

COMMISSION ON JUDICIAL SELECTION APPLICATION

ELEVENTH JUDICIAL DISTRICT COURT
DEPARTMENT 1

By

R. BRYCE SHIELDS



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| Personal Information |
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| 1. | Full Name | Robert Bryce Shields |
| 2. | Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used. | No |
| 3. | How long have you been a continuous resident of Nevada? | 17 years |
| 4. | City and county of residence | Lovelock, Pershing County |
| 5. | Age | 49 |

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| Employment History |
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6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

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| Current or Last Employer | Pershing County District Attorney |
| Phone | 775.273.2613 |
| Physical Address & Website | 400 Main Street Lovelock, Nevada 89419 https://www.pershingcountynv.gov/government/district_attorney/ |
| Date(s) of Employment | January 5, 2015 to present |
| Supervisor's Name and Title | Elected position |
| Your Title | District Attorney |
| Describe Your Key Duties | As the elected District Attorney for Pershing County, I serve as the chief public prosecutor, appearing in court four to five days per week to litigate matters involving criminal offenses, juvenile delinquency, child dependency, and child support. I also provide coverage for 48-hour bail hearings, including weekends and holidays as needed. In addition to prosecutorial duties, I oversee all civil litigation on behalf of the County and serve as legal counsel to its elected officials, departments, and public bodies. I attend public board meetings to ensure compliance with Nevada's Open Meeting Law and offer legal guidance on matters ranging from |

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| | <p>governance to statutory interpretation. My responsibilities include drafting and reviewing ordinances, resolutions, and contracts for all County entities.</p> <p>I lead the District Attorney’s Office in policy development and operational oversight, including supervision of the satellite DMV office located in Lovelock. I prepare and manage the annual budgets for the District Attorney’s Office, DMV, and Child Support Division, and actively participate in broader budgetary planning across County departments.</p> <p>Additionally, I serve as the ex officio Pershing County Public Guardian, working closely with a deputy guardian to safeguard the persons and estates of protected individuals. This role requires adaptability and compassion, as caseloads vary month to month and often involve complex legal and ethical considerations.</p> |
| Reason for Leaving | Current position |

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| Previous Employer | Pershing County District Attorney |
| Phone | 775.273.2613 |
| Address & Website | <p>400 Main Street Lovelock, Nevada 89419</p> <p>https://www.pershingcountynv.gov/government/district_attorney/</p> |
| Date(s) of Employment | May 2008 to January 4, 2015 |
| Supervisor’s Name and Title | Jim Shirley, Pershing County District Attorney |
| Your Title | Deputy District Attorney |
| Describe Your Key Duties | <p>Prosecuted criminal, delinquency, dependency, and child support matters; provided legal representation to county officials, departments, and public bodies as assigned by the District Attorney; assisted the Public Guardian with managing the person’s and estates of protected persons, including the administration protected person’s estates.</p> |
| Reason for Leaving | Elected as Pershing County District Attorney |

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| Previous Employer | Lovelock Meadows Water District |
| Phone | 775.273.2387 |
| Address & Website | 400 14 th Street, Lovelock, Nevada 89419 No website |
| Date(s) of Employment | January 2009-December 2015 |
| Supervisor's Name and Title | Lovelock Meadows Water District Board of Trustees |
| Your Title | General Counsel |
| Describe Your Key Duties | Drafted policies related to the district's water system, employee procedures, billing methods, and business relations with local utilities and government entities; advised the Trustees on open meeting laws, public bidding processes; analyzed construction contracts and labor agreements and managed civil litigation matters. |
| Reason for Leaving | Elected as Pershing County District Attorney |

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| Previous Employer | Milton R. Abrahams Legal Clinic |
| Phone | 402.280.3648 |
| Address & Website | 2500 California Plaza, Omaha, Nebraska 68178 Abrahams Legal Clinic Creighton School of Law |
| Date(s) of Employment | May 2006-May 2008 |
| Supervisor's Name and Title | Catherin Mahern, Associate Professor of Law Steve Virgil, Clinical Professor |
| Your Title | Student |
| Describe Your Key Duties | Represented low-income clients in landlord/tenant matters; Created non-profit organizations and other business structures for Spanish-speaking clients. |
| Reason for Leaving | Graduated from law school |

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| Educational Background |
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7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.
- **Tooele High School:** 301 W. Vine Street, Tooele, Utah 84074
 - August 1990-June 1994
 - High School Diploma
 - Graduated
 - **Southern Utah University:** 352 W. University Blvd., Cedar City, Utah 84720
 - August 1994-December 1996
 - Called to serve as a full-time missionary for the Church of Jesus Christ of Latter-Day Saints in the New Jersey Morristown Mission (Spanish speaking) for 2 years.
 - January 1999-June 2002
 - Bachelor of Science in Political Science and Spanish, Double Major, *Magna Cum Laude*.
 - Graduated
8. Describe significant high school and college activities including extracurricular activities, positions of leadership, and special projects that contributed to the learning experience.

High School

I dedicated significant time and energy to athletics throughout high school, earning a starting position on both the varsity football and baseball teams from my sophomore through senior years. In recognition of my leadership and commitment, I was honored to serve as team captain for both sports during my senior year.

While I never considered myself a natural athlete, my senior year achievements in football and baseball taught me that dedication and perseverance can overcome raw talent. Through countless hours of film study, extra practice sessions, and a relentless commitment to improvement, I earned all-state recognition at the 4A level in both sports and was named Region 9 Defensive MVP in football -accomplishments I attribute more to discipline than athleticism. This experience shaped my understanding that excellence is not reserved for those with innate gifts, but rather for those willing to outwork their limitations.

The same tenacity that drove me to master techniques that came easily to others has become fundamental to my approach to challenges, whether analyzing complex legal precedents or preparing for oral arguments. These experiences taught me that success in any field -including law- requires not just ability, but the determination to maximize whatever potential one possesses through sustained effort and strategic thinking.

Southern Utah University

From a young age, I aspired to play Division I college football. Although I was disappointed not to receive any Division I offers, I remained determined and walked on to the football team at Southern Utah University, a Division I-AA program. Through hard work and perseverance, I earned a full athletic scholarship and secured a starting position as a linebacker during my sophomore, junior, and senior seasons. I was honored to be elected team captain in my senior year and during my final season was recognized on the Independent all-conference team.

Between my freshman and sophomore years, I took a leave from school to serve a mission for the Church of Jesus Christ of Latter-day Saints in Northern New Jersey. During my mission, I was assigned to speak Spanish, which deepened both my cultural understanding and communication skills as I worked closely with diverse communities. Learning Spanish taught me to love the process of learning and helped me realize that meaningful growth requires sustained effort and hard work.

Returning from my mission, I was better equipped -mentally, emotionally, and spiritually- to meet the demands of collegiate athletics and academics. During my junior year, I was awarded the Merit Humanities Scholarship by the Political Science Department and was honored at graduation as the Outstanding Spanish Student by the Department of Foreign Languages. Following my mission, I maintained a 3.9 GPA and graduated magna cum laude, a reflection of the discipline and perspective I had gained.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

Creighton University School of Law: 2133 Cass St., Omaha, NE 68178

- Juris Doctor, *cum laude*, awarded May 2008. Class Rank 49/135.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

During law school, I held part-time employment at the Milton R. Abrahams Legal Clinic from June 2006 to May 2008. During the summer months, May through July, I worked full-time at the Clinic. As a student attorney, I provided pro bono legal services to low-income clients in landlord-tenant matters. I also helped Spanish speaking small business owners incorporate and qualify for tax-exempt 501(c)(3) status. Steve Virgil, Clinical Professor of Law, acted as my direct supervisor. Catherine Maher, Associate Professor of Law, was the Clinic's director.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

Spring semester of 2006, I was a finalist in Creighton's 1L Moot Court Brief Competition. Although I did not win "best brief," I was honored to be recognized as submitting one of the top briefs in my class.

Spring semester of 2008, I was selected as a member of Creighton's Advance Trial Practice Team after auditioning and competing in mock trials at the law school. I competed in the American Association for Justice Trial Competition, where we advanced to the finals round in the Denver, Colorado, Regional Competition.

I worked both part-time and full-time for two years in the Milton R. Abrahams Legal Clinic. This experience taught me that each case involves a real person with real problems. I took a lot of satisfaction representing low-income individuals and not only helping them gain access to the legal system but vindicating their rights.

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| LawPractice |
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12. State the year you were admitted to the Nevada Bar.

2009

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

None

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

- No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 15-19 for the five years directly preceding your appointment or election to the bench.

| Legal Discipline | Percentage of Practice |
|---------------------------|------------------------|
| Domestic/family | 5 |
| Juvenile matters | 10 |
| Trial court civil | 5 |
| Appellate civil | 5 |
| Trial court criminal | 40 |
| Appellate criminal | 5 |
| Administrative litigation | 5 |
| Other: Please describe | 25* |

*Other duties as district attorney include administrative functions in county government, representing county departments and boards, and preparing legal documents. I also serve as the Pershing County Public Guardian.

16. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

In the past 5 years, 60% of my litigation matters have involved cases set for jury trial and 40% have involved cases set for non-jury trials.

17. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

I have tried one jury case to conclusion in the last five years as lead counsel. I have tried four non-jury cases to conclusion in the last five years as lead counsel.

18. List courts and counties in any state where you have practiced in the past five years.

- Nevada Supreme Court, State of Nevada
- Nevada Court of Appeals, State of Nevada
- Eleventh Judicial District Court, Pershing County
- Juvenile Division of the Second Judicial District Court, Churchill County
- New River Township Justice Court, Churchill County
- Union Township Justice Court, Humboldt County
- United States Department of Interior, Interior Board of Land Appeals

19. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

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| Case 1 |
| Case name and date: <i>Matthew Jordan Hutchinson v. Director, Nevada State Dept. of Corrections, State of Nevada</i> , Case No.: 27 CV-WRI-2019-013; 2019-2021. |
| Court and presiding judge and all counsel: <ul style="list-style-type: none"> ● Eleventh Judicial District Court in and for the County of Pershing, Honorable Charles McGee, Senior Judge ● State of Nevada: R. Bryce Shields, Pershing County District Attorney ● Defense: Kristina Wildeveld and Caitlyn McAmis, Retained Counsel |
| Importance of the case to you and the case’s impact on you: |

This case marked a significant turning point in my personal and professional understanding of forgiveness and its practice. In 2006, Matthew Hutchinson ("Mr. Hutchinson") pleaded guilty to first-degree murder after killing George Moritz ("George") in a dispute involving a girl. At only 18 years old, Mr. Hutchinson was sentenced to life in prison without the possibility of parole.

Years later, in 2019, Mr. Hutchinson filed for post-conviction relief, arguing that the State had not disclosed exculpatory evidence before his guilty plea -specifically, that neither his DNA nor fingerprints were found on the murder weapon. This development deeply affected George's mother, Suzie Ramirez, who was understandably distraught at the possibility of the conviction being overturned.

Throughout three years of litigation, I witnessed the enduring pain Suzie experienced due to the loss of her firstborn son. Her suffering was a constant reminder of the far-reaching consequences of crime and the challenges faced by victims' families.

After a motions hearing, defense counsel approached me with a request from Mr. Hutchinson: he wished to meet with Suzie and speak to her directly. When I relayed this to Suzie, she surprised me by agreeing to the meeting.

During their encounter, Mr. Hutchinson expressed sincere remorse for his actions and offered an apology. Suzie, without hesitation, forgave him. She explained that her Christian faith guided her decision and that she no longer carried resentment or ill will. When I later asked Suzie how she managed to forgive the person who took her son, she shared that the process took years, but once she forgave Mr. Hutchinson, she felt a heavy burden lift. Forgiveness allowed her to rediscover joy in her relationships with her other children and grandchildren.

Importantly, Suzie clarified that forgiveness did not mean excusing Mr. Hutchinson's actions. She believed he should still be held accountable and felt at peace leaving that responsibility to the court system.

Confronting the weight of this case deepened my belief in the transformative power of forgiveness. It challenged me to cultivate the strength to forgive others, even in the face of profound harm. Crucially, I learned that forgiveness is not about condoning or excusing wrongdoing. Rather, it is a conscious choice to release resentment while maintaining a commitment to accountability.

This distinction has shaped my understanding of justice, revealing it as a delicate balance between holding individuals responsible for their actions and extending grace. Achieving this equilibrium is a fundamental responsibility for those entrusted with upholding the law.

Your role in the case: Prosecutor for the State of Nevada

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| Case 2 |
| Case name and date: <i>State v. Joseph James Souza</i> , Case No.: 27CR-2022-0249, 2022-2024 |
| <p>Court and presiding judge and all counsel:</p> <ul style="list-style-type: none"> ● Eleventh Judicial District Court in and for the County of Pershing, Honorable John P. Schlegelmilch ● State of Nevada: R. Bryce Shields, Pershing County District Attorney ● Defense: Steve Evenson, Retained Counsel |
| <p>Importance of the case to you and the case's impact on you:</p> <p>This case remains a powerful testament to resilience and courage in the face of profound adversity. VC1 reported to law enforcement that she and her younger sister, VC2, had endured years of sexual abuse at the hands of Joe Souza ("Mr. Souza"). According to both girls, the abuse began when they were just 9 and 6 years old, respectively. Shortly after their disclosure, a third young girl, VC3, came forward with her own account -she, too, had been sexually abused by Mr. Souza, beginning at the age of 8. Prior to these revelations, Mr. Souza had been a trusted family friend to all three victims' parents -so trusted, in fact, that the girls affectionately called him "Grandpa" or "Papa Joe."</p> <p>Mr. Souza waived his preliminary hearing, and the case proceeded to trial. Just weeks before it was set to begin, VC1 was diagnosed with cancer and required emergency surgery. She now faced not only the trauma of abuse and the daunting task of testifying in a multi-count felony trial, but also the life-threatening battle against cancer. The diagnosis was especially devastating given VC1's identity as a gifted athlete -she had earned a spot on her high school's varsity team as an eighth grader, a rare and impressive feat.</p> <p>Although her illness delayed the legal proceedings, VC1's resolve never faltered. Despite the physical and emotional toll of cancer, chemotherapy, and multiple surgeries, she remained a pillar of strength for her family. Her unwavering commitment to seeking justice -for herself and her sister- was nothing short of extraordinary. I continue to be inspired by her strength, determination, and grace under pressure. VC1's resilience is not only admirable -it's unforgettable. Her story reminds me, even in my own moments of hardship, what it means to persevere.</p> |
| Your role in the case: Prosecutor for the State of Nevada |

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| Case 3 |
| Case name and date: <i>Pershing County, et al v. Jewell et al</i> , 3:14-cv-00466-MMD-WGC, 2014-2015 |
| <p>Court and presiding judge and all counsel:</p> <ul style="list-style-type: none"> ● United States District Court for the District of Nevada, Honorable Miranda Du ● Plaintiff: Pershing County, R. Bryce Shields, W. Alan Schroeder ● Defense: John C. Cruden, Assistant Attorney General, United States Department of Justice, Environmental & Natural Resource Division ● S. Jay Govindan, Assistant Chief, Trent S.W. Crable, Trial Attorney, Wildlife & Marin Resource Section |
| <p>Importance of the case to you and the case's impact on you:</p> <p>This case stands out to me not only as my first experience in civil litigation, but more importantly, as a powerful lesson in the vital role of the judiciary. It underscored how the courts serve not just to vindicate individual liberty interests, but also as the final safeguard between government authority and the rights of the people.</p> <p>I represented Pershing County alongside a team of attorneys advocating for five local ranches in a lawsuit against the Department of the Interior. Our goal was to compel the agency to reduce the overpopulation of wild horses and burros in the county. For years leading up to the litigation, the number of wild horses and burros had far exceeded appropriate management levels, causing significant ecological damage to the rangeland, impairing county infrastructure projects, and contributing to an increase in vehicle accidents.</p> <p>Despite repeated efforts to resolve the issue through meetings with Nevada's Congressional Delegation and representatives from the Bureau of Land Management, no meaningful solutions occurred. As the problem worsened, our coalition filed suit. The plaintiffs presented a strong case, ultimately prompting the Department of the Interior to agree to phased, county-wide environmental assessments and to conduct emergency gathers in accordance with the assessments' findings.</p> <p>Throughout this case, I gained invaluable insight into civil litigation, learning from the skilled attorneys representing the ranchers. More profoundly, I came to appreciate the judiciary's essential function as a check on executive and legislative inaction. After years of seeking resolution through the political branches, it was only through the courts that we found a path forward. This experience deepened my respect for the judiciary and its role in upholding the rights and interests of the public.</p> |
| Your role in the case: Counsel for Plaintiff, Pershing County |

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| Case 4 |
| Case name and date: <i>In the Matter of the Guardianship of the Person and Estate of Caron Jean Hunter, a Protected Adult</i> , PR3-11674 (2014-Present). |
| <p>Court and presiding judge and all counsel:</p> <ul style="list-style-type: none"> ● Sixth Judicial District Court, the Honorable Richard Wagner Presiding; Eleventh Judicial District Court, the Honorable Jim C. Shirely Presiding ● Petitioner: R. Bryce Shields, Pershing County Public Guardian ● Counsel for Protected Person: Steve Cochran, Pershing County Public Defender |
| <p>Importance of the case to you and the case's impact on you:</p> <p>One of the most formative cases in my career involved serving as guardian for a 30-year-old woman diagnosed with fetal alcohol syndrome. Though chronologically an adult, she possessed the emotional and intellectual capacities of a 12-year-old. Over the course of a decade-long guardianship, I witnessed firsthand the complexities of protecting someone whose decisions often mirrored those of a child -impulsive, uninformed, and at times, deeply concerning.</p> <p>Among the many challenges, one moment stands out. Without informing her physician or guardian, the ward had her birth control implant removed with the intent to become pregnant. She succeeded. However, it quickly became clear that she was not capable of caring for or raising a child. With great care and sensitivity, I helped her navigate the process of placing the child for adoption, a decision rooted in caring and the best interests of both mother and child. Later, with appropriate medical advice and the legal processes in place, I arranged for tubal ligation to prevent future situations that could place my ward or others at risk.</p> <p>This case provided insights beyond what I have encountered in textbooks or courtrooms, schooling me in patience, empathy, and human dignity. Importantly, I learned that guardianship is not just about legal oversight. Rather, it's about walking alongside someone through their most vulnerable moments, offering protection without judgment, and making decisions that honor their humanity even when they cannot fully grasp the consequences themselves.</p> <p>As I pursue judicial service, I carry with me the lessons of this case: that compassion must guide authority, and that justice is not only about rules, but also relationships, responsibility, and respect for those who depend on the law to safeguard their lives.</p> |
| Your role in the case: Guardian for the Protected Person |

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| Case 5 |
| Case name and date: <i>State of Nevada v. Tami Thorne</i> , 12 CR 12107, 2012-2014 |
| <p>Court and presiding judge and all counsel:</p> <ul style="list-style-type: none"> • Lake Township Justice Court, Pershing County, the Honorable Karen Stephens presiding; Sixth Judicial District Court, the Honorable Richard Wagner presiding • State of Nevada: R. Bryce Shields, Pershing County Deputy District Attorney • Defense: Steve Cochran, Pershing County Public Defender |
| <p>Importance of the case to you and the case's impact on you:</p> <p>An important experience in my career involved a woman named Tami, whose journey through addiction and recovery demonstrates the value of specialty courts. Tammy was addicted to methamphetamine and, in the depths of her addiction, broke into her father's home to steal items to support her habit. She was facing criminal charges and the very real possibility of losing custody of her young son.</p> <p>Tammy's situation was tragic -but not hopeless. She entered in-patient treatment and, upon completion, enrolled in the Pershing County Drug Court program. Through intensive supervision, structured accountability, and access to rehabilitative services, Tammy began to rebuild her life. She completed the program, and today she is thriving. Tammy is the manager of a local business and a devoted, loving mother. Her story illustrates the powerful outcomes that can result when the justice system incorporates treatment alongside appropriate consequences.</p> <p>Tammy's story is not unique. Many individuals have achieved lasting recovery and stability because drug courts were available to them at a critical moment. These programs work, but they depend on consistent support, adequate resources, and judicial leadership. Judges are uniquely positioned to ensure that drug courts remain strong, accessible, and responsive to the needs of their communities.</p> <p>As a judge, I will actively support and work to strengthen these programs so that more people have the opportunity to reclaim their lives and contribute meaningfully to society.</p> |
| Your role in the case: Prosecutor for the State of Nevada |

20. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.
- No

21. Describe any pro bono or public interest work as an attorney.

Since May 2019, I have served as pro bono legal counsel to the Pershing County Hospital Board of Trustees. In this role, I provide guidance on Nevada's Open Meeting Law, review contracts, and advise the Board on public bidding procedures and regulatory compliance. I dedicate approximately 3 to 4 hours each month to supporting the Board through these volunteer legal services.

22. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

- State Bar of Nevada
- Nevada District Attorneys Association, President 2023
- National District Attorneys Association, State Director 2017-2019

23. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

| DATE | COURSE | PROVIDER |
|-------------|--|--|
| 09/19/2025 | Nevada Court Improvement Council | Supreme Court of NV, Administrative Office of the Courts (AOC) |
| 12/27/2024 | 2024 Nevada Government Civil Attorney's Conference | Public Lawyers Section |
| 12/24/2024 | Mind Your P's and Q's | CLE-4460-2301-9 |
| 09/06/2023 | 2023 Nevada Government Civil Attorneys Conference | State Bar of Nevada |
| 09/15/2022 | Mastering Masking Legal and Ethical Consequences of Plea Negotiations Involving Commercial Drivers | National District Attorneys Association |
| 10/13/2021 | 2021 Nevada Government Civil Attorneys Conference | State Bar of Nevada |
| 09/15/2021 | NV Council for Prosecuting Attorneys 2021 Prosecutors Conference | NV Advisory Council for Prosecuting Attorneys |
| 12/06/2020 | 2020 Nevada Government Civil Attorneys Conference | State Bar of Nevada |
| 07/10/2020 | Litigation Strategy Workshop | Nevada Public Agency Pool |
| 05/15/2019 | 2019 Nevada Government Civil Attorneys Conference | State Bar of Nevada |
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24. Do you have Professional Liability Insurance, or do you work for a governmental agency?

I work for a government agency.

Business & Occupational Experience

25. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Southern Utah University, Adjunct Spanish Professor, 2002-2003

Schmidt Construction, Laborer, 2003-2004

26. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:

- a. the nature of the business
- b. the nature of your duties
- c. the extent of your involvement in the administration or management of the business
- d. the terms of your service
- e. the percentage of your ownership

Not Applicable

27. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

As the Pershing County Public Guardian, I have served in a fiduciary capacity for approximately 20 individuals and their estates. My responsibilities include making decisions that serve the best interests of both the person and their estate. This guardianship continues for the duration of my appointment as Public Guardian or until the individual no longer requires such oversight.

Civic Professional & Community Involvement

28. Have you ever held an elective or appointive public office in this or any other state?

- Yes

29. Have you been a candidate for such an office?

- Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

I was elected to serve as the Pershing County District Attorney in November 2014. Although initially opposed, my opponent withdrew from the race for reasons unknown, resulting in an uncontested election. I began my term in January 2015 and have continued to serve in this role to the present day. I was re-elected without opposition in both 2018 and 2022.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

Constitutional Law and Modern Constitutional Theory Seminar at Creighton University, Clarence Thomas, Associate Justice, United States Supreme Court, June 2007.

Subject Matter Witness, U.S. House Subcommittee on Federal Lands, Washington, D.C. (March 2024)

- o Provided invited testimony on proposed federal land legislation, supporting recommendations adopted into draft bill language

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

None, although I have provided training on criminal procedure to both federal and local law enforcement agencies, including specialized instruction during the Burning Man event. Additionally, I have conducted training sessions for educators in the Pershing County School District on mandatory reporting requirements. I have also offered instruction on Nevada's Open Meeting Law to local boards and general improvement districts. Furthermore, I have presented the "Now You're 18" program to high school seniors, helping them understand their legal rights and responsibilities upon reaching adulthood.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I have been an active member of The Church of Jesus Christ of Latter-day Saints throughout my life, which has provided many meaningful opportunities for service. From June 1996 to June 1998, I served as a Spanish-speaking missionary in the Morristown, New Jersey Mission. During this time, I taught gospel principles to individuals from nearly every Spanish-speaking country and helped them apply those teachings in their daily lives. Serving among such a rich diversity of Hispanic cultures deeply enriched my life. I developed a profound love and respect for the traditions, values, and warmth of the people I met. Experiencing the unique customs and perspectives of so many different countries helped me grow spiritually, emotionally, and culturally, and continues to influence how I connect with others today.

From early in my mission, I held several leadership assignments, where I trained, organized, and supervised groups of 8 to 20 missionaries. In the final four months of my mission, I served as Assistant to the Mission President, helping to oversee administrative responsibilities such as housing and transportation for approximately 250 missionaries, while continuing to supervise and train fellow missionaries.

Since 1998, I have actively served in various capacities within The Church of Jesus Christ of Latter-day Saints:

- 1998–2008: I served as a Primary teacher, Gospel Doctrine teacher, counselor in a quorum presidency, ward missionary, and Young Men’s advisor.
- 2008–2012: I continued my youth service as a Young Men’s advisor and Scoutmaster, helping several young men achieve the rank of Eagle Scout. I also helped organize multiple scout camps and led a 50-mile hike, where we taught essential camping skills and outdoor safety.
- 2015–2019: I served as a Sunday School teacher for the elders’ quorum, focusing on gospel instruction and discussion.
- 2019–2022: I taught early morning seminary to high school students, holding classes from 6:30 to 7:20 a.m., Monday through Thursday, throughout the school year.
- 2022–present: I serve as a gospel volunteer at the Lovelock Correctional Center, teaching gospel principles to inmates once or twice a month.
- 2022–present: I serve as a counselor in the bishopric of a local congregation, assisting the bishop with administrative responsibilities, overseeing ward organizations, supporting youth programs, and managing financial matters.

33. List honors, prizes, awards, or other forms of recognition.

High School (4A level)

- o Regional 9 Defensive MVP
- o Second Team All-State, Football
- o Second Team All-State, Baseball

Undergraduate

- o Division I-AA Full Athletic Scholarship after walk-on
- o Team Captain, 2000-2001
- o Independent all conference, 2001
- o Department of Social Science Academic Merit Scholarship (2001)
- o Foreign Language Department Outstanding Spanish Student (2002)
- o Graduated Magna Cum Laude, Double Major

Law School

- o Finalist Moot Court Brief
- o Finalist, American Association for Justice Trial Competition, Denver, Colorado
- o Graduated Cum Laude

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

- No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

None

36. During the past ten years, have you been registered to vote?

- Yes

37. Have you voted in the general elections held in those years?

- Yes

38. List avocational interests and hobbies.

Bow hunting, fly fishing, and home improvement projects

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| Conduct |
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39. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

- Yes

40. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

- Yes. I have been cited and paid fines for speeding, with the last citation being over 15 years ago.

41. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline

commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

- No

42. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

- Yes

After a challenging freshman year at Southern Utah University, I was placed on academic probation due to poor grades. This experience became a turning point in my academic journey. I worked diligently to improve my performance, ultimately earning an academic scholarship and graduating with honors as the Outstanding Spanish Student in the university's foreign language department. Following graduation, I was invited to serve as an adjunct instructor at the university, which I believe reflects the progress, resilience, and dedication I developed throughout my college experience.

43. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

- No

44. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

- No

45. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

- No

46. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

If I am appointed:

In accordance with Rule 2.11(A)(6)(b) of the Nevada Code of Judicial Conduct, I would recuse myself from any case involving matters in which I personally participated during my tenure as the Pershing County District Attorney. This includes cases where I acted in my capacity as the Public Guardian.

In accordance with Rule 2.11(A)(6)(b) of the Nevada Code of Judicial Conduct, I would recuse myself from any case involving matters in which I personally participated as legal counsel for Pershing County's public entities, including the Pershing County School District, the Pershing County Hospital Board of Trustees, and the Lovelock Meadows Water District. Additionally, I may recuse myself from cases involving matters on which I provided legal advice during my tenure as the Pershing County District Attorney, to ensure impartiality and uphold the integrity of the judicial process.

Other

47. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

- Not Applicable

48. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

- See attached

49. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

I have spent my entire legal career serving in different versions of the 11th Judicial District Court, and I remain deeply committed to its continued success. While the district unites Lander, Pershing, and Mineral Counties under a shared jurisdiction, each county faces distinct caseload volumes and legal challenges. One of the great strengths of rural practice is the reduced bureaucratic layering, which allows attorneys to engage directly in shaping court operations, policy development, and procedural improvements.

Although the 11th District does many things well, I have actively sought feedback from prosecutors, defense counsel, and civil attorneys across all three counties to identify areas for growth. A consistent theme has emerged: a desire for more frequent bench-bar meetings tailored to each county. These gatherings would foster collaboration, promote transparency, and refine local court policies in response to real-time practitioner input.

Another opportunity lies in expanding the use of remote technologies -particularly Zoom for non-evidentiary hearings. This would enhance accessibility, reduce travel burdens, and lower litigation costs for parties across the district. Finally, given the diversity in caseloads and case types, it may be beneficial to explore different law and motion

calendars for each county. I believe that a tailored approach may improve efficiency and better serve the unique needs of each community.

50. Attach a sample of no more than ten pages of your original writing in the form of a decision, “points and authorities,” or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.
- See attached

PERSONAL STATEMENT

When Jim Shirley hired me fresh out of law school as a Deputy District Attorney in Pershing County, I imagined a two-year tenure before moving on. Seventeen years later, I remain in the same office—not out of inertia, but because I discovered what Judge Richard Wagner told me on my first day: the joys of practicing law in rural Nevada are the best-kept secret in the State.

Undoubtedly, Jim Shirley and Judge Wagner shaped not only my career but my perspective—making the practice of law in rural Nevada more rewarding and equipping me with the tools to thrive. For seven years, Jim Shirley gave me the space to manage Pershing County’s criminal, guardianship, and juvenile matters independently. His light touch, marked by timely insights and steady oversight, allowed me to grow with confidence and purpose. And trying cases in Judge Wagner’s courtroom was like presenting my work to a master craftsman: he perceived every flaw, recognized every strength, and expected nothing less than my best. Appearing before Judge Wagner was equal parts humbling and inspiring.

Practicing law in rural Nevada has offered me something rare: the opportunity to serve a community deeply, to grow professionally across diverse legal domains, and to be shaped by mentors who believed in professional excellence. The work is broad, the stakes are personal, and the rewards -both professional and spiritual- are enduring. I’ve come to see that rural practice isn’t just a career path; it’s a calling rooted in service, trust, and the kind of growth that only comes within the confines and values of small communities.

In rural Nevada, attorneys are often one of the few legal resources available, and that closeness means our decisions reach into the fabric of everyday life. As a prosecutor and community member, I see the people affected by my work at church, at the grocery store, and

when dropping my children off at school. Those are not abstract case names -they are neighbors, friends, and sometimes people I've known for years. That proximity amplifies the responsibility of the office: every charging decision, plea recommendation, or guardianship filing carries real consequences for families and for the community's sense of safety and fairness.

Because these relationships are personal and visible, the temptation to prioritize popularity can be strong, but public service demands something else. District attorneys and judges must make the fairest and impartial decisions possible, even when those decisions are unpopular. The integrity of the process -and the community's trust in equal application of the law- depends on refusing to let re-election concerns, social pressures, or personal friendship influence the outcome. In rural practice, impartiality is not an abstract ideal; it's a daily discipline.

An old colleague once told me, if you serve as the elected DA long enough, you will eventually make so many people mad that you wouldn't even be elected dog catcher. That grim humor captures a truth I've lived: doing the right thing often costs you votes, social ease, and sometimes friendships. Accepting that cost is part of the job. It frees you to focus on the law, the facts, and on what justice requires rather than on how decisions will play in the next town meeting.

I have practiced making those kinds of difficult, sometimes unpopular decisions throughout my career. I have weighed where the line falls between an individual's right to self-governance and the need for a guardian and long-term care placement. I have evaluated whether the force used by an officer rose to the level of homicide. These decisions, along with countless others through the years, required careful fact-gathering, sober legal analysis, and the willingness to stand by a decision even when it strained personal relationships.

Judges, too, confront similar choices every day: determining liberty, culpability, and accountability. My career has given me sustained practice in facing those same kinds of judgments -balancing competing rights and risks, applying legal standards under pressure, and prioritizing fairness above convenience. That experience has honed my judgment, reinforced my commitment to impartiality, and prepared me to bear the responsibility that comes with making decisions that profoundly affect the lives of those I serve. There is no place I would rather carry out that responsibility than in rural Nevada.

WRITING SAMPLE

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File No. 27CR-2023-0186

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

**IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING**

THE STATE OF NEVADA,

Plaintiff,

vs.

BILLY RAY CLINGAN, JR.,

Defendant.

**RESPONSE IN OPPOSITION TO
DEFENDANT'S PETITION FOR
WRIT OF HABEAS CORPUS**

COMES NOW, the State of Nevada, by and through R. Bryce Shields, Pershing County District Attorney, and submits this Response in Opposition to Defendant's Petition for Writ of Habeas Corpus. This Response is made and based upon the attached Points and Authorities, in addition to the papers and pleadings on file, along with oral argument.

DATED this 15th day of September 2023.



R. Bryce Shields
Pershing County District Attorney
400 Main St./P.O. Box 299
Lovelock, NV 89419
(775) 273-2613

1 POINTS AND AUTHORITIES

2 "The value of a sword of Damocles is that it hangs, not that it drops."¹

3 **I. FACTS AND PROCEDURAL HISTORY**

4 Officer Andrew Morehead arrested Billy Ray Clingan, Jr. for suspicion of driving while
5 suspended or revoked and DUI. Leading up to Clingan's arrest, Officer Morehead observed a
6 pickup truck in front of his location traveling southbound on Cornell Avenue. As the pickup
7 progressed, Officer Morehead saw it "jerk" to the right of the travel lane into the curbed area
8 where the pickup briefly paused before pulling back onto Cornell Avenue. The pickup proceeded
9 for another block where it again jerked to the right and parked along the curb.

10 Seconds later, Officer Morehead drove passed the pickup along the driver's side and saw
11 the Defendant, Billy Ray Clingan ("Clingan"), Jr. seated in the driver's seat. Knowing that
12 Clingan's license was suspended or revoked, Officer Morehead pulled over to investigate. While
13 Officer Morehead parked, Clingan exited the pickup from the driver's door along with two
14 passengers, one of whom was later identified as Erica Branson, who exited from the passenger
15 compartment. All three individuals began walking away from the pickup truck.

16 Officer Morehead called out to Clingan, who turned and approached the officer. As the
17 two conversed, Officer Morehead saw that Clingan had an object in his left hand, partially
18 concealed in his right front pocket. When asked about the item, Clingan admitted that it was a
19 key (presumably, the pickup's key because Erica Branson used the key to move the pickup after
20 Clingan's arrest). See Exhibit One. Officer Morehead also smelled alcohol emanating from
21 Clingan's person when he spoke.

22 Surprisingly, Clingan denied driving the pickup despite being identified as sitting in the
23 driver's seat immediately after the vehicle parked, exiting from the driver's side door, and
24 carrying the pickup's key. Likewise, Clingan denied that he had consumed alcohol in spite of his
25 unusual driving pattern and the odor of alcohol coming from his breath. Officer Morehead
26

27 _____
28 ¹ *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (White, J., concurring in part and dissenting in part).

1 arrested Clingan and transported him to the jail to be booked for driving while revoked and to
2 conduct additional DUI testing.

3 During the arrest procedure, Clingan called Officer Morehead a jerk multiple times and
4 accused him of following Clingan around. Morehead denied harassing Clingan, explaining that
5 the “town is only a mile big.” Clingan responded by stating, “And guess what, it’s a mile big, and
6 guess what’s going to happen.” Thereafter, the following exchange occurred:

7 Clingan: I don’t know what your problem is with me, bro, but I’m going to light you
8 up now, man.

9 Morehead: What does that mean?

10 Clingan: That means I’m going to do everything I fucking can to ruin your fucking
11 life. I mean ruin your fucking life. I’ll talk shit, make up shit, whatever I
12 gotta do to fuckin ruin your life. I know some serious people.

13 Morehead: So, you’re threatening me?

14 Clingan: No, absolutely not, not with bodily harm or anything like that ... but
15 you’re just going out of your way to fuck with me and I don’t understand
16 why.

17 Morehead: No, I am not.

18 Clingan: You are, you have followed me around for five days, bro.

19 State’s Exhibit 1.

20 The State charged Clingan with Intimidating a Public Officer, a gross misdemeanor in
21 violation of NRS 199.300(1)(d)(3)(b). The matter was bound over after a preliminary hearing,
22 after which Clingan entered a not guilty plea in district court. Clingan filed the instant writ on
23 July 28, 2023, and the Court ordered a response on August 30, 2023. The State responds as
24 follows:

25 II. LEGAL AUTHORITY AND ARGUMENT

26 It is well-settled that true threats of violence are not protected by the First Amendment.
27 *Virginia v. Black*, 538 U.S. 343, 359 (2003). True threats, in contrast to mere “political
28 hyperbole,” have been characterized by the Supreme Court as statements made by a speaker who

1 “means to communicate a serious expression of an intent to commit an act of unlawful violence
2 to a particular individual or group.” *Black*, 538 U.S. at 359, 123 S.Ct. 1536. In the instant matter,
3 Clingan did not address a true threat, but it is indisputable that he threatened to ruin Officer
4 Morehead’s life, and arguably, Clingan issued the threat with the intent to induce action or
5 inaction on the part of Officer Morehead in violation of NRS 199.300. Accordingly, the primary
6 question before this Court is whether the threat to ruin a police officer’s life, and to recruit others
7 to participate in the endeavor, constitutes First Amendment-protected-non-violent protest or
8 restricted speech beyond the reach of the Constitution.

9 Clingan’s writ should be denied because his coercive threats toward Officer Morehead
10 constitute fighting words. Moreover, Clingan’s statements, as a form of coercion, run parallel to
11 the crime of extortion, which is recognized by many courts as falling outside the First
12 Amendment’s coverage. In addition, Clingan’s words are integral to criminal conduct, another
13 class of unprotected speech.

14 On these grounds, NRS 199.300(3)(b) passes constitutional muster -the statute prohibits
15 solely unprotected speech. And because NRS 199.300(1) requires that the State prove a *mens rea*
16 of specific intent, a higher standard than that prescribed in *Counterman v. Colorado*, 143 S.Ct.
17 2106 (2023) the statute militates against a chilling effect on free expression.

18 **A. Clingan’s Statements are not Protected Speech**

19 **1. Fighting Words.**

20 “The right of free speech is not absolute at all times and under all circumstances.” *Spence*
21 *v. State of Washington*, 418 U.S. 405 (1974) quoting *Chaplinsky v. New Hampshire*, 315 U.S.
22 568 (1942). Instead, “the right of free speech, though precious, remains subject to reasonable
23 accommodation to other valued interests. *Id.* In recognition of these other values, courts have
24 allowed content-based restrictions on speech when confined to “historical and traditional
25 categories of expression long familiar to the bar.” *United States v. Stevens*, 559 U.S. 460 (2010).
26 Among these restricted categories are “fighting words,” *United State v. Alvarez*, 567 U.S. 709,
27 717-18 (2011) citing *Chaplinsky*, 315 U.S. at 571, or “words that by their very utterance inflict
28

1 injury or tend to incite an immediate breach of the peace.” *Scott v. First Judicial Dist. Court*, 131
2 Nev. 1015, 1019 (2015).

3 *Chaplinsky*, involved the prosecution of a member of the Jehovah’s Witnesses under a
4 criminal statute prohibiting “offensive,” “derisive,” or “annoying” language. *Id* at 574. The Court
5 held that the statute should be interpreted to prohibit offensive, derisive, and annoying speech
6 only in cases where it “tends to incite the addressee to a breach of the peace,” and thus constitute
7 fighting words. *Id.* at 573. The Court went on to hold that calling a police officer a “damn
8 racketeer” and “damn Fascist” constituted fighting words and were thus prohibited by the statute.
9 *Id.* at 574. In reaching this conclusion, the Court reasoned that such speech carries “no essential
10 part of any exposition of ideas and are of such slight social value as a step to truth that any
11 benefit that may be derived from them is clearly outweighed by the social interest in order and
12 morality.” *Id* at 572.

13 The instant case is similar to *Chaplinsky*. In both cases the defendant’s directed words
14 toward police officers, and each case involves a statute potentially restricting expression. The
15 cases differ, however, in the egregious nature of the words. Whereas *Chaplinsky* merely swore
16 and the police officer and called him names, Clingan’s repeatedly threatened to ruin officer
17 Morehead’s life, to make up lies about him, and to recruit assistance of “serious people” to ruin
18 Officer Morehead.

19 It follows that if directing swear words and epithets at a police officer constitutes fighting
20 words, i.e., words that tend to incite an immediate breach of the peace, then surely threatening to
21 ruin a police officer’s life, combined with threatening to lie about him, and to recruit others into
22 the endeavor of ruining the officer’s life, equally constitutes fighting words. The First
23 Amendment provides no refuge for such expression.

24 **2. Extortionate or Coercive Speech**

25 Numerous courts have held that the government may proscribe “threats, extortion,
26 blackmail and the like,” notwithstanding “their expressive content.” *Gresham v. Peterson*, 225
27 F.3d 899, 909 (7th Cir.2000) (collecting cases); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377,
28 420, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (Stevens, J., concurring) (“Although the First

1 Amendment broadly protects 'speech,' it does not protect the right to 'fix prices, breach
2 contracts, make false warranties, place bets with bookies, threaten, [or] extort.' ") (internal
3 citation omitted). Indeed, "Congress has passed numerous laws that proscribe threats ... and these
4 statutes have been consistently upheld as constitutional...." *United States v. Hayward*, 6 F.3d
5 1241, 1259 (7th Cir.1993); *see also United States v. Varani*, 435 F.2d 758, 762 (6th Cir.1970)
6 ("Speech is not protected when it is the very vehicle of the crime itself.") (citing 18 USCS 871–
7 871 ("threats, extortion, blackmail, kickbacks")); *Boos v. Barry*, 485 U.S. 312, 326, 108 S.Ct.
8 1157, 99 L.Ed.2d 333 (1988) (commenting favorably on a law that prohibits activity undertaken
9 to "intimidate, coerce, threaten, or harass"). These categories of speech are, in short, "properly
10 punished every day under statutes prohibiting extortion, blackmail and assault without
11 consideration of First Amendment issues." *United States v. Irving*, 509 F.2d 1325, 1331 (5th
12 Cir.1975) (citing *Watts v. United States*, 402 F.2d 676, 690 (D.C.Cir.1968)).

13 These considerations have caused two courts to conclude that "[i]t may categorically be
14 stated that extortionate speech has no more constitutional protection than that uttered by a robber
15 while ordering his victim to hand over the money, which [has] no protection at all." *United States*
16 *v. Hutson*, 843 F.2d 1232, 1235 (9th Cir.1988) (quoting *United States v. Quinn*, 514 F.2d 1250,
17 1268 (5th Cir.1975), *cert. denied*, 424 U.S. 955, 96 S.Ct. 1430, 47 L.Ed.2d 361 (1976)).
18 Therefore, whether or not the Defendants' actions consisted entirely of speech-based activism, it
19 appears that "[t]he First Amendment [simply] does not protect extortion," *United States v. Boyd*,
20 231 Fed.Appx. 314, 315–16 (5th Cir.2007); *see also Planned Parenthood of*
21 *Columbia/Willamette, Inc. v. American Coalition of Life Activists*, 244 F.3d 1007, 1015 n. 8 [9th
22 Cir.2001], *rehearing en banc* 290 F.3d 1058 (9th Cir.2002) ("Blackmail and extortion—the
23 threat that the speaker will say or do something unpleasant unless you take, or refrain from
24 taking, certain actions—are not constitutionally protected").

25 Here, Intimidating a Public Officer, Coercion, and Extortion are parallel crimes. All three
26 involve threats, intimidation, or violence to engage in or refrain from certain conduct or to
27 surrender property. NRS 199.300; NRS 207.190; NRS 205.320. Because each crime is similarly
28 defined and the type of threatened consequences that would befall an uncooperative victim are

1 similarly enumerated, the same principles and analysis of First Amendment jurisprudence should
2 apply to all three. *See People v. Feldman*, 7 Misc. 3d 794, 807, 791 N.Y.S.2d 361, 372–73 (Sup.
3 Ct. 2005) (equating coercive threats with extortion) *State v. Jorgenson*, 946 N.W.2d 596, 607-08
4 (Minn. 2020) (analyzing coercion statute, but also specifically identifying extortion unprotected
5 speech).

6 The First Amendment clearly does not protect extortionate speech, therefore coercive
7 speech should also fall outside the Constitution’s coverage. Clingan threatened to ruin Officer
8 Morehead’s life with the intent to compel Morehead to perform or to abstain from performing an
9 official duty, (e.g., to stop pulling Clingan over, stop following him, or to abstain from
10 administering DUI tests to Clingan). The threat that a speaker will say or do something
11 unpleasant unless one takes, or refrains from taking, certain actions, is not constitutionally
12 protected. *Planned Parenthood*, 244 F.3d at 1015, n. 8.

13 3. Speech Integral to Criminal Conduct.

14 Speech integral to criminal conduct is another category of speech unprotected by the First
15 Amendment. *See Alvarez* 567 U.S. at 717-18, citing *Giboney v. Empire Storage & Ice Co.*, 336
16 U.S. 490 (1949). The “speech integral to criminal conduct” exception is why the government
17 may validly prosecute crimes like conspiracy, solicitation, or requests to obtain illegal material,
18 even though those acts involve speech. *See United States v. Williams*, 553 U.S. 285, 297-98, 128
19 S. Ct. 1830, 1841-42, 170 L. Ed. 2d 650, 665-66 (2008). To be sure, this exception does not
20 allow the government to simply criminalize any type of speech, and then claim that the targeted
21 speech is thus integral to criminal conduct. *See, e.g., United States v. Weiss*, 475 F. Supp. 3d
22 1015, 1033 (N.D. Cal. 2020); *Eugene Volokh*, The ‘Speech Integral to Criminal Conduct’
23 Exception, 101 Cornell L. Rev. 981, 987 (2016). If the exception were that broad, the
24 government could circumvent the First Amendment’s constraints at will. Instead, speech integral
25 to criminal conduct is speech utilized towards another unlawful end. Describing the exception,
26 one of the foremost First Amendment scholars explained that the Free Speech Clause likely
27 would not protect telling an elected official “vote for this civil rights bill or I’ll disclose that you
28 cheated on your wife.” Volokh, 101 Cornell L. Rev. at 1050. In that situation, the speaker has no

1 legal right to the benefit he seeks.

2 Here, intimidating a public officer is unprotected speech because a person who
3 intimidates a public officer -whether through threats or physical force or nonphysical harm- seeks
4 to prevail over the public officer's sworn legal duty and to wrongly influence a decision to which
5 the speaker has no legal right. NRS 199.300 therefore does not target speech for the sake of
6 limiting speech; it targets speech because the speech is a tool for public corruption. Accordingly,
7 NRS 199.300 targets speech integral to criminal conduct – the illegal act of wrongfully
8 influencing a public officer's decision in order to obtain a benefit to which the speaker is not
9 legally entitled. Clingan's speech is therefor outside the scope of the First Amendment.

10 **B. NRS 199.300(3)(b) Passes Constitutional Muster.**

11 A statute is presumed to be constitutional, and the party challenging its constitutionality
12 "has the burden of making a clear showing of invalidity." *State v. Castaneda*, 126 Nev. 478, 481,
13 245 P.3d 550, 552 (2010) (internal quotations marks omitted). Clingan has failed this burden.

14 Clingan's contends that under the First Amendment, only true threats may be criminalized
15 and that true threats involve only threats of imminent physical harm. Clingan's argument fails
16 because true threats are not the only type of speech unprotected by the First Amendment. As
17 shown above, fighting words, extortionate/coercive speech, and speech integral to criminal
18 conduct are also unprotected, and NRS 199.300(3)(b) targets all three of these unprotected
19 categories. Therefore, the statute need not be read to apply only to true threats to comply with the
20 First Amendment. As a corollary, the State is not required to show that the Defendant made a true
21 threat to criminalize Clingan's threats under NRS 199.300(3)(b).

22 **C. The State is Required to Prove Specific Intent, Which Militates Away from a
23 Chilling Effect on Speech.**

24 Clingan argues that the State has not shown that he threatened Officer Morehead with the
25 requisite intent to influence the officer's decisions. This argument, like the others, fails.

26 NRS 199.300(1) reads as follows, in relevant part:

27 A person shall not, directly or indirectly, address any threat or intimidation to a
28 public officer, public employee, juror, referee, arbitrator, appraiser, assessor or
any person authorized by law to hear or determine any controversy or matter, *with*

1 *the intent to induce such a person contrary to his or her duty to do, make, omit or*
2 *delay any act, decision or determination, if the threat or intimidation*
3 *communicates the intent, either immediately or in the future:*

4 (emphasis added).

5 NRS 199.300 is a specific intent crime. Intent can rarely be proven by direct evidence. *Sharma v.*
6 *State*, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002). Therefore, the trier of fact may infer the
7 mental state of a defendant from circumstantial evidence. *Valdez v. State*, 124 Nev. 1172, 1197,
8 196 P.3d 465, 481 (2008).

9 Notably, specific intent is more demanding mental state than that announced in
10 *Counterman*, where the Court determined that a mental state of reckless was sufficient. 143
11 S.Ct.2113. In *Counterman*, a true threats case, the Court determined that the First Amendment
12 requires proof that the defendant had some subjective understanding of the threatening nature of
13 his statements. 143 S.Ct. at 2114. After making this determination, and in recognition that a *mens*
14 *rea* requirement reduces the prospect of chilling fully protected expression, the Court held that
15 the mental state of recklessness is sufficient, *Id.* at 2114 -the State must show that the defendant
16 consciously disregarded a substantial risk that his or her communications would be viewed as
17 threatening violence. *Id.* The *Counterman* Court adopted the subjective standard of
18 “recklessness” to strike the proper balance between avoiding suppressing non-threatening speech,
19 on the one hand, and on the other hand allowing states to effectively protect “against the
20 profound harms” that can flow from true threats.

21 Here, the evidence shows by slight or marginal evidence that Clingan threatened
22 or intimidated Officer Morehead with the specific purpose of causing the officer, contrary
23 to his or her duty to do, make, omit or delay any act, decision or determination. Clingan
24 repeatedly accused Morehead of following him around town, emphasizing that it was
25 “harassment” and “ridiculous.” When Officer Morehead began the process of placing
26 Clingan in handcuffs, Clingan called the officer a jerk several times. But the threat did not
27 occur until after Officer Morehead informed Clingan that he was under arrest for DUI.
28 Under these facts, a trier of fact could infer that Clingan threatened Morehead to induce

1 him to avoid Clingan while patrolling, refrain from evidentiary DUI testing, or leave
2 charges of Clingan's booking sheet. Any of these inferences would be reasonable.

3 The evidence further shows that Clingan had subjective knowledge of the
4 threatening nature of his speech. After Clingan threatened to ruin Officer Morehead's life,
5 Morehead asked if Clingan was threatening him, to which Clingan responded, "No,
6 absolutely not, not with bodily harm or anything like that." It is telling that Clingan did
7 not deny that he had threatened to ruin the officer's life and tried to be clear that he was
8 not threatening bodily harm. Essentially, Clingan was saying, I am not threatening to
9 cause you bodily harm, just to do everything I can to ruin your life.

10 Finally, the prospect of chilling fully protected speech is mitigated the
11 requirement in NRS 199.300 that the State must prove the speaker's specific intent. In
12 *Counterman*, the Court added the *mens rea* of recklessness to provide breathing room for
13 more valuable speech and to reduce an honest speaker's fear that he may accidentally incur
14 liability for expression his or her views. *Id.* at 143 S.Ct 2115. Because the statute in
15 question requires a higher *mens rea* than that announced in *Counterman*, the heightened
16 standard further reduces that prospect of chilling fully protected speech.

17 For the foregoing reasons, Clingan's petition should be denied.

18
19 DATED this 15th day of September 2023.

20 
21 R. Bryce Shields
22 Pershing County District Attorney
23 400 Main St./P.O. Box 299
24 Lovelock, NV 89419
25 (775) 273-2613
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28