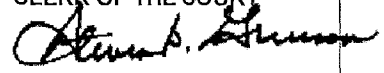
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Attorneys for Plaintiffs



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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

VERONICA HARTFIELD, a Nevada resident,
and the ESTATE OF CHARLESTON
HARTFIELD,

Plaintiffs'

vs.

OFFICE OF THE CLARK COUNTY
CORONER, an agency of the State of Nevada;
LAS VEGAS REVIEW JOURNAL, a Nevada
Corporation; and The ASSOCIATED PRESS, a
New York Corporation; DOE DEFENDANTS 1
through 10; and ROE DEFENDANTS 1 through
10,

Defendants.

Case No.: A-18-768781-C

Dept. No.: 2

**PLAINTIFFS' EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR
PRELIMINARY INJUNCTION ON
ORDER SHORTENING TIME**

HEARING REQUIRED

DATE: 2/2/18
TIME: 9:00 AM

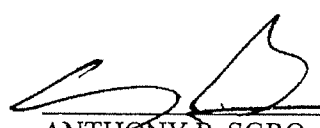

Plaintiff, VERONICA HARTFIELD, a Nevada resident, and THE ESTATE OF
CHARLESTON HARTFIELD ("Plaintiffs" or "Hartfield"), by and through its attorneys of
record, the Law Offices of SGRO & ROGER, hereby files this Ex Parte Application for

1 Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time
2 to enjoin Defendants, Office of the Clark County Coroner ("Coroner"), The Associated Press
3 ("AP") and Las Vegas Review Journal, ("LVRJ"), from releasing and publishing the protected
4 health information of autopsies to public entities, specifically the autopsy report of officer
5 Charleston Hartfield to the Las Vegas Review Journal and any other public entity.
6

7 This Application/Motion is made and based upon Nev. R. Civ. P. 65, Nev. Rev. Stat.
8 §33.010, Eight Jud. Dist. Ct. R. 2.10, the following Memorandum of Points and Authorities, any
9 Exhibits and Declarations attached hereto, the pleadings and papers on file herein, and any oral
10 argument the Court may entertain during the hearing on this matter.

11 Dated this 2 day of February, 2018.

12 SGRO & ROGER

13
14
15   8968
16 ANTHONY P. SGRO, ESQ. r12
17 Nevada State Bar No. 3811

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21 Facsimile: (702) 665-4120
22 tsgro@sgroandroger.com
23 Attorneys for Plaintiff
24
25
26
27
28

**DECLARATION OF ANTHONY P. SGRO, ESQ., IN SUPPORT OF ORDER
SHORTENING TIME**

I, Anthony P. Sgro, Esq., under penalty of perjury, declares:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am counsel for Plaintiff, and I make this declaration upon my own personal knowledge.

3. Nevada Rule of Civil Procedure 65(b) provides that a temporary restraining order ("TRO") can only last 15 days, unless the Court orders or the parties consent to an extension.

4. EDCR 2.10 states that a motion for preliminary injunction must be heard upon the notice required under EDCR 2.20 "unless an order fixed a shorter notice" and that the TRO must fix the time of the hearing and deadlines for briefs. The proposed TRO attached to this Application contains all fields that EDCR 2.10 requires.

5. I make this declaration pursuant to EDCR 2.26, which permits orders shortening time upon good cause.

6. Additionally, pursuant to NRS 239.011(2), this court shall give these matters priority over other civil matters to which priority is not given by other statutes. See NRS 230.011(2).

7. Good Cause exists because Defendants have, and continue to, seek to obtain the coroner's report and other private, personal and confidential information contained therein for the purpose of globally disseminating the same for profit, with no public interests being served thereby.

8. Pursuant to HIPAA Privacy Rules and Standards, matters contained within and drawn from the coroner's report and related documents are private and confidential, and the release of plaintiff's information would violate the family's and the decedent's rights.

9. Therefore, Plaintiff requests that the Court set a hearing date on its motion for preliminary injunction within 15 days of the TRO.

///

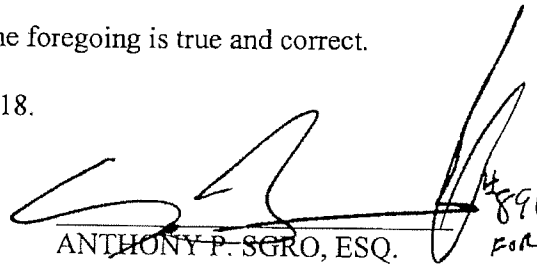
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1 10. This request for an Order Shortening Time for this matter to be heard prior to February 6,
2 2018 is made in good faith and without dilatory motive.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 DATED this 1 day of February, 2018.

5
6  8968
7 ANTHONY P. SGRO, ESQ. FOR

8 This Declaration is submitted pursuant to NRS 53.045, such that it shall have the same force
9 and effect as a sworn affidavit. I declare under penalty of perjury that the contents of this
10 Declaration are true and correct.

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ORDER SHORTENING TIME

Upon proper application and good cause appearing:

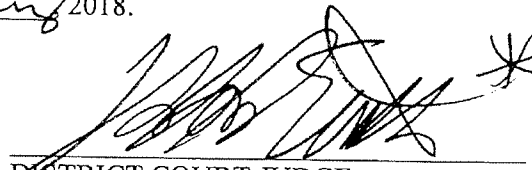
IT IS HEREBY ORDERED that the time for notice and hearing of Plaintiff's Motion for Preliminary Injunction shall be, and it hereby is, shortened. The motion shall be heard on the 12th day of February, 2018, at the hour of 9:00 A.m.

IT IS FURTHER ORDERED that all pleadings, affidavits, and briefs in support of the Temporary Restraining Order and Motion for Preliminary Injunction must be served upon the adverse party no later than the 2nd day of February, 2018.

IT IS FURTHER ORDERED that any oppositions, counter-affidavits and answering briefs must be filed no later than the 7th day of February, 2018.

IT IS FURTHER ORDERED that any reply by Plaintiff will be filed and hand-served on or before 8th day of February, 2018.

DATED this 2nd day of February, 2018.


DISTRICT COURT JUDGE
RICHARD SCOTT

A bond in the amount of \$250.00, which has been received in form of check by this court; the Court directs mortant to deposit bond with the Cashier's office forthwith. Notwithstanding these requirements, TRD is effective immediately.

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 The instant Motion requests this Court intervene and prevent Defendants, and each of
4 them, from releasing, and subsequently publishing for profit, protected health information
5 contained in autopsy reports by issuing a Temporary Restraining Order (“TRO”) and/or a
6 preliminary injunction. Because of the scale and mass media coverage resulting from the horrific
7 events of October 1, 2017 during the Route 91 Festival across from Mandalay Bay on Las Vegas
8 Boulevard, the Associated Press, the local press, and others are seeking to obtain private,
9 confidential, and inherently personal information contained in the autopsy reports of all the
10 decedent’s. They seek this information pursuant to the Nevada public Information Act; however,
11 the information sought will not serve the purposes for which the defendants seek this private
12 information, and the information obtained from the autopsy reports and related documents will
13 be used to profit the defendants – at the plaintiff’s expense. This serves no public interest.

14 Here, Plaintiffs face the threat of irreparable harm, as the violations of their rights cannot
15 be undone or remedied through money damages. Through the release of what is normally
16 confidential, HIPPA-protected health information, the defendants are placing Plaintiff’s private
17 and confidential information at risk of being published, which will very likely be broadcast and
18 republished around the world over and over.

19 For these reasons, this Court is respectfully being asked to intervene to prevent
20 defendants from profiting by publishing the plaintiff’s private, confidential, and personal
21 information as a means of selling their product under the guise of being in the public interest.

22 **II. STATEMENT OF FACTS**

23 On or about October 1, 2017 on the Las Vegas strip at the Route 91 Festival 59 people
24 were murdered, with another 500 injured, including an off-duty metro police officer, plaintiff
25 Charleston Hartfield.

26 In the case at bar, the Defendants are attempting to obtain and subsequently publish
27 private, personal, and confidential information about Mr. Hartfield, using the Nevada Public
28 Information Act as a tool to obtain otherwise private information. It is alleged that they are

1 seeking this private information to prove that the deaths could have been prevented had the
2 deceased received medical treatment sooner. This court is being asked to deny this request and
3 to declare Mr. Hartfield's confidential information to be confidential under NRS 239.0115.

4 **A. PLAINTIFF MEETS THE LEGAL STANDARD FOR AN *EX PARTE***
5 **APPLICATION FOR TEMPORARY RESTRAINING ORDER**

6 **1. Legal Standard for an *Ex Parte* Application for Temporary Restraining Order**

7 A temporary restraining order may be granted without notice to the other party or counsel
8 only if:

9 (1) it clearly appears from the specific facts shown by affidavit or by the verified
10 complaint that immediate and irreparable injury, loss, or damage will result to the
11 application before the adverse party or his attorney can be heard in opposition;
12 and (2) the applicant's attorney certifies to the court in writing the efforts, if any,
13 which have been made to give the notice and the reasons supporting his claim that
14 notice should not be required. NRCP 65(b)

15 The rule also "contemplates that a motion for a preliminary injunction shall accompany
16 the application for a restraining order if the latter is issued *ex parte*." *State ex rel. Friedman v.*
17 *Eighth Judicial Dist. Ct.*, 81 Nev. 131, 134, 399 P.2d 632, 633 (1965). *Ex parte* motions are
18 permissible "in situations and under circumstances of emergency." *Farnow v. Dept. 1 of the*
19 *Eighth Judicial Dist. Ct.*, 64 Nev. 109, 118, 178 P.2d 371, 375 (1947).

20 Applying these factors to the case at hand, it is clear that Plaintiffs, as well as the public,
21 will continue to suffer irreparable harm in the absence of injunctive relief and that relief cannot
22 wait until notice has been given. This issue will continue to arise over and over again should
23 Coroner and LVRJ be permitted to release and disseminate such information contained in
24 Charleston Hartfield's autopsy report and related documents generated by the coroner.

25 **2. Plaintiff Will Suffer Immediate and Irreparable Injury, Loss, or Damage**

26 In this case, monetary damages would not be an adequate remedy if significant harm falls
27 on Plaintiffs due to autopsy reports being released and disseminated.

28 This issue will continue to arise over and over again with the other confidential
information related to Mr. Hartfield's autopsy, and moreover the information will forever be
released given the level of the tragedy at the concert event of October 1, 2017.

3. Notice Should Not Be Required

1 Time is of the essence, and plaintiff's privacy is at stake. The coroner's office must be
2 immediately restrained from releasing Mr. Harfield's information.

3 **B. PLAINTIFFS MEET THE LEGAL STANDARD FOR A PRELIMINARY**
4 **INJUNCTION**

5 The decision to grant a preliminary injunction is within the sound discretion of the Court.
6 *Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 781, 587 P.2d 1329 (1978); *Nevada*
7 *Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975); *Coronet Homes, Inc. v.*
8 *Mylan*, 84 Nev. 435, 442 P.2d 901 (1968).

9 Injunctive relief is intended to protect the status quo and prevent the irreparable loss of
10 rights before judgment can be obtained. *Sierra Online, Inc. v. Phoenix Software, Inc.*, 739 F.2d
11 1415, 1422 (9th Cir. 1984); see NRS 33.010. In determining whether injunctive relief is
12 appropriate, the Court weighs four factors: (1) the likelihood of success on the merits; (2) the
13 threat of irreparable harm; (3) the relative interest of the parties; and (4) the interest of the public.
14 *Sobol v. Capital Mgmt. Consultants*, 102 Nev. 444, 445 726 P.2d 335, 336 (1986).

15 When applying these factors to the present case, it is clear that injunctive relief is
16 necessary to prevent Plaintiff's members from suffering irreparable loss.

17 The Nevada Supreme Court has recognized the Court's equitable powers to protect
18 claimants from irreparable harm for over 140 years. *Conley v. Chetdick*, 6 Nev. 222, 1 (1870).
19 Where there is no adequate remedy at law to protect the movant, there is irreparable injury.
20 *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 587 P.2d 1329 (1978). As
21 mentioned above, "[i]t is well established that the deprivation of constitutional rights
22 'unquestionably constitutes irreparable injury.'" *Melendres*, 695 F.3d at 1002 (quoting *Elrod v.*
23 *Burns*, 427 U.S. 347, 373 (1976)). In the case at bar, Plaintiff clearly shows "that irreparable
24 harm is *likely*, not just possible' in the absence of preliminary injunctive relief." *Rodriguez v.*
25 *Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*,
26 632 F.3d 1127, 1131 (9th Cir. 2011)).

27 Moreover, the Nevada Supreme Court has held that the possibility of a suspended
28 business license may constitute irreparable harm for the purpose of granting an injunction. *State*

1 *Dep't of Bus. & Indus. v. Check City*, 130 Nev. Adv. Op. 90, 337 P.3d 755, 758 n.5 (2014).
2 There is no adequate legal remedy for officers when they are terminated and precluded from
3 attaining secondary employment with the Department. Additionally, being terminated from a law
4 enforcement agency for insubordination severely impairs the ability of an officer to find a
5 comparable position in another agency. This preclusion from earning a livelihood is analogous to
6 *Check City*, where the Nevada Supreme Court found that suspending a business license, and
7 therefore preventing the business from operating, constituted irreparable harm. Accordingly,
8 based on the foregoing reasons, no adequate legal remedy exists and the harm the PPA and its
9 members face is irreparable.

10 The Nevada Supreme Court and the Ninth Circuit Court of Appeals agree, "only a
11 reasonable probability of success is required to support a preliminary injunction." *Christiansen*
12 *v. Chromalloy Am. Corp.*, 99 Nev. 34, 656 P.2d 844 (1983); *Gilder v. PGA Tour, Inc.*, 936 F.2d
13 417, 422 (9th Cir. 1991). In fact, merely a "fair chance on the merits" is sufficient for
14 preliminary injunction purposes. *Johnson v. Cal. State Bd. of Accounting*, 72 F.3d 1427, 1429
15 (9th Cir. 1995). Accordingly, a TRO shall issue whenever there is a reasonable probability or
16 even a fair chance that the applicant will ultimately prevail on the merits of their case. *See, e.g.*,
17 *Jackson v. Nat'l Football League*, 802 F. Supp. 226 (D. Minn. 1992). In this case, PPA
18 demonstrates a high probability of success on its claims.

19 In considering an injunction, the Court weighs the relative interests of the parties – i.e.,
20 how much damage the plaintiff will suffer if the injunction is denied versus the hardship to the
21 defendant if it is granted. *Home Fin. Co. v. Balcom*, 61 Nev. 301, 127 P.2d 389 (1942).
22 However, the equitable principle of relative hardship is not available to a party who proceeds
23 with knowledge that he is acting contrary to the vested rights of another. *Gladstone v. Gregory*,
24 95 Nev. 480, 596 P.2d 491, 495 (1979).
25

26 **C. THE FACTS AND CIRCUMSTANCES WARRANT THE POSTING OF A**
27 **MINIMAL BOND BY PLAINTIFFS**
28

1 NRCP 65(c) requires that in order for a Temporary Restraining Order or Preliminary
2 Injunction to issue, a bond must be posted in an amount determined to be reasonable by the
3 Court. A security bond protects the enjoined party from any costs and damages which the party
4 may incur or suffer due to the wrongful issuance of the injunction. NRCP 54(c); *see also Am.*
5 *Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 854 P.2d 868 (1933).

6 Here, given that the Office of the Clark County Coroner and the Las Vegas Review
7 Journal clearly have no legitimate interests that could be harmed by this Court's issuance of an
8 injunction, PPA requests that the bond required by this Court be nominal.¹

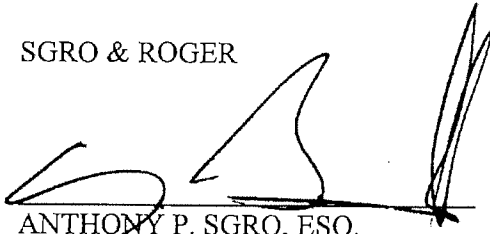
9 **III. CONCLUSION**

10 Based on the foregoing reasons, it is clear that emergency injunctive relief is necessary in
11 order to protect Plaintiff from Defendant forcing mandatory overtime, thereby subjecting
12 Plaintiffs to significant risk of harm and the general public to significant risk of harm if these
13 confidential health documents are not protected.

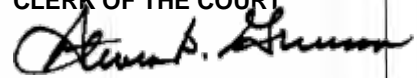
14 As such, Plaintiff respectfully requests that this Court issue a Temporary Restraining
15 Order preventing Coroner and LVRJ from releasing the protected health information of
16 autopsies.

17 Dated this 1 day of February, 2018.

18
19 SGRO & ROGER

20
21 
22 ANTHONY P. SGRO, ESQ.
23 Nevada State Bar No. 3811
24 720 S. Seventh Street, 3rd Floor
25 Las Vegas, NV 89101
26 (702) 384-9800
27 tsgro@sgroandroger.com
28 Attorneys for Plaintiff

¹ PPA proposes a bond amount of \$1,000.00.



NONO
STEVEN B. WOLFSON
District Attorney
CIVIL DIVISION
State Bar No. 001565
By: **LAURA C. REHFELDT**
Deputy District Attorney
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P. O. Box 552215
Las Vegas, Nevada 89155-2215
(702) 455-4761
Fax (702) 382-5178
E-Mail: Laura.Rehfeldt@ClarkCountyDA.com
Attorneys for Defendant
Clark County

DISTRICT COURT
CLARK COUNTY, NEVADA

VERONICA HARTFIELD, a Nevada
resident, and the ESTATE OF
CHARLESTON HARDFIELD,

Plaintiff,

vs.

OFFICE OF THE CLARK COUNTY
CORONER, an agency of the State of
Nevada; LAS VEGAS REVIEW JOURNAL,
a Nevada Corporation; and THE
ASSOCIATED PRESS, a New York
Corporation; DOE DEFENDANTS 1 through
10; and ROE DEFENDANTS 1 through 10,

Defendant.

Case No: A-18-768781-C
Dept No: II

RESPONSE IN NON-OPPOSITION

COMES NOW Defendant, OFFICE OF THE CLARK COUNTY CORONER, by its attorney STEVEN B. WOLFSON, District Attorney, through Laura C. Rehfeldt, Deputy District Attorney, and hereby files its RESPONSE IN NON-OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION seeking enjoinder of the release and publication of protected health information of autopsies. This response in non-opposition is based upon the pleadings and papers on file in the above-entitled action, the attached memorandum of points and authorities, and oral argument of counsel at the time of hearing.

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STATEMENT OF FACTS and POINTS AND AUTHORITIES

Case No. A-17-764842

After the 1 October tragedy, the Coroner received numerous requests for the 1 October autopsy reports from many media outlets, including the Las Vegas Review Journal ("LVRJ") and the Associated Press ("AP"). The LVRJ made its request on October 3, 2017 for the inspection of all autopsies from the 1 October tragedy, including the victims and the shooter. On October 9, 2017, the Coroner responded against disclosure by asserting a legal analysis based on Donrey of Nev. v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990), unwarranted invasion of privacy and AB 57 which in 2017 amended to NRS 259.045 and NRS 244.163.

On November 7, 2018, the AP made its request for all of the autopsies from the 1 October shooting. The Coroner denied access to the records and argued the balancing test and grounds set forth in Donrey of Nev. v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990) and Reno Newspapers v. Gibbons, 127 Nev. 873, 266 P.3d 623 (2011), HIPAA, state laws relating to subject matter in the autopsy records, AB57 and privacy interests.

On November 16, 2018, the LVRJ and the AP filed a Petition for Writ of Mandamus for Access to Autopsy Reports of 1 October Deaths, Case No. A-17-764842 ("Petition") against the Coroner. The parties fully briefed the issues. The Coroner argued against disclosure based on law and policy set forth in NRS Chapter 239 and Nevada case law, including, AB 57/NRS 259.045, the basis articulated in Bradshaw, HIPAA, state laws relating to the subject matter of autopsy reports, as well as privacy interests.¹ Notably, however, in their Complaint, Plaintiffs raise a different argument based on NRS 239.0115, which was not presented or adjudicated in Case No. A-17-764842.

¹ The Coroner has made similar arguments in the case of *Las Vegas Review Journal v. Clark County Office of the Coroner/Medical Examiner*, Case No. A-17-758501-W. That case involves a public records request for autopsy records of juveniles from 2012-2017 and is currently on appeal before the Nevada Supreme Court, Case No. 74604.

1 For a complete statement of facts and legal arguments made in favor of
2 confidentiality and against disclosure of the autopsy reports of the 1 October decedents. see
3 Coroner's Response to Petition, attached hereto as Exhibit "A".

4 On January 30, 2018, the LVRJ and the AP's Petition was heard by Judge Timothy
5 Williams. After oral argument, the Court ruled that: 1) the Nevada Public Records Act does
6 not set forth any exceptions and/or exemptions for autopsy reports, and, therefore, autopsy
7 reports are public record; 2) AB 57 provides no exception and has no application to this case;
8 3) the Coroner must immediately make available complete copies of requested records or
9 make them available for inspection, including autopsy reports of the victims with names
10 redacted; 4) there was no finding in bad faith by the Coroner; 5) the draft report of the
11 autopsy report of Stephen Paddock that was provided to the Las Vegas Metropolitan Police
12 Department by the Coroner shall be provided²; and 6) the autopsy and toxicology report of
13 Stephen Paddock shall be provided upon completion. See the Reporter's Transcript of the
14 Hearing, attached hereto as Exhibit "B". See also the Order that was executed by Judge
15 Williams on February 6, 2018 and entered on February 7, 2018, attached hereto as Exhibit
16 "C".³

17
18 **On January 31, 2018, the Coroner Complied with the Court Ruling in A-17-764842**
19 **With Respect to the 1 October Victims**

20 On January 31, 2018, in compliance with the ruling of the District Court, copies of the
21 autopsy reports of all the 1 October victims were released, via email, to counsel for the
22 LVRJ and AP. Names and identifying information of the victims consisting of Coroner case
23 number, age and race were redacted. Subsequently, the Clark County Office of
24 Communications released the redacted autopsy reports to other media outlets. See
25 Declaration of Laura C. Rehfeldt, attached hereto as Exhibit "D".

26
27 ² It was determined after the hearing that such a document was not provided to the police department.

28 ³ The written order is different from the Reporter's Transcript of the Hearing in several ways. One significant example is that the Order requires that the Las Vegas Review Journal and the Associated Press receive records 8 hours ahead of any other media outlet. This was not discussed at the hearing.

1 Plaintiff's Ex Parte Application for a Temporary Restraining Order and Order was
2 filed on February 2, 2018. A copy was emailed to the Coroner on February 2, 2018;
3 however the Coroner's Office was not served until February 6, 2018. Thus, the temporary
4 restraining order was received after the Coroner had released the redacted reports of the
5 victims of the 1 October shooting to the media. Nevertheless, the Coroner intends to fully
6 comply with the Temporary Restraining Order and any other orders of the Court.⁴ See
7 Exhibit "D".

8 CONCLUSION

9 Based on the foregoing, the Coroner respectfully submits its Response in Non-
10 Opposition to Plaintiff's Temporary Restraining Order and Motion for Preliminary
11 Injunction.

12 DATED this 7th day of February, 2018.

13 STEVEN B. WOLFSON
14 DISTRICT ATTORNEY

15
16 By: 
17 LAURA C. REHFELDT
18 District Attorney
19 State Bar No. 005101
20 500 South Grand Central Pkwy. 5th Flr.
21 P. O. Box 552215
22 Las Vegas, Nevada 89155-2215
23 Attorney for Defendant
24 **Clark County**

25
26
27 ⁴ The Application for Temporary Restraining Order, in support of the Order, addresses autopsy reports of all decedents.
28 See Application for Temporary Restraining Order, p. 7, lines 6-9; p. 11, lines 14-16. Therefore, to avoid the risk of
violating this Order, the Coroner is required to withhold from disclosure the autopsy records of Stephen Paddock, and
requests for 1 October autopsies that have been received since the issuance of the temporary restraining order.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 7th day of February, 2018, I served a true and correct copy of the foregoing **RESPONSE IN NON-OPPOSITION** to the following parties by the method shown below:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Anthony P. Sgro Sgro & Roger 720 S. Seventh Street, 3 rd Fl. Las Vegas, NV 89101 tsgro@sgroandroger.com	<i>Plaintiff</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)
David Roger Las Vegas Police Protective Association 9330 W. Lake Mead Blvd., Suite 200 Las Vegas, NV 89134 droger@lvppa.com	<i>Plaintiff</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)
Margaret A. McLetchie, Esq. Alina M. Shell, Esq. McLetchie Shell LLC 701 East Bridger Avenue #520 Las Vegas, NV 89101 alina@nvlitigation.com maggie@nvlitigation.com	<i>Defendant Las Vegas Review Journal</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)

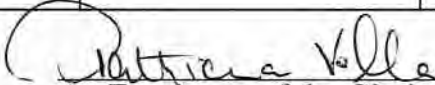
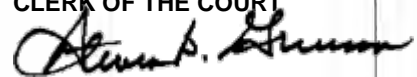

An Employee of the Clark County District
Attorney's Office – Civil Division

EXHIBIT A

Coroner's Response to Petition



RSPN
STEVEN B. WOLFSON
District Attorney
CIVIL DIVISION
State Bar No. 001565
By: **LAURA C. REHFELDT**
Deputy District Attorney
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Fax (702) 382-5178
E-Mail: Laura.Rehfeldt@ClarkCountyDA.com
Attorneys for Defendant
Clark County Coroner Medical Examiner

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW JOURNAL and
THE ASSOCIATED PRESS,

Petitioner.

vs.

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER.

Respondent.

Case No: A-17-764842-W
Dept. No: XVI

**RESPONSE TO PETITION AND OPENING BRIEF IN SUPPORT OF PUBLIC
RECORDS ACT APPLICATION PURSUANT TO NEV. REV. STAT. § 239.001 /
PETITION FOR WRIT OF MANDAMUS FOR ACCESS TO AUTOPSY REPORTS
OF 1 OCTOBER DEATHS**

COMES NOW Defendant CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER, by its attorney STEVEN B. WOLFSON, District
Attorney, through Laura C. Rehfeldt, Deputy District Attorney, and hereby files its Response
to Petition and Opening Brief in Support of Public Records Act Application Pursuant to Nev.
Re. Stat. § 239.001 / Petition for Writ of Mandamus for Access to Autopsy Reports of 1
October Deaths (hereinafter "Petition"). This response is based upon the pleadings and papers
on file in the above-entitled action, the attached memorandum of points and authorities, and

1 oral argument of counsel at the time of hearing.

2 DATED this 2nd day of January, 2018.

3 STEVEN B. WOLFSON
4 DISTRICT ATTORNEY

5 By: *Laura C. Rehfeldt*
6 LAURA C. REHFELDT
7 District Attorney
8 State Bar No. 005101
9 Las Vegas, Nevada 89155-2215
10 Attorney for Defendant
11 Clark County Coroner Medical Examiner

12 I. INTRODUCTION

13 A. Duties and Purpose of the Clark County Coroner Medical Examiner (NRS
14 Chapter 259 and Clark County Code Chapter 2.12)
15

16 The purpose of the Coroner is to investigate deaths within Clark County that are
17 violent, suspicious, unexpected or unnatural in order to identify and report on the cause and
18 manner of death. This may include those reported as unattended by a physician, suicide,
19 poisoning or overdose, occasioned by criminal means, resulting or related to an accident.
20 Clark County Code ("CCC") § 2.12.060; Declaration of John Fudenberg, incorporated herein
21 by this reference and attached hereto as Exhibit A.

22 When the Coroner's Office is notified of a death, and it is determined that the
23 circumstances of the death fall under the jurisdiction of the Coroner's Office, a Coroner
24 investigator responds to the scene and conducts a medicolegal investigation. Information is
25 gathered from the scene and persons, such as witnesses, law enforcement officers and family
26 members: the decedent is identified; the next of kin is notified; and property found on or
27 about the decedent is secured. The investigation often entails obtaining medical records or
28 health information of the decedent. Most often the decedent is transported to the Coroner's
Office. A post mortem examination is conducted by a medical examiner, which may include
an autopsy. CCC §§ 2.12.060, 2.12.280. Exhibit A, ¶ 2(b)(c).

In conducting the autopsy, the Medical Examiners perform an external and internal
exam of the body of the decedent. They review investigative findings, medical records,

1 health history prior to commencing the exam. The organs are examined, and histology
2 samples along with blood is submitted to a laboratory for analysis. It is the responsibility of
3 the medical examiner to determine the cause and manner of death. CCC §§ 2.12.040,
4 2.12.060; Exhibit A, ¶ 2(c).

5 The manner of death is the method by which someone died. The five manners of
6 death are homicide, suicide, natural, accident and undetermined. The cause of death is the
7 circumstance that triggers a death such as a gunshot wound, heart attack, or drug overdose.
8 The Medical Examiner documents findings, including the cause and manner of death in an
9 autopsy report ("Autopsy Report"). CCC §§ 2.12.060, 2.12.040, 2.12.250; Exhibit A, ¶ 2(d).

10 After completion of the autopsy, the decedent is released to a mortuary and the person
11 with rights to the body takes over the handling of the body. CCC §§ 2.12.270, 2.12.280;
12 Nev. Rev. Stat. ("NRS") § 451.024. The death of the decedent, including the cause and
13 manner are documented in a death certificate which is generated and maintained by the
14 Department of Vital Statistics. CCC § 2.12.250, ¶ 2(e).

15 **B. Content of Autopsy Reports**

16 As stated, Autopsy Reports consist of the findings resulting from the autopsy,
17 including those related to the cause and manner of death of the decedent. Additionally, the
18 name, age, sex and date of death are identified. Exhibit A, ¶ 3(a).

19 The external examination is described in the Autopsy Report, and includes an analysis
20 as to the medical/health status or condition of the exterior parts of the body. These findings
21 include very personal medical information including comprehensive description of the
22 physical findings on the decedent's body. Exhibit A, ¶ 3(b).

23 The findings related to the internal examination are also included in the Autopsy
24 Report. This may include radiographic findings, detailed descriptions of medical evaluations
25 as to the condition of organs and functions which may include the neck (i.e. thyroid, cricoid,
26 prevertebral tissue and muscles); cardiovascular system (i.e. aorta, coronary arteries, heart);
27 respiratory system (i.e. trachea, major bronchi, pulmonary vessels, lungs); hepatobiliary
28 system (i.e. liver); hemolymphatic system (i.e. spleen); gastrointestinal system (i.e.

esophagus, stomach, appendix, intestines); genitourinary system (i.e. renal and genitalia);
endocrine system (i.e. thyroid and adrenal glands); central nervous system (i.e. brain).
Exhibit A, ¶ 3(c).

The fluids, tissue and organ samples retained and submitted for testing are included in
the Autopsy Report along with the types of tests ordered. The test results and any
microscopic examinations are also included. Exhibit A, ¶ 3(d).

References to specific medical records, specific medical or health information and
personal characteristics about the decedent may also be included in the Autopsy Report.
This could include sexual orientation of the decedent, and types of disease such as venereal,
HIV, liver, cancer, mental illness, or drug or alcohol addiction or overdoses. This
information may not be publicly known, or desired by the decedent or its family to be public,
and its dissemination may result in unwanted social stigmas or embarrassment to a family.
Exhibit A, ¶ 3(e).

C. Coroner Policy with Respect to the Release of Autopsy Reports

The Coroner's procedure with respect to the release of Autopsy Reports is to release
them, upon request, to the legal next of kin, an administrator or executor of an estate, law
enforcement officers in performing their official duties, and pursuant to a subpoena. This
practice is consistent with a 1982 Nev. Op. Atty. Gen. No. 12 (hereinafter "AGO 82-12") as
well as Washoe County and Elko County.¹ Exhibit A, ¶¶ 4, 17.

If the authorized next of kin desires for the Coroner to provide an autopsy report to a
third party or media, then it is the Coroner's practice to obtain a written release from the next
of kin authorizing the disclosure. Likewise, if a third party requests an autopsy report, then
that party may seek the autopsy report directly from a decedent's next of kin. Exhibit A, ¶
15.

/ / /

¹ See Washoe County Code 35.160(4) for the purpose of demonstrating that the Washoe County Coroner has adopted the
same practice as the Coroner, and www.washoecounty.us/coroner/faq/autopsy_report.php. For Elko County see
www.elkosherriff.com/coroner.html (reports generated by the Elko County Coroner's Office are not subject to public
view).

II. STATEMENT OF FACTS RELATING TO PETITIONER'S REQUEST FOR AUTOPSY REPORTS OF THE 1 OCTOBER DECEDENTS

On the night of Sunday, October 1, 2017, the worst mass shooting in U.S. history occurred in Las Vegas, Nevada at the Route 91 Harvest Festival at the Mandalay Bay. Fifty-Nine people died and over 500 were injured. With respect to this mass fatality involving Fifty-Nine deaths, the Coroner's Office had an important role and was challenged in a way it never had before. The workload of the Coroner was impacted tremendously and priority to the families of the victims was paramount. The Coroner was one of the primary agencies in the multi-disciplinary investigation. Exhibit A, ¶¶ 5-6.

The Coroner's Office operates at a near capacity level on a routine daily basis. However, to accommodate families and assure them that the investigations into the 1 October deaths were accurate, comprehensive and complete, full use of all of the resources of the Coroner's Office was required over and above its daily caseload. Exhibit A, ¶¶ 5-6. In addition to investigating the cause and manner of the deaths, the Coroner's Office was responsible for a family assistance center, which continuously assisted and provided information to families. Communicating directly with these families has been the focus of the Coroner's Office for the past few months. Exhibit A, ¶ 6.

During the first 30-45 days after the tragedy, the Coroner's Office received hundreds of media inquiries. Exhibit A, ¶ 7. The Coroner initially asked the Civil Division of the District Attorney's Office to respond, particularly in light of a court ruling just prior to 1 October in the case of *Las Vegas Review Journal v. Office of the Clark County Coroner / Medical Examiner*, Case No. A-17-758501.² Exhibit A, ¶ 8. The Clark County Office of Public Communication later took over responding to these requests. Exhibit A, ¶ 8.

As stated, it is the practice of the Coroner to release Autopsy Reports, upon request, to the legal next of kin, an administrator of an estate, law enforcement officers, and pursuant to a subpoena. The Coroner's procedure is to not release the Autopsy Reports to the general public, and to limit the release to private individuals (except pursuant to subpoena) is based

² Eighth Judicial District Court Judge Crockett ordered that the Coroner disclose all autopsy reports of juveniles from January 2012 to April 13, 2017. The Coroner has since appealed that order.

1 on Attorney General Opinion 82-12, which opines that the Autopsy Report is a public record
2 but is not open to public dissemination. This opinion is based on public policy and laws
3 protecting the release of certain information relating to a person's body, mostly medical and
4 health information, which is contained in an autopsy report. Exhibit A, ¶ 4. Additionally,
5 the AGO applies a balancing test which weighs privacy interests against the right to public
6 access, a test that was adopted by the Nevada Supreme Court eight years later.

7 On October 3, 2017, Arthur Kane, Investigative Reporter for the Las Vegas Review-
8 Journal ("RJ"), emailed a public records request to the Coroner to:

9 ...inspect all autopsies from the "Mandalay Bay shooting of Oct. 1.
10 2017 as they are completed, including the full report and the
11 investigator's notes. Please include all the victims in the case as
well as the suspect.

12 Exhibit A, ¶ 8;³ Exhibit C ¶ 2.

13 On October 9, 2017, the RJ's request was denied. Specifically, the RJ was
14 informed that the reports would not be considered for release until 1) the Coroner
15 investigation is complete; and 2) law enforcement agencies have completed all
16 investigation into this matter and it has been determined that there is no potential jeopardy
17 to the investigation, law enforcement or others as a result of the release. Due to the
18 timing of the request and status into the 1 October investigation, the legal authority for the
19 denial was based on Donrey of Nev. v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990)
20 which applied a balancing test to determine whether privacy or special interests
21 outweighed public disclosure of a criminal investigation report under Nevada public
22 records law. The RJ was provided a thorough legal analysis applying the policy issues in
23 justifying the withholding of information requested despite the fact that the reports did not
24 exist at this time. Exhibit C, ¶ 3.

25 Later that day, on October 9, 2017, counsel for the Petitioners (Margaret A.
26 McLetchie) emailed counsel for the Coroner (Laura C. Rehfeldt) a supplemental request
27 seeking: 1) with respect to Stephen Paddock "the status of the various records that had been
28

³ With respect to Investigator Notes, the Coroner is unaware of any. Exhibit A, ¶ 9.

1 or will be completed now that the examination is complete"; 2) copies of all other media
2 records for records pertaining to Stephen Paddock or the victims and Ms. Rehfeldt's
3 responses to those requests;⁴ and 3) a "standard protocol" in a case such as this that
4 indicates what reports to create.⁵ Exhibit C, ¶ 4. The next day, on October 10, 2017, counsel
5 for Petitioners contacted counsel for the Coroner and stated that the RJ "would be fine with
6 redacted versions of the victims' autopsies if that would resolve the coroner's privacy
7 concerns on that front." Exhibit C, ¶ 5.

8 During this time, Petitioners' counsel exchanged phone discussions with counsel for
9 the Coroner. Petitioners' Counsel admitted that the reason for the victim autopsy reports was
10 to itemize which victims died from gunshot wounds and which victims died of another
11 means, such as a stampede or trampling. Exhibit C, ¶ 6. On October 13, 2017, Ms.
12 Rehfeldt substantively responded to Ms. McLetchie's emails dated October 9 and 10, 2017.
13 That response reminded Ms. McLetchie that the Coroner's Office was deeply inundated with
14 the aftermath of the 1 October incident. Counsel for the Coroner relayed to Ms. McLetchie
15 that she did not know the status of the investigation into the death of Stephen Paddock, did
16 not know if records had been created and which ones had yet to be completed, or whether or
17 not there was standard protocol with respect to these cases. As for the redaction issue,
18 counsel for the Coroner suggested that issue be revisited after completion of the
19 investigations. Ms. McLetchie was also informed that the death investigations were
20 underway and that the autopsy reports were not complete. Exhibit C, ¶ 7. The RJ did not
21 follow up or make a subsequent inquiry into this matter. In fact, the Coroner did not hear
22 from the RJ again until it filed its lawsuit in this case on November 16, 2017. Exhibit C, ¶ 8.

23 On November 7, 2017, Ken Ritter sent an email to Clark County Public Information
24 Office Dan Kulin and Coroner Fudenberg requesting the Fifty-Nine autopsies from the
25 October 1 shooting. Declaration of Daniel Kulin, incorporated herein by this reference
26 attached hereto as Exhibit B. Exhibit B, ¶ 5. On November 15, 2017, Mr. Kulin called Mr.

27
28 ⁴ These were provided on October 13, 2017 and are attached as Exhibit 7 to Petitioner's Public Records Act Application.

⁵ The Coroner does not have standard protocol for mass fatalities incidences in reference to the records that are generated. The same records process is used for all cases. Exhibit A, ¶ 9.

1 Ritter to let him know he needed more time to respond to his request. Exhibit B, ¶ 6.
2 During that conversation, Mr. Ritter asked that this information be provided in writing so
3 Mr. Kulin then submitted an email to that effect. Exhibit B, ¶ 6. Mr. Ritter then telephoned
4 Mr. Kulin and asked if he would be receiving a “response or documents” and Mr. Kulin
5 responded that it would be a response. Exhibit B, ¶ 7. Petitioners did not wait for Mr. Kulin
6 to respond. Instead, they filed this case on November 16, 2017. Exhibit B, ¶ 8. On
7 November 27, 2017, Mr. Kulin provided the following response to Mr. Ritter:

8 It is my understanding that at this time the autopsy records have not
9 been finalized or released to the families. Therefore, we will not
10 consider releasing reports that have not been finalized. That being
11 said, once they have been finalized, based on the legal authority and
12 balancing test set forth in the Nevada Supreme Court cases
13 of Donrey of Nevada v. Bradshaw, 106 Nev. 630, 798 P.2d 144
14 (Nev. 1990) and Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873,
15 880, 266 P.3d 623,628 (2011), your request will be denied.

16 In applying the balancing test adopted by the Nevada Supreme Court,
17 the interests against nondisclosure outweigh the public’s interest in
18 access. Autopsy records are largely composed of medical and health
19 information. This information is treated confidential by federal law,
20 pursuant to the Health Insurance Portability and Accountability Act
21 of 1996, as well as state law under NRS Chapter 629. Additionally,
22 other information that may be contained in autopsy reports, i.e.
23 communicable diseases (NRS 441A.220) or whether someone was
24 born out of wedlock, is also declared confidential by law (NRS
25 440.170). Further, NRS 259.045 specifies certain individuals who
26 may obtain the reports, and the media is not included.

27 Dissemination of these records to the public would constitute an
28 unwarranted invasion of privacy to a grieving family. The Nevada
Supreme Court has also recognized that an individual’s privacy as an
important interest. See Reno Newspapers v. Haley, 234 P.3d 922
(Nev. 2010). Thus, based on the foregoing, the interests of
nondisclosure outweigh public access. Therefore, access to the
autopsy records of the victims of 1 October will be denied.

Exhibit B, ¶ 9.

On December 3, 2017, the Coroner’s Office sent the death certificates, which includes
cause and manner of death, to the authorized next of kin of the decedents. It is the policy of
the Coroner’s Office to receive verification that the documents have been received by the
family before the cause and manner of death is released to the media. Exhibit A, ¶¶ 10-11.
In this case, the FBI notified the next of kin of the cause and manner of death. On December
18, 2017, the Coroner received verification from the FBI that the next of kin had been

1 notified. Exhibit A ¶ 11. On December 21, 2017, the Office of Public Communications
2 made a media release to individuals who choose to be listed on the County's media list. The
3 media release consisted of the cause and manner of death of each decedent.⁶ Exhibit B, ¶ 11.
4 Numerous RJ reporters as well as Mr. Ritter are included on this list and received the
5 information. Exhibit B, ¶ 11. Approximately thirty minutes after the release, the RJ
6 published an article on the cause and manner of the death of each of the 1 October decedents.
7 Exhibit B, ¶ 12. The AP followed thereafter publishing the information local, nationwide
8 and worldwide, as to how each decedent died. Specifically, the AP, authored by Mr. Ritter,
9 stated that "21 people were shot in the head. 36 died with chest and back wounds and one
10 died of a gunshot to the leg . . . and four victims had multiple gunshot wounds." Exhibit B, ¶
11 13.

12 On December 27, 2017, Ms. Rehfeldt asked Ms. McLetchie if the Petitioners would
13 be pursuing this case in light of the fact that the public release of information by the Coroner
14 of the cause and manner of death occurred the week prior. Exhibit C, ¶ 10. After an
15 exchange of communications with the Coroner's attorney on December 28-29, 2017, the
16 Petitioners determined that they would be pursuing the case as to the autopsy reports of the 1
17 October victims and the shooter, Stephen Paddock. Exhibit C, ¶ 11. Ms. McLetchie stated
18 that a new basis for its continued request for the victims' autopsy reports was to determine if
19 there was a "secondary cause of death." Exhibit C, ¶ 11.

20 On December 28 and 29, 2017, the Coroner engaged in discussions with Eric
21 Paddock, the brother of Stephan Paddock, with respect to the release of Stephen Paddock's
22 autopsy report to the media. Eric Paddock advised that he first wanted to release the autopsy
23 report to Jeff German, reporter for the RJ. Exhibit A ¶ 15. To date, the autopsy reports of
24 the 1 October victims have not yet been finalized and the autopsy of the shooter, Stephen
25 Paddock, has not been complete. Exhibit A ¶ 15.

26 Petitioners' Petition requests complete copies of autopsy reports, reasonable costs and
27 attorneys fees, and a finding that the Coroner acted in bad faith. The Coroner's response
28

⁶ This is essentially the same information that would be provided in a redacted Autopsy Report. Exhibit A, ¶ 13.

1 asserts that the Petition is not a justiciable controversy and provides legal analysis as to why
2 autopsy reports are not subject to disclosure under Nevada law.

3 **III. LEGAL ARGUMENT**

4 **A. There is No Justiciable Controversy and Therefore No Jurisdiction**

5 Petitioners Petition this Court for Writ of Mandamus praying for injunctive relief
6 ordering the Coroner's Office to immediately make available complete copies of all records
7 requested, declaratory relief and reasonable costs and fees. A writ of mandamus is available
8 to compel the performance of an act that the law requires as a duty resulting from an office,
9 trust, or station, NRS 34.160. See State v. Dist. Ct. (Armstrong), 127 Nev.Adv.Op. 84, 267
10 P.3d 777, 779 (2011) and Cote H., A Minor, v. The Eighth Judicial District Court of the
11 State of Nevada, In and For the County of Clark, 124 Nev. 36, 39, 175 P.3d 906, 907-908
12 (2008). However, there is no jurisdiction for this Petition as Petitioner does not have a
13 justiciable controversy and, therefore, this Petition should be dismissed.

14 A "justiciable controversy" is a "ripe dispute between two interested and adverse
15 parties, in which the moving party's interest is legally recognized," and has been held to
16 apply to a petition for writ of mandamus. Mesagate Homeowners' Association, 124 Nev.
17 1092, 1097, 194 P.3d 1248, 1251 (2008). The harm alleged by petitioners seeking review
18 must be sufficiently concrete to yield a justiciable controversy, not remote or hypothetical.
19 Cote H., 124 Nev. at 38, 175 P.3d at 907, FN 1. In the present case, there is not a justiciable
20 controversy. This case is unique as in some respects the case is not ripe, and in other
21 respects the case is moot. Furthermore, this is a hypothetical question as the Autopsy
22 Reports from the 1 October tragedy have not been finalized at this time.

23 1. This case was prematurely filed and is not ripe.

24 The request for autopsy reports is not ripe as the autopsy reports of the 1 October victims
25 have not been finalized. The request for the autopsy reports of the shooter, Stephen
26 Paddock, is not ripe as neither the autopsy nor the report has been complete. Exhibit A ¶ 12.
27 Petitioners filed their suit prematurely. The case is not ripe until the Autopsy Reports are
28 complete.

1 2. This case is also moot as the conflict which triggered this lawsuit no
2 longer exists.

3 With respect to the 1 October victims, the reason that Petitioners desired the autopsy
4 reports was so they could report statistically exactly how each victim died, i.e. gunshot
5 wound or trampled from a stampede. Exhibit C, ¶ 6. When the public data consisting of the
6 cause and manner of death of each decedent was released on December 21, 2017, the object
7 for which these reports were sought was eliminated. Within half an hour after the data was
8 released to the media, articles were written on this topic explaining that “21 people were shot
9 in the head, 36 died with chest and back wounds and one died of a gunshot to the leg . . .
10 and four victims had multiple gunshot wounds. Exhibit B, ¶ 13. Thus, there is no purpose
11 for disclosure of these reports, as the information necessary to statistically report the cause of
12 death of the decedents was released on December 21, 2017.

13 With respect to the autopsy report of Stephen Paddock, the family of this decedent has
14 stated a desire to release the report directly to Jeff German, RJ reporter, an agent of the RJ,
15 one of the Petitioners in this case. In other words, when the autopsy report of Stephen
16 Paddock is complete, it appears that his family desires that it be released to the media, thus,
17 resolving the issue relating to the disclosure of the Paddock autopsy report.⁷ Exhibit A ¶ 15.
18 Thus, Petitioners are getting what they asked for and the case is moot.

19 **B. Nevada Public Records Law**

20 Books and records kept by government entities are public “unless otherwise declared
21 by law to be confidential.” NRS § 239.010(1). If a record contains confidential information,
22 it should be redacted, but only “if the governmental entity can redact, delete, conceal or
23 separate the confidential information from the information included in the public book or
24 record that is not otherwise confidential.” NRS § 239.010(3).

25 If any material is deemed confidential, the Coroner must explain why. NRS 239.0107
26 provides, in pertinent part, that the public official must respond to the public records request

27
28 ⁷ Based on Eric Paddock’s representation that he desires to release the report first to Jeff German, a RJ reporter, it places
Petitioner RJ in a better position than when it receives press releases from the Office of Public Communications as those
are disseminated to all media contacts simultaneously.

1 within five days, and if a document is claimed to be privileged or confidential, the request
2 must say so with “[a] citation to the specific statute or other legal authority that makes the
3 public book or record, or a part thereof, confidential.”

4 Beyond statutory privileges, Nevada law recognizes common law privileges. The
5 seminal Nevada Supreme Court decision interpreting the Nevada Public Records Act is
6 Donrey of Nev., Inc. v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990). In that case, Donrey
7 and Reno Newspapers petitioned for writ of mandamus pursuant to NRS 239.010, seeking
8 disclosure by the Reno Police Department of a report prepared following investigation into
9 the circumstances surrounding dismissal of charges against Joe Conforte for contributing to
10 the delinquency of a minor. The Supreme Court concluded that the report was not expressly
11 made confidential by statute, and turned to a balancing of interests test to consider the
12 question of whether there was a common law limitation on disclosure of the records sought.
13 Id. at 635, 147 (citing Carlson v. Pima County, 141 Ariz. 487, 490, 687 P.2d 1242, 1245
14 (1984)). The court weighed the privacy and law enforcement policy justifications of
15 nondisclosure against what it characterized as the general policy in favor of open
16 government. The Bradshaw decision, by implication, recognized that any limitation on the
17 general disclosure requirements of NRS 239.010, must be based upon balancing or
18 “weighing” of the interests of non-disclosure against the general policy in favor of open
19 government. See DR Partners v. Bd. of Cnty Comm’rs, 116 Nev. 616, 621, 6 P.3d 465, 468
20 (2000).

21 The Nevada Supreme Court has clearly stated that the purpose of NPRA is to ensure
22 accountability of the government to the public by facilitating public access to “vital information”
23 about governmental activities. Id. The Court has also ruled therein that if a public agency
24 declines to produce records or information, it is the public official or agency that bears the
25 burden of establishing the existence of privilege based upon confidentiality. Id.: see also NRS §
26 239.0113. Where no statute provides an absolute privilege against disclosure, the establishment
27 of a privilege based upon confidentiality must be satisfied pursuant to a balancing of interests test,
28 described by the Court as follows:

1 In balancing the interests . . . the scales must reflect the fundamental
2 right of a citizen to have access to the public records as contrasted
3 with the incidental right of the agency to be free from unreasonable
4 interference. . . . The citizen's predominant interest may be
expressed in terms of the burden of proof which is applicable in this
class of cases; the burden is cast upon the agency to explain why the
records should not be furnished.

5 DR Partners, 116 Nev. at 621, 6 P.3d at 468 (citing MacEwan v. Holm, 226 Or. 27, 46, 359
6 P.2d 413, 422 (1961); and referencing Bradshaw, 106 Nev. at 635-36, 798 P.2d at 147-48).

7 More recently, in Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873, 880, 266 P.3d 623,
8 628 (2011), the Nevada Supreme Court walked through its historical analysis of the balancing
9 of interests test. The Court noted that the analysis begins with the presumption that all
10 government-generated records are open to disclosure, see Reno Newspapers v. Haley, 234 P.3d
11 922, 924 (Nev. 2010), and DR Partners, 116 Nev. at 621, 6 P.3d at 468, and noted that the State
12 may overcome this presumption by proving, by a preponderance of the evidence, that the
13 requested records are confidential. NRS § 239.0113; DR Partners, 116 Nev. at 621, 6 P.3d at 468.
14 Next, absent a statutory provision that explicitly declares a record to be confidential, limitations
15 on disclosure must be based upon a broad balancing of the interests involved. DR Partners, 116
16 Nev. at 622, 6 P.3d at 468; Bradshaw, 106 Nev. at 635, 798 P.2d at 147. Although the state entity
17 bears the burden to prove that its interest in nondisclosure clearly outweighs the public's interest
18 in access, that burden will clearly be met in the right circumstance. In sum, under Nevada law,
19 the duty to disclose is not unlimited. Pub. Emps.' Ret. Sys. v. Reno Newspapers, Inc., 313 P.3d
20 221, 225 (Nev. 2013) (citing Gibbons 127 Nev. at 880).

21 The Coroner will show by a preponderance of the evidence that NRS 259.045 restricts
22 the disclosure of Autopsy Reports to certain individuals and, therefore, such reports are barred
23 from public disclosure. Additionally, the Coroner will show that the subject matter contained
24 in Autopsy Reports is deemed confidential by law and that balancing the interests shows that
25 the privacy interests in all Autopsy Reports clearly outweigh public access.

26 / / /

27 / / /

1 C. **Statutory Privilege: NRS 259.045 Does not Allow Disclosure of Autopsy**
2 **Reports to the Media**

3 AB57 was included in the Coroner's legal analysis as a basis for nondisclosure to the
4 RJ and the AP's requests. AB57 was introduced and enrolled by the 2017 Nevada
5 Legislature. A.B. 57, 79th Sess. (Nev. 2017), attached hereto as Exhibit D. It became
6 effective on July 1, 2017 and did two things. First, as Petitioners point out, it made
7 provisions relating to notification of a death consistent with NRS 451.024, which provides a
8 hierarchy as to who has the right to the body after death, as well as listing certain other
9 persons who may be notified to include parents, adult children, guardian or custodian.
10 Second, it also provided that this very group of persons may be provided a copy of the report
11 of the coroner regardless of whether they had the right to the body under NRS 451.024. *Id.*
12 While Petitioners try to pretend it did not happen, it is this second change that is relevant to
13 this case for it demonstrates that Autopsy Reports are confidential, but may be released to
14 specific persons consisting of the person with the right to the body, parents, adult children,
15 guardians and custodians.

16 AB57 was discussed at the Meeting of the Assembly Committee on Government
17 Affairs on February 16, 2017. Coroner John Fudenberg was present, as were representatives
18 of other public entities, private citizens, and the Nevada Press Association. The RJ was not
19 present, and the Nevada Press Association did not present testimony or documentation.⁸

20 The language in AB 57 that references the release of a report to the parents, adult
21 children, guardians or custodians, whether or not they have the right to the body under NRS
22 451.024 is based on the principle that the reports of coroners in Nevada are not for public
23 access, and as a matter of practice are generally released only to next of kin (note that
24 Washoe and Elko Counties have the same policy as the Clark county Coroner).⁹ The

25
26 ⁸ Revised provisions relating to coroners: Hearing on A.B. 57 Before the Assemb. Comm. On Gov't Affairs, 2017 Leg.,
79th Sess. 1-2 (Nev., Mar. 8, 2017) (statement of John Fudenberg, Coroner, Office of the Coroner/Medical Examiner,
Clark County).

27 ⁹ The Coroner's procedure of limiting the disclosure of Autopsy Reports to next of kin is consistent with other counties
28 in the State of Nevada. See Washoe County Code 35.160(4) for the purpose of demonstrating that the Washoe County
Coroner has adopted the same practice as the Coroner, and www.washoecounty.us/coroner/faq/autopsy_report.php.
For Elko County see www.elkosherriff.com/coroner.html (reports generated by the Elko County Coroner's Office are

1 discussion at the legislative hearing demonstrates that the practice of the Coroner limiting
2 release of Autopsy Reports to next of kin was implied, accepted and incorporated into AB
3 57. AB 57 then expanded this practice to include a specific enumerated group of
4 individuals. Exhibit A, ¶¶ 16-18. This is discussed at the hearing:

6 We have been working on this bill for well over a year. I want to
7 thank Rose Floyd. She is in Las Vegas today. She will be
8 testifying in support. Rose tragically lost three family members in
9 2015. As a result of old statutes, she had problems with being
10 notified and potentially receiving copies of the Office of the
11 Coroner/Medical Examiner reports at the time because she was
12 not considered legal next of kin. Her daughter's next of kin was
13 her husband, who was the suspect in the murder. This bill will
14 take care of that issue. Additionally, it will ensure that coroners
15 statewide will be allowed to release reports to someone who is not
16 necessarily the legal next of kin when the legal next of kin is a
17 suspect in the death. Needless to say, this is a no-brainer. The
18 nonlegal next of kin under these circumstances should be entitled
19 to reports of their family members. (emphasis added)¹⁰

20 * * *

21 Under the circumstances, if the legal next of kin is the suspect,
22 then the nonlegal next of kin – the parents in this scenario –
23 would be entitled to the report. A real-life example, Rose Floyd's
24 daughter and two other family members were murdered by her
25 daughter's husband. By law, the daughter's husband was the
26 legal next of kin, so Rose was not notified right away. This will
27 minimize that from happening in the future.

28 Rose would not have been entitled to receive coroner's reports
because she was not the legal next of kin. I do not want to speak
for the other 16 counties in the state, but in Clark County under
these circumstances, we would release the reports to her although
it is not clearly outlined in statute. In section 3, subsection 2, the
bill allows us to legally release the reports to her as the nonlegal
next of kin when the legal next of kin is a suspect in a murder.
(emphasis added).¹¹

not subject to public view. These reports are available to the legal next of kin but only at the conclusion of the
investigation (including district attorney's review) and upon written request, and appropriate fees being forwarded. The
reports do not include protected health information and reports or documents obtained from other agencies.)

¹⁰ Revised provisions relating to coroners: Hearing on A.B. 57 Before the Assemb. Comm. On Gov't Affairs, 2017
Leg., 79th Sess. 4 (Nev., Mar. 8, 2017) (statement of John Fudenberg, Coroner, Office of the Coroner/Medical Examiner,
Clark County).

¹¹ Revised provisions relating to coroners: Hearing on A.B. 57 Before the Assemb. Comm. On Gov't Affairs, 2017
Leg., 79th Sess. 5 (Nev., Mar. 8, 2017) (statement of John Fudenberg, Coroner, Office of the Coroner/Medical Examiner,
Clark County).

1 Three times the hearing testimony references how Rose Floyd could not get a Coroner report
2 because she was not the authorized next of kin. In other words, the policy of disclosing the
3 Autopsy Report to the next of kin is clearly imbedded in the legislation. If it wasn't, then
4 Ms. Floyd would have received the report and it would not have had to be addressed.

5 AB57 was not expanded to allow release to just anybody (unless pursuant to NRS
6 451.024); not the press and not the general public. This is consistent with well-settled
7 application of statutory interpretation in Nevada. When the legislature specifically includes
8 or enumerates particular things, it must be interpreted to mean that all other things were
9 intended to be excluded. Ramsey v. City of N. Las Vegas, 392 P.3d 614, 619 (Nev. 2017)
10 (the maxim *expressio unius est exclusio alterius* the expression of one thing is the exclusion
11 of another, long adhered to in this state, instructs that the failure to acknowledge or include
12 one thing demonstrates the intent to exclude, or allow no other); Galloway v. Truesdell, 83
13 Nev. 13, 26, 422 P.3d 237, 246 (1967) (the principle has been repeatedly confirmed in
14 Nevada); Silvers v. Sony Pictures Entm't. Inc., 402 F.3d 881, 885 (9th Cir. 2005) (under
15 traditional principles of statutory interpretation, the doctrine creates the presumption that
16 when a statute designates certain persons, things, or manners of operation, all omissions
17 should be understood as exclusions, citation omitted).

18 The Nevada Legislature could have stated that Autopsy Reports were open to the
19 public and not confidential, but it did not do that. Instead, AB57 furthered the policy of
20 coroners in Nevada by accepting the limited release of the reports to the immediate next of
21 kin, and then providing that certain other persons associated with the decedent *may* also
22 receive a report. The reason for specifying other persons related to the decedent was so that,
23 in the event the direct next of kin under NRS 451.024 was responsible for the death of a
24 loved one, other next of kin would be able to be notified and obtain an Autopsy Report. By
25 enumerating such a small number of individuals entitled to notification and a report, AB57
26 recognizes and respects the privacy interests in information pertaining to a decedent and
27 his/her family.
28

1 Thus, AB 57, now statutory law, is consistent with the Coroner's release of Autopsy
2 Reports and clearly demonstrates that these reports are not for public disclosure.

3 **D. The Law Enforcement Investigation Mandated Nondisclosure to the RJ's**
4 **October 3, 2017 Request for 1 October Autopsy Reports**

5 Petitioners heavily criticize the Coroner's response to the October 3, 2017 request
6 as they claim it is not meaningful and based on speculation and conjecture. Petitioners are
7 completely unreasonable as the Coroner who acted in good faith, provided on October 9,
8 2017, a very detailed analysis as to why the Autopsy Reports should not be disclosed.
9 Exhibit C, ¶ 3. That analysis was completely appropriate for the stage of the 1 October
10 investigation at that time. Also of importance, which is lost on Petitioners, is that as of
11 the date of the filing of the instant Response, the records that were requested are still not
12 finalized. Exhibit A, ¶ 12. Specifically, the RJ was informed that the reports would not
13 be considered for release until:

- 14 1) the Coroner investigation is complete; and 2) law enforcement
15 agencies have completed all investigation into this matter and it
16 has been determined that there is no potential jeopardy to the
17 investigation, law enforcement or others as a result of the
release.

18 Exhibit C, ¶ 3. With the timing of the request and the early stage of the 1 October
19 investigation, non-disclosure was the only position that the Coroner could take. The legal
20 authority for the denial was based on Donrey of Nevada v. Bradshaw, 106 Nev. 630, 798
21 P.2d 144 (1990) which applied a balancing test to determine whether policy issues justified
22 the withholding of criminal investigation reports. In applying the balancing test, the Court
23 considered policy issues that would justify the withholding of investigative information. The
24 criteria it considered included:

- 25 1) whether there was a pending or anticipated criminal
26 proceeding; 2) whether there were confidential sources or
27 investigative techniques to protect; 3) whether disclosure could
28 deny a fair trial; and 4) whether release could potentially
jeopardize law enforcement.

1 Donrey, 106 Nev. at 148. The RJ was provided a thorough legal analysis applying the policy
2 issues justifying the withholding of information. Declaration of Laura C. Rehfeldt, by this
3 reference incorporated herein and attached hereto as Exhibit C. Exhibit C, ¶ 3.

4 The legal analysis provided to the RJ compared autopsy reports to the criminal
5 investigation reports that were the subject of the Donrey case, and concluded that

6 At this time, it is too early to rule out the possibility of a criminal
7 proceeding, as well as the need to protect confidential sources.
8 Further, at this point, the release could jeopardize law enforcement
9 or the ongoing investigation. Also important is the fact that the
10 Coroner has not completed its own investigation and documents
11 with respect to this matter. Thus, the policy considerations and
12 legal analysis in Donrey, clearly weigh against disclosure of the
13 requested records.

14 Exhibit C, ¶ 3. This analysis was completely appropriate on October 9, 2017, a mere eight
15 days after the tragedy.

16 Petitioners are also highly critical of the Coroner's reference to the Freedom of
17 Information Act 5 USC Section 552(b)(7), a federal statute (not a mere guideline as
18 Petitioners assert) which exempts from disclosure documents that could be reasonably
19 expected to interfere with enforcement proceedings (5 USC Section 552(b)(7)(A), could
20 reasonably be expected to endanger the life or physical safety of any individual (5 USC
21 Section 552(b)(7)(C), or constitute an unwarranted invasion of privacy (5 USC Section
22 552(b)(7)(C). Exhibit C, ¶ 3. However, citation to this statute was imperative as the federal
23 government participated in the investigation into the tragedy.

24 The Coroner's legal analysis concluded that, unlike the Nevada Supreme Court's
25 conclusion in Donrey, in the context of the request, dated October 3, 2017, for the 1 October
26 deaths, the Donrey analysis weighs strongly in favor of public withholding as the requested
27 documents are directly linked to the 1 October criminal investigation. Exhibit C, ¶ 3.

28 Petitioners cite to United States v. Loughner, 769 F.Supp.2d 1188 (D. Ariz. 2011) in
an attempt to provide support for their position. However, in that case, search warrants were
the subject of the request, not Autopsy Reports. Notably, it was determined that the search
warrants could be disclosed *after* completion of the pre-indictment investigation and the
indictment was issue. Id. at 1193 (emphasis added). In the present case, the RJ requested

1 these records within 48 hours after the worst mass fatality in United States history. The
2 response to this request was made just 8 days after that tragedy. The Coroner was immersed
3 in its investigation into the deaths, running the family assistance center, fielding media
4 requests and maintaining its routine workload. Federal and local law enforcement agencies
5 were also heavily immersed in the investigation of the event. Families were still coming to
6 terms with the death of their loved ones and many questions regarding the tragedy remained
7 unanswered. In addition to the fact that the death investigations had not been completed and
8 therefore, Autopsy Reports did not exist, there was no better answer to this request than to
9 assert a legal analysis based on the Donrey criteria. Indeed, the Coroner did act in good
10 faith. It would have been very irresponsible for the Coroner to argue otherwise, or, even if it
11 had reports, to disclose them at the risk of compromising a serious multi-faceted
12 investigation observed by the world.

13 Petitioners complain that the Coroner should have explained how release of such
14 reports (if they existed at the time) would jeopardize law enforcement or the investigation, or
15 how they could endanger life or physical safety of an individual. However, this position is
16 unreasonable as well. It is quite likely that the precise ramifications of releasing reports (if
17 the reports had been complete at the time) so early in an investigation would be unknown.
18 Further, even if the ramifications were known, the ramifications themselves could
19 compromise an investigation. Also important is that when dealing with information about a
20 family's loved one, the information cannot be released to the media ahead of the family.
21 Petitioners place the Coroner in an impossible position by asking for records so early on in
22 such an important investigation, when the scene is fluid and facts are being established. The
23 Coroner had no choice but to assert the Donrey policy considerations justifying
24 nondisclosure of the records during this critical investigative stage. While in this case it does
25 not appear that there would be an indictment, under the reasoning in Loughner, disclosure of
26 the records on October 3, 2017 would have been premature.

1 E. Nevada Law Deems Confidential Subject Matter Contained within
2 Autopsy Report and Therefore the Privacy Interests in Autopsy Reports
3 Outweigh Public Access

4 In the event this Court finds that NRS 259.045 was not established by a
5 preponderance of the evidence to restrict the disclosure of Autopsy Reports to certain
6 specified persons that do not include the media, then the balancing of the interests will
7 clearly show that the interests in confidentiality outweigh public access. Consistent with the
8 reference to 5 USC Section 552(b)(7)(C) in response to the RJ's request on October 3, 2017,
9 these privacy interests were also articulated in the Coroner's response to Ken Ritter with the
10 Associated Press ("AP").

11 1. Protecting Medical and Health Information from Public Access is
12 Consistent with Public Policy set forth in HIPAA and State Law

13 As discussed, the vast majority of the information contained in an Autopsy Report
14 consists of medical and health information. Confidentiality, protection and limited
15 disclosure of medical and health information is addressed in the federal Health Insurance
16 Portability and Accountability Act of 1996 (HIPAA). With respect to health information of
17 decedents, HIPAA generally prohibits health care providers and other covered entities from
18 disclosing a decedent's protected health information to anyone other than the decedent's
19 personal representative. 45 C.F.R. § 164.502(f)-(g). Further, HIPAA requires that covered
20 entities protect this information for 50 years. Id.

21 There are certain exceptions to HIPAA, and one of them allows for disclosure to a
22 coroner, for purposes of exercising its duties, including identifying a decedent and
23 determining the cause and manner of death. 45 C.F.R. § 164.512(g) (emphasis added).
24 While the Coroner is not a covered entity under HIPAA, or a provider of health care, the fact
25 that federal law stringently protects such information in the health care context, and the fact
26 that such information is a large component of Autopsy Reports, demonstrates privacy
27 interests in health information contained in Autopsy Reports. Also, the Coroner is not a
28 covered entity to the extent it is exercising its duties, such as identifying a decedent and
29 determining cause and manner of death. Disclosing medical and health information of a

1 decedent to the media is beyond the realm of the Coroner exercising its duties. It is absurd
2 to suggest that after the Coroner obtains the medical information for purposes of exercising
3 its duties, it should then release it to the public via an Autopsy Report.

4 Since an Autopsy Report contains the same type of information HIPAA protects in
5 the health care context, the only responsible position that the Coroner can take is to limit
6 further exploitation of that information by allowing limited access to only the next of kin,
7 law enforcement, and by subpoena. This is consistent with HIPAA requiring health
8 information of a decedent be disclosed only to a personal representative and protecting it for
9 50 years. In other words, for 50 years after one's death, HIPAA limits disclosure only to a
10 personal representative. Thus, Petitioner's position that a dead person has no privacy
11 interest fails.

12 With the privacy interests that federal law attaches to health information, even of
13 those who have passed, it is only prudent to apply the same privacy interests to the same
14 information contained in Autopsy Reports when dealing with public dissemination of
15 Autopsy Reports.

16 State law also protects medical and health information. NRS 49.225 provides that
17 communications between a patient and a physician are privileged. NRS Chapter 629
18 restricts inspection of health care records in certain circumstances. Also persuasive is AGO
19 82-12, which, in analyzing Autopsy Reports in the context of public records, opined that in
20 Nevada there is strong public policy that the secrets of a person's body are very private and
21 confidential, and any intrusion in the interest of public health or adjudication is narrowly
22 circumscribed. AGO 82-12, p. 3. As set forth below, other jurisdictions have extended this
23 protection to Autopsy Reports. Additionally, this position has been outright adopted in other
24 jurisdictions. Globe Newspaper Co. v. Chief Medical Exam'r, 404 Mass. 132, 135, 533
25 N.E.2d 1356, 1358 (1989) addressed the public policy favoring confidentiality as to medical
26 data about a person's body. Like the legal analysis in AGO 82-12, that case emphasized that
27 the policy is evident in the confidentiality of hospital records, records pertaining to venereal
28 disease, records concerning Reyes Syndrome and reports of infectious disease. Ultimately,

1 the case held that Autopsy Reports contain medical information, are diagnostic in nature and
2 contain intimate details about a person's body and medical information and are exempt from
3 disclosure. The Supreme Court of South Carolina holds that Autopsy Reports are
4 incorporated into the meaning of a medical record. Perry v. Bullock, 409 S.C. 137, 142, 761
5 S.E.2d 251, 253 (2014). In Perry, the court stated:

6 [T]he medical information gained from the autopsy and indicated
7 in the report is not confined to how the decedent died. Instead,
8 an autopsy, which is performed by a medical doctor, is a
9 thorough and invasive inquiry into the body of the decedent
10 which reveals extensive medical information, such as the
11 presence of any diseases or medications and any evidence of
12 treatments received, regardless of whether that information
13 pertained to the cause of death.

14 Id.

15 While it is not necessary to change the meaning of "health records"¹² in Nevada to
16 include Autopsy Reports, it is clear that the protection of such information pursuant to policy
17 and law logically applies to Autopsy Reports. Since the vast majority of subject matter in an
18 Autopsy Report consists of medical and health information, and HIPAA and Nevada law
19 limit dissemination of such information, it is logical to limit the release to the next of kin,
20 consistent with HIPAA's release to an executor of an estate. Autopsy Reports contain the
21 sensitive medical and personal information that the law protects in other contexts and,
22 therefore, they should not be disclosed.

23 2. Other Nevada Laws Protect Privacy Interests in Subject Matter 24 Contained in an Autopsy Report

25 Other Nevada statutes demonstrate the public policy behind confidentiality of the type
26 of subject matter in an Autopsy Report. One example is the release of data contained in vital
27 statistics. NRS 440.170 restricts disclosure of data contained in vital statistics except as
28 authorized by statute or the State Board of Health. In other words, the public does not have
the right of access to this information.

¹²"Health care records" means any reports, notes, orders, photographs, X-rays or other recorded data or information whether maintained in written, electronic or other form which is received or produced by a provider of health care, or any person employed by a provider of health care, and contains information relating to the medical history, examination, diagnosis or treatment of the patient. NRS 629.021.

1 Another area of protection is with respect to death certificates. The public's access to
2 death certificates is limited under certain circumstances. NRS 440.650(2) restricts the
3 issuance of a certified copy of a record of death by State Registrar unless the applicant has a
4 direct and tangible interest in the manner recorded. Additionally, NAC 440.021(1)(b) states
5 that the State Registrar may allow examination of a certificate if it is determined not to
6 contain confidential information, or the disclosure would not constitute an unwarranted
7 invasion of privacy which would result in irreparable harm to the person named on the
8 certificate or members of the immediate family. Logically, if access to a death certificate is
9 not open to the public, neither should an Autopsy Report.

10 Certain information that may be socially stigmatic should also not be available for
11 public access. Disclosure of data in vital statistics indicating that a birth occurred out of
12 wedlock is prohibited except by court order. See NRS § 440.170(2). Information relating to
13 communicable disease is confidential medical information which must not be disclosed
14 except under very limited circumstances. NRS § 441A.220. Likewise, the case of Haley,
15 234 P.2d at 927, recognized "that an individual's privacy is also an important interest,
16 especially because private and personal information may be recorded in government files."
17 Thus, the policy imbedded in these statutes which restricts public access to information such
18 as pre-existing illness, sexual or other communicable diseases, terminal illness, drug or
19 alcohol addition, medical information or other details is consistent with the Coroner's policy
20 that Autopsy Reports are not for public dissemination. Autopsy Reports contain very
21 private, personal and sensitive information, that decedent's, when they were alive, or their
22 grieving families, may not want publicly exploited. Again, based on the confidential
23 material contained in an Autopsy Reports, such report is not subject to disclosure.

24 3. The Privacy Interest in Autopsy Reports Clearly Outweighs Public 25 Access

26 As discussed herein, the confidentiality of the medical and health information that
27 happens to be contained in Autopsy Reports, along with information that may be socially
28 stigmatic, demonstrates that the privacy interests in the Autopsy Reports clearly outweigh

1 public interest. Even though the cause and manner of death have been released to the
2 Petitioners, Petitioners continue to demonstrate an interest in the very information that the
3 Coroner has asserted an obligation to protect, which is health information collateral to the
4 cause of death of the decedents of 1 October. Petitioners' mere desire to snoop is further
5 demonstrated by their admission to their continued interest in Autopsy Reports for any
6 "secondary causes of death". Exhibit C, ¶ 11. The position in support of nondisclosure of
7 this information is best stated in AGO 82-12:

8 While cognizant that public inspection is the rule and secrecy
9 the exception, we can ascertain no public interest in
10 disclosure sufficient to outweigh the public policy of
11 confidentiality of personal medical information. The fact that
12 a person dies in an accident, is drowned, or meets his death in
13 any of a number of ways which may require an autopsy is no
14 justification for enabling public knowledge of that which was
15 closely guarded throughout his lifetime.

16 AGO 82-12, p. 3. Ultimately, that opinion concluded that Autopsy Reports were public
17 records but not open to public inspection. The legal analysis in that opinion was based on
18 the fact that the subject matter contained in an Autopsy Report is largely confidential by
19 law. Additionally, that opinion applied the balancing test, which was adopted eight years
20 later by the Nevada Supreme Court, and concluded that the privacy interests outweigh
21 public access. Thus, there is simply no public interest in the collateral health information
22 of a decedent.

23 It is no secret that laws with respect to the disclosure of Autopsy Reports vary from
24 jurisdiction to jurisdiction. As Petitioners argue, there are some laws that support
25 disclosure.¹³ However, many jurisdictions are akin to NRS 259.045 (as amended in 2017 by

26 ¹³ Although not all of the cases cited by Petitioners support their position. They cite to Marsh v. Cty. of San
27 Diego, 771 F.Supp.2d 1227 (S.D. Cal. 2011), aff'd 680 F.3d 1148 (9th Cir. 2012) for support that copying autopsy
28 reports did not violate the decedent's mother's constitutional rights, but Petitioners failed to recognize that in addition
to addressing constitutional violations resulting from the unauthorized reproduction of an autopsy photo, the Marsh case
involved a California state statute prohibiting the reproduction and dissemination of a coroner-taken photograph of a
deceased. As for Swickard v. Wayne Cty. Med. Exam'r, 438 Mich. 536, 475 N.W.2d 304 (1991), that case is
distinguished by Larry S. Baker, P.C. v. City of Westland, 627 N.W.2d 27, 15 (Mich.App. 2001) which found that
notions of privacy in state law applied to deceased individuals and their families and outweighed public interest in
accident and injury information.

1 AB57) and the practice of the Coroner as they classify these reports as confidential but
2 subject to release to certain specified individuals, such as the next of kin, which does not
3 include the media or the general public. In the case of Reid v. Pierce County, 136 Wash. 2d
4 195, 198, 961 P.2d 333, 335 (1998), relatives of deceased persons sued a county for common
5 law invasion of privacy with respect to allegations of appropriation and display of
6 photographs of deceased relatives. In that case, the court discussed the privacy interest in
7 autopsy records and held that: “[T]he immediate relatives of a decedent have a protectable
8 privacy interest in the autopsy records of the decedent. That protectable privacy interest is
9 grounded in maintaining the dignity of the deceased.” Id. at 212, 342; see also Galvin v.
10 Freedom of Info. Com., 201 Conn. 448, 461, 518 A.2d 64, 71 (1986) (autopsy reports are not
11 accessible to the general public as information in autopsy reports could cause embarrassment
12 or unwanted attention to the family of the deceased); Larry S. Baker, P.C. v. City of
13 Westland, 627 N.W.2d 27, 15 (Mich.App. 2001)¹⁴ (notions of privacy in state law applied to
14 deceased individuals and their families and outweighed public interest in accidents and
15 injuries information).

16 Statutes in other jurisdictions also exempt Autopsy Report from public disclosure
17 except to certain specified persons such as next of kin. See Iowa Code § 22.7(41) (Iowa)
18 (expressly exempts autopsy reports from disclosure except to the decedent’s immediate next
19 of kin); Mass. Ann. Laws ch. 38, § 2 (Massachusetts) (the chief medical examiner is required
20 to promulgate rules for the disclosure of autopsy reports, which are deemed not to be public
21 records, to those who are legally entitled to receive them); N.H. Rev. Stat. Ann. § 611-
22 B:21,III (New Hampshire) (autopsy reports are confidential, but available to the next of kin,
23 law enforcement, decedent’s physician and organizations for education or research); N.D.
24 Cent. Code § 23-01-05.5 (North Dakota) (autopsy reports are confidential but may be
25 disclosed to certain specified persons such as next of kin); Okla. Stat. tit. 63, § 949(D)
26 (Oklahoma) (reports of medical examiner may be furnished to next of kin or others having
27 need upon written statement); Or. Rev. Stat. Ann. § 146.035(5)(a) (Oregon) (autopsy reports

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¹⁴ Again, distinguishing Swickard v. Wayne Medical Examiner, 475 N.W.2d 304 (1991), cited by Petitioners.

1 are generally exempt from public disclosure except next of kin or person liable for the death
2 may examine copies of the autopsy report); Utah Code Ann. § 26-4-17(3) (Utah) (despite
3 being confidential medical examiner shall deliver copies of reports to next of kin or
4 decedent's physicians upon request); Wash. Rev. Code Ann. § 68.50.105 (Washington)
5 (autopsy reports are confidential, but available to certain specified persons such as family
6 members, decedent's physicians or law enforcement).

7 Consistent with AB57, as discussed above, and the legal analysis offered by Nevada
8 Attorney General Opinion 82-12, these out-of-state statutes demonstrate substantial authority
9 in favor of privacy interests with respect to Autopsy Reports

10 **F. The RJ's Waiver Argument Fails and Coroner Did Not Act in Bad Faith**

11 Petitioners allege that the Coroner's initial responses under NRS 239.0107 are
12 defective, and, therefore, the Coroner has waived its ability to assert a privilege or position
13 of nondisclosure. Petitioners also ask for a ruling that the Coroner acted in bad faith on
14 grounds it failed to provide a meaningful response to the AP.

15 With respect to the waiver issue, there is not a provision in NPRA for a waiver.
16 except in NRS 239.052 where it states the public entity may waive a fee. Petitioners
17 reference two Eighth Judicial District Court Orders from its own cases in support of this
18 argument. However, reference to those cases is flawed as Petitioners want the Court to
19 believe that the Courts in Case No. A-17-750151-W and A-17-758501-W¹⁵ determined the
20 records should be disclosed solely on the public entity's failure to respond as required by
21 NRS 239.0107, and due to notice deficiencies the public entity waived its right to assert a
22 privilege. Importantly, the failure to timely assert a claim of confidentiality was not in and
23 of itself sufficient to be the basis for disclosure in either court order. Neither of these orders
24 even mentions the term waiver and addresses the substantive reasons the Court found for
25 disclosure. See Ex. 1 and Ex. 2 to Petition.

26 With respect to the Coroner's response to Ken Ritter on November 15, 2017 stating
27 more time was needed, such a response is perfectly acceptable under NRS 239.0107.

28 _____
¹⁵ This case is currently on appeal before the Nevada Supreme Court.

1 However, after receiving that response, Mr. Ritter personally telephoned Mr. Kulin. Exhibit
2 B, ¶ 7. Mr. Ritter influenced Mr. Kulin into stating whether or not the records would be
3 produced. When Mr. Kulin stated he would be providing a response and not records, this
4 lawsuit was filed the next day without warning and without providing Mr. Kulin a chance to
5 substantively respond to Mr. Ritter. In other words, Mr. Kulin was set up to not respond
6 substantively so there would not be a response, an argument that clearly benefits Petitioners.
7 After the lawsuit was filed, a response was not warranted. Nevertheless, Mr. Kulin provided
8 a detailed substantive response, as promised, to Mr. Ritter's request on November 27, 2017.
9 Exhibit B, ¶ 9. It is the Petitioners that have acted in bad faith and such action cannot be
10 imputed to the Coroner in order for the Petitioner to allege a bad faith action.

11 Even if it were assumed that the Coroner's notice was technically not compliant with
12 NRS 239.0107, to suggest it is the basis for disclosure is abusive, inaccurate and would be
13 unfair to families of decedents, undermine confidentiality protections relating to medical and
14 health information, and contrary to public policy, particularly with the media's interest in
15 "any secondary causes of death." Additionally, some leniency is due to the Coroner's Office
16 and the Office of Public Communications as a result of the workload and challenges they
17 faced the last few months as a result of the 1 October tragedy. Exhibits A, ¶¶ 5-7 and B, ¶¶
18 2-3. Further, the RJ reporters and Mr. Ritter have dealt with the Coroner's Office for many
19 years on many stories. They fully understand the policy and practice of the Coroner's Office
20 with respect to the disclosure of Autopsy Reports, its reliance on AGO 82-12¹⁶ and the
21 release of the cause and manner of death with respect to a particular decedent. Exhibits A, ¶
22 14 and B, ¶ 10. Any deficiency by the Coroner in no way harmed Petitioners, particularly
23 since the Autopsy Reports have not been finalized.

24 **G. A Privilege Log is Unwarranted**

25 Petitioners claim that the Coroner's Office must provide a privilege log for
26 withholding documents. However, per Gibbons, 127 Nev. at 883, 266 P.3d at 629, a log is

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28 ¹⁶ Relevant to this section is Cannon v. Taylor, 88 Nev. 89, 92, 493 P.2d 1313, 1314 (1972) (where government officials are entitled to rely on opinions of the Attorney General, and do so in good faith, they are not responsible for damages if the opinion is mistaken.)

1 not warranted in this case as Petitioners have more than sufficient information to contest the
2 claim of confidentiality without a log. While requester may generally be entitled to a log, it
3 would be unnecessary when “the requesting party has sufficient information to meaningfully
4 contest the claim of confidentiality without a log”. *Id.* Again, this is not the first time
5 Petitioners have dealt with this issue. Mr. Fudenberg has been the assistant coroner and the
6 Coroner for the past 14 years and over the years received dozens of requests for Autopsy
7 Reports from the media, including the RJ. The Coroner’s procedure with respect to the
8 release of the reports and the reasoning in AGO 82-12 has been provided and explained to
9 reporters, including those from the RJ and AP many times. Exhibit A, ¶ 14; Exhibit B, ¶ 10.
10 AGO 82-12 has been provided many times. In fact, the RJ and the Coroner are litigating
11 another case relating to Autopsy Reports of children and there are many issues in the present
12 case that overlap that one. That case is currently pending before the Nevada Supreme Court.
13 Thus, Petitioners have more than sufficient information and familiarity with the Coroner’s
14 policy and legal arguments to challenge the Coroner’s position with respect to Autopsy
15 Reports.

16
17 **H. Redacted Sample Autopsy Reports Are Unwarranted Due To Release of Cause and Manner of Death**

18 In response to Petitioner’s request for redaction, the Coroner suggested to the RJ that
19 the issue be tabled until the autopsy reports were completed. Exhibit C, ¶ 7. This was a very
20 reasonable and practical response. Subsequently, however, Petitioners made no follow-up
21 inquiries as to the status of the completion of the reports prior to filing this lawsuit. Exhibit
22 C, ¶ 8. Then, on December 21, 2017, after the FBI had confirmed appropriate next of kin of
23 the decedents received cause and manner of death notification, this information was publicly
24 released by the Office of Public Communications. Exhibit B, ¶ 11. This is the exact
25 information that Petitioners had been waiting for so they could statistically report on
26 precisely how many gunshot wounds each victim sustained. Thus, Petitioners desire for the
27 Autopsy Reports, whether redacted or not, is moot.
28

1 **I. The Coroner appropriately responded to Petitioners' requests on October**
2 **10-11, 2017.**

3 Petitioners emphasize that they did not receive adequate responses to their piecemeal
4 requests on October 9-10, 2017 for "the status of the various records that had been or will be
5 completed now that the examination¹⁷ is complete". and a "standard protocol" in a case such
6 as this that indicates what reports to create. Exhibit C, ¶ 4. This complaint is also
7 unwarranted, as truly these requests, made by counsel for the Petitioner to the District
8 Attorney's Office, served no purpose. Petitioners know that the District Attorney's Office
9 does not maintain the records of the Coroner and is not its records custodian. Petitioners
10 knew that the staff and resources of the Coroner's Office were inundated with the death
11 investigations from the 1 October tragedy, as well their normal workload. Additionally,
12 asking what records have been or will be complete is not even a records request. With
13 respect to protocol for mass fatalities, Coroner Fudenberg states that protocol for mass
14 fatality incidences in reference to the records that are generated is no different from a routine
15 death investigation. The attorney does not know the status of the Coroner's death
16 investigations. Thus, the responses on behalf of the Coroner to these unreasonable inquiries
17 was completely appropriate.

18 **J. Attorneys' Fees are Not Warranted**

19 Pursuant to NRS 239.012, the Coroner cannot be liable for fees, no matter the Court's
20 decision on the RJ's Petition. That statute provides:

21 Immunity for good faith disclosure or refusal to disclose
22 information. A public officer or employee who acts in good faith
23 in disclosing or refusing to disclose information and the employer
24 of the public officer or employee are immune from liability for
 damages, either to the requester or to the person whom the
 information concerns.

25 NRS § 239.012. As established herein, the Coroner has acted in good faith. Therefore, the
26 Coroner is immune from liability for damages, even if that damage is in the form of

27
28 ¹⁷ Presumably Petitioners are referring to the examination of Paddock but it is unclear why they
 would believe that it was complete on October 9-10, 2017.

1 attorney's fees and costs for which there is no specific statutory entitlement. Accordingly,
2 Petitioner's claim for attorney's fees and costs must be denied.

3 **IV. CONCLUSION**


4 Based on the foregoing, the Coroner respectfully requests that this Court deny the
5 RJ's Petition for Writ of Mandamus on the following grounds:

- 6 1. The Coroner has established by a preponderance of the evidence that the Autopsy
7 Reports are not to be disclosed to the public pursuant to NRS 259.045; and
8 2. That the application of the balance of interest test demonstrates that the privacy
9 interests in Autopsy Reports clearly outweighs the public interest.

10 DATED this 2nd day of January, 2018.

11 STEVEN B. WOLFSON
12 DISTRICT ATTORNEY

13 By:

14 
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EXHIBIT A

Declaration of John Fudenberg

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DECLARATION OF JOHN FUDENBERG

John Fudenberg makes the following declaration:

1. That I am the Clark County Coroner ("Coroner") in Clark County, Nevada and have been so since 2015. From 2003 to 2015 I was the Assistant Coroner in Clark County.
2. That the general duties and purpose of the Coroner are summarized as follows:
 - a. To investigate deaths within Clark County that are violent, suspicious, unexpected or not natural for the purpose of identifying and reporting on the cause and manner of death. More specifically, these deaths include those reported to be unattended by a physician, suicide, poisoning or overdose, occasioned by criminal means, resulting or related to an accident. The duties and obligations of the Coroner are codified in NRS Chapter 259 and Clark County Code Chapter 2.12.
 - b. When a death has been reported to the Coroner's Office, and it is determined that the circumstances of the death fall under the jurisdiction of the Coroner's Office, in most cases a Coroner investigator responds to the scene and conducts a medicolegal investigation. The investigator gathers information from the scene and persons, such as witnesses, law enforcement officers and family members, identifies the decedent, notifies the next of kin, and secures property found on or about the decedent. The investigation often entails obtaining medical records or health information of the decedent. In most cases the decedent is transported to the Coroner's Office and the investigator presents its investigative information to the medical examiner assigned to the case.
 - c. The medical examiners are forensic pathologists who conduct examinations of the body of a decedent. The medical examiner's review includes investigative findings, medical records, and health history prior to commencing the exam. A post mortem examination is then conducted, which may include an autopsy. An autopsy involves a complete physical examination, internally and externally, on the decedent. The exam consists of examining organs, taking histology and blood samples, and reviewing lab results of said samples. Based on the investigative findings and autopsy, it is the responsibility of the medical examiner to determine the cause and manner of death.
 - d. The manner of death is the method by which someone died. The five manners of death are homicide, suicide, natural, accident and undetermined. The cause of death constitutes the circumstance that triggers a death such as a gunshot wound, heart attack, or drug overdose. The medical examiner documents its findings, including the cause and manner of death in an autopsy report ("Autopsy Report").
 - e. After the autopsy is complete, the body of a decedent is released to a mortuary and the person with rights to the decedent takes over the handling of the body. The death of the decedent, including the cause and manner are documented in a death certificate which are generated and maintained by the Department of Vital Statistics.
3. That Autopsy Reports generally include the following information:
 - a. The findings resulting from the autopsy, including those related to the findings as to the cause and manner of death of the decedent. Along with the cause and manner of death, the name, age, sex, race, gender and date of death are identified.

1 b. A description of the external examination is described in the Autopsy Report,
2 which includes an analysis as to the medical/health status or condition of the exterior
3 of different parts of the body. These findings include very personal medical
information including comprehensive description of the physical findings on the
decedent's body,

4 c. Findings related to the internal examination are also included in the report.
5 This includes radiographic findings as well as detailed descriptions and medical
6 evaluations of the condition of the internal exam which may include the neck (i.e.
thyroid, cricoid, prevertebral tissue and muscles); cardiovascular system (i.e. aorta,
7 coronary arteries, heart); respiratory system (i.e. trachea, major bronchi, pulmonary
8 vessels, lungs); hepatobiliary system (i.e. liver); hemolymphatic system (i.e. spleen);
gastrointestinal system (i.e. esophagus, stomach, appendix, intestines); genitourinary
system (i.e. renal and genitalia); endocrine system (i.e. thyroid and adrenal glands);
central nervous system (i.e. brain).

9 d. The fluids, tissue and organ samples retained and submitted for testing are also
10 included in the report along with the types of tests ordered. The test results and any
microscopic examinations are also be included.

11 e. Descriptions of individual injuries, references to specific medical records,
12 specific medical or health information, vital statistics and personal characteristics
about the decedent is also included in the Autopsy Report. This could include the
13 sexual orientation of the decedent, pre-existing conditions and other types of disease
such as hepatitis, venereal, HIV, liver, cancer, mental illness or drug or alcohol
14 addiction or overdoses. This information may not be publicly known, or desired by
the decedent or its family to be public, and its dissemination may result in unwanted
social stigmas.

15 4. The Coroner's Office procedure with respect to the release of Autopsy Reports is to
16 release them, upon request, to the legal next of kin, an administrator or executor of an estate,
17 law enforcement officers in performing their official duties, and pursuant to a subpoena. The
18 Coroner's policy not to release the Autopsy Reports to the general public, and to limit the
19 release to private individuals (except pursuant to a subpoena) is based on the reasons set
20 forth in Attorney General Opinion, 82-12 ("AGO 82-12"). This AG Opinion, opines that the
21 Autopsy Report is a public record but is not for public dissemination. This opinion is based
22 on public policy and laws protecting the release of certain information relating to a person's
23 body, mostly medical and health information. This procedure has been in effect for years
24 and the Coroner's Office has acted in good faith, in the past and present, consistent with this
25 policy.

26 5. That on the night of Sunday, October 1, 2017, the worst mass shooting in modern
27 U.S. history occurred in Las Vegas, Nevada at the Route 51 Harvest Festival at the
28 Mandalay Bay. Fifty-Nine people died and over 500 were injured. With respect to this

1 event being a mass fatality involving Fifty-Nine decedents, the Coroner's Office had an
2 important role and was tasked in a way it had never been before. The workload of the
3 Coroner's Office was tremendously impacted with priorities directed to the families of the
4 victims. It, along with the FBI, Las Vegas Metropolitan Police Department and Clark
5 County Fire Department, was one of the primary agencies in the multi-disciplinary
6 investigation of the 1 October tragedy.

7 6. The Coroner's Office functions at a near capacity level on a routine daily basis. To
8 add fifty-nine cases at one time resulting from a mass fatality became quite a challenge.
9 During these challenging times priorities were shifted to accommodate families and to assure
10 them that the investigation into the 1 October incident was accurate, comprehensive and
11 complete. It was a priority to ensure that families were provided thorough information
12 above their loved ones. One of the main tasks of the Coroner's Office was to set up a family
13 assistance center. The Coroner staffed and managed this center. It assisted families to
14 determine if a loved one died and, then upon notification of a death, continuously assisted
15 and provided information. The family assistance center remained intact so that families had
16 direct access to staff in the Coroner's Office. Communicating directly with families has
17 been the focus of the Coroner's Office for the past few months.

18 7. The Coroner's Office fielded hundreds of media inquiries during the first 30-45 days
19 of the incident. Unfortunately, it was impossible to respond in a timely fashion. The
20 Coroner initially asked the Civil Division of the District Attorney's Office to assist with
21 responding to the inquiries specifically requesting Autopsy Reports. The Clark County
22 Office of Public Communication then took over these requests.

23 8. I have become familiar with the records request that Las Vegas Review-Journal
24 ("RJ") investigative reporter Art Kane made to the Coroner's Office, on or about October 3,
25 2017, with respect to all Autopsy Reports of the 1 October victims and the shooter, Stephen
26 Paddock. As stated, at that time the Coroner's Office was deeply immersed in the initial
27 investigation of the tragedy and the autopsies had barely commenced and were not complete.
28 In light of the Coroner's Office being inundated with the 1 October responsibilities, and the

1 ruling in the case of Las Vegas Review-Journal v. Clark County Coroner Medical Examiner,
2 Case No. A-17-758501-W, which was made just days before the 1 October tragedy, my
3 office directed the Civil Division of the District Attorney's Office to provide the initial
4 records response denying disclosure. It is important to note that, at this time, the Autopsy
5 Reports were barely underway, and were not in any way near completion.

6 9. I have also become familiar with the RJ's request for a "standard protocol" as to what
7 records would be made in a tragedy like the 1 October. The Coroner's Office does not have
8 a "standard protocol" for mass fatality incidences in reference to the records that are
9 generated. The same process is used for all cases. No additional report was generated other
10 than what was normal. Likewise, I am aware that investigator notes were requested and I do
11 not know of any such notes.

12 10. After completion of the investigations and autopsies into the death of the 1 October
13 victims, death certificates, which state the cause and manner of death, were issued to
14 appropriate next of kin of the victims. The death certificates were sent to the appropriate
15 next of kin on December 3, 2017.

16 11. It is customary for the Coroner's Office to provide to the media cause and manner of
17 death when requested. However, it is the practice of the Coroner's Office not to make this
18 information public until there is verification that the families of the victims have been
19 notified of the cause and manner of death. In this case, the FBI hand delivered death
20 certificates to the appropriate next of kin. Once the Coroner's Office was assured by the FBI
21 that families had this information, it was disclosed to the media. On December 18, 2017 it
22 was ascertained that the families of all of the victims had been notified of the cause and
23 manner of death. On December 21, 2017, the Clark County Office of Public
24 Communications released the cause and manner of death of the decedents to persons on the
25 County media list.

26 12. To date, the Autopsy Reports have not been finalized. It is not uncommon for reports
27 to take this long to be complete. When they are complete they will be sent out to the
28 authorized next of kin.

1 13. If the Coroner's Office were to redact the confidential information in an Autopsy
2 Report, it would redact medical and health information, and that which could be marked with
3 stigmata or considered an invasion of privacy by the family. The remaining information
4 would essentially consist of cause and manner of death, which was released to the media on
5 December 21, 2017.

6 14. The position of the Coroner in denying the release of the 1 October Autopsy Reports
7 is consistent with its policy that Autopsy Reports are not released to the public. In fact, over
8 the years, RJ and Associated Press ("AP") reporters have made dozens of requests for
9 Autopsy Reports and the Coroner's Office has consistently taken the same position based on
10 the legal analysis in the AGO 82-12, which has been explained and provided to the RJ and
11 AP many times.

12 15. If an authorized next of kin executes a release directing the Coroner to disclose an
13 Autopsy Report, the Coroner will do so. On December 28, 2017, I contacted the Eric
14 Paddock, the brother of Stephen Paddock, to determine if he would be interested in releasing
15 the Autopsy Report of Stephen Paddock to the media. Eric Paddock indicated that he
16 wanted to directly release the Autopsy Report of his brother to RJ reporter Jeff German.

17 16. During the 2015 and 2017 Nevada Legislature Sessions, I served as a lobbyist for
18 Clark County. I represented the County's position with respect to legislation impacting the
19 County and of interest to the County. I am very familiar with AB57 which was introduced in
20 the 2017 Session and, after amendments, became effective on July 1, 2017. AB57 made
21 changes to NRS Chapter 259 that require a coroner to notify the next of kin with the right to
22 the body of the decedent under NRS 451.024 in that it provided that a coroner may notify
23 certain other next of kin consisting of parents, guardians, adult children or custodians as
24 defined in NRS 432B.060. Additionally, that bill provided that a copy of the coroner's
25 report may be released to certain individuals (parents, adult children, guardian or custodian
26 as defined in NRS 432B.060) regardless of whether they have the right to the body under
27 NRS 451.024.

1 17. It is my understanding that the policy of the Coroner's Office with respect to limiting
2 dissemination of Autopsy Reports to the next of kin is consistent with that of other coroners
3 in Nevada. See Washoe County Code 35.160(4). In fact, this policy and practice was the
4 premise under which AB 57 was adopted.

5 18. The County supported AB57 and I testified on its behalf. At no time was there any
6 discussion or contemplation that the legislation intended for Autopsy Reports to be publicly
7 released, such as to the media, including the RJ and the AP.

8 I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045)

9 EXECUTED on this ____ day of January 2, 2018.

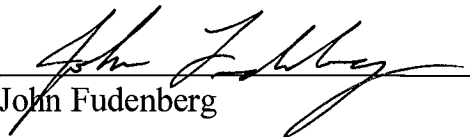
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12 John Fudenberg
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EXHIBIT B

Declaration of Daniel Kulin

DECLARATION OF DANIEL KULIN

Daniel Kulin makes the following declaration:

1. That I am a Public Information Administrator with the Clark County Office of Public Communications and have been working with the Office of Public Communications for the past eleven years. Prior to my employment with Clark County, I was a news reporter for the Las Vegas Sun.

2. As a Public Information Administrator for Clark County, I respond to media inquiries related to the County on many issues involving various county departments and divisions including Public Works, Code Enforcement and Animal Control, Family Services, and the Coroner. Also, I work to generate publicity for County programs and projects, such as new road construction, voter registration and early voting.

3. I am familiar with the tragedy that took place at the Route 91 Harvest Festival on October 1, 2017. Immediately following the tragedy, I was a County Public Communications Office representative at the incident command center at Las Vegas Metropolitan Police Department Headquarters, and then at the Multi-Agency Coordination Center at the Family Assistance Center. I served as a liaison between County officials and law enforcement, and I responded to inquiries from international, national and local media outlets. I also assisted with news conferences that provided the public and concert attendees with important information related to the tragedy such as available services and the return of personal property.

4. Understandably, the media requests that took place as a result of this event went on for some time, and are still occurring. Reporters from all the local media outlets and some national media outlets have submitted inquiries daily on a variety of topics including additional information about the victims and suspect that would come from the Coroner's Office such as the identities of the victims and later that cause and manner of their deaths.

5. On November 7, 2017, I received an email from Ken Ritter with the Associated Press requesting "any and all autopsy records related to the 59 people who died in a shooting beginning about 10 p.m. Sunday, Oct. 1, 2017...". Email dated November 7, 2017 from Ritter to Kulin attached hereto as Attachment 1.

1 6. On November 15, 2017, I called Mr. Ritter to let him know that I needed more time to get
2 him a response to his request for autopsy reports. Mr. Ritter asked that I send him an email stating
3 what I had just told him, and so I emailed him stating that I was working on a response to his request
4 and that I expect to have something for him within the next few days. Email dated November 15,
5 2017 from Kulin to Ritter, attached hereto as Attachment 2.

6 7. After I sent the email on November 15, 2017, Mr. Ritter telephoned me and asked me if I
7 would be sending him a "response or documents". I said that I expected I would be sending him a
8 response and not documents.

9 8. The very next day, on November 16, 2017, the Las Vegas Review-Journal and the
10 Associated Press filed a lawsuit seeking the autopsy reports of the victims of the shooting on 1
11 October.

12 9. Despite the lawsuit being filed, I nevertheless responded formally to Mr. Ritter on November
13 27, 2017. I told him that the autopsy reports had not been finalized. I also told him that based on
14 the balancing test adopted by the Nevada Supreme Court, the privacy interests in the autopsy reports
15 outweighed public access. I also told him that the autopsy reports would not be disclosed on the
16 grounds that the content within the document is treated confidential by law. Email dated November
17 27, 2017 from Kulin to Ritter, attached hereto as Attachment 3.

18 10. Mr. Ritter has been a reporter in Las Vegas for many years and has dealt with the Coroner's
19 Office on many, many stories over the years. He is familiar with the policy and practice of the
20 Coroner's Office to release to the media and the public a decedent's identity and the cause and
21 manner of their death. In fact, on numerous cases he has received information about decedents
22 consisting of cause and manner of death.

23 11. On December 21, 2017, at about 4:45 p.m., the Coroner authorized me to release the cause
24 and manner of death relating to each decedent to the persons listed on the media list. The media list
25 is made up of news reporters and editors, and other individuals who have requested to receive
26 County news releases. Mr. Ritter is on this list and received the information. Additionally,
27 numerous Las Vegas Review-Journal staff are on this list and also received the information.
28

1 December 21, 2017 email from Kulin to media list, and cause and manner of death information
2 provided, is attached hereto as Attachment 4.

3 12. Within 30 minutes of sending the information about the cause and manner of the victims'
4 deaths, the Las Vegas Review-Journal published an article about the cause and manner of death of
5 each of the 1 October victims. The focus of the article was how the victims and suspect died. A
6 copy of the article published by the Las Vegas Review-Journal is attached hereto as Attachment 5.

7 13. Around the same time as the Review-Journal published their article, the Associated Press
8 also distributed a similar article, authored by Ken Ritter, which resulted in numerous articles in
9 media outlets from across the globe explaining the manner of death of the victims. The Associated
10 Press stated that: "21 people were shot in the head, 36 died with chest and back wounds and one
11 died of a gunshot to the leg...and four victims had multiple gunshot wounds" The Associated Press
12 article appeared in newspapers including New York Daily News, The Morning News (Florence,
13 S.C.), The Virginia Gazette, The Seattle Times, The Orlando Sentinel, Chicago Tribune, the Capital
14 Gazette, The Weekly Times (Australia), San Francisco Chronicle and the Irish Examiner. Articles
15 are attached hereto as Attachment 6.

16 I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045)

17 EXECUTED on this 2nd day of January, 2018.

18
19 
20 Daniel Kulin

ATTACHMENT 1

Dan Kulin

From: Ritter, Ken <kritter@ap.org>
Sent: Tuesday, November 07, 2017 1:32 PM
To: Dan Kulin
Cc: John Fudenberg; Nicole Charlton
Subject: AP. Coroner Autopsies. Records request: Oct 1 2017 Shooting
Attachments: FOIA. Shooting Autopsy records. 11.07.2017.doc

Importance: High

Dan Kulin. 702-455-5534.
As discussed.
Freedom of Information Request for 59 autopsies from Oct 1 shooting.
attached & below.

Cc: John Fudenberg, Nicole Coleman.

Please acknowledge receipt.

Ken Ritter

Associated Press
offc: 702-382-7440 (Pacific time)
300 S. Fourth St., Suite 810
Las Vegas, NV 89101
cell: 702-285-9479
kritter@ap.org
<https://apnews.com>
<http://twitter.com/krtrr>



"There are only two forces that carry light to all the corners of the globe ... the sun
in the heavens and The Associated Press down here." - Mark Twain

The Associated Press
300 S. 4th St., Suite 810
Las Vegas, NV 89101
702-382-7440

John Fudenberg
Clark County Coroner-Medical Examiner
1704 Pinto Lane
Las Vegas, NV 89106

Dan Kulin
Public Information Director, Clark County
702-455-5534

This is a request for information under requirements of Nevada Revised Statutes Chapter 239, Nevada's public records law.

>> The Associated Press requests any and all autopsy records related to the 59 people who died in a shooting beginning about 10 p.m. Sunday, Oct. 1, 2017, from the Mandalay Bay resort into the Route 91 Harvest Festival concert venue.

We understand under NRS 239.0113 that you have the burden of proof if the record or any part thereof is deemed confidential.

We are willing to pay reasonable search and copying expenses not to exceed the actual cost of complying with this request, under NRS 239.052. If you expect the cost to exceed \$50, please contact me by telephone and e-mail.

If you need further explanation of the nature or scope of this request, please contact AP immediately at the phone number above.

As per NRS 239.010, in the event the requested documents are not disclosable in their entirety, please release all segregable nonexempt portions and all parts that can be rendered disclosable by redaction.

For each withheld portion of the documents, please specify the legal and factual basis for withholding the information.

We appreciate your cooperation and seek a prompt response.

Ken Ritter
Associated Press
cell: 702-285-9479
kritter@ap.org

7 November 2017

The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1500 and delete this email. Thank you.

The Associated Press
300 S. 4th St., Suite 810
Las Vegas, NV 89101
702-382-7440

John Fudenberg
Clark County Coroner-Medical Examiner
1704 Pinto Lane
Las Vegas, NV 89106

Dan Kulin
Public Information Director, Clark County

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For each withheld portion of the documents, please specify the legal and factual basis for withholding the information.

We appreciate your cooperation and seek a prompt response.

Ken Ritter
Associated Press
cell: 702-285-9479
kritter@ap.org

7 November 2017

ATTACHMENT 2

Dan Kulin

From: Dan Kulin
Sent: Wednesday, November 15, 2017 2:38 PM
To: 'Ritter, Ken'
Subject: RE: AP. Coroner Autopsies. Records request: Oct 1 2017 Shooting

Ken,
Working on a response to your records request. I expect to have something within the next few days.

Dan Kulin
Clark County Office of Public Communications
(702) 455-5534 – office
(702) 376-3764 – cell

From: Ritter, Ken [<mailto:kritter@ap.org>]
Sent: Tuesday, November 07, 2017 1:32 PM
To: Dan Kulin
Cc: John Fudenberg; Nicole Charlton
Subject: AP. Coroner Autopsies. Records request: Oct 1 2017 Shooting
Importance: High

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Please acknowledge receipt.

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kritter@ap.org
<https://apnews.com>
<http://twitter.com/krttr>



"There are only two forces that carry light to all the corners of the globe ... the sun
in the heavens and The Associated Press down here." - Mark Twain

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John Fudenberg

Clark County Coroner-Medical Examiner
1704 Pinto Lane
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Ken Ritter
Associated Press
cell: 702-285-9479
kritter@ap.org

7 November 2017

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ATTACHMENT 3

Dan Kulin

From: Dan Kulin
Sent: Monday, November 27, 2017 4:54 PM
To: 'Ritter, Ken'
Subject: RE: AP. Coroner Autopsies. Records request: Oct 1 2017 Shooting

Dear Mr. Ritter:

It is my understanding that at this time the autopsy records have not been finalized or released to the families. Therefore, we will not consider releasing reports that have not been finalized. That being said, once they have been finalized, based on the legal authority and balancing test set forth in the Nevada Supreme Court cases of *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (Nev. 1990) and *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623,628 (2011), your request will be denied.

In applying the balancing test adopted by the Nevada Supreme Court, the interests against nondisclosure outweigh the public's interest in access. Autopsy records are largely composed of medical and health information. This information is treated confidential by federal law, pursuant to the Health Insurance Portability and Accountability Act of 1996, as well as state law under NRS Chapter 629. Additionally, other information that may be contained in autopsy reports, i.e. communicable diseases (NRS 441A.220) or whether someone was born out of wedlock, is also declared confidential by law (NRS 440.170). Further, NRS 259.045 specifies certain individuals who may obtain the reports, and the media is not included.

Dissemination of these records to the public would constitute an unwarranted invasion of privacy to a grieving family. The Nevada Supreme Court has also recognized that an individual's privacy as an important interest. See *Reno Newspapers v. Haley*, 234 P.3d 922 (Nev. 2010). Thus, based on the foregoing, the interests of nondisclosure outweigh public access. Therefore, access to the autopsy records of the victims of 1 October will be denied.

Dan Kulin
Clark County Office of Public Communications
(702) 455-5534 – office
(702) 376-3764 – cell

ATTACHMENT 4

Dan Kulin

From: Dan Kulin
Sent: Thursday, December 21, 2017 4:45 PM
To: Dan Kulin
Subject: coroner statement
Attachments: 1 Oct Cause and Manner.pdf

From Clark County Coroner John Fudenberg D-ABMDI:

"Attached is information about the cause and manner of death for each of the 58 victims of the 1 October incident. As you can see, the manner of death in each case was homicide and the cause was a gunshot wound or wounds.

Regarding the suspect, Stephen Paddock, the manner of his death was suicide and the cause was intraoral gunshot wound of head."

Dan Kulin
Clark County Office of Public Communications
(702) 455-5534 – office
(702) 376-3764 – cell



CLARK COUNTY CORONER / MEDICAL EXAMINER

1 October Fatalities

Dec 21, 2017

Cause and Manner of Death

Total cases: 58

Name	Cause of Death	Manner of Death
Ahlers, Hannah Lassette	Penetrating gunshot wound of the head	Homicide
Alvarado, Heather Lorraine	Gunshot wound to the right side of the neck	Homicide
Anderson, Dorene	Gunshot wound of the left back	Homicide
Barnette, Carrie Rae	Gunshot wound to the right chest	Homicide
Beaton, Jack Reginald	Gunshot wound to the head	Homicide
Berger, Stephen Richard	Gunshot wound of the right upper chest	Homicide
Bowers, Candice Ryan	Gunshot wound of the central upper back	Homicide
Burditus, Denise Brenna	Gunshot wound to the head	Homicide
Casey, Sandra Lee	Multiple gunshot wounds of the back	Homicide
Castilla, Andrea Lee Anna	Gunshot wound of the head	Homicide
Cohen, Denise Marie	Gunshot wound of head	Homicide
Davis, Austin William	Gunshot wound of head	Homicide
Day, Jr., Thomas Allen	Gunshot wound of head	Homicide
Duarte, Christiana Mae	Multiple gunshot wounds (Head and Left Leg)	Homicide
Etcheber, Stacey Ann	Gunshot wounds of the head and right forearm	Homicide
Fraser, Brian Scott	Gunshot wound of chest	Homicide
Galvan, Keri Lynn	Gunshot wound of head	Homicide
Gardner, Dana Leann	Gunshot wound of the right arm, right lateral chest	Homicide
Gomez, Angela Christine	Gunshot wound of the right upper chest	Homicide
Guillen, Rocio	Gunshot wound of leg	Homicide
Hartfield, Charleston V.	Gunshot wound of chest	Homicide
Hazencomb, Christopher James	Gunshot wound of head	Homicide
Irvine, Jennifer Topaz	Gunshot wound of head	Homicide
Kimura, Teresa Nicol	Gunshot wound to the left chest	Homicide
Klymchuk, Jessica Lynn	Gunshot wound of the chest	Homicide
Kreibaum, Carly Anne	Gunshot wounds of the chest and left forearm	Homicide
LeRocque, Rhonda M.	Gunshot wound of head	Homicide
Link, Victor Loyd	Gunshot wound of the head	Homicide
McIdoon, Jordan Alan	Gunshot wound of chest	Homicide
Meadows, Kelsey Breanne	Gunshot wound of the left back	Homicide
Medig, Calla-Marie	Gunshot wound of the back	Homicide
Melton, James Sonny	Gunshot wound to the left back	Homicide
Mestas, Patricia Louis	Multiple gunshot wounds (Chest and Right Forearm)	Homicide
Meyer, Austin Cooper	Gunshot wound of back	Homicide
Murfitt, Adrian Allan	Gunshot wound to the back of the neck	Homicide
Parker, Rachael Kathleen	Gunshot wound of back	Homicide
Parks, Jennifer Marie	Multiple gunshot wounds of head	Homicide
Parsons, Carolyn Lee	Gunshot wound of back	Homicide
Patterson, Lisa Marie	Gunshot wound of back	Homicide
Phippen, John Joseph	Gunshot wound of the left low back	Homicide
Ramirez, Melissa Viridiana	Gunshot wound of the right lateral chest	Homicide
Rivera, Jordyn Nicole	Gunshot wound of the back	Homicide
Robbins, Quinton Joe	Gunshot wound of chest	Homicide
Robinson, Cameron Lee	Gunshot wound to the right chest	Homicide
Roe, Tara Ann	Gunshot wound to the right back	Homicide
Romero-Muniz, Lisa M.	Gunshot wound of the central upper back	Homicide
Roybal, Christopher Louis	Gunshot wound of chest	Homicide
Schwanbeck, Brett Erin	Gunshot wound of the head	Homicide



CLARK COUNTY CORONER / MEDICAL EXAMINER

1 October Fatalities

Dec 21, 2017

Cause and Manner of Death

Name	Cause of Death	Manner of Death
Schweitzer, Bailey Dee	Gunshot wound of the right upper chest	Homicide
Shipp, Laura Anne	Gunshot wound of back	Homicide
Silva, Erick Steven	Gunshot wound of head	Homicide
Smith, Susan Marie	Gunshot wound to the right chest	Homicide
Stewart, Brennan Lee	Gunshot wound to the right chest	Homicide
Taylor, Derrick Dean	Gunshot wound of the right lateral neck	Homicide
Tonks, Neysa Christine	Gunshot wound of the head	Homicide
Vo, Michelle Ngoc	Gunshot wound of the left upper chest	Homicide
Von Tillow, Kurt Allen	Gunshot wound to the right chest	Homicide
Wolfe, Jr., William Winfield	Gunshot wound of chest	Homicide

ATTACHMENT 5

Dan Kulin

From: Review-Journal <erj@reviewjournal.com>
Sent: Thursday, December 21, 2017 5:13 PM
To: Dan Kulin
Subject: News Alert -- Causes of death released for 58 killed in Las Vegas shooting

News Alert

CAUSES OF DEATH RELEASED FOR 58 KILLED IN LAS VEGAS SHOOTING

The Clark County coroner's office on Thursday released the cause and manner of death for each victim killed during the Las Vegas mass shooting.

<http://erj.reviewjournal.com/ct/uz3709631Biz35458918>

CATEGORIES: Crime, News, Top News

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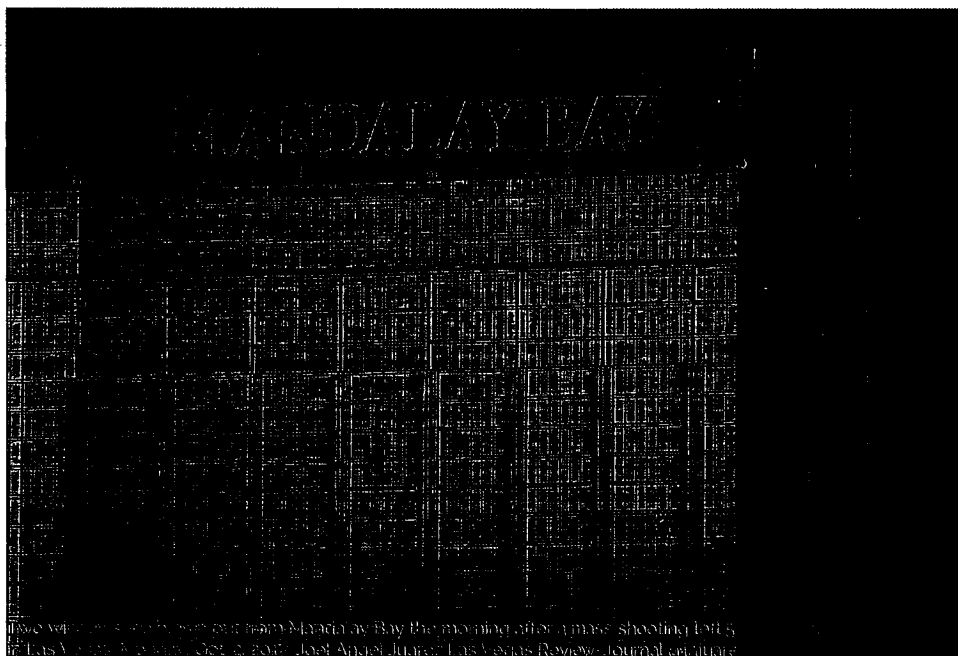
LAS VEGAS SHOOTING UPDATES ([HTTPS://WWW.REVIEWJOURNAL.COM/LAS-VEGAS-SHOOTING/](https://www.reviewjournal.com/las-vegas-shooting/))

THE FALLEN: THOSE WHO DIED (VICTIMS-OF-THE-LAS-VEGAS-ROUTE-91-)

Home (/) >> Crime (<https://www.reviewjournal.com/crime/>)

>> Homicides (<https://www.reviewjournal.com/crime/homicides/>)

Causes of death released for 58 killed in Las Vegas shooting



By Rachel Crosby Las Vegas Review-Journal
December 21, 2017 - 5:12 pm



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LAS VEGAS SHOOTING UPDATES ([HTTPS://WWW.REVIEWJOURNAL.COM/LAS-VEGAS-SHOOTING/](https://www.reviewjournal.com/las-vegas-shooting/))

Post| Causes of death released for 58 killed in Las Vegas shooting&body=You may be interested in the following post:
<https://www.reviewjournal.com/post/127c>

Updated December 21, 2017 - 7:24 pm

The cause of death for each of the 58 victims killed during the Las Vegas mass shooting (<https://www.reviewjournal.com/local/the-strip/it-was-a-horror-show-mass-shooting-leaves-at-least-59-dead-527-wounded-on-las-vegas-strip/>) was released Thursday, nearly three months after the massacre.

A report issued by the Clark County coroner's office confirmed that all of the victims died from at least one gunshot wound. Each of the deaths was ruled a homicide.

In his first interview since the Oct. 1 shooting, Coroner John Fudenberg said it took his office so long to release the information because his staff was striving for accuracy and wanted to update the families first.

"Because of the impact that this incident had on our community, and the attention that this incident received, it became very important for us to ensure that all of the families had the information prior to us releasing it to the public," said Fudenberg, who responded to the scene the night of the shooting.

Most of those killed at the Route 91 Harvest festival died from a single gunshot wound, according to the coroner's office. Six died from multiple wounds.

Hundreds of others were injured but survived.

Of the homicide victims, 18 died from at least one gunshot wound to the head, 21 died from at least one gunshot wound to the chest, 15 died from at least one gunshot wound to the back, and three died from a gunshot wound to the neck.

Rocio Guillen of Corona, California, was the only person who died from a gunshot wound to the leg. The 40-year-old mother of four made it to a hospital with her fiance (<https://www.reviewjournal.com/crime/shootings/familys-development-stunted-when-mom-dies-in-las-vegas-shooting/>), Chris Jaksha, just before she died.

Jennifer Parks, a 36-year-old kindergarten teacher from Palmdale, California, died from multiple gunshot wounds to the head.

The off-duty Metropolitan Police Department officer killed at the festival, Charleston Hartfield, died from a gunshot wound to the chest. Thousands honored the 34-year-old father of two during a public memorial service (<https://www.reviewjournal.com/local/local-las-vegas/funeral-held-for-metro-officer-killed-in-las-vegas-shooting-video/>) in October.

In a separate statement released Thursday, the coroner's office noted that gunman Stephen Paddock died from a gunshot wound to the head that entered through the mouth. His death was ruled a suicide.

LAS VEGAS SHOOTING UPDATES ([HTTPS://WWW.REVIEWJOURNAL.COM/LAS-VEGAS-SHOOTING/](https://www.reviewjournal.com/las-vegas-shooting/)) | THE FALLEN: THOSE WHO DIED (VICTIMS-OF-THE-LAS-VEGAS-ROUTE-91-)

(mailto:rcrosby@reviewjournal.com) or 702-477-3801 | Follow @rachelacrosby (<http://www.twitter.com/rachelacrosby>) on Twitter.

Cause and Manner of death for Las Vegas shooting victims
(https://www.scribd.com/document/367706863/Cause-and-Manner-of-death-for-Las-Vegas-shooting-victims#from_embed) by Las Vegas Review-Journal
(https://www.scribd.com/user/234057260/Las-Vegas-Review-Journal#from_embed)
on Scribd



CLARK COUNTY CORONER / MEDICAL EXAMINER

1 October Fatalities


Cause and Manner of Death

Case 7: 21

Total cases: 59

[illegible]


LAS VEGAS SHOOTING UPDATES (HTTPS://WWW.REVIEWJOURNAL.COM/CRIME/VEGAS-SHOOTING/)




THE FALLEN: THOSE WHO DIED (VICTIMS-OF-THE-LAS-VEGAS-ROUTE-91-)

Tribute to the victims who died.
(https://www.reviewjournal.com/victims-of-the-las-vegas-route-91-harvest-festival-shooting/)


REMEMBERING THE VICTIMS




Hannah Ahlers, 34
(https://www.reviewjournal.com/crime/homicides/vegas-shooting-victim-hannah-ahlers-murrietta-california/)



Heather Alvarado, 35
(https://www.reviewjournal.com/crime/homicides/vegas-shooting-victim-heather-warino-alvarado-cedar-city-utah/)



Dorene Anderson, 49
(https://www.reviewjournal.com/crime/homicides/vegas-shooting-victim-dorene-anderson-anchorage-alaska/)



Carrie Barnette, 34
(https://www.reviewjournal.com/crime/homicides/vegas-shooting-victim-carrie-barnette-riverside-california/)

TOP NEWS



2 arrested in east Las Vegas double homicide
(https://www.reviewjournal.com/crime/homicides/)
By Mike Shoro / RJ

HOMICIDES
(HTTPS://WWW.REVIEWJOURNAL.COM/..
>>

2 dead, 3 hospitalized after shooting at Las Vegas apartment ...
(https://www.reviewjournal.com/crime/homicides/)
By Mike Shoro / RJ

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Parents irked with CCSD denial of online

learning options
(<https://www.reviewjournal.com/crime/homicides/>)
By Amelia Pak-Harvey / RJ

NATION AND WORLD
(<https://www.reviewjournal.com/las-vegas-shooting/>)
(<https://www.reviewjournal.com/news/nation-and-world/>)

AND-WORLD/)

/ Updated 9:06 am

As deep freeze sets in, Northeast's most vulnerable become focus

By David Sharp The Associated Press

NATION AND WORLD

(<https://www.reviewjournal.com/news/nation-and-world/>)

Bad first date ends with \$300K damage to lawyer's art collection

The Associated Press

WEATHER

(<https://www.reviewjournal.com/weather/>)

Warm temps expected through end of 2017 in Las Vegas Valley

By Max Michor / RJ

EAST VALLEY

(<https://www.reviewjournal.com/local/east-valley/>)

Coroner identifies woman killed in east Las Vegas scooter crash

By Max Michor / RJ

FOOD

(<https://www.reviewjournal.com/entertainment/food/>)

Atomic Liquors' cocktail blends Scotch, maple, carrot juice — VIDEO

By Al Mancini / RJ

NATION AND WORLD

(<https://www.reviewjournal.com/news/nation-and-world/>)

Child playing with stove caused New York City fire, mayor says

By Jennifer Peltz The Associated Press

NEW YEAR'S EVE IN VEGAS

(<https://www.reviewjournal.com/entertainment/new-years-eve-in-vegas/>) >>

THE FALLEN: THOSE WHO DIED (VICTIMS-OF-THE-LAS-VEGAS-ROUTE-91-I-15)

Las Vegas police drones will monitor New Year's Eve crowds

(<https://www.reviewjournal.com/entertainment/new-years-eve-in-vegas/>)
By Nicole Raz / RJ

CLARK COUNTY

(<https://www.reviewjournal.com/news/nation-and-government/clark-county/>) >>

Clark County eyes \$150M in park

By Michael Scott Davidson / RJ
(<https://www.reviewjournal.com/news/nation-and-government/clark-county/>)

SHOOTINGS

(<https://www.reviewjournal.com/crime/homicides/>) >>

BUSINESS

(<https://www.reviewjournal.com/business/>)

Southern Nevada Goodwill plans to exit bankruptcy in spring

By Wade Tyler Millward / RJ

NORTH LAS VEGAS

(<https://www.reviewjournal.com/local/north-las-vegas/>)

Police looking for missing North Las Vegas boy

(<https://www.reviewjournal.com/local/north-las-vegas/>)
By Mike Shoro / RJ

Prosecutors may seek death penalty in triple homicide case

(<https://www.reviewjournal.com/crime/homicides/>)
By David Ferrara / RJ

A red pickup bonds survivors of Las Vegas shooting

(<https://www.reviewjournal.com/crime/homicides/>)
By Mike Shoro / RJ

TRAFFIC

(<https://www.reviewjournal.com/traffic/>)

/ Updated 6:11 am

One person injured in central Las Vegas crash

(<https://www.reviewjournal.com/traffic/>)

HOMICIDES

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TV

(<https://www.reviewjournal.com/entertainment/tv/>)

Actress Rose Marie, a former Strip headliner, dies at 94

By The Associated Press and Variety

Las Vegas Valley homicides edge closer to 2016 record numbers
(<https://www.reviewjournal.com/crime/homicides/>)

NATION AND WORLD

(<https://www.reviewjournal.com/news/nation-and-world/>)

Clark County DA details decision to

drop out murder case
(<https://www.reviewjournal.com/crime/homicides/>)

By Blake Apgar / RJ

At least 12 dead in New York City apartment fire
The Associated Press

By Rio Lacanale / RJ

Local Spotlight

LAS VEGAS SHOOTING UPDATES ([HTTPS://WWW.REVIEWJOURNAL.COM/CRIME/HOMICIDES/LAS-VEGAS-SHOOTING/](https://www.reviewjournal.com/crime/homicides/las-vegas-shooting/))

LOCAL LAS VEGAS
([HTTPS://WWW.REVIEWJOURNAL.COM/LOCAL/LOCAL-LAS-VEGAS/](https://www.reviewjournal.com/local/local-las-vegas/))

New Year's Eve partiers in Las Vegas have transportation options
By Art Marroquin / RJ

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Nevada sports books suffer record \$11.4M loss after World Series
By Todd Dewey / RJ

LOCAL LAS VEGAS
([HTTPS://WWW.REVIEWJOURNAL.COM/LOCAL/LOCAL-LAS-VEGAS/](https://www.reviewjournal.com/local/local-las-vegas/))

Las Vegas police investigating infant's death
(<https://www.reviewjournal.com/local/local-las-vegas/>)
By Mike Shoro / RJ

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([HTTPS://WWW.REVIEWJOURNAL.COM/NEWS/POLITICS-AND-GOVERNMENT/](https://www.reviewjournal.com/news/politics-and-government/))

In his first year, Trump changes the rules for diplomacy and trade
By Debra Saunders / RJ White House

NEW YEAR'S EVE IN VEGAS
([HTTPS://WWW.REVIEWJOURNAL.COM/ENTERTAINMENT/NEW-YEARS-EVE-IN-VEGAS/](https://www.reviewjournal.com/entertainment/new-years-eve-in-vegas/))

Snipers, National Guard will man New Year's Eve on Las Vegas Strip
By Blake Apgar / RJ

STADIUM
([HTTPS://WWW.REVIEWJOURNAL.COM/BUSINESS/STADIUM/](https://www.reviewjournal.com/business/stadium/))

Agreement is 'major step' needed to build Las Vegas Raiders stadium
By Michael Scott Davidson / RJ

JOHNNY LEGENDS AUTO GROUP

Stop by Today

A Positive Outlook – When It Comes to Conventions, Las ...
(<https://www.reviewjournal.com/br>)
By Jeremy Aguero

HOMICIDES VIDEO

SHOOTINGS

([HTTPS://WWW.REVIEWJOURNAL.COM/CRIME/HOMICIDES/SHOOTINGS/](https://www.reviewjournal.com/crime/homicides/shootings/))

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FBI chief says report on Las Vegas shooting expected by anniversary

By Rachel Crosby / RJ

Lawyers to create plan to manage Las Vegas gunman's assets

By David Ferrara / RJ

RJ reporters on business at Mandalay Bay since shooting –

RJ

EVENTS

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Friday, December 29, 2017



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Bringing Hope To the Table

ALL DAY

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Smith's Food & Drug Centers

([//reviewjournal.com/eviesays.com/?event/7231143/50144782/celestial-abstraction-painting-by-benjamin-schmitt](https://reviewjournal.com/eviesays.com/?event/7231143/50144782/celestial-abstraction-painting-by-benjamin-schmitt))

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LAS VEGAS SHOOTING UPDATES (<https://www.reviewjournal.com/las-vegas-shooting/>) THE FALLEN THOSE WHO DIED (VICTIMS) OF THE LAS VEGAS ROUTE-91+
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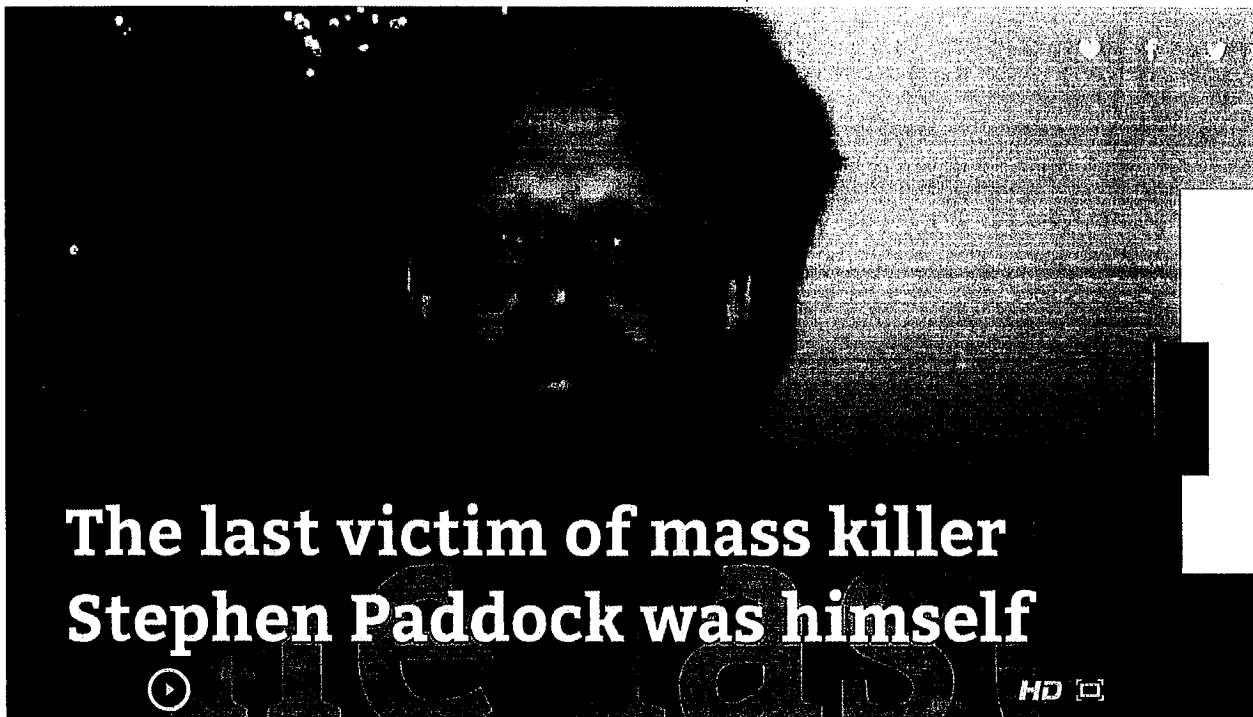
ATTACHMENT 6

Las Vegas mass shooter Stephen Paddock committed suicide by shooting himself in the mouth



THE ASSOCIATED PRESS

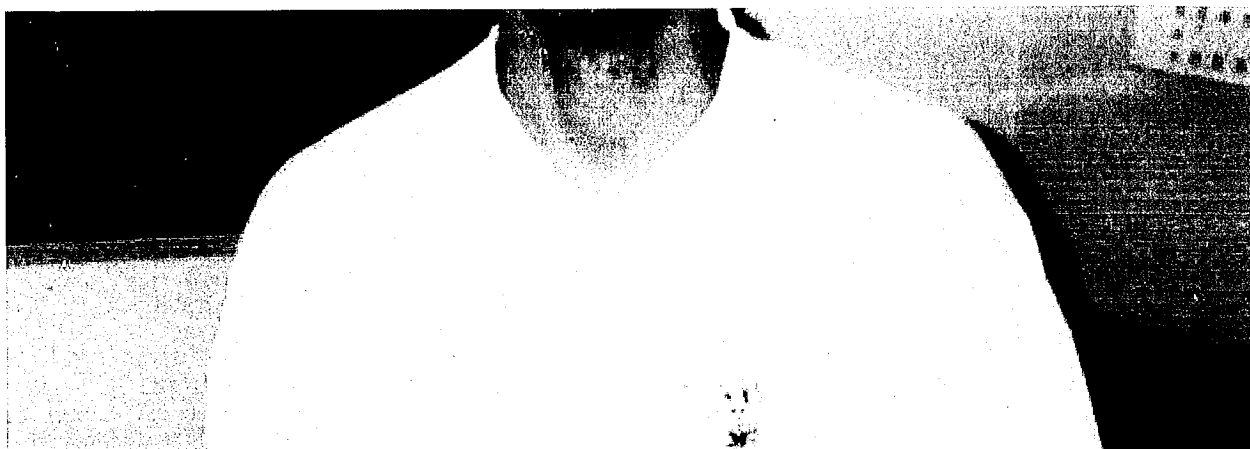
NEW YORK DAILY NEWS Friday, December 22, 2017, 2:50 AM



The mass murderer who gunned down 58 victims during a Las Vegas music festival in October died from a self-inflicted gunshot wound to the mouth, according to a coroner. Stephen Paddock's death was ruled a suicide, Clark County Coroner John Fudenberg told The Associated Press.

Among the victims in the deadliest mass shooting in modern U.S. history, 21 people were shot in the head, 36 died with chest and back wounds and one died of a gunshot to the leg, according to a chart the coroner released.





On Sunday, Oct. 1, 2017, Stephen Paddock opened fire on the Route 91 Harvest festival killing dozens and wounding hundreds. (AP)

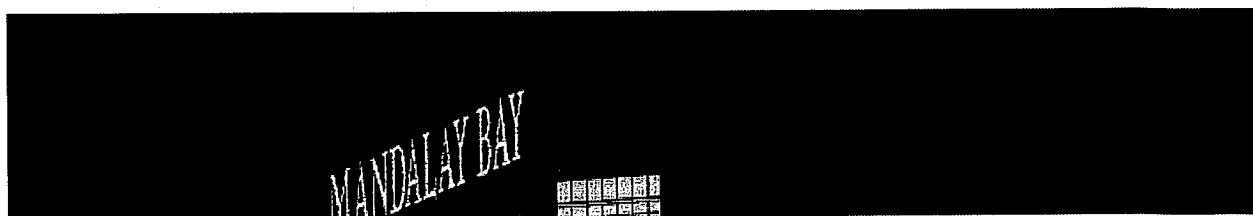
Four victims had multiple gunshot wounds. All 58 deaths were ruled homicides.

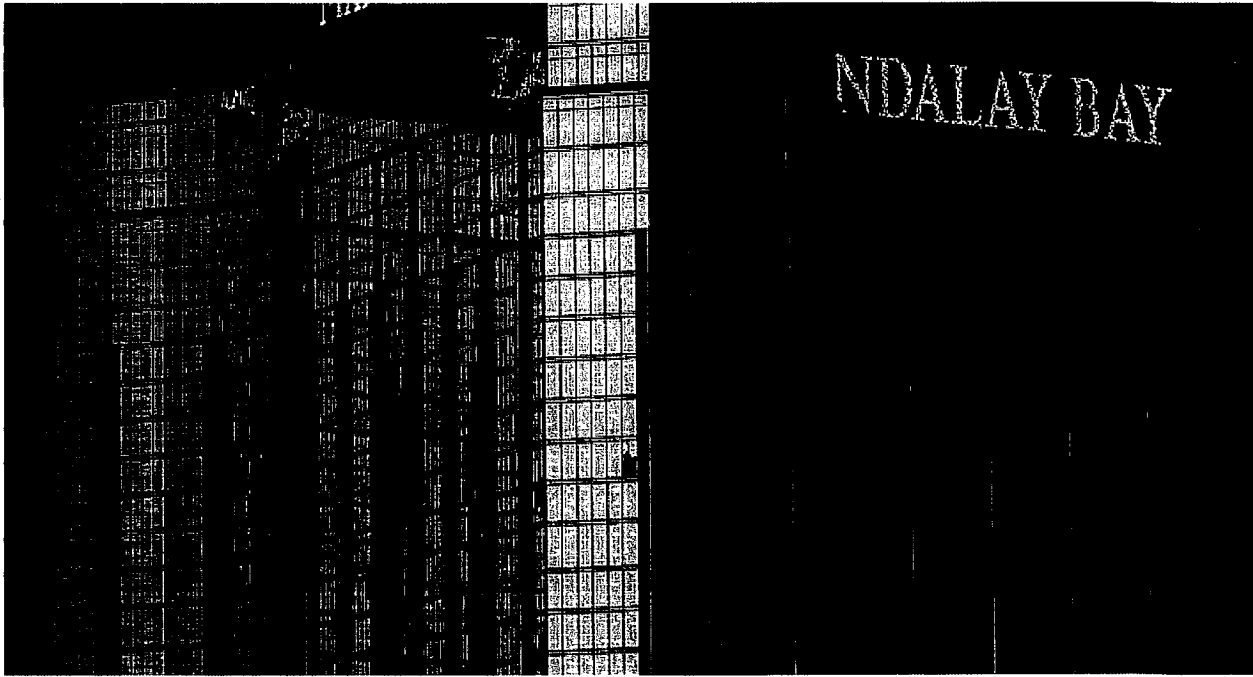
Authorities have said more than 500 people were injured when Paddock, a high-stakes video poker gambler, unleashed gunfire from the 32nd floor of Mandalay Bay into a crowd of 22,000 people at the Route 91 Harvest Festival below.



People dive for cover at Route 91 Harvest, country music festival after apparent gunfire was heard on October 1, 2017 in Las Vegas, Nevada. (DAVID BECKER/GETTY IMAGES)

Police and the FBI have not said publicly what they think motivated Paddock, who was armed with an arsenal of assault-style weapons and ammunition. Authorities also haven't said why they think he stopped shooting. They say he killed himself before officers reached his room.





Windows are broken at the Mandalay Bay resort and casino where Stephen Paddock unleashed a torrent of gunfire on the crowds below. (JOHN COCHRAN/AP)

Clark County Sheriff Joe Lombardo said last month that Paddock fired more than 1,100 shots. Authorities also reported finding about 4,000 unused rounds along with the 23 guns in the suite.

Fudenberg said autopsy reports in the case are not yet complete.

Paddock's brain was sent to Stanford University in California to study after a visual inspection during found no abnormalities.

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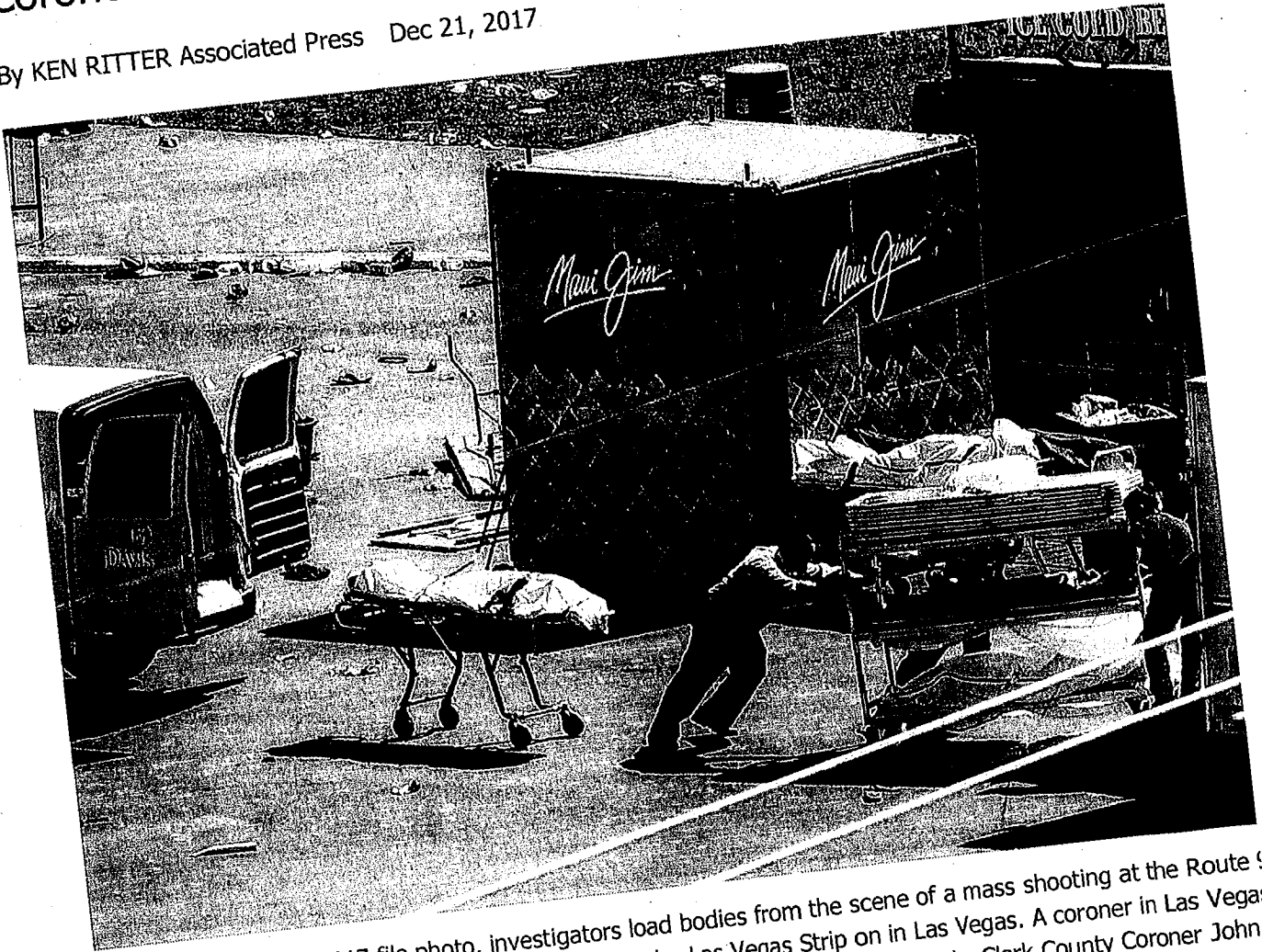
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<http://www.apnewsarchive.com/2017/A-coroner-says-all-58-victims-of-the-Las-Vegas-mass-shooting-died-of-gunshot-wounds/id-c94ade9112db40aab0ea423f924837f1>

AP

Coroner: Gunfire killed all 58 victims in Las Vegas shooting

By KEN RITTER Associated Press Dec 21, 2017



FILE - In this Oct. 2, 2017 file photo, investigators load bodies from the scene of a mass shooting at the Route 91 festival near the Mandalay Bay resort and casino on the Las Vegas Strip on in Las Vegas. A coroner in Las Vegas victims in the Oct. 1 mass shooting on the Las Vegas Strip died of gunshot wounds. Clark County Coroner John told The Associated Press on Thursday, Dec. 21, that all the cases were ruled homicides. (AP Photo/Chris Carlson)

LAS VEGAS (AP) — All 58 victims of the Las Vegas mass shooting died of gunshot wounds, a coroner said Thursday, revealing that no one was trampled to death trying to escape from an outdoor concert that turned into a massacre.

The deaths in the deadliest mass shooting in modern U.S. history were all ruled homicides, Clark County Coroner John Fudenberg told The Associated Press.

The only wound to the shooter, Stephen Craig Paddock, 64, was a self-inflicted gunshot to the mouth, Fudenberg said. The death was ruled a suicide.

Twenty-one people were shot in the head, 36 died with chest and back wounds and one died of a gunshot to the leg, according to a chart the coroner released. Four victims had multiple gunshot wounds.

Authorities have said more than 500 people were injured when Paddock, a high-stakes video poker gambler, unleashed gunfire from an upper floor of a high-rise casino hotel onto an outdoor country music festival below.

Some have described receiving injuries other than gunfire during their escapes.

Police and the FBI have not said publicly what they think motivated Paddock to amass an arsenal of assault-style weapons and ammunition in a two-room suite and then rain bursts of gunfire for 10 minutes from the 32nd floor of Mandalay Bay into a crowd of 22,000 people at the Route 91 Harvest Festival below.

They also haven't said why they think he stopped shooting. They say he killed himself before officers reached his room.

Clark County Sheriff Joe Lombardo said last month that Paddock fired more than 1,100 shots. Authorities also reported finding about 4,000 unused rounds along with the 23 guns in the suite.

Fudenberg said autopsy reports in the case are not yet complete.

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Coroner: Gunfire killed all 58 victims in Las Vegas shooting

By **KEN RITTER**

Associated Press

DECEMBER 22, 2017, 4:00 AM | LAS VEGAS

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This article is related to: Shootings, Stephen Paddock, Las Vegas Strip Shooting

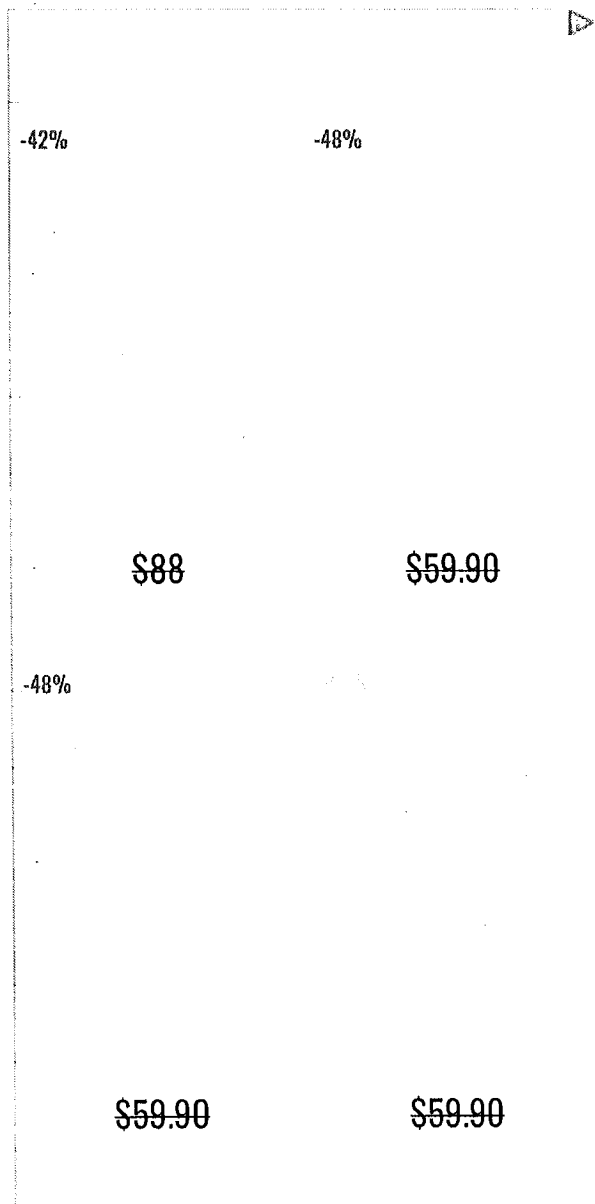
Coroner: Gunfire killed all 58 victims in Las Vegas shooting



Originally published December 21, 2017 at 5:00 pm Updated December 21, 2017 at 6:02 pm



1 of 5 FILE – In this Oct. 2, 2017 file photo, investigators load bodies from the scene of a mass shooting at the Route 91 Harvest festival near the Mandalay Bay resort and casino on the Las Vegas Strip on in Las Vegas. A coroner in Las Vegas says all 58 victims in the Oct. 1 mass shooting on the Las Vegas Strip died of gunshot wounds. Clark County Coroner John Fudenberg told The Associated Press on Thursday, Dec. 21, that all the cases were ruled homicides. (AP Photo/Chris Carlson, File) **Less** ^



By KEN RITTER

The Associated Press

LAS VEGAS (AP) — All 58 victims of the Las Vegas mass shooting died of gunshot wounds, a coroner said Thursday, revealing that no one was trampled to death trying to escape from an outdoor concert that turned into a massacre.

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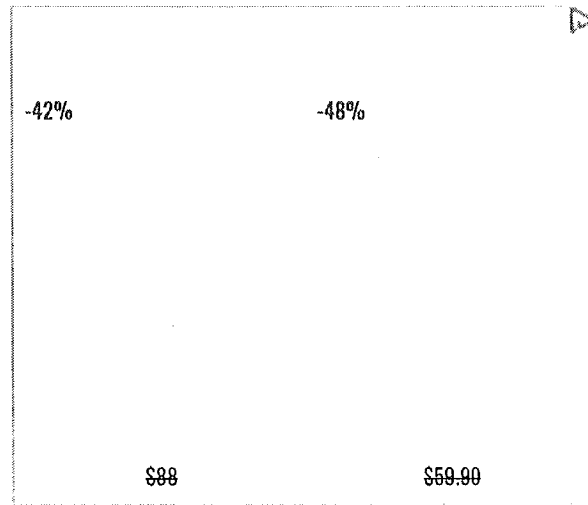
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KEN RITTER

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Mick Anderson, who bought his Melbourne, Fla. house that he currently lives in from the previous owner, Las Vegas shooter Stephen Paddock, talks about learning that Paddock was responsible for the mass killing, Monday, October 2, 2017. (Joe Burbank/Orlando Sentinel)

By **Ken Ritter**
Associated Press

DECEMBER 22, 2017, 4:00 AM | LAS VEGAS

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Associated Press

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Vegas massacre victims were all shot dead

By KEN RITTER, Associated Press

December 21, 2017 6:01pm



A US coroner says all 58 victims of the Las Vegas massacre died of gunshot wounds.

Clark County Coroner John Fudenberg told The Associated Press that all the deaths were determined to be homicides.

Fudenberg said on Thursday that the 64-year-old shooter died of a self-inflicted gunshot. It was, Stephen Paddock's only wound, and his death was ruled a suicide.

The findings reveal that none of the victims killed at an outdoor concert on October 1 died of injuries received trying to escape the festival grounds.

Authorities say more than 500 people were injured when Paddock unleashed gunfire from an upper floor of a high-rise hotel onto a country music festival below.

Readers seeking support and information about suicide prevention can contact Lifeline on 13 11 14.

Suicide Call Back Service 1300 659 467.

MensLine Australia 1300 78 99 78.

Originally published as Vegas massacre victims were all shot dead



US & World

Coroner: Gunfire killed all 58 victims in Las Vegas shooting

KEN RITTER, ASSOCIATED PRESS | December 21, 2017 | Updated: December 21, 2017 9:07pm

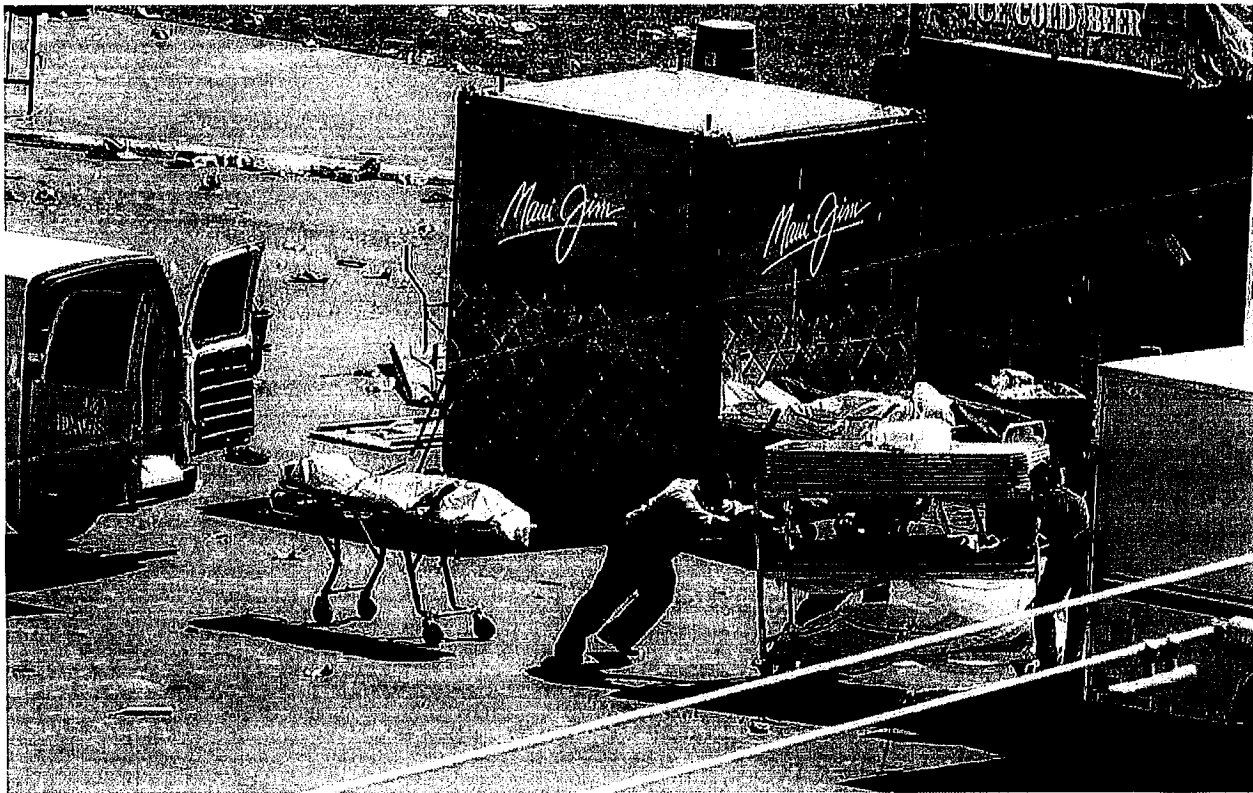


Photo: Chris Carlson, AP

IMAGE 1 OF 5

FILE - In this Oct. 2, 2017 file photo, investigators load bodies from the scene of a mass shooting at the Route 91 Harvest festival near the Mandalay Bay resort and casino on the Las Vegas Strip on in Las ... more

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