

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.

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Case No.:

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

PETITIONERS' APPENDIX
VOLUME II 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)
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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 II was served by First Class United States Mail, postage fully prepaid to the following:

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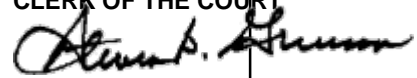
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/s/ Pharan Burchfield
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10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 VERONICA HARTFIELD, a Nevada
13 resident and the ESTATE OF
14 CHARLESTON HARTFIELD,

15 vs.

Case No.: A-18-768781-C

Dept. No.: II

**OPPOSITION TO EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER/MOTION
FOR PRELIMINARY INJUNCTION**

16 OFFICE OF THE CLARK COUNTY
17 CORONER; THE LAS VEGAS REVIEW
18 JOURNAL; THE ASSOCIATED PRESS;
19 DOE DEFENDANTS 1 through 10; and
20 ROE DEFENDANTS 1 through 10.

21 The Las Vegas Review-Journal ("Review-Journal") and The Associated Press ("the
22 AP") (collectively, the "Media Defendants"), by and through their counsel Margaret A.
23 McLetchie and Alina M. Shell of the law firm McLetchie Shell LLC, hereby submit this
24 Opposition to the Ex Parte Application for a Temporary Restraining Order filed by Plaintiffs
25 Veronica Hartfield and the Estate of Charleston Hartfield.

26 DATED this the 7th day of February, 2018.

27 /s/ Margaret A. McLetchie

28 Margaret A. McLetchie, Nevada State Bar No. 10931

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MCLEATCHIE SHELL, LLC

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Attorneys for Las Vegas Review-Journal and the Associated Press

I. INTRODUCTION¹

The Media Defendants are of course sympathetic to the families of the victims of 1 October. However, Plaintiffs' case is unnecessary and improper. As Plaintiffs are aware (yet failed to apprise this Court in their Ex Parte Motion), this Court (Department 16) recently granted a petition filed by the Media Defendants pursuant to the Nevada Public Records Act (the "NPRA") in *The Las Vegas Review-Journal and The Associated Press vs. Clark County Office of the Coroner/ Medical Examiner*, Case No.: A-17-764842-W. In that case, this Court declared certain records public records pursuant to the NPRA, including autopsies of the 1 October victims. *At the request of the Review-Journal and the AP*, those records were ordered produced *with personally-identifying information removed via appropriate redactions*. (See **Exhibit 1** ("NPRA Order") at p. 12, ¶ 60; *see also* p. 7, ¶ 32 ("the Court ... finds that the Coroner's Office's concerns regarding privacy are addressed by reacting names and identifying information from the autopsy reports as proposed by Petitioners."))

As the NPRA Order makes clear, the records at issue in this action (in redacted form) are public records subject to production. Thus, Plaintiffs' request that this Court "declare Mr. Hartfield's confidential information to be confidential under NRS 239.0115" is improper. Moreover, while HIPAA and the other law cited by Plaintiffs do not take the records out of the reach of the NPRA, as indicated, the NPRA Order did consider privacy concerns and found that redacting personally identifying information adequately addressed those concerns. Indeed, in light of the unique facts of this case, the Review-Journal and the AP limited their request for victims' autopsies to redacted versions.

This matter is thus unnecessary to protect the interests asserted by Plaintiffs. It is also moot. The Coroner's Office has already provided the redacted versions of the autopsies

¹ The Media Defendants hereby incorporate the facts and declarations submitted in connection with their Emergency Motion to Dissolve the Temporary Restraining Order (on Order Shortening Time), submitted to the Court via hand-delivery on 2/7/2018 (and simultaneously emailed to counsel for the other parties in this action).

1 and the Petitioners have already reported on the records.² So have other media outlets.³
2 Notably, none of the reporting has jeopardized the privacy of any of the victims' families.
3 Plaintiffs have indicated they want the Review-Journal and the AP to return the autopsy
4 records pertaining to Mr. Hartfield. However, the Review-Journal and the AP have no means
5 of discerning which records pertain to Mr. Hartfield for the very reason that the Coroner's
6 Office provided the records in redacted form. Thus, it is any "claw back" of the records
7 pertaining to Mr. Hartfield that threatens to reveal his identity in connection with any of the
8 autopsy reports.

9 Further, the relief granted and sought is unconstitutional because Plaintiffs
10 endeavor to limit the speech of the Media Defendants. Any injunction against speech is an
11 invalid prior restraint and violates the important and First Amendment-protected rights of
12 Petitioners. In their brief, Plaintiffs entirely ignore the First Amendment implications of the
13 severe and unprecedented relief that they seek. Instead, they erroneously contend that the
14 public interest in any reporting is minimal. However, it is not for Plaintiffs—or this Court—
15 to determine what the press can and cannot report on. Any future prohibition on the
16 dissemination of the records or publications based on the records constitutes an illegal prior
17 restraint. Moreover, in connection with a petition filed pursuant to the NPRA, a requester
18 need not establish that the production of the records would serve the public interest. Instead,
19 the NPRA contains a *presumption* in favor of access. In any case, particularly because the
20 redactions have and continue to protect any privacy interests that might be at stake, the public
21 interest in evaluating and understanding the events of 1 October necessarily outweighs the
22 interests asserted by Plaintiffs.

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25 ² See, e.g., <https://www.reviewjournal.com/crime/shootings/coroner-releases-autopsy-reports-of-58-victims-from-las-vegas-shooting/>
26 (January 31, 2018 report regarding the release of the autopsy records) (last accessed
27 February 7, 2018).

28 ³ See, e.g., <http://www.fox5vegas.com/story/37399460/coroner-releases-autopsy-records-of-all-1-october-victims-person-of-interest-speaks> (last accessed February 7, 2018).

1 Additionally, because the records at issue were properly anonymized, no
2 individually identifiable records were produced and thus Plaintiffs do not have standing.
3 Finally, nothing in the NPRA provides for an action like the one that Plaintiffs are pursuing:
4 an action to retroactively declare confidential a record that has already been disseminated in
5 connection with an NPRA lawsuit.

6 In short, the declaratory relief sought by Plaintiffs directly conflicts with another
7 order of this Court. The injunctive relief sought (return of a document and a gag order) is not
8 warranted and would serve as an unconstitutional restraint on the Media Defendants' free
9 speech rights. Plaintiffs' requests for relief must be denied and their action should be
10 dismissed.⁴

11 II. PLAINTIFFS ARE NOT ENTITLED TO RELIEF

12 Plaintiffs seek an order enjoining Defendants "from releasing and publishing the
13 protected health information of autopsies to public entities, specifically the autopsy report of
14 officer Charleston Hartfield to the Las Vegas Review-Journal and other public entity."
15 (Plaintiffs' Ex Parte Application, p. 1:27-2:6). While this is somewhat confusing (amplifying
16 the problems with the fact that a Temporary Restraining Order has already been issued), as
17 far as the Media Defendants have been able to gather, Plaintiffs want to get the autopsy
18 records regarding Mr. Hartfield back from the Media Defendants and want to enjoin the
19 Media Defendants on future reporting concerning the records.

20
21 ⁴ The Media Defendants intend to file a Motion to Dismiss pursuant to Nev. Rev. Stat. §
22 12(b)(5) without delay. Additionally, for the reasons set forth herein and for additional
23 reasons, this matter is subject to a special motion to dismiss pursuant to Nevada's anti-
24 SLAPP statute, codified as NRS § 41.635 *et. seq.* The undersigned has advised counsel for
25 Plaintiffs of this, and in light of the fact that Ms. Hartfield is a widow of an October 1
26 victim, hopes that counsel (who is responsible for this litigation strategy and appears not
27 to have complied with basic Rule 11 obligations in pursuing this misguided action) will
28 cover any fees, costs or other sanctions Plaintiffs could face under the anti-SLAPP statute.
See NRS § 41.670(1)(a) (mandating award of costs and attorney's fees to prevailing anti-
SLAPP defendant); NRS § 41.670(1)(b) (additionally authorizing award of up to \$10,000
to prevailing anti-SLAPP defendant); NRS § 41.670(1)(c) (additionally authorizing
prevailing anti-SLAPP defendant to bring a separate action to recover compensatory
damages, punitive damages, and attorney's fees and costs).

In any matter (including this one), in order to obtain a temporary restraining order or protective order, the applicable legal standard needs to be met. Additionally, in this case, Plaintiffs need to pass a near-impossible test to justify silencing the media. On the facts of this case, Plaintiffs cannot even meet the basic meet the legal standard for a temporary restraining order or preliminary injunction. Indeed, they cannot get any relief in this case at all. Any “claw back” of the already-released report (which is believed to have been widely disseminated by the Coroner’s Office and/or Clark County’s Public Information Office) would be impossible and would in fact render Mr. Hartfield’s autopsy de-anonymized. Finally, any declaratory relief regarding the application of Chapter 239 of the Nevada Revised Statutes (the NPRA) would be improper because another court has already considered—and ruled—on the application of the NPRA. In redacted form, the record is a public record and does not violate any privacy rights.

A. Any Relief Limiting Speech Is Presumptively Improper.

As detailed in Plaintiffs’ Emergency Motion to Dissolve the Temporary Restraining Order, any gag order is subject to exacting procedural requirements. Substantively, gag orders are almost never issued.

Both the U.S. Constitution and the Nevada Constitution protect the right to speak freely. The First Amendment, applied to the states through the Fourteenth Amendment, of course protects “free speech.” Similarly, Article 1, section 9 of the Nevada Constitution unequivocally provides that “every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right.” The Nevada Supreme Court has observed “the constitutional right to free speech . . . embraces every form and manner of dissemination of ideas held by our people” and that “[f]ree speech . . . must be given the greatest possible scope and have the least possible restrictions imposed upon it, for it is basic to representative democracy.” *Culinary Workers Union v. Eighth Judicial Dist. Court*, 66

1 Nev. 166, 173, 207 P.2d 990, 993, 994 (1949);⁵ see also *People for the Ethical Treatment of*
2 *Animals (PETA) v. Bobby Berosini, Ltd.*, 111 Nev. 615, 625, 895 P.2d 1269, 1276 (1995)
3 (reversing injunctive relief in a defamation case and holding that the “the constitutional
4 privilege provided by the Nevada Constitution protects the animal rights activists [speakers]
5 from defamation liability.”); see also *First National Bank of Boston v. Bellotti*, 435 U.S. 765,
6 783, 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978) (“the First Amendment goes beyond
7 protection of the press and the self-expression of individuals to prohibit government from
8 limiting the stock of information from which members of the public may draw.”).

9 The relief sought by Plaintiffs prevents speech before it even occurs and, thus,
10 constitutes a prior restraint. See Erwin Chemerinsky, *Injunctions in Defamation Cases*, 57
11 Syracuse L. Rev. 157, 163 (2007); see also *Alexander v. United States*, 509 U.S. 544, 550
12 (1993); *Balboa Island Village Inn, Inc. v. Lemen*, 57 Cal. Rptr. 3d 320, 339, 156 P.3d 339,
13 355 (Cal. 2007) (“A prohibition targeting speech that has not yet occurred is a prior
14 restraint.”); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931) (holding that an injunction
15 prohibiting the publication of expressive material was a prior restraint, and reversing a court
16 order that indefinitely enjoined a court order that enjoined any future “malicious, scandalous
17 or defamatory” publication); see also *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559
18 (1976) (“prior restraints on speech and publication are the most serious and the least tolerable
19 infringement on First Amendment rights” and are thus presumptively unconstitutional).

20 Any prior restraint carries a “heavy presumption” against its constitutional validity.
21 *Carroll v. Princess Anne*, 393 U.S. 175, 181 (1968); *Bantam Books, Inc. v. Sullivan*, 372
22 U.S. 58, 70 (1963). Due to the inherent First Amendment problems, courts rarely, if ever,

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26 ⁵ In *Culinary Workers*, on a writ of prohibition, the Nevada Supreme Court overturned a
27 district court injunction against peaceful picketing that had been based in part on the fact that
28 an “unfair” sign was untruthful. *Id.* at 995. The Supreme Court noted that statements of
opinion “are not subject to judicial restraint.” *Id.*

grant injunctions enjoining speech—even defamatory speech.⁶ Under early English and American common law, injunctions were never permissible in defamation cases. *See Chemerinsky, supra*, at 167. Not once has the United States Supreme Court ever departed from this precedent.⁷ In fact, even where a criminal defendant’s Sixth Amendment rights are alleged to be at issue, a court is strictly limited in its ability to limit publication, “one of the most extraordinary remedies known to our jurisprudence.” *Hunt v. National Broadcasting Co.*, 872 F.2d 289, 293 (9th Cir. 1989).

The Nevada Supreme Court has held that a gag order may only be issued when “(1) the activity poses a clear and present danger or a serious and imminent threat to a protected competing interest, (2) the order is narrowly drawn, and (3) no less restrictive means are available.” *Johanson v. Eighth Judicial Dist. Court of State of Nev. ex rel. Cty. of Clark*, 124 Nev. 245, 251, 182 P.2d 94, 98 (2008) (citing and adopting standard set in *Levine v. U.S. Dist. Court for C. Dist. of Cal.*, 764 F.2d 590, 595 (9th Cir.1985)).

The gag order sought does not satisfy the applicable criteria. First, there is no evidence that dissemination of the **redacted** autopsy reports—which are public records—

⁶ “The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. Only after judgment has become final, correct or otherwise, does the law’s sanction become fully operative. A prior restraint, by contrast and by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication “chills” speech, prior restraint “freezes” it at least for the time. The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559, 96 S. Ct. 2791, 2803, 49 L. Ed. 2d 683 (1976).

⁷ The Supreme Court was poised to consider the question of whether an injunction should ever be available to enjoin false and defamatory speech but decided not to after the plaintiff’s death. *Tory v. Cochran*, 544 U.S. 734, 737 (2005) (while the Court did not find it moot, it held that the plaintiff’s “death makes it unnecessary, indeed unwarranted, for us to explore ... [whether] the First Amendment forbids the issuance of a permanent injunction in a defamation case.”)

1 presents a clear and present danger or serious and imminent threat to Plaintiffs' interests.
2 Second, the order is not narrowly drawn, and instead is a blanket restriction preventing the
3 Review-Journal and the AP from engaging in the constitutionally-protected business of
4 reporting the news. Third, the gag order is not the least restrictive means available to protect
5 Plaintiffs' stated interests. In fact, the order directing the release of the autopsy records is
6 designed to protect Plaintiffs' stated privacy interests: again, all of the autopsy reports have
7 been redacted to remove the names and identifying information of the victims, including case
8 numbers, racial identifiers, and other information that would link specific reports to specific
9 victims. Thus, the remedy Plaintiffs seek—protection for Mr. Hartfield's privacy—has
10 already been put in place by Department 16's order.

11 **B. Plaintiffs Have Not and Cannot Satisfy the Legal Test for a Temporary**
12 **Restraining Order or a Preliminary Injunction.**

13 The Nevada Supreme Court has explained the generally-applicable test for a
14 preliminary injunction:

15 A preliminary injunction is available when it appears from the complaint
16 that the moving party has a reasonable likelihood of success on the merits
17 and the nonmoving party's conduct, if allowed to continue, will cause the
18 moving party irreparable harm for which compensatory relief is inadequate.

19 *City of Sparks v. Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118,1124 (2013);
20 *see also Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100
21 P.3d 179, 187 (2004); Nev. Rev. Stat. § 33.010.⁸ Plaintiffs carry a heavy burden of
22 demonstrating they are entitled to the "extraordinary remedy" of a preliminary injunction.
23 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22, 129 S.Ct. 365, 376
24 (2008). As noted above, given the First Amendment implications in this case, the request
25 for an injunction must very closely scrutinized. *Nebraska Press Assn. v. Stuart*, 427 U.S.
26 539, 559, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976).

27 _____
28 ⁸ The test for obtaining a temporary restraining order mirrors the test for a preliminary
injunction.

1. Plaintiffs Do Not Face Irreparable Harm.

The records have already been released and reported on—without incident. Due to the fact that the victims’ autopsy records have been extensively redacted, there is no private, protected information at issue. Thus, there is no future possible harm that would be caused by any future reporting.

2. A Gag Order Necessarily Constitutes Irreparable Harm.

Only the Media Defendants would suffer irreparable harm if a preliminary injunction were granted—indeed, they are currently suffering irreparable harm so long as the Temporary Restraining Order is arguably in effect, as detailed in the Emergency Motion to Dissolve the Temporary Restraining Order. As the United States Supreme Court has explained, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976).

3. Plaintiffs Are Unlikely to Prevail on the Merits.

Plaintiffs do not have a reasonable likelihood of success on the merits. This is so in light of the fact that gag orders are almost never permissible and for the additional reasons set forth below.

a) There Is a Presumption In Favor of Access.

As detailed below, another Court has already determined that the records sought are public records—and that redaction has adequately protected privacy (*see, generally*, Exh. 1). Misapprehending both that the redactions adequately protect privacy and the NPRA, Plaintiffs nonetheless argue throughout their brief that privacy interests outweigh access. Revealing deep disrespect for the media and a failure to research NPRA law before filing suit, Plaintiffs argue that there is no public interest in disclosure and complain that “the information sought will be used to profit the defendants.” In fact, the media—for profit or otherwise—and any member of the public is entitled to seek records under the NPRA. After receiving a request, if a governmental entity seeks to withhold a document that is not

1 explicitly made confidential by statute (which the autopsies are not), it must prove by a
2 preponderance of the evidence that the records are confidential or privileged, and must also
3 prove by a preponderance of the evidence that the interest in nondisclosure outweighs the
4 strong **presumption** in favor of public access. *See, e.g., Reno Newspapers, Inc. v. Gibbons*,
5 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *see also Donrey of Nevada, Inc. v. Bradshaw*,
6 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990). Thus, consistent with the democratic
7 principles enshrined in the NPRA, it is access itself to public records that is presumed to be
8 in the public interest. In any case, reporting about the events of 1 October do further the
9 public interest and, because no private information is revealed in the redacted victims’
10 autopsies, the presumption in favor of access necessarily outweighs any privacy claims, as
11 already ordered by this Court.

12 **b) The Victims’ Autopsies Are Public Records.**

13 Plaintiffs want a declaration which asserts that the information in the autopsy
14 reports is protected health information pursuant to the Health Insurance Portability and
15 Accountability Act (HIPAA), 45 C.F.R. § 160.101 *et seq.* This argument fails for two
16 reasons. First, the Coroner’s Office and the public records it generates are not subject to
17 HIPAA because the Coroner’s Office is not a “covered entity” pursuant to 45 C.F.R. §
18 106.103. Under 45 C.F.R. § 160.103, a covered entity is defined as: (1) a health plan; (2) a
19 “health care clearinghouse;” or (3) “[a] health care provider who transmits any health
20 information in electronic form in connection with a transaction covered by [HIPAA].”
21 Moreover, 45 C.F.R. § 160.102 specifically states that HIPAA only applies to those three
22 categories of health care entities. Thus, by its plain language, HIPAA is not intended to apply
23 to autopsy records. Moreover, several courts have held that autopsy reports are not “medical
24 records.” *See, e.g., Charles v. Office of the Armed Forces Med. Exam’r*, 935 F. Supp. 2d 86,
25 99–100 (D.D.C. 2013) (rejecting argument that deceased service members’ family members
26 have privacy interest in final autopsy reports); *Swickard v. Wayne Cty. Med. Exam’r*, 438
27 Mich. 536, 558, 475 N.W.2d 304, 314 (Mich. 1991) (finding that medical examiner failed to
28 establish that autopsy report and toxicology test results performed on district court judge

constituted “information of a personal nature,” and medical examiner was not justified under Michigan’s Freedom of Information Act in withholding the information out of concern for privacy rights of a decedent’s family members); *Marsh v. Cty. of San Diego*, 771 F. Supp. 2d 1227, 1231 (S.D. Cal. 2011), aff’d, 680 F.3d 1148 (9th Cir. 2012) (holding that copying the autopsy photos did not violate decedent’s mother’s constitutional right to privacy.

Second, as the district court in *Las Vegas Review-Journal and Associated Press v. Clark County Office of the Coroner/Medical Examiner* recently held, autopsy reports are public records subject to disclosure under the NPRA. This finding is consistent with a broad body of case law from courts around the country. *See Bozeman v. Mack*, 744 So.2d 34, 37 (La. App. 1 Cir. 1998) (“[A]n autopsy report is a public record when it is prepared by a coroner in his public capacity as coroner”); *Everett v. S. Transplant Serv., Inc.*, 709 So.2d 764 (La. 2/20/98) (Louisiana Supreme Court reinstated the trial court’s finding that a coroner’s records were public records); *Swickard*, 438 Mich. at 545, 475 N.W.2d at 308 (Autopsy report and toxicology test results prepared by the county medical examiner’s office were prepared “in the performance of an official function” and were “public records” for purpose of Freedom of Information Act); *Schoeneweis v. Hamner*, 223 Ariz. 169, 174, 221 P.3d 48, 53 (Az. App. 2009) (holding that an autopsy report is a public record and not statutorily privileged under Arizona’s public records law).

Likewise, in *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio. St. 3d 580, 583, 669 N.E.2d 835, 839 (Ohio 1996), the Ohio Supreme Court has held that a county coroner’s records in which the cause of death was suicide were “unquestionably public records” under Ohio’s public records laws. The Colorado Supreme Court has also held that autopsy reports are public records, and thus may only be withheld from public inspection by application for a court order permitting refusal of disclosure on the ground of “substantial injury to the public interest.” *Denver Pub. Co. v. Dreyfus*, 184 Colo. 288, 295, 520 P.2d 104, 108 (Colo. 1974) (en banc); *accord Freedom Newspapers, Inc. v. Bowerman*, 739 P.2d 881, 883 (Colo. App. 1987); *see also Hearst Television, Inc. v. Norris*, 617 Pa. 602, 619-20, 54 A.3d 23, 33–34 (Penn. 2012) (holding that manner of death records prepared by county

coroner were not exempt from disclosure under Pennsylvania’s Right to Know Law); *Home News Pub. Co. v. State, Dep’t of Health*, 239 N.J. Super. 172, 178–79, 570 A.2d 1267, 1271 (N.J. App. Div. 1990) (holding that death certificates are public records under New Jersey’s right to know law); *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 429 N.W.2d 772 (Wisc. Ct. App. 1988) (autopsy reports are public records subject to public inspection unless they are implicated in a “crime detection effort”).

Because the autopsy reports are public records, the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) mandates the reports must be made available to any member of the public for inspection and copying. Nev. Rev. Stat. § 239.010(1). The NPRA further provides that it must be construed liberally to allow the public access to government records, and that any “exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Nev. Rev. Stat. § 239.001(2) and (3). The court’s order runs afoul of these statutory mandates. Thus, the order must be dissolved.

c) Plaintiffs’ Action Is Moot.

“[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it.” *Nat’l Collegiate Athletic Ass’n v. Univ. of Nevada, Reno.*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). In this case, Plaintiffs’ action was moot even before they submitted it to this Court. As noted above, the Coroner’s Office disseminated the autopsy reports to the Review-Journal and the AP on January 31, 2018, two days prior to the initiation of Plaintiffs’ action. Moreover, both the Review-Journal and the Associated Press reported on the autopsy reports hours after their dissemination. Further, it is believed that the Coroner’s Office widely disseminated the victims’ autopsy reports (but, again, in redacted form). Thus, Plaintiffs’ action is moot.

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d) There Is No Relief That Can Be Granted to Plaintiffs.

Given that the redacted autopsy reports have already been released and reported on by the Review-Journal and the AP (as well as several other local and national media outlets), there is no relief available to Plaintiffs. *See, e.g., Zana v. State*, 125 Nev. 541, 545–46, 216 P.3d 244, 247 (2009) (“it is beyond the power of any court to unring a bell”).

III. CONCLUSION

For the reasons set forth above (and in the Emergency Motion to Dissolve the Protective Order), Review-Journal respectfully requests that this Court:

- Immediately dissolve the Temporary Restraining Order, as requested in the Emergency Motion to Dissolve the Protective Order; and
- Deny Plaintiffs’ request for a Preliminary Injunction;
- Deny all relief sought by Plaintiffs; and
- Grant the Media Defendants all such relief that is just and proper.

Respectfully submitted this the 7th day of February, 2018.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada State Bar No. 10931
Alina M. Shell, Nevada State Bar No. 11711
MCLEITCHIE SHELL, LLC
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101

Attorneys for Las Vegas Review-Journal and the Associated Press

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2018, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER/MOTION FOR PRELIMINARY INJUNCTION in *Veronica Hartfield et al. v. Clark County Office of the Coroner et al.* Eighth Judicial District Court Case No. A-18-768781-C, to be served electronically using the Odyssey File & Serve electronic filing service system, to all parties with an email address on record:

Laura Rehfeldt Laura.Rehfeldt@clarkcountyda.com

And courtesy copies sent also using the Odyssey File & Serve option to:

Tony Sgro TSgro@sgroandroger.com

David Roger DRoger@lvppa.com

Craig Bourke CBourke@sgroandroger.com

Laura Rehfeldt Laura.Rehfeldt@clarkcountyda.com

Ofelia Monje Ofelia.Monje@clarkcountyda.com

Mary-Anne Miller Mary-Anne.Miller@clarkcountyda.com

I hereby further certify that on the 7th day of February, 2018, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER/MOTION FOR PRELIMINARY INJUNCTION by depositing the same in the United States mail, first-class postage pre-paid, 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 Plaintiffs, Veronica Hartfield and the Estate of Charleston Hartfield

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

Lastly, copies are also being hand-delivered to Mr. Sgro and Ms. Rehfeldt on February 8, 2018 by 9:00 a.m.

/s/ Pharan Burchfield
An Employee of MCLEATCHIE SHELL LLC

EXHIBIT 1

Steven D. Grierson

1 **ORDR**

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3 ALINA M. SHELL, Nevada Bar No. 11711

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Counsel for Petitioner

DISTRICT COURT

CLARK COUNTY NEVADA

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

11 Petitioners,

12 vs.

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

15 Respondent.

Case No.: A-17-764842-W

Dept. No.: XVI

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

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:

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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.

6. On October 13, 2017, counsel for the Coroner's Office responded to the Review-Journal's October 9, 2017 email request. Counsel for the Coroner's Office indicated she did not know the status of the reports and records.

7. On November 7, 2017, the Associated Press also submitted a public records request to the Coroner's Office and Clark County asking for the autopsy reports for the 58 victims and shooter.

8. On November 15, 2017, Dan Kulin with the Clark County Office of Public Communications responded to the Associated Press's request by email. In that email, Mr. Kulin stated that he was "[w]orking on a response to [the] records request."

9. On November 16, 2017, Petitioners submitted an application and petition pursuant to Nev. Rev. Stat. § 239.011(1) asking the Court to issue a writ of mandamus directing Respondent to produce the requested records.

10. The November 16, 2017 Petition also requested this Court find the Coroner's Office acted in bad faith by refusing to produce the requested records.

11. Petitioners submitted an Opening Brief in support of their petition on December 8, 2017.

12. The Coroner's Office filed a Response to Petitioners' Petition and Opening Brief on ~~December 20, 2017.~~ *January 2, 2018 BT*

13. Petitioners filed a Reply Brief on January 16, 2018, and an Errata and Corrected Reply Brief on January 29, 2018.

14. The Court conducted a hearing on the Petition on January 30, 2018, and heard oral argument from Petitioners and Respondent.

II.

CONCLUSIONS OF LAW AND FINDINGS

15. The Court, having reviewed the Petition and all papers, pleadings, and exhibits on file herein, makes the following conclusions of law.

16. The purpose of the NPRA is to foster democratic principles by ensuring easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1) (“The purpose

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

17. To fulfill that goal, the NPRA must be construed and interpreted liberally. Government records are presumed public records subject to the Act, 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); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada legislature intended the provisions of the NPRA to be "liberally construed to maximize the public's right of access").

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

A. The Records Sought Are Public Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Attorney General Opinion Does Not Justify Non-Disclosure.

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

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

1 35. Because it is not binding legal authority and because it addressed a
2 different version of the NPRA than the current version, the legal analysis contained in AGO
3 82-12 is inapplicable and does not satisfy the Coroner's Office's burden of establishing that
4 the records are confidential and that the interest in non-disclosure outweighs the
5 presumption in favor of access.

6 ***The Coroner's Policy Does Not Justify Non-Disclosure***

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

12 37. In any case, any internal policy of the Coroner's Office (or other Coroner's
13 Offices) cannot satisfy its burden under the NPRA. An agency's internal policy does not
14 have the force of law. *See Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 885, 266 P.3d
15 623, 631 (2011).

16 38. Moreover, the individual practices of local municipalities cannot trump the
17 Nevada legislature's intent in adopting the NPRA. *See, e.g., Lamb v. Mirin*, 90 Nev. 329,
18 332, 526 P.2d 80, 82 (1974) ("Whenever a legislature sees fit to adopt a general scheme for
19 the regulation of particular subject, local control over the same subject, through legislation,
20 ceases."); *accord Crowley v. Duffrin*, 109 Nev. 597, 605, 855 P.2d 536, 541 (1993). This
21 "plenary authority of a legislature operates to restrict and limit the exercise of all municipal
22 powers." *Lamb*, 90 Nev. 329, 333, 526 P.2d 80, 82 (citation omitted). Thus, once the
23 legislature has adopted a scheme to regulate a particular subject—in this case, a general
24 scheme for accessing public records—"[i]n no event may a county enforce regulations
25 which are in conflict with the clear mandate of the legislature." *Lamb*, 90 Nev. 329, 333,
26 526 P.2d 80, 82 (citing *Mabank Corporation v. Board of Zoning Appeals*, 143 Conn. 132,
27 120 A.2d 149 (1956)).
28

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

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

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

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

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

The Coroner's Office Is Not Covered By HIPAA

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

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



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

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

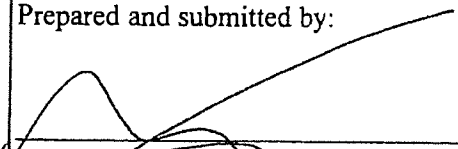
- 8 • The toxicology report pertaining to Stephen Paddock;
- 9 • Any and all other any records pertaining to the autopsy of Stephen
- 10 Paddock; and
- 11 • Copies of all media requests pertaining to the autopsies of Stephen
- 12 Paddock and/or the 58 victims;

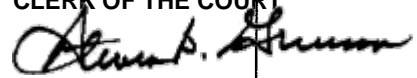
13 Further, the Coroner's Office must provide copies to Petitioners (via their counsel) eight (8)
14 business hours in advance of providing them to other requesters or posting them publicly, or
15 otherwise publicly disseminating them.

16
17
18 It is so ORDERED this 6th day of February, 2018.

19 
20 DISTRICT COURT JUDGE 

21
22 Prepared and submitted by:

23 
24
25 Margaret A. McLetchie, NBN 10931
26 Alina M. Shell, NBN 11711
27 **McLetchie Shell, LLC**
28 701 East Bridger Ave., Suite 520
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9 *Attorneys for the Las Vegas Review-Journal and the Associated Press*

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No.: A-18-768781-C

Dept. No.: II

vs.

**NOTICE OF ENTRY OF
EMERGENCY COUNTER-MOTION
TO DISSOLVE TEMPORARY
RESTRAINING ORDER
IMMEDIATELY ON ORDER
SHORTENING TIME**

OFFICE OF THE CLARK COUNTY
CORONER; THE LAS VEGAS REVIEW
JOURNAL; THE ASSOCIATED PRESS;
DOE DEFENDANTS 1 through 10; and
ROE DEFENDANTS 1 through 10.

**IMMEDIATE ACTION
REQUIRED**

TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
PLEASE TAKE NOTICE that on the 7th day of February, 2018, an Emergency
Counter-Motion to Dissolve Temporary Restraining Order Immediately on Order Shortening
Time [Immediate Action Required] was entered in the above-captioned action. A copy of
the Emergency Counter-Motion to Dissolve Temporary Restraining Order Immediately on
Order Shortening Time [Immediate Action Required] is attached hereto as Exhibit 1.

DATED this 8th day of February, 2018.

/s/ Margaret A. McLatchie

MARGARET A MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

Attorneys for the Las Vegas Review-Journal and the Associated Press

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2018, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF EMERGENCY COUNTER-MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER IMMEDIATELY ON ORDER SHORTENING TIME [IMMEDIATE ACTION REQUIRED] in *Veronica Hartfield et al. v. Clark County Office of the Coroner et al.* Eighth Judicial District Court Case No. A-18-768781-C, to be served electronically using the Odyssey File & Serve electronic filing service system, to all parties with an email address on record:

Laura Rehfeldt Laura.Rehfeldt@clarkcountysda.com

And courtesy copies sent also using the Odyssey File & Serve option to:

Tony Sgro TSgro@sgroandroger.com

David Roger DRoger@lvppa.com

Craig Bourke CBourke@sgroandroger.com

Laura Rehfeldt Laura.Rehfeldt@clarkcountysda.com

Ofelia Monje Ofelia.Monje@clarkcountysda.com

Mary-Anne Miller Mary-Anne.Miller@clarkcountysda.com

I hereby further certify that on the 8th day of February, 2018, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF EMERGENCY COUNTER-MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER IMMEDIATELY ON ORDER SHORTENING TIME [IMMEDIATE ACTION REQUIRED] by depositing the same in the United States mail, first-class postage pre-paid, 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 Plaintiffs, Veronica Hartfield and the Estate of Charleston Hartfield

1 Laura Rehfeldt
2 **Clark County District Attorney's Office**
3 500 S. Grand Central Pkwy., Ste. 5075
4 Las Vegas, NV 89106
5 *Counsel for Defendant, Clark County Office of the Coroner*

6 *Lastly, copies are also being hand-delivered to Mr. Sgro and Ms. Rehfeldt on*
7 *February 8, 2018 by 9:00 a.m.*

8 /s/ Pharan Burchfield
9 An Employee of MCLETCHE SHELL LLC
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EXHIBIT 1

Steven D. Grierson

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*Attorneys for the Las Vegas Review-Journal
and the Associated Press*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No.: A-18-768781-C

Dept. No.: II

vs.

**EMERGENCY COUNTER-MOTION
TO DISSOLVE TEMPORARY
RESTRAINING ORDER
IMMEDIATELY ON ORDER
SHORTENING TIME**

OFFICE OF THE CLARK COUNTY
CORONER; THE LAS VEGAS REVIEW
JOURNAL; THE ASSOCIATED PRESS;
DOE DEFENDANTS 1 through 10; and
ROE DEFENDANTS 1 through 10.

**IMMEDIATE ACTION
REQUIRED**

The Las Vegas Review-Journal ("Review-Journal") and The Associated Press ("the AP") (collectively, the "Petitioners"), by and through their counsel Margaret A. McLetchie and Alina M. Shell of the law firm McLetchie Shell LLC, hereby submit this Emergency Motion to Dissolve Temporary Restraining Order Immediately (On Order Shortening Time).

DATED this the 7th day of February, 2018.

HEARING REQUIRED

DATE: 2/9/18

TIME: 9:00 AM

MH

Margaret A. McLetchie, Nevada State Bar No. 10931
Alina M. Shell, Nevada State Bar No. 11711
MCLETCHIE SHELL, LLC
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Attorneys for Las Vegas Review-Journal and the Associated Press

FEB 07 2018

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1 8. The procedural requirements, which include advance notice, were not met
2 in this case. The Nevada Supreme Court has held that a court must provide litigants
3 reasonable notice that it is considering a restrictive order and an opportunity to oppose a
4 restrictive order's issuance. *Id.*, 124 Nev. 245, 253, 182 P.3d 94, 99 (2008).

5 9. The Media Defendants did not have the opportunity to oppose the issuance
6 of the gag order before entering the Temporary Restraining Order as no notice was provided
7 before it was issued. Further, Plaintiffs did not timely serve the order in accordance with this
8 Court's order. The Court required that the Order be served by February 2, 2018. Plaintiffs
9 (as detailed in the additional declaration of Margaret A. McLetchie) did not do so. Thus, the
10 Media Defendants contend that the order is invalid.

11 10. Nonetheless, the Order serves as a chill on the Media Defendants and this
12 is an emergency matter because the temporary restraining order granted by this Court
13 infringes on the Media Defendants' constitutional rights. Because gag orders are a form of
14 prior restraint, the Nevada Supreme Court has held that a gag order may only be issued when
15 "(1) the activity poses a clear and present danger or a serious and imminent threat to a
16 protected competing interest, (2) the order is narrowly drawn, and (3) no less restrictive
17 means are available." *Johanson*, 124 Nev. 245, 247, 182 P.3d 94, 96 (citations omitted).

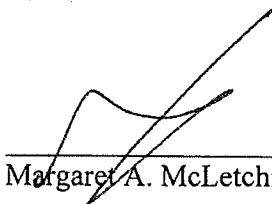
18 11. Restricting the Media Defendants' ability to obtain access to the autopsy
19 records concerning Stephen Paddock—records that a court has declared are public records
20 and has ordered be produced to the Media Defendants—also infringes on the Media
21 Defendants' First Amendment rights. *See, e.g., Globe Newspaper Co. v. Pokaski*, 868 F.2d
22 497, 507 (1st Cir. 1989) ("even a one to two day delay [in accessing records] impermissibly
23 burdens the First Amendment"); *see also Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d
24 110,126-27 (2d Cir. 2006) ("Our public access cases and those in other circuits emphasize
25 the importance of immediate access where a right of access is found.") (emphasis added)
26 (citations omitted); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th
27 Cir. 1994) (public access to documents "should be immediate and contemporaneous");
28 *Associated Press v. U.S. Dist. Ct. for Cent. Dist. Of California*, 705 F.2d 1143, 1147 (9th

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Cir. 1983) (holding that a 48-hour delay in access constituted “a total restraint on the public’s first amendment right of access even though the restraint is limited in time”).

12. Given the significant First Amendment issues presented by the gag order, shortened time is required so the Temporary Restraining Order be dissolved immediately. If this Court does not dissolve the Temporary Restraining Order immediately, the undersigned respectfully requests that an immediate hearing be set on an emergency basis.

I declare under the penalty of perjury that the foregoing is true and correct.
EXECUTED this the 7th day of February, 2018.

By: 
Margaret A. McLetchie

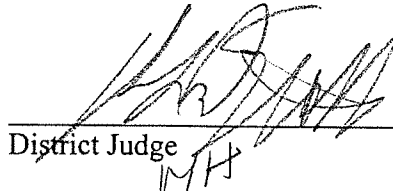
ORDER SHORTENING TIME

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

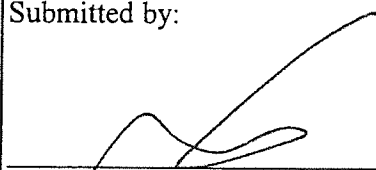
Good cause appearing therefor,

IT IS HEREBY ORDERED that the time for hearing of the Review-Journal and AP's Counter-Motion to Dissolve Temporary Restraining Order will be shortened to the 9th day of February, 2018, at 9:00 a.m./p.m. or as soon thereafter as the parties may be heard. *Must be served by 9:00 AM on February 8th 2017.*

DATED this 7th day of February, 2018.


District Judge

Submitted by:


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ALINA M. SHELL, Nevada Bar No. 11711
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Good cause appearing therefor,

IT IS HEREBY ORDERED that the Temporary Restraining Order issued on February 2, 2018 be immediately dissolved.

DATED this _____ day of _____, 2018.

District Judge

Submitted by:

MARGARET A MCLETCHE, Nevada Bar No. 10931
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**ADDITIONAL DECLARATION OF MARGARET A. MCLETCHIE IN SUPPORT
OF OPPOSITION AND COUNTER MOTION**

MARGARET A. MCLETCHIE hereby declares that she has personal knowledge and is competent to testify to the following facts:

1. I am an attorney duly licensed to practice before this Court.
2. I am counsel of record for the Las Vegas Review-Journal and The Associated Press (the "Petitioners").
3. On January 30, 2018, during a hearing in *The Las Vegas Review-Journal and The Associated Press vs. Clark County Office of the Coroner/ Medical Examiner*, Case No.: A-17-764842-W, the Court declared autopsy records of Stephen Paddock public records. The Court also found that autopsy records of the October 1 victims, in redacted form, are public records. The Court directed the Coroner's Office to make the records immediately available.
4. Attached as **Exhibit ("Exh.") 1** is a true and correct copy of the written order in *The Las Vegas Review-Journal and The Associated Press vs. Clark County Office of the Coroner/ Medical Examiner*, Case No.: A-17-764842-W.
5. On January 31, 2018, the Coroner's Office provided me with copies of the autopsies (in redacted form) of the victims of 1 October. These records were carefully redacted such that it is not possible to discern which records correspond to each victim and I have no idea which report pertains to Mr. Hartfield.
6. On information and belief, the Coroner's Office also provided copies of the redacted autopsy reports to a number of other media outlets.
7. I have informed Mr. Tony Sgro, counsel for Plaintiffs, on multiple occasions that the record at issue in this action has already been produced but only in redacted and anonymized form. Mr. Sgro asked if I could remove the records pertaining to Mr. Hartfield and I explained that I could not discern which pertained to Mr. Hartfield because the records provided were anonymized. I also indicated that the Coroner's Office had already provided the records to my clients.

1 8. I first spoke to Mr. Sgro about Mr. Hartfield late on the afternoon of January
2 31, 2018. Mr. Sgro did not tell me he planning to file a separate action seeking a ruling to
3 contradict the ruling that had been issued by Judge Williams in *The Las Vegas Review-*
4 *Journal and The Associated Press vs. Clark County Office of the Coroner/ Medical*
5 *Examiner*, Case No.: A-17-764842-W, and I was not aware that any gag order would be
6 sought or was obtained until counsel for the Coroner's Office told me about Plaintiffs' filing
7 on the morning of February 5, 2018.

8 9. On the afternoon of February 2, 2018, a staff person in my office did receive
9 a message from a Mr. Bourke. Mr. Bourke did indicate it was important that I return his call.
10 Unfortunately, I was tied up with emergency matters and could not return his call. Mr.
11 Bourke did not indicate in his message that a gag order had been issued against my client
12 and did not bother to email me a copy of the Temporary Restraining Order when it was
13 submitted, or even when it was signed by the Court.

14 10. Plaintiffs did not serve any order or other documents on me or on my clients
15 until on or after February 5, 2018. When I arrived at work on Monday, February 5, 2018, I
16 contacted Ms. Mary-Anne Miller regarding a draft order in the NPRA matter. At that time,
17 Ms. Miller informed me of the filing and indicated that she could not comply with directives
18 from the Court in the NPRA matter due to the Temporary Restraining Order issued by this
19 Court (and thus would not be making any records pertaining to Stephen Paddock available)

20 11. After emailing with Ms. Miller, I immediately contacted Mr. Sgro via email
21 at 8:39 a.m. I subsequently spoke with Mr. Sgro. Upon learning that he did not have a copy
22 of Mr. Hartfield's autopsy in redacted form (and, thus, was litigating over a purported breach
23 of privacy that did not occur), I suggested to him that he contacted Ms. Mary-Anne Miller to
24 obtain a copy. I also emailed both Mr. Sgro and Ms. Mary-Anne Miller about the issues at
25 hand and my intention to file a response, as well as an emergency motion to dissolve the
26 temporary restraining order on shortened time.

27 12. On information and belief, Mr. Sgro did not contact Ms. Mary-Anne Miller
28 to obtain a copy of the redacted autopsy report (at least as of February 5, 2018) and thus has

1 not even ascertained whether the redacted report even in fact implicates his client's privacy
2 rights—and did not do so to comply with his Rule 11 obligations before instituting this
3 action.

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

5
6 EXECUTED this the 7th day of February, 2018.

7
8 By:

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Margaret A. McLetchie

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION AND FACTS¹

3 As Plaintiffs are aware (yet failed to apprise this Court), Department 16 recently
4 granted a petition filed by Petitioners pursuant to the Nevada Public Records Act (the
5 “NPRA”) declaring certain records public records pursuant to the NPRA, including autopsies
6 of the 1 October victims. At the request of the Review-Journal and the AP, those records
7 were ordered produced *with personally-identifying information removed via appropriate*
8 *redactions*. (See Exh. 1 at p. 12, ¶ 60; see also p. 7, ¶ 32 (“the Court ... finds that the
9 Coroner’s Office’s concerns regarding privacy are addressed by reacting names and
10 identifying information from the autopsy reports as proposed by Petitioners.”) The Coroner’s
11 Office has complied with that portion of Department 16’s order.

12 Notably, nowhere in their Emergency Application for a Temporary Restraining
13 Order do Plaintiffs mention the fact another department of this Court has already ordered
14 release of the autopsies. Likewise, to mislead this Court into thinking that potentially private
15 information needed to be protected on an emergency basis, Plaintiffs fail to explain the fact
16 that the records that were provided to the Review-Journal and the AP (and other media
17 outlets) were provided in redacted form and, thus, anonymized. The Review-Journal and the
18 AP voluntarily limited their request for the records to redacted versions of the victims’
19 autopsies, and the Court likewise ordered that the victims’ autopsies be provided in redacted
20 form.

21 Then, despite being ordered to do so by this Court, Plaintiffs failed to serve copies
22 of the pleadings and other documents filed in support of the Temporary Restraining Order—
23 or even the Order Shortening Time granting Plaintiffs with an immediate gag order on the
24 press—on the Review-Journal or the AP on February 2, 2018.

25 ///

26
27 _____
28 ¹ The pertinent facts are set forth in the declarations included herein, and those facts are
incorporated herein by reference.

1 This Court should not entertain Plaintiffs' gamesmanship. As this Court
2 (Department 16) already determined in connection with a petition filed pursuant to NPRA,
3 the records at issue are public records subject to production. Thus, Plaintiffs' request that this
4 Court "declare Mr. Hartfield's confidential information to be confidential under NRS
5 239.0115" is improper. Moreover, while HIPAA and the other law cited by Plaintiffs do not
6 take the records out of the reach of the NPRA, Department 16 did consider privacy concerns
7 and found that redacting personally identifying information addressed those concerns. And,
8 as noted above, in light of the unique facts of this case, the Review-Journal and the AP limited
9 their request for victims' autopsies to redacted versions.

10 This matter is thus unnecessary to protect the interests asserted by Plaintiffs. It is
11 also moot. As noted above, the Coroner's Office has already provided the redacted versions
12 of the autopsies and the Petitioners have already reported on the records. So have other media
13 outlets.² Notably, none of the reporting has jeopardized the privacy of any of the victims'
14 families. In their action, Plaintiffs are seeking an order requiring the Review-Journal and the
15 AP to return the autopsy records pertaining to Mr. Hartfield. However, the Review-Journal
16 and the AP have no means of discerning which records pertain to Mr. Hartfield for the very
17 reason that the Coroner's Office provided the records in redacted form. Thus, it is any "claw
18 back" of the records pertaining to Mr. Hartfield that threatens to reveal his identity in
19 connection with any of the autopsy reports.

20 Further, the relief granted and sought is unconstitutional. Because the Temporary
21 Restraining Order was granted without any notice to the AP or the Review-Journal (and then
22 not even timely served), it is procedurally invalid. Even if notice had been properly provided,
23 substantively, the Temporary Restraining Order serves as an invalid prior restraint and
24 violates the important and First Amendment-protected rights of Petitioners. In their brief,
25 Plaintiffs entirely ignore the First Amendment implications of the severe and unprecedented

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28 ² See, e.g., <http://www.fox5vegas.com/story/37399460/coroner-releases-autopsy-records-of-all-1-october-victims-person-of-interest-speaks>

1 relief that they seek. Instead, they erroneously contend that the public interest in any
2 reporting is minimal. However, it is not for Plaintiffs—or this Court—to determine what the
3 press can and cannot report on. Any future prohibition on the dissemination of the records or
4 publications based on the records constitute an illegal prior restraint. Moreover, in connection
5 with a petition filed pursuant to the NPRA, a requester need not establish that the production
6 of the records would serve the public interest. Instead, as detailed below, the NPRA contains
7 a *presumption* in favor of access. In any case, particularly because the redactions have and
8 continue to protect any privacy interests that might be at stake, the public interest in
9 evaluating and understanding the events of 1 October necessarily outweighs the interests
10 asserted by Plaintiffs.

11 Additionally, because the records are at issue were properly anonymized, no
12 individually identifiable records were produced and thus Plaintiffs do not have standing.
13 Finally, nothing in the NPRA provides for an action like the one that Plaintiffs are pursuing:
14 an action to retroactively declare a record that has already been disseminated in connection
15 with an NPRA lawsuit confidential.

16 In short, the relief sought by Plaintiffs directly conflicts with another order of this
17 Court. Neither the relief sought nor the gag order are warranted, and the gag order serves as
18 an unconstitutional restraint on the media’s free speech rights.

19 Accordingly, the Temporary Restraining Order sought by Plaintiffs granted by this
20 Court must be formally dissolved to avoid any chill on the First Amendment rights of the
21 media and to ensure compliance with the Court’s Order in *The Las Vegas Review-Journal*
22 *and The Associated Press vs. Clark County Office of the Coroner/ Medical Examiner*, Case
23 No.: A-17-764842-W.

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II. ARGUMENT

A. The Temporary Restraining Order Is Invalid Because Plaintiffs Failed to Notify and Serve the Review-Journal and the AP.

Pursuant to Nevada Rule of Civil Procedure 65(b), a temporary restraining order may be granted without written or oral notice to the adverse party or that party's counsel only if:

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

Plaintiffs' application fails to satisfy these two procedural requirements. First, as detailed below, counsel's declarations do not demonstrate that Plaintiffs will suffer immediate or irreparable harm because the harm Plaintiffs allege is illusory: contrary to Plaintiffs' assertions, the release of autopsy records do not reveal the identity of any decedent, and not contain any protected health information. Second, counsel's declarations fail to describe any efforts he undertook to notify the Review-Journal and the AP of Plaintiffs' application for a restraining order. Indeed, he did not do so in advance of filing it.

As set forth in the declaration of counsel and statement of facts above, although Plaintiffs' counsel did call the undersigned on January 31, 2018, Plaintiffs' counsel did not notify the undersigned at that point or at any point prior to applying for the Temporary Restraining Order that Plaintiffs intended to seek this form of extraordinary relief.

Second, the Order is invalid because Plaintiffs failed to serve it on the Review-Journal and the AP in the manner specifically mandated by this Court. Pursuant to the order, Plaintiffs were supposed to serve the Review-Journal and the AP "no later than the 2nd day of February, 2018." As discussed above, Plaintiffs did not serve the order on the Review-Journal and the AP until February 5, 2018—three days after the date of compliance set by this Court.

///

1 The February 2, 2018 Order is thus invalid, and this matter should be dismissed.

2 **B. The Temporary Restraining Order Does Not Comport With**
3 **Procedural Requirements**

4 Procedural due process requires that a party whose silence is sought be afforded
5 “reasonable notice of and an opportunity to oppose a restrictive order’s issuance.” *Johanson*
6 *v. Eighth Judicial Dist. Court of State of Nev. ex rel. Cty. of Clark*, 124 Nev. 245, 253, 182
7 P.2d 94, 99 (2008) (quoting *Jordan v. State, Dep’t of Motor Vehicles*, 121 Nev. 44, 60, 110
8 P.3d 30, 42 (2005)).

9 Moreover, NRCP 65(d) places specific procedural requirements on restraining
10 orders. Specifically, Rule 65(d) requires:

11 Every order granting an injunction and every restraining order shall set forth
12 the reasons for its issuance; shall be specific in terms; shall describe in
13 reasonable detail, and not by reference to the complaint or other document,
14 the act or acts sought to be restrained; and is binding only upon the parties
15 to the action, their officers, agents, servants, employees, and attorneys, and
16 upon those persons in active concert or participation with them who receive
17 actual notice of the order by personal service or otherwise.

18 NRCP 65(d). The failure to include a statement of reasons “mandate[s] nullification wherever
19 the reasons for an injunction are not readily apparent elsewhere in the record or appellate
20 review is otherwise significantly impeded due to lack of a statement of reasons.” *Las Vegas*
21 *Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)

22 In the instant case, the gag order does not satisfy any of the requirements of NRCP
23 65(d). There is no written order from this Court making specific findings justifying the
24 restraint on the Review-Journal and the AP’s reporting activities. There are also no specific
25 terms; just a statement from the Court that the restraining order is “effectively immediately.”
26 Thus, the order is null and void, and must be immediately dissolved.

27 **C. The Gag Order Does Not Satisfy the Exacting Test Set by the**
28 **Nevada Supreme Court for the Issuance of Such Orders.**

Gag orders are presumptively unconstitutional and cannot be entered absent
adherence to strict procedural requirements. *Johanson v. Eighth Judicial Dist. Court of State*
of Nev. ex rel. Cty. of Clark, 124 Nev. 245, 251, 182 P.2d 94, 98 (2008) (citing *United States*

v. *Scarfo*, 263 F.3d 80, 92 (3d Cir. 2001)). Because gag orders act as a prior restraint, the Nevada Supreme Court has held that a gag order may only be issued when “(1) the activity poses a clear and present danger or a serious and imminent threat to a protected competing interest, (2) the order is narrowly drawn, and (3) no less restrictive means are available.” *Id.* (citing and adopting standard set in *Levine v. U.S. Dist. Court for C. Dist. of Cal.*, 764 F.2d 590, 595 (9th Cir.1985)).

The gag order does not satisfy these criteria. First, there is no evidence that dissemination of the **redacted** autopsy reports—which are public records—presents a clear and present danger or serious and imminent threat to Plaintiffs’ interests. Second, the order is not narrowly drawn, and instead is a blanket restriction preventing the Review-Journal and the AP from engaging in the constitutionally-protected business of reporting the news. Third, the gag order is not the least restrictive means available to protect Plaintiffs’ stated interests. In fact, Department 16’s order directing the release of the autopsy records is designed to protect Plaintiffs’ stated privacy interests: all of the autopsy reports have been redacted to remove the names and identifying information of the victims, including case numbers, racial identifiers, and other information that would link specific reports to specific victims. Thus, the remedy Plaintiffs seek—protection for Mr. Hartfield’s privacy—has already been put in place by Department 16’s order.

III. CONCLUSION

For the reasons set forth above, Review-Journal respectfully requests this Court immediately dissolve the gag order.

Respectfully submitted this 7th day of February, 2018.


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ALINA M. SHELL, Nevada Bar No. 11711
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701 East Bridger Ave., Suite 520
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Attorneys for Las Vegas Review-Journal and Associated Press

EXHIBIT 1

Steven D. Grierson

1 **ORDR**

2 MARGARET A MCLETCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

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5 701 East Bridger Ave., Suite 520

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Email: maggie@nvlitigation.com

Counsel for Petitioner

DISTRICT COURT

CLARK COUNTY NEVADA

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

11 Petitioners,

12 vs.

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

15 Respondent.

Case No.: A-17-764842-W

Dept. No.: XVI

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

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 ///

MCLETCHIE

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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 "NPR") 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.



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

17. To fulfill that goal, the NPRA must be construed and interpreted liberally. Government records are presumed public records subject to the Act, 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); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada legislature intended the provisions of the NPRA to be "liberally construed to maximize the public's right of access").

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

A. The Records Sought Are Public Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Attorney General Opinion Does Not Justify Non-Disclosure.

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

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

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)).

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

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

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

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

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

The Coroner's Office Is Not Covered By HIPAA

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

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

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

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

G. The Records Should Be Provided Directly to Petitioners.

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

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

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

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

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

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

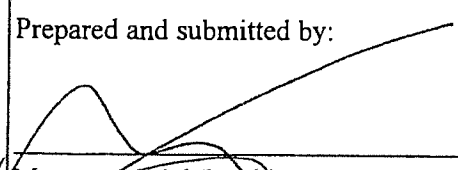
- 8 • The toxicology report pertaining to Stephen Paddock;
- 9 • Any and all other any records pertaining to the autopsy of Stephen
10 Paddock; and
- 11 • Copies of all media requests pertaining to the autopsies of Stephen
12 Paddock and/or the 58 victims;

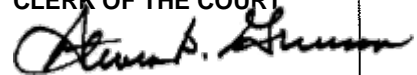
13 Further, the Coroner's Office must provide copies to Petitioners (via their counsel) eight (8)
14 business hours in advance of providing them to other questers or posting them publicly, or
15 otherwise publicly disseminating them.

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

19 
20 DISTRICT COURT JUDGE 

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22 Prepared and submitted by:

23 
24
25 Margaret A. McLetchie, NBN 10931
Alina M. Shell, NBN 11711
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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.: 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.**

COMES Now, Plaintiff, VERONICA HARTFIELD, a Nevada resident, and THE
ESTATE OF CHARLESTON HARTFIELD ("Plaintiffs" or "Hartfield"), by and through its

1 attorneys of record, the Law Offices of SGRO & ROGER, and hereby files this Opposition To
2 Defendant Las Vegas Review Journal And Associated Press' Emergency "Counter-Motion" To
3 Dissolve Temporary Restraining Order And Reply To Opposition To Ex Parte Application For
4 Temporary Restraining Order/Motion For Preliminary Injunction. Plaintiff seeks relief in the
5 form of: 1) denying the request to dissolve the TRO; 2) ordering the coroner's file and/or
6 autopsy report Confidential as to Charleston Hartfield; and 3) granting the Motion seeking an
7 Injunction to prevent any access to and/or disclosure to the public of the contents of the
8 coroner's file and or autopsy report regarding Charleston Hartfield, a deceased Metropolitan
9 Police Officer and Victim of the Violent Crime that occurred on October 1, 2017, at the Route
10 91 Festival.
11

12 This Reply and Opposition is made and based upon all pleadings and papers on file
13 herein, the Memorandum of Points & Authorities, the attached Declaration of Anthony P. Sgro,
14 Esq., the attached Declaration of Plaintiff (Exhibit 1), and any oral argument this Court may
15 entertain.
16

17 Dated this 6 day of February, 2018.

18 SGRO & ROGER

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20 

21 ANTHONY P. SGRO, ESQ.
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28 *Attorneys for Plaintiff*

1 **DECLARATION OF ANTHONY P. SGRO IN SUPPPORT OF PLAINTIFF'S**
2 **OPPOSITION TO EMREGENCY COUNTER MOTION TO DISSOLVE TEMPORARY**
3 **RESTRAINING ORDER IMMEDIATELY, ON ORDER SHORTENING TIME**

- 4 1. I am an attorney duly licensed to practice before this court.
- 5 2. I am counsel of record for the Plaintiff in this matter.
- 6 3. I have reviewed the declarations of Margaret McLetchie in support of her Emergency
7 Counter-Motion.
- 8 4. Ms. McLetchie's Declarations omits several important facts.
- 9 5. First off, I contacted counsel for Defendants immediately after being contacted by the
10 Plaintiff in this matter and alerted her as to the potential issues Plaintiff might raise via
11 litigation.
- 12 6. During that conversation, she gave me the distinct impression that I should simply
13 advise my client that she should not move forward. I advised her at that time, that
14 despite our conversation, I would likely be proceeding to pursue some form of
15 injunctive relief on behalf of the Plaintiff.
- 16 7. That conversation was memorialized in an email I sent to her on February 2, 2018
17 attached as Exhibit 2.
- 18 8. She also contacted me after we filed the pleadings I alluded to in our prior (February
19 2) conversation. She told me that notwithstanding what she put her in her email about
20 not recalling anything about me mentioning my pursuit of injunctive relieve that she
21 "was very busy that day" and may have forgotten about what we specifically
22 discussed.
- 23 9. As to Plaintiff's interest in this matter, I am unaware of her ever being advised by any
24 party in this action that they sought to procure from the Clark County Coroner's office
25 her husband's Autopsy report. The Plaintiff has signed an affidavit stating the same.
- 26 10. No one, as far as I know ever gave the Plaintiff any notice of the court hearing that
27 took place in front of Judge Williams.
- 28

1 11. No one ever named the Plaintiff as a party, and most egregiously, no one ever apprised
2 her of the decision rendered by Judge Williams. Her affidavit reflects that she learned
3 of the Court decision that concerned her husband's autopsy report from a friend of
4 hers.

5 I declare, under the penalty of perjury that foregoing is true and correct.
6

7 EXECUTED this 8th day of February, 2018.
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10 SGRO & ROGER

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13 ANTHONY P. SGRO, ESQ.
14 Attorney for Plaintiff
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **1. PLAINTIFF'S DECLARATION IN SUPPORT OF REPLY AND OPPOSITION**

3 Veronica Hartfield met her husband when she was 14 years old. They were high school
4 sweethearts. (Exhibit 1). He served in the military and completed a tour in Iraq; she went to
5 college and became a registered nurse. They married in 2002 in California. After his 4.5 years of
6 active duty service, he joined the National Guard, and was still affiliated with the National
7 Guard until his death. (Exhibit 1).

8 Veronica and her husband have two beautiful children together, a son who is 15 years
9 old, and a daughter who is 9 years old. (Exhibit 1). Her husband's murder has been devastating
10 to the family, especially their children. (Exhibit 1).

11 Veronica is employed with St. Rose Delima Campus. (Exhibit 1). At the time of her
12 husband's death, he was employed with Las Vegas Metropolitan Police Department (LVMPD),
13 and had been employed there since 2006. (Exhibit 1).

14 Veronica has worked very hard to shield the children from as much exposure to her
15 husband's murder, as possible. (Exhibit 1). Her son's classmate(s) have already seen
16 information pertaining to the murder on the internet and a photo was put up of her husband and
17 the shootings that occurred on October 1, 2017. (Exhibit 1).

18 Veronica wants her husband and her family to have dignity and respect in regard to his
19 murder. (Exhibit 1). As his wife, it is her responsibility to keep her husband's private and
20 personal information, private. It angers her that people and/or entities are exploiting her
21 husband's murder for their own personal gain. If anyone has a question about her husband's
22 autopsy and how he died, that person or entity is able to request to obtain this information from
23 Veronica. (Exhibit 1).

24 On October 1, 2017, Veronica's husband and Veronica were attending a country music
25 festival with friends when they heard a noise that sounded like firecrackers or fireworks going
26 off. (Exhibit 1). Veronica's husband, a LVMPD officer, and having been active military was
27 immediately hypervigilant and told Veronica to put her phone away. He said the sound was not
28 fireworks or firecrackers and began directing people, in order to assist with the chaos and the

1 rush of people that was beginning to surround them. (Exhibit 1).

2 They heard what sounded like rapid fire and Veronica noticed her husband looked up.
3 (Exhibit 1). He stopped as many people as possible and directed them to get down. He placed
4 Veronica on the ground underneath him. (Exhibit 1).

5 During those moments, Veronica heard her husband say he had been hit. (Exhibit 1).

6 When the first rounds of fire finished, everyone got up except her husband. (Exhibit 1).
7 Veronica told him they had to get up and go and he did not respond. Veronica tried to pull her
8 husband out of the scene with her friend. (Exhibit 1).

9 Veronica called 911. (Exhibit 1).

10 More rounds were fired. (Exhibit 1).

11 Veronica's friend, who was laying next to her, was also shot in the back. (Exhibit 1).

12 When the firing ceased again, Veronica rolled her husband over. (Exhibit 1). She could
13 see blood from coming from his mouth and she tried to find a point of impact. She could not see
14 or feel anything, but it was very dark. (Exhibit 1).

15 Veronica has not been able to return to work since the shootings. (Exhibit 1). She has
16 been seeing a therapist once a week for the trauma from this event. She cannot talk about what
17 happened to her husband and her family without crying. (Exhibit 1).

18 After the shooting, a list of the victims came out with their names, birthdates, and sex.
19 (Exhibit 1; *see* Associated Press Article dated October 5, 2017, and attached as Exhibit 2).

20 From that point on, more identifying information of the victims was released through the
21 media. (*See* List of Cause and Manner of Death, attached as Exhibit 3).

22 Veronica never knew that there was an issue with autopsy reports being released.
23 (Exhibit 1). No one ever provided any notice to Veronica that her husband's autopsy report
24 could be released. Veronica was never informed that the coroner's office was subject to a
25 lawsuit about autopsy reports being released. She assumed this was private information.
26 (Exhibit 1).

27 A friend of Veronica's mentioned something to her about autopsy reports being released.
28 (Exhibit 1). Even with redacted information, it would still be easy to ascertain Veronica's

1 husband from the autopsy reports. (Exhibit 1).

2 Veronica is trying to protect my children and her husband's reputation so that he has
3 dignity, even in death. (Exhibit 1). No one has asked Veronica how she feels about her
4 husband's autopsy being produced to the public. No one has asked Veronica how she feels
5 about the private information about the investigation done on his body, and the reports that stem
6 therefrom. (Exhibit 1). Veronica's children are growing up in the age of technology and they
7 deserve privacy regarding my husband's personal matters. (Exhibit 1). As such, she is
8 requesting that the information contained in her husband's autopsy report remain private and
9 confidential. Redacting his name or other personal information does not make it acceptable to
10 release this information to the general public. (Exhibit 1).

11 **2. PROCEDURAL HISTORY**

12 Undersigned counsel contacted counsel for Defendants immediately after being
13 contacted by the Plaintiff in this matter and alerted her as to the potential issues Plaintiff
14 might raise via litigation. (*See Attached Declaration of Anthony P. Sgro, Esq.*). During that
15 conversation, Ms. McLetchie gave undersigned counsel the distinct impression that he should
16 simply advise Plaintiff that she should not move forward. Undersigned counsel advised her at
17 that time, that despite this conversation, undersigned counsel would likely be proceeding to
18 pursue some form of injunctive relief on behalf of the Plaintiff.

19 That conversation was memorialized in an email undersigned counsel sent to her on
20 February 2, 2018:

21 When we spoke about this issue, prior to filing, you are correct that you told me
22 about some of the re[d]actions that had occurred. I devised you then, that I
23 likely would move forward on some sort of injunctive relief despite that
24 information. Immediately after it was filed, because you, during our prior
25 conversation, advised that you represented the review journal and associated
26 press, we contacted you to alert you. We left you a detailed message.
27 You did not respond to that telephone message. I am returning to the office
28 as we speak, and will make certain that if you do not already have the pleadings,
you will have them shortly.

1 (See Declaration of Anthony P. Sgro, Esq., and Email dated February 5, 2018, attached as
2 Exhibit 2).

3 Ms. McLetchie also contacted undersigned counsel after pleadings were filed that
4 undersigned counsel alluded to in the prior (February 2) conversation. Ms. McLetchie told
5 undersigned counsel that notwithstanding what she put her in her email about not recalling
6 anything about undersigned counsel mentioning undersigned counsel's pursuit of injunctive
7 relieve that she "was very busy that day" and may have forgotten about what was specifically
8 discussed.

9 As to Plaintiff's interest in this matter, undersigned counsel is unaware of her ever
10 being advised by any party in this action that they sought to procure from the Clark County
11 Coroner's office her husband's Autopsy report. The Plaintiff has signed an affidavit stating
12 the same. (Exhibit 1).

13 No one, as far as undersigned counsel is aware, ever gave the Plaintiff any notice of
14 the court hearing that took place in front of Judge Williams. No one ever named the Plaintiff
15 as a party, and most egregiously, no one ever apprised her of the decision rendered by Judge
16 Williams. Her affidavit reflects that she learned of the Court decision that concerned her
17 husband's autopsy report from a friend of hers.

18 This matter was set to be heard on Monday, February 12, 2018. Because Ms.
19 McCletchie requested this matter be heard on order shortening time and because of the
20 cumulative nature of the briefing that has occurred, this reply to the opposition and the
21 opposition to the counter-motion follows. Plaintiffs are entitled to the TRO that was previously
22 ordered by the Court, for the counter-motion to be denied in its entirety, and for injunctive
23 relief in the case at bar.

24
25 **A. THE DECLARATION OF MARGARET A. MCLETCHIE, ESQ.:**

26 1. Ms. McLetchie, Esq. indicates in her Declaration that there is a pending Order of the
27 District Court in Case No.: A-17764842, which Order has been Appealed to the Supreme Court
28

1 in Docket Number: 74604, with a filed Order removing the Appeal from the Settlement Program
2 and briefing stayed pending resolution of Respondent's motion to dismiss.

3 2. Ms. McLetchie, Esq. further addresses the fact that this action does not address the
4 autopsy results and or file contents as regard Stephen Paddock, which is correct. This action only
5 involves the autopsy file and results for Charleston Hartfield, whose wife, Veronica Hartfield, is
6 continuing to suffer from the loss of her husband and best friend.

7 3. Defendants further stretch the impact of the instant TRO to imply that it acts as a
8 global gag order. They attempt to create this distraction in an effort to disregard the privacy, the
9 emotions, and the horror suffered by Mrs. Hartfield. All of this being done in an effort to
10 accomplish their objective, which is to glorify the eternal suffering and loss with which these
11 families will forever live. The undersigned only represents Veronica Hartfield and the Estate of
12 Charleston Hartfield. If and when the families of the other deceased victims elect to pursue
13 remedies, the court can address those issues at that time. Plaintiffs are asking that this court
14 Order that Charleston Hartfield's autopsy results and the coroner's file for him be deemed
15 Confidential.

16 4. Defendants state that they did not receive advance notice. This Court issued a TRO
17 (Temporary). The Court hand wrote the TRO was immediately effective. Defendants were
18 immediately notified of the same as undersigned's office telephoned Ms. McLetchie's office on
19 February 2, 2018 and did leave an extensive message with Ms. McLetchie's assistant.
20 Subsequently, Ms. McLetchie did send an email communication stating she never received a
21 message. That position changed in Defendant's recent pleading. The file stamped copy was not
22 received until late Friday evening. It was sent out for service on Saturday. Counsel would have
23 received notice even sooner had she elected either to return the phone call or review carefully the
24 detailed message that was left.

25 5. Ms. McLetchie declares that the media has a "constitutional right" that has been
26 infringed upon by the issuance of the TRO. The media does not have a constitutional right to
27 Charleston Hartfield's autopsy report, nor do they have a constitutional right to publish
28

1 worldwide the medical history of Charleston Hartfield in order to continue to glorify this tragedy
2 by using the victims' autopsy reports as the basis to sell newspapers.

3 6. Ms. McLetchie further declares that in regard to anonymity, , as well as the redacted
4 information in the produced coroner reports, that it is not possible to discern which victim is
5 which. It is further asserted that it then makes no difference in relation to an individual's privacy
6 rights. This is deceptive and disingenuous, as will be addressed herein..

7 **3. LEGAL ARGUMENT**

8 Plaintiff adopts herein as though fully set forth statements set forth in the Application for
9 TRO and Motion for Injunction.

10 Plaintiff Veronica Hartfield and the Estate of Charleston Hartfield are here seeking to
11 retain as confidential any autopsy reports or materials relating to Mr. Hartfield. (*See* Declaration
12 of Veronica Vernice Hartfield, attached as Exhibit 1). It should not be hard to understand why
13 Veronica Hartfield would want to maintain the integrity of her husband's body and remains. It is
14 bad enough to suffer as she, and many others have, as a result of the worst shooting in American
15 History. Nevertheless, the defendants state that this is about the First Amendment, and the
16 public's right to know, but for the plaintiff it is about her right to not have her husband's
17 confidential and private information broadcast, published, and trampled upon. (Exhibit 1).

18 Defendants argue that because of the anonymity created by the redaction of the coroner
19 reports and autopsy, that there will not be a harm suffered by Plaintiff. That argument fails for
20 several reasons. The invasion itself into the plaintiffs' medical, bodily remains, and autopsy in
21 general are wildly intrusive. Autopsy reports by their nature examine the most intimate details of
22 a human body, including the vascular system, the brain, internal organs, blood, and so on. The
23 invasion into Mr. Hartfield's remains is the most invasive intrusion imaginable. To then publish
24 those materials will act to consistently violate the Plaintiff's rights for eternity. Removing a
25 name from a report does not end or curtail the violation, it merely conceals a name.

26 It cannot be overstated that the plaintiffs' rights to privacy and confidentiality far
27 outweighs what the public *may* garner from an anonymous autopsy report. The plaintiffs clearly
28

1 have a right to their privacy. It is unclear what policy, or what benefit is served by granting
2 Defendant's Petition.

3
4 **A. PERSONAL PRIVACY RIGHTS ARE DIFFERENT THAN THOSE THAT
CAN BE ASSERTED BY GOVERNMENTAL ENTITIES**

5 Although the Media Defendants attempt to argue this issue has already been litigated in
6 another court, this argument is disingenuous because Plaintiff has a completely separate claim in
7 this matter. Plaintiff is not a government entity attempting to retain records to keep them
8 confidential. Plaintiff is the wife of the deceased who enjoys a specific privacy right to keep the
9 autopsy report of her husband confidential.

10 Family members of decedents have a privacy right in records regarding their deceased
11 relatives. *Katz v. National Archives & Records Admin.*, 862 F.Supp. 476 (D.D.C. 1994). In *Katz*,
12 the court held:

13 [T]he Kennedy family has a clear privacy interest in preventing the disclosure
14 of both the x-rays and the optical photographs taken during President
15 Kennedy's autopsy...However, there can be no mistaking that the Kennedy
16 family has been traumatized by the prior publication of the unauthorized
records and that further release of the autopsy materials will cause additional
anguish...

17 ...The Court finds that allowing access to the autopsy photographs would
18 constitute a clearly unwarranted invasion of the Kennedy family's privacy.

19 *Katz*, 862 F.Supp. at 485-86. See also *Badhwar v. United States Dep't of Air Force*, 829 F.2d
20 182, 185-86 (D.C. Cir. 1987) (families of deceased aircraft pilots have a privacy interest in
21 autopsy reports); *New York Times Co. v. NASA*, 782 F.Supp. 628 (D.D.C. 1991) (reporter's
22 request to obtain disclosure of tape-recorded voice communications aboard the Challenger space
23 shuttle on date of accident killing seven astronauts denied as unwarranted invasion of the
24 personal privacy of the astronaut's families).

25 In *Cowles Publ'g Co. v. State Patrol*, 109 Wash.2d 712, 748 P.2d 597 (1988), the court
26 identified the nature of facts protected by the right of privacy, stating:

27 Every individual has some phases of his life and his activities and some
28 facts about himself that he does not expose to the public eye, but keeps entirely

1 to himself or at most reveals only to his family or to close personal
2 friends. Sexual relations, for example, are normally entirely private matters,
3 as are family quarrels, many unpleasant or disgraceful or humiliating
4 illnesses, most intimate personal letters, most details of a man's life in his
5 home, and some of his past history that he would rather forget. When
6 these intimate details of his life are spread before the public gaze in a
7 manner highly offensive to the ordinary reasonable man, there is an
8 actionable invasion of his privacy, unless the matter is one of legitimate
9 public interest.

10 *Cowles Publ'g Co.*, 109 Wash.2d at 721, 748 P.2d 597 (quoting Restatement (Second) of Torts
11 sec. 652D, at 386 ('977)). *See also Seattle Firefighters Union Local No. 27 v. Hollister*, 48
12 Wash. App. 129, 135 P.2d 1302 (1987).

13 The *Reid* court utilized the *Cowles* decision in its holding that the family of the decedent
14 had a privacy right to autopsy reports, given the confidential nature of autopsy reports, and that
15 by displaying autopsy photographs, a matter private to the lives of the Plaintiffs was given
16 publicity by the County. *Reid v. Pierce County*, 961 P.2d 333 (Wash. 1998).

17 In Case No. A-17-764842-W, Dept. XVI, the District Attorney referenced a Declaration
18 of John Fudenberg, and attached his Declaration as Exhibit A.

19 The Declaration, in sum, discusses the investigation that occurs when the coroner's office
20 is notified of a death and the circumstances fall under the jurisdiction of the coroner's office.
21 (Exhibit 5). The declaration states that information is gathered from the scene and persons, such
22 as witnesses, law enforcement officers, and family members. The investigation often entails
23 obtaining medical records or health information of the decedent and most often, an autopsy is
24 conducted. (Exhibit 5).

25 In conducting an autopsy, the medical examiners perform an external and internal exam
26 of the body. (Exhibit 5). They review investigative findings, medical records, and health history.
27 They examine organs, and histology samples. (Exhibit 5).

28 The content of the autopsy report includes an analysis as to the medical/health status or
condition of the exterior parts of the body. (Exhibit 5). The findings related to the internal
examination are also included, which may include radiographic findings, detailed descriptions of

1 medical evaluations as to the condition of organs and functions which may include the neck (ie
2 thyroid, cricoid, prevertebral tissue and muscles); cardiovascular system (ie aorta, coronary
3 arteries, heart), respiratory system (ie trachea, major bronchi, pulmonary vessels, lungs),
4 hepatobiliary system (ie liver), hemolymphatic system (ie spleen), gastrointestinal system (ie
5 esophagus, stomach, appendix, intestines), genitourinary system (ie renal and genitalia),
6 endocrine system, (ie thyroid and adrenal glands), central nervous system, (ie brain). (Exhibit 5).

7 The fluids, tissue and organ samples retained and submitted for testing are included in the
8 autopsy report along with the type of tests ordered. (Exhibit 5). Test results and microscopic
9 examinations are also included. References to specific medical records, specific medical or
10 health information and personal characteristics may be included in the autopsy report. This could
11 include sexual orientation, types of diseases such as venereal, HIV, liver, cancer, mental illness,
12 drug or alcohol addiction or overdoses. This information might not be publicly known, or desired
13 by the decedent or its family to be public, and its dissemination may result in unwanted social
14 stigmas or embarrassment to a family. (Exhibit 5).

15 Given how utterly invasive these autopsy reports are and Plaintiffs' right to privacy that
16 is clearly established in the case law above, it cannot be disputed that Plaintiffs have a privacy
17 interest in keeping Mr. Hartfield's autopsy records and/or reports confidential. The test
18 ultimately turns to a balancing test of whether the right to make these records public outweighs
19 the privacy interest Plaintiffs have in keeping these records confidential.

20 Although Defendants' pleadings are filled with conjecture and accusation, there has still
21 been no legitimate basis explained for why Mr. Hartfield's autopsy records need to be shared
22 with the general public. What purpose will that serve? Overall, how is knowing that an
23 individual may have been dying of cancer, or suffered from an embarrassing venereal disease, or
24 once had a caesarian section going to assist the public in understanding why this mass shooting
25 occurred? Specific to this Plaintiff, and this family, how is knowing Plaintiff's husband's most
26 personal physical and medical history going to be of any benefit to the public?

27 Although the argument is put forth that redaction covers privacy concerns, it is clear that
28 is not the case. Already, the names, ages, and sex of each victim has been identified on the

1 internet. (Exhibit 3). Already, the cause and manner of death of each victim has been identified.
2 (Exhibit 4). With the amount of information already available about the victims, even with
3 redaction, Plaintiff's husband could easily be identified if someone in the general public wanted
4 to figure out which autopsy report was his. And what purpose would that ultimately serve the
5 general public? There is no reasonable answer to this question.

6 What is evident, however, is the enormous invasion of privacy that will occur to Plaintiff,
7 and her family, should his records be released to the general public. And what is more evident is
8 the amount of trauma and grief this family has already suffered. (Exhibit 1). Plaintiff is a
9 devastated widow who is still grieving the loss of her husband, and who is trying to protect their
10 children from being further exposed and traumatized by the loss of their father by having their
11 peers, friends, and neighbors read about their father's personal life on the internet. Although the
12 "Media Defendants" claim they are "sympathetic" to the family, their trivialization of the
13 devastation and grief this family is going through, as set forth in the opposition, attempting to
14 minimize the irreparable harm that will be suffered by this family, cannot be discounted. As
15 such, an analysis is required to determine the privacy rights afforded to this family vs. the alleged
16 benefit the public will receive should dissemination of Mr. Hartfield's personal and private
17 information, continue to occur.

18 Nevada case law is clear that this balancing test must occur. *Donrey of Nevada v.*
19 *Bradshaw*, 106 Nev. 630, 798 P.2d 144 (Nev. 1990) and *Reno Newspapers, Inc. v. Gibbons*, 127
20 Nev. 873, 880, 266 P.3d 623, 628 (2011).

21 In applying the balancing test adopted by the Nevada Supreme Court, the interests against
22 nondisclosure outweigh the public's interest in access to the autopsy records and reports. As
23 described in the declaration attached as Exhibit 5, autopsy records are very invasive, and are
24 largely composed of medical and health information. In the DA's response to the case outlined in
25 Exhibit 5, it is recognized that this information is treated confidential by federal law, pursuant to
26 the Health Insurance Portability and Accountability Act of 1996, as well as state law under NRS
27 Chapter 629. (Exhibit 5).

28

1 Additionally, other information that may be contained in autopsy reports, ie
2 communicable diseases (NRS 441A.220) or whether someone was born out of wedlock is also
3 declared confidential by law (NRS 440.170). (Exhibit 5). Further, as argued in the case before
4 Judge Williams, NRS 259.045 specific certain individuals who may obtain the reports, and the
5 media is not included. *See* Exhibit 5.

6 Plaintiff's family is already grieving and dissemination of the autopsy reports and records
7 would only cause more irreparable harm. (Exhibit 1). The Nevada Supreme Court has also
8 recognized that an individual's privacy is an important interest. *See Reno Newspapers v. Haley*,
9 234 P.3d 922 (Nev. 2010). Because Plaintiffs' interests of nondisclosure outweigh the public's
10 interest in obtaining this information, Plaintiffs' TRO should be upheld.

11 **B. PLAINTIFF IS NOT RESTRICTING DEFENDANT'S FREE SPEECH.**

12 The plaintiffs herein are seeking to retain the confidentiality of Mr. Hartfield's autopsy
13 report and coroner file. Pursuant to NRS 239.0115(b), this court is being asked to declare Mr.
14 Hartfield's personal information confidential. That section reads in relevant part:

15 **NRS 239.0115 Application to court for order allowing inspection or**
16 **copying of public book or record in legal custody or control of governmental**
17 **entity for at least 30 years; rebuttable presumption; exceptions.**

18 1. Except as otherwise provided in this subsection and subsection 3,
19 notwithstanding any provision of law that has declared a public book or record, or
20 a part thereof, to be confidential, if a public book or record has been in the legal
21 custody or control of one or more governmental entities for at least 30 years, a
22 person may apply to the district court of the county in which the governmental
23 entity that currently has legal custody or control of the public book or record is
24 located for an order directing that governmental entity to allow the person to
25 inspect or copy the public book or record, or a part thereof. If the public book or
26 record pertains to a natural person, a person may not apply for an order pursuant
27 to this subsection until the public book or record has been in the legal custody or
28 control of one or more governmental entities for at least 30 years or until the
29 death of the person to whom the public book or record pertains, whichever is
30 later.

31 2. There is a rebuttable presumption that a person who applies for an order
32 as described in subsection 1 is entitled to inspect or copy the public book or
33 record, or a part thereof, that the person seeks to inspect or copy.

34 3. The provisions of subsection 1 do not apply to any book or record:

35 (a) Declared confidential pursuant to NRS 463.120.

36 (b) **Containing personal information pertaining to a victim of crime that**
37 **has been declared by law to be confidential.**

1 (Added to NRS by 2007, 2062; A 2009, 290)

2 Mr. Hartfield is the victim of a violent crime. The Defendants are not seeking to release
3 his private and confidential information to serve a public interest or to benefit the public. There
4 has been no legitimate explanation of what will be the benefit to the public to have his autopsy
5 records released. The Defendants have only argued that they have a right to it, but in the balance
6 of interests, the plaintiffs' right to privacy and confidentiality is only served by not releasing Mr.
7 Hartfield's autopsy results.

8 **C. PLAINTIFF MEETS THE LEGAL STANDARD FOR AN *EX PARTE***
9 **APPLICATION FOR TEMPORARY RESTRAINING ORDER**

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

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

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

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

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

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

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

D. THE FACTS AND CIRCUMSTANCES WARRANT THE POSTING OF A MINIMAL BOND BY PLAINTIFFS

NRCP 65(c) requires that in order for a Temporary Restraining Order or Preliminary Injunction to issue, a bond must be posted in an amount determined to be reasonable by the Court. A security bond protects the enjoined party from any costs and damages which the party may incur or suffer due to the wrongful issuance of the injunction. NRCP 54(c); *see also Am. Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 854 P.2d 868 (1993).

Here, the Office of the Clark County Coroner and the Las Vegas Review Journal clearly have no legitimate interests that could be harmed by this Court's issuance of an injunction, particularly as regard Mr. Hartfield's autopsy; a minimal bond is appropriate.

CONCLUSION

Based on the foregoing reasons, Plaintiff requests that Defendant's Counter-motion be denied and that her request for injunctive relief be granted..

Dated this 8 day of February, 2018.

SGRO & ROGER

ANTHONY P. SGRO, ESQ.
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Attorneys for Plaintiff

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_____ by first class mail, prepaid, addressed to the recipients below,
 _____ by facsimile transmission to the recipients' telephone numbers below,
 x by electronic service via the Clark County District Court electronic filing system,
 _____ by hand delivery to the recipients below.

Laura Rehfeldt, Esq.
Clark County District Attorney
500 S. Grand Central Pkwy.
Las Vegas, NV 89106

Jennifer Jackson
An Employee of SGRO & ROGER

Exhibit 1

1 **DECLARATION OF VERONICA VERNICE HARTFIELD**

2 I, Veronica Vernice Hartfield, under penalty of perjury declare:

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

7 2. I am the Plaintiff in this matter and I make this declaration upon my own
8 personal knowledge.

9 3. I met my husband when I was 14 years old. We were high school sweethearts.

10 4. He served in the military and completed a tour in Iraq; I went to college and
11 became a registered nurse. We married in 2002 in California. After his 4.5 years of active duty
12 service, my husband joined the National Guard, and was still affiliated with the National Guard
13 until his death.

14 5. My husband and I have two beautiful children together, a son who is 15 years
15 old, and a daughter who is 9 years. Old. My husband's murder has been devastating to the
16 family, especially our children.

17 6. I am employed with St. Rose Delima Campus. At the time of my husband's
18 death, he was employed with Las Vegas Metropolitan Police Department (LVMPD), and had
19 been employed there since 2006.

20 7. I have worked very hard to shield our children from as much exposure to my
21 husband's murder, as possible. My son's classmate(s) have already seen information pertaining
22 to the murder on the internet and a photo was put up of my husband and the shootings that
23 occurred on October 1, 2017.

24 8. I want my husband and my family to have dignity and respect in regard to his
25 murder. As his wife, it is my responsibility to keep my husband's private and personal
26 information, private. It angers me that people and/or entities are exploiting my husband's
27 murder for their own personal gain. If anyone has a question about my husband's autopsy and
28 how he died, that person or entity is able to request to obtain this information from me.

1 9. On October 1, 2017, my husband and I were attending a country music festival
2 with friends when we heard a noise that sounded like firecrackers or fireworks going off.

3 10. My husband, a LVMPD officer, and having been active military was
4 immediately hypervigilant and told me to put my phone away. He said the sound was not
5 fireworks or firecrackers and began directing people, in order to assist with the chaos and the
6 rush of people that was beginning to surround us.

7 11. We heard what sounded like rapid fire and I noticed my husband looked up. He
8 stopped as many people as possible and directed them to get down. He placed me on the ground
9 underneath him.

10 12. During those moments, I heard my husband say he had been hit.

11 13. When the first rounds of fire finished, everyone got up except my husband. I told
12 him we had to get up and go and he did not respond. I tried to pull my husband out of the scene
13 with my friend.

14 14. I called 911.

15 15. More rounds were fired.

16 16. My friend, who was laying next to me, was also shot in the back.

17 17. When the firing ceased again, I rolled my husband over. I could see blood from
18 coming from his mouth and I tried to find a point of impact. I could not see or feel anything, but
19 it was very dark.

20 18. I have not been able to return to work since the shootings.

21 19. I have been seeing a therapist once a week for the trauma from this event.

22 20. I cannot talk about what happened to my husband and my family without crying.

23 21. After the shooting, a list of the victims came out with their names, birthdates, and
24 sex.

25 22. From that point on, more identifying information of the victims was released
26 through the media.

27 23. I never knew that there was an issue with autopsy reports being released.

28 24. No one ever provided any notice to me that m husband's autopsy report could be

1 released.

2 25. I was never informed that the coroner's office was subject to a lawsuit about
3 autopsy reports being released. I assumed this was private information.

4 26. A friend of mine mentioned something to me about autopsy reports being
5 released.

6 27. Even with redacted information, it would still be easy to ascertain my husband
7 from the autopsy reports.

8 28. I am trying to protect my children and my husband's reputation so that he has
9 dignity, even in death.

10 29. No one has asked me how I feel about his autopsy being produced to the public.
11 No one has asked me how I feel about the private information about the investigation done on
12 his body, and the reports that stem therefrom.

13 30. My children are growing up in the age of technology and we deserve privacy
14 regarding my husband's personal matters. As such, I am requesting that the information
15 contained in my husband's autopsy report remain private and confidential. Redacting his name
16 or other personal information does not make it acceptable to release this information to the
17 general public.

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

19
20 Dated this 8 day of February, 2018.

21
22 
23 VERONICA VERNICE HARTFIELD

24 This Declaration is submitted pursuant to NRS 53.045, such that it shall have the same force and
25 effect as a sworn affidavit. I declare under penalty of perjury that the contents of this Declaration
26 are true and correct.
27
28

Exhibit 2

Subject: RE: Hartfield v. Office of the Clark County Coroner, et. al.
Date: Monday, February 5, 2018 at 10:19:23 AM Pacific Standard Time
From: maggie
To: Tony Sgro, Craig Bourke
CC: Jennifer Jackson, pharan@nvlitigation.com, Alina
Attachments: image001.jpg

Tony: You did not advise me that you would be pursuing any filing and I assumed that you understood that your matter was unnecessary as the records were redacted. Which number did you leave a message at? Further, nothing has been served on me (or my clients). Again, please call me at your convenience.



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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From: Tony Sgro [mailto:tsgro@sgroandroger.com]
Sent: Monday, February 05, 2018 10:16 AM
To: maggie <maggie@nvlitigation.com>; Craig Bourke <cbourke@sgroandroger.com>
Cc: Jennifer Jackson <jackson@sgroandroger.com>; pharan@nvlitigation.com; Alina <Alina@nvlitigation.com>
Subject: Re: Hartfield v. Office of the Clark County Coroner, et. al.

Maggie-

Obviously, we are not withdrawing the motion. When we spoke about this issue, prior to filing, you are correct that you told me about some of the reactions that had occurred. I devised you then, that I likely would move forward on some sort of injunctive relief despite that information. Immediately after it was filed, because you, during our prior conversation, advised that you represented the review journal and the associated press, we contacted you to alert you. We left you a detailed message. You did not respond to that telephone message. I am returning to the office as we speak, and will make certain that if you do not already have the pleadings, you will have them shortly

On Feb 5, 2018, at 8:39 AM, maggie <maggie@nvlitigation.com> wrote:

Tony:

Please call me at your very earliest convenience. I learned from counsel for the Coroner that you filed an emergency motion for an injunction. In light of the facts that the records *do not contain personally-identifying information* (as we discussed) and that you did not serve my client, I am presuming you are withdrawing this motion.

Maggie

<image001.jpg>

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Las Vegas, NV 89101
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Exhibit 3

CRIME • October 5th, 2017

List of those killed in the Oct. 1 shooting in Las Vegas

Associated Press

LAS VEGAS – The following is a list from the Clark County Coroner's Office of the 58 people who died in the Oct. 1 mass shooting in Las Vegas, the deadliest in the nation's modern history. Shooter Stephen Craig Paddock also took his own life.

NAME DATE OF BIRTH GENDER

Ahlers, Hannah Lassette — 6/2/1983 Female

Alvarado, Heather Lorraine — 9/20/1982 Female

Anderson, Dorene — 4/16/1968 Female

Barnette, Carrie Rae — 12/16/1982 Female

Beaton, Jack Reginald — 12/10/1962 Male

Berger, Stephen Richard — 9/30/1973 Male

Bowers, Candice Ryan — 8/10/1977 Female

Burditus, Denise — 6/5/1967 Female

Casey, Sandra — 11/1/1982 Female

Castilla, Andrea Lee Anna — 9/29/1989 Female

Cohen, Denise — 8/2/1959 Female

Davis, Austin William — 6/20/1988 Male

Day Jr., Thomas — 10/29/1962 Male

Duarte, Christiana — 8/7/1995 Female

Etcheber, Stacey Ann — 2/26/1967 Female

Fraser, Brian S. — 8/20/1978 Male

Galvan, Keri — 8/20/1986 Female

Gardner, Dana Leann — 7/6/1965Female

Gomez, Angela C. — 12/26/1996Female

Guillen, Rocio — 12/20/1976 Female

Hartfield, Charleston — 5/16/1983Male

Hazencomb, Christopher — 9/27/1973 Male

Irvine, Jennifer Topaz — 6/6/1975 Female

Kimura, Teresa Nicol — 3/24/1979 Female

Klymchuk, Jessica — 5/1/1983 Female

Kreibaum, Carly Anne — 12/9/1983 Female

LeRocque, Rhonda M. — 8/29/1975 Female

Link, Victor L. — 9/7/1962 Male

McIlldoon, Jordan — 10/6/1993 Male

Meadows, Kelsey Breanne — 6/26/1989 Female

Medig, Calla-Marie — 8/8/1989 Female

Melton, James — 8/2/1988 Male

Mestas, Patricia — 7/25/1950 Female

Meyer, Austin Cooper — 9/18/1993 Male

Murfitt, Adrian Allan — 7/5/1982 Male

Parker, Rachael Kathleen — 12/16/1983 Female

Parks, Jennifer — 1/18/1981 Female

Parsons, Carolyn Lee — 12/28/1985 Female

Patterson, Lisa Marie — 6/26/1971 Female

Phippen, John Joseph — 10/25/1960 Male

Ramirez, Melissa V. — 11/29/1990 Female

Rivera, Jordyn N. — 7/22/1996 Female

Robbins, Quinton — 3/21/1997 Male

Robinson, Cameron — 1/1/1989 Male

Roe, Tara Ann — 9/1/1983 Female

Romero-Muniz, Lisa — 5/19/1969 Female

Roybal, Christopher Louis — 10/9/1988 Male

Schwanbeck, Brett — 1/31/1956 Male

Schweitzer, Bailey — 4/5/1997 Female

Shipp, Laura Anne — 5/9/1967 Female

Silva, Erick — 8/19/1996 Male

Smith, Susan — 8/24/1964 Female

Stewart, Brennan Lee — 2/19/1987 Male

Taylor, Derrick Dean — 9/25/1961 Male

Tonks, Neysa C. — 7/27/1971 Female

Vo, Michelle — 1/10/1985 Female

Von Tillow, Kurt Allen — 12/4/1961 Male

Wolfe Jr., William W. — 10/15/1974 Male

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U.S.

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Economy
Personal Freedoms

Politics

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House
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Exhibit 4



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
Gullen, Rodio	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
Kreibbaum, 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
McIllood, 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
Schweltzer, 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

Exhibit 5

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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.

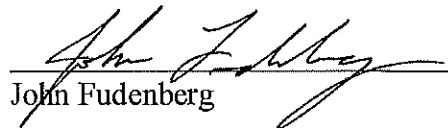
28

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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REGISTER OF ACTIONS

CASE NO. A-18-768781-C

Veronica Hartfield, Plaintiff(s) vs. Office of the Clark County Coroner ,
Defendant(s)

§
§
§
§
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§

Case Type: Other Civil Matters
Date Filed: 02/02/2018
Location: Department 2
Cross-Reference Case Number: A768781

PARTY INFORMATION

Defendant	Associated Press	Lead Attorneys Margaret A. McLetchie Retained 702-728-5300(W)
Defendant	Las Vegas Review Journal	Margaret A. McLetchie Retained 702-728-5300(W)
Defendant	Office of the Clark County Coroner	
Plaintiff	Estate of Charleston Hartfield	Anthony P. Sgro Retained 7023859595(W)
Plaintiff	Hartfield, V eronica	Anthony P. Sgro Retained 7023859595(W)

EVENTS & ORDERS OF THE COURT

02/09/2018 Minute Order (3:00 AM) (Judicial Officer Scotti, Richard F.)
Motion for Preliminary Injunction requested by Plaintiff Veronica Hartfield

Minutes

02/09/2018 3:00 AM

- Consistent with the Court's oral ruling today, the Court DENIES the Emergency Counter-Motion to Dissolve Temporary Restraining Order Immediately on Order Shortening Time filed by the Las Vegas Review Journal and the Associated Press. The Court GRANTS the Motion for Preliminary Injunction requested by Plaintiff Veronica Hartfield and the Estate of Charleston Hartfield. The existing cash bond shall remain in effect. The Hearing set for Monday, February 12, 2018 is therefore MOOT and VACATED. The Court sets a Status Check on this matter regarding compliance with the Preliminary Injunction, for Monday, March 12, 2018.

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REGISTER OF ACTIONS

CASE No. A-18-768781-C

Veronica Hartfield, Plaintiff(s) vs. Office of the Clark County Coroner ,
Defendant(s)

§
§
§
§
§
§

Case Type: Other Civil Matters
Date Filed: 02/02/2018
Location: Department 2
Cross-Reference Case Number: A768781

PARTY INFORMATION

Defendant	Associated Press	Lead Attorneys Margaret A. McLetchie Retained 702-728-5300(W)
Defendant	Las Vegas Review Journal	Margaret A. McLetchie Retained 702-728-5300(W)
Defendant	Office of the Clark County Coroner	
Plaintiff	Estate of Charleston Hartfield	Anthony P. Sgro Retained 7023859595(W)
Plaintiff	Hartfield, V eronica	Anthony P. Sgro Retained 7023859595(W)

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS
02/02/2018	Complaint
	Complaint
02/02/2018	Initial Appearance Fee Disclosure
	Initial Appearance Fee Disclosure
02/02/2018	Temporary Restraining Order
	Plaintiff's Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time
02/02/2018	Summons Electronically Issued - Service Pending
	Summons
02/02/2018	Summons Electronically Issued - Service Pending
	Summons
02/02/2018	Summons Electronically Issued - Service Pending
	Summons
02/07/2018	Non Opposition
	Response in Non-Opposition
02/07/2018	Order Shortening Time
	Emergency Counter-Motion to Dissolve Temporary Restraining Order Immediately on Order Shortening Time [Immediate Action Required]
02/07/2018	Opposition
	Opposition to Ex Parte Application for Temporary Restraining Order/Motion for Preliminary Injunction
02/07/2018	Initial Appearance Fee Disclosure
	Initial Appearance Fee Disclosure (NRS Chapter 19)
02/08/2018	Notice of Entry
	Notice of Entry of Emergency Counter-Motion to Dissolve Temporary Restraining Order Immediately on Order Shortening Time [Immediate Action Required]
02/08/2018	Receipt of Copy
	Receipt of Copy
02/08/2018	Receipt of Copy
	Receipt of Copy
02/09/2018	Motion to Modify or Dissolve TPO (9:00 AM) (Judicial Officer Scotti, Richard F.)
	Emergency Counter-Motion to Dissolve Temporary Restraining Order Immediately on Order Shortening Time [Immediate Action Required]
02/09/2018	Opposition
	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	Minute Order (3:00 AM) (Judicial Officer Scotti, Richard F.)
	Motion for Preliminary Injunction requested by Plaintiff Veronica Hartfield
	Minutes
	Result: Granted
02/12/2018	CANCELED Preliminary Injunction Hearing (9:00 AM) (Judicial Officer Scotti, Richard F.)
	Vacated
	Plaintiffs' Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time
03/12/2018	Status Check (9:00 AM) (Judicial Officer Scotti, Richard F.)

PA325

Status Check on this matter regarding compliance with the Preliminary Injunction

FINANCIAL INFORMATION

	Defendant Las Vegas Review Journal		
	Total Financial Assessment		253.00
	Total Payments and Credits		253.00
	Balance Due as of 02/09/2018		0.00
02/08/2018	Transaction Assessment		253.00
02/08/2018	Efile Payment	Receipt # 2018-09182-CCCLK	Las Vegas Review Journal (253.00)
	Plaintiff Estate of Charleston Hartfield		
	Total Financial Assessment		300.00
	Total Payments and Credits		300.00
	Balance Due as of 02/09/2018		0.00
02/02/2018	Transaction Assessment		300.00
02/02/2018	Efile Payment	Receipt # 2018-07760-CCCLK	Estate of Charleston Hartfield (300.00)

From: Laura Rehfeldt <Laura.Rehfeldt@clarkcountyda.com>
Sent: Friday, February 09, 2018 4:12 PM
To: maggie; Alina; pharan@nvlitigation.com
Cc: Mary-Anne Miller; Ofelia Monje
Subject: Media Requests
Attachments: requests.pdf

Maggie –

Attached are the media requests pertaining to the autopsies of Stephen Paddock and/or the 58 victims. They may include ones that I provided you last October.

Laura

Laura C. Rehfeldt

Deputy District Attorney | Senior Attorney
Laura.Rehfeldt@clarkcountyda.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: [Elinson, Zusha](#)
To: [Dan Kulin](#)
Subject: Autopsy reports
Date: Tuesday, January 30, 2018 6:30:39 PM

Hi Dan - Can you send me those autopsy reports that the judge ordered released today?

Best,

--

Zusha Elinson



M: 415-297-3016
O: 415-765-6110
E: zusha.elinson@wsj.com
T: @ZushaElinson

IAPE Local 1096: We Power Dow Jones.

From: [Sidner, Sara](#)
To: [Dan Kulin](#)
Subject: CNN request for information on Autopsies & Draft Autopsy related to the Las Vegas Mass Shooting
Date: Tuesday, January 30, 2018 12:47:56 PM

Hey Dan,

This is Sara Sidner with CNN. I am requesting copies of autopsies that the court has deemed to be public record today. Please let me know that you received this email. And I think you told me you think the copies will take a couple of hours to get hold off.

Will you send them out to my email specifically or to the media blast?

Thanks again for your help,
Sara

Sara Sidner
CNN
National Correspondent
323-229-5730

From: [Montero, David](#)
To: [Dan Kulin](#)
Subject: formaal rquest re Oct. 1 shooting in Las Vegas
Date: Friday, October 13, 2017 5:53:08 PM

Hi Dan, here is the formal request:

Under the **Nevada Open Records Act § 239 et seq.**, I am requesting an opportunity to inspect or obtain copies of public records that pertain to the shooting on Oct. 1, 2107 involving the deaths of 58 people and one shooter at the Route 91 Harvest Festival from the Mandalay Bay, specifically causes of death and autopsy reports for the 58 victims and the shooter, Stephen Paddock.

If there are any fees for searching or copying these records, please inform me if the cost. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the events of Oct. 1, 2017 and is related to news gathering purposes for the Los Angeles Times. This information is not being sought for commercial purposes.

If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering the request.

Regards,

David Montero
Los Angeles Times
(213) 268-4659
Twitter: @davemontero

From: [Nicole Charlton](#)
To: [Dan Kulin](#)
Subject: FW: 17-10064 Paddock, Stephen
Date: Monday, February 05, 2018 3:07:23 PM

Nicole Charlton

*Administrative Secretary
Clark County Office of the Coroner/Medical Examiner
1704 Pinto Lane
Las Vegas, NV 89106
Nicole.Charlton@clarkcountynv.gov
Office: (702) 455-3210
Desk: (702) 455-1937
Fax: (702) 387-0092*

Accredited by:



From: Kelsey Jeralds
Sent: Friday, December 15, 2017 12:59 PM
To: Nicole Charlton
Subject: 17-10064 Paddock, Stephen

You may already have an email about this.

But Christian Duran from TBS news is trying to request a copy of the autopsy report on Stephen Paddock.

I told him I did not believe we released autopsy reports to news outlets but he was insistent I email someone.

His number is 818-655-1847 if you wish to speak with him.

Kelsey Jeralds
Clerical Assistant
Clark County Coroner's Office
1704 Pinto Ln.
Las Vegas, NV 89106
702-455-3210

From: [Nicole Charlton](#)
To: [Dan Kulin](#)
Subject: FW: Autopsy records request
Date: Monday, February 05, 2018 3:06:41 PM

Nicole Charlton

*Administrative Secretary
Clark County Office of the Coroner/Medical Examiner
1704 Pinto Lane
Las Vegas, NV 89106
Nicole.Charlton@clarkcountynv.gov
Office: (702) 455-3210
Desk: (702) 455-1937
Fax: (702) 387-0092*

Accredited by:



From: Ivan Pentchoukov [mailto:ivan.pentchoukov@epochtimes.nyc]
Sent: Saturday, October 21, 2017 11:00 AM
To: Nicole Charlton
Subject: Autopsy records request

Dear Ms. Coleman,

In accordance with the to State of Nevada public records law, I am writing to request autopsy reports for the 58 victims and 1 suspect of the Oct. 1 shooting as per the official list released by the coroner here:

<http://www.clarkcountynv.gov/public-communications/Pages/Clark-County-Coroner-Releases-Names-of-Deceased-from-Oct--1-Mass-Shooting.aspx>

It is my understanding that a September ruling by a judge established that all autopsy reports are public records.

I would prefer to receive the records in a digital format sent to this email or to the below physical address and am willing to pay the associated costs.

I am a reporter and my request for these records is in the public's interest.

Thank you.

--

Ivan Pentchoukov

Reporter

(646) 957-3049

EPOCH TIMES

229 West 28th Street, Floor 7

New York, NY 10001

From: [John Fudenberg](#)
To: [Dan Kulin](#)
Subject: FW: media request for 1 October autopsies
Date: Tuesday, February 06, 2018 9:42:32 AM

Nicole Charlton

*Administrative Secretary
Clark County Office of the Coroner/Medical Examiner
1704 Pinto Lane
Las Vegas, NV 89106
Nicole.Charlton@clarkcountynv.gov
Office: (702) 455-3210
Desk: (702) 455-1937
Fax: (702) 387-0092*

Accredited by:



From: Deena Sayegh
Sent: Tuesday, January 30, 2018 2:39 PM
To: John Fudenberg
Cc: Nicole Charlton
Subject: media request for 1 October autopsies

Jamie, from News 3, called to inquire about the release of 1 October victims autopsies.

She can be reached at 702-657-3150.

Thanks

Deena Sayegh
Office Assistant
Clark County Coroner's Office
1704 Pinto Lane
Las Vegas, Nevada 89106
Office: 702-455-3210
Fax: 702-455-0416

Accredited by:



From: [Erik Pappa](#)
To: [Dan Kulin](#)
Subject: FW: NYTimes requests - medical/ toxicology reports
Date: Monday, February 05, 2018 5:08:43 PM

From: Erik Pappa
Sent: Monday, October 09, 2017 10:20 AM
To: Medina, Jennifer
Subject: Re: NYTimes requests - medical/ toxicology reports

Not soon. Erik

Sent from my iPhone

On Oct 9, 2017, at 10:13 AM, Medina, Jennifer <jemedina@nytimes.com> wrote:

Thanks so much for the quick response. Will do - any clue when it will come?
(off the record is fine, just trying to get fair expectation.)

On Mon, Oct 9, 2017 at 1:12 PM, Erik Pappa <epappa@clarkcountynv.gov> wrote:

It's not available at this time. Feel free to check back as often as you like.... Thanks, Erik

From: Medina, Jennifer [mailto:jemedina@nytimes.com]
Sent: Monday, October 09, 2017 10:11 AM
To: Stacey Welling; Dan Kulin; Erik Pappa
Subject: NYTimes requests - medical/ toxicology reports

Hi all,
We are trying to find out information about autopsy/ medical and toxicology reports on Paddock.
Has any of that been done already? If so, can you please forward information? If not, when can we expect that to be available?

I'd very much appreciate any guidance you can give as soon as possible. I left a message with Kelly in the office as well, but know email may be easier.

You can reach me here or at [917.941.4845](tel:917.941.4845).

Thanks and all best,
Jenny

On Thu, Oct 5, 2017 at 1:45 PM, Medina, Jennifer <jemedina@nytimes.com> wrote:

Hi all,

Thanks for all the help in what I know is an extremely trying time.

I'm working on a profile about Sheriff Lombardo and would like to speak with

Commissioner Sisolak. Can one of you help me set that up for today? I am happy to do it by phone or in person.

We are also still waiting for the list of the deceased from the coroner's office. LVMPD has said repeatedly that information has to come from you all. Can you please let me know when you expect it to be available? The coroner mentioned Tuesday that all but 3 victims had been identified and that he would be releasing the list soon. Would very much like to have an update about that.

I can best be reached via this email or cell [917.941.4845](tel:917.941.4845).
I would deeply appreciate a response either way as soon as possible.

Thank you again and all the best,
Jenny

--

Jennifer Medina
National Correspondent
The New York Times
Los Angeles Bureau
[323 617 9034](tel:323.617.9034) office
[917 941 4845](tel:917.941.4845) cell
@jennymedina

----- Forwarded message -----

From: **Dan Kulin** <DKulin@clarkcountynv.gov>
Date: Wed, Oct 4, 2017 at 4:21 PM
Subject: FW: NYTimes requests
To: "jemedina@nytimes.com" <jemedina@nytimes.com>

I'm not sure if we will have anyone to speak with you about this today, but your best bet is to try calling our Fire Dept. PIO number at [\(702\) 379-5536](tel:702.379.5536)

Dan

From: "Medina, Jennifer" <jemedina@nytimes.com>
Date: October 4, 2017 at 10:15:22 AM PDT
To: DKulin@clarkcountynv.gov
Subject: NYTimes requests

Hi Dan,
We met the other night and want to renew my request to talk to anyone from the fire department. We're most interested in understanding how they responded and how training kicked in. I know the Sheriff mentioned it at the presser and would be extremely

helpful to get more information about how much that helped.

Also, still looking for the list from the coroner's office about full list of names.

Please let me know as soon as possible.

Thanks so much and all the best,
Jenny

--

Jennifer Medina
National Correspondent
The New York Times
Los Angeles Bureau
[323 617 9034](tel:3236179034) office
[917 941 4845](tel:9179414845) cell
@jennymedina

--

Jennifer Medina
National Correspondent
The New York Times
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[323 617 9034](tel:3236179034) office
[917 941 4845](tel:9179414845) cell
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--

Jennifer Medina
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@jennymedina

--

Jennifer Medina
National Correspondent
The New York Times
Los Angeles Bureau
323 617 9034 office
917 941 4845 cell
@jennymedina

From: [Erik Pappa](#)
To: [Dan Kulin](#)
Subject: FW: NYTimes requests - medical/ toxicology reports
Date: Monday, February 05, 2018 2:24:24 PM

From: Medina, Jennifer [mailto:jemedina@nytimes.com]
Sent: Monday, October 09, 2017 10:11 AM
To: Stacey Welling; Dan Kulin; Erik Pappa
Subject: NYTimes requests - medical/ toxicology reports

Hi all,

We are trying to find out information about autopsy/ medical and toxicology reports on Paddock.

Has any of that been done already? If so, can you please forward information? If not, when can we expect that to be available?

I'd very much appreciate any guidance you can give as soon as possible. I left a message with Kelly in the office as well, but know email may be easier.

You can reach me here or at 917.941.4845.

Thanks and all best,
Jenny

On Thu, Oct 5, 2017 at 1:45 PM, Medina, Jennifer <jemedina@nytimes.com> wrote:

Hi all,

Thanks for all the help in what I know is an extremely trying time.

I'm working on a profile about Sheriff Lombardo and would like to speak with Commissioner Sisolak. Can one of you help me set that up for today? I am happy to do it by phone or in person.

We are also still waiting for the list of the deceased from the coroner's office. LVMPD has said repeatedly that information has to come from you all. Can you please let me know when you expect it to be available? The coroner mentioned Tuesday that all but 3 victims had been identified and that he would be releasing the list soon. Would very much like to have an update about that.

I can best be reached via this email or cell [917.941.4845](tel:917.941.4845).

I would deeply appreciate a response either way as soon as possible.

Thank you again and all the best,
Jenny

--

Jennifer Medina
National Correspondent

The New York Times
Los Angeles Bureau
[323 617 9034](tel:3236179034) office
[917 941 4845](tel:9179414845) cell
@jennymedina

----- Forwarded message -----

From: **Dan Kulin** <DKulin@clarkcountynv.gov>
Date: Wed, Oct 4, 2017 at 4:21 PM
Subject: FW: NYTimes requests
To: "jemedina@nytimes.com" <jemedina@nytimes.com>

I'm not sure if we will have anyone to speak with you about this today, but your best bet is to try calling our Fire Dept. PIO number at [\(702\) 379-5536](tel:7023795536)

Dan

From: "Medina, Jennifer" <jemedina@nytimes.com>
Date: October 4, 2017 at 10:15:22 AM PDT
To: DKulin@clarkcountynv.gov
Subject: NYTimes requests

Hi Dan,
We met the other night and want to renew my request to talk to anyone from the fire department. We're most interested in understanding how they responded and how training kicked in. I know the Sheriff mentioned it at the presser and would be extremely helpful to get more information about how much that helped.

Also, still looking for the list from the coroner's office about full list of names.

Please let me know as soon as possible.

Thanks so much and all the best,
Jenny

--

Jennifer Medina
National Correspondent
The New York Times
Los Angeles Bureau
[323 617 9034](tel:3236179034) office
[917 941 4845](tel:9179414845) cell
@jennymedina

--

Jennifer Medina
National Correspondent
The New York Times
Los Angeles Bureau
[323 617 9034](tel:3236179034) office
[917 941 4845](tel:9179414845) cell
@jennymedina

--

Jennifer Medina
National Correspondent
The New York Times
Los Angeles Bureau
323 617 9034 office
917 941 4845 cell
@jennymedina

From: [Nicole Charlton](#)
To: [Dan Kulin](#)
Subject: FW: Question & records request - NEWSWEEK
Date: Monday, February 05, 2018 3:04:49 PM

Nicole Charlton

*Administrative Secretary
Clark County Office of the Coroner/Medical Examiner
1704 Pinto Lane
Las Vegas, NV 89106
Nicole.Charlton@clarkcountynv.gov
Office: (702) 455-3210
Desk: (702) 455-1937
Fax: (702) 387-0092*

Accredited by:



From: Christal Hayes [mailto:c.hayes@newsweekgroup.com]
Sent: Thursday, October 05, 2017 9:48 AM
To: Nicole Charlton
Subject: Question & records request - NEWSWEEK

Good afternoon,

I had a question for your process for conducting autopsies. I know it usually takes a bit to finish because of toxicology. Do you all conduct those toxicology tests internally? If not, where are they sent?

I also wanted to put in a records request for the autopsy of Stephen Paddock. If it is not available, do you have the location and number of times he was shot? Do you know if he was ill at all or had any type of medical condition?

Thanks!

Christal Hayes | Breaking news reporter
NEWSWEEK MEDIA GROUP
7 Hanover Square, Floor 5, New York, NY, 10004
O | +1 646 867 7142
E | c.hayes@newsweekgroup.com
T | [@Journo_Christal](#)
W | newsweekgroup.com

Newsweek Media Group



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From: [Kamp, Jon](#)
To: [Stacey Welling](#); [Dan Kulin](#)
Subject: Fwd: Wall Street Journal Public Records Request - Autopsy / Postmortem Reports on Stephen Paddock
Date: Thursday, October 05, 2017 2:18:03 PM

Hi Stacey and Dan, I am a reporter with the WSJ, and I wanted to make sure this public information request had found its way into the right hands in Clark County. If there is anywhere else I should send it, please let me know.

Thanks much,

Jon Kamp, WSJ

----- Forwarded message -----

From: **Kamp, Jon** <jon.kamp@wsj.com>
Date: Thu, Oct 5, 2017 at 12:02 PM
Subject: Wall Street Journal Public Records Request - Autopsy / Postmortem Reports on Stephen Paddock
To: ncoleman@clarkcountynv.gov, jfudenberg@clarkcountynv.gov

To whom it may concern,

I am a reporter with the Wall Street Journal and I am submitting this request for public records, in accordance with the Nevada Public Records Act. I am requesting the autopsy report and any other reports generated from the Clark County Medical Examiner's examination and investigation concerning Stephen Paddock, age 64, deceased Oct. 1 at the Mandalay Bay hotel.

I ask that you provide these records via electronic mail to jon.kamp@wsj.com.

I am a representative of the news media affiliated with the Wall Street Journal, and I am requesting this information as part of news gathering. As I am making this request as a journalist and this information is of timely value, we would appreciate your communicating with us by telephone [773-294-7673](tel:773-294-7673) or electronic mail if you have questions regarding this request.

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the law. We will also expect you to release all segregable portions of otherwise exempt material. We, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Thank you very much,

Jon Kamp

Reporter, Wall Street Journal

53 State Street, Suite 1201

Boston, MA 02109

[617-654-6728](tel:617-654-6728)

cell: [773-294-7673](tel:773-294-7673)

jon.kamp@wsj.com

[@jon_kamp](#)

--

Jon Kamp

Reporter, Wall Street Journal

53 State Street, Suite 1201

Boston, MA 02109

617-654-6728

cell: 773-294-7673

jon.kamp@wsj.com

[@jon_kamp](#)

From: [Bauman, Kean](#)
To: [Dan Kulin](#)
Subject: ONE OCTOBER AUTOPSY REPORTS
Date: Tuesday, January 30, 2018 3:22:59 PM
Attachments: [Outlook-1453233659.png](#)
[Outlook-1453233747.png](#)

Dan,

Judge issued an order today releasing autopsy reports of Paddock and victims from One October event.

Will these be released via your office?

(702) 493-4951 cell

Kean Bauman
Investigative Producer
kean.bauman@ktnv.com
(702) 257-8329
KTNV



From: [Bethania Palma](#)
To: [Dan Kulin](#)
Subject: Question about Paddock autopsy from Snopes reporter
Date: Wednesday, October 18, 2017 2:04:52 PM

Hi Dan,

I'm a reporter for the fact checking web site Snopes.com. I have a couple questions regarding the Paddock autopsy:

- I read the Clark County coroner web site and noticed that autopsy reports there are not public record, but with the public nature of this incident, will the coroner be releasing Paddock's autopsy report?
- Do you happen to know if lead poisoning will be tested for? And is that part of a standard toxicology screening have to be specially tested for?

Thank you for your help.

Sincerely,
Bethania Palma
Snopes.com
818-390-4938

From: Dan Kulin
To: ["Dennis Neuhausel"](#); [Erik Pappa](#); [Stacey Welling](#)
Subject: RE: Coroner Reports
Date: Tuesday, January 30, 2018 10:36:00 AM

Checking.

Dan Kulin
Clark County Office of Public Communications
(702) 455-5534 – office
(702) 376-3764 – cell

From: Dennis Neuhausel [mailto:DNeuhausel@lasvegasnow.com]
Sent: Tuesday, January 30, 2018 10:31 AM
To: Erik Pappa; Dan Kulin; Stacey Welling
Subject: Coroner Reports

Hey gang sorry to bother you all but I am sure you have heard by the now the judge ruled that the coroners office has to release the autopsy result from the victims of the 1 October shooting and the draft autopsy on Paddock. I just wanted to circle back with you to make sure we are doing the proper ways to request those when available. Thank you.

D

--

Dennis Neuhausel
Assignment Manager
KLAS-TV
3228 Channel 8 Drive
Las Vegas, NV 89109
(702) 792-8870 Newsroom
(702) 482-0204 Cell
dneuhausel@lasvegasnow.com

From: [Joe Nelson](#)
To: [Dan Kulin](#); [FOX5 Assignment Editors](#)
Cc: [Adam Herbets](#)
Subject: RE: coroner statement on 1 October autopsy reports
Date: Wednesday, January 31, 2018 5:50:37 PM

Hi Dan, this is Joe Nelson with FOX5. We saw the Associated Press just reported this: "The coroner in Las Vegas has started releasing redacted autopsy records about the 58 people killed in the deadliest mass shooting in modern U.S. history."

Can you release any of those autopsy records to us tonight? If not, do you know when we'd be able to get those?

Thank you!

Joe Nelson
FOX5 Vegas
joe.nelson@fox5vegas.com
(702)436-8256

From: 5 News Desk
Sent: Tuesday, January 30, 2018 5:12 PM
To: FOX5 Assignment Editors <FOX5AssignmentEditors@meredith.com>; FOX5 Producers <FOX5Producers@meredith.com>; FOX5 AnchorsReporters <FOX5AnchorsReporters@meredith.com>
Subject: FW: coroner statement on 1 October autopsy reports

From: Dan Kulin [<mailto:DKulin@ClarkCountyNV.gov>]
Sent: Tuesday, January 30, 2018 5:07 PM
To: Dan Kulin <DKulin@ClarkCountyNV.gov>
Subject: coroner statement on 1 October autopsy reports

In accordance with the court's order, redacted autopsy reports of the victims will be released as soon as possible.

The Paddock autopsy report is not finalized, and, contrary to the discussion in the court proceeding, a draft autopsy report was not provided by the Coroner to law enforcement. Also pursuant to the court's order, when Paddock's autopsy report is finalized it will be provided unredacted, including the toxicology report.

- Clark County Coroner John Fudenberg, D-ABMDI

Dan Kulin
Clark County Office of Public Communications

(702) 455-5534 – office

(702) 376-3764 – cell

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From: [Kelly Garrett \(Public Communications\)](#)
To: [Dan Kulin](#)
Subject: RE: Coroner
Date: Tuesday, October 10, 2017 10:13:30 AM

[Josh Saul, Newsweek, C: 607.351.9952 – Total # of deaths](#)

From: Kelly Garrett (Public Communications)
Sent: Tuesday, October 10, 2017 9:17 AM
To: Dan Kulin <DKulin@ClarkCountyNV.gov>
Subject: RE: Coroner

[Sarah Wisefelt \(sp?\), CNN, 323.646.4331 – Paddock autopsy](#)
[Melissa Perelli, TheBlast.com, 781.632.2391, Ralph May autopsy](#)

From: Kelly Garrett (Public Communications)
Sent: Tuesday, October 10, 2017 9:11 AM
To: Dan Kulin <DKulin@ClarkCountyNV.gov>
Subject: RE: Coroner

[Chuck Johnston, CNN, 404.827.1511 – Paddock autopsy](#)

From: Kelly Garrett (Public Communications)
Sent: Tuesday, October 10, 2017 8:47 AM
To: Dan Kulin <DKulin@ClarkCountyNV.gov>
Subject: Coroner

[Ron Edwards, News 3, 657-3150 – Has Bob Wolfe's body been released](#)

Kelly D. Garrett
Office of Public Communications
500 S Grand Central Parkway 6th FL
Las Vegas, NV 89155
Office: (702) 455-3546
Fax: (702) 455-3558
www.ClarkCountyNV.gov

From: [Matt Ferner](#)
To: [Dan Kulin](#)
Subject: Re: FW:
Date: Friday, February 02, 2018 7:24:02 AM

Hi Dan, sounds like the autopsy reports have been released - can you email a copy of them to me? Thank you.

Matt

On Tue, Jan 30, 2018 at 5:24 PM Dan Kulin <DKulin@clarkcountynv.gov> wrote:

Coroner statement on 1 October autopsies

In accordance with the court's order, redacted autopsy reports of the victims will be released as soon as possible.

The Paddock autopsy report is not finalized, and, contrary to the discussion in the court proceeding, a draft autopsy report was not provided by the Coroner to law enforcement.

Also pursuant to the court's order, when Paddock's autopsy report is finalized it will be provided unredacted, including the toxicology report.

- Clark County Coroner John Fudenberg, D-ABMDI

Dan Kulin

Clark County Office of Public Communications

(702) 455-5534 – office

(702) 376-3764 – cell

--

Matt Ferner
National Reporter | HuffPost
c: 310-403-0614 (Find me on Signal)
e: matt.ferner@huffpost.com
t: @matthewferner
PGP: keybase.io/mattferner

From: [Margolin, Josh](#)
To: [Dan Kulin](#); [Erik Pappa](#)
Subject: Records request from ABC News
Date: Wednesday, October 04, 2017 9:45:25 AM
Attachments: [image001.png](#)

Gentlemen:

This is Josh Margolin from ABC News. Please accept this as a formal request for records pursuant to all laws and practices that govern such matters in Clark County and the state of Nevada. ABC News requests records of the autopsy of Stephen Paddock, who died in the mass casualty incident at Mandalay Bay casino on Oct. 1, 2017.

ABC News asks respectfully that this request be expedited in light of the incredible global interest in this story. ABC News agrees in advance to pay for all duplication costs. ABC News requests that this material be transmitted electronically.

Should you have any questions, please do not hesitate to contact me at 646-484-0469 or josh.margolin@abc.com.

Thank you for your assistance with this urgent matter.



Josh Margolin • Senior Investigative Reporter

47 West 66th Street / New York, New York / 10023

Office: 212.456.3673 / Cell: 646.484.0469 / Twitter: @JoshMargolin

From: [Montero, Douglas](#)
To: [Dan Kulin](#)
Subject: request for info - shooter and jerry lewis
Date: Thursday, October 19, 2017 9:08:30 AM
Attachments: [C6093BDF-0CC1-463F-8D57-A5B9B3B15EF0\[16\].png](#)

Hello Dan,

I know you must very busy so I will get right to the point.

Can you provide me with a copy of the Jerry Lewis autopsy report — if there is one.

I figure at 90-plus, the doctor signed the death certificate. But just in case, let me know if an autopsy was conducted.

Second,

Can you send me a copy of autopsy report for shooter Stephen Paddock once his toxicology is complete.

I figure it should become available within the next two to four weeks.

And finally, could you also include me on your media list for press releases.

Feel free to call me if you have any questions,

Good luck dealing with the aftermath of that terrible shooting.

After 9-11 I saw first hand how tough it gets for the folks at the ME's office.

All the best

DOUGLAS MONTERO
NATIONAL CORRESPONDENT



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