

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Case No.: 78967 Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, The Honorable Joe Hardy
Presiding.

APPELLANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S,
APPENDIX, VOLUME 11
(Bates Nos. 2346-2577)

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1 Q Can you estimate during the four months, four and a
2 half months, about how many tricks did you turn?

3 A About 50 to 60 tricks.

4 Q Fifty to 60 tricks during the four months or so and
5 you were working two to three nights at the beginning and then
6 it increased. So about how many nights out of those four
7 months do you think you actually worked?

8 A I don't know off the top of my head but I know that
9 I went out about two to three times a week and maybe
10 [inaudible] more towards the end.

11 Q Okay. And there were some nights that you would go
12 out and you wouldn't get any tricks, correct?

13 A Yes, there was a couple nights.

14 Q A couple nights where nothing happened, correct?

15 A Yes.

16 Q And do you recall how -- what's the most number of
17 tricks you would have in any one night?

18 A About four or five.

19 Q Okay. Did that happen a lot?

20 A That was less common to have that many tricks.

21 Q Now, when you -- when you're soliciting and turning
22 tricks, sometimes your johns get angry with you, don't they?

23 A Yes, they can.

24 Q And did that happen with you sometimes?

25 A It happened once, yes.

1 Q And when did that happen?

2 A I would assume end of April. It was -- yeah, about
3 that time. And he got angry because of the amount of time and
4 the time -- the rule that we had and his time was up so he
5 tried to take back his money.

6 Q Did you get in a fight with him?

7 A No. I actually gave him back the money and LR,
8 Robert, had gotten angry and I got beat for that.

9 Q And you gave him back the money to avoid getting in
10 a fight or getting beaten by him?

11 A I gave him some of it, yes.

12 Q You've heard of prostitutes being beaten up by their
13 johns many times, correct?

14 A Yes.

15 Q And you've even seen that in some of the videos you
16 were watching at Robert's place, correct?

17 A Yes.

18 Q Now, after the beginning of April you began, you
19 testified, getting beat more often after the first one
20 obviously, increased in frequency, correct?

21 A Yes.

22 Q And I believe you testified that your face would get
23 puffy --

24 A Yes.

25 Q -- is that true?

1 A Yes.

2 Q And you'd get bruises and marks?

3 A Yes.

4 Q And as a prostitute you'd have to kind of look good,
5 correct?

6 A Yes.

7 Q You'd have to show a little skin to hopefully entice
8 a john, correct?

9 A Not usually. We were working with a different
10 clientele. LR had told me that we are looking for high class
11 businessmen. So we tried to dress expensive -- expensive. We
12 tried to wear jewelry. We had to look nice but we didn't have
13 to show a lot of skin.

14 Q Okay. Where -- where would you get this jewelry?

15 A He would buy it.

16 Q Was it real jewelry or fake jewelry?

17 A He didn't buy any for me but Kariah had real jewelry
18 that was bought by him.

19 Q And Kariah would allow you to wear some of hers?

20 A No, he bought them for her.

21 Q Okay. So would you wear jewelry?

22 A I did not at that point.

23 Q Okay. So you were not wearing jewelry, only Kariah?

24 A Yes. He said that they were rewards if we were
25 good, so I didn't get any.

1 Q Okay. And basically through the month of April of
2 2014, can you estimate about how many times you were beaten
3 during that month?

4 A Honestly, no, not really.

5 Q Okay. And then we get into the month of May. Were
6 you beaten more frequently or about the same or less
7 frequently during May?

8 A More frequently than April.

9 Q Okay. During May and you say you were beaten more
10 frequently, did those beatings preclude you from going out and
11 working?

12 A Yes, towards the very, very end of April and
13 beginning of May into May 10th, yes, I wasn't able to work.

14 Q And obviously, if you were -- you know, in your mind
15 you believed your purpose was to make money for LR, Robert, he
16 can't make money if you're not out there working, correct?

17 A Yes.

18 Q So if he was beating you to such an extent that you
19 couldn't go out there to work, that's basically against his
20 own interest. Wouldn't that be true?

21 A Yes.

22 MR. WEINSTOCK: Court's indulgence for one moment,
23 Your Honor. Court's indulgence.

24 BY MR. WEINSTOCK:

25 Q Now you said that it was a lot worse during the

1 month of May, correct?

2 A Yes.

3 Q The beatings?

4 A Yes, it was.

5 Q And they precluded you for a lot of times during May
6 from working, correct?

7 A There was a -- I believe a two-week span that I
8 wasn't able to work and he moved which part of the body he was
9 beating so I could go to work.

10 Q And do you remember there came a time in May 28th,
11 that you were out soliciting and you got stopped and actually
12 trespassed out of a hotel?

13 A I wasn't sure of the date but I remember that
14 happening.

15 MR. WEINSTOCK: If I can approach, Your Honor?

16 THE COURT: Very well.

17 BY MR. WEINSTOCK:

18 Q I'm showing -- I'm showing you what has been marked
19 as Defendant's Proposed Exhibit A. Do you recognize that
20 document?

21 A Yes.

22 Q And what is that?

23 A This is when I was at the Aria with -- with Kariah
24 and we were looking for tricks. And a security or a police
25 officer had came and took us back down to security and got our

1 information.

2 Q In looking at Proposed Exhibit A, can you please
3 look at it and read it? Do you see anything in there that
4 indicates you were with anyone else?

5 A No.

6 Q And in fact, it indicates on there that you
7 solicited this investigator and admitted to being an escort,
8 correct?

9 A Yes. We had talked about pricing before we got to
10 the room.

11 Q You talked to the escort, correct?

12 A Kariah was actually the one who talked about the
13 pricing but we both were charged with trespassing.

14 Q And, again, on -- I'm asking you in this document,
15 Proposed Exhibit A, does it indicate at all that it was Kariah
16 that solicited the investigator and admitted that they were an
17 escort?

18 THE COURT: Counsel, should we be talking about the
19 document before it's even identified or admitted? Because I
20 don't even know what this document is that you're showing her.

21 MS. MERCER: Well, and Your Honor, I would also
22 object because I don't believe he's showing her the complete
23 set of documents.

24 THE COURT: Well, he -- I don't know what he's
25 showing her, he hasn't identified it yet and hasn't been moved

1 into admission. He just started asking her questions about
2 some documents. So can you please either lay foundation
3 and/or try to admit the document --

4 MR. WEINSTOCK: All right.

5 THE COURT: -- before you -- because otherwise I
6 don't think it's proper impeachment.

7 BY MR. WEINSTOCK:

8 Q Well, Ms. Richards, you do remember being escorted
9 and -- you were escorted out of the Aria Hotel on this night,
10 correct?

11 A I was escorted to security and then escorted out,
12 yes.

13 Q Okay. And the document, Proposed Exhibit A, is a
14 picture of you, correct?

15 A Yes.

16 Q And does that appear to be a copy of the report that
17 was made on this incident when you were escorted out of the
18 Aria?

19 A Yes.

20 MR. WEINSTOCK: I'd move for the admission of
21 Defendant's Proposed Exhibit A, Your Honor.

22 MS. MERCER: I would object, Your Honor. I don't
23 believe that this is the appropriate witness to lay that
24 foundation. She has no knowledge as to how or when or why
25 those reports were prepared by the Aria and I believe it's an

1 incomplete copy of the reports regarding this incident.

2 THE COURT: Ms. Richards, have you seen this
3 document at all before today?

4 THE WITNESS: No, I haven't.

5 THE COURT: Do you know how -- how it was prepared?

6 THE WITNESS: Yes. I was at the Aria with Kariah
7 and we were 86'd.

8 THE COURT: Do you -- but let me -- let me ask you.
9 Did you -- did you see personnel preparing this particular
10 report?

11 THE WITNESS: They took a picture of me.

12 THE COURT: So you recognize the picture?

13 THE WITNESS: Yes.

14 THE COURT: All right. But what about the report
15 itself, the rest of the -- the substance of the report, do you
16 -- do you know that this is a report that was prepared by the
17 Aria?

18 THE WITNESS: I was there when he was on the
19 computer but I did not ever see a printed copy of it. I was
20 not given the information.

21 THE COURT: So you knew somebody was preparing --
22 was typing in some information while they were talking to you
23 at the Aria?

24 THE WITNESS: Yes.

25 THE COURT: And this was some security guard or a

1 police officer?

2 THE WITNESS: Yes.

3 THE COURT: All right. And did they -- when they
4 were done taking information, did they print it out and hand
5 it to you?

6 THE WITNESS: No.

7 THE COURT: So do you know if this is what they were
8 working on?

9 THE WITNESS: No. I would assume so, yes, but I'm
10 not sure.

11 THE COURT: I don't think there's enough foundation.
12 I'll let you try a little bit more, Mr. Weinstock.

13 BY MR. WEINSTOCK:

14 Q Have you read this document?

15 A Before today, no.

16 Q And did you read it today?

17 A Yes.

18 Q And you've read it. Do you have any reason to doubt
19 the accuracy of anything that's contained in this document?

20 A Other than the fact that it does not state that
21 Kariah was with me. The information about me is correct.

22 Q Exactly. That's all I'm asking you to testify about
23 is you. And this is a true and correct document relative to
24 your trespass out of the Aria on this date, correct?

25 MS. MERCER: Again, I would object, Your Honor. I

1 don't believe that she can lay the foundation that this is a
2 true and accurate copy.

3 THE COURT: I'm going to sustain the objection and
4 not allow the document to come in but -- but it can certainly
5 be used by Mr. Weinstock to the extent he needs to refresh the
6 witness's recollection about the events of that evening. So I
7 don't think she's laid proper foundation and she has testified
8 that it is, at least to some extent, inaccurate. But the
9 picture -- the photograph can come in.

10 MR. WEINSTOCK: Okay. That's the main thing I
11 wanted is the photograph.

12 THE COURT: Okay. She did -- she did authenticate
13 the photograph. Thank you, sir.

14 BY MR. WEINSTOCK:

15 Q That photograph is true and correct as to how you
16 appeared on May 28th, 2014, correct?

17 A Yes.

18 Q And --

19 THE COURT: Let -- make sure she can finish
20 answering.

21 A Yes, that was what I looked like.

22 BY MR. WEINSTOCK:

23 Q Okay. Do you see any visible injuries to you in
24 this photograph?

25 A No.

1 Q And, again, this was the end of May when you had
2 testified earlier the beatings were -- had progressed to be
3 much worse.

4 A Yes. But by that point in time he was already
5 switching the parts of my body that he was beating.

6 Q Did you have any other visible injuries on you on
7 May 28th, 2014?

8 A Under clothes, yes.

9 Q It was all under clothes?

10 A It was all under clothes, yes.

11 Q Did you have an opportunity to speak with the
12 security guard that had arrested you?

13 A Yes, but not in private. Kariah was sitting in the
14 room with us the whole time.

15 Q And obviously, he was a security guard, correct?

16 A He was dressed like somebody just walking around the
17 casino, which is why -- a vice unit that was undercover or
18 something like that.

19 Q But he did identify himself as a security guard,
20 correct?

21 A He just identified himself as a security guard but
22 he never showed us a badge or anything, so he could have been
23 a vice unit or a police officer.

24 Q But you certainly believed he was some type of law
25 enforcement, correct?

1 A Yes, I believe he was some type of law enforcement.

2 Q And if you wanted to you could have told him about
3 all these complaints that you were having at the end of May of
4 2014, of these beatings and everything that had occurred,
5 correct?

6 A I was too scared.

7 Q What were you scared of?

8 A That he was going to come after my family or me.
9 And the way that he was beating me made it so I really
10 believed he was going to come after me.

11 Q But he wasn't there, was he?

12 A No, he wasn't.

13 Q Okay. And there was somebody that had identified
14 themselves as being security that was there, correct?

15 A Yes.

16 Q And certainly, did you believe -- let me ask you
17 this. Did you believe that if you told them about these
18 horrific things that were going on in your life that the
19 security would have somehow allowed Robert into see you if you
20 didn't want it?

21 A No, but I don't think they would have been able to
22 protect me.

23 Q Well, in what way wouldn't they have been able to
24 protect you in your mind?

25 A Because I still thought he was going to come and

1 kill me or my family.

2 Q Okay. Now, when you say you or your family, did he
3 know where your family -- your mother in Colorado was?

4 A No, he didn't know where my mother was. He said
5 that he would find her and that he had connections and that he
6 would kill her, because she was pregnant at the time, by
7 killing the baby first and then killing her.

8 Q When did he say that?

9 A Throughout the whole month of May and June and
10 probably towards the end of April.

11 Q It would just come out that all of a sudden saying,
12 oh, by the way, Autumn, I'm going to kill your mother if you
13 do anything? I'm going to kill the baby first?

14 A When he got mad. When he got mad he would make
15 threats like that.

16 Q Now, your testimony was you continued to be beaten.
17 And there came a point -- actually I think a little bit
18 earlier when you told him you wanted to leave.

19 A Yes.

20 Q When was that?

21 A May 10th.

22 Q May 10th. So that would have been approximately a
23 month after you had been with him, correct?

24 A Two months.

25 Q Okay. Two months afterwards. That's when you first

1 indicated you wanted to leave.

2 A Yes.

3 Q And prior to that he had indicated to you anytime
4 you wanted to leave you could leave, correct?

5 A Yes.

6 Q And so you didn't do anything until two months after
7 you had been with him until you first asked to leave.

8 A I first asked after that first beating but I wasn't
9 stern about it. I didn't -- I wasn't saying please take me
10 back, please take me back. I -- he got angry and he made me
11 feel bad for wanting to leave and like I spent all his money
12 and then he was doing all these nice things for me. So May
13 10th I said, please, please, please just take me home.

14 Q That was the first time you were serious that you
15 wanted to leave.

16 A That I was 100 percent I wanted to go. I was not
17 going back on what I wanted.

18 Q Now, prior to that time living in the house was you,
19 Kariah and Robert, correct?

20 A Yes.

21 Q Wasn't there somebody else that was in the house at
22 some point in time?

23 A I believe his family came and visited.

24 Q And didn't another girl at some point in time come
25 in?

1 A Yes.

2 Q You remember her name?

3 A Blanca.

4 Q Blanca. And she was, to your understanding,
5 supposed to be another prostitute?

6 A Yes.

7 Q And Blanca was at the house with you and Kariah and
8 Robert?

9 A Yes.

10 Q For about how long?

11 A She was there for about 24 hours.

12 Q And then she left, correct?

13 A Yes.

14 Q Did anybody stop her from leaving?

15 A No.

16 Q Do you know how she left?

17 A We were out on the Strip and she just left with
18 another prostitute that was with a previous prostitute I --
19 I'm sorry, with her previous pimp I believe.

20 Q And when you say we were out on the Strip, that was
21 yourself, Blanca and Kariah?

22 A Yes.

23 Q So Kariah was with her and could have stopped her
24 from leaving if Kariah wanted to.

25 THE COURT: Excuse me a second. Ma'am, are you --

1 do you need some help?

2 JUROR: Can I get a glass of water, please?

3 THE COURT: Go ahead. Go ahead. Will you get some
4 water, Marshal? Where's my Marshal? Why's my Marshal not
5 here? Marshal, you've got to pay attention. Thank you. The
6 juror number two needs some help.

7 MR. WINDER: Here you go.

8 THE MARSHAL: Your Honor, may I approach the juror?

9 THE COURT: Yes, thank you -- Marshall, please --
10 please stay in this room. All right. Thank you. Are you
11 ready?

12 JUROR: Yeah.

13 THE COURT: Okay.

14 JUROR: Sorry about that.

15 THE COURT: No, you don't have to apologize, not a
16 problem.

17 MR. WEINSTOCK: Do you need a second?

18 JUROR: [inaudible]

19 THE COURT: All right. Let's continue.

20 MR. WEINSTOCK: Okay. Thank you.

21 THE COURT: All right.

22 BY MR. WEINSTOCK:

23 Q Again, when Blanca was living in the house for a
24 period of time and then decided she wanted to leave and she
25 just left, correct?

1 A Yes.

2 Q Was there anything different that was stopping you
3 from doing the same thing?

4 A She was a renegade and that is a girl who sells
5 herself or goes from pimp to pimp. And --

6 Q How'd you know that?

7 A They told me what a renegade was.

8 Q Who?

9 A LR and Kariah.

10 Q Okay. But did you ever talk to Blanca?

11 A While we were out there, yes.

12 Q Okay. And she told you she was leaving?

13 A No. She was talking with one of the girls and me
14 and Kariah were walking in front of her and the next minute
15 she's gone. After that LR got mad and he started talking with
16 the other pimps on the Strip, is what he said, told me that he
17 was talking with the other pimps on the Strip and that she was
18 a renegade.

19 Q Okay. Did you try to leave with Blanca?

20 A No.

21 Q Why?

22 A Because I was scared.

23 Q Of Kariah?

24 A Of LR.

25 Q He wasn't with you, correct?

1 A No, he wasn't.

2 Q Now, you testified yesterday there's a time when LR,
3 Robert, turned you over to another pimp. You remember that?

4 A Yes.

5 Q Do you know who that pimp was, what his name was?

6 A His name was Slim.

7 Q Where'd he live?

8 A In a townhouse.

9 Q Townhouse where in the area of Las Vegas?

10 A I don't know.

11 Q How'd you get to Slim's residence?

12 A LR and Kariah had both drove me in the Mercedes Benz
13 to his house and they dropped me off with my stuff.

14 Q Okay. And you weren't blindfolded, were you?

15 A I wasn't allowed to look up.

16 Q Weren't allowed to look up?

17 A Because if we looked up out of a car it was being
18 out of pocket and he would beat us for being out of pocket.

19 Q When you say he would beat us, did you ever see him
20 beat Kariah for looking up?

21 A Yes, once.

22 Q When was that?

23 A It was about -- about May.

24 Q And I asked you earlier I think, you were aware that
25 Kariah was pregnant, correct?

1 A Yes.

2 Q When did you first become aware that Kariah was
3 pregnant?

4 A It was after the first beating. I would assume the
5 beginning or middle of April.

6 Q Okay. And by that time she was beginning to show,
7 wasn't she?

8 A No, not really.

9 Q By the time you left end of May was she beginning to
10 show?

11 A Yes.

12 Q Okay. The beginning of June was she showing?

13 A Yes, she showed.

14 Q Now, you testified you were with Slim who was a
15 pimp, correct?

16 A Yes.

17 Q He acknowledges he was a pimp?

18 A Yes.

19 Q He told you he was a pimp?

20 A Yes, and that I was going to be his girl when I got
21 healthy enough to work.

22 Q And what did Slim look like?

23 A He was older, he was black.

24 Q Can you describe anything else? Hair?

25 A He had some hair. It was I think white, but to be

1 completely honest I was there for four days and I don't have
2 much memory of it.

3 Q Well, you told the police eventually what -- a
4 description of Slim, didn't you?

5 A Yes, they showed me a lineup.

6 Q And you didn't identify anybody out of a lineup they
7 showed you, did you?

8 A No, because I can't remember what he looked like.

9 Q But you did explain to the police what you recall of
10 Slim, that he was heavyset, correct?

11 A He was taller --

12 Q Heavyset. Do you recall saying that?

13 A No, I don't recall saying that.

14 Q Do you recall telling them that he was bald except
15 for some gray on the side?

16 A I think I said that, yes.

17 Q You don't remember?

18 A No, I'm not sure.

19 Q And you were with Slim for four days at least,
20 correct?

21 A Yes.

22 Q Did you ever look at him?

23 A Yes.

24 Q Were you able to pick your head up to look at him?

25 A Yes.

1 Q He didn't stop you from doing that, did he?

2 A No.

3 Q And then there came a time shortly after you were
4 taken from Slim's that you were, I believe, driven to the area
5 by UMC and left behind a Wendy's?

6 A Yes.

7 Q Do you remember about what time during the day that
8 was?

9 A It was about 10, 11 in the morning I believe.

10 Q And when you say 10 or 11 in the morning, that's a
11 pretty exact time. Why are you saying that?

12 A Because I remember that morning when the sun was
13 coming up that I was calling him and he said that LR was going
14 to take me to the hospital and I started to get really scared
15 because I didn't think he was going to take me to the
16 hospital. And he waited a long time and I remember saying
17 that if I don't get to the hospital this morning I'm going to
18 die, I'm going to die.

19 Q You -- again, you were -- you said you were calling
20 him. Who was him?

21 A Slim.

22 Q You were calling Slim. Does that mean you were
23 calling him on a phone?

24 A Yes, I was calling him on a phone.

25 Q So you had a phone number to contact him, correct?

1 A Yes.

2 Q Did you ever give that phone number to the police?

3 A I gave the phone to the police.

4 Q You gave the phone that you were calling on but did
5 you give them the phone number that you were calling on?

6 A I don't remember. It was a 9-3-7 number because
7 that was an Ohio area code but I don't know if I gave them the
8 exact number.

9 Q Okay. And your condition got worse during the four
10 days or so that you were with Slim, correct?

11 A Yes.

12 Q But in any event, you were taken to this Wendy's by
13 UMC. About how far was the Wendy's from the UMC?

14 A Wendy's was across the street, like two
15 intersections.

16 Q Two intersections across. Did you have to cross
17 Charleston?

18 A Yes.

19 Q Charleston's a pretty busy street, isn't it?

20 A Yes.

21 Q But you were able to cross there and you walked into
22 the emergency room, correct?

23 A Yes.

24 Q And I assume when you walked into the emergency room
25 at some point they had to get some background from you,

1 correct?

2 A Yes.

3 Q Do you recall them asking you some -- asking you
4 what happened?

5 A Yes.

6 Q And do you recall what you said to UMC when you
7 first were in the emergency room?

8 A I don't remember saying it to them but I know I said
9 the story that LR told me to say.

10 Q Okay. Now, let's talk about the story that LR told
11 you to say. What was the story LR told you to say?

12 A LR had told me to say that three weeks before I was
13 doing dominatrix with a wooden paddle and that's how the
14 infection on my butt happened. And that I was living under
15 the bridge and he gave me the specific street. I was living
16 under a bridge and I was homeless and these two guys came and
17 beat me up the night before I walked in.

18 Q And was that exactly what Robert told you?

19 A Yes.

20 Q You remember that.

21 A That's exactly what he told.

22 Q Was there any more information that he told you?

23 A He was going to take me to the desert if I didn't
24 say it right in front of him.

25 Q I'm talking specifically about the story that Robert

1 told you he wanted you to say. Basically that you were in a
2 dominatrix and somebody was hitting you with a wooden paddle
3 and you were homeless under a bridge and somebody beat you up
4 or something, correct?

5 A Yes.

6 Q Is there any more information that Robert told you
7 to tell?

8 A No, I think that's it.

9 MR. WEINSTOCK: Court's indulgence.

10 THE COURT: Yes, housekeeping matter. As for that
11 photograph, if you want to admit that you're going to have to
12 redact it, your Proposed Exhibit A.

13 MR. WEINSTOCK: Okay.

14 THE COURT: And make sure that it's separately
15 submitted. All right.

16 BY MR. WEINSTOCK:

17 Q When you went to UMC emergency room someone asked
18 you some questions, correct?

19 A Yes.

20 Q Do you remember them asking you some background
21 information about your age, birthday, things like that?

22 A Faintly, yes.

23 Q Do you recall them asking you about your previous
24 medical history?

25 A No, I don't remember that.

1 Q Do you recall you ever volunteering information to
2 them about your medical history?

3 A Other than my name I -- I don't remember -- my name
4 and social security number and birthday.

5 Q Now, let me ask you. Prior to your going into UMC,
6 did you have a history of bipolar disorder?

7 MS. MERCER: Objection, Your Honor. May we please
8 approach?

9 THE COURT: Yes.

10 (Bench conference transcribed as follows.)

11 THE COURT: Okay. What's -- what's the issue?

12 MS. MERCER: Your Honor, the Court's ordered --

13 THE COURT: I thought you stipulated to the medical
14 records?

15 MR. WEINSTOCK: Yeah.

16 MR. MARTINEZ: No, that's not --

17 MS. MERCER: He's -- that's not what he's asking and
18 that's not what the medical records exhibit. He's asking --

19 THE COURT: I thought I read it in there.

20 MS. MERCER: No. The medical records said that she
21 suffered [inaudible] have a history.

22 MR. WEINSTOCK: Here is Exhibit B and I'm going to
23 ask her about it, Your Honor. And at the very beginning I
24 just --

25 THE COURT: No, I read this. So what's -- you guys

1 can't all talk at the same time. He asked if she had --

2 MS. MERCER: Did she ever have a history of --

3 THE COURT: History -- what's wrong with that
4 question?

5 MS. MERCER: Because that's not what's reflected in
6 the medical records. The medical records reflect that she --
7 she reported those issues but it doesn't reflect that she had
8 those issues.

9 THE COURT: Well, sure, but he's entitled to test
10 the accuracy of what she reported, right?

11 MR. MARTINEZ: That's not what --

12 MS. MERCER: But that's not what he asked and that's
13 not what the Court's order was regarding the issue. What's
14 the Court's order was regarding the issue was that he could
15 ask her, do you recall reporting to UMC that you --

16 THE COURT: I didn't make any order on what he can
17 or can't ask her with respect to prior medical history. My --
18 we discussed that -- the only thing we discussed is I'm --
19 hold on a second. The issue came up with respect to the
20 admissibility of his expert testimony.

21 MS. MERCER: Correct.

22 THE COURT: And -- and I was not going to allow him
23 to testify through his expert on what it means to be bipolar,
24 schizophrenic, masochistic, ADHD --

25 MS. MERCER: Correct.

1 THE COURT: -- unless it's -- unless he first lays
2 foundation that she has those conditions.

3 MS. MERCER: That was not the --

4 THE COURT: That was the first thing that I ruled.

5 MS. MERCER: That is not what -- what we recall
6 occurring, Your Honor.

7 THE COURT: I don't know why we're having this --
8 look -- look, this is what I ordered. Number one, I said if
9 you open the door then his expert can testify on what these
10 terms mean. He wants an expert to testify on what these terms
11 mean. I said he's not going to allow -- be allowed to have an
12 expert testify on what these terms mean unless either of you
13 open the -- unless you open the door. All right? Or if there
14 was foundation on -- that she actually had these conditions.
15 I remember specifically ruling that there has to be
16 foundation. And you guys said well, there is no foundation
17 because -- no, he said he can't possibly lay the foundation
18 because he doesn't have any of her prior medical records.

19 MR. MARTINEZ: Right.

20 THE COURT: Right? So that was -- but I never ruled
21 that he's precluded from introducing foundation. Why would I
22 make that ruling?

23 MR. MARTINEZ: But she --

24 MS. MERCER: He can't lay the foundation, that's
25 the --

1 THE COURT: I can't hear both of you at the same
2 time.

3 MR. MARTINEZ: Go ahead.

4 MS. MERCER: He can't lay the foundation that she
5 ever had these mental health issues.

6 THE COURT: Why can't he just ask her; has she ever
7 been diagnosed? What's wrong with that? I don't understand
8 why -- what rule does that violate?

9 MS. MERCER: Why would it be relevant if she was
10 diagnosed as a child when she's in the hospital at 18?

11 THE COURT: It goes to the whole entire issue of the
12 accuracy of her story.

13 MS. MERCER: Even though we have an evaluation that
14 was conducted at the time that she was admitted to the
15 hospital in which they found no evidence of a mental health
16 issue and no reason to medicate her?

17 THE COURT: Where's that evaluation?

18 MS. MERCER: That's the one that Mr. Martinez showed
19 you last week.

20 THE COURT: Oh the --

21 MS. MERCER: That was done at the time she was
22 admitted to UMC.

23 THE COURT: Okay. So you can impeach her. If she
24 says that she has -- if she's been diagnosed in the past. I
25 just don't -- I mean, it goes to the entire credibility of her

1 story. You know, because if --

2 MS. MERCER: If -- if she had been evaluated at the
3 time that she was at the hospital and they determined that she
4 had some sort of psychiatric issue that was causing -- that
5 could potentially cause her to make up this story, I would
6 absolutely agree with you. But the actual finding was that
7 she had no indications of mental health issue at the time she
8 was admitted to the hospital.

9 THE COURT: But she's saying she does. So it seems
10 logical --

11 MS. MERCER: As a child.

12 THE COURT: I don't know how long it was lasting.

13 MR. WEINSTOCK: Your Honor, this is going to be my
14 next one. If you look --

15 THE COURT: Let me see. Hold on.

16 MR. WEINSTOCK: [inaudible]

17 THE COURT: I've seen this one.

18 MR. WEINSTOCK: And that one says she was diagnosed.

19 MR. MARTINEZ: Who had diagnosed her and where does
20 it say [inaudible] diagnosed?

21 MR. WINDER: [inaudible]

22 THE COURT: Well, I'm going to allow the question on
23 whether she was ever diagnosed. She can -- they can ask her
24 that question because she's the one who's self-reporting it.

25 MR. MARTINEZ: Then they have to look at the

1 [inaudible].

2 THE COURT: Yeah, they had to look at -- well, no,
3 they can --

4 MR. MARTINEZ: What other foundation do you have?

5 THE COURT: -- they can show her the document.

6 MR. WEINSTOCK: Exactly.

7 MR. MARTINEZ: But, Your Honor's rule was that they
8 could ask her and cross-examine her as to what she reported to
9 UMC. But they can't say and they can't imply that she
10 actually is those things without the proper foundation and
11 they don't have it.

12 THE COURT: They can ask her. Why wouldn't -- why
13 wouldn't her own testimony be proper foundation? A person can
14 say I was diagnosed.

15 MR. MARTINEZ: But if she says no, then they can't
16 say, oh, yes, you were diagnosed with that because you said
17 it.

18 MR. WEINSTOCK: I can ask her why she put down that
19 she self-diagnosed.

20 THE COURT: Of course.

21 MR. MARTINEZ: That's it.

22 MR. WEINSTOCK: I know.

23 MR. MARTINEZ: They can't -- they can't say that
24 there's an actual diagnosis without proper --

25 MR. WEINSTOCK: I never said that.

1 THE COURT: No, they can't say that.

2 MR. WEINSTOCK: No, I never said that. I would not
3 say that.

4 THE COURT: You're stuck with her answer.

5 MR. WEINSTOCK: Yeah, exactly.

6 THE COURT: Because there hasn't been any other
7 medical records that established that she was diagnosed with
8 these conditions. You haven't produced them in discovery
9 so --

10 MR. WEINSTOCK: There is -- there is right here,
11 evidence that she was diagnosed.

12 MR. MARTINEZ: No.

13 MS. MERCER: No, there's not.

14 MR. MARTINEZ: That's her self-reporting.

15 THE COURT: That's her self-reporting.

16 MR. WEINSTOCK: No.

17 THE COURT: Look, you can argue you it however you
18 want in closing argument but just be careful how you
19 cross-examine her on it. You can -- look, the limited
20 question before me right now is are you allowed to ask her;
21 does she --

22 MR. WINDER: [inaudible]

23 THE COURT: -- is it her understanding that she was
24 diagnosed and what is that based on?

25 MR. WEINSTOCK: This is like a patient during

1 evaluation acknowledge that she was diagnosed with ADHD,
2 schizophrenia and bipolar disorder as a teenager.

3 MS. MERCER: As a teenager.

4 THE COURT: That's not a finding that she was
5 diagnosed --

6 MR. MARTINEZ: That's not a finding.

7 THE COURT: -- that's her self-reporting that she
8 believes she was diagnosed. That's what you can ask.

9 MR. WEINSTOCK: Okay. I mean it's --

10 MR. WINDER: [inaudible] but if she says yes, she
11 was I mean you're allowed to ask about it.

12 THE COURT: You can ask her.

13 MR. WEINSTOCK: Yeah.

14 MR. MARTINEZ: Well, that's what the Court's ruling
15 was initially was that you can ask her if that's what she said
16 but you can't --

17 MR. WEINSTOCK: That's what I did.

18 MR. MARTINEZ: -- say that she was diagnosed.

19 THE COURT: Okay.

20 MS. MERCER: You just asked her was she diagnosed.

21 MR. WEINSTOCK: Yeah.

22 MR. MARTINEZ: That's different.

23 MS. MERCER: That's different.

24 THE COURT: Ask her if she reported that she was
25 diagnosed and why did she report that. That solves the

1 question. Okay?

2 MR. MARTINEZ: That's what your Court -- Your
3 Honor's ruling was.

4 THE COURT: Okay? Ask her, did she report and why
5 did she report that.

6 MR. WEINSTOCK: Okay.

7 THE COURT: That's what you both want, right?

8 MS. MERCER: Thank you, Your Honor.

9 THE COURT: All right. Sorry, complex legal issue.

10 (End of bench conference.)

11 THE COURT: Very well-articulated issue and
12 opposition but I think we got it sorted out. So no need for
13 me to elaborate. Why don't you just go ahead and ask the
14 question consistent with our discussions. Thank you.

15 BY MR. WEINSTOCK:

16 Q When you got to UMC and checked into UMC, do you
17 recall telling a person there when they were getting your
18 background, that you had been diagnosed with schizophrenia,
19 bipolar disorder, ADHD and post-traumatic stress disorder?

20 A No, I do not recall saying that.

21 Q Okay. If I may --

22 THE COURT: If you may what?

23 MR. WEINSTOCK: If I may approach the witness and I
24 want to show her what's marked as State's Proposed -- I mean
25 excuse me, Defense Proposed Exhibit B if I can find it.

1 THE COURT: You may approach. Did you -- will you
2 show defense -- the State first so they know what you're
3 looking at?

4 MR. WEINSTOCK: I assume they've seen it but -- may
5 I approach?

6 THE COURT: Yes, you may.

7 BY MR. WEINSTOCK:

8 Q Showing you what has been marked as Defense Proposed
9 Exhibit B. Can you look at that and read that to yourself for
10 a moment? Have you read it?

11 A Yes.

12 Q Okay. Did you see the beginning of it?

13 A Yes.

14 Q Okay. On the third line down, does it say what date
15 this was done?

16 A July 30th.

17 Q July 30th or --

18 A Oh, sorry, June 30th, 2014.

19 Q Okay. That would have been the day that you were in
20 the hospital at UMC, correct?

21 A Yes.

22 Q Okay. And then it indicates later on there that
23 you're an 18-year-old female. That's correct, isn't it?

24 A Yes.

25 Q Okay. And it says, "With a self-reported history of

1 bipolar disorder, ADHD and schizophrenia who's self-described
2 as a masochist." Do you see that?

3 A Yes.

4 Q Is that true?

5 A No.

6 Q Did you tell them that?

7 A I'm sure I did.

8 Q Okay. Did you lie to them?

9 A My mother always thought that I was those things and
10 so she put me on medication for it.

11 Q Okay. But this doesn't say anything about your
12 mother thinking this. This says you self-reported it.

13 A Yes.

14 Q Okay. So you did self-report it, correct?

15 A Yes.

16 Q You told them that, that you were -- had a history
17 of bipolar disorder, ADHD and schizophrenia and were a
18 self-described masochist, you told them that.

19 MR. MARTINEZ: Objection, asked and answered.

20 THE COURT: That was asked and answered.

21 BY MR. WEINSTOCK:

22 Q Did you tell them that?

23 THE COURT: That was asked and --

24 MS. MERCER: Objection, asked and answered.

25 THE COURT: -- I think she answered that.

1 BY MR. WEINSTOCK:

2 Q Okay. Now, if you read a little bit further on
3 towards the middle of the page.

4 MR. WEINSTOCK: If I can approach again?

5 BY MR. WEINSTOCK:

6 Q I'm pointing you to a specific -- see where my
7 [inaudible] where it says starting with the word patient?

8 A Yes.

9 Q What does that say?

10 THE COURT: Are you just asking her to read from the
11 document by herself or --

12 MR. WEINSTOCK: Well --

13 THE COURT: -- or do you want her to read it out
14 loud?

15 BY MR. WEINSTOCK:

16 Q If you can read it from the document.

17 MS. MERCER: The document's not in evidence, Your
18 Honor. So it would be improper.

19 MR. WEINSTOCK: Well, I would move for the admission
20 of Defense Proposed Exhibit B.

21 THE COURT: All right. My records -- I thought that
22 the party stipulated to the medical records. Is this one of
23 those that --

24 MS. MERCER: It's part of the medical records, Your
25 Honor, but he hasn't --

1 THE COURT: You haven't moved it into evidence yet?

2 MS. MERCER: He hasn't admitted the document yet.

3 MR. WEINSTOCK: I'd move for the admission, Your
4 Honor, yes.

5 THE COURT: What's the State's position on whether
6 this one comes in?

7 MS. MERCER: Your Honor, based upon the parties'
8 prior stipulation to the authenticity I --

9 THE COURT: Okay. So -- so the document will be
10 admitted into evidence, that's Defendant's Proposed B.

11 MR. WEINSTOCK: And it's no longer proposed then I
12 take it.

13 THE COURT: B is admitted.

14 (Defendant's Exhibit B admitted.)

15 MR. WEINSTOCK: Thank you.

16 THE CLERK: Over the objection?

17 THE COURT: No. That was based upon the earlier
18 stipulation of the parties.

19 BY MR. WEINSTOCK:

20 Q Ms. Richards, did you read the part that I pointed
21 you out to?

22 A Yes.

23 Q Okay. That indicates that you told them that you
24 had been diagnosed with those conditions, correct?

25 A Yes, but it also says I was diagnosed as a teenager.

1 I was not actually diagnosed with any of these as a teenager.
2 I was diagnosed by my mother because she had a medical degree,
3 with schizophrenia and bipolar disorder when I was 10. And
4 ADHD, she had put me on ADHD medication when I was five and
5 seven. This document I was under a lot of drugs and I don't
6 remember even giving them the report.

7 Q Do you even know if you were under drugs at this
8 time? Wasn't this one of the first questions they asked you
9 when you went to the emergency room before you were under
10 drugs?

11 A No, because this is on June 30th. I was -- I was
12 actually put into the hospital on June 29th. At least that's
13 what my medical bracelet said. They did a surgery on the 29th
14 I think; my first of 12.

15 Q Okay. If I can --

16 MR. WEINSTOCK: Court's indulgence, please.

17 BY MR. WEINSTOCK:

18 Q Okay. Ms. Richards, let me show you what has been
19 marked as Defense Proposed Exhibit C. You can take a minute
20 to read that. Have you read that?

21 A Yes.

22 Q Do you recall making those statements to the
23 doctors?

24 A Which ones?

25 Q Well, any of them or all of them I guess.

1 A I remember --

2 THE COURT: Well, that's kind of compounded. Can
3 you break it up? It's kind of difficult for the witness to --
4 BY MR. WEINSTOCK:

5 Q Okay. Well, let me -- let me start it by this. Can
6 you look on the last page that has a date of this reporting?
7 Do you see that?

8 A Yes.

9 Q And what's that date?

10 A The date of the reporting or the date that I was
11 admitted?

12 Q The date of the reporting or the date of the
13 admission. I think they're the same, aren't they?

14 A June 29th, 2014.

15 Q Okay. And that was the date that you first went
16 into the hospital, correct?

17 A Yes.

18 Q You weren't on drugs at that time, were you?

19 A I know that they started giving me drugs when I
20 first got to the emergency room before I went -- was admitted
21 into ICU before I went to surgery. But at this point in time
22 I do not know.

23 Q Okay. And if you can look on the first paragraph
24 about two lines down. Do you see that?

25 A Yes.

1 MR. WEINSTOCK: And at this time, Your Honor, I'd be
2 moving for the admission of Defense Proposed Exhibit C.

3 THE COURT: What is C?

4 MR. WEINSTOCK: C is the -- another medical
5 reporting.

6 THE COURT: It's a medical record?

7 MR. WEINSTOCK: Yes.

8 THE COURT: For UMC?

9 MR. WEINSTOCK: Yes.

10 THE COURT: And it's dated June 29th, 2014?

11 MR. WEINSTOCK: Yes.

12 THE COURT: All right. Any opposition?

13 MS. MERCER: No, Your Honor.

14 THE COURT: Okay. Then C is admitted.

15 (Defendant's Exhibit C admitted.)

16 BY MR. WEINSTOCK:

17 Q Okay. Did you see where that says that you stated
18 two weeks ago you were hit with a paddle -- a paddle board on
19 the back of the rear? You see that?

20 A Yes.

21 Q And is that something that you're saying that Robert
22 told you to say?

23 A Yes. He said that I was supposed to say dominatrix
24 or I said S&M with a wooden paddle.

25 Q Okay. Again, do you see anything here that you said

1 anything about a dominatrix in this report?

2 A Isn't S&M the same thing?

3 Q Well --

4 A I'm not even quite clear if they are or not.

5 Q Okay. Well, it does state in this report, and
6 please correct me if I'm reading this wrong, it says, "She
7 states that two weeks ago she was hit with a paddle board on
8 the backside of her rear stating that it left a large bruise
9 and that turned into these large abscesses over the last two
10 weeks. The patient states that this was an act of consensual
11 beating." Is that true?

12 A That is what I said.

13 MR. WEINSTOCK: Your Honor, for the record is
14 State's B, that's in, correct?

15 MS. MERCER: I think he means Defense B.

16 MR. WEINSTOCK: Or Defense B.

17 THE COURT: Defense B, Defense B is admitted, yes.

18 MR. WEINSTOCK: Thank you.

19 BY MR. WEINSTOCK:

20 Q And that's the one -- is that still in front of you,
21 the one dated June 30th, 2014?

22 A Yes.

23 Q Now, in that document, again, it states that you
24 were an 18-year-old female who has a self-reported history of
25 bipolar disorder, ADHD and schizophrenia and a self-described

1 masochist. That is what it says, correct?

2 A Yes.

3 Q Did Robert tell you to tell them you were
4 schizophrenic?

5 A No.

6 Q Did Robert tell you that you had bipolar disorder?

7 A No.

8 Q Did Robert tell you you were a self-described
9 masochist?

10 A No.

11 Q Did Robert tell you to tell them about ADHD?

12 A No.

13 Q And again, the part that we were at previously about
14 halfway through where it says patient, do you see that?

15 A Yes.

16 Q That talks about you being diagnosed as a teenager
17 with these conditions?

18 A Yes.

19 Q Did Robert tell you to them that?

20 A No.

21 Q Now, you go in further to describe to the doctors, a
22 couple lines later, you see where it says, "She states"?

23 A Could you point it out?

24 Q Where it says, "She states that she was neglected."
25 Do you see that? Do you see that?

1 A Yes.

2 Q And you go on and in your reporting it states on
3 there that, "She states that she was neglected by her mother
4 throughout childhood and she only gets her mother's attention
5 by acting up at home. She states that when she acts up she
6 will get negative attention from mother and that she often was
7 punished by mother. She states that she participates in
8 masochistic activity as she often feels that this is the only
9 way to get -- she can get attention from others." Do you see
10 that?

11 A Yes.

12 Q Did you say that?

13 A I would assume so, yes. I don't remember.

14 Q Did Robert tell you to say that?

15 A No.

16 Q Is it true?

17 A My mother only gave me attention when I was acting
18 up. She was very neglectful. But I don't like S&M or
19 dominatrix, no, that part is incorrect.

20 Q So you lied?

21 A Yes.

22 Q Okay. And go down another line or two, it says,
23 "She reports."

24 A Okay.

25 Q You see that where it says, "She reports multiple

1 psychiatric hospitalizations during her teenage years. She
2 states that she was into -- initially diagnosed with ADHD at
3 around age 13 to 14. She states that when she failed
4 treatment for ADHD she was eventually diagnosed with bipolar
5 disorder and later on schizophrenia." Is that true?

6 A No.

7 Q You told them that, though, didn't you?

8 A Yes.

9 Q Why'd you tell them that?

10 A I don't know.

11 Q Robert didn't tell you to tell them that, did he --
12 did he?

13 A No.

14 Q So you're telling me you just decided to out and out
15 lie to the hospital, correct?

16 A Yes.

17 Q Okay. I'd ask you to go to the second page on this
18 document. See where it says, "Past psychiatric history"?

19 A Yes.

20 Q See where it says, "The patient endured multiple
21 psychiatric hospitalizations as a teenager. She states that
22 most of her hospitalization occurred in Colorado. She states
23 that she was diagnosed with ADHD, bipolar disorder and
24 schizophrenia in the past. She states that she has been on
25 medication for ADHD as well as multiple antipsychotics in the

1 past. She also -- or she does not remember the name of the
2 medication that she was on in the past. She states that she
3 has been off the medication for many years." Did you say
4 that?

5 A I would believe so, yes.

6 Q Is that true?

7 A I have been hospitalized.

8 Q How many -- how many times?

9 A Once.

10 Q For what?

11 A I debated committing suicide.

12 Q When was that?

13 MS. MERCER: Objection, relevance.

14 MR. WEINSTOCK: Well, Your Honor, I guess it's going
15 to lead to a follow-up question because -- if I can, Your
16 Honor.

17 THE COURT: Well, let's hear what the follow-up
18 would be.

19 BY MR. WEINSTOCK:

20 Q In this report doesn't it say you denied any
21 suicidal attempts?

22 THE COURT: If that's in the report I'll let you ask
23 the question.

24 MR. MARTINEZ: Can he refer us where in the report?

25 THE COURT: Yeah. Are you still looking at Defense

1 Exhibit C?

2 MR. WEINSTOCK: It very well may be, Your Honor. It
3 may be in another one that I'll have to bring up.

4 THE COURT: Well, in any event, the issue here is
5 whether she told the truth when she stated to UMC that she had
6 been hospitalized, that's the issue. And she indicated that
7 she had been hospitalized. So I think we can move on from
8 that.

9 BY MR. WEINSTOCK:

10 Q Okay. It's your testimony that you were
11 hospitalized for a suicide attempt when you were a teenager?

12 A Yes.

13 Q Okay.

14 A And it wasn't an attempt. It was suicidal thoughts
15 actually.

16 Q Were you on medication for bipolar, ADHD or any of
17 the -- schizophrenia?

18 A Yes. My mom had put me on two different
19 antipsychotics and I was on ADHD medicine from five to seven.

20 Q From ages five to seven?

21 A Yes.

22 Q And were you taking those?

23 A At five to seven, yes.

24 Q Did the doctor take you off the medication?

25 A I don't remember. I was -- yes.

1 Q I would ask you to go to the third page of Exhibit
2 B.

3 A Mine's only two pages.

4 MR. WEINSTOCK: Court's indulgence, Your Honor. I
5 apparently got my exhibits mixed -- mixed up. Can I have
6 Court's -- one moment.

7 THE COURT: C is June 29 and B is June 30th.

8 MR. WEINSTOCK: If I may have one minute so I can
9 sit down and hopefully go through this again, Your Honor. I
10 unfortunately lost my place. I apologize, Your Honor, I'll
11 try to move on a little bit then.

12 BY MR. WEINSTOCK:

13 Q Do you remember telling the hospital that you denied
14 any alcohol use?

15 A I honestly don't remember these reports at all.

16 Q Okay. But if -- if hypothetically you did tell the
17 hospital that you were denying alcohol use, that would have
18 been a lie, correct?

19 MS. MERCER: Objection as to foundation. Like what
20 time frame is he talking about? I mean if it's immediately
21 upon admission and she hadn't been drinking in the last 24
22 hours --

23 THE COURT: Yeah, sustained.

24 MS. MERCER: -- did they ask for long-term?

25 THE COURT: It's improper argument anyway. You

1 shouldn't ask witness -- fact witnesses hypothetical
2 questions.

3 MR. WEINSTOCK: I'd move for the admission of
4 Defense Exhibit, Proposed Exhibit -- Exhibit D, that's another
5 medical record, Your Honor.

6 THE COURT: State? Do we know what D is yet? I
7 mean, how do I know it's a medical record? Did they see it?

8 MR. WEINSTOCK: I've shown it to them.

9 MS. MERCER: It's a piece of the medical records.

10 THE COURT: Okay, then I'll go ahead and admit D.

11 (Defendant's Exhibit D admitted.)

12 BY MR. WEINSTOCK:

13 Q Okay. If you can read that for me? Have you read
14 that?

15 A Yes.

16 Q Is that a statement you made? And looking at the
17 first paragraph specifically.

18 A Where it says note through 131 --

19 Q Yes.

20 A -- [inaudible] admission?

21 Q Yes.

22 A Yes, I believe so.

23 Q Okay. So you recall telling them specifically that
24 you had sexual activity with a dominatrix in a -- with a
25 paddle that had -- or excuse me, that was used by a partner

1 that was embedded with metal. That she had been spanked
2 multiple times to her buttocks. Did Robert ever tell you to
3 say anything about anything about a metal?

4 A No.

5 Q Why'd you mention that this wooden paddle was
6 embedded with metal?

7 A I don't know. My story got mixed up I guess.

8 MR. WEINSTOCK: Your Honor, can -- Ms. Clerk, can I
9 have Exhibit Number 86? If I may approach, Your Honor?

10 THE COURT: You may.

11 BY MR. WEINSTOCK:

12 Q I'm showing you what's been admitted as State's
13 Exhibit 86. You remember you testified yesterday that that
14 was the iron that was used to burn your foot?

15 A Yes.

16 Q How do you know that?

17 A Because I saw it.

18 Q Well, is there anything distinctive about that iron
19 pictured in Exhibit 86 which differentiates that from any
20 other iron such that you can identify that as the iron that
21 burned you?

22 A No. There's not any real thing to identify that
23 specifically.

24 Q Well let me ask you. Do you know beyond a doubt
25 that that iron pictured in Exhibit 86 was the iron that burned

1 you?

2 A I'm not sure that is the iron.

3 Q Okay. So all you know is you were burned by an
4 iron.

5 A A metal iron that was in his closet that he would
6 iron his clothes with every day.

7 Q Okay.

8 A Kariah would iron his clothes.

9 Q So the iron that you're claiming was used to -- that
10 you claim was used to burn you was an iron that was in general
11 use in the house, correct?

12 A Yes, it was in his room.

13 Q It was in whose room?

14 A Sorry. It was in the master bedroom closet.

15 Q Okay. Where in the master bedroom closet was it
16 kept? Was it on a shelf or on the floor?

17 A It was on the shelf.

18 Q Okay. How high up was the shelf?

19 A I guess about six feet up.

20 Q Okay. Had you ever used that iron?

21 A No.

22 Q Had you seen Robert use that iron?

23 A Kariah would use the iron to --

24 Q To iron, correct?

25 A -- to iron his jeans every night before we went to

1 work.

2 Q Okay. So you saw an iron being used in the house,
3 correct?

4 A Yes.

5 Q And after it was used was it put up?

6 A Yes.

7 Q And it was kept in the closet in the master bedroom,
8 correct?

9 A Yes.

10 Q Do you remember, was it a plug-in iron or one that
11 would use basically water and not need to be plugged in?

12 A It was a plug-in iron.

13 Q Do you know how long the cord was?

14 A No, not off the top of my head.

15 Q The specific time that you testified to that you had
16 your foot burned with an iron, did you see it get plugged in?

17 A Yes. He had to plug it in and let it heat up. And
18 then when he started to burn my foot he moved it to the other
19 outlet that was near the small nightstand of the bed.

20 Q So he plugged it in and then at some point unplugged
21 it and plugged it in at a different place?

22 A Yes, because he didn't want me moving rooms.

23 Q You don't know what he wanted, do you? You're
24 assuming that at this time, correct?

25 A No, he told me not to move.

1 Q He may have told you not to move. Where were you
2 standing?

3 A I was seated on the floor near the bed.

4 Q In the master bedroom?

5 A Yes.

6 MR. WEINSTOCK: And, Your Honor, if I could have
7 Exhibit 88?

8 THE COURT: All right. The clerk will retrieve it.

9 MR. WEINSTOCK: May I approach?

10 THE COURT: Yes. Does the State need to see what
11 he's showing --

12 MS. MERCER: No, Your Honor.

13 THE COURT: -- to be reminded what 88 is? No?
14 Okay.

15 BY MR. WEINSTOCK:

16 Q I'm showing you what's been marked as State's
17 Exhibit Number 88. What's that?

18 A That's the yellow pole.

19 Q The yellow pole?

20 A [inaudible]

21 Q Do you know where that yellow pole came from?

22 THE COURT: Mr. Weinstock, you've got to make sure
23 she finishes her answer. Thank you.

24 BY MR. WEINSTOCK:

25 Q Your testimony is that's the yellow pole?

1 A It's the yellow pole that he used to beat me.

2 Q Do you know where that yellow pole came from?

3 A The exercise room.

4 Q The exercise room. And I believe -- Ms. Richards,
5 I'm showing you Exhibits 35 and 37. You previously identified
6 those as being photographs of the exercise room, correct?

7 A Yes.

8 Q And you said that the yellow pole came from the
9 exercise room, correct?

10 A Yes.

11 Q Did it come off any equipment that was in the
12 exercise room?

13 A I saw him pull it off of the back machine in the
14 corner.

15 Q And the back machine's photographed and contained in
16 either Exhibit Number 35 or 37, correct?

17 A Yes, in 35.

18 Q Do you see anything yellow about that exercise
19 machine?

20 A No.

21 Q And you're saying that you believe that Exhibit
22 Number 88 was removed from the back of the machine in Exhibit
23 Number 35. Is that what you're testifying to?

24 A He pulled it from -- because the exercise chair was
25 made like this and it had a pole, he grabbed it from there. I

1 don't know if it was a part of a machine or if he just laid it
2 on top but he did it pull out from there. Because when I was
3 in the exercise room he grabbed it.

4 Q Okay. Now, regarding Exhibit Number 88, the yellow
5 pole, again, how do you know that this was the yellow pole
6 that you claim was used to beat you?

7 A Because it has those rings on the edge.

8 Q That's the distinctive part that tells you it's the
9 same pole that beat you?

10 A Yes.

11 Q Okay. Let me -- and when you say rings at the
12 end --

13 THE COURT: So I want the record to reflect the
14 witness was testifying to rings without the photograph in
15 front of her and now the defense counsel is putting the
16 photograph in front of her.

17 BY MR. WEINSTOCK:

18 Q I'm giving you a black pen. Can you circle the
19 rings that you're referring to?

20 MS. MERCER: Objection, Your Honor. That's --

21 THE COURT: You can't mark on an actual exhibit.
22 But if you want, what you could do, is put it on the -- the
23 screen on the Elmo and she could --

24 MR. WEINSTOCK: I'm not sure I know how to do that
25 but I will try.

1 THE COURT: -- and you can have her circle with her
2 hand the parts that you want her to identify. It's an
3 interactive screen.

4 MR. WEINSTOCK: I don't know what that means, Your
5 Honor. I'm old and I don't remember all this stuff. How do I
6 turn it on, Your Honor?

7 THE COURT: Well, it's already on. We all can see
8 it and she just circled what she's referring to.

9 MS. MERCER: And, Your Honor, I don't believe the
10 actual big screen over here is on for the jurors.

11 THE COURT: Oh, it isn't on. All right. So, I'm
12 not the technology guy so --

13 MR. MARTINEZ: Do you want me to turn it on, Your
14 Honor? I can turn it on.

15 THE COURT: If you could, thank you. All right.
16 And no offense, Mr. Weinstock, just my court clerk would be
17 very upset with me if I allowed anybody to mark original
18 exhibits --

19 MR. WEINSTOCK: I understand. I understand, Your
20 Honor. I apologize.

21 THE COURT: All right.

22 BY MR. WEINSTOCK:

23 Q Okay. So you've now circled the rings that you're
24 telling --

25 THE COURT: And the jurors can't still see it.

1 They're waiting for it to -- okay. Why don't we redo it so we
2 can --

3 BY MR. WEINSTOCK:

4 Q Okay. So it's these what you call rings at the very
5 top of this yellow pole that you're testifying makes you sure
6 that this is the same yellow pole that was used to beat you?

7 A Yes.

8 Q How were you able to see those rings?

9 A Because I had looked back at them and the beating
10 lasted a long time, so I saw it.

11 Q And you testified I believe on direct examination
12 that that yellow pole was red and yellow from your blood?

13 A Yes.

14 Q Where was the blood?

15 A On the bottom side of the pole.

16 Q Now, after you got out -- or excuse me. While you
17 were in the hospital, do you remember a police officer coming
18 by to talk to you, don't you?

19 A Which one?

20 Q The first one when you -- on June 30th of 2014, do
21 you remember an Officer Myles coming to talk to you at the
22 hospital?

23 A I remember faintly. I don't remember how long he
24 was there or anything but I remember talking with him.

25 Q Do you remember what you told him?

1 A I told him the story.

2 Q The whole story?

3 A I believe so.

4 Q Okay. Did you mention anything about a
5 sadomasochistic beating with a paddle?

6 A I believe so.

7 Q You believe so? Okay. Do you believe you mentioned
8 that the paddle had spikes in it?

9 A I don't know.

10 Q Why didn't you tell the officers the truth on that
11 time?

12 A Because I was scared.

13 Q Who were you scared of?

14 A Of LR coming after me and my family.

15 Q Well, you were in the hospital, there was a police
16 officer there, tell me you're still scared knowing all that?

17 A I'm still scared now.

18 Q Okay. And now you're telling another story, aren't
19 you?

20 A The truth.

21 MS. MERCER: Objection, Your Honor, that was really
22 argumentative.

23 THE COURT: Sustained. Save your argument for
24 closing argument, Mr. Weinstock.

25 MR. WEINSTOCK: Yes, sir.

1 BY MR. WEINSTOCK:

2 Q Do you remember another police officer coming in to
3 see you a few days later on July 4th, 2014?

4 A Ortega.

5 Q Do you remember?

6 A I remember a police officer named Ortega and he was
7 rude to me. That's why I remember him.

8 Q Okay. Did you lie to him because he was rude to
9 you?

10 A No, I lied to him because I was scared.

11 Q And do you remember sometime around July 11th, did
12 you -- were you in contact with Shared Hope International?
13 Did somebody contact you from them?

14 A Was that the Salvation Army?

15 Q I don't know. Do you recall?

16 A I recall the Salvation Army --

17 Q Okay.

18 A -- coming in and giving me pajama pants and a purse
19 and a couple of things.

20 Q And do you recall shortly after that you went to
21 California for further treatment, correct?

22 A Yes.

23 Q And when you were in California you had your aunts,
24 your uncle, your other friend, I believe Ms. Fite [phonetic],
25 they came and saw you, correct?

1 A My uncle lives in Nevada. Yes, my aunt in
2 California and Della Fite, yes.

3 Q And then when they talked to you and they tried to
4 get you to tell them what happened, correct?

5 A Yes.

6 Q And you were embarrassed about what happened, right?

7 A I was embarrassed, yes.

8 Q And you're still embarrassed today I imagine,
9 correct?

10 A I'm ashamed.

11 Q Can you --

12 MR. WEINSTOCK: Court's indulgence.

13 THE COURT: Yes, sir.

14 BY MR. WEINSTOCK:

15 Q Ms. Richards, I just want to kind of summarize a
16 little bit. You've testified under oath today, and I really
17 appreciate it, that you had lied to your mother at one period
18 of time, correct?

19 A What do you mean?

20 Q You -- you lied to your mother in the past, correct?

21 MS. MERCER: Objection, that mischaracterizes her
22 testimony. I don't believe her -- she was ever asked that
23 question.

24 BY MR. WEINSTOCK:

25 Q Did you ever lie to your mother?

1 THE COURT: Give me a moment. I don't -- frankly, I
2 don't remember that question being asked, Mr. Weinstock.

3 MR. WEINSTOCK: I thought I did, Your Honor.

4 BY MR. WEINSTOCK:

5 Q Let me ask you. During the time that you --

6 THE COURT: So I'll sustain the objection and please
7 -- please rephrase.

8 BY MR. WEINSTOCK:

9 Q During the time you were living with your mother in
10 Colorado, did you ever lie to her -- to her?

11 MS. MERCER: Object to relevance.

12 THE COURT: Sustained. I don't see how that's
13 relevant to any of the issues in this case whether she's ever
14 lied to her mother.

15 MR. WEINSTOCK: Well, I think it goes into
16 credibility, Your Honor --

17 THE COURT: All right.

18 MR. WEINSTOCK: -- it's a pattern we're talking
19 about.

20 THE COURT: Not relevant.

21 MR. WEINSTOCK: Okay.

22 THE COURT: Improper character evidence, so please
23 continue.

24 BY MR. WEINSTOCK:

25 Q In early 2014, you lied to your father, correct?

1 MS. MERCER: Objection, relevance and vague.

2 THE COURT: That's sustained. All right.

3 BY MR. WEINSTOCK:

4 Q You lied to the police on at least three occasions
5 after you went to the hospital, correct?

6 MS. MERCER: Objection, mischaracterizes her
7 testimony. She's testified that she was interviewed by Patrol
8 Officer Myles and Detective Ortega and as to the third she
9 didn't make a statement.

10 THE COURT: Well, I think the -- the more important
11 issue here is you've covered this already and the jurors have
12 been attentive and have been taking notes. And to the extent
13 you've asked her questions about what she told the police and
14 whether that diverged from what actually happened, I trust the
15 jurors already recollect that and have notes. So I would
16 prefer that you not take time to repeat the -- the stuff that
17 you've already covered.

18 MR. WEINSTOCK: Very well, Your Honor. I have no
19 further questions at this time.

20 THE COURT: But you will be allowed in closing
21 argument to refresh the jurors' recollection about everything
22 that you elicited. All right. Then redirect.

23 MS. MERCER: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. MERCER:

1 Q Ms. Richards, defense counsel went over and over and
2 over again with you --

3 MR. WEINSTOCK: Objection, Your Honor, I don't
4 believe the comments by the --

5 THE COURT: That's sustained. Let's don't
6 characterize the --

7 MS. MERCER: Okay.

8 THE COURT: -- what the other counsel did. Let's
9 just get to the bottom of the matter.

10 BY MS. MERCER:

11 Q Do you recall being asked several questions about
12 your self-reporting history as a teenager with bipolar
13 disorder, ADHD, things of that nature?

14 A Yes.

15 Q You were actually evaluated by a psychiatrist while
16 you were at UMC, correct?

17 A Yes.

18 MR. WEINSTOCK: Objection, leading, Your Honor.

19 THE COURT: All right. So ask her in a non-leading
20 fashion.

21 BY MS. MERCER:

22 Q Were you evaluated by a psychiatrist while you were
23 at UMC?

24 A Yes, and I was also evaluated when I was 17.

25 MS. MERCER: Permission to approach, Your Honor.

1 THE COURT: Yes, you may.

2 BY MS. MERCER:

3 Q While he's reviewing that document, would you be
4 surprised if there was over 1,200 pages of medical records
5 from your stay at UMC?

6 MR. WEINSTOCK: Objection, relevance.

7 THE COURT: Overruled.

8 A No, I wouldn't be surprised.

9 BY MS. MERCER:

10 Q Ms. Richards, I'm going to ask you to please look
11 over this document for me and tell me when you're done. Did
12 you have a chance to review that entire document?

13 A Yes.

14 Q Did that appear to be the report regarding the
15 psychiatric evaluation that was done?

16 A Yes.

17 MS. MERCER: Your Honor, I would ask to have this
18 marked as State's next in order and move for the admission. I
19 believe it will be State's Exhibit 96, Your Honor.

20 THE COURT: So what are they, medical records from
21 UMC?

22 MS. MERCER: It is, Your Honor.

23 THE COURT: What's the next number?

24 THE CLERK: Ninety-six.

25 THE COURT: All right. Does the defense want to

1 make any opposition?

2 MR. WEINSTOCK: No.

3 THE COURT: All right. Ninety-six is admitted.

4 (State's Exhibit 96 admitted.)

5 MS. MERCER: Permission to publish, Your Honor?

6 THE COURT: You may.

7 BY MS. MERCER:

8 Q For the record, I'm publishing the third page of
9 this exhibit, Ms. Richards. It indicates the patient is
10 without findings of psychosis, mania or ADHD on the mental
11 status examination [inaudible] evaluation, correct?

12 A Yes.

13 Q And under plan and recommendations it says, "At the
14 current time there will be no requirement -- or no
15 recommendation for psychotropic medication as the patient at
16 the time of this evaluation was without findings of major
17 mental illness", correct?

18 A Yes.

19 Q So when you reported these -- this incident to
20 detectives you were not suffering from any sort of mental
21 illness, correct?

22 MR. WEINSTOCK: Objection, Your Honor, assumes facts
23 not in evidence.

24 THE COURT: Well, let's ask from her -- from her
25 perspective. She can talk about her own medical conditions.

1 So ask from her -- from her own understanding of her own
2 physical and mental condition.

3 A Looking back, I can say that I had PTSD but other
4 than that, no, no mental illness.

5 BY MS. MERCER:

6 Q And you were also asked several questions about why
7 you didn't report this incident to the police when they came
8 to your hospital. Do you recall that line of questioning?

9 A No.

10 Q When Mr. Weinstock asked you whether or not you
11 reported being pandered or pimped out by the defendant when
12 the patrol officer came to see you on June 30th and then when
13 Detective Ortega came to you, do you recall that --

14 A Yes.

15 Q -- those questions?

16 A Yes.

17 Q You indicated that you were scared?

18 A Yes.

19 Q And that's why you didn't reveal that?

20 A Yes.

21 Q As early as July 3rd of 2014, had you begun
22 disclosing bits and pieces of it to your aunt who was in town?

23 A Yes, I did.

24 Q And do you know whether she ever reported that to
25 medical staff?

1 A I think she did.

2 MR. WEINSTOCK: Objection, Your Honor, it's
3 speculative.

4 MS. MERCER: Permission to approach the witness,
5 Your Honor?

6 THE COURT: Well, so --

7 MS. MERCER: It's a copy --

8 THE COURT: -- sustained. Lay some more foundation,
9 please.

10 MS. MERCER: If I could just approach?

11 THE COURT: You may.

12 BY MS. MERCER:

13 Q Ms. Richards, if you could just review that document
14 to yourself and let me know when you're done. It's the second
15 paragraph. Okay.

16 MS. MERCER: Your Honor, I would ask to have this
17 marked as State's Exhibit, 97. It's a part of the medical
18 records.

19 THE COURT: Ninety-seven's admitted.

20 (State's Exhibit 97 admitted.)

21 MS. MERCER: I would move for --

22 THE COURT: You may publish.

23 MS. MERCER: Thank you.

24 BY MS. MERCER:

25 Q In that second paragraph it indicates that you had

1 disclosed some of this -- the fact that you were pimped out by
2 the defendant to your aunt but you were afraid of reporting it
3 because of fear of the defendant, correct?

4 MR. WEINSTOCK: Your Honor, I would object at this
5 time. This is a statement that came from allegedly the aunt,
6 not from her. This is somebody that is not --

7 THE COURT: Why -- it's a medical record, which
8 parties have already stipulated to and she's using it to
9 refresh the witness's recollection.

10 MR. WEINSTOCK: Well, I don't -- I stipulated to the
11 authenticity. I don't necessarily stipulate that the hearsay
12 statements from an aunt is relevant or is in fact proper and
13 that's double hearsay.

14 THE COURT: I thought you guys stipulated to
15 admissibility?

16 MR. WEINSTOCK: I -- I stipulated as to the
17 authenticity of the document and the document that's in there.
18 But I don't think we can stipulate as to statements made by a
19 third party.

20 THE COURT: All right. So how do you want to
21 address that, Ms. Mercer?

22 MS. MERCER: My position is that the statement for
23 purposes of medical diagnosis so they could properly address
24 her injuries and her well-being.

25 MR. WEINSTOCK: Your Honor, there's no information

1 as to that, Your Honor. Again, no foundation.

2 THE COURT: I will allow it. It's overruled. Go
3 ahead.

4 MS. MERCER: Thank you, Your Honor.

5 BY MS. MERCER:

6 Q This document indicates that your aunt reported to
7 medical staff that you were afraid of reporting that -- the
8 pimping incident, correct?

9 A Yes.

10 Q Defense counsel also asked you about a description
11 for Slim. Do you recall that line of questioning?

12 A Yes.

13 Q Do you recall exactly how you described Slim to the
14 detectives as you sit there today?

15 A He was bald on top, white hair, they called him --
16 they called him Slim and I guess I thought that was funny.

17 Q Why did you think that was funny?

18 A I guess probably because I thought he was chunky. I
19 think I remember he had a beer belly, I kind of remember.

20 And --

21 Q Were you able to describe him in any further detail?

22 A When I looked at the pictures I wasn't sure but I
23 could tell by his bottom lip because he had a bigger bottom
24 lip and that was for some reason something I remembered.

25 Q How much time did you spend with Slim during the

1 four days that you were with him?

2 A Maybe a couple hours. Most of the time he went out
3 to the Strip and was doing whatever it is he did and I slept a
4 lot those four days.

5 Q Why did you sleep a lot?

6 A Because I was really ill.

7 Q When --

8 MR. WEINSTOCK: Objection, foundation, Your Honor.

9 THE COURT: Overruled. Go ahead.

10 BY MS. MERCER:

11 Q Speaking of really ill, when you reported -- or when
12 you walked into the UMC Hospital, did you enter the emergency
13 room area?

14 A Yes.

15 Q Once you were admitted into the emergency room, do
16 you recall what the first thing they did to you was in terms
17 of treating you?

18 A They did a blood transfusion. I remember that in
19 the emergency room.

20 Q You had to receive a blood transfusion?

21 A Yes, and it was in my neck.

22 Q How soon after walking into the emergency room did
23 that occur?

24 A I don't know.

25 Q Was it soon or was it days later?

1 A It was soon, within hours.

2 Q Do you know why you had to receive a blood
3 transfusion?

4 MR. WEINSTOCK: Objection, foundation, hearsay.

5 MS. MERCER: I'm asking her if she knows, Your
6 Honor.

7 THE COURT: All right. If you know, don't
8 speculate. You can answer the question if you know.

9 BY MS. MERCER:

10 Q Do you know, ma'am?

11 A They said that I had a third --

12 MR. WEINSTOCK: Hearsay, Your Honor.

13 A They told me I had a --

14 MR. WEINSTOCK: Hearsay, Your Honor.

15 THE COURT: So that's hearsay, she can't --

16 A Okay.

17 THE COURT: -- she can't explain her -- so you can't
18 say what someone else told you.

19 BY MS. MERCER:

20 Q Let me ask you this question. Were you bleeding
21 externally when you walked into the ER?

22 A Yes. I didn't have much blood they told me.

23 Q I'm sorry. Were you -- was there blood coming out
24 of your body?

25 A Out of my butt.

1 Q Okay. Was it a lot of blood or a little bit of
2 blood coming out of your rear end?

3 A It was constant for days.

4 Q Was it bleeding enough that that was the cause for
5 you to have a transfusion?

6 MR. WEINSTOCK: Objection, foundation, Your Honor.

7 THE COURT: I'll let her answer that. She can --
8 she can say if that was her perception.

9 A I lost a lot of blood over time. I don't know if
10 that was the only reason why I lost all that blood.

11 BY MS. MERCER:

12 Q Defense counsel also asked you some questions about
13 this other girl, Blanca, that was apparently going to
14 prostitute for the defendant as well. Do you recall that line
15 of questioning?

16 A Yes.

17 Q You indicated that she was there for how long?

18 A About 24 hours.

19 Q In that 24 hours, did the defendant ever get a copy
20 of her driver's license with her family's address on it?

21 MR. WEINSTOCK: Objection, foundation, Your Honor.

22 BY MS. MERCER:

23 Q That you saw?

24 A No.

25 Q Did he ever drive her to or from her family's house

1 that you saw?

2 A No.

3 MR. WEINSTOCK: Relevance, Your Honor.

4 THE COURT: Overruled.

5 BY MS. MERCER:

6 Q But he had driven you to your family's house,
7 correct?

8 A No. He would not allow me to see my family.

9 Q Right. But when you first went with him he drove
10 you to your aunt and uncle's house so that you could get your
11 belongings, correct?

12 A Yes.

13 Q And he had a copy of your driver's license, correct?

14 A Yes.

15 Q And whose address was on your driver's license?

16 A My father's address.

17 Q You were also asked some questions about Kariah
18 being beaten for being out of pocket?

19 A Yes.

20 Q You said that you witnessed her being beaten one
21 time for -- because she was out of pocket?

22 A Yes.

23 Q Tell me about the circumstances of that beating.

24 A They were in the garage and she looked up because he
25 was getting in the car and she got beaten on and off for that

1 and he just kept screaming at her and beating her and then he
2 came and hit me a couple times.

3 Q You indicated that you thought it was end of April,
4 early May when you were beaten so badly that you couldn't
5 work --

6 A Yes.

7 Q -- because your face was so messed up?

8 A Yes.

9 Q And you said during cross-examination that after
10 that is when he began beating you elsewhere?

11 A Yes.

12 Q Was that when he began to beat you with the oranges
13 in the socks?

14 A Yes.

15 MR. WEINSTOCK: Objection, Your Honor, exceeds the
16 scope of redirect. I never got into anything about that.

17 MS. MERCER: He specifically asked her would it --
18 wouldn't it be detrimental to the defendant that he'd beaten
19 her so badly she couldn't go to work. And then --

20 MR. WEINSTOCK: It's not the same thing, Your Honor.

21 THE COURT: I think it's close enough that I'll
22 allow her to get into it. Go ahead.

23 A Yes.

24 BY MS. MERCER:

25 Q Do you recall the question?

1 A Yes. Yes, he beat me with the oranges in the sock
2 after that incident.

3 Q So that the injuries wouldn't be visible?

4 A Yes.

5 Q Underneath clothing?

6 A Yes.

7 Q You were also shown a photograph of --

8 MS. MERCER: May I approach your clerk, Your Honor?

9 THE COURT: Yes.

10 BY MS. MERCER:

11 Q You were shown a document by defense counsel
12 regarding your trespass at the Aria?

13 A Yes.

14 Q And you acknowledge that that was a photograph of
15 you taken on that night, correct?

16 A Yes.

17 Q Was it a full body photograph or just a photograph
18 of your face?

19 A It's a photograph of my face and about to here.

20 Q So from your like neck area up?

21 A Yes.

22 Q And that was on May 28th of 2014?

23 A Yes, that's what it states.

24 Q So after the time period in which he began beating
25 you about the abdomen and things of that nature?

1 A Yes.

2 MS. MERCER: Court's indulgence, Your Honor.

3 THE COURT: Uh-huh.

4 BY MS. MERCER:

5 Q Under what circumstances was it that you handed your
6 Walmart gift card to the defendant? What was occurring at the
7 time you handed it to him?

8 A He was going to help me stay there for a couple
9 weeks and I didn't have -- I didn't want to go back to my
10 dad's and my aunt and uncle's house. And I had just missed my
11 bus out of town.

12 Q And that was after the conversation about you being
13 a prostitute for him and him being a pimp and Kariah being a
14 ho?

15 A Yes.

16 Q At the time that the defendant first pitched this
17 idea of you being a prostitute for him, what information did
18 you have about what a pimp was and what a prostitute was?

19 A I didn't really have anything other than what I had
20 previously seen in movies and that wasn't much.

21 Q When did you watch this Snoop Dog movie with the
22 defendant about pimping?

23 A I want to say it was around the time that the first
24 beating happened.

25 Q So late March, early April of 2014?

1 A Yes.

2 Q How many other pimp movies did you watch with him
3 that he had at the house?

4 A I watched some movies of these real pimps at the
5 Players Balls and things like that. And that he -- when I was
6 told to go to the exercise room he would put those on or he
7 would put sermons for me to watch.

8 Q So you would have to watch these in the exercise
9 room?

10 A Yes, on a little -- I think it was a Mickey Mouse or
11 Dora TV.

12 Q And these were his movies, correct?

13 A Yes.

14 Q Not yours?

15 A No, they weren't mine.

16 Q Defense counsel also asked you about it being your
17 choice to stay there. Do you recall that?

18 A Yes.

19 Q That very first day on March 10th of 2014?

20 A Yes.

21 Q Did you voluntarily miss your bus?

22 A No.

23 Q Had it not been for the defendant making you miss
24 the bus would you have even been in a situation where you
25 could have been pimped out by the defendant?

1 MR. WEINSTOCK: Objection, speculation and it --
2 facts not in the evidence at this time, Your Honor.

3 THE COURT: Let me hear the question one more time?
4 BY MS. MERCER:

5 Q Had it not been for the defendant making you miss
6 your bus to Ohio that morning, would you have even been in a
7 position where you could have been pimped out by him?

8 MR. WEINSTOCK: And it's assuming facts not in
9 evidence, Your Honor and --

10 THE COURT: Sounds kind of argumentative so why
11 don't you -- I'll sustain the objection.

12 BY MS. MERCER:

13 Q Ms. Richards, if he had not made you miss your bus
14 would you have gotten on the bus and traveled to Ohio?

15 A Yes.

16 Q And never had any dealings with him again?

17 MR. WEINSTOCK: Objection, speculation.

18 THE COURT: No, I'll -- I'll overrule that
19 objection.

20 A No, I wouldn't have ever seen him again.

21 BY MS. MERCER:

22 Q Did you wake up the morning of March 10th of 2014
23 and think to yourself, hey, you know what, I think I'm -- I
24 want to be a prostitute now?

25 MR. WEINSTOCK: Objection, argumentative.

1 THE COURT: Overruled.

2 A No.

3 BY MS. MERCER:

4 Q With regards to this individual that you considered
5 dating, were you ever in a dating relationship with him? The
6 individual before you met the defendant and Kariah?

7 A We went out on a couple dates but we were never
8 boyfriend and girlfriend.

9 Q And he never tried to pimp you out?

10 A No.

11 Q Did he even bring up the topic of pimping with you?

12 A No.

13 Q You first reported this incident or the fact that
14 you were pimped out by the defendant in August of 2014,
15 correct?

16 A Yes.

17 Q To Detective Hui and Detective Lucero?

18 A Yes.

19 Q And that was once you were back in California?

20 A Yes, it was.

21 Q When were you approached about the documentary?

22 A I had met them on a retreat in it was September of
23 2014.

24 Q So after you reported the incident?

25 A Yes.

1 Q And you were not being paid by them --

2 A No.

3 Q -- correct?

4 A No.

5 Q You were also asked questions about meeting with
6 myself and Mr. Martinez in anticipation of your testimony. Do
7 you recall that line of questioning?

8 A Yes.

9 Q Do you recall Mr. Martinez and I telling you that no
10 matter what you needed to be truthful?

11 A Yes.

12 MS. MERCER: No further questions, Your Honor.

13 THE COURT: Okay. You get the last word, Mr.
14 Weinstock unless the jurors might have questions afterwards,
15 so please go ahead.

16 MR. WEINSTOCK: Thank you.

17 RECROSS-EXAMINATION

18 BY MR. WEINSTOCK:

19 Q Ms. Richards, district attorney asked you on March
20 10th, 2014, did you ever wake up and say, gee, I want to be a
21 prostitute? And you said no. On March 10th, 2014, did you
22 ever wake up and say gee, I don't want to be a prostitute?

23 A Of course I didn't want to be a prostitute but I
24 felt like I didn't have a choice because I didn't have any
25 money and I was trying to go to Ohio.

1 Q And again, that was your choice, correct?

2 A Yes.

3 Q Now, Ms. Mercer asked you a question about the
4 statement your aunt made while she was down here to the
5 hospital. Do you remember that?

6 A Yes.

7 Q The same aunt that you didn't get along with, right?

8 A Yes.

9 Q It's the same aunt that you left, correct?

10 A Yes.

11 Q And you were aware that it's the same aunt that
12 believed you were a virgin and going to go into missionary
13 school?

14 MS. MERCER: Objection, Your Honor, beyond the scope
15 and irrelevant.

16 THE COURT: That is beyond the scope of redirect.

17 MR. WEINSTOCK: Okay.

18 THE COURT: Nothing about missionary school.

19 BY MR. WEINSTOCK:

20 Q Okay. And Ms. Mercer asked you about Slim. Did you
21 ever tell anybody that Slim wore glasses?

22 A I don't remember.

23 Q Do you remember if he did wear glasses?

24 A Honestly, no.

25 Q Do you remember seeing a lineup that was given to

1 you by the police where they wanted you to identify Slim?

2 A Yes.

3 Q Didn't all those people in that lineup that was
4 shown to you have glasses on?

5 A No.

6 Q You sure about that?

7 A I don't know.

8 Q Do you remember if any of them seemed to be elderly
9 gentlemen?

10 A No, I don't remember.

11 Q Do you remember if any of them seemed to be heavysset
12 gentlemen?

13 A I don't remember.

14 Q Do you remember if any of them seemed to be bald
15 with a little gray hair on the side?

16 A I don't remember.

17 MR. WEINSTOCK: Court's indulgence one moment.

18 THE COURT: Yes, sir.

19 MR. WEINSTOCK: Nothing further, Your Honor.

20 THE COURT: Do the jurors have any questions and if
21 so, raise your hand. I don't see any questions. Give me a
22 moment. So I do have a question.

23 Ms. Richards, after you met the defendant, Mr.
24 Sharpe, did you ever ask Mr. Sharpe at any point in time to
25 inflict any injuries on you?

1 THE WITNESS: No.

2 THE COURT: We saw photographs of a lot of injuries
3 that you've had. At any time after you met Mr. Sharpe, did
4 you ask anybody to ever inflict injuries on you?

5 THE WITNESS: No.

6 THE COURT: Did you ever ask anybody after that
7 point in time to -- to inflict pain on you?

8 THE WITNESS: No.

9 THE COURT: Did any of those injuries that we saw to
10 your buttocks occur as a result of being severely paddled by
11 -- at a period of time when you were homeless?

12 THE WITNESS: No.

13 THE COURT: All right. And clarify again, when you
14 were first admitted at UMC, what was -- how many days or weeks
15 before that time period was it when you indicated that your
16 rear was so injured that it was turning black? What was the
17 time period?

18 THE WITNESS: It was about two weeks but --

19 THE COURT: Two weeks.

20 THE WITNESS: -- I had no sense of time because I
21 wasn't allowed to have my cell phone.

22 THE COURT: All right. Counsel, you can -- those
23 are all the questions that I had. You can follow up if you
24 have anything. I'll let the State go first.

25 MS. MERCER: I don't have any questions, Your Honor.

1 THE COURT: Mr. Weinstock, you may follow up on
2 anything there.

3 MR. WEINSTOCK: Just a couple questions along those
4 lines.

5 BY MR. WEINSTOCK:

6 Q First off, isn't it true that when you went to
7 Slim's you had your cell phone didn't you?

8 A Yes.

9 Q Okay. And isn't it also true that on those at least
10 two occasions that you testified to that you were having sex
11 with Robert, it was kind of wild, dangerous sex?

12 MS. MERCER: Objection -- objection, Your Honor,
13 this far exceeds the Court's questions.

14 MR. WEINSTOCK: No, it doesn't.

15 THE COURT: That exceeds my questions. Well --

16 MR. WEINSTOCK: I think, Your Honor --

17 THE COURT: What time period are you talking about?

18 MR. WEINSTOCK: This would have been in early March
19 of 2015 -- '14.

20 MS. MERCER: And she testified that the time frame
21 she was talking about was two weeks before she went to the
22 hospital.

23 MR. WEINSTOCK: And so if --

24 THE COURT: I'll go ahead and allow that question.

25 BY MR. WEINSTOCK:

1 Q Wasn't your sex that you had with Robert on at least
2 those two occasions that you testified you did have sex, it
3 was wild sex, wasn't it?

4 THE COURT: What'd you say, wild?

5 MR. WEINSTOCK: Yeah.

6 MS. MERCER: Objection as to relevance then.

7 THE COURT: So the real question is -- is -- I mean,
8 wild is pretty subjective and I don't think that that's
9 relevant here. I mean, we're talking about injuries, we're
10 not talking about, you know, any kind of consensual sex.

11 MR. WEINSTOCK: Well, Your Honor, not that I have
12 personal knowledge but I believe wild sex can result in
13 injuries, damages.

14 THE COURT: Well, ask her about injuries then.
15 Don't -- let's don't use undefined adjectives.

16 A Both times that we had sex was on the bed in the
17 pink room with no -- no weapon or sex toy or anything of that
18 nature.

19 BY MR. WEINSTOCK:

20 Q It was a little aggressive, wasn't it?

21 THE COURT: That's inappropriate. I'm not going to
22 allow that. We're talking about whether there was injuries
23 caused or whether there was any desire to cause injuries or
24 intent to cause injuries.

25 MR. WEINSTOCK: I have nothing further then, Your

1 Honor.

2 THE COURT: All right. You don't want to follow up
3 in that line?

4 MR. WEINSTOCK: No.

5 THE COURT: Okay. Anything else from the State?

6 MS. MERCER: One question.

7 THE COURT: Okay.

8 BY MS. MERCER:

9 Q During the two times that you had consensual sex
10 with the defendant, did he ever beat you?

11 A No.

12 Q Did you ever sustain any injuries?

13 A No.

14 MS. MERCER: No further questions.

15 THE COURT: All right. Nothing from the jurors?

16 Oh, we do have one. Did you write your question down?

17 JUROR: I'll write it down.

18 THE COURT: You have to write it down and you need
19 to put your badge number and you need to sign it. Okay? So
20 did you write your question down and sign it and write your
21 badge number? Okay. Thank you. The Marshal will collect the
22 questions and I'll take a look at them and see if they're
23 appropriate to ask.

24 Thank you, Marshal. All right. Give me a chance to
25 look at these, counsel.

1 You guys -- you know, why don't you come forward and
2 look at these the same time I am. I --

3 MR. MARTINEZ: Your Honor, I think there's one
4 additional question as well.

5 THE COURT: Oh, very good. Marshal, will you please
6 retrieve that? I'm trying to think. I'm supposed to keep
7 everybody together but we --

8 MR. WEINSTOCK: We don't have an objection to her
9 just going to the restroom, Your Honor. I don't think --

10 THE COURT: You don't have any objection? If
11 everyone agrees and she's supervised, that would be fine.

12 MS. MERCER: I don't have any objection.

13 THE COURT: All right. So just one person, can we
14 just excuse you? Yeah. Marshal will just escort you to the
15 restroom and make sure you don't come in contact with anybody.
16 Don't discuss the case. All right? Thank you, ma'am. All
17 right. So all right. Let's go ahead and have static.

18 (Bench conference transcribed as follows.)

19 THE COURT: I believe that one's appropriate, so
20 look at that one first. And I believe this one's appropriate
21 and I think that's the word drugged. It says do they but I
22 think it's supposed to be did they. So go ahead and look at
23 that one first.

24 MS. MERCER: I don't have any objection to that --
25 either one of them.

1 THE COURT: Yeah, go ahead and pass it down.
2 MS. MERCER: I can't read that. Oh, that's a fair
3 question.
4 THE COURT: This is probably going to come up later
5 so I will keep that one. That's kind of outside the scope.
6 MS. MERCER: Yeah, I don't know that she can answer
7 that.
8 MR. MARTINEZ: She can't.
9 THE COURT: Let him look at it. Let Mr. Winder look
10 at that. I think that one's probably not proper to ask. I
11 think that's -- I think that's --
12 MR. WEINSTOCK: Yeah, that one's not, though. I
13 don't think it's appropriate --
14 THE COURT: I don't think that's proper.
15 MR. WEINSTOCK: -- at this time.
16 THE COURT: Yeah, so --
17 MS. MERCER: Yeah, that's fair too.
18 THE COURT: Did you ever see more than one iron in
19 the house? Okay.
20 MR. WINDER: She's already talked about this
21 [inaudible].
22 THE COURT: She did.
23 MS. MERCER: She said that she was told not to
24 scream and I don't know that she specifically --
25 THE COURT: Yes.

1 MS. MERCER: -- said she didn't.

2 THE COURT: I think it might --

3 MR. WINDER: [inaudible]

4 MR. WEINSTOCK: Your Honor, I would object to that
5 one, just I think that's vague. Did anyone participate in
6 beatings? [indiscernible] helped beat her or was she beat? I
7 mean we talked about that --

8 THE COURT: It means if she was part of the -- part
9 of the beater.

10 MR. WEINSTOCK: Well, I don't know if it says that.
11 I mean if you're going to -- are you going to ask that
12 question directly or like -- like it's written? I mean --

13 THE COURT: Yeah.

14 MS. MERCER: It says did Kariah ever participate in
15 the beatings?

16 MR. WEINSTOCK: In the beatings in which way?
17 Participate by beating her?

18 MS. MERCER: Well, it's a fair question.

19 MR. WEINSTOCK: Or receiving beatings?

20 MS. MERCER: I think it's a fair question and
21 counsel can follow up if they have further questions.

22 MR. WEINSTOCK: I would object that that is vague.

23 THE COURT: Okay. So an objection is noted to the
24 question from juror 344 as vague. I'm going to go ahead and
25 ask it, though. I think it's -- and I'll let you follow up.

1 I think it's --

2 MR. WEINSTOCK: And I have an objection as to this
3 question only as it is raised in that I don't know that we can
4 refer to her as the victim at this time, she's the witness.

5 THE COURT: Okay.

6 MR. WEINSTOCK: I would have no problem with the --

7 THE COURT: Well, I think you referred to her as a
8 victim.

9 MS. MERCER: Uh-huh.

10 THE COURT: Just not a victim of your --

11 MR. WEINSTOCK: Well, she's a victim of -- we don't
12 know if she's a victim in this case is all -- she's a witness
13 in this case.

14 THE COURT: Okay. So your objection to -- to
15 question from juror nine is noted also but I'm going to go
16 ahead and ask that. I -- but I understand your objection.
17 All right. And then let's finish these. So I'm going to give
18 the question from nine. I'm giving the question from badge
19 number 44, giving the question from badge 344.

20 MR. WEINSTOCK: No, this one I don't have any
21 problem with.

22 THE COURT: Okay. So no -- that's no objection to
23 the second question from 344, the one regarding clocks and
24 iron. Right, no objection?

25 MR. WINDER: No objection.

1 THE COURT: Thank you. Okay. And I didn't read
2 this one yet.

3 MR. WEINSTOCK: This one I don't have any --

4 THE COURT: You have no objection to 334, correct?

5 MR. WEINSTOCK: I think it's vague and ambiguous but
6 other than that.

7 MR. WINDER: [inaudible]

8 MR. WEINSTOCK: Yeah, I mean --

9 THE COURT: And I'm going to clarify. It says do
10 they, I think it means -- I think that word is drug, right?

11 MS. MERCER: Yes.

12 MR. WEINSTOCK: Yeah, yeah, I would agree too.

13 THE COURT: So it should be did they, not do they --

14 MS. MERCER: Correct.

15 THE COURT: -- so I'm going to say did; is that
16 okay?

17 MS. MERCER: Okay. No objection.

18 THE COURT: Put the correct tense in?

19 MR. WINDER: [inaudible]

20 THE COURT: Is what?

21 MR. WINDER: [inaudible] marijuana --

22 MR. WEINSTOCK: And alcohol.

23 MR. WINDER: [inaudible]

24 THE COURT: Those are drugs.

25 MS. MERCER: Yeah, alcohol's a drug.

1 THE COURT: Those are drugs.

2 MR. WINDER: Okay. I just want to -- what I'm
3 saying is to clarify alcohol [inaudible]

4 THE COURT: So I'll say other than marijuana or
5 alcohol?

6 MR. WINDER: Yeah, something like that.

7 THE COURT: I'll say other than. Well, I've got --
8 I've got to read it as read and then --

9 MS. MERCER: Yeah.

10 THE COURT: -- let you guys clarify, okay?

11 MR. WINDER: Okay.

12 THE COURT: And that's technically the instruction I
13 gave. Let's look at this last one. That's a good question.
14 Very good question.

15 MS. MERCER: I have no objection, Your Honor.

16 MR. WEINSTOCK: Yeah.

17 THE COURT: Okay. So you guys all said no objection
18 to question from juror number one, right?

19 MR. WEINSTOCK: Right.

20 MS. MERCER: Correct.

21 THE COURT: All right. Thank you.

22 (End of bench conference.)

23 THE COURT: -- these questions and then the
24 attorneys get to follow up if they want. All right. So we're
25 just going to do them one at a time, not in any particular

1 order. So -- and I'll -- Ms. Richards, so these are questions
2 coming from the jury. And I -- my obligation is just to read
3 it and then you can answer it, if you can, to the best of your
4 ability, okay? All right. But I can't elaborate on these
5 questions. Okay. So -- and I don't need to indicate which
6 juror they come from either.

7 So the first question is on March 10th, 2014, did AR
8 ask her dad for bus money after she missed the bus? She
9 previously stated that her dad often gave her money. So you
10 may respond and tell the jurors the answer.

11 THE WITNESS: No, I didn't because my dad didn't
12 know I was leaving to Ohio. I didn't want to be in contact
13 with my family after.

14 THE COURT: Thank you. The next question is -- it
15 says do they but I'm assuming this -- I'm changing the tense
16 to did they, did they drug you? How often did they drug you?
17 Did he drug you first before beating you? Did you ever feel
18 the beatings done to you? Those are the questions. So if you
19 could answer those questions?

20 THE WITNESS: No, I was never drugged. Because of
21 the fact Kariah used to be --

22 MR. WEINSTOCK: Objection, Your Honor, she's
23 assuming -- she's giving a reason that -- that wasn't the
24 question.

25 THE COURT: But she can -- she can explain her

1 answer. Just don't -- you know, you don't give hearsay and
2 make sure you only give an answer that's based upon your own
3 personal knowledge. Okay? And not based upon what somebody
4 -- well, what -- don't speculate is what I want to say. Don't
5 speculate. Okay? Go ahead and answer.

6 THE WITNESS: Kariah told me that she used to be an
7 addict --

8 THE COURT: Well, now --

9 MR. WEINSTOCK: That's -- that's hearsay, Your
10 Honor.

11 THE COURT: Well, we -- we already discussed before
12 that, you know --

13 MR. WEINSTOCK: That's not in furtherance of the
14 conspiracy, alleged --

15 MR. MARTINEZ: Well, and I don't think --

16 MR. WEINSTOCK: -- conspiracy.

17 MR. MARTINEZ: -- I don't think she's offering it
18 for the truth either, she's just giving it from her point of
19 view.

20 THE COURT: Yeah. I don't want to explain my
21 rationale because I don't want to taint the jury but I believe
22 that is a proper -- that she is giving a proper response.
23 Your objection's overruled. Go ahead.

24 THE WITNESS: And because she was pregnant he didn't
25 -- it was a lot easier to tell us both not to do drugs and he

1 did not bring drugs into the house. He did not like them. He
2 thought they would make us look bad for being out on the
3 Strip.

4 THE COURT: All right. Thank you, ma'am. The next
5 question is, were there clocks in the house? Clocks in the
6 house?

7 THE WITNESS: No, there weren't any clocks in the
8 house.

9 THE COURT: Next question. Did you ever see more
10 than one iron in the house?

11 THE WITNESS: No, I just seen the one iron.

12 THE COURT: All right. Next question. Did Kariah
13 ever participate in beating?

14 THE WITNESS: Kariah had never participated in the
15 beatings. She was present and she had to sit there and watch
16 or she was being screamed at as well.

17 THE COURT: Thank you. Next question. On the day
18 taken to UMC victim said she called Slim to pick her up. I am
19 not clear because LR took her to neighborhood behind Wendy's
20 and dropped her off. Please clarify.

21 THE WITNESS: Slim didn't have a car but he was --
22 he was at the Strip because he had went that night. And I
23 said how are you going to get me there and he said that LR was
24 going to drive me there. He was going to come pick me up and
25 drive me to the hospital.

1 THE COURT: Thank you. Last question that I'm going
2 to give is, while you were being beat did you scream? And if
3 so, would the neighbors possibly hear you?

4 THE WITNESS: I was told not to scream when I was in
5 a beating and I was told not to move when I was in a beating.
6 He put very loud music on and that's a lot of times why the
7 beatings happened in his room because he had a stereo system
8 in there.

9 THE COURT: All right. Thank you. There's one
10 question that I'm not giving for reasons I don't need to
11 explain to the jurors right now. I'm going to hand all these
12 questions marked either given or not given and initialed by me
13 to the court clerk who will make them court exhibits. The
14 attorneys are now invited to ask further questions if they
15 feel necessary with respect -- as follow up to those questions
16 asked by the jurors.

17 MS. MERCER: Thank you, Your Honor, I just have one.
18 BY MS. MERCER:

19 Q Ms. Richards, the -- in the question that was posed
20 to you regarding whether you were ever drugged prior to the
21 beatings, part of that question was did you feel the beatings?

22 A Yes, I did feel the beatings.

23 Q What did you feel?

24 A Pain [inaudible]

25 Q How much pain?

1 A A lot. I tried to block it out, what was going on.

2 MS. MERCER: No further questions, Your Honor.

3 THE COURT: All right. Mr. Weinstock, you have an
4 opportunity to ask any follow up questions.

5 MR. WEINSTOCK: No questions, Your Honor.

6 THE COURT: Okay. Very good. Then this concludes
7 the examination of Ms. Richards. You are excused, ma'am.
8 Please watch --

9 MR. WEINSTOCK: Your Honor, we would ask that she be
10 kept. We may need her in our rebuttal case.

11 THE COURT: All right. Then she's not excused yet.
12 You're excused from being a witness for the State's case in
13 chief, you might be called as a rebuttal witness.

14 MS. MERCER: Your Honor, may we approach briefly?

15 THE COURT: Yes, you may. All right. One moment,
16 ma'am.

17 (Bench conference transcribed as follows.)

18 THE COURT: Yes?

19 MS. MERCER: She's from out of state.

20 THE COURT: Oh, she's from out of state.

21 MS. MERCER: And to my knowledge they have not
22 subpoenaed her.

23 MR. WINDER: We don't have to, she's here. Anybody
24 present in court [inaudible] --

25 MS. MERCER: She lives out of state.

1 MR. WEINSTOCK: She may be a rebuttal witness, Your
2 Honor. We have the right to have rebuttal witnesses.

3 MS. MERCER: At State expense?

4 THE COURT: I think you've got to subpoena her.
5 This is your chance to ask her questions. Why would you
6 inconvenience her by forcing --

7 MR. WEINSTOCK: I've asked her the questions we need
8 to ask her at this time. We don't know what the other
9 witnesses are going to be testifying to and we may need her
10 for rebuttal after.

11 THE COURT: So you're asking her to stick around
12 until Thursday?

13 MR. WEINSTOCK: Yes.

14 THE COURT: Who's supposed to pay for that?

15 MR. WEINSTOCK: That's all right. That's -- the
16 State brought here.

17 THE COURT: What do you mean that's all right? You
18 didn't subpoena her.

19 MR. WEINSTOCK: We don't have to subpoena her for
20 rebuttal testimony, Your Honor.

21 MR. WINDER: And, Your Honor, any --

22 MR. MARTINEZ: Are you talking about your case in
23 chief?

24 MR. WINDER: -- any witness in the courthouse is --
25 can be held to remain under the subpoena. You don't have to

1 resubpoena them. And you don't have to relist witnesses the
2 DA's list.

3 MS. MERCER: Their rebuttal case is not a rebuttal
4 case, it's a case in chief. And so if they want her for their
5 case in chief they need to subpoena her for the case in chief.

6 MR. WINDER: That is not true, Your Honor.

7 MR. WEINSTOCK: And we don't have the information to
8 subpoena her if we wanted to.

9 MR. MARTINEZ: We'll send them a bill then if they
10 want.

11 THE COURT: Is she planning to leave tonight or
12 tomorrow?

13 MS. MERCER: I don't know when she's planning to
14 leave. What's the final verdict on that?

15 THE COURT: If they want to call her as part of
16 their case in chief I'll let them call her out of order
17 tomorrow morning.

18 MR. WEINSTOCK: We can't do that until we hear
19 the --

20 THE COURT: I'll decide what I can do and can't do.

21 MS. MERCER: Your Honor, I don't know what they
22 ultimately decided as far as their travel arrangements because
23 the last time we spoke was Friday.

24 THE COURT: Can you check?

25 MS. MERCER: Yes, I can.

1 THE COURT: And see if she's available tomorrow?

2 MS. MERCER: Yes.

3 THE COURT: Because I'll -- I'll let -- would you be
4 willing to let him call the witness as part of his case in
5 chief out of order so that it wouldn't inconvenience your
6 witness?

7 MR. WINDER: Your Honor --

8 MR. MARTINEZ: So we're just going to call her to
9 the stand again tomorrow morning?

10 MR. WINDER: Your Honor, part of what we're saying
11 is based on what they're -- they've got detectives they're
12 going to call.

13 THE COURT: They have what?

14 MR. WINDER: They have detectives they are going to
15 call. It's been my experience they're going to call some of
16 the detectives and officers. Based on what they testify to we
17 need to maybe have her here again. Now, we were unable to
18 contact her because --

19 THE COURT: Oh, you want to --

20 MR. WINDER: -- she had an attorney in Colorado. We
21 went through that attorney in Colorado who would not give me
22 information. So we've had less ability to contact her than
23 even other victims.

24 MS. MERCER: They could have served her through her
25 attorney, which is what we do when we have to subpoena --

1 THE COURT: So I guess -- you guys, I guess I need
2 to see the statute.

3 MS. MERCER: I just need to find out what her travel
4 arrangements are.

5 THE COURT: Check her travel arrangements and I need
6 to check the statute on -- look I don't want to make an error
7 here. I don't want to create an error that doesn't need to
8 exist. All right? So I need -- I need to check the statute
9 on whether she's required to remain to be available for their
10 case in chief.

11 MS. MERCER: I would just note again that they could
12 have served her with a subpoena through her attorney. They
13 have the attorney's contact information.

14 THE COURT: I understand that but --

15 MR. WINDER: But Your Honor, any witnesses here --

16 THE COURT: -- the issue is is -- hold on. The
17 issue is, does the fact that they did subpoena her preclude
18 them from -- from having her stick around until their case.
19 That's the issue.

20 MS. MERCER: Okay.

21 THE COURT: I don't -- do you know the answer to
22 that?

23 MS. MERCER: Not off the top of my head, Your Honor.

24 THE COURT: I don't either so I don't want to make a
25 -- I don't --

1 MS. MERCER: I appreciate that.

2 MR. MARTINEZ: Do you guys have the statute or
3 the --

4 MR. WINDER: I don't have it offhand, Your Honor,
5 but I've --

6 THE COURT: Well, let's all take a look at --

7 MR. WINDER: -- heard this as a judge's law clerk
8 and --

9 THE COURT: -- but let's find her -- if she's going
10 to be here tomorrow in case --

11 MS. MERCER: Okay.

12 THE COURT: -- in case we need to call her back.
13 All right?

14 MR. WINDER: And, Your Honor, since we're here, one
15 other thing, can we start at 11 because I have two [inaudible]
16 hearings tomorrow. As you know, most of the courts take those
17 [inaudible] hearings at the end --

18 THE COURT: At the end.

19 MR. WINDER: -- in the calendar. And so --

20 THE COURT: Is that okay with you guys? I wanted to
21 get it going but if there's --

22 MR. WINDER: -- you know, say 10:30. I just don't
23 want to be late. I'm assuming these witnesses --

24 THE COURT: All right. I'll do that a favor to you,
25 sure.

1 MR. WINDER: Thank you, Your Honor.

2 THE COURT: Okay. All right. So let's -- so check
3 with --

4 (End of bench conference.)

5 THE COURT: -- schedule. So we're trying to
6 determine -- defense counsel has --

7 MR. WINDER: We can release the jury.

8 THE COURT: I don't know that I need to discuss this
9 with the jurors. I can go ahead and release --

10 MR. WEINSTOCK: Yeah.

11 THE COURT: -- release the jurors. I'm trying to
12 determine whether I need to keep Ms. Richards available or on
13 call in the event that she's needed to testify further later
14 on in the case. That's ultimately the -- the issue I have to
15 resolve. And it involves reading -- looking into her travel
16 plans, by looking at the statute, looking at who subpoenaed
17 who and a bunch of issues I need to look at.

18 So I can't give you an answer right now but I'm
19 going to have the witness stick around after I release the
20 jurors and I'm going to check the statutes and then advise the
21 parties what we need to do. All right. And the witness --
22 the parties are going to check with the -- the witness and her
23 advocate and find out what her availability is. All right?

24 So at this point in time I'm going to ask that the
25 Marshal escort the jurors out after I read your admonishment.

1 I need you back here at 11 tomorrow. I know I wanted to start
2 at 10:30 but I had a request from one of the counsels, one of
3 the attorneys to start at 11 so I'm going to honor that
4 request. So we're going to start at 11, go for about, hour,
5 hour and a half and then take a lunch break and then go as far
6 as we can. All right? All right.

7 Ladies and gentlemen, we're going to take a recess,
8 overnight recess. During this overnight recess do not talk or
9 converse among yourselves or with anyone else on any subject
10 connected with the trial. Do not read, watch or listen to any
11 report of or commentary on the trial or any person connected
12 with this trial. Do not seek or obtain information or
13 comments about the case from any source including, without
14 limitation, newspapers, television, the Internet, cell phones
15 or radio. Do not form or express any opinion on any subject
16 connected with the trial until the case is finally submitted
17 to you. Marshall, you may excuse the jurors. Drive safe,
18 have a good evening. Leave the notes, no one will touch them.

19 (Jury recessed at 5:39 p.m.)

20 THE COURT: So we're outside the presence of the
21 jury. So counsel, you understand on the one hand I don't want
22 to inconvenience the witness any more than necessary. On the
23 other hand, I want to make sure that the defendant's due
24 process rights to examine the witness to the extent that
25 allowed under the law are available to them. So I need to

1 research the particular issue that you raised with me at the
2 sidebar.

3 So Ms. Richards, you may step down and be excused
4 temporarily and confer with your advocate. And counsel for
5 the State might have a question for you. All right. So you
6 may step down.

7 So let's -- let's go off the record --

8 MR. WEINSTOCK: Well, Your Honor, I think I need to
9 make a motion on the record.

10 THE COURT: A motion? Okay. Go ahead.

11 MR. WEINSTOCK: Your Honor, with all due respect,
12 truthfully I am moving for a mistrial at this time based upon
13 the Court's questioning of the witness in a pro-prosecutorial
14 position that I think influenced the jury. The questions the
15 Court asked, although they were very good questions, I would
16 submit, should have been asked by the prosecution in their
17 case and not by the Court because the Court, in making those
18 questions, I believe took a pro-prosecution stance in light --
19 in front of the jury. That is not the Court's job.

20 The Court is supposed to be neutral and I believe
21 the questions were questions whether or not she asked to be
22 beaten, many other questions that the Court made were good
23 questions and I certainly respect the Court for asking those
24 questions, but I do believe they are improper coming from the
25 Court in front of the jury and I am moving for a mistrial on

1 that -- based upon that.

2 THE COURT: I appreciate that. I think they were
3 neutral because you know the statute does allow the Court to
4 ask questions. I think they were neutral. You actually
5 raised -- both parties raised the issue about -- the question
6 whether this victim witness is a masochist. The issue has
7 come up by both sides and there's some indication she might be
8 and so I wanted to know to what extent she might have brought
9 upon, you know, the pain and the injuries herself. It seems
10 to me that is something the jurors need to consider and I
11 thought it was somewhat possible. I thought she actually
12 might respond to some of those questions that, you know, that
13 she -- at least I wanted to see her reaction, engage her
14 reaction, to see if she really was into pain and injuries.

15 So that was my intent in asking those questions
16 because I think -- I think we needed -- because those
17 questions weren't asked and I thought that those were quite
18 important questions to actually find out the extent to which,
19 you know, that she might have been a masochist. That's why I
20 asked them. So it wasn't intended to be pro-defense or
21 pro-State. I'm just trying to get at the truth.

22 MR. WEINSTOCK: I understand that, Your Honor. I
23 just made my record because in my belief it was
24 pro-prosecution and that these were questions that should have
25 been asked by the State and weren't. And I would add, it's

1 interesting to note that prior to Your Honor asking questions
2 you asked the jury, did anybody have any questions they wanted
3 to ask and the response was unanimously negative. There were
4 no questions. The Court asked the Court's eight or nine
5 questions and then we resulted in seven questions coming from
6 the jury after that. If the Court had not asked his
7 questions, there would have been none from the jury and I just
8 want to make a record.

9 THE COURT: It's a good thing when the jurors ask
10 questions, right? It helps get to the truth and I -- and I
11 don't necessarily agree that they didn't have questions. I
12 mean, it takes time to write questions out. And you could see
13 that the questions were trickling in obviously.

14 MR. WEINSTOCK: If I recall, I may be wrong, but I
15 think the Court asked, were there any questions from the jury
16 and then the Court said seeing none.

17 THE COURT: I didn't see any hands, that's correct,
18 I didn't. And then I asked my questions and then we started
19 getting some questions and then we got a couple more, and then
20 a couple more and I ended up having eight questions all came
21 in. You know, sometimes the jurors are a little bit
22 self-conscious about submitting questions and I don't see
23 anything wrong with the Court, you know, reminding them of
24 their right to ask questions.

25 MR. WEINSTOCK: I just want to make the record --

1 THE COURT: You made a record.

2 MR. WEINSTOCK: Thank you.

3 MS. MERCER: And Your Honor, I would just note that
4 Mr. Weinstock didn't object to any of the Court's questions
5 when he was asking -- when you were asking them.

6 THE COURT: All right.

7 MR. WEINSTOCK: It's kind of difficult to object the
8 Court questions.

9 THE COURT: I've had it done before but --

10 MR. WEINSTOCK: Have you ever sustained one?

11 THE COURT: Yes, as a matter of fact I have.

12 MR. WEINSTOCK: Okay. Okay.

13 MR. MARTINEZ: I think it's more of a
14 dissatisfaction with the answers than the actual questions.

15 THE COURT: Well, is there anything else that the
16 State wanted to add? I mean, I -- I don't think that I
17 committed error by asking questions. I wanted -- I really
18 thought it was helpful to the parties to find out to what
19 extent she might have wanted the pain or the injuries.

20 MS. MERCER: And the statute, as Your Honor has
21 already pointed out, specifically allows the Court to ask
22 questions of any witness called by either party.

23 THE COURT: Well, the record is made and we'll see
24 where it leads, but I understand. And I don't take offense by
25 that, you --

1 MR. WEINSTOCK: I appreciate it.
2 THE COURT: -- you're a very fine advocate and have
3 to do your job.
4 MR. WEINSTOCK: Thank you, Your Honor.
5 THE COURT: Thank you. All right. Anything else,
6 counsel?
7 MR. MARTINEZ: No, Your Honor. Eleven?
8 THE COURT: So can you please confer with -- can you
9 please confer with the advocate or the witness and find out
10 what her availability is and -- and let me know what your
11 position is?
12 MR. MARTINEZ: Yes. I'll be right back.
13 THE COURT: Thank you. So I'm going to stay up here
14 on the bench.
15 MR. WEINSTOCK: The only other thing, Your Honor --
16 THE COURT: Can we go off the record?
17 MR. WEINSTOCK: Yeah, we can go off the record.
18 (Court recessed for the evening at 5:45 p.m.)
19
20
21
22
23
24
25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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EXHIBIT 87

1 TRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 * * * * *

5
6 LAS VEGAS REVIEW-JOURNAL,)

) CASE NO. A-18-775378

7 Plaintiff,)

8 vs.)

) DEPT. NO. XV

9 LAS VEGAS METROPOLITAN POLICE)

10 DEPARTMENT,)

Transcript of Proceedings

11 Defendant.)

12 BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

13 **HEARING**

14 WEDNESDAY, AUGUST 8, 2018

15 APPEARANCES:

16 For the Plaintiff: MARGARET A. MCLEITCHIE, ESQ.

17
18 For the Defendant: JACKIE NICHOLS, ESQ.
19 NICHOLAS CROSBY, ESQ.

20
21 RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT
22 TRANSCRIBED BY: KRISTEN LUNKWITZ

23
24 Proceedings recorded by audio-visual recording, transcript
25 produced by transcription service.

1 WEDNESDAY, AUGUST 8, 2018 AT 9:45 A.M.

2

3 THE LAW CLERK: Page number 1, A775378, *Las Vegas*
4 *Review-Journal versus Las Vegas Metropolitan Police*
5 *Department.*

6 MS. MCLETCHIE: Good morning, Your Honor. Maggie
7 McLetchie for the Las Vegas Review-Journal.

8 MR. CROSBY: Good morning, Your Honor. Nick
9 Crosby on behalf of Las Vegas Metropolitan Police
10 Department.

11 MS. NICHOLS: Good morning, Your Honor. Jackie
12 Nichols on behalf of the Las Vegas Metropolitan Police
13 Department.

14 THE COURT: Good morning. Okay. So, I do have a
15 settlement conference that's supposed to start at 10:30,
16 just so you all know. I don't know how long you're
17 planning on taking, but I may have to cut you off at some
18 point.

19 I have reviewed a plethora of material, I call it,
20 including the Application/Petition, the brief in support of
21 that, the Metro -- Metro's response, Review-Journal's
22 Reply, and accompanying exhibits, as well as, just so you
23 all know, this is my stack of relevant portions of NRS 239,
24 NRS 179A, the 1983 Nevada Attorney General opinion, quite a
25 few of the applicable case law, and I welcome arguments of

1 counsel.

2 MS. MCLEATCHIE: Good morning, Your Honor. I'll be
3 as brief as possible.

4 As the stack of papers the Court has reveals, this
5 is a somewhat complex case, but like any other public
6 records case, we start with certain mandates from the
7 Nevada Legislature. First, all public entities and
8 officials in Nevada are subject to the Nevada Public
9 Records Act. This does include law enforcement.

10 Second, all records are presumed public -- oh, and
11 they're -- and because they're presumed public, they're
12 open to both inspection and copying. The Public Records
13 Act actually separately provides for inspection and
14 copying, Your Honor.

15 THE COURT: And that's by anyone.

16 MS. MCLEATCHIE: Correct. Not just a member of the
17 media, but any -- the Public Records Act is designed so any
18 member of the media or the public can go to a public agency
19 and review their documents. It's designed to promote
20 transparency and democratic principles.

21 Third, every provision of the NPRA is interpreted
22 in favor of access to further the important underlying
23 democratic principles that I just mentioned, transparency
24 mainly.

25 THE COURT: So much so that the Legislature in

1 2007 added 239.001, very explicit is how I would
2 characterize it.

3 MS. MCLEITCHIE: Correct. It explicitly contains
4 the legislative intent and mandates about how to interpret
5 the act itself and it mandates that it be interpreted
6 liberally in favor of access and that any restriction on
7 access be interpreted narrowly.

8 Nevada Supreme Court case law is also similarly --
9 similarly describes the importance of the Public Records
10 Act and does -- and has carried forth the principles from
11 the Legislature. It's also a part of a governmental
12 agency's mandate, their existing job to comply with the
13 NPRA. That includes meaningfully responding to requests
14 and not interfering with access. It also includes
15 meaningfully working with requestors to solve barriers to
16 access.

17 Here, while every single record is actually
18 presumed public, a requester need not to come forward to
19 explain why they want a record. But, here, I will point
20 out, by way of background, that the records do pertain to
21 important public policy issue in southern Nevada. Sex
22 trafficking. It's -- it gets a lot of attention and it's a
23 serious problem that Metro spends a lot of resources on and
24 that the public is entitled to ascertain how Metro deals
25 with this problem.

1 But, despite the extensive efforts of the Las
2 Vegas Review-Journal Investigative Team Reporter Brian
3 Joseph, some of the requests at issue have been stalling
4 for over a year. They started in February of 2017.
5 Meanwhile, very few documents, despite the fact that the
6 Review-Journal engaged me to assist them with these
7 requests, very few documents have been produced at all.

8 I have -- Mr. Crosby and I have talked about this
9 case at length, but we haven't moved anything forward and
10 Metro won't sit down with us with the reporter and people
11 from Metro so we can figure out, for example, how records
12 are stored and how to work together to overcome any
13 logistical issues.

14 THE COURT: So that kind of leads a question that
15 I had for both sides on -- and maybe more than one
16 question, but kind of related to what you just said.

17 So, what then -- these are two questions, I guess,
18 that I -- one, what evidence has Metro provided in support
19 of its positions and arguments? And, then, related maybe
20 more to what you just said is, you know, that -- why don't
21 we have, and maybe this one's more for Metro, but even a
22 COR Declaration of somebody who can say, hey, these are the
23 issues we have, here's why we have or have not done
24 whatever? So, I'm not sure --

25 MS. MCLEITCHIE: Sure.

1 THE COURT: -- that second one's for you
2 necessarily, but --

3 MS. MCLEITCHIE: Well, so, my view is that Metro
4 does have the burden of establishing that records are
5 confidential by a preponderance of the evidence. That's so
6 whether or not they're trying to argue that a record is
7 explicitly made confidential by law. They still have to
8 come forward with evidence showing that the actual records
9 are subject to any kind of explicit, unequivocal objection
10 -- exception. And, second, or if they're trying to
11 establish some other claim of confidentiality, they also
12 need to come forward with evidence. NRS 239.0113 or .113,
13 Your Honor, makes that explicitly clear. And they haven't
14 come forward with any evidence. And it's my position that
15 it's too late.

16 These record requests, as I mentioned, have been
17 pending since February of 2017. I have been trying to work
18 with counsel for Metro for quite some time. Not only did
19 Metro come forward with no evidence, arguments of counsel
20 are not evidence, they also refused to provide a privileged
21 log. The point of a privileged log, while not necessarily
22 required in every case, and it need not necessarily take
23 the form of a log, in the *Givens* case, the Nevada Supreme
24 Court made clear that it's important because it furthers
25 the adversarial process and it makes it more fair in this

1 proceeding. In this proceeding, we had -- did not have the
2 benefit of a log. They should have provided it in
3 connection with their response. We made crystal clear both
4 in our Petition and in our opening brief that we thought we
5 were entitled to a log.

6 And, in the *Givens* case, what the Nevada Supreme
7 Court has said was that at a minimum, at a minimum, on such
8 a log, that the governmental entity try to overcome
9 disclosure has to explain what the records there -- the
10 specific records they're withholding and the specific
11 reasons why.

12 In this case, there are two steps which a public
13 agency has to assert and justify confidentiality. I agree
14 with Metro in their Opposition that they don't need to come
15 forward with evidence within five days of a request, five
16 business days of a request, and that's not what we argued.
17 But they do have to come forward with specific authority
18 that makes each record or a part of a record confidential
19 within five business days. That's explicitly laid out in
20 NRS 239.0101 -- 010 -- 01071(d). And they didn't. They
21 essentially said: We'll get back to you later. We
22 anticipate a further response. But that's not one of the
23 five things that a public agency is allowed to do in
24 response to a request.

25 They did not timely assert valid claims of

1 confidentiality within five days, as required by law, and
2 it's my view that that means that they've waived the
3 ability to do so. It would be nonsensical to say they can
4 just ignore public records requests and then march into
5 court and come up with new arguments. A pub -- NRS
6 239.0101 -- 0107 is designed to allow a requester to know
7 what the government entity is arguing so that they can
8 figure out if it's justified; if they can figure out if
9 it's fair. You shouldn't have to pay an attorney to come
10 to court to get their answer that was due within five
11 business days.

12 THE COURT: So let's -- let me pause you a little.

13 MS. MCLEATCHIE: Sure.

14 THE COURT: On your waiver argument, doesn't that
15 seem like somewhat of a harsh remedy, especially in light
16 of what we're dealing with here in terms of the arguments
17 at least by Metro, the confidentiality. I know there's one
18 group where they argue, well, it's confidential because of
19 the assignments of the officers and may subject them to
20 certain things, but setting that one aside, isn't there a
21 confidentiality argument more of, hey, the confidentiality
22 goes to other -- people other than Metro, like a witness or
23 a victim who has not testified or things like that, and how
24 would it not be a harsh remedy for me to say, well, those
25 other nonparties' privacy or confidentiality is waived

1 because -- assuming that Metro did not do what it was
2 supposed to do. Does that make sense?

3 MS. MCLEATCHIE: I do understand the question, Your
4 Honor. And here's, I think, something that's important to
5 point out to the Court. We actually have conceded
6 throughout and that names of sex trafficking victims who
7 have not testified in open court and that are protected by
8 law. There is a specific statute that deals with the
9 protecting identifying information concerning sex
10 trafficking victims. We have actually conceded throughout
11 that for cases that haven't gone to court, for some reason
12 an investigation that didn't go forward, we've conceded
13 that the statute does protect the identifying information
14 regarding those witnesses. So, there's no concern in this
15 case about any unintended consequences with regard to the
16 privacy of third parties.

17 But, here, even if the Court does think it's a
18 harsh remedy and doesn't like how NRS 239.0107 operates, it
19 doesn't change the fact that it's explicit on what it
20 requires a governmental entity to do and --

21 THE COURT: But it isn't -- you'd agree with me
22 though that -- let's assume that you're right, it's
23 explicit, and assume that Metro did not comply with it, but
24 it is not explicit in terms of, well, if you don't comply,
25 the remedy is waiver. Right?

1 MS. MCLEATCHIE: I would agree that it doesn't
2 specifically say if you don't comply with this, you've
3 waived it, but I think if we take the -- if we interpret it
4 to mean that you don't really have to comply, right, that
5 if you go to court later, you can come up -- if the
6 requester goes to court later, you can come up with
7 something new, I think that raises a whole host of problems
8 and I think that the question for the Court isn't whether
9 this is a harsh remedy. I think the question is: How does
10 the Court interpret that provision such that it furthers
11 access? And that's what the Legislature has told this
12 Court to do and it's my view that -- and, more generally,
13 even if this wasn't a public records case, Metro's
14 interpretation that they're free to ignore public records
15 requests is not at all consistent with the mandates in the
16 Public Records Act and it would essentially render that
17 provision meaningless.

18 And it is designed -- it is very specific. And
19 both about what time they're supposed to respond by and how
20 they're supposed to respond. I'm not saying that they had
21 to provide a privilege log within five days of all 800 or
22 700 -- Metro's not sure how many files there are either,
23 but I'm not saying they had to come forward with a
24 privilege log, but they had to come forward with a specific
25 basis for confidentiality.

1 And while it does say you're allowed to say, we're
2 working on it and we'll give you records by a certain date,
3 it doesn't allow you just to push things down the road to
4 say, oh, we'll get back to you later. It doesn't allow you
5 to take a certain position that the DA is the one that you
6 need to go to and then when you go to the DA, you have to
7 go back to Metro, and you're bounced back --

8 THE COURT: Somebody might --

9 MS. MCLEATCHIE: -- and forth.

10 THE COURT: Somebody might have an issue with
11 conduct like that, in term of, well, it's not us, go see
12 this other person. The other person says: Well, it's not
13 us. Go see this other person. Then you go back to the
14 other person and the other person, being Metro in this
15 case, at least it seems to me as I sit here, saying: Well,
16 we're going to respond at some point in time. And here we
17 are a year and a half after the start.

18 MS. MCLEATCHIE: Right. And that's the -- that is
19 not at all consistent with the mandates of the NPRA, which
20 are supposed to promote democracy and access to records.
21 So, in my view, they have waived. They have waived any
22 claims of confidentiality.

23 I'll also say that throughout this back and forth
24 between counsel for Metro and myself, we have essentially
25 agreed on what the scope of the law is. They came up with

1 new -- they changed their tune in their response to the
2 Petition in their opening brief, however, throughout we've
3 essentially agreed on the fact that, for example, as I just
4 said, that, yes, you can redact the names of sex
5 trafficking victims who haven't testified in open court.
6 Mr. Crosby provided me with a sample investigative file.
7 The idea for -- the example that arrest reports are not
8 public records would be absurd. In fact, it's explicitly
9 stated in the statute Metro points to that they must
10 provide arrest reports to reporters.

11 So, in my view, they've waived these arguments and
12 we can't have a situation like we have here where you have
13 to go back and forth, try to figure out the parameters for
14 production, and then go to Court only to have them say:
15 Ha, ha, we actually think that these should be kept top
16 secret and we don't want to have to hand them over at all.

17 With regard to their claims, Your Honor, again,
18 the -- they have to -- if they're relying on a provision of
19 law like they try to do with NRS 179A.100, they need to
20 point to a provision of law that expressly and
21 unequivocally makes a record confidential. NRS 179A.100
22 deals with records of criminal history that must be
23 produced and may be produced. It doesn't say anything
24 about what cannot be produced. And the idea that somehow -
25 - because of the existence of 179A.100 that the framework

1 for analyzing public records question set forth in the NPRA
2 and by Supreme Court precedent doesn't apply is
3 nonsensical. The NPRA is the comprehensive, specific
4 scheme that deals with public records requests. It does
5 say in its provisions that except as provided in, and then
6 it lists a whole bunch of statutes, or otherwise provided
7 by law, but it's the law that deals with public records
8 requests.

9 And when you turn to NRS 179A.100, it doesn't
10 explicitly make anything confidential. They argue --

11 THE COURT: So, you're saying that 179 does not
12 limit 239?

13 MS. MCLEITCHIE: Correct. And I do think that 179
14 -- and 179 -- their position, for example, is, I think, if
15 I understand it correctly, is that because investigative
16 reports are exempted from records of criminal history that
17 somehow they're not subject to the Public Records Act and
18 *Donrey* has been overruled and I thin that's an absurd
19 position when you look at the many things that are defined
20 as not records of criminal history, such as records of
21 other branches of government. If this Court were to adopt
22 their argument, pretty much nothing would be a public
23 record.

24 And, again, there's nothing express or unequivocal
25 in NRS 179A.100 that casts a whole swathe of documents with

1 confidentiality. And this position is inconsistent with
2 the position that they've taken throughout and the fact that
3 they've provided me with an investigative report.

4 The same thing with arrest reports. They are not
5 explicitly exempted. 179A actually mandates that the
6 arrest reports be provided to reporters and there's nothing
7 in the law to support their contention that arrest reports
8 are not -- or there's a blanket rule that says that arrest
9 reports are not subject to the NPRA. That's just not the
10 case.

11 With regard to the reliance on the 1983 Attorney
12 General opinion, it's not law. It's before the Public
13 Records Act was amended and it has no binding force on this
14 case and it does not create a confidentiality. The funny
15 thing about the *Donrey* case is that while they say that
16 *Donrey* has been overruled when they want it to be
17 overruled, they also rely on *Donrey* over and over. But, to
18 be clear with the Court, *Donrey* doesn't create a privilege.
19 *Donrey* was the first decision that said you can apply a
20 balancing test. Even if a record is not explicitly
21 confidential, you can go through a balancing test. But, in
22 2007, the Legislature amended the Public Records Act to
23 stop public agencies from doing what Metro always does
24 which is just say the records are confidential, see *Donrey*.
25 Those -- that was the explicit reason for them amending the

1 Public Records Act. And, so, for Metro to continually just
2 say we're just going to rely on *Donrey*, *Donrey* doesn't make
3 a record confidential. They'll ask for a balancing test
4 that's been drastically reduced since that time.

5 With regard to their argument about unit
6 assignments, I think they're speculative. They haven't
7 produced any evidence, Your Honor, and I don't think it's
8 consistent with Metro's public position that they believe
9 in community policing. If you don't know who the officers
10 are that are assigned to your area of town, how can the
11 community have a relationship with the officers that
12 supposedly work for them? If they had any claim of
13 confidentiality, they could have come forward with the
14 needs to protect certain officers and some sort of
15 mechanism for doing that. They didn't do that and, in
16 their Opposition, which was their opportunity to provide
17 evidence, Your Honor, they didn't provide any evidence.

18 With regard to the SCOPE, they take the position
19 that the data in SCOPE is maybe a record, but the fields in
20 the SCOPE database are not and I think that the public is
21 entitled to understand what the fields are in a SCOPE
22 database and their definition of record is just
23 inconsistent with a modern age. It's not a hard copy.
24 It's electronic records, too. And the Nevada Supreme
25 Court, for example, recently said the government officials,

1 County Commissioners, I think, in a rural county, their
2 cell phones were subject to the Public Records Act. And,
3 so, the idea that the information that's in a field in the
4 SCOPE database is not subject to the Public Records Act
5 just isn't supported by law, or common sense, or the
6 underlying principles of the Public Records Act.

7 THE COURT: Tell me about what exact relief you
8 want and what, in terms of costs, are you -- because it
9 seems to me that there's also a dispute on who's going to
10 charge what.

11 MS. MCLEITCHIE: Right. And it's our position --
12 well, it's our position -- I'll start with costs, if that's
13 okay, Your Honor.

14 But with the costs, it's our position that nowhere
15 in the NPRA does it allow for a charge for inspection.
16 Their argument in that is that, well, we need to redact
17 them, so we're going to charge you for inspection. There's
18 also nothing in the Nevada Public Records Act that allows
19 them to redact records. They also haven't met their burden
20 of proof to establish that any records would need to be
21 redacted. And so it would be nonsensical to require the
22 Review-Journal to pay them to redact records that they had
23 -- haven't even come forward with proof establishing that
24 these cases -- by the way, most of the -- most of our
25 record requests are back from 2016 and before. So, they're

1 not all likely to be active cases, but it's nonsensical to
2 require us and it wouldn't further access to pay them to
3 keep records away. The only cost that the NPRA allows for
4 are the actual costs for the -- for copies and that is
5 defined as the cost for direct reproduction in NRS 239.005.
6 They haven't come forward with any evidence about what
7 their actual costs are. Just because they publish a cost
8 sheet doesn't mean that that's their actual costs.

9 Extraordinary use is also for copies only. It's
10 capped at 50 cents a page, but this case is not
11 extraordinary use. Redacting certain information is not
12 extraordinary use. They've certainly -- there's certainly
13 been a backlog now that we've been trying to get records
14 for a year and -- over a year and a half, but these are
15 good faith requests. They're not nuisance requests. They
16 haven't shown that, for example, they're required to write
17 a program or do anything special to get these records.
18 They haven't even really talked to us about how these
19 records exist and where they're housed.

20 We have -- back in June, when we filed this, Mr.
21 Crosby reached out to me again and we had, what I thought
22 was a productive conversation. Since that time, I've tried
23 to follow-up and I haven't heard back from him, but we
24 actually came up with what I think would be an appropriate
25 mechanism so that Metro doesn't have to produce records

1 that the reporter doesn't ultimately want and that was that
2 they provide officer reports and requests for prosecution.
3 We had talked about doing a test run for a certain month,
4 but now we're in litigation and we need to clear a Court
5 Order, but I think the Review-Journal would be happy to
6 start with receiving officer reports included in each
7 investigative file as well as any requests for prosecution.
8 The requests for prosecution, Your Honor, could help us
9 then determine collectively with Metro whether or not this
10 person has testified in open court and we're entitled to
11 unredacted versions. So, I think that that -- that would
12 be a way with regard to the investigative files, Your
13 Honor, for us to start this -- start working on these
14 record requests in a manner that could save Metro money and
15 save everybody money and time. And we've tried to work on
16 reasonable ways to resolve this.

17 But I don't think that the -- that Metro is
18 entitled to costs under the law for our request for
19 inspection. If they want to provide records
20 electronically, we're happy to pay for the price of a
21 medium and I think that -- those are the appropriate -- I
22 think that those are the appropriate remedies, Your Honor.

23 We did have issues in another litigation -- in
24 other litigation involving the Las Vegas Review-Journal and
25 Metro where the Court ordered that the records be produced

1 and then Metro took the position that they could just
2 produce whichever of the records they wanted to produce
3 when they wanted and that we had to have all of the records
4 or none of the records and I don't think that's how we
5 should work this case. I think we should be reasonable and
6 Metro should be ordered to work with us to provide, first,
7 an actual log for what we're talking about for all the
8 records and, second, we'd be happy to work with them to
9 stagger production in a manner that saves resources because
10 we do want -- we don't want to waste taxpayer resources or
11 the time of Metro's staff and I think that that would be --
12 that would be the best resolution for this case, Your
13 Honor.

14 THE COURT: Thank you.

15 MS. MCLEATCHIE: Any further questions?

16 THE COURT: Thank you very much.

17 MS. MCLEATCHIE: Thank you, Your Honor.

18 MS. NICHOLS: Thank you, Your Honor.

19 I want to start out by addressing the waiver issue
20 and I think you kind of hit the nail on the head is that
21 that is a harsh remedy and, more importantly, the NPRA
22 already provides remedy and that remedy is judicial
23 intervention. And, so, if the government fails to respond
24 or even deny the request under 239.0107, the remedy is to
25 seek court intervention. And if this Court reads waiver

1 into the statute, it essentially renders 239.0113 void
2 because the government agency has a burden in a judicial or
3 administrative proceeding to demonstrate their burden.
4 And, so, if their arguments are essentially waived as to
5 confidentiality that statute serves no purpose.

6 Furthermore, 239.0107 would not be rendered
7 meaningless because, again, the judicial remedy -- the
8 judicial intervention is the remedy when there is a denial
9 or a complete ignorance of a requester's request.

10 As far as arrest reports in 179A, I think that the
11 Supreme Court has been pretty clear in statutory
12 construction that when a general statute such as the Public
13 Records Act conflicts with a more specific statute, such as
14 179A, the specific one controls. And, so, we're looking at
15 the NPRA as access to all government records. 179A is very
16 specific in the sense that it's only related to criminal
17 history information and it sets out specific records of
18 what criminal history is. And then it also controls who
19 that information is or may be disseminated to.

20 THE COURT: All right. So I'm -- but I'm having a
21 hard time following what you're saying, in part, at least,
22 because doesn't 179 say that arrest reports are records of
23 criminal history and then the -- let's see.

24 MS. NICHOLS: Your Honor, we're not disputing that
25 they're public records. Like, we understand --

1 THE COURT: Okay.

2 MS. NICHOLS: -- that the media isn't entitled --
3 is entitled to arrest report, but just for clarification --

4 THE COURT: So, have you provided any arrest
5 reports?

6 MS. NICHOLS: So, the problem with their request
7 is that we cannot conduct a search. As we indicated in our
8 brief, they want --

9 THE COURT: But how do I know that because what
10 evidence have you given me? Who -- because you are
11 counsel. Your arguments are not evidence. What evidence
12 have you given me that this cannot be done?

13 MS. NICHOLS: We have not provided a declaration,
14 Your Honor, and I know that one of the questions was: Why
15 haven't we provided a custodian of records? And we would
16 argue under the *PERS* case, we're not required to -- at
17 least for purposes of responding to a public records
18 request, to create a document. So, we don't have to create
19 essentially a declaration to the Review-Journal to say that
20 we can't accommodate your request.

21 But I would argue --

22 THE COURT: But you've read 239.0103. Right?
23 Please, tell me you've read that one.

24 MS. NICHOLS: .01. -- I'm sorry --

25 THE COURT: 239.0113 --

1 MS. NICHOLS: Right. Where the burden falls on
2 the government to demonstrate confidentiality --

3 THE COURT: By a preponderance of the evidence.

4 MS. NICHOLS: Correct, Your Honor. But we're not
5 arguing confidentiality. We're saying that we cannot even
6 conduct a search. There's no possible way to conduct a
7 search of the trespass arrest reports without combing
8 through millions of calls for service. There's just no way
9 and I explained this in the brief in the sense that we --
10 the Department runs searches through a person's name, an
11 event number. We can do addresses, which is --

12 THE COURT: But how do any of us know that what
13 you're telling us is true? Because we don't have -- you,
14 with all due respect, are the attorney. Your arguments,
15 again, are not evidence. So that's why I'm saying: Why
16 don't we even have a COR declaration? And you say: Well,
17 we're not required to create a document.

18 I mean, that -- I'm having a hard time with that
19 because you keep saying all these facts, and I'll use air
20 quotes, because what evidence do I have of any of these
21 facts that you're telling me?

22 MS. NICHOLS: The problem, Your Honor, is that
23 this is not just one single division or one single bureau
24 that controls these records. So, I'm having to speak with
25 general counsel who essentially speaks with several

1 different divisions and several different bureaus within
2 the Department and then reports back to me. And, so, I
3 would essentially have to -- and it would take me at least
4 a month, if not two, to get declarations or affidavits from
5 each person within a division or bureau to show how these
6 records are searched for. Because we're talking about
7 trespass --

8 THE COURT: Haven't you had a year and a half to
9 do it?

10 MS. NICHOLS: No, Your Honor. I believe that Mr.
11 Crosby and Ms. McLetchie have had several discussions on
12 trying o work with this and I believe that it has been
13 represented that we cannot conduct these searches.

14 And, in fact, on May 4th, 2017, the Department
15 replied to the reporter and said that we can't conduct
16 these searches without addresses. And in response for one
17 request, in response, he did provide us 213 addresses for
18 one of his requests. This is nothing new. We have in
19 almost every single response in letter format to the
20 Review-Journal we have explained that we cannot conduct
21 searches and that they need to somehow narrow their
22 searches because a trespass -- an arrest report for a
23 trespass, it can involve a burglary, a homicide, a robbery.
24 It's not limited to just sex trafficking or solicitation
25 and their request is extremely broad. It's solicitation or

1 trespass. Now, if they want to narrow that down to just
2 related to sex trafficking, we could then submit that
3 request to the Vice Unit, which is the responsible unit for
4 those crimes, and then attempt to conduct searches that
5 way.

6 THE COURT: So, I'm going to go out on a limb here
7 and say the Review-Journal probably has a reason for
8 including this trespass request and I'm going to say that
9 it might be because often in sex trafficking instances or
10 suspicions or cases, one of the charges involved is
11 trespassing.

12 MS. NICHOLS: That's correct, Your Honor. And --

13 THE COURT: Okay.

14 MS. NICHOLS: And, unfortunately, we can't search
15 by just a key word, trespass. So, there is a CAD which you
16 can use to search by addresses or you can use to search by
17 a dis -- a 400 code or a disposition code. I have that
18 printed out.

19 [Pause in proceedings]

20 MS. NICHOLS: Your Honor, may I approach?

21 THE COURT: Sure. So what are we looking at?

22 MS. NICHOLS: So that is -- the 400 numbers are
23 400 code related to calls for service. So, when an officer
24 gets a call, that is how they indicate which call that
25 they're responding to --

1 THE COURT: So, has this been provided to --
2 MS. NICHOLS: I just provided it to --
3 THE COURT: I mean, I talk slow. So you'll have
4 to bear with me a little bit.
5 MS. NICHOLS: I apologize.
6 THE COURT: I -- that happens all the time.
7 Prior to just now, has this been provided to
8 petitioner?
9 MS. NICHOLS: No, Your Honor.
10 THE COURT: Okay. Why not?
11 MS. NICHOLS: I believe it has been explained that
12 we cannot do searches unless there is an event number, or
13 person, or address, or an actual code.
14 THE COURT: So why -- I -- that's a decent
15 statement. I'm not sure it answers my question. The paper
16 -- the two-page document that you just handed to me, why
17 hasn't it been provided to petitioner prior to just now?
18 MS. NICHOLS: To be honest, Your Honor, I assumed
19 that Ms. McLetchie was already familiar with that 400 code.
20 As she indicated, there are multiple cases between the
21 Review-Journal and the Las Vegas Police Department, so I
22 did not think that she didn't know anything about that 400
23 code.
24 THE COURT: Okay.
25 MS. NICHOLS: And for -- so, for instance, under

1 trespass, there -- you will see that there is no 400 code
2 for trespass. Generally an officer would respond by using
3 other disturbance or would -- or a homicide or something
4 similar. So, there's no way to actually search for
5 trespasses.

6 THE COURT: Okay.

7 MS. NICHOLS: Moreover, I don't think that the
8 purpose of the NPRA is complete -- is to completely
9 displace the government. As we indicated in --

10 THE COURT: I don't think they're arguing that
11 though. I'm --

12 MS. NICHOLS: So, there's -- for solicitation
13 purposes -- for solicitation arrests, the Vice Unit found
14 over 7,000 arrests for the three years that they requested.
15 That would require the Department to search by hand each
16 file to determine whether or not an arrest report was in
17 fact part of the file because arrest reports are not always
18 part of a file. Sometimes there's declarations of arrests
19 or, in the alternative, if the officer obtained a search
20 warrant to establish probable cause, an arrest report would
21 not be created. So, an arrest report does not always
22 exist.

23 In -- for -- so, for the solicitation arrests
24 alone, we would have to review each file individually and
25 there was over 7,000 arrests in the three-year period. I

1 don't even have a page number because of the amount of
2 arrests of how large those files are.

3 The investigative files at issue -- there's 860
4 and the reason that there's 860 versus the 757 that Ms.
5 Bible [phonetic] initially quoted is because the additional
6 files include pandering and accepting earnings from
7 prostitution which was a later request in May. So, the 860
8 comprises sex trafficking and the pandering and accepting
9 earnings.

10 We did provide a sample file and that sample file
11 was 200 pages and what the problem came down to for the
12 invest -- the close investigative files for the three years
13 was cost. The NPRA does provide that the governmental
14 agency gets to charge the actual cost incurred and, under
15 239.052, a governmental agency is required to maintain a
16 fee schedule related to those costs and we have -- and we
17 maintain a fee schedule and it's available on our website
18 and we have provided this sheet numerous times to the
19 Review-Journal. And, under that sheet, it says that we
20 charge, generally, 31 cents a page for copy. And that --

21 THE COURT: So, I'm going to pause you on that
22 one. So isn't your argument circular on that in terms of
23 the statute says you get to charge actual costs and Metro
24 says, well, our fee schedule says it's 31 cents and
25 therefore 31 cents is our actual costs? I mean, isn't that

1 just a completely circular argument? What is the basis --
2 I think the Review-Journal has responded to those and said
3 -- I'm going to characterize their response: We don't know
4 that you have a basis for this 31 cents. And your response
5 is: Well, it's on our fee sheet.

6 MS. NICHOLS: Sure. My understanding is that a
7 study was done years ago in producing records. And so the
8 31 cents is comprised of the actual paper used and the
9 toner.

10 THE COURT: Okay.

11 MS. NICHOLS: For example, the arrest reports on
12 the fee schedule generally cost \$9 for the entire arrest
13 report up to 20 pages. And, as I explained, that's
14 generally because, depending on the information that we get
15 in order to search for the arrest report, there may be some
16 necessary researching and, of course, redaction involved in
17 those. And, so, that \$9 encompasses all of that, the
18 copying, the redaction, the reviewing, and the researching.

19 As far as the officer unit officer assignments are
20 concerned, we provided the names of the officers, we
21 provided the P numbers, but the unit assignments are
22 confidential for purposes of officer safety. In fact, we
23 had a case, I cited to it in our brief, where we had a seek
24 a protective order and they wanted to know what area
25 command he had been transferred to and the Judge said that

1 that wasn't -- he didn't -- he was not entitled to that
2 information.

3 THE COURT: So, the response to that was: Well,
4 that's a particularized, specific instance and I'm not sure
5 the Review-Journal said we understand that, but that being
6 a specific, particularized instance, the Review-Journal
7 responded: Hey -- and I point to my stack of cases and the
8 statutes. Hasn't the Legislature and the Nevada Supreme
9 Court been clear in terms of you can't just throw out
10 general statements? You have to have, one, evidence and it
11 has to be specific rather than general or speculative and
12 how is what you just said not general or speculative?

13 MS. NICHOLS: Well, the other argument that we
14 placed in our brief is the undercover positions, especially
15 with the Vice Unit.

16 THE COURT: So, let's assume that we -- and I
17 don't know if the Review-Journal would agree but let's
18 assume that, okay, undercover positions are confidential
19 and understandable, I'm going to go out on a limb and
20 assume that not everyone who works in Metro's undercover
21 positions.

22 MS. NICHOLS: No, Your Honor. You're correct.
23 But the requests here are directed towards the sex
24 trafficking cases and that would be the Vice Unit and so
25 that is our concern. We cannot disclose the officers

1 working for the Vice Units and other units. There are
2 other units within the Department that require homeland
3 security, I'm sure Gangs also has undercover units. And so
4 those -- all of those positions would be confidential.

5 THE COURT: Okay. Anything else to wrap up?

6 MS. NICHOLS: I would just like to make one
7 comment regrading SCOPE and the database. It's a computer
8 information system. I don't think a computer information
9 system qualifies as a record. If they want records within
10 SCOPE, those are generally provided over the phone because
11 SCOPE is a system where every single criminal justice
12 agency within Nevada dumps information into it. And, so,
13 the Department is only permitted to release information
14 that it puts into it. And, so, if you run a person's name,
15 it could include information from North Las Vegas or City
16 of Henderson and we are not permitted to disclose that
17 information under 179A.

18 THE COURT: Thank you very much.

19 MS. NICHOLS: Thank you.

20 THE COURT: Here's what I'm going to do and I
21 would entertain more argument but for time limitations. As
22 I sit here, it is clear that Metro has not complied or even
23 come close to compliance with the NPRA and it's -- had more
24 than enough time to do that, but has not. As I sit here,
25 Metro either doesn't understand its obligations, which I'm

1 -- either doesn't understand its obligations or it
2 understands them and takes a position that it doesn't have
3 to comply with its obligations or doesn't care and Metro
4 needs to comply with the NPRA. And it, like I said, has
5 not even come close to doing that. And I don't understand
6 why.

7 Unfortunately, for Metro, as I sit here right now,
8 Metro has given me zero evidence, which almost leaves me
9 speechless because I don't understand why that is the case
10 here after a year and a half. And I would also note that
11 Metro had nearly two months in which to file its response
12 and yet I have no evidence from Metro.

13 And Metro has forced petitioner to go round and
14 round and spin wheels and incur what -- the attorneys' fees
15 and costs that should never have been needed to incur. And
16 it boggles my mind, quite frankly, as to why Metro has done
17 what it has done and taken the positions that it's taken.

18 And I'm saying this because Ms. Nichols, you will
19 need to go back to your client and convey all this to your
20 client and say: We're going to be back in front of Judge
21 Hardy and I'm -- before we come back, I'm going to engage
22 in good faith meet and confer efforts with Ms. McLetchie,
23 as counsel for petitioner, but they need to under -- Metro
24 needs to understand the reality of this case, which is they
25 haven't come close to complying with their obligations and

1 they need to do that. And if it takes you going to Metro's
2 general counsel with whomever and saying here's the
3 statutes, here are the cases, read these, please, because
4 we need to comply with them. I don't know if you'll need
5 to do that or something else, but something needs to be
6 done on your end so that when you engage in the good faith
7 meet and confer efforts, your client understands the
8 position that it's in and engages in good faith, which it
9 has not done to date. And faces the reality of its
10 obligations under the statutes and sets aside these
11 positions that lack merit as it has done so far.

12 And the reason why I'm doing this, other than what
13 I've already said, is that this is Metro's one last
14 opportunity to comply with its obligations and I hope that
15 Metro does that, although I have to say, given the history,
16 I'm not very confident that will happen, but -- and this
17 discussion will include a frank and candid discussion of
18 costs. And get the transcript and give it to your client.

19 And what will happen next is the parties will give
20 me either a proposed agreement as to how you're going to do
21 this by stipulation or you're going to submit supplements
22 and say: Here is the actual relief requested. Be very
23 specific. And here are the costs.

24 It's frustrating for me as a Judge when the
25 statute's very clear. It says, hey, if you're like Metro

1 and you're claiming that this is confidential or privileged
2 or what have you, you have the burden of proof by
3 preponderance of the evidence and you give me no evidence.

4 Part of that discussion, hey, here's the person,
5 Review-Journal, that you can meet with and talk to that can
6 explain all of these positions and all of these things that
7 we've said in our brief and in front of Judge Hardy for
8 which we have not submitted any evidence. Here's how our
9 system works. And sit down with them and it may be that if
10 you can't come up with an agreement, I will order that a
11 COR deposition occur, that documents be produced. Metro
12 needs to approach it from this viewpoint, which it has not
13 done, and I'll bring you back for further argument.

14 So, time frame.

15 MS. MCLEITCHIE: Your Honor, if I may? In June,
16 when Mr. Crosby and I last spoke, we had talked about
17 providing for December of 2016 for sex trafficking files so
18 we could do an experiment to see if narrowing would work.
19 And we had proposed that they provide just the officer
20 reports, which I think he had estimated at 3 to 20 pages
21 within the 2 -- an average 200-page sex investigative file
22 and I had also requested the request for prosecution. So,
23 I would suggest that in order to further this mechanism
24 that Your Honor has come up with to try to move this
25 forward, that they produce that for December of 2016.

1 That's just the officer reports and the request for
2 prosecution, so that my client can see for December of 2016
3 what that looks like and if that would assist my client in
4 limiting its request. Right now, they've requested the
5 entire file and this was -- this could be a mechanism to
6 allow us to narrow it.

7 THE COURT: That sounds like it makes sense to me
8 and -- but have that discussion, come up with -- if that
9 was the agreement, make sure it's formal or, if it's not,
10 but I will bring you back within a reasonable period of
11 time, that I'll get both of your input on, to make sure
12 this is moving forward as appropriate.

13 MS. MCLEATCHIE: And, to be clear, I wasn't
14 suggesting that be the final relief in the case. That
15 would be something that would help us --

16 THE COURT: No. I --

17 MS. MCLEATCHIE: -- because we're a little bit in
18 the dark on what -- how information is stored.

19 THE COURT: So that's the kind of discussion that
20 you can continue to have, which may be helpful now in light
21 of what I've already said.

22 MS. MCLEATCHIE: Thank you, Your Honor.

23 THE COURT: But should I set you out two weeks,
24 three weeks, four weeks?

25 MS. MCLEATCHIE: We're just two -- I think we

1 should meet in two weeks to make sure that we're -- we
2 should come back in two weeks to make sure that we're
3 moving this forward.

4 MR. CROSBY: I don't have a problem with two
5 weeks, but I did want to add, Your Honor, given the Court's
6 comments with respect in addressing its decision is that I
7 have been -- I was the one primarily dealing with Ms.
8 McLetchie in trying to work out a resolution on this and I
9 identified, I believe it's Exhibit 21 of our response.
10 You'll see that my initial response to her identified the
11 volume of documents and then a cost and a time frame, which
12 was 50 cents a page, which was under the statute, as well
13 as a time frame based upon our initial run of that first
14 month that identified roughly 200 pages for one case file
15 and that was an analyst who went through that.

16 So, I guess -- while I certainly appreciate the
17 Court's comments, I want the record to reflect that -- and
18 I don't think Ms. McLetchie will deny that we did have
19 extensive discussion. I think she said in her opening
20 arguments, we had extensive discussions. I provided the
21 RJ, at the very start of this, with a time frame and a cost
22 for all of these records. It's Exhibit 21. And that was
23 reviewed. What this boiled down to was the cost. They
24 didn't want to pay -- the RJ didn't want to pay \$67,000 or
25 whatever it was for all of these files. And Ms. McLetchie

1 and I engaged in numerous discussions, which is identified
2 in the record.

3 THE COURT: So, as part of my comments, I -- one,
4 I still don't evidence of what you just told me. I don't
5 have a -- did anyone authentic that exhibit?

6 MR. CROSBY: Well, it was actually my discussion
7 with Ms. McLetchie --

8 THE COURT: See. And, so, we're talking about you
9 who talked to your client who tells you X and you convey
10 that to Ms. McLetchie. I understand negotiations, but
11 we're in court and I need to deal with evidence.

12 In terms of costs, I'm trying to bite my tongue on
13 that, but you will engage in your good faith meet and
14 confer efforts and come see me in two weeks and hopefully
15 before that -- so, when's two weeks?

16 THE CLERK: August 22nd of 2018 at 9 a.m.

17 THE COURT: So, to the extent either side -- if
18 you come to some kind of agreement, or stipulation, or you
19 can't do that and you want to tell me where you're at so I
20 can be more prepared than just come in blind, file
21 stipulation or supplemental brief on August 20th that way
22 that'll --

23 MS. MCLECHIE: August 20th, Your Honor? I'm
24 sorry.

25 THE COURT: -- help me -- yeah. August 20th. So,

1 Monday and you'll be back on Wednesday, the 22nd.

2 Costs certainly is an issue, which would make
3 sense if you can all agree that, hey, let's do this test
4 run of a month and let's see what comes out and if we can
5 limit or not. But Metro really needs to take its
6 obligation seriously and try not to have positions in
7 discussions and then come in front of me and say: Wait, we
8 don't actually -- we didn't mean that. That makes it a bit
9 hard to -- but do your good faith meet and confer before
10 August 20th, that way you'll have at least that day to file
11 your agreement or stipulation or supplemental briefs and
12 then come see me on the 22nd. And I don't know if I'll make
13 any final ruling then, but I -- if not, I will stay on top
14 of this case and make sure everything gets taken care of.

15 MR. CROSBY: Thank you, Your Honor.

16 MS. MCLETCHE: Thank you, Your Honor.

17 THE COURT: Thank you.

18

19 PROCEEDING CONCLUDED AT 10:42 A.M.

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CERTIFICATION

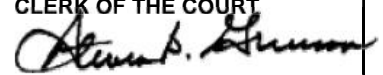
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

LAS VEGAS REVIEW-JOURNAL,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Defendant.

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CASE NO. A-18-775378

DEPT. NO. XV

Transcript of Proceedings

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

HEARING

WEDNESDAY, AUGUST 22, 2018

APPEARANCES:

For the Plaintiff: MARGARET A. MCLETCHE, ESQ.

For the Defendant: JACKIE NICHOLS, ESQ.
NICHOLAS CROSBY, ESQ.

RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 WEDNESDAY, AUGUST 22, 2018 AT 9:22 A.M.

2

3 THE LAW CLERK: *Las Vegas Review-Journal versus*
4 *Las Vegas Metropolitan Police Department.*

5 MS. MCLEATCHIE: Good morning, Your Honor. Maggie
6 McLetchie for the Las Vegas Review-Journal. And I have
7 with me Jessica Brown from my office.

8 MR. CROSBY: Good morning, Your Honor. Nick
9 Crosby on behalf of the Las Vegas Metropolitan Police
10 Department.

11 THE COURT: Good morning.

12 MS. NICHOLS: Good morning, Your Honor. Jackie
13 Nichols on behalf of the Las Vegas Metropolitan Police
14 Department.

15 THE COURT: Good morning. All right. Well, okay.
16 Okay. Good morning.

17 So, I've reviewed both supplemental briefs and I
18 commend the parties for working out some of the issues at
19 least. So, thank you.

20 There are some outstanding issues, obviously, so,
21 I guess, given that still Review-Journal's original
22 Petition or Writ, maybe you, and then counsel for Metro,
23 and then see where we go.

24 MS. MCLEATCHIE: Thank you, Your Honor.

25 Your Honor, I think the meet and confer and the

1 other efforts show that the Review-Journal is more than
2 willing to refine and narrow requests, but it can't do that
3 without information. And Metro still won't provide
4 information. Instead, we've had to resort to doing things
5 like trying to figure out from documents that we can find
6 on the internet.

7 While we were able to resolve some issues at the
8 meet and confer, it's my view that Metro didn't fully meet
9 and confer in good faith. Metro just now, with its
10 Supplement, provided information to the Court that it
11 should have provided to the Review-Journal back when these
12 requests were made, over the last year and a half that Mr.
13 Crosby and I were trying to resolve these issues.

14 If Metro had only been willing to provide client
15 representatives for the meet and confer or for prior
16 discussions between myself and Mr. Crosby, we would not
17 have wasted so much time or now need depositions and still
18 need information.

19 Instead, it looks to me like Metro ran searches
20 and created declarations, declarations I think Ms. Nichols
21 said would take two months to get at the last hearing,
22 after the meet and confer. It just reveals to me that
23 Metro's interest isn't in giving us enough information so
24 we can figure out how to narrow requests and do this
25 efficiently, but, instead, is just in trying to justify

1 charging us exorbitant fees.

2 At the end of their supplemental brief, Metro
3 complains that we want to understand their system so that
4 we can make other requests. Even if that were the case,
5 we, in fact, want the depositions so we can narrow these
6 requests and not make money, but, even if that were the
7 case, what would be wrong with that? If Metro would
8 cooperate and not engage in gamesmanship, requests like the
9 Review-Journal's would not be as difficult to address,
10 would not be as expensive, it would not even require court
11 resources.

12 The information that Metro provided is still
13 incomplete. For example, is it possible to limit queries
14 for arrest reports to VICE and to certain area commands?
15 How are records -- how are VICE records organized? All
16 they've told us is that they have keep -- keep them only on
17 like hard copy. How are they indexed? How are they named?
18 What programs, if any, does VICE actually use? What does
19 this analytical section do? And could we work with the
20 analytical section to more efficiently get them information
21 about the records we're seeking so that we can do this
22 efficiently? Who is responsible for Metro for providing
23 data to crime mapping? Who is responsible for providing
24 data to the FBI?

25 We produced information in our Reply showing that

1 Metro does provide information regarding sex trafficking.
2 Metro's positions in this litigation just bely belief. If
3 Metro -- Metro is a sophisticated, important police
4 department, but they act, in this litigation, as if they're
5 the Keystone Cops and they've said that VICE has no
6 electronic records. Again, they provide these statistics
7 but they say they're going to count the files to get
8 statistics and we have no idea what their methodology for
9 providing the statistics they have agreed to provide us is.

10 They also take the position that they don't even
11 know of these many hardcopy files that must be piling up,
12 that they don't know which cases is referred for
13 prosecution and have become criminal cases and which
14 haven't. So, the idea that they've just sort of lumped all
15 of these cases together and they've got to do research to
16 even figure out if they went to trial or not, doesn't make
17 any sense. There should be a Request for Prosecution at
18 least in a file. And it just seems like VICE's work has to
19 be more organized and has to have more oversight than them
20 just doing cases and not knowing how many go to court and
21 how many don't.

22 The time, they say, that's involved is not
23 realistic, especially in light of the Review-Journal's
24 willingness to limit and do as much of the work as
25 possible, as one of our solutions, I think, shows. That's

1 work that Metro's required to do under the law that we're
2 willing to do to make this easier on them.

3 Metro said it was researching requests and
4 figuring out what records existed back in February of 2017
5 when these requests were first made. How -- and these are
6 Exhibits 6 to 8 through our Petition. But, now, it says it
7 still needs to charge us time to do the work of looking and
8 figuring out what's closed.

9 The other thing -- the other claim that's
10 incredible to me is that there's no documentation at Metro
11 regarding the SCOPE fields, either input or query fields --

12 THE COURT: So, is it fair to say that the first
13 time we had evidence of that position that, hey, it's not
14 us, it's Clark County IT, was in the declaration that they
15 submitted on --

16 MS. MCLEATCHIE: I think that is --

17 THE COURT: -- August --

18 MS. MCLEATCHIE: I think that is fair to say, Your
19 Honor, and I think that when you look at that declaration,
20 they -- he -- they do put in there -- I think it's
21 paragraph 18 -- paragraphs 18 and 20. The -- they do have
22 some information in there about what fields are -- what the
23 query modules are both for input and for -- both for input
24 and for, I think, dissemination. So, they have information
25 about the modules. What we're looking for, I think, Your

1 Honor, is the information that is under those modules, what
2 the fields are.

3 So, if we turn to Exhibit U, it's in paragraph 18.
4 It says:

5 For example, there are 15 module query screens for
6 users of the SCOPE web portal labeled --

7 And, then, it says what these module query screens
8 are. Presumably these query screens have files that you
9 can see and see data in or enter data into. That
10 information isn't provided. That's essentially the
11 information the reporter is looking for.

12 And while they say that they're not the owners of
13 the database, Your Honor, it just belies belief that they
14 don't have information about what the fields are. For
15 example, they have what they call LEST, law enforcement
16 support technicians. Those LEST get trained. They must be
17 trained in how to use SCOPE. Those training manuals must
18 describe what they -- what officer Leto [sic] describes as
19 query screens and report dissemination report query
20 screens. They must have information about those. That's
21 all we're trying to get at.

22 During the meet and confer, I suggested, for
23 example, why not give us manuals or training materials that
24 you give the LEST to work in SCOPE? And we didn't get
25 that. I followed-up by e-mail and said: You can consider

1 this a formal request if you need to. Ms. Nichols has
2 taken the position that she has five days to get back to me,
3 which is true under the NPRA, but they won't even give me
4 that information, which could just solve -- which could
5 probably just solve the problem and answer the reporter's
6 question.

7 I also just think that if they had had Mr. Leto --
8 Peto, I'm sorry, on the phone with Mr. Joseph, who was
9 present with me, Your Honor, during the meet and confer, we
10 wouldn't have dumb lawyers trying to talk about technology.
11 Instead, we'd have a sophisticated reporter and somebody at
12 Metro who is sophisticated in technology and I bet you
13 anything that they could have figured this out. But they
14 didn't.

15 And I just don't -- I just don't think it's
16 possibly true that there's no information. He did his
17 declaration somehow. I'm sure he doesn't have the module
18 query screens memorized and I certainly think it would be
19 possible for Metro to tell us what's actually there in
20 SCOPE. We're not trying to get the actual confidential
21 information. We're just trying to see what's -- what are
22 the fields in SCOPE? What are -- what information can be
23 inputted? What type of information can be inputted and
24 seen?

25 With regard to costs, Your Honor, the Review-

1 Journal's been trying to problem solve this whole -- all of
2 these requests for over a year and a half. For example, I
3 had suggested -- I think at the beginning of this year,
4 that's Exhibit 27 to the Petition, hey, let's do a test run
5 for December. We'll pay 10 cents a page. We don't think
6 we should have to pay you anything. I've suggested trying
7 to do these records subject to a flat fee, but, as we've
8 seen in this case, Metro is incentivized to make this
9 difficult and expensive.

10 If we look at the sample file that they did
11 provide, that I am grateful for, I believe that was Exhibit
12 21 to the -- that was Exhibit 21 to the Petition, we
13 figured out that -- we've devised a methodology where we
14 can figure out, we think, that -- who has testified in
15 cases. If we can get the names of files, we think we can
16 figure out for them and say, hey, if it -- if the Defendant
17 is Defendant X, I can tell you that when -- that the victim
18 witness Y testified. I didn't put in citations.
19 I apologize. But on Exhibit 85, for example, on page 20,
20 page 23, page 27, 28, 49, 51, throughout, Your Honor,
21 there's numerous references to Ms. Autumn Richards, who
22 also went on TV. Frankly, a Google search would have told
23 whoever redacted that file that that victim -- victim's
24 name was publically named. She's gone on TV.

25 They -- while they say it took five hours to

1 redact that file, it was five hours of wasted time and what
2 we can't have is Metro being able to charge an exorbitant
3 per page price to do work that isn't even necessary.

4 We do think that we've come up with a way to avoid
5 all of that. And it's my guess, Your Honor, that in light
6 of the fact we're starting with 2016 files, in light of the
7 fact that these are older files, if a VICE investigation
8 was completed, it's highly likely that these cases went to
9 trial. Right? It's possible that some of them didn't, but
10 it's going to be the vast majority of these cases that went
11 to trial and, in the vast majority of these cases, the
12 victim probably testified, too. We'll be able to figure
13 this out --

14 THE COURT: Couldn't a bunch of them have been
15 plead out?

16 MS. MCLETCHE: That's possible, too, but the --
17 but it's also possible that the witnesses are still public
18 information in those cases and, if we get the names, we can
19 figure that out and we can even focus, first, on all of the
20 cases in which the witnesses have testified. Right? And,
21 so, we can work -- we're willing to work and put the hours
22 in to make this efficient and to make this inexpensive,
23 but, as you can see, Metro just will-nilly redacted that
24 file, made redactions that aren't permissible under the
25 law. That information is not legally protected because she

1 did testify and we can't have a situation where they're
2 hiding the ball and being able to charge high, high prices.

3 They also hid the ball, Your Honor, with regard to
4 the cost study that was mentioned -- it's discussed in one
5 of the declarations how they justified their per page
6 copying price -- copying fee. They could have provided
7 this to me years ago, but they didn't provide -- they
8 didn't provide -- they still haven't provided it to me.
9 Instead, they provide a declaration kind of summarizing it.
10 I asked --

11 THE COURT: I was going to say that it appears
12 that -- I mean, I know it's been represented that there's
13 some actual study. Right?

14 MS. MCLEATCHIE: Yes.

15 THE COURT: I don't know if that exists. I mean,
16 I -- as I sit here, it seems like maybe it doesn't. I --
17 and we still don't have it.

18 MS. MCLEATCHIE: We still don't have it --

19 THE COURT: Right?

20 MS. MCLEATCHIE: -- and there's -- in the
21 declaration, there's hearsay about how they kind of figured
22 out how to charge for -- how they came up with 31 cents a
23 page.

24 THE COURT: Which exhibit is that one again?

25 MS. MCLEATCHIE: That's Exhibit 10 to their

1 Supplement.

2 THE COURT: 10? I'm pretty sure because theirs is
3 letters.

4 MS. MCLEATCHIE: I'm sorry. T.

5 THE COURT: T. Okay.

6 MS. MCLEATCHIE: Thank you, Your Honor.

7 So, it details how service charges are created --
8 are determined each year. I asked them during the meet and
9 confer for the -- excuse me, Your Honor.

10 THE COURT: Sure.

11 MS. MCLEATCHIE: They -- I asked them during the
12 meet and confer for a copy of the cost study, I followed-up
13 by e-mail, I still don't have it. Ms. Nichols has taken
14 the position that she's got five days under the NPRA to give
15 it to me --

16 THE COURT: Are you serious?

17 MS. MCLEATCHIE: Yes.

18 And, by the way, Your Honor, it is -- the NPRA
19 does allow for up to five days to make a response, but
20 there's nothing stopping Ms. Nichols from providing it
21 earlier and there's nothing from ever stopping a public
22 entity from providing a record earlier. This should be --
23 somebody must have looked at it, for example, when they
24 made these declarations.

25 THE COURT: Well, as I sit here, I don't even know

1 if it exists. You know, because they said it does.
2 They've told me it does. They've told you it does, but why
3 don't we have it is a question for Metro's counsel when
4 it's their turn.

5 MS. MCLEATCHIE: So, I think -- as -- a sort of
6 shocking thing to me that was revealed in the course of
7 getting the declaration and the arguments of counsel in the
8 Supplement were that it appears that Metro's 31 cents a
9 page, which is their standard copying fee. That is their
10 standard copying fee. Their standard copying fee, Your
11 Honor, I'm actually going to ask this Court for a
12 declaration that their service fee list is illegal under
13 the NPRA. And here's why, Your Honor.

14 What NRS 239.005, subsection 1, under definitions,
15 says is that if you're providing a copy, you're only
16 allowed to charge the actual cost.

17 THE COURT: Cost.

18 MS. MCLEATCHIE: Yes. The actual cost. And
19 further in definitions, it actually says that actual cost
20 means the direct cost related to the reproduction of a
21 public record. The term does not include a cost that a
22 governmental entity incurs regardless of whether or not a
23 person requests a copy of a particular public record.

24 That means staff time, Your Honor. Throughout
25 these declarations, Metro admits --

1 THE COURT: Yeah. I mean, let's -- I -- bear with
2 me a moment.

3 MS. MCLEATCHIE: Sure.

4 THE COURT: I'm looking forward to, let's put it
5 that way, the explanation of Metro in terms of -- I mean,
6 I'll just read from my note right here that I wrote before
7 today:

8 The statutory authority for charging hourly rate
9 and benefits.

10 That's -- I mean, that's what you're saying.
11 Right?

12 MS. MCLEATCHIE: There is --

13 THE COURT: It's a statute --

14 MS. MCLEATCHIE: There's absolutely none.

15 THE COURT: Well, okay. Let's see if they can
16 tell me what it is because I don't see it, but maybe they
17 have some other statutes that I'm not aware of.

18 MS. MCLEATCHIE: Right. And they have changed
19 their position in this litigation. Originally, in response
20 to the request, and, frankly, Your Honor, I feel that they
21 do this to make sure that we're -- to see if requesters
22 will just kind of go away, but their initial request was
23 \$56.29 per hour. Then they said: Okay. We'll just charge
24 a 50 cent per page fee, which is the maximum you can charge
25 if you establish extraordinary use is required to provide a

1 copy. It says copy in NRS 239.055. They try to read that
2 out, but it explicitly says the word copy in there. You
3 can charge up to 50 cents if it's -- if -- but it can't be
4 more than either 50 cents or -- and your actual costs. So,
5 there's two different caps on there. It has to be costs
6 actually incurred and they have to be reasonable. That's
7 another limitation in NRS 239.055. So, there's actually
8 three limitations: reasonable, no more than your actual
9 cost, and no more than 50 cents a page.

10 Now they come down to 31 cents, but I don't think
11 -- which is their standard copying fee, which is
12 necessarily illegal, in light of the language in NRS
13 239.005, prohibiting copying costs from including staff
14 time.

15 And if you see throughout their declarations, Your
16 Honor, while they're claiming that this case is going to
17 take extraordinary use, I think the evidence shows that
18 it's going to take extraordinary use because they want it
19 to, but it's not actually going to take extraordinary use
20 because they're not even actually incurring overtime.
21 Throughout the declarations --

22 THE COURT: Well, even -- you know, I read through
23 Exhibit 82, which is the LEST Guide and, on page 5, it talks
24 about SCOPE. And, then, farther down, toward the bottom,
25 police records and reports unit.

1 LEST is assigned to this unit process request for
2 reports from the public to include background checks,
3 traffic accident reports, crime reports, and other
4 documents.

5 So, to me, their own document right there says:
6 Hey, we have employees who we employ in part to do this
7 type of work. And I think I saw somewhere that there's --
8 and correct me if I'm wrong, 300 of these people?

9 MS. MCLEATCHIE: I believe that's in the -- I don't
10 have the numbers memorized, but we did produce what we
11 think is a copy of their budget that we were able to find
12 that also showed that there are LESTs within VICE who
13 presumably do things like enter information electronically.
14 We also found some information online, since Metro won't
15 give it to us, about databases they keep.

16 So, here's -- with regard to the extraordinary
17 use, Your Honor, the initial requests, besides the
18 statistics, the initial requests we've agreed to by
19 stipulation that we want Metro to focus on first are the
20 sex trafficking investigative reports.

21 THE COURT: That apparently may or may not be only
22 in paper format?

23 MS. MCLEATCHIE: I don't think that they -- I think
24 that they are probably are not only in electronic form,
25 Your Honor.

1 THE COURT: Well, that's what I --

2 MS. MCLEATCHIE: It seems incredible to me. What
3 would happen if there was a fire? Would cases never get
4 prosecuted? If what Metro is saying in this case is true,
5 Metro -- the public should be very concerned because this
6 is not -- they are a sophisticated police department and
7 they can't possibly be operating like this.

8 But with regard to those, we are doing a test run
9 for December of 2016.

10 THE COURT: When's that going to begin?

11 MS. MCLEATCHIE: They haven't -- I don't think they
12 told me that. They -- I don't think they've told me that
13 yet, or maybe in a stipulation. They're providing --
14 they're going to provide us with names of the file. Oh,
15 I'm sorry. It says by August 23rd. And then we said within
16 one business day we can figure out, based on the names of
17 the files they gave us, if the victims testified. Within
18 one day, Your Honor. And we could probably do it much more
19 quickly than that.

20 So, again, I don't want to reveal the Review-
21 Journal's methodology, but if the Review-Journal can figure
22 this out, Metro could have figured it out. And I think
23 that's exactly the central problem with how -- with
24 allowing the government to charge a very expensive hourly
25 redactions fee or allowing them to charge for redactions at

1 all, Your Honor. It -- they are not redacting what needs
2 to be redacting. They're over redacting and they're not
3 incentivized to do it efficiently or appropriately. And,
4 as we saw in this case, the Review-Journal can figure out
5 how to do it better and faster and they're willing to take
6 on Metro's work for doing -- to figure out what's public
7 and what's not public.

8 But I can't see that the sex trafficking files,
9 assuming I'm right, and that we focused in on ones in which
10 victims have testified, for example, they originally gave
11 us a sample file of 202 pages. Three pages of those have
12 dates of birth and social security numbers. It looks to me
13 like -- we didn't get a redactions log, but it looks to me
14 like all the other redactions in that file were probably
15 the victim's name.

16 So, I -- and of the 202 pages, Your Honor, as part
17 of our proposed solution to efficiently narrow in on the
18 files that are most important, we suggested just give us
19 certain documents. That's in a stipulation. Of the 202
20 pages, only 21 pages, I believe, would have to be -- only
21 scores of pages, rather than hundreds of pages, would need
22 to be provided, Your Honor.

23 And with regard to the arrest reports, I believe -
24 - they didn't provide a declaration about the specific
25 arrest reports that are at issue in the stipulation, but,

1 with regard to those solicitation and trespass arrest
2 reports, they -- it's my understanding that they can get
3 them electronically and that once they figure out which
4 arrest reports are at issue, they can provide them
5 electronically to us.

6 Metro has argued that there's -- that it's
7 entirely irrelevant whether records are in -- are in
8 electronic or not in electronic form. That's not true.
9 Anyone who has ever done any kind of discovery work,
10 intensive document review, which I did in another life, can
11 tell you electronic review can be a lot faster. Their post
12 hoc declarations don't actually address the issue of the
13 specific arrest reports that were -- that we're asking for
14 in the stipulation and it is actually relevant whether or
15 not records are in electronic or hard copy form because
16 electronic records are far preferable to reporters and what
17 NRS 239.010 subsection 4 says is:

18 A person may request a copy of a public record in
19 any medium in which the public record is readily
20 available. An officer, employee, or agent of a
21 governmental entity who has legal custody or control of
22 a public record, shall not refuse to provide a copy of
23 that record in a readily available medium because the
24 officer, employee, or agent has already prepared or
25 would prepare -- prefer to provide the copy in a

1 different medium.

2 That's -- we said we'd be willing to inspect. We
3 always prefer electronic copies. They've taken the
4 position that they need to print them out but then they
5 want to be able to charge the copying -- a per page
6 occupying fee for doing so and that's just not appropriate.
7 In fact, with regard to information like the database, if
8 there is, in fact, any data at Metro about sex crimes, sex
9 trafficking crimes, we are entitled to that information
10 electronically. And, as you can imagine, investigative
11 reporters would far prefer to get that information
12 electronically and be able to utilize it.

13 So, in short, Your Honor, especially with regard
14 to the records at issue, and you can see from the
15 stipulation, what the Review-Journal's willing to do to try
16 to figure this out. There is no basis for any sort of
17 extraordinary use fee. According to their declaration, I
18 believe they figured out that the per page price for
19 actually making the copy was a penny. We are happy to pay
20 a penny. We are happy to pay the penny. We agreed to pay
21 \$150 for December of 2016, not because we thought it was
22 worth it but I didn't want to spend another year arguing
23 over costs and fees before we actually got that -- get that
24 file.

25 THE COURT: Tell me about the patrol officers and

1 unit assigned.

2 MS. MCLEATCHIE: With regard to the patrol
3 officers, I think it's too late for them to come forward
4 with evidence. I think they had to do within five days and
5 they did not do so. You can see in Exhibit 6 to the
6 Petition that they didn't do that and the post hoc
7 declaration from Sheriff Lombardo is speculative. They --
8 he hasn't --

9 THE COURT: Well, doesn't he focus on covert
10 operations and undercover officers?

11 MS. MCLEATCHIE: He does.

12 THE COURT: And I really -- I mean, --

13 MS. MCLEATCHIE: Sorry.

14 THE COURT: You've already said you don't want
15 that.

16 MS. MCLEATCHIE: Yeah. We've said that we're
17 willing and that -- we don't think they've established
18 anything should be confidential, but, in the effort to
19 compromise, --

20 THE COURT: Spirit of compromise.

21 MS. MCLEATCHIE: Yeah. We said patrol officers.
22 Give us patrol officers.

23 I don't understand why providing their unit
24 numbers does all the things that the Sheriff says in
25 paragraph 4 and would reveal the kind of information like

1 home addresses and I don't think the fact that a home
2 address is protected is an argument about why unit
3 assignments would become protected.

4 I also want to reiterate an argument that we've
5 already made, in the last hearing, at the end of our
6 briefs. Metro keeps saying that they're interested in
7 community policing, they want to be partners with the
8 community. Why can't people know what patrol officers work
9 in their parts of town, in their neighborhoods? I don't
10 understand that. I -- and I just don't think they've
11 provided evidence. The case law makes very clear that the
12 kind of speculation and conjecture in Sheriff Lombardo's
13 declaration is not the kind of evidence that can warrant
14 nondisclosure of a public record. There was a case about
15 CCW permit information, for example. And that information
16 was found to be a public record because no evidence was
17 produced and all the claims about potential harm were
18 speculative and that's exactly the kind of argument we have
19 here.

20 So, even if this -- even if they can now come in
21 on a Supplement not even within five days, and not even in
22 connection with a response, even if this is properly before
23 the Court, I don't think it meets their burden.

24 With regard to SCOPE, Your Honor, I discussed that
25 briefly. They've said that their declaration shows that it

1 doesn't exist. I think that the information does exist.
2 There must be some information. If they had provided me
3 the manuals instead of making me wait, we may have already
4 even had the information, Your Honor, before today's
5 hearing and I do think we're entitled to a Court Order both
6 with regard to SCOPE information and with regard to the
7 unit assignments. And we are still willing to limit that
8 to patrol officers, Your Honor.

9 THE COURT: Thank you.

10 MS. MCLETCHE: Thank you.

11 MR. CROSBY: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. CROSBY: Working around -- sort of in reverse
14 order, with respect to the unit assignments. I think it's
15 important to note that, A, the Department did provide the
16 names of the officers and their P Numbers. The only thing
17 that the Department was not willing to provide would be the
18 unit assignments and the basis for that -- and I actually
19 had discussions with Ms. McLetchie a year ago on this
20 issue. I raised the concern about covert operations and my
21 position which is exemplified in Sheriff Lombardo's
22 declaration is that if I omit assignments for officers who
23 they already -- the R-J already has the officer's name,
24 then logic dictates that that person is in a capacity at
25 that time that would be in a covert position.

1 So, if Your Honor was an officer and your name,
2 Officer Joe Hardy, was listed already and now when I
3 supplement it there's no unit assignment for Officer Joe
4 Hardy with a -- and the bulk nature of that reference,
5 there's going to be one document that states Officer Joe
6 Hardy, presumably, worked in a covert position.

7 Now, if it's in 2014, maybe Officer Joe Hardy is
8 no longer in a covert position, but in 2014 maybe he was.
9 We don't -- officers don't -- when a case is done, say:
10 Hey, surprise. I'm a covert operative. They generally
11 funnel the information and a lot of times officers are
12 arrested in processes so that they can keep that cover.

13 So, that was the concern. That's what's
14 identified in Exhibit V. Specifically Officer -- or
15 Sheriff Lombardo's position was that the bulk nature of the
16 release presents a concern. By omission, someone could
17 deductively -- or use deductive reasoning and say: Okay,
18 as an example, Officer Joe Hardy was listed as an officer,
19 he has a P Number, but his assignment is not listed,
20 therefore he is -- he was, at some point in time, a covert
21 operative, at the time for the request. That was the
22 concern for the unit assignments.

23 To suggest that the Department doesn't want its
24 people to know who we're patrolling -- patrolling their
25 streets, it's -- that is just simply not true. The

1 officers have their name and their badge number when
2 they're out in the public. It's the bulk nature with the
3 omission of covert operatives, would lead someone to say
4 that this person was a covert operative at some point.

5 Now, you extrapolate that with a name that someone
6 has a social media account or maybe they did something
7 prior to being an officer -- the internet has a lasting
8 memory of images and references which someone --

9 THE COURT: So, let me ask. If -- so they've made
10 requests for January 1, 2014, January 1, 2015, January 1,
11 2016 and let's take what should be maybe the -- maybe the
12 easiest is not the right word, but let's take the oldest
13 one. January 1, 2014, which was four and a half years ago.
14 Right? How does the Review-Journal and me, as the Judge on
15 this case, determine, okay, well, I kind of understand the
16 issue that you're talking about that if we gave a list of
17 everyone, and then we give a list of only patrol officers,
18 then somebody could maybe take those and figure out, okay,
19 well the ones that aren't -- the ones on the list of
20 everyone who aren't on the list of only patrol officers,
21 they are involved in undercover or covert operations, but
22 how do we know here, four and a half years later, that any
23 of that is actually true as we sit here today?

24 MR. CROSBY: Well, I think, Your Honor, with
25 specific instances, that would -- I mean, it would have to

1 be like a case by case analysis, but the concern -- the
2 overarching concern was not to get into that risk by
3 disclosing covert operatives because, for example, someone
4 who worked in an undercover capacity in 2014 may very well
5 have not blown his or her cover in a prosecution of a case.
6 For example, if --

7 THE COURT: I understand that, but how do I --
8 this goes back to the issue I had last hearing which has
9 been addressed, at last in part in this one, so thank you,
10 but last hearing it was like I had representations of
11 counsel on a myriad of issues without any evidence. And,
12 now, you're saying, okay, well, maybe some of them are
13 still, you know, involved in covert operations here four
14 and a half years later. That might be true, but how do I
15 know that?

16 MR. CROSBY: And not to sound, you know, like I'm
17 posing a rhetorical question, but how would I be able to
18 express to the Court a specific person who is in an
19 undercover capacity to support that without also disclosing
20 that under cover officer's identity? And that's the issue
21 is that in -- short of a sealed hearing, you know, there is
22 a legitimate -- and I don't think the Court would disagree,
23 there's a legitimate peril in identification of officers,
24 even their name, if they're in an undercover capacity, or
25 if they were in an undercover capacity because we don't

1 disclose -- generally, we don't disclose for an undercover
2 officer. Obviously, it happens at times if they effectuate
3 an arrest, but a lot of times it's just to funnel
4 information to gather, to do other enforcement activities.
5 But I can't come to the Court and say Officer Joe Smith
6 worked as undercover and he should be protected because now
7 I've just told everybody that Officer Smith is an
8 undercover officer and it's the very thing I'm seeking to
9 protect from disclosure. It presents a challenge. I don't
10 not appreciate the Court's query, but the reality is I
11 can't come to the Court and say: Officers X, Y, and Z are
12 undercover. And I can't disclose their names because then,
13 by the very nature of presenting evidence in a specific
14 fashion as the Court is requesting, I have now belied the
15 information I am trying to protect.

16 And that is a very real concern, obviously, for
17 the Sheriff. I don't -- it's not that the Department is
18 not interested in community policing or that it's trying to
19 hide identities of officers. I provided the names and
20 badge numbers of officers, but when you get down to where
21 people work, by process of elimination, even if I'm allowed
22 to protect the covert officers' assignments, by nature, the
23 omission demonstrates that they were in a covert assignment
24 and that presents a concern. And, again, I can't come and
25 say Officer X, Y, and Z were all covert officers. So, I

1 can't disclose those things because then I've disclosed
2 their names and that presents a very real challenge that I
3 don't think should be taken lightly.

4 With respect to the SCOPE inquiry, this is not --
5 the Court made -- posed a question or a comment that this
6 is the first time that it's learned that the Department
7 doesn't have this information. I think we need to first
8 back up and look. The actual request was for a record
9 layout and a data database of SCOPE. That was the --
10 that's the public record request. So, the Department
11 actually notified Mr. Joseph that it did not have that. It
12 was actually the Clark County who had -- was the
13 administrator of SCOPE. Clark County said: Go to Metro.

14 We've confirmed with counsel and I confirmed with
15 my client that we do not possess the data dictionary. And
16 record layout, I believe what Mr. Joseph, after our meet
17 and confer, would be referred to as a schema --

18 THE COURT: Are you telling me that you can't --
19 Metro cannot call up Clark County and say: Hey, we use
20 SCOPE, provide us with this schema or database or -- and I
21 apologize for not using perhaps the term of art that you
22 all are. Because first you said Clark County then you said
23 Metro, now you're saying Clark County --

24 MR. CROSBY: No. We've actually said -- we've
25 always said Clark County. From jump street, we've said

1 Clark County. That -- we have said from the very start,
2 the initial request was directing Mr. Joseph to Clark
3 County. We do not have --

4 THE COURT: And he went to Clark County and what
5 did they tell him?

6 MR. CROSBY: They said: Go to Metro.

7 THE COURT: Okay.

8 MR. CROSBY: But I didn't say -- I didn't -- no,
9 Your Honor, --

10 THE COURT: So am I --

11 MR. CROSBY: What I'm saying is --

12 THE COURT: No, hold on. Hold on.

13 MR. CROSBY: Sorry.

14 THE COURT: Hold on.

15 So, can you understand, perhaps, the Review-
16 Journal's, and now mine, frustration when -- it's like jump
17 through this hoop, well, that hoop is Clark County has it.
18 So, he jumps through that hoop and he goes to Clark County
19 and Clark County says: No, you have to jump through this
20 hoop. Metro has it. So, he goes back to Metro and Metro
21 says: No, no, no, no. Really, Clark County has it.

22 So, I mean, why does he have to or the Review-
23 Journal or me, as the Judge, have to put up with this, you
24 know, go -- chasing a tail around or whatever phrase you
25 want to use? I mean, let's -- why should he have to do

1 that?

2 MR. CROSBY: Your Honor, I think the issue is the
3 NPRA requires us to turn over records that we possess. We
4 don't have the records that he's asking for. We do not
5 have it.

6 THE COURT: So they are --

7 MR. CROSBY: That's the issue and we've said from
8 day one we don't have the record.

9 THE COURT: So, what -- what's he supposed to do
10 when he goes to the people you say have it and they say:
11 We don't have it, Metro does.

12 MR. CROSBY: They didn't say Metro has it. They
13 said refer your query to Metro, I believe.

14 THE COURT: Oh my gosh.

15 MR. CROSBY: And this is what I'm saying is --

16 THE COURT: So, --

17 MR. CROSBY: At the end of the day, Your Honor, I
18 -- my client does not have the document he's requesting and
19 we've relayed that to Ms. McLetchie, I believe, confirmed
20 it most recently that Clark County IT has that information,
21 that document.

22 THE COURT: And you are representing to me as an
23 Officer of the Court that Metro cannot contact Clark County
24 IT and ask them to --

25 MR. CROSBY: Absolutely not. I'm not saying that

1 but the Public Records Act does not require me to go out
2 and find other government agency's public records for them.
3 That's like if someone asked me for Department of Public
4 Safety's arrest statistics or NDOT's arrest statistics,
5 does my agency work with NDOT? Sure. But that's not a
6 public record that I house and the NPRA doesn't require a
7 government agency to go to another government agency to
8 find a public record.

9 If I'm reading -- if I'm interpreting NPRA
10 incorrectly, I just don't see that in the NPRA that states:
11 Okay, government agency, you don't have this record but you
12 know who has it now. Now you have to go and get it from
13 that other government agency. Because that's really what
14 that would require is --

15 THE COURT: They went to the other government
16 agency and they said: No.

17 MR. CROSBY: Then --

18 THE COURT: Metro. And now you're playing with
19 words in terms of, no, they didn't say Metro has it, they
20 said to go ask Metro.

21 MR. CROSBY: And I'm saying, Your Honor, that my
22 client does not have that record and the NPRA does not
23 require me to go get that public record. If the Review-
24 Journal wants to petition Clark County for that record,
25 they're free to do that, but I do not have the record. My

1 client does not have the record, I should say, nor do I,
2 but that's the reality and this proceeding is -- and
3 discussions with Ms. McLetchie in this is, I think, losing
4 sight of the fact that this is a public records request for
5 public records, not information about public records.

6 Now, we've had I thought a very meaningful public
7 records meet and confer discussion. We obviously reached a
8 stipulation and order, which I think is pretty substantial.

9 THE COURT: Once again, I'll be clear, as I said
10 in the beginning, I commend the parties for their work
11 after the hearing and after I ordered that that be done.
12 You certainly spent time doing that, which -- and I now
13 have actual evidence, which I appreciate, but there's still
14 obviously a lot of outstanding issues.

15 MR. CROSBY: Well, I mean, really the outstanding
16 one -- the main outstanding issue, obviously, is the costs
17 and with respect to -- we've addressed the unit assignment.
18 I've addressed the SCOPE position and really, at the end of
19 the day, what we're dealing with here is we have to address
20 the cost situation so the parties, in their stipulation,
21 have left this up to the Court.

22 THE COURT: So, tell me about statutory authority
23 for charging hourly rates and benefits for the copies.

24 MR. CROSBY: And, Your Honor, the -- based upon
25 the declaration, which is attached as Exhibit T, I believe,

1 to the Supplement, the Department reaches its charge based
2 upon a calculation identified in paragraph 6 and 7 of that
3 declaration. The -- as it relates in this case, the
4 Department takes this position these requests are --
5 require extraordinary use of personnel under 239.055. It's
6 not just a matter of someone pulling a record and giving
7 it. These are cases that we have to review for juvenile --
8 see if there's juvenile victims that are protected by
9 statute, sex crime victims, which are protected by statute,
10 and whether or not there -- obviously, you know, dates of
11 birth and social security numbers, things that this Court
12 requires to be redacted to be filed. It's not just a
13 matter of printing a document or copying a document.
14 That's the Department's position. That's how it reaches
15 its fee.

16 Now, the statute provides for up to 50 cents per
17 page and we briefed the cost issue and the response to the
18 Petition with respect to the legislative history for
19 extraordinary use of personnel that requires more than a
20 half hour for someone to achieve that result. And I'll
21 note that this Court, the Eighth Judicial District, charges
22 50 cents per page for a copy, for just a regular black and
23 white copy. It charges \$10 for an exemplified copy.

24 So, it's -- the Department's 31 cents, which it's
25 now 32 cents, but 31 cents at the time this was started. I

1 disagree with the characterization that that's an
2 exorbitant fee.

3 THE COURT: So, you tell me a litigation case that
4 you have worked on as an attorney where a document
5 production company charged you 31 cents or 32 cents or 50
6 cents a page.

7 MR. CROSBY: I don't have -- well, I don't look at
8 my invoices, to be quite candid with you, Your Honor. I
9 just sign the fee that's due, but the -- I believe that
10 there's a range and, based upon my experience, there's a
11 range of what people charge for copy costs. As I said,
12 this Court charges 50 cents a page.

13 THE COURT: Well, --

14 MR. CROSBY: I believe in Ms. McLetchie's Motion
15 for Fees, she charges 8 cents a page. I think my firm
16 charges 25 cents a page.

17 THE COURT: So, let me pause you. I'm dealing
18 with Metro and its statutory obligations. I'm not dealing
19 with the Eighth Judicial Court and whether it charges 50
20 cents a page or not.

21 MR. CROSBY: And I was just bringing that up based
22 upon the Court's inquiry as to what other people have
23 charged me. And that's -- there -- copy charges from the
24 gamut -- I believe the Secretary of State charges 10 cents
25 a page, I want to say, or 5 cents a page. There's -- the

1 cost runs the gamut for government entities. This is what
2 the Department has identified as its cost for reproduction,
3 copy charges.

4 THE COURT: Do we have an actual study that's been
5 represented?

6 MR. CROSBY: I think the term, study, which is
7 probably me saying that during our meet and confer. This
8 Exhibit T is what would be referred to as a study as they
9 take the rates and deduce it based upon minute. That's --
10 I think when I mentioned the word study, you know, it's a
11 bit of a hazard on my comment but --

12 THE COURT: I don't know if it --

13 MR. CROSBY: -- this is how --

14 THE COURT: -- was you or your colleague.

15 MR. CROSBY: Actually, it was both of us on the
16 conference call.

17 But, then, as far as, I believe Ms. McLetchie -- I
18 don't think she raised it necessarily in her oral
19 arguments, it's definitely raised in her supplemental
20 briefing, is essentially the order of discovery --

21 THE COURT: So, --

22 MR. CROSBY: And here's the thing is we looked at
23 this --

24 THE COURT: So, you've read NRS 34.300. Right?

25 MR. CROSBY: I have read 34 and I also read it in

1 conjunction --

2 THE COURT: Okay.

3 MR. CROSBY: -- with 34.780, in that same
4 statutory scheme, which 34.780 addresses post-conviction or
5 post-conviction or habeas relief where the Legislature has
6 specifically enumerated discovery for those procedures.
7 They allow for discovery. The actual word discovery is
8 used, which is permissible. That same -- the Legislature
9 did not include discovery in the mandamus section, which is
10 34.300, which is the statute the Court just identified. I
11 think at looking at the legislative -- looking at the
12 construction of the statute as a whole, had the Legislature
13 intended for mandamus proceedings to be subject to
14 discovery or discovery be available, it would have included
15 as such in the mandamus section of the section as it did in
16 the post-conviction of the statute, which is specifically
17 NRS 34.780.

18 THE COURT: So, discovery -- you're telling me
19 that it's your position that discovery is not encompassed
20 in 34.300 that says:

21 Except as otherwise provided, the provisions of
22 NRS and Nevada Rules of Civil Procedure relative to
23 civil actions from the District Court are applicable to
24 and constitute the rules of practice and the
25 proceedings mentioned in NRS 34.150 to 34.290,

1 inclusive.

2 That does not include discovery. Is that --

3 MR. CROSBY: I think --

4 THE COURT: -- what you're telling me?

5 MR. CROSBY: -- that ostensibly could include
6 discovery, but when you look at the statutory scheme as a
7 whole, the Legislature specifically in 34.780 included
8 discovery as being -- in specific, it states that parties
9 may use discovery tools as provided in the Rules in Civil
10 Procedure. That, using statutory construction,
11 demonstrates to me, my interpretation, is that NRS 34.300
12 does not contemplate specifically conducting full-blown
13 civil litigation discovery in a writ of mandamus, nor does
14 the Public Records Act allow for discovery in these cases.

15 But if the purpose of discovery to ferret out
16 facts and determine facts, if that's the road and the
17 method that the Review-Journal -- if it's their belief that
18 there's a matter of fact that's essential to the
19 determination of the issue and it's affecting a substantial
20 right of a party, then NRS 34.220 requires a jury trial on
21 the issue and that question be certified to a jury.

22 THE COURT: So are you requesting a jury trial in
23 this case?

24 MR. CROSBY: I'm not requesting a jury trial, I'm
25 trying to look at the statutory scheme as a whole and I --

1 it's my position that NRS -- the Nevada Public Records Act,
2 Chapter 239, does not contemplate full-blown litigation and
3 discovery for purposes of Public Records Act. The Supreme
4 Court has found that a mandamus -- a writ of mandamus is an
5 appropriate vehicle to enforce a Public Records Act. So,
6 looking at Chapter 34, based upon the statute, I do not
7 believe that full-blown discovery is permitted in a writ of
8 mandamus case based upon, again, as I stated, the statutory
9 construction of NRS 34.780, but if the purpose of discovery
10 is for a -- to identify a material issue of fact that's
11 essential to determination of the motion and it's effect --
12 it's substantially affecting a party's right, the Court can
13 hold a jury trial and that -- and the jury trial is
14 specific to that question. That question gets certified to
15 the jury.

16 I certainly don't want or feel like the Nevada
17 Public Records Act and the Supreme Court intended public
18 records disputes to turn into jury trials. I don't think
19 that's an effective use of taxpayer money. I don't -- it's
20 -- excuse me. I don't think it's an effective use of the
21 Court's resources. I don't think it's an effective use of
22 anyone's time, but if we're looking at what the statute
23 says, that's what the statute says. And if the Court is
24 finding that there is a material fact that's essential to
25 the determination of its motion, and it's also

1 substantially affecting a party's right, then it goes to a
2 jury trial on that specific narrow issue, whatever issues
3 are presented and certified for purposes of determination
4 of the court or the jury in a mandamus proceeding, jury
5 trial, pursuant to 34.220.

6 I mean, it's -- there is a -- I think what's
7 happening is there's a blending of counsel's discussions
8 and requests for further information with an obligation on
9 the Department to do and now -- I'm not trying to take a
10 black and white approach to everything here, that -- no,
11 Public Records Act doesn't require that, but I'm also
12 cognizant of what I'm able to do and what I'm not able to
13 do. We -- our meet and confer, I think, substantially
14 resolved most of these issues. Obviously, the Department
15 is -- has been producing things, we've been providing
16 information to Ms. McLetchie. We are in the process --
17 we'll have -- I know Thursday is the deadline for the
18 September 16 files. In her -- in Ms. McLetchie's request
19 for relief, there were some discussions about pandering
20 cases. The records they're going to get is going to be all
21 of those. They'll get all of those, but when really, at
22 the end of the day, what it boils down to, there is a
23 pragmatic hurdle here with respect to how much time it
24 takes to comply with all this stuff.

25 It's not -- as much as everyone would like to

1 think the Department has everything in a Cloud database and
2 just pulls all these off, the reality is the VICE Unit does
3 not have its investigative files stored electronically.
4 They are hard files in VICE. Now is that to say if an
5 arrest report is generated out of a VICE case it's not
6 housed in the Elite Arrest database? No. That's not what
7 I'm saying. What Ms. McLetchie asked for in that original
8 public records request was all investigative files. The
9 investigative file is a hard file.

10 And, so, the Department has never once said --

11 THE COURT: And when a case is closed out, it
12 remains a hard file?

13 MR. CROSBY: Yes.

14 THE COURT: Okay.

15 MR. CROSBY: I mean, that's the reality and I
16 think probably a lot of that is the function of the -- the
17 manner in which the types of cases that VICE does and the
18 manner -- because they do have a covert side of that
19 entity, but I've never once stated that there's absolutely
20 nothing from a VICE case that doesn't -- that isn't housed
21 electronically, but the public record request for the
22 actual -- for investigative files, the entire investigative
23 file is a hard file.

24 But to the note, Your Honor, on the stipulation,
25 we have agreed to produce arrest reports -- what was it?

1 Charge -- the case summaries, Requests for Prosecution, if
2 they exist. Obviously, there wouldn't be a Request for
3 Prosecution if it went to a grand jury because the grand
4 jury would issue the Information out of that. We wouldn't
5 have a Request for Prosecution.

6 And I don't dis -- I don't doubt and I don't
7 discredit the Review-Journal's offering to -- for us to
8 provide a list of these defendant cases so that they can
9 use whatever system they have in place to check to see
10 which victims that have testified. So there's no need to
11 protect the victim.

12 The Department is not trying to shield the public
13 from seeing these cases. We redact the victims' names
14 because we don't want a victim's name to be out because
15 they have a right, as a sex trafficking victim, to not have
16 their name disclosed. Or if they are a rape victim, they
17 have a right not to have their name out. It's --

18 THE COURT: But how do you address their concern
19 that, you know, the sample one, the name of which I don't
20 recall right now.

21 MR. CROSBY: Robert Sharp.

22 THE COURT: But there's the sample one where they
23 say: Hey, we have a serious concern with -- you know,
24 setting aside the time and the legal authority to redact or
25 not, just set that aside. But their concern with: Look,

1 in this one sample, this case went to trial, trials are
2 public, witness testified, it's public. Witness even,
3 apparently, went on TV and yet Metro redacted them.

4 MR. CROSBY: We redacted the names, social
5 security numbers, and dates of birth, I believe.

6 THE COURT: And that's all?

7 MR. CROSBY: Well, I don't have the file -- do you
8 have Exhibit 21 in front of you?

9 MS. MCLEITCHIE: I do.

10 MR. CROSBY: If I can just kind of look at it?

11 THE COURT: Exhibit 21. Bear with me so I can --

12 MR. CROSBY: So --

13 THE COURT: Hold on one second.

14 [Pause in proceedings]

15 MR. CROSBY: Well, I see here that -- on the
16 notes, which I believe are officer's notes, we -- or -- I
17 don't know if they'd be officer's notes, but they're
18 somebody's notes. We redacted someone's notes about their
19 password and security questions for their Progressive
20 Insurance portal access into their insurance. That would
21 be bate stamp LVRJ438. This person has security question
22 and answer. We redacted the answer and the question,
23 verifying answer, social security question. We redacted
24 that. I mean, this is -- would I ever expect that -- I
25 could say in my experience, hey, when we give -- when we go

1 through an investigative file, there will be someone's
2 handwritten notes about all their passwords to their banks
3 or -- I mean, see, these are the things that I can't --
4 there has to be some lenience in my Department to be able
5 to redact these things. I'm certainly -- irrespective if
6 this person was a suspect, a convicted person, or a victim,
7 I don't think it's appropriate for the Department to
8 release someone's verification answers to their -- clearly
9 identified as their Progressive Insurance portal and their
10 policy number and what their passwords are. And that is
11 something that I think would be -- and I would hope that
12 this Court would agree, is something the Department would
13 have an obligation to redact. And someone has to read that
14 to be able to determine what that is. If we just go and
15 start looking for social security number and dates of
16 birth, those types of things get missed.

17 By in large, though, the bulk of these redactions
18 were social security numbers, as you see on bate stamp page
19 LVRJ425, bate stamp -- or, sorry. Social security number
20 and driver's license numbers. We didn't redact the
21 person's name, but we did redact a social security number
22 and a driver's license number. Obviously this is personal
23 identifying information if the Court, you know, has ever
24 had to verify something, driver's license is one of the
25 ways you do it, in conjunction with your name and your date

1 of birth or your social security number. These are things
2 that the Department, again, has an obligation to redact so
3 that people who don't expect this information to be put out
4 in to the public -- it doesn't get put out into the public
5 on the hands of the Department. This is stuff that someone
6 has to read.

7 It's easy to say just redact social security
8 numbers and dates of birth and I don't think there's a
9 dispute, at least certainly not with social security
10 numbers, that those things need to be redacted, but when
11 you look at a file like this and this is just one file and
12 I have handwritten notes about people's passwords, how can
13 the Department possibly be expected to just add -- to just
14 let all of that stuff out?

15 But if you look at the bulk of this document, it's
16 names of the victim, social security number, dates of
17 birth, and portions of telephone numbers. But even if you
18 look at the date of birth, we -- we don't even redact the
19 year. We just redact the month and the day.

20 THE COURT: Okay.

21 MR. CROSBY: So, it's not that it -- this is a
22 case of overreacting. Okay. I definitely understand
23 counsel's position that if a victim testified and his or
24 her name is brought about in court and publically
25 identified in court, I certainly don't dispute that it's a

1 long road to hoe to say that that person's name shouldn't
2 be disclosed. Right? But I equally don't think there's an
3 issue or there should be an argument that if someone hasn't
4 testified, that their name shouldn't have -- shouldn't come
5 out and simply because the cases closes -- as Your Honor
6 pointed out, simply because the case closes, doesn't mean
7 that it went to trial. It could have plead out and that
8 victim's name could have never been aired in the light of
9 day because a lot of times, as I'm sure this Court has
10 seen, that they'll identify people as Victim 1 or Victim 2.
11 I mean, most notably or most recently in the Information or
12 the Indictment for Mr. Cohen, President Trumps' counsel,
13 they identified it as Institution 1, Company 1, Witness 2,
14 you know, the -- they don't list the actual names.

15 And, so, yes, if a case is closed, is there a base
16 -- is there a possibility that that case went to trial and
17 that the victim actually testified? Absolutely. But is
18 there also an equal possibility that that case plead out,
19 never -- that victim's name never made it to the Court, and
20 the Department -- again, that requires someone to read
21 through the casefile to see if it went to trial.

22 It -- the mechanism that we've established in the
23 stipulation is that the Department can redact it and
24 provide a privilege log of what's redacted. If we redact -
25 - for example, if we redact a name, a victim's name, and

1 they -- for some reason, let's say when we send the list to
2 the R-J and they send it back these victims who have been
3 identified, if there's a victim that didn't identify and we
4 redact that person, the R-J would be able to discuss that
5 with us and we could further check and it wouldn't impede
6 the transfer of public records that we've agreed to here in
7 this stipulation, but there has to be some recognition --
8 the Department has an obligation as a public entity that is
9 in possession of confidential information, like the example
10 I just provided of someone's passwords, that we have to
11 have the ability to redact those. And that inquiry
12 requires extraordinary personnel and go and actually read
13 all of that. It's not a matter of clicking a button and
14 hitting print or taking a file out and copying it on a copy
15 machine and taking a Sharpie to it. Someone has to sit and
16 read this stuff.

17 And this is what I explained to Ms. McLetchie
18 very, very early on when I provided my initial estimate for
19 costs and number of pages with respect and time -- with
20 respect to this initial inquiry. And I think we've come a
21 long way from that point with this stipulation that we've
22 submitted to the Court and I think that this stipulation
23 represents a reasonable workout for the Department to
24 provide these documents on a rolling basis. We have an
25 obligation under the stipulation and order to meet and

1 confer with Ms. McLetchie if there's issue in good faith
2 and I think we've been meeting in good faith.

3 But the idea that information is a public record
4 in a sense that, you know, who does what, how things are
5 done, I think on the black letter law of the Public Records
6 Act, that's not required, but we have been working with Ms.
7 McLetchie to provide this information and work to get these
8 things turned over. But, at the end of the day, it
9 requires personnel to do all of this. It requires time to
10 achieve all of this, which is why we're on a rolling basis
11 to do this. And we've met our deadlines that we've agreed
12 to in the meet and confer with Ms. McLetchie. And, if she
13 has further questions, we respond to the further questions
14 and we get the information. It's not that the Department
15 is ignoring the requests or refusing to produce anything.
16 We have a stipulation and order in place.

17 Really, at the end of the day, we've asked this
18 Court to identify how much it costs or how much the
19 Department can charge and the unit assignment issue. And
20 I've made my record on that. And with respect to the
21 SCOPE, I've -- the Court is provided with evidence that the
22 Department does not have the information that it's seeking.
23 It's identified what government entity has that
24 information, that specific information, and, again, the
25 initial request for the SCOPE was for the data database and

1 record layout, not training manuals, not people who
2 administer or provide, you know, SCOPE information, not
3 what -- you know, the Department doesn't -- isn't required
4 to create a record. That has been established by the
5 Nevada Supreme Court. We don't have to create a public
6 record for purposes of satisfying a public record even
7 though, to some degree, the Department has in this case
8 with respect providing, you know, some of the statistics
9 that have been requested that -- not housed in a specific
10 document, but we have provided that information, but there
11 is no obligation of the Department to recreate a record and
12 simply creating a -- you know, like all the SCOPE fields,
13 is essentially going to require the Department to create a
14 record, but we've already identified where the specific
15 record, subject to eth NPRA, the original request, is
16 housed and who has it. And, furthermore, and probably more
17 importantly in this case, that we do not have it.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 MS. MCLEITCHIE: Your Honor, I'll start with SCOPE.
21 Metro has spent more time preparing a declaration and
22 arguing about whether or not they technically have this
23 information than it would probably take for them to
24 actually give the information to my client.

25 In the declaration they provided, they listed --

1 they did list the queries -- some of the query modules.
2 Right? And, in order to do that, they had to look at
3 something. They could have hit print, control print, on
4 the screen and shown the search fields underneath those
5 modules and they must have a manual or some other
6 information that reflects it. But I think it just reflects
7 the gamesmanship that they -- the gamesmanship that Metro
8 is engaging in that they say, well, they didn't make a
9 request earlier for manuals. It was just for the record
10 layout and data dictionary. They should be working with us
11 to get us whatever records provide the information. We've
12 -- I've talked to Mr. Crosby about these records at length.
13 Mr. Joseph, the reporter, has tried to go to Metro, has
14 tried to go to the County, it should not be this difficult.
15 It's just not credible that there's no information at Metro
16 that reflects the fields in SCOPE and that's, essentially,
17 what the client is asking for.

18 And, again, they're taking this position --

19 THE COURT: Let me ask -- let me ask --

20 MS. MCLEATCHIE: Sure.

21 THE COURT: And I kind of apologize, kind of not,
22 because I meant to ask before, but, --

23 MS. MCLEATCHIE: Sure.

24 THE COURT: -- at the end of the day, in this
25 case, do you anticipate requesting fees and costs?

1 MS. MCLEATCHIE: Requesting -- pardon me?

2 THE COURT: Fees and costs.

3 MS. MCLEATCHIE: I do, Your Honor.

4 THE COURT: And what would be the basis?

5 MS. MCLEATCHIE: The basis is that if there's a
6 prevailing -- if you have to go to court and get a Court
7 Order, the NPRA expressly provides that the requester is
8 entitled to their reasonable costs and fees. It's not -- I
9 don't have the NPRA in front of me and I forget that
10 provision, but they're -- it specifically provides for fees
11 and costs in the NPRA.

12 There is a separate provision that deals with
13 other liability under the NPRA, but there's a specific
14 provision in the NPRA that says that a requester is
15 entitled to their fees and costs if they prevail, if they
16 have to go to court to get access to the records.

17 MR. CROSBY: Your Honor, I don't have the statute
18 off hand either, but I'll stipulate that the NPRA does
19 provide for a prevailing party attorney fee and cost award
20 provision.

21 MS. NICHOLS: It's 239.011.

22 THE COURT: Thank you.

23 MS. MCLEATCHIE: Thank you, Ms. Nichols.

24 THE COURT: Thank you.

25 MR. CROSBY: Teamwork.

1 THE COURT: .011 you said?

2 MS. NICHOLS: That's correct.

3 THE COURT: Oh yeah. Okay.

4 MS. MCLEITCHIE: So, Your Honor, if you look at the
5 declaration, clearly somehow I'm sure that the declarant
6 didn't have the SCOPE query modules memorized. They had to
7 look at something and get this information. And the time
8 that effort it took to make that declaration, let alone the
9 time and effort to fight in this litigation, they could
10 have provided us with this information.

11 I do suspect that the manuals I'm asking for
12 contain that information and I think that it's an example
13 of Metro's gamesmanship that they say: Well, you didn't
14 actually ask for manuals at the beginning. You asked for a
15 record layout and data dictionary. And I think it's also
16 gamesmanship that I asked for this information at the meet
17 and confer last Wednesday and they won't get it to me. And
18 they -- they're going to -- probably what is going to
19 happen is that within five days, Ms. Nichols -- based on my
20 experience, Ms. Nichols will write me a letter saying the
21 information isn't readily available. I estimate being able
22 to give it to you in 30 days. They're going to play games.

23 And I think the issue is Mr. Crosby talks a lot
24 about what the Public Records Act doesn't require him to do
25 and he talks a lot about concerns about making sure that

1 information doesn't get out there. He ignores the fact
2 that the NPRA is a very important Act enacted by the
3 Legislature in order to facilitate transparency. It's
4 supposed to be interpreted liberally to further democracy
5 itself. And his position, for example, is that this isn't
6 a proceeding for information about public records. We
7 don't have to give the R-J -- we don't have to tell them
8 what systems we have. We don't have to tell them the
9 information about how we keep public records. We'll only
10 provide that in a declaration at the supplemental briefing
11 stage in order to resist disclosure and in order to support
12 an exorbitant cost number. That is not acting in the
13 spirit of the NPRA. That is intentionally trying to make
14 this difficult and confusing for us.

15 They are keeping us in the dark. We are doing
16 everything that we can, Your Honor, to try to figure this
17 out. It's not easy stuff. We're going on the internet.
18 We're spending all this time. If they had only provided --
19 done what I had asked for months and months ago, which is
20 have -- sit down with me and the client and try to figure
21 this out. Like I said, I think the declarant about SCOPE
22 and my client probably could have spoken better directly
23 than through counsel to get the records my client wants.

24 Whether we -- there was a discussion about whether
25 or not I had argued about requiring depositions and I did,

1 Your Honor, at the beginning, I think, when I was arguing.
2 I was explaining the type of information we still need to
3 get to.

4 I don't think that the jury trial provisions in
5 the petition procedures mean that you have to go to jury --
6 a jury if there's an issue of fact that can be resolved on
7 summary judgment. I know that in some -- some people, in
8 their petition practice, file Motions for Summary Judgment.
9 For example, the Court could also have an evidentiary
10 hearing. Metro could also have provided some of these
11 clients at the meet and confer. I offered to go to Metro
12 Headquarters. I offered to go to across town to their
13 offices in Summerlin. We offered to do whatever it took to
14 get people in the room that could talk and try to work some
15 of this out.

16 Instead of making this easy, Metro wants to take
17 the position that they're not required to provide
18 information that doesn't already exist. It's true. You
19 cannot make a public records request to make a governmental
20 entity make a record. That is absolutely true. But even
21 before litigation, Your Honor, public entities should be
22 furthering the spirit of the Public Records Act by giving
23 requesters information to try to narrow and focus their
24 requests so that they can get at what they want to get at
25 in order to do so efficiently. Instead, I think this case

1 illustrates that Metro has been trying to keep us in the
2 dark and then say: Well, look, it's going to take us five
3 years to just go through the sex trafficking files and it's
4 going to cost you scores and scores of thousands of
5 dollars.

6 The final examples that Mr. Crosby gave that he
7 indicates would still require redacting for things like
8 passwords, I don't believe that they're in the limited file
9 pages that we asked for. He wasn't getting page numbers,
10 but he gave in one instance and I was clear that that -- I
11 was sure that that was not one of the limited file pages
12 that we've wanted. We've asked for the limited file,
13 initially, for a reason, Your Honor. And that's so that we
14 can get a smaller portion of the file, the important pages
15 that don't have those detailed notes with things like the
16 passwords, that should be easier to redact, and should be
17 easier for us to get information. Again, based on my
18 analysis, very few pages of what's within that big file,
19 the more limited pages, three pages or so appear to have
20 things like numbers and dates of birth, social security
21 numbers and dates of birth.

22 And they say that, you know, they were redacting
23 that in good faith. I don't think so, Your Honor. They
24 could have Googled that name and found her immediately as
25 somebody who went on TV. There was no reason to redact her

1 name. And we want to work with Metro to avoid unnecessary
2 work. We seem to absolutely agree that if there's a sex
3 trafficking victim who's testified, their name doesn't need
4 to be protected. We think we figured out a way to get
5 Metro the information. I don't think they can charge us
6 extraordinary use for figuring -- when we're trying to
7 figure out the -- figure out that information for them.

8 With regard to unit assignments, Your Honor, our
9 request -- our limited request was patrol officers, not for
10 all officers other than covert officers. And I believe
11 that there are officers other than covert officers and
12 patrol officers. For example, I know that there are
13 officers that work in departments like Diversity and
14 Quality Insurance and have desk jobs at Metro. And their
15 argument assumes that the Review-Journal is going to
16 disseminate the list that Nick already gave me in the
17 spirit of compromise and then try to figure out and create
18 a report of, okay, these are who we think might be covert
19 officers. That's not the case. What we're asking for is -
20 - and we're happy to do a different date than the date for
21 which Mr. Crosby gave me the list of all officers.

22 Our limited request was for patrol officers. They
23 have not provided sufficient evidence to show that just
24 providing patrol officers' unit assignments will cause
25 harm. And some of the arguments made by Mr. Crosby today,

1 things about social media and things, aren't in Mr. -- in
2 Sheriff Lombardo's declaration. It's all still
3 speculation.

4 The other thing, too, is that Mr. Crosby asserts
5 that, well, we have -- we can't reveal the confidentiality
6 in order to protect the confidential information. In many
7 public record cases, you can present information in-camera.
8 Metro knows how to do that. They could have come -- they
9 could have provided evidence in-camera for the Court to
10 consider.

11 Mr. Crosby said today it's not to be taken
12 lightly. It's also not to be taken lightly to withhold
13 information under the Public Records Act. They could have
14 done the work to justify withholding, if it truly can be
15 withheld. I don't think that revealing patrol officers
16 would, in fact, cause any harm and I think their arguments
17 are entirely speculative.

18 They have not, Your Honor, provided evidence
19 justifying their costs. Mr. Crosby said: These aren't our
20 extraordinary use costs. These are our just basic costs.
21 NRS 239.055 makes crystal clear that actual costs cannot
22 include staff time and the declaration is all based on
23 hearsay and this cost study and it states, I believe, that
24 the only per page copying price is actually a penny. So,
25 if they refuse to provide us with electronic documents,

1 provide records for inspection, then a penny a page is the
2 most they should be able to charge, Your Honor, because
3 that's the only evidence of their actual costs that they've
4 come forward with, even assuming that that declaration has
5 any evidentiary value because it's all hearsay.

6 I think this issue with the cost study is another
7 good example of the gamesmanship. They rely on semantics
8 to say: Well, that doesn't -- document doesn't really
9 exist. Ms. McLetchie misunderstands me. Why didn't they
10 say that before instead of saying: We'll get back to your
11 public records request within five days, as required by
12 law. It also just belies belief that there's nothing in
13 writing other than this declaration memorializing this
14 formula. They had to do -- Metro can't do everything
15 orally. They must have somehow analyzed this information.
16 If they were truly acting in good faith, Your Honor, in
17 this litigation, they would have provided me the actual
18 cost study or whatever other records they meant when they
19 say cost study.

20 Instead, they're relying on this idea now that
21 there isn't actually a document called cost study, so they
22 don't have to give me the cost study. There's something in
23 writing about these costs besides these dec -- that
24 declaration that isn't all information that was in that
25 declarant's head, just like the information about what

1 query modules are in SCOPE. Was it in the other
2 declarant's head? If they can get information into a
3 declaration for the purposes of resisting Public Records
4 Act access, they can certainly just give me the underlying
5 records and just give us the information.

6 The -- I think the Court could order an
7 evidentiary hearing so I could cross-examine these
8 witnesses. I think the Court has full authority to require
9 Metro to submit to declarations and I think that them
10 submitting to declarations -- I'm sorry. To depositions,
11 in the long run, Your Honor, will save everybody time and
12 costs. We've seen in this case, Metro is not incentivized
13 to try to figure out how to do this correctly. They are
14 focused on what they don't have to provide.

15 As Mr. Crosby said, this is not a proceeding to --
16 for information about public records. Why -- and in their
17 brief they complained that these depositions will be a way
18 for the R-J to figure out how to make requests. They
19 should be encouraging that, Your Honor. Mr. Crosby should
20 be providing information about public records and how
21 they're stored at Metro so that we can save everybody
22 money, the taxpayers and requesters, which aren't all the
23 Review-Journal. Every requester should have access to
24 public records. If Metro would give us information, --
25 we're doing our best. We're trying to figure things out,

1 but if Metro would give us information, we could do it
2 better and cheaper, I think, than just taking these across
3 the board positions like Metro has that it would take five
4 years to give you the records.

5 Well, let's try to problem solve. We can't
6 problem solve when there aren't -- the other party isn't at
7 the table. I am glad that we could solve what we could
8 solve, but there's more to be solved out there and we need
9 information -- we need information to make these requests
10 as narrow and to get the information as efficiently as
11 possible. They can't, at the same time, say: No, you
12 can't have that information, you have to pay whatever we,
13 in our self-serving declarations, say it's going to take to
14 do it our way.

15 I think there is a better way. I think we've
16 already demonstrated that we can figure out a better way
17 with not much time and I don't think the Review-Journal
18 should have to pay for Metro's inefficiency.

19 Another thing Mr. Crosby said for the first time
20 today was: Oh, I'm not saying VICE doesn't have electronic
21 files, I'm just saying those specific files, the whole
22 investigative file, doesn't exist electronically. Well, if
23 that's true, if they don't scan in the whole investigative
24 file, we've now narrowed our initial request to this
25 limited file. Does those exist in the electronic form? If

1 those exist in electronic form, then why not give it to us
2 electronically? My paralegal can tell you that redacting
3 electronically can be a lot easier. I also think redacting
4 three pages -- as we figured out, we think we could do with
5 the file -- the sample file they provided, is a lot quicker
6 than the five hours they represented -- we don't have any
7 other evidence like time records, but they say it took five
8 hours. We think we could do it a lot quicker if there's
9 only three pages and we're only looking at scores of pages
10 and not hundreds initially.

11 And, so, long story short, Your Honor, they
12 haven't justified either withholding the SCOPE records, the
13 unit assignments, or their exorbitant costs. We need -- we
14 want to do this efficiently and we need more information to
15 do so.

16 I will say that they did provide us some
17 statistical information yesterday, however, it was missing
18 the gender breakdown that's required under the stipulation
19 and I have asked -- I asked Ms. Nichols last night for that
20 information and have not received it. So, technically --

21 THE COURT: Well, yeah.

22 MS. MCLEATCHIE: Yeah.

23 THE COURT: Okay.

24 MS. MCLEATCHIE: She'll probably get it back to me
25 within five days, Your Honor.

1 THE COURT: Thank you.

2 MS. MCLEATCHIE: Any further questions?

3 THE COURT: No.

4 MS. MCLEATCHIE: Thank you, Your Honor.

5 THE COURT: So, I'm not prepared to make a final
6 ruling this morning, but I am prepared to continue what I
7 would call oversight, I suppose, of the case. Although, I
8 have a concern, in terms of how much oversight and how much
9 time do I need to devote, and so I'm going to make a
10 probably fairly limited ruling right now and figure out how
11 we're going to keep moving the case forward in a timely
12 fashion and hopefully more cost efficient than we have been
13 doing thus far.

14 Within a week, the parties and their attorneys
15 will engage in a further, in-person meet and confer. And
16 when I say parties, I mean parties. So there will be at
17 this good faith meet and confer that will occur in person,
18 within a week, representatives of petitioner and
19 respondent. And I would suggest that those include the
20 folks who gave declarations. Not necessarily Sheriff
21 Lombardo, but the folks who are involved in the document
22 review and production at Metro and anyone, of course, at
23 the R-J, but it's clear, I share the Review-Journal's
24 concern that we're still in this game of telephone where
25 Ms. McLetchie talks to counsel, counsel talks to Metro,

1 Metro talks to other folks at Metro, those folks respond,
2 and let's try and move forward in a more timely and
3 efficient manner.

4 And, so, the order will be within a week you will
5 meet and confer in person, counsel along with party
6 representatives, to figure out, you know, what is the basis
7 for some of the representations made in the declarations.
8 How can we do searches? Those types of things. Included
9 in that meet and confer will be a discussion -- this one
10 doesn't -- this discussion doesn't have to be necessarily
11 at that, but you will also have either in that meet and
12 confer or in another meet and confer a discussion on
13 proceeding forward in discovery.

14 I am ordering right now that, notwithstanding the
15 creative argument of Mr. Crosby, -- it's clear to me,
16 anyway, that the NRS 34.300 includes discovery. And I
17 share the concern with the Review-Journal that these
18 representations are being made in declarations that the
19 basis or bases, of which is not entirely clear, based on
20 declarations, that further follow-up needs to be done under
21 oath. How do you do this? Why are you saying that?
22 Those types of things. So, essentially, COR depositions,
23 those types of depositions of Metro representatives can be
24 start to be scheduled as soon as you hold that meet and
25 confer. I'm not going to wait on Joint Case Conference

1 Report or something because, again, we -- this started a
2 year and a half ago and it's past time to get things done.

3 Let's see. There is a presumption that public
4 records are public and I think I expressed that last time
5 but I'm not sure that Metro fully appreciates still that
6 fact. There's a presumption as well that inspection of
7 records is free. And, again, that's another one that I'm
8 not sure that Metro appreciates or understands still. And
9 everything we're doing here flows from those presumptions.
10 And I share Metro's concern. I would say, obviously, but
11 to be clear, you know, production of social security
12 numbers, production of passwords, yeah. Those, you know,
13 should not be public.

14 Now, in other litigation, what do you do with that
15 type of thing? You either redact or maybe you do a
16 confidentiality order or, if you can't figure things out,
17 you do an in-camera review. So, you will discuss those
18 types of things as well in your meet and confer.

19 In another avenue, you'd do privilege logs and it
20 -- you know, in litigation, you can't charge the other side
21 for doing a privilege log until maybe at the end of the
22 case. But, Metro's -- well, the Court will express on the
23 record the concern -- another one, I guess, of -- at the
24 end of the day, as the Review-Journal has responded to my
25 inquiry, Review-Journal plans on requesting fees and costs

1 for this endeavor. If and when such a request is made, and
2 if and when such a request is granted, who is going to pay
3 for it? Well, Metro may say: Metro. Or the Review-
4 Journal may say: Metro. I, as I sit here, express my
5 concern that, at the end of the day, it's the taxpayers of
6 Clark County who would be paying for that. And, so, I hope
7 that that fact is not lost on the party responding to the
8 request.

9 The hoops that the Review-Journal has had to jump
10 through, and continues to do so, only makes that price
11 increase. I -- the LEST training manuals need to be
12 produced right away. Again, that goes back to why are --
13 why -- you're working on some things, which, again, I
14 commend the parties for, to be clear, but I continue to
15 have this concern, as I've stated, concerns over the scope
16 of the Act not being perhaps appreciated, the presumptions
17 under the Act not being appreciated, and then, at the end
18 of the day, who has to pay for all of this? Well, right
19 now, you know, the Review-Journal is paying for their
20 attorneys and Metro is paying for their attorneys. There's
21 a good possibility that, at the end of the day, the
22 taxpayers of Clark County will have to foot this bill and I
23 hope that fact is not lost on counsel or the parties.

24 Let's see. I continue to have concern over the
25 statutory authority for charging hourly rates and benefits

1 for allowing inspection or copying. I'm not going to rule
2 right now on that issue, but I have a concern.

3 As part of your good faith meet and confer, you'll
4 discuss whether anyone thinks having a jury trial in this
5 case is a good idea. It seems that nobody thinks that's a
6 good idea, but I want to make sure because what happens
7 sometimes is it's clear to me in court what counsel say
8 only to not be clear, perhaps, later on. So, as a part of
9 your good faith meet and confer efforts within the week,
10 parties will inform me concrete, in writing, whether they
11 believe a jury trial on any issue in this case is
12 appropriate. I don't see it, as I sit here, but it was
13 raised and I want to make sure we're all on the same page
14 if at all possible on that issue.

15 You'll also discuss, you know, the discovery
16 process. One note I wrote down during this hearing is: Do
17 I need to appoint a discovery master? If I had more time
18 and more availability, I'd do it myself. But I fear that I
19 may not have the time needed, but if you work stuff out
20 then you may not need one. But that's something you'll
21 talk about.

22 So, the good faith meet and confer efforts within
23 a week.

24 Patrol officers, within a week, Metro will provide
25 a supplemental brief, unless you can work it out. But what

1 I need -- I understand some of the arguments and some of
2 the general statements in the declaration, but I also, as I
3 sit here, I need more detail and more evidence that those
4 concerns are justified, going back, for example -- like I
5 pointed -- I mean, a list four and a half years ago of
6 patrol officers, as I sit here, I don't see how that
7 implicates the concerns raised by Sheriff Lombardo and
8 Metro.

9 But here's your last chance on that issue to give
10 me something more than general statements. And if you can
11 work out some agreement on that, great. But, if not, I'll
12 do that in two weeks.

13 Let's see.

14 MR. CROSBY: Yes, Your Honor. Is that two weeks
15 for that or one week for that briefing?

16 THE COURT: So, yeah. So, yeah. That's fair. I
17 said two weeks because that's when I'll bring you back.

18 And I plan on ruling on that issue then. But
19 we'll have something in writing within a week from Metro
20 and, certainly once the Review-Journal gets it, you can
21 respond.

22 I mean, -- again, I've said this a few times. I
23 commend the parties for making real progress within the
24 last couple of weeks on some of the issues. The costs
25 seems to be maybe the biggest fight and I'm going to rule

1 on that at some point in this litigation, just not today.

2 MS. MCLEATCHIE: Your Honor, how would -- with
3 regard to the cost issue, if the Court ultimately ruled,
4 for example, that they were entitled to 31 cents a page,
5 I'm just wondering how long the Court anticipates a ruling
6 on the cost issue and how the Court wants the parties to
7 address producing records when we don't yet know how much
8 it is going to cost. And -- because I would like some
9 solution that allows us to get records, but not end up in a
10 situation where, well, you ended up getting -- we ended up
11 deciding to give you a 1,000 copies, now you owe us \$500.

12 And one suggestion that I had with regard to the
13 arrest reports that are in the stipulation is that we would
14 be happy to receive those -- we would be happy to receive
15 those electronically. I believe they can be downloaded
16 from a data -- from the database that's mentioned in a
17 declaration about different arrest reports. We'd be happy
18 to just receive those on a disc. We'd be happy to inspect
19 them because we do want to avoid unnecessary paper tree
20 killing and unnecessary costs there. And I don't know if
21 the Court wants an interim solution for the sex trafficking
22 files as well.

23 THE COURT: So, I fully appreciate the part --
24 both sides' desire to have me rule on that right now
25 because it is this big looming issue. I'm still hopeful

1 that you'll be able to resolve that. And, if you're not, I
2 will resolve it at some point.

3 I would point out in response, you all are
4 familiar, probably more than I am, with NRS 239.011, and so
5 let's say, hypothetically, I were to find that the
6 requester prevailed, requester is entitled to recover his
7 or her costs and reasonable attorneys' fees.

8 So, it's almost, you know, -- read that for what
9 it says because whoever -- if the requester has to pay 50
10 cents a page and then if I find that, no, the requester
11 prevailed, that 50 cents a page is going to be perhaps paid
12 right back. And I've already said my peace on who actually
13 will -- may ultimately have to pay for this, which is a big
14 concern of mine.

15 MS. MCLEITCHIE: Your Honor, I would just like to
16 point out that NRS 239.0104, which says that we can request
17 it on a public record -- any medium in which the public
18 record is readily available. And I would like to request
19 the arrest reports in the stipulation on a USB drive, or a
20 drive that we provide, or whatever, but that would avoid, I
21 think, whoever has to pay in the end, Your Honor, me as a
22 taxpayer, or my client, I do think that it's important that
23 we do save costs. Right? And that's what we're trying to
24 do.

25 THE COURT: I totally agree with that. And --

1 MS. MCLEITCHIE: So, I would like to receive those
2 electronically.

3 THE COURT: Well, so, I've said my peace for
4 today. To be clear, the order right now is you're to meet
5 and confer on the various issues that I said and within a
6 week. Metro is -- now I forget what I said. What was the
7 other thing I told you to do within a week, Metro?

8 MR. CROSBY: We have to -- within one week, Your
9 Honor, we have to provide a supplemental brief with more
10 detailed --

11 THE COURT: On the --

12 MR. CROSBY: -- information regarding the unit
13 assignments and the justification --

14 THE COURT: Yeah.

15 MR. CROSBY: -- for not disclosing covert
16 officers' unit assignments.

17 THE COURT: No. So, to be clear, I -- everybody
18 says you don't have to disclose covert officer unit
19 assignments, but your concern, which I kind of, sort of
20 understand, is: Well, if we gave a list of everybody, and
21 then we give a list of everybody minus covert officers,
22 that necessarily tells who the covert officers are. I'm
23 not sure there's not a way to avoid that and I'm not sure
24 that that really holds a lot of argument four and a half
25 years, or three and a half years, or two and a half years

1 later. That's why I need more detail. And, then, you'll
2 come see me here in two weeks and, in your meet and confer,
3 again, you'll engage -- like you did before. You're
4 continuing to engage in efforts in which you are to
5 continue to do. But, very specifically, in person, with
6 representatives. And also I did order that if the Review-
7 Journal wants, they can start noticing custodian of
8 records' depositions right now. You'll figure out if you
9 want to be in front of the Discovery Commissioner or me and
10 figure out whether or not anybody actually wants a jury
11 trial on this case.

12 MS. MCLEITCHIE: Your Honor, just one thing I did
13 want to note. I am leaving next Tuesday on vacation
14 through Labor Day, which may pose some scheduling issues.
15 I'm happy to make myself available any time between now and
16 then, but I will be in the woods of northern Main with my
17 family and have very limited ability to even do a phone
18 meeting. So, I just want to throw that out there and I
19 think Mr. Crosby is also --

20 MR. CROSBY: I have an all-day labor arbitration
21 scheduled on the 28th and then I am also in -- the 29th I
22 have a hearing in Reno and I'm not back until the 31st, I
23 believe. So, --

24 THE COURT: So, you're saying my deadlines were --
25 both sides are saying they're too soon, which --

1 MR. CROSBY: I mean, perhaps -- are you back after
2 Labor Day?

3 MS. MCLEATCHIE: I'm back the day after Labor Day.

4 MR. CROSBY: So maybe we should have our meet and
5 confer that week?

6 MS. MCLEATCHIE: Sure.

7 MR. CROSBY: Because I am -- I -- with the
8 exception of the Labor Day, I'm out the 7th. I'm also out
9 the 4th, 5th, and 6th, I believe.

10 MS. MCLEATCHIE: Do we tentatively want to plan on
11 the Thursday after Labor Day?

12 THE COURT: So the --

13 MR. CROSBY: The 6th? That should be good.

14 MS. MCLEATCHIE: Yeah. I don't have my calendar in
15 front of me because I turned my phone off, but --

16 MR. CROSBY: How about Ms. McLetchie and I can
17 work out a date within that week there, --

18 MS. MCLEATCHIE: Yeah.

19 MR. CROSBY: -- some time frame, given our
20 perspective schedules?

21 THE COURT: So the -- rather than the week for the
22 meet and confer, it will be on or before September 7th. And
23 then I will bring you back on the -- does September 19
24 work?

25 MS. MCLEATCHIE: September 19th?

1 MR. CROSBY: And if I may, Your Honor, just a
2 point of clarification. It's the Court's position that the
3 parties are allowed to conduct discovery pursuant to NRS
4 34.300 or only the R-J is permitted to produce -- conduct
5 discovery?

6 THE COURT: So, at this point, -- that's a fair
7 question. Thank you. So, at this point, I'm saying that
8 the R-J may start noticing COR depo or depositions and
9 whether the -- whether Metro wants to conduct some type of
10 discovery as to the Review-Journal, I'll leave that for
11 your meet and confer --

12 MS. MCLEATCHIE: Your Honor, I can't see anything -
13 -

14 THE COURT: I don't see that either.

15 MS. MCLEATCHIE: -- relevant and I see big First
16 Amendment concerns with my reporters being subjected to a
17 deposition.

18 THE COURT: Well, --

19 MR. CROSBY: Well, Your Honor, if the Court's
20 interpretation on NRS 34.300 is that the rules of discovery
21 apply, I, under 26(a), have the right to do discovery as
22 well. And I'm just -- just wanted clarification for the
23 purpose of requesting a motion -- oral motion for stay so I
24 can take that issue up if I need to.

25 MS. MCLEATCHIE: And --

1 THE COURT: Well, hold -- so let me -- let me --
2 here's my order.

3 I'm allowing right now the Review-Journal to begin
4 noticing a COR deposition or COR depositions, plural, under
5 the Nevada Rules of Civil Procedure, which would include,
6 you know, you have to identify the categories and all that
7 so that they can prepare somebody, etcetera, etcetera. I
8 am not prepared, as I sit here, to allow any other type of
9 discovery other than that. If either side thinks they want
10 additional discovery or not, that's part of why I'm saying
11 do your meet and confer in person, which this portion
12 doesn't necessarily have to be with the party
13 representatives, because usually that's something you do
14 with counsel in terms of scope of discovery or things like
15 that. I -- I mean, I would hope that you could all realize
16 what this case is about and -- but that's why I'm here, I
17 guess. So, --

18 MR. CROSBY: And I understand. I just -- given my
19 reading of the statute, construction of the statute, I just
20 want to make the oral motion for stay with respect to that
21 order and --

22 THE COURT: That's denied.

23 MR. CROSBY: Thank you.

24 THE COURT: Okay.

25 MR. CROSBY: Thank you, Your Honor.

1 THE COURT: You're welcome. Thank you, all.
2 So we set September 19th at 9?
3 THE CLERK: Yes.
4 THE COURT: So, September 19th, 9 a.m., you'll come
5 back and see me.
6 MS. MCLEATCHIE: Thank you, Your Honor.
7 THE COURT: Thank you, all.
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9 PROCEEDING CONCLUDED AT 11:05 A.M.
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CERTIFICATION

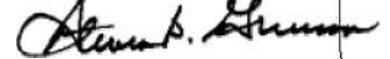
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



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Metropolitan Police Department

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Case No.: A-18-775378-W

Dept. No.: XV

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S SUPPLEMENTAL BRIEF
IN SUPPORT OF ITS RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S PETITION
FOR WRIT OF MANDAMUS**

Respondent Las Vegas Metropolitan Police Department ("LVMPD" or the
"Department"), by and through its attorneys of record, Nicholas Crosby, Esq. and Jackie Nichols,
Esq., of the law firm of Marquis Aurbach Coffing, hereby files a Supplemental Brief in Support
of its Response to Las Vegas Review-Journal's Petition for Writ of Mandamus.

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1 This Supplemental Brief is made and based upon the papers and pleadings on file herein,
2 the Memorandum of Points and Authorities, and any oral argument allowed by the Court at a
3 hearing on this matter.

4 Dated this 31 day of August, 2018.

MARQUIS AURBACH COFFING

By: 

Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
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Las Vegas, Nevada 89145
*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

15 In context of public records cases, several courts have determined that officer
16 assignments are exempt from disclosure because of the inherent danger to police officers' lives
17 and safety. As demonstrated by the declaration of Steve Grammas, disclosing patrol officers'
18 unit assignments could very well endanger the lives and safety of officers who were previously
19 assigned and are currently assigned to undercover and covert positions. For the reasons
20 discussed below, the Court should find that officer unit assignments are confidential.

II. LEGAL ARGUMENT¹

22 Given the lack of a statute rendering unit assignments confidential, this Court must utilize
23 the balancing test outlined in *Donrey* to determine whether disclosure of officer unit assignments
24 is appropriate. See *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).
25 Specifically, this Court must determine whether LVMPD's interest in non-disclosure of unit
26 assignments substantially outweighs any interest the public has in access. *Id.* In applying the

27 ¹ LVMPD incorporates its Statement of Facts and Legal Argument provided in its initial Response to
28 LVRJ's Petition for Writ of Mandamus and previous Supplemental Brief on file herein.

1 balancing test, the Court noted several policy considerations that weigh in favor of non-
2 disclosure. *Id.* at 635-36; 798 P.2d at 147-48. More importantly, the *Donrey* court
3 acknowledged that the policy considerations enumerated by Court were “virtually identical” to
4 Exemption 7 of the Freedom of Information Act (“FOIA”). *Id.* at n.4.; *see also* 5 U.S.C. §
5 552(b)(7) (1998). Thus, this Court should look to FOIA cases that involve similar requests in
6 reaching its determination.

7 For example, the Drug Enforcement Administration (“DEA”) asserted Exemption 7 to
8 protect the identities of special agents, law enforcement officers, and government employees
9 because these individuals may be subject to physical attacks or other threats to their lives if their
10 identities are revealed. *See Adionser v. Dep’t of Justice*, 811 F.Supp.2d 284, 301 (D.D.C. 2011).
11 The district court determined that the DEA properly withheld the records to protect the physical
12 safety of the above-mentioned individuals. *Id.* Likewise, the Tenth Circuit ruled that the Bureau
13 of Prisons’ Supermax roster was exempt from disclosure under FOIA. *See Jordan v. U.S. Dep’t*
14 *of Justice*, 668 F.3d 1188, 1198 (10th Cir. 2011). The *Jordan* court relied on Exemption 7 of
15 FOIA and concluded that the release of staff names could reasonably be expected to endanger
16 the life or physical safety of any individual by exposing them to threats, manipulation, and harm.
17 *Id.* A New York court made a similar ruling concerning station assignments of police officers.
18 *See Matter of Ruberti, Girvin & Ferlazzo v New York State Div. of State Police*, 218 A.D.2d 494,
19 499 (NY 1996) (finding that the disclosure of the troop, zone and station assignments of each of
20 its sworn members could endanger the life and safety of those officers).

21 The same concerns addressed in these cases apply to LVMPD’s unit assignments. As
22 Sheriff Lombardo indicated in his declaration, revealing unit assignments of LVMPD officers
23 causes grave concern for the officer’s safety and livelihood. *See Exhibit V.* Limiting the
24 disclosure to unit assignments of patrol officers does not mitigate the risk to officer safety. *See*
25 Declaration of Steve Grammas attached hereto as **Exhibit W**. Similarly, this limitation does not
26 diminish LVMPD’s concern about undercover and covert operations. *Id.* In fact, the disclosure
27 of patrol officer assignments can reveal the identities of past or future undercover and covert
28 officers. *Id.* For example, an officer who previously worked undercover or in a covert operation

1 may now be assigned as a patrol officer. *Id.* Disclosing the officer's current unit assignment
2 could allow individuals, who previously interacted with the unknown undercover officer, to seek
3 retaliation or retribution. *Id.* In other words, revealing which area command the officer is now
4 located at could endanger the life and safety of the officer. *Id.* Furthermore, redaction of the
5 names of patrol officers that served in an undercover or covert capacity would easily reveal the
6 officers previously assigned in cover operations by process of elimination. *Id.* The converse
7 could also put officers at risk. *Id.* For instance, a current undercover officer could have been
8 assigned to an area command within the past three years. *Id.* Revealing unit assignments of past
9 patrol officers would jeopardize an officer's current undercover or overt operation. *Id.*

10 The policy considerations enumerated by the Nevada Supreme Court in *Donrey* mirrors
11 Exemption 7 of FOIA. Several courts have determined that the identification and assignments of
12 law enforcement personnel pose a significant risk of endangerment to the life and safety of the
13 individuals involved. In applying the balancing test, the Court must weigh whether the safety
14 and livelihood of officers substantially outweighs the public's interest in officer unit
15 assignments. Not only are the patrol officers' safety and livelihood at risk, but disclosure of
16 patrol unit assignments will also place prior undercover officers at risk of harm, as well as
17 jeopardize current covert operations. The public's interest in officer unit assignment is
18 substantially outweighed by the public policy and overall concern of officers' lives and safety.

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1 **III. CONCLUSION**

2 Based on the foregoing, this Court should order that LVMPD unit assignments shall
3 remain confidential.

4 Dated this 21 day of August, 2018.

MARQUIS AURBACH COFFING

By: 

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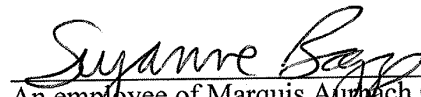
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S PETITION FOR WRIT OF MANDAMUS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 29th day of August, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
MCLECHIE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Email: maggie@nvlitigation.com
*Counsel for Petitioner,
Las Vegas Review-Journal*

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A


An employee of Marquis Aurbach Coffing

² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT “W”

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DECLARATION OF STEVE GRAMMAS

I, Steven Grammas, hereby declare under the penalty of perjury:

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

2. That I am the President of the Las Vegas Police Protective Association ("PPA"), which is the Union for officers of the Las Vegas Metropolitan Police Department ("LVMPD").

3. It is my understanding that unit assignments for LVMPD patrol officers is being sought.

4. The confidentiality of officer unit assignments is extremely important for officer safety.

5. The disclosure of patrol officer assignments can reveal the identities of past or future undercover and covert officers.

6. For example, officers who once worked in an undercover or covert capacity may now be assigned as a patrol officer working at an area command. Disclosing the officer's current unit assignment could allow individuals, who previously interacted with the unknown undercover officer, to seek retaliation or retribution. In other words, revealing which area command the officer is now located at could endanger the life and safety of the officer.

7. Redacting the names of patrol officers that served in an undercover or covert capacity would easily reveal the officers previously assigned in covert operations by process of elimination.

8. The converse could also put the officer at risk. For instance, a current undercover officer could have been assigned to an area command within the past three years. Thus, revealing unit assignments of past patrol officers could jeopardize an officer's current undercover or covert operation.

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9. The disclosure of officer unit assignments could certainly endanger the life and safety of both patrol officers and undercover or covert operations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. NRS 53.045.

EXECUTED this 29 day of August, 2018.

Signature 
STEVE GRAMMAS