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**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT STATE
OF IDAHO COUNTY OF FREMONT**

STATE OF IDAHO,
Plaintiff

CASE NO. CR22-21-1624

Vs.

**DECLARED DEFENDANT COUNSEL RESPONSE
AND OBJECTION TO MOTION FOR
CONTEMPT**

LORI NORENE VALLOW
AKA LORI NORENE DAYBELL

COMES NOW THE DEFENDANT LORI DAYBELL by and through her Attorney of Record,
Mark L. Means of Means-Law and hereby responds to the Prosecution Motion for Contempt to
this Court as follows:

The prosecutions unsupported ill timed and malicious attempt at slandering the
Defendant and Defense Counsel Mark L. Means regarding the unethical, quite possible,
unconstitutional actions of the Prosecution and the Idaho Department of Health and Welfare
(agents) in its blatant manipulation and coercion of mentally ill Defendant Lori Vallow (Daybell)
is the equivalent of victim shaming and should be immediately dismissed by this Court without
a hearing and Prosecution sanctioned for its blatant misuse of public funds and position of
power. The depths this Prosecution is willing to go in shirking his heighten ethical duties to

DECLARED DEFENDANT COUNSEL RESPONSE AND OBJECTION TO MOTION FOR CONTEMPT

1 appease the personal vendetta against Mr. Means in this matter is cause for his disqualification
2 and or withdrawal from this matter. The concerns of the miscarriage and manipulation of
3 justice in this matter is set out as follows:

- 4 1. Mr. Wood made it blatantly obvious of his desire to have my office withdraw and or
5 disqualified in this matter to his “off the record” coercion, manipulation, unethical,
6 threatening statements to Mrs. Summer Shiflet prior to Mrs. Shiflet’s statement to the
7 Rexburg Police Department.¹ He wishes to have Mr. Means disqualified so that
8 “Lori” would be encouraged to “talk” to the prosecution through an appointed
9 public defender.^{2 3}

10
11 In this recording, and since then discovered, as discovery responses are
12 unquestionably delayed by the Prosecution, Mr. Wood has engaged in further
13 slanderous actions, insulting Attorney Means, and called him to material witness
14 April Raymond the “*bane of his existence...*” and further references to his LDS status
15
16
17

18 ¹ Detectives of this Police Department are believed to have been involved in
19 this manipulation as part and parcel of these unjust actions. Please see
20 attached Shiflet Transcript. Dr. Davidson uncontested professional analysis
21 of this behavior. As the Court has taken judicial notice of matters from
22 previous cases involving the Defendant it may do so now regarding the Motion
23 to Disqualify Mr. Wood of which he offered no evidence to the evidence
24 presented in the matter. Mr. Wood’s Counsel cited a “local boy” to the
25 Madison County Area, Judge to maintain his position against Disqualification.

26 ² Believed to be Mr. Archibald, based on previous conversations with Mr. Wood.
Please note no intent or insult to Mr. Archibald or his legal abilities or
expertise.

³ Mr. Archibald is not interested in investigating this matter based on what
appears to be Mr. Wood representation he would not call LDS Attorney as a
witness. This approach, if allowed by this Court, is the ultimate “sweeping
under the rug”. The IDHW, LDS Attorney, Prosecution should be investigated
to see how deep this manipulation has occurred. By victim shaming and bully
tactics they appear to be concerned of what an investigation will unveil.

as a Bishop and membership, in again, attempts to build a strawman case on an unethical foundation of sand.⁴

In addition, Mr. Wood, the prosecution, and the IDHW “got caught” as stated and testified by Dr. Newton, University of Idaho School of Law Ethics Professor in attempted manipulation of mentally incompetent Defendant and now shift blame to Attorney Means as was the case with Attorney Garrett Smith in the above referenced Shiflet matter. This is Defacto victim shaming of Lori. The depths of desperation engaged by a “caught” individual with a heighten obligation to comply with ethical rules and guidelines is nauseating. The ethical standards of my office own Lori an assertive advocacy to address and prevent miscarriage of her rights.

2. Much like the agents of the IDHW, this prosecutor is attempting to use his local status and position of authority to circumvent Lori’s constitutionally protected right to her choice of counsel. Any possible means, ethical or not, are not beyond the accusations of this Prosecutor. The clear self-evident manner this case is being prosecuted is quite simply the “ends justify the means.”⁵ Removal of Attorney Means by way of accusation of contempt due to obligatory advocacy for Lori is not only illogical but laced with malicious personal undertones in a misguide attempt to

⁴ To a criminal defense attorney this “insult” is quite complimentary. But this was said to a material witness while the material witness was giving statements relevant to this matter. Mr. Wood’s presence in Hawaii for these “interview” at the taxpayer expense where he jokes about having to travel to different islands in Hawaii, for potential interviews and engaging in defamatory behaviors is clear sign of an individual that quite possible engages in similar unethical and or unconstitutional behaviors to attempt to stay employed as Prosecutor. These behaviors remind me of tactics used by an insecure elementary school bully.

⁵ No pun intended.

1 redirect the Court purview to further investigation of this matter by way of special
2 prosecutor, discovery, subpoenas, and criminal depositions.

3 3. Again, Mr. Wood has made himself a material witness in this matters.⁶ It is the
4 intent to call Mr. Wood for a full accounting (not limited to the following) of his
5 personal dealings with the material witnesses in this matter and to fully expose for
6 the Court and Jury his self-imposed manipulative tactics in regard to this matter.
7 This includes but not limited to his LDS status/membership/"calling" repeatedly
8 disclosed, unsolicited in most instances, to witnesses, personal insults to counsel
9 and defendant(s), withholding/concealment of evidence, etc. He should do the
10 ethical thing, especially given the notice of seeking the death penalty for Mr. Daybell
11 and recuse himself. His previous and current involvement bring this entire
12 prosecution into question and concern.⁷

13 4. Regarding the facts surrounding this matter that warrant investigation, we know
14 without questions:

15 a. Lori, currently incompetent and unable to stand for trial, was manipulated by
16 agents/employees of the IDHW, to make statements to an LDS Attorney,
17 who was clearly not her attorney knowing full well that Lori has counsel.⁸

18 This LDS Attorney took the call and engaged in conversations with Lori. This
19
20
21

22
23 ⁶ As previously disclosed.

24 ⁷ It is Mr. Wood's letter to Madison County Idaho Board of Commissions letter
dated 3/16/21 where he expresses his offices inability to prosecute this
matter and requests assistance, despite his elected tax paid funded
employment duties.

25 ⁸ Completely irrelevant and unrelated to rehabilitation treatment and quite
possible unethical actions of persons in authority and control of Lori.
26

1 LDS Attorney then called to report this phone call and its contents to Mr.
2 Wood. *This LDS attorney did not at this time call Defense Counsel.* Mr. Wood
3 then at sometime reported to Mr. Archibald the phone call.⁹ Mr. Archibald
4 called LDS Attorney then and only then did a phone call come to Mr.
5 Archibald from this LDS Attorney. Not as imply in attached issued
6 statement.¹⁰ Finally we know from Mr. Wood had a more detailed
7 conversation with this LDS counsel by his own statements expressed to this
8 Court that Lori was “seeking new counsel” compared to his statements to
9 Archibald that nothing was discussed and or implied in his contempt filings
10 now. ¹¹

- 11
12
13 5. Furthermore, this is an attempt to continue to drive a wedge between Co-counsels
14 in the defense of Lori. This Court, sua sponte, appointed Mr. Archibald as a death
15 penalty counsel in a case of which no death penalty notice has ever been filed in this
16 matter. The Court appointed Mr. Archibald as “co-counsel” and it is self-evident
17 that there are competing theories of defense and avenues of advocacy or Lori as
18

19 ⁹ Please see attached news release statement by the LDS Law Firm involved in
20 this matter. Please note the subtle discrepancies of not releasing or
21 identifying the specific attorney involved in the call. Please see in this
22 statement that there is no mention of the “notes” this LDS attorney alleged
23 kept from this phone call nor have they been produced to my office as of yet.
24 Please notice that this statement did not mention that the Attorney desired
25 to be removed is Mr. Jim Archibald as the sua sponte appointed public
26 defender for a death penalty case that does not legally exist against Lori.
Please notice the “subsequent calls” reference to imply calls were made to
her Counsel and prosecutor.

¹⁰ Please note a Utah State Bar Complaint has been filed in this matter with a
requests for an investigation.

¹¹ Please note that Mr. Wood has filed contradictory affidavits regarding his
offices/detectives access to privilege communications between Mr. Means and
Lori previously.

1 illustrated in this matter. This conflict is a direct assault on Lori's right to counsel of
2 her choice and an unnecessary interference to her rights to a unified defense
3 imposed solely by this Court.

4 6. Finally, Mr. Wood references further ex parte communication with this Court of
5 which my office was not notified nor allowed an opportunity to participate. This
6 reeks of an attempt to conceal a guilty conscious.
7

8 Wherefore, Defendant requests this contempt matter be dismissed forthwith. To allow
9 the prosecution to further this matter is to allow intimidation childish tactics be further
10 directed at the defense to consume the very limited resources of the defense compared to the
11 prosecution blank check. It strains credulity to believe a prosecution would file a victim
12 shaming contempt motion in an attempt to further thwart the basic constitutional rights of
13 Lori.
14

15 Any for further relief as discovered through the above motion/production/disclosures as
16 become evident.

17 DATED this 2 day of December 2021.

18 By Mark L. Means
19 Mark L. Means
20 Attorney
21
22
23
24
25
26

CERTIFICATE OF SERVICE: I hereby certify that the above aforementioned document was served as identified below DATED this 2 day of December 2021.

Ms. Lindsey A. Blake x____ Email
Email: prosecutor@co.fremont.id.us

Mr. John Prior x____ Email
Email: john@jpriorlaw.com

Mr. Jim Archibald x____ Email
Email: jimarchibald21@gmail.com

Mr. Robert Wood x____ Email
Email: mcpo@co.madison.id.us

DATED this 2 day of December 2021.

By M.L. Means
Mark L. Means
Attorney



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IN THE DISTRICT COURT OF THE
SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF FREMONT

STATE OF IDAHO,

Plaintiff,

vs.

Case No. CR22-20-0838

LORI NORENE VALLOW AKA
LORI NORENE DAYBELL,

Defendant.

RECORDED CONVERSATION

RECORDED ON
THURSDAY, OCTOBER 1, 2020

PARTICIPANTS
PROSECUTOR ROB WOOD
SUMMER SHIFLET
GARRETT SMITH

RECORDED CONVERSATION**RECORDED ON****THURSDAY, OCTOBER 1, 2020**

MR. WOOD: -- the ones kind of running down the kids' case because they were last seen in Rexburg, and -- or were last living in Rexburg.

MS. SHIFLET: Right.

MR. WOOD: I think Tylee was last seen in Yellowstone, but ...

And so we were the ones that, like, knew everything about the case, and so they assigned us on that.

I'm just going to tell you right now; we are going to be filing conspiracy to commit murder charges against both Chad and Lori.

MR. SMITH: Good.

MR. WOOD: And we're not shy about that. I've told their attorneys.

MR. SMITH: Okay.

MR. WOOD: His attorney keeps pretending like I've never said that. Whatever. What?

But we are. We have to.

MS. SHIFLET: Yeah.

MR. WOOD: We have to.

1 But I kind of what to give, like, a little
2 bit of background of where we are and kind of, like,
3 our kind of theory of how this ended up where it
4 was. We know that this is not the same Lori
5 everyone else knew. What's so strange to me is
6 everyone we talk to -- everyone we talk to -- who
7 knew Lori before this, they're like, well, she was
8 the primary president. She made quilts for these
9 kids. She --

10 **MS. SHIFLET:** Yeah.

11 **MR. WOOD:** She made everything fun.

12 **MS. SHIFLET:** Mm-hmm.

13 **MR. WOOD:** Everyone loved her. She loved
14 everyone.

15 **MS. SHIFLET:** Great mom.

16 **MR. WOOD:** Great mom. That's what
17 everyone says.

18 And, you know, so the one thing I'm going
19 to kind of ask you to consider is maybe something
20 happened, I don't know what. I don't know if it's
21 psychological. I don't know. I don't know if we'll
22 ever know. But something happened. And I think
23 Colby, the way he said it to me, I think, is kind of
24 -- it's like, "The person who's in that jail cell is
25 not my mom. It's someone else."

1 **MS. SHIFLET:** Yeah.

2 **MR. WOOD:** The flip side of that is -- I
3 shouldn't say the flip side. But I want to be
4 clear. I'm not going to pull any punches on any
5 defendant in this case, right? Like, I've got my
6 job to do and --

7 **MS. SHIFLET:** Absolutely.

8 **MR. WOOD:** But we also want the truth and
9 the whole truth and the context of it. And Chad
10 Daybell is -- I -- did you ever meet Chad?

11 **MS. SHIFLET:** So I met him once at a
12 Preparing People -- I went to one Preparing People
13 thing.

14 **MR. WOOD:** Okay.

15 **MS. SHIFLET:** And my mom and husband and I
16 went to support Lori, and she wanted to support Mel,
17 so we went and met Chad after he talked for, like,
18 90 seconds maybe.

19 **MR. WOOD:** Mm-hmm.

20 **MS. SHIFLET:** If that. And then he called
21 me -- when Lori got transferred to the Idaho jail,
22 he texted me and said Lori wanted to talk to me.
23 And I was like, yeah. And then the second I hung up
24 with her, he called me to ask me about bail for
25 Lori. So I've talked to him maybe three times

1 briefly on the phone. Never a long, extended
2 conversation. But the first thing he said to me
3 when he called me was that -- he said, "Lori hasn't
4 told me very much about the kids, so there's not
5 really much I can tell you about it."

6 **MR. WOOD:** Right. Of course he said that.

7 **MS. SHIFLET:** Mm-hmm.

8 **MR. WOOD:** Well -- well, good chat,
9 Daybell.

10 So what I want to kind of tell --

11 **MS. SHIFLET:** I have -- I have my own
12 opinions formed of him --

13 **MR. WOOD:** He's --

14 **MS. SHIFLET:** -- after all this.

15 **MR. WOOD:** I bet you do.

16 **MS. SHIFLET:** Yeah.

17 **MR. WOOD:** He is -- he's highly
18 manipulative.

19 **MS. SHIFLET:** Yeah, I see that.

20 **MR. WOOD:** I'm not going to say he's
21 highly intelligent, but you don't have to be highly
22 intelligent to be highly manipulative.

23 **MS. SHIFLET:** Absolutely.

24 **MR. WOOD:** He is extremely manipulative
25 and -- and I want to -- your sister manipulated him

1 in some ways, too. But the -- the context for
2 everything that happened came from Chad.

3 **MS. SHIFLET:** Absolutely.

4 **MR. WOOD:** And unfortunately -- we -- we
5 do -- we have enough evidence to prosecute them, and
6 we are. The case against your sister is stronger.
7 But I just -- I kind of want to give you, like, just
8 that background. That's kind of the context we see
9 this as. Like this guy came in here and, you know -
10 - again, I'm not making excuses for anyone, but kind
11 of blew up this situation.

12 **MS. SHIFLET:** Mm-hmm.

13 **MR. WOOD:** And he did not care who died.

14 **MS. SHIFLET:** Mm-hmm.

15 **MR. WOOD:** Who got hurt. He did not care
16 at all.

17 And the other thing I'll tell you is your
18 sister truly believes that everything she's done has
19 been done in righteousness.

20 **MS. SHIFLET:** I know.

21 **MR. WOOD:** I know I'm kind of using LDS
22 speak there.

23 **MR. SMITH:** Yeah, that's --

24 **MR. WOOD:** That's -- that's --

25 **MS. SHIFLET:** (Indiscernible) percent,

1 that's my interpretation also.

2 **MR. WOOD:** Yeah.

3 **MS. SHIFLET:** I think she hundred percent
4 believes --

5 **MR. WOOD:** She believes it.

6 **MS. SHIFLET:** Mm-hmm.

7 **MR. WOOD:** Every once in a while, you'll
8 see kind of a little crack in, like, a jail phone
9 call, but she'll --

10 **MS. SHIFLET:** Well, you've heard our
11 conversations, so you know that I -- I get that
12 she's not fully aware of what she's really done.

13 **MR. WOOD:** Right.

14 **MS. SHIFLET:** Yeah.

15 **MR. WOOD:** Yeah.

16 **MS. SHIFLET:** I don't think she is.

17 **MR. WOOD:** Yeah. I mean -- well, I'm
18 going to say it this way. I think she knows what
19 she's done --

20 **MS. SHIFLET:** She knew enough to lie to us
21 about it.

22 **MR. WOOD:** But -- yeah. But she -- the
23 context under which it was done was this religious,
24 I mean, just these ideas that are out there. I can
25 say this because I am LDS, like, no basis in the LDS

1 faith. I mean, just -- you said in her phone call
2 to her.

3 So anyway, that's kind of where we're at,
4 and we, you know -- but again, we're just really
5 (indiscernible). And it's going to be hard to talk
6 about these things.

7 **MS. SHIFLET:** Oh, yeah.

8 **MR. WOOD:** We know that.

9 **MR. SMITH:** Yeah.

10 **MR. WOOD:** And they're going to be nice,
11 because obvious- -- you know you're not even a
12 person of interest in this.

13 **MR. SMITH:** Yeah. We've had that
14 conversation.

15 **MR. WOOD:** You're not --

16 **MS. SHIFLET:** Yeah.

17 **MR. WOOD:** Yeah. And -- but part of what
18 we need to do is understand what -- when you have a
19 case like this, it's not, like, just like a meth
20 case, like: Oh, you had meth. No one cares who you
21 are or anything.

22 **MS. SHIFLET:** Yeah, there's no drugs, no
23 alcohol.

24 **MR. WOOD:** Yeah.

25 **MS. SHIFLET:** It's just (indiscernible).

1 **MR. WOOD:** But this case is a --

2 **MS. SHIFLET:** Yeah.

3 **MR. WOOD:** We need to -- we need to
4 understand the context of who these people are.

5 **MS. SHIFLET:** Yeah.

6 **MR. WOOD:** And so that's a lot of what
7 they're going to be asking you about.

8 **MS. SHIFLET:** Okay.

9 **MR. WOOD:** And --

10 **MS. SHIFLET:** I'll do my best.

11 **MR. WOOD:** Like I said, I don't --

12 **MS. SHIFLET:** I mean --

13 **MR. WOOD:** It won't be easy. I know it's
14 going to be a hard -- hard interview for you, but --

15 **MS. SHIFLET:** I was wondering if you would
16 be willing to tell me, if you're able to tell me, if
17 there's any progress in what you know about Tylee
18 and her death? Is there any progress in her autopsy
19 where you understand better?

20 **MR. WOOD:** All I can tell -- well --

21 **MS. SHIFLET:** I mean, do you have a cause
22 yet or is it close to one?

23 **MR. WOOD:** She is at the FBI's state-of-
24 the-art crime lab. Unfortunately, there's a lot of
25 deceased bodies there that they're -- they're going

1 through.

2 **MS. SHIFLET:** I'm sure.

3 **MR. WOOD:** And so we're not -- we don't
4 know really any more yet.

5 **MS. SHIFLET:** Okay.

6 **MR. WOOD:** We may never know due to the --

7 **MS. SHIFLET:** Yeah.

8 **MR. WOOD:** -- the destruction of that
9 body. And, yeah. We hope we'll find out. We may
10 not. But obviously, we know it's her. There was
11 soft tissue that was still preserved enough to do
12 DNA tests.

13 **MS. SHIFLET:** Yeah, thankfully, you guys
14 found them.

15 **MR. WOOD:** Yeah.

16 **MS. SHIFLET:** Like, we wouldn't have ever
17 known --

18 **MR. SMITH:** Yeah.

19 **MS. SHIFLET:** And I would have never
20 dreamed that she would ever hurt them. So --

21 **MR. WOOD:** You know what? And everyone
22 says that.

23 **MS. SHIFLET:** Yeah.

24 **MR. WOOD:** That's what everybody says. I
25 never would have -- so it's -- it is -- it's a

1 tragic thing.

2 **MS. SHIFLET:** It really is, yeah.

3 **MR. WOOD:** And -- but I -- again, I just
4 want you to know how grateful we are, you know. I
5 know you know you don't have to talk to us, and so
6 we're just grateful that you're willing to and --
7 and helping us that way. And I -- it's, I'm sure,
8 kind of difficult knowing, like, they're asking me
9 for information that's going to help them in a case
10 against your sister, but -- but I -- I guess the
11 thing I want you to know is our whole goal is just
12 justice for these kids, you know.

13 **MS. SHIFLET:** Yeah.

14 **MR. WOOD:** And we -- I mean, our hope --
15 our hope is it comes to a -- your sister's actually
16 made some overtures. She might be willing to talk
17 to us.

18 **MS. SHIFLET:** I hope she does. I pray for
19 that all the time.

20 **MR. WOOD:** We hope she does.

21 **MS. SHIFLET:** Yeah.

22 **MR. WOOD:** She actually was talking about
23 -- with Chad about talking to us before we found the
24 bodies, just a few days before, and he talked her
25 out of it.

1 **MS. SHIFLET:** Hmm.

2 **MR. WOOD:** Which is too bad. It would
3 have been better for her to tell us.

4 **MR. SMITH:** Yeah, sure would've been.

5 **MS. SHIFLET:** I agree.

6 **MR. WOOD:** I mean, it -- we were actually
7 just finishing up our warrant on the day that she
8 said that. We were just getting ready to go out
9 there, but it would have been -- you know, that
10 would have been even better, and he talked her out
11 of it.

12 **MS. SHIFLET:** Yeah.

13 **MR. WOOD:** And then the night before, she
14 says to him, like, hey, what do you think about, you
15 know, and he uses this kind of, I call it spiritual
16 abuse, spiritual manipulation.

17 **MS. SHIFLET:** Yeah.

18 **MR. WOOD:** We've all seen that guy in the
19 LDS religion whose wife has to obey him because he
20 has the priesthood type thing. And that's not what
21 he says, but it's very -- it's the same type of
22 thing.

23 **MR. SMITH:** Mm-hmm.

24 **MR. WOOD:** You know, "Well, I'm the
25 visionary guy," so, you know.

So anyway, again, I just wanted to meet with you real quick, introduce myself and Makenzie. She's --

MS. SHIFLET: Yeah. Well, I've obviously
seen you.

MR. WOOD: Yes. Yeah. I'm -- yeah.

MS. SHIFLET: But I don't take any joy in doing anything that's going to harm her. I don't take joy in her spending her life in prison.

There's nothing --

MR. WOOD: Sure.

MS. SHIFLET: It hurts to think about her
being in there. MR. WOOD: There's

nothing good about a case like this, right?

MS. SHIFLET: There's nothing good about
it.

MR. WOOD: Even like -- even if you win a case -- and Garrett's been in court. Like there's cases, you know, as a prosecutor, like, you take to trial and you win and you're like -- even at the end, you're, like, well, nothing good has -- it's all -- it's all bad.

MR. SMITH: Yeah.

MS. SHIFLET: It's all bad, I know.

MR. WOOD: But the one thing -- you know,

1 I said this to someone the other day who knows your
2 sister, is our goal is -- sometimes you get a murder
3 and all you have is that murder and you just have to
4 run out and charge it and then kind of put it
5 together. We are -- we were able to put them in
6 jail with a high bail on these lower charges and put
7 together our case. And our goal is to have such a
8 strong case that when she has competent counsel -- I
9 don't know if you know this. Her attorney has never
10 handled a felony before.

11 **MS. SHIFLET:** Hmm.

12 **MR. WOOD:** He has never -- never -- done
13 any meaningful criminal work at all and he doesn't
14 know what he's doing. He's a nice guy.

15 **MS. SHIFLET:** Yeah, I've met him. He's --

16 **MR. WOOD:** Other than when he's lying
17 about me. But he -- but he's -- he doesn't know
18 what he's doing. And once we file further charges,
19 she will be appointed counsel who will know what
20 they're doing. And our goal is to put together such
21 a case that they're smart enough to say, uh, it's
22 going to be better to talk.

23 **MS. SHIFLET:** Mm-hmm.

24 **MR. WOOD:** You know. And I think we are.
25 And make it easier for everyone. Make it easier

1 especially, you know, for Colby. I -- if there's
2 someone who's lost everything, it's him.

3 So anyway, again, I mainly just wanted to
4 thank you for coming in and meeting with us and --

5 **MS. SHIFLET:** Mm-hmm. It's weird to be on
6 the prosecution and defense's side at the same time
7 because I love everybody, and I just --

8 **MR. WOOD:** Well, you know, it's a system -
9 - I did defense work for almost -- I mean, I did it
10 for five years, and I -- I mean, I -- and I actually
11 really enjoyed it. I thought it was a lot of fun.

12 **MR. SMITH:** Yeah, I like defending.

13 **MR. WOOD:** And -- well, and -- it gave me
14 that perspective where I, like, just because someone
15 has committed a crime doesn't mean they're a
16 horrible person.

17 **MS. SHIFLET:** So I -- I'm so torn with all
18 of -- it's such a conflicting feeling to know that
19 this person's been good her whole life and then has
20 made this error in judgment and got sucked into this
21 vortex of this man.

22 **MR. WOOD:** Mm-hmm.

23 **MS. SHIFLET:** And I feel for her. I just
24 have so much compassion towards her because I know
25 that's not what she would have ever done on her own.

1 **MR. WOOD:** Right.

2 **MS. SHIFLET:** And so she has to pay the
3 price for this forever, and I hate that for her. So
4 I'm very conflicted.

5 But I was going to ask you, on the
6 concealment -- or not the concealment, but on the
7 conspiracy to commit murder, what's the weight of
8 that in terms of jail time? Is that a death penalty
9 thing or is --

10 **MR. WOOD:** It is a death penalty case in
11 Idaho.

12 **MS. SHIFLET:** Do you -- are you planning
13 to ask for that for them, or do you not know if --

14 **MR. WOOD:** We sure hope we don't.

15 **MS. SHIFLET:** Okay.

16 **MR. WOOD:** A lot of that will depend on
17 her.

18 **MS. SHIFLET:** Okay.

19 **MR. WOOD:** And it's -- that's -- that's
20 not a decision or -- that's a decision we don't
21 make, actually, until usually after the case is
22 filed.

23 **MS. SHIFLET:** Okay.

24 **MR. WOOD:** In Idaho we -- we have a couple
25 months. Because a lot of times you file it, it's

1 out there on the table, and then oftentimes that's a
2 big motivator for people to get together and talk
3 and try and resolve it. And that's -- that's what
4 we hope happens. I have -- I have no desire to do
5 that. Plus, once you do do that, it's endless
6 appeals.

7 **MR. SMITH:** Yeah.

8 **MR. WOOD:** I don't think the other family
9 wants it at all because it --

10 **MR. SMITH:** It prolongs it.

11 **MR. WOOD:** -- the case is never resolved -
12 -

13 **MR. SMITH:** Yeah.

14 **MR. WOOD:** -- really, in a way. Just kind
15 of they appeal this, then they appeal that, and it
16 can go on forever. So we're -- we're sure hoping
17 not to go down that route. Now, I'm not saying I
18 won't if -- if we go to trial, I might. But we
19 haven't made up our minds on that.

20 **MS. SHIFLET:** Can --

21 **MR. WOOD:** We -- but we don't want to. I
22 can tell you that, from the bottom of my heart.

23 **MS. SHIFLET:** Knowing her, if she comes
24 out of this state and realizes the weight of it, she
25 may prefer that, honestly. I think about that all

1 the time with her just because of what she's been
2 through and just -- oh, I'm just getting --

3 **MR. WOOD:** Well, I -- I've -- I know that
4 you know a lot more about Lori than I do, but we
5 have learned a lot about Lori, and there's -- yeah.
6 I mean, there's been some things happen in her life,
7 I think, that have played into this.

8 **MS. SHIFLET:** Oh, definitely.

9 **MR. WOOD:** And so -- but, yeah, we -- like
10 I said, I talk about, you know, one way is a little
11 bit (indiscernible), but I want you to know that I
12 have no desire to --

13 **MS. SHIFLET:** Yeah. I think you see it
14 for what it is.

15 **MR. WOOD:** Yeah. It's not --

16 **MS. SHIFLET:** I don't know how you
17 couldn't with interviewing everybody.

18 **MR. WOOD:** Well, it's -- yeah. I mean,
19 I'll tell you, when -- I was there in Hawaii when
20 that -- the order to produce the children was
21 served, and I -- and I was there when they served
22 the search warrants where the news showed up --
23 which I was super annoyed by that. I never want the
24 -- it just -- it just blows everything up, right?

25 **MS. SHIFLET:** Yeah.

1 **MR. WOOD:** At that moment when we saw them,
2 like -- your sister can put on a brave face.

3 **MS. SHIFLET:** Oh, yeah.

4 **MR. WOOD:** We were like, oh, does this guy
5 know what he's gotten into?

6 **MS. SHIFLET:** Mm-hmm.

7 **MR. WOOD:** And -- because she was just
8 very, very stoic, very, like, "I'm not going to say
9 a word." And he looked like he was about to pee his
10 pants because he's actually a wimpy person.

11 **MS. SHIFLET:** Yeah.

12 **MR. SMITH:** Did you say "wimpy"?

13 **MR. WOOD:** Yeah.

14 **MS. SHIFLET:** Yeah.

15 **MR. WOOD:** He's great if he has someone
16 else to do something for him, but he himself is one
17 person.

18 **MS. SHIFLET:** Mm-hmm.

19 **MR. WOOD:** And at the time we're like,
20 this is all her. Like how -- she hoodwink this guy?
21 But then once we, like, dug in the -- you know, that
22 was the beginning as we're, like, starting to get
23 facts. As soon as we got more facts, like, oh.

24 Again, I'm not going to pull punches if I
25 have to go to trial, but --

1 **MS. SHIFLET:** No, I understand.

2 **MR. WOOD:** -- these -- these ideas came
3 from him.

4 **MS. SHIFLET:** Oh, yeah.

5 **MR. WOOD:** And she had -- she had some
6 different views on theology than, like, standard LDS
7 by that point, but he really knew how to manipulate
8 that and turn it into something even more.

9 **MS. SHIFLET:** His influence was there
10 before she met him.

11 **MR. WOOD:** Yes. Yeah. We --

12 **MS. SHIFLET:** So --

13 **MR. WOOD:** She was reading his books for -
14 -

15 **MS. SHIFLET:** Wasn't just his books, so --
16 it was, like, the Julie Rowe podcasts.

17 **MR. WOOD:** Oh, yes.

18 **MS. SHIFLET:** He gave Julie Rowe a lot of
19 her ideas. And so when she would listen to Julie
20 Rowe, she was getting Chad ideas, too --

21 **MR. WOOD:** Mm-hmm.

22 **MS. SHIFLET:** -- at the same time.

23 **MR. WOOD:** Yeah. Oh, yeah. Yeah, Julie
24 Rowe, she's interesting.

25 **MS. SHIFLET:** Mm-hmm. I've heard some of

1 her podcasts. When she started talking about
2 herself in third person all the time, I'm like, hmm.

3 **MR. WOOD:** Yeah. I -- I've listened to
4 her podcasts as well, and interesting stuff.

5 **MR. SMITH:** Garrett -- Garrett doesn't
6 like it when people talk about themselves in the
7 third person.

8 **MS. SHIFLET:** So we're very suspicious.

9 **MR. WOOD:** Yeah, neither does Rob.
10 Well, hey, we'll let you get going --

11 **MR. SMITH:** Okay.

12 **MR. WOOD:** -- and start on this.

13 **MS. SHIFLET:** I was going to see if you
14 guys wanted some wristbands to take back with you.
15 These are wristbands I had made up for Tylee and
16 J.J.

17 **MR. WOOD:** I'll have one --

18 **MS. SHIFLET:** And here --

19 **MR. WOOD:** -- if that's all right.

20 **MR. SMITH:** Take as many as you want.

21 **MS. SHIFLET:** You can take them and give
22 them to everybody or --

23 **MR. WOOD:** All right. I'll tell you what.

24 **UNIDENTIFIED FEMALE:** Can we take some for
25 our officers?

1 **MS. SHIFLET:** If you want them. We just -

2 -

3 **MR. WOOD:** Yeah.

4 **MS. SHIFLET:** We did a balloon release for
5 them here --

6 **MR. WOOD:** They've -- they've got a couple
7 of wristbands for -- let's see. There's Ron, Ray --

8 **MS. SHIFLET:** You could just take the
9 whole bag with you. That's fine. Just take the --

10 **MR. WOOD:** Oh, do you have more than this?

11 **MS. SHIFLET:** Oh, I have plenty.

12 **MR. WOOD:** Okay.

13 **MS. SHIFLET:** I had hundreds --

14 **MR. SMITH:** You can't -- you can't order
15 less than a hundred, so, you know.

16 **MS. SHIFLET:** Yeah. No, I have -- I made
17 up hundreds for --

18 **MR. WOOD:** Oh.

19 **MS. SHIFLET:** I started off just doing
20 them for Tylee and J.J.'s friends and teachers. We
21 wear ours all the time, so it just keeps them close.

22 **UNIDENTIFIED FEMALE:** (Indiscernible).

23 Thank you.

24 **MS. SHIFLET:** Yeah. Were you guys --

25 **MR. WOOD:** Sorry.

1 **MR. SMITH:** That's all right. It's okay.

2 **MS. SHIFLET:** You've been in a --

3 **MR. SMITH:** It's an emotional thing.

4 **MR. WOOD:** You know, it's interesting how
5 you can -- in Rexburg, those kids weren't there very
6 long, but they're our kids.

7 **MS. SHIFLET:** Yeah.

8 **MR. SMITH:** Yeah.

9 **MR. WOOD:** And --

10 **MS. SHIFLET:** Any time there's kids
11 involved, it's not okay.

12 **MR. WOOD:** So, thank you.

13 **MS. SHIFLET:** Yes.

14 **MR. SMITH:** There's not a one among us
15 that doesn't want to protect the kids.

16 **MR. WOOD:** Right.

17 **MS. SHIFLET:** Yeah.

18 **MR. SMITH:** For sure.

19 **MR. WOOD:** Yeah. All right. We'll call
20 the defense. Maybe we'll (indiscernible).

21 If you need -- I don't know how long -- if
22 -- I mean, if we wanted, could probably sit down and
23 talk to you for days and days and then we all just
24 sit around after. Any breaks you need, you need
25 anything --

1 **MR. SMITH:** Yeah. I'll run it. You bet.

2 I told her if she's got questions she needs to ask
3 me or needs to use the bathroom or --

4 **MR. WOOD:** Yeah.

5 **MR. SMITH:** -- we'll -- we'll shut it down
6 and --

7 **MS. SHIFLET:** Thank you.

8 **MR. SMITH:** -- do all that. So --

9 **UNIDENTIFIED FEMALE:** It was nice meeting
10 both of you.

11 **MR. WOOD:** Oh, I'm on the wrong
12 (indiscernible).

13 **MS. SHIFLET:** Nice to meet you.

14 **UNIDENTIFIED FEMALE:** Good luck.

15 **(End of recording.)**

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CERTIFICATE

I, Sheri Schneider, do hereby certify that the proceeding named herein was professionally transcribed on the date set forth in the certificate herein; that I transcribed all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true, and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 17th day of December, 2020.



Sheri Schneider, CET No. 1069

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JAMES DAVIDSON Ph.D.

CRIMINAL AND CIVIL FORENSIC PSYCHOLOGY

Forensic Analysis of Summer Shiflet Interview by Prosecutor Robert Wood

State of Idaho vs. Lori Norene Vallow

**In the District Court of the Seventh Judicial District of the State of Idaho,
In and For the County of Fremont**

Case No. CR22-20-0838

Report Date: December 13, 2020

Purpose of this Report

I was retained by Mark Means, the attorney for Lori Vallow, to prepare a report detailing a forensic analysis of a brief interview of Summer Shiflet.

Structure of this Report

This report is organized in the following manner:

1. A review of witness interview models.
2. A review of witness interview best practices.
3. A review of witness interview bias.
4. An analysis of the interview of Summer Shiflet by Prosecutor Robert Wood.

A Review of Witness Interview Models

The ultimate purpose of a witness interview in a criminal investigation is to form a conversation (Shepherd & Griffiths, 2013) that facilitates:

- Maximum spontaneous disclosure
- Maximum capture of fine-grain detail
- Rapid, timely identification of issues and anomalies requiring probing—questioning to obtain expansion and explanation.

Obtaining high-value, reliable statements from a witness is difficult. The bad interview invariably leads to unreliable information. A biased interview leads to unreliable information and may

result in a complaint against the interviewer. Finally, an interview that coerces a witness may lead to a false confession.

The challenges of ethically interviewing witnesses have led to the development of interview models in an effort to promote reliable information while minimizing tainted information, witness manipulation, and witness mistreatment. Selection of a particular model depends on one's training and one's goals. Some common interview models are discussed below.

ACCESS model. The ACCESS model of investigation is mnemonic of the six stages of problem-solving in any investigation (Shepherd & Griffiths, 2013).

ABE model. Achieving Best Evidence (ABE) is protocol in the United Kingdom and is designed to improve the quality of evidence used in court for interviews of children. An interview is recorded following ABE procedures.

Conversation Management model. The conversations management model is based on three elements:

- Reciprocity: Self-disclosure and building trust and respect
- Response: An acronym for Respect, Empathy, Supportiveness, Positiveness, Openness and Non-judgmental attitude.
- Managed Sequence: The GEMAC acronym: Greet the interviewee, Explain the interview process, Mutual activity of expLoring interview topics, Closure of the interview.

PEACE model. The PEACE interview model is widely used in the United Kingdom and Canada. Black and Yeschke (1997) observed, "The model is an inquisitorial, nonaccusatory interview model that is designed to gather information and behavioral data from an interviewee." PEACE is an acronym for Planning, Explain & Engagement, Account, Close and Evaluate.

NICHD interview model. The NICHD protocol is an interview technique for professionals conducting forensic interviews with suspected child abuse victims. Although its focus is on abuse, the principals of the protocol extend to adult witness interviews by virtue of a clear orientation to the interview, open-ended questions, and narrative training. The protocol seeks to minimize interviewer bias including suggestibility and manipulation through non-verbal cues.

Wicklander-Zulawski (WZ) model. The WZ method is a non-confrontational interview and interrogation used in criminal justice and business. The model allows the interviewer to build credibility through an introductory statement followed by rationalizing with the witness. The WZ focus is "identifying the truth and obtaining reliable information through ethical, moral and legally acceptable techniques. Our non-confrontational method is a structured, conversational approach that eliminates conflict between interviewer and suspect, and is also more appropriate for interviewers who are eliciting actionable information rather than seeking a confession."

Reid model. The Reid technique is a confrontational interview and interrogation that minimizes the witness's ability to deny allegations. The Reid model is typically used to interview a suspect

in an alleged crime and relies heavily on close-ended questions and manipulation to promote a confession. The Reid technique involves three steps: case-file analysis, non-accusatory interview, and interrogation.

A Review of Witness Interview Best Practices

The importance of reducing interview procedural errors is simple: a poor interview results in unreliable information. There are numerous examples of poor interview techniques resulting in false confessions through manipulation, suggestibility and coercion. For example, the McMartin Preschool biased interview techniques led to seven years of daycare sex-abuse hysteria and no convictions while ruining the lives of seven defendants -- and ultimately led to the NICHD protocol mentioned above. The Guilford Four and Birmingham Six cases in England highlighted the international prevalence of tainted interview techniques – and led to the PEACE model described above.

The importance of training in witness interviewing is summarized by Black and Yeschke (1997) with their description of “the interviewer’s needs”:

Experienced interviewers learn to keep their own biases and feelings in check during an investigation. Investigators who try to fulfill egocentric, personal, or childish needs during an interview may become frustrated, which may lead them to act out personal tensions and misuse their authority. The potential for destructiveness goes with a position of authority. Given authority, some individuals become destructive in ways and at times that are not helpful to society or to their own goals in an investigation. When the self-image and self-esteem of interview participants are at stake, pressure can be overwhelming. Overstimulation of the body's autonomic nervous system, which governs involuntary actions, routinely adds to distress, particularly when there is no way to vent built up pressure. When the investigation becomes intense - stressful enough to cause emotional involvement - proficient interviewers tried to remain detached.”

Although interview techniques are diverse, a core of interview best practices has emerged across interview models. The first priority of best practices involves following moral, legal and regulatory requirements (Black & Yeschke, 1997; McCartney et al, 2015). Core moral, legal and regulatory interview practices Shepherd & Griffiths (2013) include:

- **Acting ethically.** An interviewer in the criminal justice system is typically an attorney, police officer or mental health professional. Each occupation has its own code of ethics. The interviewer must respect the dignity and rights of any citizen ...to be treated with respect, to be listened to, not to be exploited, and exercise freedom of choice (Shepherd & Griffiths, 2013)
- **Acting with integrity.** An interviewer must operate within the rule of law, including laws protecting the rights of the accused, accuser, and witnesses. Integrity means that the interviewer is “trusted to do the right thing in their treatment of information and

individuals – to tell the truth, to act honestly and with fairness, and not to manipulate – even when there is no chance of getting caught for acting otherwise (Shepherd & Griffiths, 2015).”

- **Avoiding inappropriate interviewer behavior.** The conduct of the interviewer shall not influence, exploit, shape or misrepresent the narrative of the witness.
- **Sensitivity to vulnerable witnesses.** The interviewer must remember that any witness interview has a significant power differential favoring the interviewer and must be sensitive to witness characteristics that would lead to unreliable narratives. Factors affecting witness vulnerability include the witness’s emotional condition (e.g., anxiety), fatigue, age (e.g., very young and elderly), culture, and cognitive impairment.

The actual interview process may vary according the model (or lack of) used by the interviewer. Regardless of the model, the basic elements are similar and summarized with the GEMAC acronym: Greet the interviewee, Explain the interview process, Mutual activity of expLoring interview topics, Closure of the interview.

- **Greeting** the witness is the first step of establishing expectations for the interview that follows. The first few minutes begin the process of “set induction” with the witness and seeks to elicit the cooperation of the witness to work together with the interviewer. The interviewer seeks to establish trust and reciprocity with the witness: I ask a question and you reciprocate with information.
- **Explanation** orients the witness to the interview and forms a “cognitive set induction” regarding the purpose of the interview. During this phase, best practices include a preliminary orientation, introductions, and a formal explanation that includes 1) the reason for the interview, 2) the topics to be covered, 3) what the interviewer (and assistant if present) will be doing during the interview and 4) expectations for the interviewer and witness.
- **Mutual activity** involves listening and analysis of the witness narrative using such techniques as open-ended questions, active listening, probing, and verification. Inconsistent statements are reconciled and resistance by the witness is addressed.
- **Closing** involves thanking the witness for their participation, summarizing key aspects of the narrative, inviting questions and informing the witness of next steps.

Interview best practices specifically avoids coercion, threats, false promises, interrupting a witness when the narrative is at odds with the interviewer’s theory, providing false information, providing information not revealed to the public, sequential closed-end questions (i.e., cross examination), and poor environmental considerations (i.e., too cold or too warm in the room, not providing a beverage, not taking breaks and so forth).

A Review of Witness Interview Bias

Reliability of information presented by a witness is central to witness interviewing. The witness whose story is inconsistent with other facts, changes their story, or selects their narrative to please the interviewer is unlikely to provide reliable testimony. The ability of the interviewer to ask questions without biasing the response of the witness is a key element to reliability.

The bias rule as defined in Black's Law Dictionary is noted as:

A principle of procedural fairness requiring a decision-maker not to be personally biased and not to appear to a reasonable, informed, detached observer to be prejudiced in any way in legal proceedings or in dealing with some matter in the course of making a decision.

Interviewer bias refers to the influence of the interviewer's conscious or unconscious expectations or opinions on the witness. Interviewer bias can taint the testimony of the witness leading to unreliable testimony. Interviewer bias can prejudice the response of a witness and is important to avoid.

There are many different types of interviewer bias. Several major types are explored in this section.

Primacy bias. The interviewer tends to rely on the first piece of information received in an investigation and thereafter seeks statements from witnesses that are consistent with the first piece of information.

Recency bias. The interviewer tends to rely on the last piece of information received in an investigation and thereafter seeks statements from witnesses that are consistent with the last piece of information.

Confirmatory bias. The interviewer places inordinate weight on witness statements that support the interviewer's opinions in a matter while ignoring non-supportive information. Confirmatory bias is often related to primary or recency bias. An example of confirmatory bias is embracing witness comments that suggest person A committed a crime while minimizing or rejecting comments that anyone else is culpable. Martindale (2001) observed, "Whether in private conversation or courts of law, people who express opinions like to see those opinions accepted and are naturally inclined to offer supporting information and disinclined to offer non-supporting information."

Acquiescence bias. The witness tends to agree with the statements and beliefs of the interviewer without considering the content of a question or their "true" position. Acquiescence bias is common with leading questions (i.e., wouldn't you agree?) or leading statements (i.e., you know that...). This form of bias is accentuated when closed-ended rather than open-ended questions are used by the interviewer.

Derogation bias. The interviewer places the witness in a defensive position by emphasizing the value of providing testimony supportive of the interviewer while minimizing or criticizing (i.e., derogation) those working at odds to the interviewer. An example would be a prosecutor emphasizing the importance of seeking justice for the victim in a case while criticizing the efforts of the defense to “get the perpetrator off.”

Ingroup-Outgroup bias. The interviewer can elicit favorable testimony by emphasizing the opportunity for the witness to join the “ingroup” while avoiding involvement with the “outgroup”. Appiah (2012) reported, “The extent to which ingroup membership reinforces or weakens a person’s positive social identity is impacted by both internal (e.g., strength of the individual’s identification with the ingroup) and external (e.g., media messages) elements.” Ingroup-outgroup bias in the criminal justice system is illustrated by efforts of the prosecution (e.g., ingroup) to quickly identify and interview parties that may not be directly related to the alleged offense in an effort reject or minimize the witness involvement with the defense (e.g., outgroup). Ingroup-outgroup bias is often accompanied by derogation of the outgroup.

Similar to me bias. This form of bias occurs when the interviewer and the witness have common characteristics. The result is that the witness may selectively provide information in an effort to curry favor with the interviewer. An example would be the discovery that the interviewer and witness attended the same high school, leading to familiarity that may cloud the judgment of the witness and the interviewer.

Stereotyping bias. The interviewer places weight on a witness statement based on their stereotypical opinion of the entire group rather than an individual’s traits. An example of stereotyping bias is valuing the report of a white collar professional while rejecting or minimizing the comments of a person on welfare of a different ethnic group.

Religious bias. The interviewer can incorporate religion in various ways to influence the witness. The witness may be expected to provide information as matter of fidelity to their faith. When an interviewer and witness share a common faith, the witness may feel obligated to please or agree with the interviewer in ways consistent with their shared faith. Or a witness may perceive that the interviewer is virtuous and powerful due to the combination of faith and authority to interview the witness with the consequence that the witness provides select information to please the interviewer and fails to challenge the interviewer if uncomfortable or threatened.

Inner-circle bias. The interviewer, particularly when a significant power differential exists between the interviewer and witness, may provide “exclusive” information to the witness in an effort to solicit supportive testimony. Inner-circle bias is illustrated by providing the witness with details unknown to the general public with the implicit understanding that witness cooperation and testimony may affect the outcome.

A Forensic Analysis of the Interview of Summer Shiflet by Prosecutor Wood
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The forensic analysis consisted of assessing the interview for best practices and bias. In the following transcript, I have included brief comments for each best practice and bias of concern.

Interview of Summer Shiflet by Prosecutor Robert Wood

- ✓ Best practice - Ethics: It is appropriate for the prosecutor to meet a witness in the case.
- ✓ Best practice – Integrity: The interview was not recorded by the prosecution and therefore any information gathered would unfairly benefit the prosecution since the defense would not be afforded the same information.
- ✓ Best practice – greeting: There is no evidence that the witness is greeted, although it could have occurred before the recording started.
- ✓ Best practice – explanation: There is no evidence that the witness is provided an explanation of the interview scope and ground rules, although it could have occurred before the recording started.

Robert Wood: Everyone is kind of running down the kid's case because they were last seen in Rexburg. And, or were last living in Rexburg.

Summer Shiflet: Right.

Robert Wood: Tylee was last seen in Yellowstone, but, and so we were the ones that knew everything about the case. So, they assigned us on that. I'm just going to tell you right now, we are going to be filing conspiracy to commit murder charges against both Chad and Lori.

- ✓ Bias – Inner-circle: The witness is provided information that was not known to the public. The witness's role is providing information and has no need to know about future charging.

Garrett: Ok.

Robert Wood: And we're not shy about that. We've told both attorneys. His attorney keeps pretending like I've never said that. What? But we are, we have to. But I kind of want to give you like a little bit of background of where we are. And, kinda our theory of how this ended up where it was. We know that this is not the same Lori everyone else knew. What's so strange to me is, everyone we talked to, everyone we talked to who knew Lori before this, she was primary president, she made quilts for these kids, she, she made everything fun, everyone loved her. She loved everyone.

- ✓ Best practice – mutual activity: The mutual activity of listening to the witness has yet to occur. The prosecution is actually testifying the theory of the case which risks influencing the witness narrative. No open-ended questions or active listening has occurred. The task of interviewing the witness is trumped by case information.

- ✓ Bias – Derogation: The prosecutor mocks the defense attorney which could manipulate the witness to align with the state and resist cooperation with the defense. There is no need to provide the witness with information about counsel since the sole purpose of the witness interview is to gather reliable fact information.
- ✓ Bias – Ingroup-outgroup: The prosecutor provides information on the theory of the case which proposes that the state understands the defendant has changed. The witness can align with the prosecution as the ingroup because they empathize with the defendant, or the witness can foolishly align with the defense which is portrayed as inept.

Summer Shiflet: Great mom.

Robert Wood: Great mother, that's what everyone says. And you know. So, one thing I'm going to kind of ask you to consider is maybe, something happened. I don't know what. I don't know if it was psychological. I don't know. I don't know if we'll ever know. But something happened and I think Colby, the way he said it to me I think is, kind of, the person who is in that jail cell, is not my mom, it's someone else.

- ✓ Bias – confirmatory: The prosecutor asks the witness to adopt his theory of the case. It is not the role of the witness to adopt any theory of the case, so this is an effort to unduly influence the witness. An influenced witness will knowingly or unknowingly provide information which supports the prosecutor's theory and dismiss or minimize conflicting information.

Summer Shiflet: Yeah

Robert Wood: The flip side of that is, I shouldn't say the flip side but, I want to be clear. I'm not going to pull any punches on any defendant in this case. Right? I've got my job to do and

Summer Shiflet: Absolutely

Robert Wood: But we also want the truth and the whole truth and the context of it. And Chad Daybell, is, did you ever meet Chad?

- ✓ Bias - Acquiescence: The interview thus far has elicited statements from the witness agreeing with the prosecution premises. Rather than seek the uncontaminated narrative of the witness, the prosecutor is making his case to the witness and seeking her acceptance. The pattern of witness acquiescence repeats throughout the interview.
- ✓ Best practices – mutual activity: The first question to the witness is a closed-end directive question. Such questions typically lead to limited information compared to an open-ended question, which in this case would be, "Tell me about Chad Daybell."

Summer Shiflet: So, I met him once at a preparing people. I went to one preparing people thing.

Robert Wood: Ok

Summer Shiflet: and with my mom and husband, I went to support Lori and she wanted to support Mel, so went and met Chad after he talked for like 90 seconds maybe. If that. And then he called me when Lori got transferred to the Idaho jail, he texted me and said Lori wanted to talk to me. And I was like yeah and then the second I hung up with her, he called me to ask me about bail -

Robert Wood: mmm

Summer Shiflet: For Lori. So, I've talked to him maybe three times briefly on the phone. Never a long-extended conversation. But the first thing he said to me when he called me was that, he said that Lori hasn't told me very much about the kids so there's not really much I can tell you about it.

Robert Wood: OK, of course he said that.

- ✓ Best practices – mutual activity: There is no follow-up to the question posed to the witness to seek her information.
- ✓ Bias – stereotyping: The statement by the witness stereotypes the defendant with the comment “of course he said that.” The stereotype is that defendant’s manipulate, lie and so forth.

Summer Shiflet: mmm.

Robert Wood: Well. Welcome to Chad Daybell. So, what I want –

- ✓ Best practices – mutual activity: The prosecutor’s statement dismisses the need to provide any further information about Chad Daybell.
- ✓ Bias – Confirmatory: The prosecutor telegraphs that a primary purpose of the interview with the comment, “so, what I want” is for the witness to give him what he wants, not to elicit the witness narrative.

Summer Shiflet: I have my own opinions for him, don't get me wrong.

Robert Wood: I bet you do. He is highly manipulative.

Summer Shiflet: Yeah, he is.

Robert Wood: I'm not going to say he's highly intelligent, but you don't have to be highly intelligent to be highly manipulative.

Summer Shiflet: Absolutely.

Robert Wood: He is extremely manipulative, and your sister manipulated him in some ways too, but the, the context for everything that happened came from Chad.

- ✓ Best practices – mutual activity: The witness offers to continue her testimony with the comment, “I have my own opinions...” However, the prosecutor shuts down her narrative with the comment, “I bet you do.”
- ✓ Bias – confirmatory: Rather than elicit witness testimony, the prosecutor provides his theory that the defendant is manipulative and not highly intelligent. His comments anchor his viewpoint for the witness who risks being influenced by the comments. Her sister’s fate is in the hands of the prosecutor and the risk of disagreeing with him is significant.

Summer Shiflet: Absolutely.

Robert Wood: Unfortunately. We have enough evidence to prosecute him, and we are. The case against your sister is stronger. But, I just I kind of want to give you just that background. That’s the kind of the context that we see this guy. This guy came in here. And you know not making excuses for anyone, but kind of blew up this situation. And he did not care, who died –

- ✓ Best practices – mutual activity: The witness likely had her own viewpoint on Chad Daybell. However, it is apparent that the prosecutor is in control of the narrative and there is little interest in the witness information.

Summer Shiflet: mmm.

Robert Wood: who got hurt. He did not care at all. And the other thing I can tell you is, your sister truly believes that everything she's done, has been done in righteousness.

Summer Shiflet: I know.

Robert Wood: I know I’m kind of using LDS speak.

Garrett: Yeah.

Summer Shiflet: 100% that’s my interpretation also, I think she 100% believes.

- ✓ Best practices – mutual activity: The prosecutor proposes that the defendant acted for religious reasons. The prosecutor’s testimony likely unduly influences the witness with his theory. But the groundwork of bias and poor interview practices now elicits an affirmative response from the witness about the defendant’s beliefs. The witness has

not been asked a single question about her narrative concerning the defendant's belief system and motivation.

- ✓ Bias – religious: The prosecutor refers to the defendant's faith and frames his narrative as "LDS speak" and uses the term "righteousness."
- ✓ Bias - Ingroup-outgroup: The prosecutor's narrative identifies an ingroup as members of the Church of Jesus Christ of Latter-Day Saints (i.e., LDS speak). The prosecutor's narrative alerts the witness that her comments will be also be viewed in a religious context. This can lead to several issues. The witness may now feel pressure to adhere to the tenets of her faith in her testimony. The witness may be influenced to provide a narrative that supports the prosecutor's assessment that the defendant acted in "righteousness."

Robert Wood: She believes it.

Summer Shiflet: mmm.

Robert Wood: Every once in a while, you'll see kind of a little crack, in like a jail phone call. But, or she'll –

Summer Shiflet: Well you've heard our conversations too, you know that I, I get that she's not fully aware of what she's really done.

Robert Wood: Right, yeah.

Summer Shiflet: I don't think she is.

Robert Wood: Yeah. I mean, I'm going to say this. I think she knows what she's done.

- ✓ Best practices – mutual activity: The witness offers her narrative that the defendant was not fully aware of her actions. Rather than develop the witness's narrative, the prosecutor disagrees. This technique is characteristic of the Reid technique which advocates denying every statement by a witness that doesn't agree with the interviewer's theory of the case.

Summer Shiflet: She knew enough to lie to us about it.

- ✓ Bias – Acquiescence: The witness immediately changes her story when the prosecutor disagrees with her narrative. This illustrates prima facie influence of the witness. The witness testimony is now reflecting influence of the prosecutor rather than an untainted narrative.

Robert Wood: Right, yeah but she, the context under which it was done was this. Religious. Just these ideas were out there, I can say this 'cause I am LDS - no basis in the LDS faith. Just, you

said it in your phone calls to her. So, anyway that's kind of where we're at, and we, you know, again were just really grateful for you coming in. And it's gonna be hard, to talk about these things.

- ✓ Bias – similar to me: The prosecutor reveals not only that he is LDS but is an authority on LDS doctrine. The witness faces the choice of aligning with the spiritual authority of the prosecutor or risk disagreement. Thus far, the influence of the prosecutor has halted any disagreement. If and when the witness is appropriately questioned, the foundation has been laid on the narrative that is acceptable and the narrative that is not.

Summer Shiflet: Oh yeah.

Robert Wood: We know that, and they're gonna be nice, cause obviously, you know you're not a person of interest.

- ✓ Best practices – explanation: The explanation that the witness is not a person of interest should have been explained at the outset of the interview, not in the midst of the interview.

Garrett: Yeah, we've had that conversation so...

Robert Wood: Part of what we need to do is understand. When you have a case like this it's not like just like a meth case. I've already had meth and nobody cares who you are.

Summer Shiflet: No, no alcohol, its just...

Robert Wood: But this case is a, we need to understand the context of who these people are. And so that's a lot of what they're going to be asking you about.

- ✓ Best practices – explanation: Orienting the witness to the nature of questions is appropriate, but should occur at the outset of the interview, not in the midst of the interview.

Summer Shiflet: Ok, I'll do my best, I mean...

Robert Wood: It won't be easy, I know it's going to be a hard, be a hard interview.

Summer Shiflet: I was wondering if you would be willing to tell me, if you're able to tell me if there's any progress in what you know about Tylee and her death, is there any progress in her autopsy where you understand better?

Robert Wood: All I can tell, well.

Summer Shiflet: I mean do you have a cause yet or is it close to one?

Robert Wood: She is at the FBI's state of the art crime lab. Unfortunately, there's a lot of deceased bodies there, that they're going through.

Summer Shiflet: I'm sure

Robert Wood: And so we're not. We don't know really any more yet. We may never know. Due to the, the destruction of that body. And yeah, we hope we'll find out, we may not. But obviously, we know it's her. There was soft tissue that was still preserved enough to do DNA tests.

- ✓ Bias – inner-circle: The purpose of the interview for the witness has clearly been defined as hearing the state's theory of the case and encouraging her agreement. The witness has consistently acquiesced to the prosecutor's statements which reflects undue influence. The witness, realizing by virtues of her cooperation that she is in the inner-circle, now requests case-specific details not known to the public. Rather than decline to comment on the case details and instead focus on obtaining witness information, the prosecutor provides the case-specific information.

Summer Shiflet: Yeah, thanks that you guys found them, like we wouldn't have ever known.

Garrett: Yeah.

Summer Shiflet: And I would have never dreamed that she would ever hurt them so.

Robert Wood: You know what, and everyone says that.

Summer Shiflet: Yeah.

Robert Wood: That's what everyone says. Everyone says that, 'I never would have'. So, it is, it's a tragic thing.

Summer Shiflet: It really is, yeah.

Robert Wood: But I again I just want you to know how grateful we are, I know you know you don't have to talk to us. And so, we're just grateful that you're willing to and helping us that way. And it's, I'm sure, kind of difficult knowing that they're asking for information that's going to help them in the case against your sister. But I guess the thing I want you to know is our whole goal is just justice for these kids.

- ✓ Best practices – explanation: Offering thanks to a witness for participating is appropriate. However, this information should be presented at the outset of the interview, not in the midst of the interview.

Summer Shiflet: Yeah.

Robert Wood: And we, our hope... Our hope is it comes to it. Your sister's actually made some overtures she might be willing to talk to us.

Summer Shiflet: I hope she does. I pray for that all the time.

Robert Wood: We hope she does. She actually was talking about with Chad about talking with us before we found the bodies. Just a few days before. And he talked her out of it.

- ✓ Best practices – mutual activity: Rather than elicit the witness's comments on this subject, the prosecutor provides information not in the public realm.

Summer Shiflet: mmm.

Robert Wood: Which is too bad. It would have been better for her to tell us.

Garrett: Yeah, it would sure have been.

Summer Shiflet: I agree.

Robert Wood: I mean it, we were actually just finishing up our warrant on the date she said that. We were just getting ready to go out that day. That would have been even better, and he talked her out of it.

Summer Shiflet: Yeah.

Robert Wood: And the night before she says to him again like, hey, what do you think about, you know, and he uses this kind of, I call it, spiritual abuse. Spiritual manipulation.

Summer Shiflet: Yeah.

Robert Wood: We've all seen that guy in the LDS religion whose wife has to obey him because he the priesthood type thing. And that's not what he says but its very, it's the same type of thing.

Garrett: mmm.

Robert Wood: Well, I'm the visionary guy, so, you know. So anyway, again I just wanted to meet with you real quick and introduce myself and Mackenzie, she's...

Summer Shiflet: I would have obviously seen you.

Robert Wood: Yes, yeah.

Summer Shiflet: But I don't take any joy in doing anything that's going to harm her. I don't take joy in her spending her life in prison. There's nothing,

Robert Wood: Sure.

Summer Shiflet: It hurts to think about her being in there.

Robert Wood: There's nothing good about a case like this.

Summer Shiflet: There's nothing good about it.

Robert Wood: And you know what, even if you win a case. Like Garrett's been in court. Like there's cases, you know as a prosecutor, like you take to trial and you win and you're like, even at the end, you're like, well nothing good has, it's all bad.

Garrett: Yeah.

Summer Shiflet: It's all bad.

- ✓ Bias – acquiescence: The witness consistently agrees with the prosecutor's statements or parrots his comments. The witness statement is thus shaped and manipulated to agree with the case theory of the prosecution.

Robert Wood: The one thing, I said this to someone the other day who knows your sister. Our goal is, sometimes you get a murder and all you have is that murder and you just have to run out and charge it and then you kind of put it put it together. We were able to put them in jail with a high bail on these lower charges and put together a case. Now our goal is to have such a strong case that when she has competent counsel, I don't know if you know this, her attorney, has never handled a felony before.

Summer Shiflet: mmm.

Robert Wood: He's never, never done any meaningful criminal work at all. And he doesn't know what he's doing. He's a nice guy.

Summer Shiflet: Yeah, I met him.

Robert Wood: Other than when he's lying about me, but he's, he doesn't know what he's doing and once we file further charges, she will be appointed counsel who will know what they're doing. And our goal is to, put together such a case, that they're smart enough to say, uh, it's gonna be better to talk.

- ✓ Bias – derogation: The prosecutor derogates the defense attorney as unqualified, incompetent and a liar. These statements are highly prejudicial and likely serve to raise doubt in the witness about cooperating with the defense in any manner. The message to the witness is that cooperation with the prosecution is in her best interest since the current defense attorney will be leaving at some point and replaced with a public defender.

Summer Shiflet: mmm.

Robert Wood: You know and I think we are, and make it easier for everyone. Make it easier especially you know for Colby, if there's someone who's lost everything, its him. So, anyway I again I mainly just wanted to thank you for coming in and being with us.

Summer Shiflet: mmm. It's weird to be on the prosecution and defense's side at the same time because I love everybody.

- ✓ Bias – inner-circle: The witness indicates her dilemma of choosing which side to be on. The prosecutor's statement and effort to influence the witness has caused cognitive dissonance.

Robert Wood: Well, you know, it's a system. I did defense work for almost... I did it for 5 years. And I, I actually really enjoyed it, I thought it was kind of fun.

Garrett: I liked defending.

Robert Wood: And you gave me that perspective right away. Just 'cause someone's committed a crime doesn't mean they're a horrible person.

Summer Shiflet: So, I'm, I'm so torn with all this. It's such a conflicting feeling to know that this person's been good her whole life and then has made this error in judgement and got sucked into this vortex of this man.

Robert Wood: mmm.

Summer Shiflet: And I feel for her. I just have so much compassion towards her because I know that's not what she would have ever done on her own.

Robert Wood: Right.

Summer Shiflet: And so, she has to pay the price for this, forever. And I hate that for her. So, I'm very conflicted. But I was going to ask you on the concealment or not the concealment but on the conspiracy to commit murder, what's the weight of that in terms of judgement, is that a death penalty thing?

Robert Wood: It is a death penalty case in Idaho.

Summer Shiflet: Are you planning to ask that for them, or do you not want to?

Robert Wood: We sure hope we don't. A lot of that will depend on her.

Summer Shiflet: Ok.

Robert Wood: And that's not a decision or, that's a decision we don't make actually until usually after a case is filed –

- ✓ Bias – inner-circle: The witness has consistently acquiesced to the prosecutor's statements which reflects undue influence. The witness, realizing by virtue of her cooperation that she is in the inner-circle, now requests charging details not known to the public. Rather than remaining demure and focused on obtaining witness information, the prosecutor provides the charging information.

Summer Shiflet: Ok.

Robert Wood: In Idaho. And we have a couple months. Cause a lot of times when you file it, it's out there on the table. Oftentimes that's a big motivator for people to get together and talk and try and resolve it. And that's, that's what we hope happens. I have no desire to do that. Plus, once you do do that, it's endless appeals.

Garrett: Yeah.

Robert Wood: I don't think the other family wants it at all, because it...

Garrett: Prolongs it.

Robert Wood: the case just never resolves really, in a way.

Garrett: Yeah.

Robert Wood: It just kind of, well you appeal this, then you appeal that, and it can go on forever, so we're sure hoping not to go down that route. Now I'm not saying I won't. If we go to trial I might. But we haven't made up our minds on that.

Summer Shiflet: Ok.

Robert Wood: We don't want to. I can tell you that from the bottom of my heart.

Summer Shiflet: Knowing her, if she comes out of this "state" and realizes the weight of it, she may prefer that honestly. I think about that all the time with her just because of what she's been through. Just, I just can't.

Robert Wood: I know that you know a lot more about Lori than I do. But we have learned a lot about Lori and there's, I mean there's been some things happen in her life I think that play into this.

Summer Shiflet: Oh definitely.

Robert Wood: And, so, but we, like I said, I talk of having a one way a little bit but I want you to know that I have no desire to.

Summer Shiflet: Yeah, I think you see it for what it is.

- ✓ Best practices – mutual activity: The witness has learned that she is not being interviewed but rather educated on the prosecution’s theory of the case which is not in the public arena. As a member of the “inner circle” she asks if the prosecution will seek a capital charge. The prosecutor has great power over her sister’s fate and responds. A witness interview would have focused on the witness viewpoint.
- ✓ Bias – inner-circle: As noted above, the witness has determined she is a member of the ingroup and can ask charging questions.

Robert Wood: Yeah, it’s not a...

Summer Shiflet: I don’t know how you couldn’t with interviewing everybody.

Robert Wood: Well, its, yeah. I mean I’ll tell you. I was there in Hawaii when the order to produce the children was served. And I was there when they served the search warrants for the news showed up, I was super annoyed by that. I never want that, it just blows everything up right. At that moment when we saw them, ‘cause your sister can put on a brave face.

Summer Shiflet: Oh yeah.

Robert Wood: We were like, oh does this guy know what he’s gotten into?

Summer Shiflet: mmm.

Robert Wood: And ‘cause she was just very stoic, very like, I’m not going to say a word. He looked like he was about to pee his pants. Cause he’s actually, a wimpy person.

Summer Shiflet: Yeah.

Garrett: He’s wimpy?

Robert Wood: Yeah.

Summer Shiflet: Yeah.

Robert Wood: He’s great if he has someone else to do something for him, but he himself is a wimpy person. And at the time they were like this is all her. Like how is she manipulating this guy? But then once we dug into the, that was the beginning as we’re like starting to get fact’s we got more fact’s like oh. Again, I’m not gonna pull punches, if I have to go to trial. But these ideas came from him.

Summer Shiflet: Oh yeah.

Robert Wood: And she had, she had some different views on theology and standard LDS by that point. But he really knew how to manipulate that and turn it into something even more.

Summer Shiflet: His influence was there before she met him.

Robert Wood: Yes, she was reading his books for...

Summer Shiflet: It wasn't just his books, so it was like the Julie Rowe podcasts.

- ✓ Bias – religious: The prosecutor continues with his theory of the case and shifts blame to Chad Daybell. It may be apparent to the witness that her testimony, if consistent with the prosecutor's theory, may facilitate the shifting of blame and spare her sister of some consequences.
- ✓ Bias – inner-circle: Rather than respond to questioning, the witness is now offering assistance to the prosecutor for his theory of the case by adding "it was like the Julie Rowe podcasts." As a member of the inner-circle, she can help out the prosecution. Unfortunately, because she isn't being interviewed, it isn't known if this is her true thought or just an effort to be helpful.

Robert Wood: Oh yes.

Summer Shiflet: He gave Julie Rowe a lot of her ideas. And so, when she would listen to Julie Rowe, she was getting Chad's ideas too by listening to this.

Robert Wood: Yeah, oh yeah, Julie Rowe, she's interesting.

Summer Shiflet: I've heard some of her podcasts, when she started talking about herself in third person all the time I'm like, hmm.

Robert Wood: Yeah, I've listened to her podcasts as well and interesting stuff.

Garrett: Garrett doesn't like it when people talk about themselves in the third person.

Robert Wood: Well and we'll let you get going and we can start on this.

Garrett: Ok.

Summer Shiflet: I was going to see if you guys wanted some wrist bands to take back with you. These are wrist bands I had made up for Tylee and J.J.

Robert Wood: Oh, I would.

Garrett: Take as many as you want.

Summer Shiflet: Give them to everybody.

Robert Wood: I'll tell you what.

Summer Shiflet: If you want them, we just...

Robert Wood: Yeah.

Summer Shiflet: We did it where...

Robert Wood: They've got a couple of wrist bands for, let's see, there's Ron, Ray...

Summer Shiflet: You could just take the whole bag with you that's fine, just take them.

Robert Wood: Oh, do you have more of these?

Summer Shiflet: Oh, I have plenty more.

Robert Wood: Oh, Ok.

Garrett: You can't order these in a hundred so...

Summer Shiflet: I many have hundreds for, I started off just doing them for Tylee and JJ's friends and teachers. We wear ours all the time, so just keeps them close.

Robert Wood: Thank you.

Summer Shiflet: Yeah

Robert Wood: Sorry.

Summer Shiflet: It's fine.

Garrett: It's an emotional thing.

Robert Wood: you know it's interesting how you can in Rexburg, those kids weren't there very long, but they're our kids.

Garrett: Yeah.

Summer Shiflet: Anytime there's kids involved, it's not okay.

Robert Wood: So, thank you.

- ✓ Best practices – closing: Thanking the witness for their cooperation is appropriate at the close of an interview.

Garrett: There's not one of us that doesn't want to protect the kids.

Robert Wood: Right.

Garrett: For sure.

Robert Wood: Alright well, I'll call or text. If you need, I don't know how long this ... would you mind if we sit down and talk to you, any breaks you need, anything?

Garrett: I've run over it, you bet. I told her if she has questions, she can ask me, or use the bathroom or we'll shut it down and...

Summer Shiflet: Thank you.

Garrett: Do all that so...

Summer Shiflet: Nice to meet you.

Following this orientation, the group can be heard moving to an interview room and commencing a lengthy interview.

A Summary of Findings for the Summer Shiflet Witness Interview

My findings for Summer Shiflet's interview are summarized as follows:

Best practices – greeting: Because it is apparent that the audio on the recording starts with a conversation already underway, it is unknown if a greeting was provided the witness at the outset of the meeting.

Best practices – explanation: There are a few explanatory comments amid the interview rather than at the beginning. Because it is apparent that the audio on the recording starts with a conversation already underway, it is unknown if an explanation was provided the witness at the outset of the meeting.

Best practices – mutual activity: The witness is present to respond to questions. However, she is asked only one question during the interview: Did you ever meet Chad? Rather than answering questions as a witness, she is schooled in the prosecution's theory of the case.

Best practices – closing: The witness is thanked at the end of the interview for her willingness to participate, which is appropriate.

Bias – primacy: No examples were apparent in the interview.

Bias – recency: No examples were apparent in the interview.

Bias – confirmatory: The prosecutor presents a one-dimensional description of his theory of the case. Alternative explanations are not presented. Knowing the prosecutor's theory of the case places the witness in a challenging position: agree and be accepted or disagree and risk rejection. The witness is specifically asked to consider the prosecution's theory of the case with comments such as "so, what I want" and "I want you to consider."

Bias – acquiescence: The witness repeatedly agrees with the statements and beliefs of the prosecutor. She disagrees once and is corrected and thereafter resumes her pattern of agreement.

Bias – derogation: The prosecutor mocks the defense attorney, and informs the witness that he is unqualified, incompetent and a liar.

Bias – ingroup-outgroup: The prosecutor provides insight into his theory of the case. Since this information is paired with derogation of the defense attorney, the prosecution is identified as the ingroup and the defense attorney as the outgroup.

Bias – similar to me: The prosecutor reveals not only that he is LDS but is an authority on LDS doctrine. The witness faces the choice of aligning with the spiritual authority of the prosecutor or risk disagreement.

Bias – stereotyping: The male defendant is stereotyped with the comment, “of course he said that.”

Bias – religious: The prosecutor identifies himself as LDS. Bringing religion into the interview is problematic since the witness must decide the extent to which their faith guides their comments and allegiance. The male defendant is viewed as operating outside LDS beliefs while the female defendant is accepted as simply misguided.

Bias – inner-circle: The witness is provided charging information by the prosecutor. The witness perceives that she can ask the prosecutor charging questions as a member of the inner circle including whether the case will be charged as capital murder.

Conclusions

As noted in the introduction, the purpose of this report is to perform a forensic analysis of the interview of Summer Shiflet by Prosecutor Wood. Various strengths and weaknesses are noted in the preceding section.

Based on my forensic analysis, my conclusions are:

Acting ethically: The American Bar Association has adopted Model Rules of Professional Conduct. Analyzing the actions of the prosecutor related to the Model Rules of Professional Conduct is outside the scope of my task.

Acting with integrity: The rule of law is one standard that determines integrity. The Idaho Criminal Code 18-2604(3) specifies that a witness should testify “freely, fully, and truthfully.” The efforts of the prosecutor in the interview that I analyzed suggested improper influence of the witness.

Avoiding inappropriate interviewer behavior: The witness was present at the request of the prosecution for a voluntary interview. Best practices require a witness to be greeted, provided detailed explanation of the reason and scope of the interview, and questioned in a manner that provides an unbiased narrative. An interview is a simple process: one is asked questions and

responds with answers. Efforts are made to avoid influence, exploitation, or shaping the witness narrative.

One could raise the objection that the interview that I analyzed was not an interview, but simply a “meet and greet” with the prosecutor. If that is the case, my observations stand and my concerns about ethics and integrity rise to a higher level. If a meeting between the prosecutor and the witness is advisable at this stage in the investigation, then the proper time to meet would have been after the witness was interviewed, not immediately before.

The nature of the initial interview (or meeting) with the prosecution is troubling. There is no apparent effort to seek impartial testimony from the witness and numerous efforts to influence, exploit and shape the witness narrative.

The witness is a vulnerable witness. The witness is the sister to the defendant and clearly is concerned about her future (i.e., death penalty). The witness notes that it is “weird” to be testifying for the prosecution and the defense. A vulnerable witness must be treated carefully to avoid introducing bias into their responses to questions.

The interview with the prosecutor provides the witness with the theory of the case including the prosecutor’s opinion of the male defendant (i.e., wimpy, manipulative and perverting LDS doctrine) and the defense attorney (unqualified, incompetent, and a liar).

The prosecutor specifically asks the witness to consider various aspects of his theory of the case. Before the witness ever responds to questions following this initial interview, she has been coached on the validity of the prosecution’s theory of the case.

It strains credulity to think that the efforts of the prosecution had no impact on the subsequent testimony of the witness. It is apparent during the interview that she seeks to please the prosecutor with her responses and begins to volunteer information in an apparent effort to help him. It is likely that the subsequent interview of the witness has been influenced and tainted by the nature of the initial interview with the prosecutor.

Opinions and conclusions in this report are based on the sources of information listed in this report; additional information, should it become available after the report is written, may or may not affect the validity, reliability and opinions contained in this report. I reserve the right to supplement this report should additional information be provided after this report is released.

Very Respectfully,

A handwritten signature in dark ink, reading "Jane Davidson Ph.D." in a cursive script.

James Davidson, Ph.D.

Forensic and Clinical Psychologist

Licensed Psychologist in Idaho (PSY-202958), Texas (36018), Oregon (3300), Washington (TE 61090984), Indiana (99101546A), Florida (10979), Ohio (Temp 200457) ASPPB CPQ (#301)

Learned treatises (partial listing)

Black, I.S. and Yeschke, C.L. (2003) *The art of investigative interviewing*. Waltham MA: Elsevier.

Heilbrun, K. M. (2002). *Forensic mental health assessment*. New York: Oxford University Press.

Hessm J.E. (2010) *Interviewing and interrogation for law enforcement*. Abingdon OX: Taylor & Francis.

McCartney, S., Parent, R. and McCartney, S. (2015) *Ethics in Law Enforcement*. Open Library|Pressbooks.

Shepherd, E., and Griffiths, A. (2013) *Investigative interviewing: The conversation management approach*. New York: Oxford University Press.

Ackley, C.N, Mack, S.M. Beyer, K. and Erdberg, P. (2011) *Investigative and forensic interviewing: A personality focused approach*. Boca Raton: CRC Press.

KIRTON | McCONKIE



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EDUCATION

Seattle University, J.D.,
1983

University of Utah, M.A.,
English, 1980

University of Utah, B.A.,
English, 1978

ADMISSIONS

Utah, 1984

OTHER ADMISSIONS

OVERVIEW

Mr. McConkie is a member of the firm's Insurance section and the Litigation section. He has over 27 years of experience in risk management, insurance defense, personal injury, and products liability. Also, he has an extensive background in criminal prosecution and defense. He possesses extensive trial experience in both federal and state courts representing individual insureds as well as political subdivisions of the state of Utah.

Mr. McConkie is recognized as one of Utah's Legal Elite and as a Mountain States Super Lawyer for insurance coverage. He is AV rated by Martindale Hubbell.

AFFILIATIONS

Utah State Bar Association



United States Supreme Court, 1990

United States Court of Appeals for the Tenth Circuit, 1989

LANGUAGES

Portuguese

HONORS & AWARDS



Super Lawyers national: Insurance Coverage (2013)

Mountain States Super Lawyer: Insurance Coverage (2012, 2014 - 2018)

Utah Legal Elite: Insurance (2015), International (2019, 2020)

EXPERIENCE

- Prosecuted criminal cases in the Salt Lake County Attorney's Office (Drug and Major Offender Divisions) with emphasis on drug abuse, violent crimes, and homicide
- Designated as a Special Assistant Attorney for the state of Utah in a capital homicide case before the United States Supreme Court
- Possesses extensive trial experience in both federal and state courts representing individual insureds, as well as political subdivisions of the state of Utah

NEWS & EVENTS

NEWS

- [Utah Legal Elite: 34 attorneys across 14 categories recognized](#)
03.13.2020

- [Utah Legal Elite: 34 Kirton McConkie Attorneys Recognized](#)
03.20.2019
- [28 Kirton McConkie attorneys named 2018 Mountain States Super Lawyers](#)
Press Release, 06.11.2018

[44 Kirton McConkie Attorneys Named Utah Legal Elite](#)
02.2018

[Founding Partner of Kirton McConkie, Oscar W. McConkie, Jr., Painted by World-Renowned Artist, Leon Parson](#)
01.18.2018

[31 Kirton McConkie attorneys named 2017 Mountain States Super Lawyers](#)
Press Release, 06.13.2017

[32 Kirton McConkie attorneys named 2016 Mountain States Super Lawyers](#)
Press Release, 03.2016

[36 Kirton McConkie attorneys named 2015 Mountain States Super Lawyers](#)
Press Release, 06.12.2015

[29 Kirton McConkie Attorneys Named Utah Legal Elite](#)
Press Release, 04.03.2015

[39 Kirton McConkie attorneys named Mountain States Super Lawyers](#)
Press Release, 06.11.2014

[12 Kirton McConkie attorneys selected for National 2013 Super Lawyers](#)
Press Release, 06.12.2013

SPEAKING ENGAGEMENTS

- Presenter at State and National Seminars Involving Insurance Defense and Risk Management

Statement from Kirton McConkie issued on October 28, 2021 by Robert D. Walker, President:

On October 6, 2021, Kirton McConkie received an unsolicited call from Lori Daybell seeking assistance. Kirton McConkie informed Mrs. Daybell that it could not provide advice or representation and directed her to the State Bar of Idaho or the court if she needed assistance in finding an attorney. Subsequent calls with her counsel and the prosecutor confirmed the unsolicited contact.

MADISON COUNTY
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PROSECUTING ATTORNEY

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Criminal Deputy
Mekazie Cole

March 16, 2012

To: Madison County Idaho Board of Commissioners
From: Robert Wood, Prosecuting Attorney
Re: Additional Resources

Dear Commissioners:

I wanted to give you an update regarding an additional, temporary prosecutor to assist our team with the Chad and Lori Daybell matter. Few offices our size across the country have the manpower to manage a case of this magnitude without sacrificing their day-to-day obligations. The temporary addition of an experienced prosecutor to work on the Daybell case will enable us to meet the increased manpower demands during the duration of this high-profile matter and ensure justice for the victims and the people of Madison County.

I'm pleased to share that Rachel Smith, a veteran homicide prosecutor, has joined our team on a contract basis. Ms. Smith has 25 years of experience in complex criminal litigation. She has prosecuted thousands of felony cases in her career, including over 100 homicide and death penalty cases. Smith currently works as a special prosecutor throughout Missouri assisting other elected prosecutors with their complex criminal cases. In addition, she served in Missouri Attorney General's Office as a special prosecutor where she traveled the State of Missouri to handle capital, homicide and public corruption investigations and cases.

Ms. Smith is an Adjunct Professor and Clinical Co-Director for Washington University School of Law. She served at the National Association of Attorney General's trial school as an instructor, along with training hundreds of law enforcement officers and prosecutors throughout her career on criminal procedure and best practices. Smith also serves as an Expert for the Prosecutors' Center for Excellence, a national "think tank" based in Manhattan. Prior to starting her own practice, Smith served for almost two decades as an executive-level prosecutor in the City of St. Louis Circuit Attorney's Office, serving for 16 years under former Circuit Attorney Jennifer M. Joyce, who referred Ms. Smith to our office. Ms. Joyce, along with Susan Ryan work as consultants with Vera Causa Group, which is also supporting our office during the prosecution of the Daybell matter.

Ms. Smith is licensed to practice in Missouri and, accordingly, we will be asking the court to admit her to practice in Idaho *pro hac vice* by permission of the courts pursuant to IBCR 227, which allows attorneys to practice law in another state for a particular matter.

There is also a long-term benefit to having Ms. Smith as part of our team for the next several months. While we have an excellent staff of skilled prosecutors in the office and our community enjoys relatively low crime rates, the criminal litigation experience and teaching instruction Ms. Smith brings with her will help prepare our team for future complex situations if and when they arise.

Please let me know if you have any questions.

Regards,



Rob Wood
Madison County Prosecuting Attorney

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