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JONATHAN HAGEL,	)	SUPERIOR COURT OF NEW JERSEY
MICHELE DOWNIE,	)	APPELLATE DIVISION
CATHERINE READ,	)	DOCKET NO.: A-003840-24
Appellants,	)	
v.	)	ON APPEAL FROM NEW JERSEY
NEW JERSEY STATE POLICE	)	SUPERIOR COURT, LAW DIVISION
	)	DOCKET NO.: MER-L-890-25
Respondent	)	SAT BELOW:
	)	HON. ROBERT LOUGY, A.J.S.C.

**BRIEF OF APPELLANTS JONATHAN HAGEL, MICHELE DOWNIE
AND CATHERINE READ IN SUPPORT OF THE MOTION TO APPEAL
AS OF RIGHT UNDER RULE 2:2-3(a) CASE NUMBER: A-003840-24**

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PRELIMINARY STATEMENT

There are numerous errors by the Superior Court in this case. Remanding this matter back cannot fix the total and complete misunderstanding of details and basic facts the lower Court demonstrated in its decision. The Superior Court erred to the point where this Judge cannot be expected to make any correct decisions relating to this matter. Plaintiffs have presented more than enough factual evidence to overturn this unjust and illogical ruling.

Plaintiffs have been reading about and researching the Lindbergh case for their own motives for several years. They are friends with a group of dedicated people interested in answering some lingering questions about the most famous criminal case in New Jersey's history and have all become interested in ongoing advances in forensics. Their motives are not related in any way to seeking wealth, fame or personal gain. Their quest is one that directly comports with the purpose of OPRA – to examine and if necessary, correct the historical record on a matter which has wide and monumental significance for the history of New Jersey and the United States.

Over the past several years, Plaintiffs have learned that the leadership of the New Jersey State Police has no interest in authorizing a forensic examination of the stamps and envelopes mailed from the presumed kidnapper(s). Plaintiffs made several attempts to advise the Defendant that the envelopes could not possibly be

damaged, and how Plaintiffs' legitimate and reliable experts opine that collecting a forensic sample would be very easy and cause no damage or harm to the items involved. Plaintiffs pointed out that in the opinion of several leading forensic experts, there is urgency. They further pointed out that there is a chance that the specific individual(s) who sent those envelopes can be identified through modern forensics.

Between sometime in early Spring 2024 and late June 2025, the New Jersey State Police Museum's archives were closed to the Plaintiffs. They were also closed to many of the Plaintiffs' friends, and all members of the public for at least fourteen months. Each Plaintiff was given a reason by the Defendant's archivist, Gregory Ferrera, why the archives were closed. The most common answer received was that the Defendant was working on updating its procedures. The procedures, as argued by Plaintiffs, existed for over forty-two (42) years.

It was only after Plaintiffs' friend Margaret Sudhakar's case was published in the New York Times on March 5, 2024 that the New Jersey State Police decided that after over forty-two (42) years, members of the public would not be allowed to conduct research or access the archives. This restriction was in place for more than fourteen (14) months in direct violation of EO 110, preventing anyone from copying, inspecting, and examining documents related to their research. This injustice and

serious governmental overreach caused harm to the Plaintiffs, their friends, and the public researching this case.

The facts of this case demonstrate that the misinterpretation of facts, and decision rendered by the Superior Court were so misleading, inaccurate and incorrect, that the only logical remedy in this case is a complete and total reversal by the Appellate Court.

PROCEDURAL HISTORY

On April 25, 2025, Plaintiffs timely filed a Verified Complaint and Order to Show Cause under the Open Public Records Act against the State Police of New Jersey for multiple violations of Plaintiffs' rights under Governor Byrne's Executive Order 110 (Pa1). Due to an administrative filing error, Plaintiff's Exhibit P-24 was inadvertently excluded from the filing, and was submitted on April 29, 2025 (Pa203).

On May 7, 2025, Plaintiffs filed a motion for oral arguments and witness testimony prior to the hearing for the Superior Court to hear from subject matter experts how easy collecting a forensic sample would be from the envelopes in question (Pa207). Furthermore, the Plaintiffs planned to call at least one witness and clarify any doubts explaining how the State Police Museum had been shut down for researchers and members of the public to access the archives, and to copy, examine and inspect the documents in direct violation of Governor Byrne's EO 110 and how

that denial of access impacted their research. On May 29, 2025, the Defendant filed a responsive brief in opposition to the Plaintiffs' motion to call these witnesses. The Plaintiffs responded to this letter brief on June 4, 2025. The motion was argued on June 6, 2025, and the Court dismissed the motion the same day (Pa209)¹.

On June 19, 2025, the Defendant submitted its response back to the Verified Complaint and Order to Show Cause. Plaintiff's pro bono counsel responded back on June 23, 2025 and also submitted an updated response on June 27, 2025.

This matter was argued on July 2, 2025. A decision in this matter was electronically issued against the Plaintiffs, with prejudice on July 7, 2025 (Pa251)².

APPELLATE STATEMENT OF FACTS

Plaintiffs concede that OPRA does not generally apply to forensic analysis of documents in most cases. This case however is very different. OPRA applies in this case because Governor Byrne's EO 110 specifically applies his order to OPRA. Thus, the Plaintiffs argued that because of the plain language, nature, purpose, and intent of Governor Byrne's EO 110, this case does authorize and justify forensic analysis of documents under OPRA.

There are very few cases in the history of United States jurisprudence in which a Governor of a State issued an Executive Order specifically about a criminal case.

¹ Transcript added as 1T, dated June 6, 2025 Motion Transcript

² Transcript added as 2T, dated July 2, 2025 Oral Arguments Transcript

New Jersey has only one. That case is the Lindbergh Kidnapping Case. This case was so famous, that when it happened, it was both known as the “Crime of the Century” and later the “Trial of the Century.”

The applicable Executive Order was Governor Brendan T. Byrne’s 110th Executive Order, issued on October 9, 1981. Prior to issuing this Executive Order, Governor Byrne ordered that the State of New Jersey to conduct a forensic examination of the evidence in the Lindbergh case file from April 1977 to February 1978 (*see Sudhakar*³) before modern-day forensic analysis capabilities existed (Pa1).

Executive Order 110 specifically allows members of the public to copy, examine and inspect the Lindbergh archives which roughly consists of over 225,000 pieces of evidence (Pa40). Plaintiffs argued that Governor Byrne issued this Executive Order for three reasons.

Plaintiffs argued that the primary reason why Governor Byrne issued EO 110 was in response to the wrongful death lawsuit filed by the widow of Bruno Richard Hauptmann, the same week that the Executive Order was written.⁴ In fact, Governor

³ Margaret Sudhakar v. New Jersey State Police et. al, MER-L-1706-22, Exhibit F, Pages 88-96, Forensic Scientific Report of Senior Forensic Chemist, New Jersey State Police, entitled, “Special Report,” dated March 17, 1978.

⁴ See *Hauptmann v. Wilentz*, 570 F. Supp. 351 (D.N.J. 1983), Anna Hauptmann’s 55-page claim was originally filed on October 14, 1981, (pages 2 and 10). As part of this brief, Anna Hauptmann’s attorney, Robert R. Bryan argued that, “She seeks damages and a preliminary and permanent injunction directing the United States

Byrne wanted to prove to the State and members of the public that the State convicted and executed the right person and wanted members of the public to have full and complete transparency over all evidence to confirm that Bruno Richard Hauptmann was guilty⁵ (Pa1, Pa94, Pa105, Pa111). As the Court likely knows, Governor Byrne, was a former Essex County Prosecutor as well as a Superior Court judge. “The civil action was filed...against him, the Attorney General and the state police superintendent by Mr. Hauptmann’s widow, Anna...⁶”

Plaintiffs also demonstrated that the second reason why EO 110 was issued was because Governor Byrne did not believe that the convicted and executed man, Bruno Richard Hauptmann, acted alone. Plaintiffs submitted proof of this in Plaintiff’s Exhibit P-13 (Pa117), and in its response to Defendant’s letter brief in opposition of Plaintiff’s motion to call witnesses. These demonstrated items were a

Marshal to seize all records relating to the Hauptmann case and instructing Byrne, Zazzali and Pagano to cooperate by providing the records sought. On October 9, 1981, then-Governor Byrne issued an executive order which released all available Hauptmann records to the public and directed Colonel Pagano to establish procedures to ensure that the inspection would be orderly and would not damage the records. Exec. Order No. 110 (Oct. 9, 1981),” Page 15.

⁵ New York Times Article, dated October 1, 1981 written by Peter Kihss. Governor Byrne stated that, “The Hauptmann trial is a part of American history’ he said, ‘and there is no need to preserve any security aspects now, more than 40 years after the event.’”

⁶ Ibid, page 2.

letter issued by Governor Byrne to author Robert Zorn (Pa117), and a 1989 NJN documentary on the case entitled “Reliving the Lindbergh Case.”⁷

The third reason why Governor Byrne issued EO 110 was because he wanted the Open Public Records Act (OPRA) to be directly connected to the case. In fact, his Executive Order contains the exact language from OPRA ordering the Superintendent of the State Police to make all exhibits and evidence relating to the Lindbergh kidnapping, “available to the public, and subject to inspection and examination and available for copying” (Pa38).

It is also a fact that between approximately early Spring 2024 until at least late June 2025, the New Jersey State Police Museum’s archives were closed to the public, a fact freely admitted by the Defendant. This was a direct violation of Governor Byrne’s Executive Order 110. This shutdown directly violated Plaintiffs’ (and the general public’s) rights to copy, examine and inspect the archival evidence from the Lindbergh Kidnapping case.

Governor Byrne sought government transparency; the Defendant clearly does not want transparency. The plain language of EO 110 makes it clear what the aim of his Executive Order was and why he felt that transparency in New Jersey’s most

⁷ New Jersey Network (NJN) documentary which aired on December 11, 1989, entitled, Reliving the Lindbergh Case.”

famous criminal case was vitally important. These three reasons demonstrate the obvious nature, purpose and intent of Governor Byrne's 110th Executive Order.

Modern-day forensic analysis did not exist in October 1981. Had it existed, there can be little doubt that Governor Byrne would have ordered the State to utilize forensics from 1977-1978, or when he issued EO 110 in October of 1981. A forensic analysis of the envelopes and stamps could lead to conclusive samples proving who sealed the ransom envelopes and who licked the stamps.

Plaintiffs acknowledged and recognized that they are not seeking to expand OPRA and noted that the only reason why their argument for a forensic analysis would be permitted is because of EO 110. They further noted that they are not attempting to expand the scope of OPRA. Further, Plaintiffs acknowledge that they "have no argument under OPRA in the event Governor Murphy or any future New Jersey Governor rescinds Governor Byrne's Executive Order 110.

LEGAL ARGUMENT

POINT ONE:

THE SUPERIOR COURT ERRED IN ITS INTERPRETATION AND SCOPE OF GOVERNOR BYRNE'S EXECUTIVE ORDER 110 DATED OCTOBER 9, 1981. (Pa251).

Governor Byrne intended the Open Public Records Act (OPRA) to be directly connected to his 110th Executive Order dated October 9, 1981. His wording mirrors the language of OPRA, and specifically made the Lindbergh kidnapping evidence

“available to the public, and subject to inspection and examination and available for copying” (Pa38).

It is also clear that Plaintiffs argued to the Court that this order, which has not been overturned, applies OPRA to this one case for those few purposes of making the evidence: 1. available to the public, 2. subject to inspection, 3. subject to examination, 4. subject to being copied. Plaintiffs have not sought, were not seeking, and do not seek to broaden the scope of OPRA. Rather, Plaintiffs are seeking to have the plain language of the Executive Order applied in modern times, with the knowledge of modern technology and an understanding of the rationale and purpose behind the issuance of the Executive Order.

The Court erred in collapsing the word “examination” into merely viewing and copying the documents in question, thus treating EO 110 as adding nothing beyond OPRA. The specific wording of “subject to inspection and examination and available for copying” (Pa38) indicates a broader access right than simply viewing. An understanding of this is an understanding of why the EO exists to begin with. With a full understanding of the public interest, Governor Byrne enabled members of the public to examine the evidence themselves with opportunities to prove whether Hauptmann acted alone or had accomplices.

The Court’s reading nullifies “examination” as surplusage and ignores the fact that EO 110 separately empowers the Superintendent to manage procedures to

prevent damage, and not to categorically prohibit “examination”, a word specifically written within the EO for the purposes of justice and transparency. The Appellate Court should correct the legal interpretation; reverse on these grounds, or remand for the agency to exercise discretion under EO 110, guided by an accurate reading of the word “examination,” which can include controlled, non-destructive testing.

The Court further failed to apply the scientifically archival non-destructive procedures commonly accepted by the Department of Justice (Pa148) to this case. Plaintiffs argued that these examination techniques and similar ones were recently responsible for finding and capturing the suspected Gilgo Beach killer. Instead of applying these scientific non-destructive procedures, the Court made a broad sweeping denial of all forensic access.

This is particularly troubling given how far the Court strayed from considering Plaintiffs arguments. Plaintiffs argued very clearly that the only basis for their argument is EO 110. Plaintiffs argued that if Governor Murphy or any future New Jersey Governor rescinded Governor Byrne’s EO 110, then they would have no argument. To follow this line of reasoning, Plaintiffs made their point clear that they are not seeking to broaden the scope of OPRA. They are merely seeking to apply OPRA to the case at hand, because EO 110 allows members of the public to conduct examinations and inspect these documents.

The Superior Court erred indicating that “interpreting OPRA in such a way to allow DNA testing would lead to absurd results as individuals could then subject any government record to testing and analysis” (Pa251). This is not at all what the Plaintiffs argued or sought, and ignoring the very foundation of the Plaintiff’s argument is a gross error.

POINT TWO:

**THE SUPERIOR COURT ERRED IN VIEWING PLAINTIFFS’
REQUEST AS CREATING A NEW RECORD UNDER OPRA (Pa251).**

The Court warned of “absurd results” characterizing this request as a physical examination, analysis and extraction rather than a records request. This misconstrues and misrepresents the entirety of Plaintiffs’ argument. The records are in Defendant’s custody. There is no dispute that the records in question, i.e. the fifteen (15) envelopes and the twelve (12) stamps on those envelopes are government records. The biological residue is already inherent in and on those records. Plaintiffs are seeking to examine, inspect and copy those already existing records using their own subject matter experts and in the presence of the Defendant.

Using their own experts under New Jersey State Police supervision and safeguards, Plaintiffs’ request is no different than a request for photographing or scanning records with their own equipment. Thus, the custodian is not creating a new record. The records exist and have existed since the time those envelopes were sealed, and those stamps were affixed. Plaintiffs’ expert Mr. Danny Hellwig noted

that, “the sealed interior flaps of the envelopes or the undersides of affixed stamps-where biological material may be preserved” would yield the most likely result from these existing records (Pa92).

Plaintiffs request is strictly limited to a fact-specific standard complying with archival practices, minimal risk, minimal damage, utilizing non-destructive techniques. Limiting the scope of EO 110 to these standards would not be a categorical bar and would not lead to “absurd results” in this unique case.

To counter this argument, the Court cites *Burnett* noting that, “OPRA does not obligate a custodian to provide a requestor with a copy of a record that does not exist or an obligation to create such a new record from information in its possession” (Pa251). This is a hollow and inaccurate statement of law. The biological records do exist and there is no request to seek any “new records.”

Accordingly, the Appellate Court should reverse this order, or remand to consider a tailored access order and protective conditions rather than dismissing Plaintiffs’ case as a non-OPRA request.

POINT THREE:

THE SUPERIOR COURT ERRED IN NOTING THAT THE COMMON LAW RIGHT OF ACCESS BALANCING TEST APPLIED IS A PER SE RULE (Pa251).

Under the common-law right of access, courts balance the public interest against the State’s interest. The Court treated any alteration risk as dispositive and

did not weigh narrower alternatives or protective orders such as a neutral examiner, or a professional forensic scientist. Further, there was no consideration of alternative options such as swab-only, no detaching of the stamps options, or no opening of the flap. The Court also did not consider full chain of custody, or on-site Supervision. Thus, the Court effectively made a categorical ruling and did not apply the individualized balancing test under the common-law right of access, which is required.

This was perhaps most in evidence during oral arguments. Plaintiffs' counsel, Kurt W. Perhach, referred the Court to look at Plaintiff's Exhibit P-24, which is a statement of Mr. Wayne McDaniel (Pa203). Mr. Perhach argued that this is one of three examples presented to the Defendant by the Plaintiffs that has almost zero chance of causing any type of damage if a forensic examiner withdrew the biological record under the stamp. Clear evidence exists by looking at the photograph of envelope 11 (Pa203). The stamp on that envelope is only about halfway affixed to the paper and by looking at the lines on the stamp, it appears that the positioning of the stamp has shifted. Not only does it appear that the Court entirely ignored this argument, but it also did not apply the requisite balancing test.

In the spirit of OPRA, Plaintiffs submitted overwhelming public interest and support for their request. One example of this interest is Plaintiffs' Exhibit, P-17 (Pa151), which is a petition for DNA testing submitted by over one hundred (100)

members of the public people from across the United States and around the world in support of Plaintiffs' efforts. Additional proof of this public support was submitted by Margaret Sudhakar (Pa94) and Sigi Raich (Pa119), who have been zealous advocates for historical preservation and truth in this case for decades. Plaintiffs also offered support letters from retired Federal agents Mary Ellen O'Toole (Pa158), and Mary Francis Martin (Pa186) as well as authors including Robert Zorn (Pa165), Greg Ahlgren (Pa171) and Stephen Monier (Pa174). Plaintiffs submitted statements from relatives of people involved including Patrick Bamburak who is the great-grandnephew of former New Jersey Governor Hoffman (Pa162), and Dr. Martin Dolan, who is the great-grandnephew of Special Agent Michael Francis Malone, who worked closely on the Lindbergh kidnapping case (Pa184). Plaintiffs also submitted numerous statements from concerned citizens including Kyle Devlin of Hopewell (Pa190), and Jeff Boyarsky (Pa188), as well as a statement from the Mayor of Bruno Richard Hauptmann's hometown of Kamenz, Germany, Roland Dantz (Pa192).

The Court merely glanced over this overwhelming public support on oral arguments, acknowledging that there remains a significant amount of interest in this case without conducting a proper balancing test of the Defendant's preservation of evidence claim against the public's interest.

Further, the Court completely disregarded Plaintiffs' argument regarding the purpose of preserving those envelopes. There is no way keeping these documents in folders and boxes outweighs the public's interest in knowing who sent those envelopes and whose biological records are contained on them.

The Court also erred in referring to Governor Hughes' earlier EO's noting that "EO 110 did not expand the public's rights vis-à-vis the Lindbergh archive beyond those available to any other government records subject to disclosure" (Pa251). In fact, that is exactly what EO 110 did. The entire purpose of Governor Byrne's EO 110 is to allow the public full, complete and total access to the entire archives in perpetuity. This access enables members of the public with a passive interest in the case to examine, inspect, and copy the records they want, as well as zealously passionate members of the public to examine, inspect, and copy the records they want, including the biological records contained in the archives.

The Superior Court demonstrated an abuse of discretion based on its failure to apply the common-law right of access balancing test to the interests of the public. The Appellate Court should reverse and vacate the Superior Court's order. In the event the Appellate Court does not deem this action warrants a reversal, the case should be remanded for a proper common law right of access balancing test with an evidence-based risk assessment and narrowly tailored conditions.

POINT FOUR:

**THE SUPERIOR COURT ERRED IN MAKING A PREMATURE
FACTUAL DETERMINATION ON A PAPER RECORD (Pa209;
Pa251)**

Recognizing that the Court may not fully comprehend the process for collecting forensic samples, Plaintiffs entered a motion to have witnesses testify to explain to the Court different forensic options (Pa207). That motion was wrongly denied by the Court the day of the argument on June 6, 2025 (Pa209).

The Court credited Defendant's archivist Gregory Ferrera's certification which prohibits swabbing and asserting alterations and treated Plaintiffs' proposed methods as necessarily manipulative by opening flaps and removing stamps (Pa214). The Court denied Plaintiffs' request to have their experts testify as witnesses or answer any questions about their procedures and disregarded their claims that modern techniques can be minimally invasive and non-destructive. Material factual disputes existed that warranted an evidentiary hearing before dismissing this matter with prejudice.

The Defendant did not seek to enter archivist Gregory Ferrera as an expert in forensics and the Court did not appear to consider him one. The Plaintiffs offered three experts in forensics, Dr. Colleen Fitzpatrick (Pa42, Pa79), Mr. Danny Hellwig (Pa92) and Dr. Angelique Corthals (Pa126, Pa148). None of these experts were questioned or disputed as being experts by either the Defendant or the Court.

However, it appears that deference was given to the Defendant's archivist over these three forensic experts submitted by the Plaintiffs, without clear explanation or warrant. Furthermore, no explanation was provided by the Court regarding why it categorically lumped all three experts submitted by the Plaintiffs together rather than distinguishing between them.

In Plaintiff's Exhibit P-5, Mr. Danny Hellwig references how non-destructive means would be utilized to extract the biological records. (Pa92). Mr. Hellwig states that instead of cutting or causing any permanent alteration or damage, "Proven forensic techniques should be employed that allow for the careful extraction of potential DNA without compromising the structural integrity of the evidence" (Pa92). Mr. Hellwig was prepared to testify on his proposed forensic options, but the Court denied Plaintiffs' motion (Pa92).

In its motion denial, the Court failed to convert this OPRA proceeding to a plenary hearing (Pa209). Its rationale was that "Plaintiffs fail to illustrate why witness testimony is necessary for the purposes of obtaining the records sought other than saying this case is 'too important'" (Pa209). This is misleading and inaccurate. In Plaintiff's motion request, Plaintiffs stated, "Dr. Colleen Fitzpatrick can easily explain the process the Plaintiffs are seeking and will be a valuable witness for the Plaintiffs." (Pa207). Further, Plaintiffs complete statement was omitted in a manner that appears to be misleading. Plaintiffs stated, "This case is too important to too

many people to have a decision rendered by the Court without...an opportunity for the Court to understand the ease of process by which the Plaintiffs are seeking justice...” (Pa207). Plaintiffs also made this point clear in its response to Defendant’s opposition to its motion noting that, “Listening to one or two forensic experts explain to the Court how easy and simple the process of collecting forensic samples from these stamps and envelopes is, will ensure the Court more completely understands the extremely minimal risk to any alterations of said documents.” This Court, without further explanation, seemed predetermined that the documents would be permanently altered and manipulated without any supporting testimony or evidence.

To that point, the Court states “Obtaining the DNA profile of the envelopes and stamps would permanently alter the conditions of the items” (Pa251). That is not what Plaintiffs’ experts said. The Court continued, noting that, “Plaintiffs’ experts emphasize the use of nondestructive methodology, even these methodologies may result in permanent alterations to the items as the experts state that they have to open the envelope flaps and remove the stamps” (Pa251). Mr. Danny Hellwig does not state that at all and never mentioned that he would need to “open envelope flaps and remove the stamps” (Pa251). It appears the Court came up with this conclusion from one of the other three Plaintiff experts. Perhaps the Court took what Dr. Colleen Fitzpatrick referenced to be a certainty for Mr. Danny Hellwig’s statement.

Dr. Fitzpatrick stated that, “I agree with the assessment of Resolve Forensics that to obtain a sample of DNA from the envelopes, it is best to open the flaps and to remove the stamps, swab them, and then replace both flaps and stamps in their original condition” (Pa79). While this is one forensic option Plaintiffs’ experts are aware of, there are many other forensic techniques which could have easily been understood by the Superior Court had they granted Plaintiffs motion to allow witness testimony. Instead of clarifying how forensics can be obtained, the Court incorrectly assumed they were fully aware of Mr. Danny Hellwig’s proposed collecting options (Pa79).

The third Plaintiff expert in this case is Dr. Angelique Corthals. Dr. Corthals noted that the technique she would use “to retrieve endogenous DNA (i.e. of the person who issued the letters) are non-destructive and consist in swabbing the envelopes’ seals with both dry swabs and swabs containing ESDA-Lite, as well as gently vacuuming (Plaza et al. 2014; Slack, 2014; Parsons et al. 2016; McLaughlin, 2021) (Pa148). These techniques are well established and approved by the Department of Justice for the use of historical and valuable documents” (Pa148). Based on the Court’s grossly misleading determination (Pa251), it does not appear the Superior Court considered this gentle vacuuming technique “that is well established and approved by the Department of Justice” (Pa148).

Aside from its misleading, incorrect and collective classification of “Plaintiffs’ experts,” the Court seems to think that Plaintiffs were requesting a ruling

in their favor and then the “Plaintiffs experts” would immediately arrive at the Defendant’s location and start extracting DNA. That is not what was asked for, nor what is currently sought. Plaintiffs and their friends have sought for years for this to be a collaborative process in full view of and with the cooperation of the Defendant. This point is so important that Plaintiffs made it in their closing paragraph of their brief, where they noted that, “Plaintiffs wish to obtain the forensic DNA in the State Police Museum, on camera and in the presence of the Defendants ensuring both sides are satisfied that the evidence has not been tainted with.”

There are multiple Plaintiff experts. There are multiple approaches to examine and inspect the biological records. Plaintiffs seek and have sought this to be a discussion between their experts with the Defendant on the best approach, methodology and tactics to preserve these governmental records with the enforcement of EO 110. Plaintiffs have been forced into litigation because the Defendant does not want to entertain this conversation and does not want any part of Plaintiffs’ biological records request. However, should the Appellate Court overturn the Superior Court’s decision and compel the Defendant, the Plaintiffs and their experts will work cooperatively and directly with the Defendant on options that both adhere to the purpose, nature and intent of EO 110, while adhering to all compliant historical preservation protocols without exception.

The Superior Court erred in numerous ways regarding these points because it had prejudged and predetermined its factual decision, which is perfectly summarized by its sentence, “Depriving the public to access to these items in their original state would not serve the public interest” (Pa251).

Plaintiffs made the argument several times that these records are not in their “original state.” This is clear to anyone familiar with the documents, and is visible in Plaintiff’s Exhibits P-6 (Pa94), P-14 (Pa119) and P-24 (Pa203). Over the course of more than ninety (90) years, many of these documents have deteriorated and are not at all in their “original state.” The lower Court wants the Appellate Court to believe that these records are in their “original state,” yet the same Defendant “protected” many of these records when a water leak occurred above them by placing a garbage can underneath the water leak without moving any of the records (Pa94, Pa119). The lower Court misunderstood basic facts in this case, including misunderstanding what “original” means while claiming all three experts submitted by the Plaintiffs gave identical statements while proposing the same method of extracting a forensic analysis. This is not at all what the Plaintiffs argued, or what they proposed prior to litigation.

In its decision denying witness testimony to clarify these points, the Court focused on what the Plaintiffs hope to do with the records, noting that, “Witness testimony as to what Plaintiffs hope to do with the records once they obtain them is

irrelevant to whether Defendant violated OPRA or the common law right of access in denying their request” (Pa209). Plaintiffs did not discuss what they hope to do with the records other than to determine whose DNA profile is on the records. This is yet another example of a predetermined decision being made without due process afforded to the Plaintiffs.

The Appellate Court should reverse. The Superior Court demonstrated abuse of discretions in its arguments. If deemed less severe, the Appellate Court should at least remand for an evidentiary hearing with expert testimony on archival processes, non-protective protocols, and risk-mitigation. Plaintiffs maintain that these basic errors are obvious enough to overturn the seriously incorrect and misleading decision from the Superior Court and these glaring inaccuracies did not warrant a dismissal with prejudice.

POINT FIVE:

THE SUPERIOR COURT ERRED IN MISREADING EXECUTIVE ORDER 110 AND ITS “NO RISK” CLAUSE (Pa251).

The Court relied on the language from EO 110 empowering the Superintendent to “insure that there is no risk of damage or mutilation of such files” (Pa40) and treated this language as an absolute and substantive bar. Instead, what this language does is govern procedures. Those procedures were the same for over forty-two (42) years. The EO only empowers how access is administered, not the existence of examination rights. If it were contrary, then even supervised handling

of any of the 225,000 documents would be impossible, since there is always a risk to damage or mutilate paper records with supervised handling, or any “handling” for that matter.

What Governor Byrne empowered the Superintendent to have, is the power to establish administrative procedures. Those procedures were in place for over forty-two (42) years until the archives were closed to Plaintiffs for over fourteen (14) months. The very fact that the Court appears to be granting Defendant’s arguments that the Superintendent is empowered to eliminate all risk of damage or mutilation is an overreach when Plaintiffs demonstrated that Defendant could not guarantee an elimination of risk of damage or mutilation when Defendant’s employees chose to place a garbage can and a garbage bag underneath the archives when the roof was leaking, while also choosing not to move any records underneath that water leak. The better construction is a reasonable risk-minimization approach through protocols.

Similar to the Court indicating that all Plaintiff’s experts have the same proposed testing methods, another example of the Court’s overreach is contained within the following statement, “obtaining the DNA profile of the envelopes and stamps would permanently alter the condition of the items” (Pa251). These types of absolutes are wrong, speculative, and demonstrate a gross overreach of interpretive

law directly rejecting the obvious reasons why the Governor issued the Executive Order in the first place.

The Appellate Court should clarify the EO's procedural focus, require the Court or Defendant to evaluate whether proposed safeguards meet archival standards rather than impose a per se prohibition.

POINT SIX:

THE SUPERIOR COURT MADE A REMEDIAL ERROR IN DISMISSING THIS MATTER WITH PREJUDICE (Pa251).

Even if the Court was correct in its decision that OPRA alone does not compel forensic analysis of the documents in question, the Court acknowledged an alternate path. That path is for Plaintiffs to submit a research-testing proposal to the Superintendent. Dismissing with prejudice foreclosed a tailored judicial remedy. This act prohibited the Plaintiffs from submitting a proposal to the Superintendent to consider a concrete proposal on an administrative record or allow an amendment to seek declaratory or injunctive relief compelling a reasoned exercise of discretion.

It is likely that the Court does not know that Plaintiffs and their friends have already tried this over the past several years. It is also likely that the Court does not know much about the communications, physical visits to the museum, phone calls, emails and proposals from Plaintiffs and their friends to the Defendant which all led to any research-testing proposal being entirely rejected. Despite that lack of

knowledge, by making this suggestion, the Court should not have dismissed with prejudice given this recommended course of action.

The Appellate Court should modify the dismissal without prejudice or remand with instructions for agency consideration under EO 110, with judicial review for arbitrariness.

POINT SEVEN:

THE SUPERIOR COURT ERRED IN NOTING THAT THE PLAINTIFFS FAILED TO STATE A CLAIM (Pa251).

Plaintiffs, their friends, and others were attempting to access the archives between early Spring 2024 and sometime in late June 2025. Plaintiffs had been conducting research, visited the museum, and were denied access to examine, inspect, or copy any of the archival records including biological records at the New Jersey State Police Museum. The unreasonable denial of their OPRA records requests during the time the museum's archives were closed to them caused them harm and continued to harm their research. They all have a valid claim under OPRA.

As a part of that claim, they have been attempting to obtain a forensic analysis of the thirteen (13) ransom envelopes and ten (10) stamps on those envelopes sent to Charles Lindbergh or his intermediaries as well as the two (2) letters sent by Bruno Richard Hauptmann and both stamps affixed to those envelopes. Seeking a forensic analysis of these documents to obtain the biological records does not limit their claim that they were improperly denied access to the archives.

The Appellate Court should reverse or remand to address this inaccuracy by the Superior Court.

POINT EIGHT:

THE SUPERIOR COURT ERRED IN ITS UNDERSTANDING OF THE BASIC ARGUMENT MADE BY PLAINTIFFS AS TO WHY EO 110 EXISTS (Pa251).

The Court claimed that Plaintiffs asserted that “Governor Byrne issued EO 110 for three reasons: (1) transparency; (2) his belief that Bruno Richard Hauptmann did not act alone; and (3) intent to link the Lindbergh case to OPRA” (See Volume 2, page 115). These are not the three reasons asserted by the Plaintiff. The catalyst to issue EO 110 was as a reaction to Bruno Richard Hauptmann’s widow, Anna Hauptmann, filing a 55-page wrongful death lawsuit the week that EO 110 was issued.⁸ While transparency was sought by Governor Byrne, that is part of the third reason, which is the connection to OPRA.

This basic misunderstanding demonstrates to the Appellate Court the sheer lack of understanding of this case and is another example warranting a reversal.

⁸ See Hauptmann v. Wilentz, 570 F. Supp. 351 (D.N.J. 1983).

POINT NINE:

THE SUPERIOR COURT ERRED IN INDICATING THAT PLAINTIFFS' ATTORNEY IS NOT ENTITLED TO ATTORNEY FEES (Pa251).

For the aforementioned reasons, the Court incorrectly noted that Defendant properly denied Plaintiffs' OPRA requests. Accordingly, Plaintiffs' attorney is entitled to reasonable attorney fees for the unreasonable denial by the Defendants.

CONCLUSION

Plaintiffs and their friends have been seeking the truth in this case for years. The evidence presented before the Appellate Court is overwhelming demonstrating the purpose, nature and intent of Governor Byrne's EO 110, and how the Plaintiffs have been harmed by the Defendant. For the aforementioned reasons, this case should be reversed. If the Appellate Court deems that reversal is not appropriate, the case should be remanded to the Superior Court for multiple errors.

Respectfully submitted,
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