



WSBA

OFFICE OF DISCIPLINARY COUNSEL

September 8, 2017

Denise Williamson Greer
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955 Tacoma Ave S Ste 301
Tacoma, WA 98402-2160

John Cain
802 N 2nd St
Tacoma, WA 98403-1929

Re: Grievance of John Cain against Mark Evans Lindquist
ODC File No. 16-00748

Dear Ms. Greer and Mr. Cain:

We have completed our investigation, and we write to advise you of our conclusions before we report this matter to a Review Committee of the Disciplinary Board. Our analysis is based on interviews of Jared Ausserer, Gregory Greer, Judge Jack Nevin, Heather Songer, and Mike Stewart; a review of the court file in State of Washington v. Skylar Nemetz, Pierce County Superior Court No. 14-1-04212, and a review of the documentation listed at the end of this letter.

We are recommending that the Review Committee order this matter to hearing. If you wish to provide additional information or address our analysis, you should do so on or before October 9, 2017. The Review Committee will be provided with the documentation listed at the end of this letter and with anything further that you send to us. All materials will become public when and if the Review Committee orders the matter to hearing or orders that an admonition be issued, unless the materials are covered by a protective order.

Mr. Cain, a Pierce County criminal defense lawyer, filed this grievance against Mr. Lindquist, the elected Pierce County Prosecuting Attorney (PA). He alleges that PA Lindquist violated RPC 3.6 and RPC 3.8(f) when he gave an interview on Nancy Grace, a nationally broadcast television show, about an ongoing criminal jury trial. Ms. Greer represents PA Lindquist.

FACTS AS DISCLOSED BY INVESTIGATION

State v. Nemetz: The Charges

On October 22, 2014, Skylar Nemetz was charged in the Pierce County Superior Court with murder in the first degree.¹ The information, filed in the name of Prosecuting Attorney (PA) Mark Lindquist, alleged that Mr. Nemetz, with premeditated intent, caused the death of his wife, Danielle Nemetz, while armed with a rifle.² The Declaration for Determination of Probable Cause set forth some of the alleged facts related to the shooting, including Mr. Nemetz's experience with firearms and the statements he made about the shooting.

State v. Nemetz was assigned to Judge Jack Nevin. Deputy Prosecuting Attorney (DPA) Gregory Greer and DPA Jared Ausserer represented the State of Washington. Lawyer Michael Stewart represented Mr. Nemetz. For months, the case received substantial media coverage, not all of the highest quality.

The First Nancy Grace Interview

On December 3, 2014, with State v. Nemetz set for a jury trial on May 4, 2015, PA Lindquist gave a telephonic interview about the case on the national television show Nancy Grace. The show, which ran for more than a decade on the CNN Headline News (HLN) network, was well known for its aggressive coverage of "tabloid crime stories." "Nancy Grace to Leave HLN After More Than a Decade," New York Times, June 30, 2016. The show's eponymous hostess was "criticized frequently as promoting a one-sided view of the stories she covers, castigating those she perceives to be guilty without waiting for rulings from jury or judge." Id. "Since her show began in 2005," wrote a New York Times media critic, "the presumption of innocence has found a willful enemy in the former prosecutor turned broadcast judge-and-jury." "TV Justice Thrives on Fear," New York Times, May 22, 2011. Besides Ms. Grace herself, the show featured "a contingent of experts who have all the independence of a crew of trained seals." Id.

In his December 3, 2014 interview on Nancy Grace, PA Lindquist described some of the information contained in the Declaration for Determination of Probable Cause relating to Mr. Nemetz's experience with firearms and the statements he made about the shooting. But in addition, PA Lindquist expressed his opinions about Mr. Nemetz's credibility, his motive, and the quality of his anticipated defense. PA Lindquist opined, for example, that what Mr. Nemetz said about the shooting "undercuts his claim that this was an accident." He opined that Mr. Nemetz "may have imagined that she [Danielle Nemetz] was doing something, cheating on him," and "to me that just gives him motive to murder her," adding that, in his view, a jury would say "that's motive for murder." He opined that Mr. Nemetz's claims that the shooting

¹ Pierce County Superior Court No. 14-1-04212.

² See RCW 9A.32.030(1)(a), 9.94A.533.

was accidental “just don’t make sense,” adding, “I think the motive of jealousy makes it more clear that this was intentional.”

A full transcript of the December 3, 2014 episode of Nancy Grace is at Appendix A. The portion of the episode devoted to State v. Nemetz follows, with PA Lindquist’s comments in boldface.

(END VIDEO CLIP)

GRACE: It is not fitting together for me. What we have is a young wife, Danielle Nimitz, found, shot dead in the back of the head, sitting at her home computer. Her husband has given several different stories about what happened. But one of them is as he was trying to put his assault rifle on safety and accidentally did that as he was pointing at the back of her head. I’m hearing in my ear, I’m just now being joined by special guest, Pierce County prosecuting attorney, Mark Lindquist. Mark, thanks so much for being with us.

MARK LINDQUIST, PIERCE COUNTY PROSECUTING ATTORNEY (via telephone): Happy to be here, Nancy. Thank you.

GRACE: Man, you’ve got a tough job. I remember the ten years that I prosecuted felonies, every day, I would think, well, I’ve seen it all now, until the next day. How many stories, Mark Lindquist, do we know that Skyler Nimitz gave about the shooting death of his wife?

LINDQUIST: He gave basically three different stories, which obviously undercuts his claim that this was an accident. Initially, he claimed his wife shot herself. Second, he claimed the weapon went off accidentally when the stock bumped against his leg. And third, he admitted that he pointed the gun at the back of her head, and took off the safety and pulled the trigger, but claimed he didn’t know the gun was loaded.

GRACE: Now this is the problem, Mark Lindquist, as you probably already know. Some people out there will think, if he thought his wife was having an affair, whether she was or wasn’t, that that will somehow lower the charge or nullify the charge. But as I have the “I was mad” argument is not a legal defense under the law, Mark.

LINDQUIST: Right. And actually I think the motive of jealousy makes it more clear that this was intentional.

GRACE: Why do you say that, Mark?

LINDQUIST: Well, first, let me step back a little and note that this defendant is highly trained in the use of firearms and it doesn’t make any

sense that he would point a loaded gun at the back of his wife's head, click the safety off and pull the trigger. We know the number one rule of gun safety is assumed all guns are loaded.

GRACE: You know what, Mark? Even when I would bring a gun in as evidence, number one, I hate handling guns because I'm the victim of gun violence. But always, even after my investigator would hand me the gun in open court, I would turn it away from the jury and down to the ground if I wanted to demonstrate anything because of the number one rule of gun safety is assume it's loaded. Go ahead, Mark.

LINDQUIST: And always point the gun in a safe direction. He knows what he's doing with guns. He's angry for whatever reason, whether it's an actual affair or imagined affair, and his multiple claims that it was an accident just don't make sense.

GRACE: An accident? Was there a point where he said his wife shot herself?

LINDQUIST: Yes, that's what he told the neighbor initially.

GRACE: Why is it that the neighbor -- you know what? Unleash the lawyers. In addition to the prosecuting attorney, Mark Lindquist, with me, Randy Kessler, Alex Sanchez and also with me, Dr. Ish Major, board certified psychiatrist out of New York. Doctor Ish Major, first to you. When does jealousy take over your body so somehow it makes sense to you to murder your wife?

DR. ISH MAJOR, BOARD CERTIFIED PSYCHIATRIST: You know what? It sounds like he was building up and got to a point where he was in a jealous rage. The question I have, Nancy, is what is the history here? Guys just don't come home and get jealous and shoot their wife in the back of the head. So I'm betting there's a history of violence, maybe abuse or in the very at least intimidation going on.

GRACE: Randy Kessler, Alex Sanchez, taking that into account what Ish Major has just told us, give me your best defense, Alex Sanchez, I'm braced.

ALEX SANCHEZ, DEFENSE ATTORNEY: The best defense is that he's going to be ending up pleading manslaughter in this case on the grounds of extreme emotional disturbance. He was in the military, under stress. He comes home and finds out his wife may be having an affair with somebody. Somebody is giving alcohol --

GRACE: It was a bottle of liquor.

SANCHEZ: Yes, bottle of liquor, but what is that for? What do you think is going on there?

GRACE: Are you asking me to speculate because a family friend gives this family a bottle of liquor. Let me ask you something, when you go to a Christmas party or a dinner, I bet you give people a bottle of wine. Does that mean you're sleeping with the lady?

SANCHEZ: The first thing you need to do is get real. A man is giving a bottle of alcohol to a man's wife while this guy is away. That doesn't look good and he has intentions that are inconsistent with the marital vows.

GRACE: OK, to Mark Lindquist, Pierce County prosecuting attorney. That's a perfect argument to a jury when some defense attorney tries this, is how many people on a jury, whether they drink or not, how many times when they go to a party or a dinner or get together, do they take a bottle of wine? Does that mean you're sleeping with the lady that lives there? No, it does not. I guess, you're ready for that, Mark.

LINDQUIST: I'm a prosecutor, not a psychiatrist, so I look at the evidence, and the fact that he may have imagined that she was doing something, cheating on him, to me that just gives him motive to murder her. I don't think there's a jury out there that will say, maybe she was cheating and therefore this is manslaughter. On the contrary, they will say that's motive for murder.

(COMMERCIAL BREAK)

After the interview, a representative of Nancy Grace sent a note to the Pierce County Prosecuting Attorney's Office (PCPAO) thanking the staff for assisting with the interview, adding: "Nancy loved Mark!"

48 Hours

The trial was continued three more times to January 4, 2016. Meanwhile, in late 2015, representatives of the CBS television series 48 Hours, described (by CBS) as "television's most popular true-crime series," began planning an episode devoted to State v. Nemetz. To make logistical arrangements, 48 Hours representatives worked mainly through Heather Songer, the Communication and Public Information Coordinator for the PCPAO. The episode on State v. Nemetz was to include interviews with DPA Greer and DPA Ausserer. DPA Greer and DPA Ausserer insisted, however, that no such interview be disseminated by means of public communication until after a verdict was reached, so as not to prejudice the proceeding. At DPA Greer's insistence, 48 Hours agreed to this condition in writing.

A representative of 48 Hours also contacted Michael Stewart, Mr. Nemetz's lawyer, to request an interview. Mr. Stewart declined the invitation, and sent the following email to DPA Greer and DPA Ausserer on December 2, 2015:

Dear Mr. Greer and Mr. Ausserer,

I had the pleasure of a surprise visit this afternoon from Greg Fisher and Erin Moriarty from CBS News. I declined to be interviewed. They left an impression with me however that you have not declined to be interviewed. I wish to remind you of RPC 3.6. No doubt you are familiar with this rule. You are undoubtedly also aware of rule 3.8 which falls right on its heels. Please read them together.

Thank you, gentleman.

DPA Ausserer replied the next day:

Mr. Stewart,

We are familiar with the RPC's, which state we shall refrain from extra-judicial statements that we know will be disseminated and will have a substantial likelihood of materially prejudicing the trial. None of our statements to CBS will be disseminated prior to verdict and have no likelihood of prejudicing the trial. Similarly, RPC 3.8 specifically states that there is nothing in this rule that is intended to restrict a statement that would be proper under RPC 3.6.

Thank you for your concern.

State v. Nemetz: The Trial

The trial of State v. Nemetz began on January 4, 2016 with hearings on various pretrial motions, including a motion regarding media coverage. In an Order Regarding Media Coverage, Judge Nevin ordered, among other things, that no interviews would take place "within [the] presence, sight or hearing of any juror . . . or when there is a reasonable likelihood that a juror or jurors may be present." After six days of pretrial hearings, jury selection began on January 14, 2016. After three days of jury selection, a jury was sworn on January 20, 2016. The jurors then heard 12 days of trial testimony, including the testimony of Skylar Nemetz on February 10-11, 2016. On February 11, 2016, the jurors were released and the trial recessed until February 22, 2016.

The Second Nancy Grace Interview

On the morning of February 16, 2016, while the trial was in recess, Mike Duffy, a representative of Nancy Grace, telephoned Mr. Stewart and asked if he would speak about State v. Nemetz on Nancy Grace later that day. Mr. Stewart declined. He told Mr. Duffy that the trial was ongoing,

and that he would be willing to comment at some later date, but only after the jury reached a verdict.

On the same morning, Mr. Duffy telephoned Heather Songer and told her he would like PA Lindquist to make another appearance on the show later that day to talk about State v. Nemetz again. Ms. Songer thought the proposal was a bad idea, given the sensationalistic character of the show and the fact that the trial was ongoing. She believed, however, that PA Lindquist would be very interested nonetheless.

Ms. Songer went first to DPA Greer and DPA Ausserer and told them about the Nancy Grace proposal. Both DPA Greer and DPA Ausserer strongly opposed an appearance by PA Lindquist or anyone else from the PCPAO on Nancy Grace while the trial of State v. Nemetz was ongoing. They were both concerned that such an appearance could prejudice the proceeding, especially if one or more jurors saw the show. They both believed, however, that PA Lindquist would not want to pass up the opportunity to appear on a national television show, even one like Nancy Grace, which, according to DPA Ausserer, DPA Greer said was “crap.”

Ms. Songer then spoke to PA Lindquist. She explained that both DPA Greer and DPA Ausserer believed an appearance on Nancy Grace while the trial of State v. Nemetz was ongoing was a bad idea. PA Lindquist then brought DPA Ausserer into the conversation. DPA Ausserer expressed his discomfort with an appearance on Nancy Grace while the trial was ongoing, but, according to Ms. Songer, he did so less forcefully than he had earlier in conversation with her and DPA Greer when PA Lindquist was not present. PA Lindquist made it clear that he wanted to do the interview, notwithstanding the concerns of Ms. Songer, DPA Ausserer, and DPA Greer.

Meanwhile, Mike Duffy, a representative of Nancy Grace, sent the following email to Ms. Songer:

Hi Heather. Here are the types of questions for today's show. If there's anything you can't answer, just let me know and Nancy totally understands.

Mike Duffy

[Telephone redacted]

HOW IMPORTANT IS NEMETZ'S HISTORY WITH FIREARMS TO THE STATE'S CASE?

WHAT CAN YOU TELL US ABOUT THE DIFFERENT STORIES NEMETZ GAVE POLICE?

HOW DO ALL THE DIFFERENT STATEMENTS NEMETZ GAVE POLICE ADD UP AGAINST HIM?

HOW MUCH DOES EVIDENCE OF A MOTIVE HELP IN A CASE LIKE THIS?

HOW DO YOU SHOW NEMETZ'S [sic] ACTIONS AFTER THE SHOOTING MAKE IT CLEAR THIS WAS NO ACCIDENT?

WHAT IS THE MOST COMPELLING EVIDENCE AGAINST NEMETZ?

Ms. Songer replied that she would go over the questions with PA Lindquist. After consulting with PA Lindquist, Ms. Songer replied at 1:59 p.m.:

Yes, this is a go. It looks like we can address everything except questions 3 and 6.

Later the same day, February 16, 2016, PA Lindquist gave a telephonic interview about State v. Nemetz on Nancy Grace. Before the interview, PA Lindquist had DPA Ausserer place certain public records related to the case on a desk so that he could refer to them. PA Lindquist told DPA Ausserer to make sure he (PA Lindquist) didn't "deviate" from information contained in the public record. DPA Ausserer and Ms. Songer were with PA Lindquist in his office during the interview, but they could hear only PA Lindquist's side of the call.

In his February 16, 2016 interview on Nancy Grace, PA Lindquist again described some of the information contained in the Declaration for Determination of Probable Cause relating to Mr. Nemetz's experience with firearms and the statements he made about the shooting. But in addition, PA Lindquist expressed his opinions about Mr. Nemetz's motive, about the inferences to be drawn from the evidence, about the significance of certain evidence, and about the strength of the evidence. PA Lindquist opined, for example, that "the motive in this case was jealousy." He opined that "[t]he evidence suggests the defendant thought Danielle was fooling around" He opined that Mr. Nemetz's experience with firearms was "critical to the case" and that certain other putative facts were "highly probative." And although he was never specifically asked the "add up" question (number 3) that his interviewer was told he could not address, PA Lindquist volunteered his opinion that "it's his actions combined with his statements . . . and his experience with firearms that add up to murder, rather than an accident." That was, according to PA Lindquist, the ultimate issue to be determined: "That's the whole defense. And that's the whole question. Was this an accident? Was it intentional?"

In addition, PA Lindquist represented as fact at least one allegation that was not in evidence at trial. PA Lindquist responded "Right" to Nancy Grace's assertion that "it's highly, highly probative when you are at home, you're the only other person in the home, and you were in the middle of a fast and furious fight with your wife over something that has just happened." In fact, there was no evidence that Mr. Nemetz and his wife were involved in any fight, "fast and furious" or otherwise, just before the shooting. PA Lindquist also repeated the allegation, contained in the Declaration for Determination of Probable Cause, that Mr. Nemetz had initially told a witnesses that Mrs. Nemetz shot herself while cleaning a rifle. Much was made of this

alleged fact by Nancy Grace, by one of her “contingent of experts,”³ and by PA Lindquist himself. But the witness, a neighbor of Mr. Nemetz, had testified at trial on January 27, 2016 that he did not remember Mr. Nemetz having made such a statement.

A full transcript of the February 16, 2016 episode of Nancy Grace is at Appendix B. The portions of the episode devoted to State v. Nemetz follow, with PA Lindquist’s comments in boldface.

GRACE: Good evening. I’m Nancy Grace. I want to thank you for being with us.

Bombshell tonight. Friends, family, relatives in shock after husband Skylar Nemetz walks free.⁴ Police hone in on Nemetz when his young wife, Danielle, is found still seated at her home computer but shot dead in the back of the head, blowing off her face.

Police say a neighbor had bought Danielle alcohol at her request. He stopped by the liquor store while Nemetz [was] away on military training. And when he found out the neighbor had done that favor, it infuriated Nemetz so much, he was to the point he was, quote, “shaking with anger.”

Straight out to Candace Trunzo, senior editor, Dailymail.com. Candace Trunzo, I know that this episode apparently infuriated Nemetz, the husband. He was away for about two weeks on some military training op. And he was the one that told his wife to go to the liquor store and have it there when he got home. He had been dry for two weeks. He wanted X, whatever liquor -- oh, it was, like, cinnamon vodka or . . .

CANDACE TRUNZO, DAILYMAIL.COM (via telephone): Cinnamon whiskey, yes.

GRACE: Whiskey, that’s right, cinnamon whiskey. I never heard of it. It’s got, like, a devil on the side with a pitchfork. But long story short, he asked her to go get the liquor. And she then mentions it to a neighbor, who stops by the liquor store, brings it, drops it at the house. And he gets furious. But I don’t see that as enough of a motive. So what I want to talk about, Candace Trunzo, is the physical evidence. I want to start with the physical evidence. What do we know, Candace?

TRUNZO: Well, we know that when the police arrived, they found her sitting at

³ “TV Justice Thrives on Fear,” New York Times, May 22, 2011.

⁴ Mr. Nemetz was released on bond on or about October 31, 2014.

her computer. She was shot through her left eye. She was shot in the back with an AR-15 assault weapon, through the back, went through the eye, into the computer.

GRACE: Wait, wait, wait! Did you say an assault weapon?

TRUNZO: Yes. An AR-15 assault weapon.

GRACE: Guys, I'm being joined right now -- hold on, Candace Trunzo from Dailymail.com. In my ear, I'm hearing we have special guest joining us, Mark Lindquist, the Pierce County elected prosecutor. Mark, thank you so much for being with us.

**MARK LINDQUIST, PIERCE COUNTY PROSECUTOR (via telephone):
Thank you, Nancy.**

GRACE: Mark, I know that you are on a break from court, so I want to ask you a couple of quick questions. I know all about the amendment to the Constitution that gives us the right to bear arms. I'm fine with bearing arms. But an assault weapon at home? Why did he have an assault weapon at home, Mark?

LINDQUIST: The defendant was highly experienced with firearms. He actually had 15 different weapons in his apartment. He'd been handling guns since he was 4 years old. He actually builds AR-15s. He buys the parts and puts them together. And he customized the weapon in this case for Danielle. So . . .

GRACE: Wait, what does that mean? I think I know my way around a weapon from being a prosecutor for so many years, but what do you mean he customized an AR -- an assault weapon for his wife?

LINDQUIST: He put together the parts and he balanced the weapon in a way that it would be ambidextrous, so it could be used on either shoulder.

GRACE: You're seeing the scene of the shooting. We've heard everything from an accident to she was the one holding the weapon, to a mistake. I'm trying to get a line on what exactly the defense is going to be. And there you see Danielle Nemetz and Skylar in their happy times. And as a matter of fact, it was stated in evidence that there had been no argument leading up to the shooting. But it's only him and her in the room, isn't that right, Mark Lindquist?

LINDQUIST: Right. But we can look at what happened before they were alone together in the room. Initially, as you pointed out, the defendant said Danielle shot herself. Later he said that he shot her accidentally. And now at trial, he's saying that he doesn't remember pulling the trigger.

GRACE: You know what? You just brought up something really interesting, Mark Lindquist. I'm just getting it straight out of the courtroom. Listen to this.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

SKYLAR NEMETZ, CHARGED WITH MURDER: No, I didn't!

UNIDENTIFIED MALE: Did you intend to hurt your wife?

NEMETZ: I did not! I did not intend to hurt my wife. I never did. I wanted her to be with me forever! I wanted her to be the mother of my child.

(END VIDEO CLIP)

GRACE: OK, straight to you, Ryan Schwartz, defense attorney out of the Atlanta jurisdiction. Why is he crying now? Because from what I understand, the day of the shooting, Ryan Schwartz, he wasn't crying. After his wife accidentally shot herself in the head as she was sitting at her home computer, it's my understanding he actually kicked some evidence under the bed and hid some other evidence. But in court, it's, Wah, wah.

RYAN SCHWARTZ, DEFENSE ATTORNEY: Well, again, Nancy, this is an accident. Accidents happen every day. He's obviously upset because he didn't intend to kill his wife.

GRACE: OK, you know what? I hear you. I hear you. But I want to analyze what this guy says on the stand again. Oh, yes, he's crying now! Run it again, Liz.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

NEMETZ: No, I didn't!

UNIDENTIFIED MALE: Did you intend to hurt your wife?

NEMETZ: I did not! I did not intend to hurt my wife. I never did. I wanted her to be with me forever! I wanted her to be the mother of my child.

(END VIDEO CLIP)

GRACE: Mark Lindquist joining me, the elected prosecutor in Pierce County.

Mark, has he been crying like that the whole time?

LINDQUIST: No, he hasn't. But -- and as you know, Nancy, prosecutors don't have to prove motive, but jurors always want to know the motive, right? And the motive in this case was jealousy. The evidence suggests the defendant thought Danielle was fooling around with another soldier. Even if that's not true, the point is the defendant suspected that.

GRACE: Unleash the lawyers. Joining me out of Atlanta, Ryan Schwartz, and out of New York, family law attorney and victims' rights advocate, Susan Moss. Susan Moss, did you see him turning on those waterworks? You know, he wasn't crying that day.

SUSAN MOSS, VICTIMS' RIGHTS ATTORNEY: No, I actually didn't see any tears at all. Apparently, he didn't go to the Jodi Arias school of learning how to cry! But domestic violence is violence, and domestic violence that leads to murder is murder! More women die at the hands of their partner than any other disease or any other reason! The fact here is that this was a man who was intense on control! And when he thought that his wife was receiving gifts, in this case alcohol from the neighbor, that's when he went crazy! That's what happened in this case, and that's what I believe they'll prove!

GRACE: But isn't it true, Candace Trunzo, senior news editor, Dailymail.com, he's the one that asked for the liquor? He started the whole thing.

TRUNZO: He did. He was texting -- I mean, he couldn't wait to get his hands on that bottle of cinnamon whiskey. He was texting her, Please get me the whiskey, please get me the whiskey. And for whatever reason, she didn't get it. She got a neighbor get it, and the neighbor was a man. The neighbor was a man, and he suspected something was going on between this man and Danielle, that she was cheating on him.

GRACE: With me right now, renowned forensic pathologist Dr. William Morrone joining me out of Madison Heights. Dr. Morrone, thank you for being with us. It's my contention, and I think the district attorney agrees with me -- I've got him right here with me, Mark Lindquist -- Dr. Morrone, this is absolutely impossible to have been self-inflicted. Yes, no.

DR. WILLIAM MORRONE, FORENSIC PATHOLOGIST: Absolutely. You can't shoot yourself in the back of the head with a rifle. Absolutely.

GRACE: Now, why do you say that?

MORRONE: Well, it's going to take holding it in such a way that you can pull the

trigger, and you can't put that far enough behind you even with a short barrel. And this is a small, petite woman, and the legal distance between the chamber and the tip of the barrel is mandated by the state, and that has to be certain distance. She would have had to have been reaching three feet behind her head . . .

GRACE: Ridiculous!

MORRONE: . . . to get to the trigger to shoot herself in the head so it would come out the eye. And that round is going over a thousand feet a second. That's why it penetrates bone twice.

GRACE: Joining us on a break is Mark Lindquist, the Pierce County elected prosecutor. Again, Mr. Lindquist, thank you for being with us, joining us out of Tacoma. Mark, I want to look at the facts. I mean, as you said, the state doesn't have to prove motive, although the jury likes to think they know the motive because it helps them put together the puzzle, like we all want to do.

LINDQUIST: Right.

GRACE: But what you've got to rely on, as you accurately pointed out, is the hard forensics. What can you tell me about what was found in that room? How do we know she had been sitting at her computer at the time she was shot in the head?

LINDQUIST: There's really no dispute that she was sitting at the computer when she was shot in the head. And at this point in the trial, the defense is arguing not that she shot herself, but rather that it was an accident. That's the whole defense. And that's the whole question. Was this an accident? Was it intentional? And that's why the defendant's experience with firearms is critical to the case. But it's not just that physical evidence, it's the behavior afterwards.

GRACE: Right.

LINDQUIST: The defendant never called 911. He never called for help. He seemed more focused on cleaning up the scene, disposing of the liquor bottles . . .

GRACE: Oh!

LINDQUIST: . . . than getting help. And it's his actions combined with his statements . . .

GRACE: Behavioral evidence.

LINDQUIST: . . . and his experience with firearms that add up to murder, rather than an accident.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

911 OPERATOR: So the male told you that his wife is dead?

UNIDENTIFIED MALE: Yes.

UNIDENTIFIED MALE: Prosecutors say after Skylar Nemetz shot his wife in the back of the head with an AR-15, he made up several stories.

NEMETZ: I did not intend to hurt my wife! I never did!

(END VIDEO CLIP)

GRACE: There you see Skylar Nemetz on the stand defending himself and claims that he, in cold blood, shot down his young wife. Apparently, motive, he had been away for about two weeks on a training op with the military and demanded over and over, texting and calling, that she have a certain kind of liquor at the house when he got home. Well, a neighbor stopped by the liquor store and got it for her, and when he found out this neighbor was actually a man, he allegedly goes berserk to the point that he was actually shaking. With me right now, special guest, in addition to Mark Lindquist, the elected prosecutor in that jurisdiction, James Peltier, friend and neighbor of the victim, Danielle Nemetz. James, thank you for being with us.

JAMES PELTIER, FRIEND AND NEIGHBOR (via telephone): Thank you, Nancy.

GRACE: I'm just so stunned that this situation escalated to the point where she is gunned down dead sitting at her home computer. What can you tell us about their relationship? What did you ever observe?

PELTIER: Well, there was some red flags on one occasion that really stood out to us the last time she came down to Humboldt County to visit us, and he was fighting with her and ended up smashing her cell phone to the ground. And I had conversations with Danielle. He just basically dumped her at our house, didn't even come in and say hi or anything. And I talked to Danielle and asked her if she was afraid of him or in fear, and her response was, Only when he's been drinking.

GRACE: "Only when he's been drinking." Everybody, that's home video of

Danielle from YouTube. Let's listen to it.

(BEGIN VIDEO CLIP)

DANIELLE NEMETZ, VICTIM: I'm so excited! OK, is there a card? OK. Read your card first. I'm so excited! OK.

(END VIDEO CLIP)

GRACE: There you see Danielle apparently reading a gift and a card from her husband, clearly deeply, deeply in love with him. I want to go through the physical evidence. Matt Zarrell, I want to walk through the blood evidence and why we know his story is a lie. But first, listen to him. We just got this from the courtroom.

(BEGIN VIDEO CLIP)

NEMETZ: And I was trying to clear the weapon, and I didn't do it correctly and I made a terrible mistake. And the weapon went off in my hands and it struck the back of my wife. It hit her in the head. And she died.

(END VIDEO CLIP)

GRACE: Christopher Robinson, firearms expert with Chris Robinson Forensics, former crime lab director out of Orlando -- Chris, that is a crock of BS, what I just heard. I'm not a gun expert like you, but I know that, what he just said, is a lie. I mean, really? I was cleaning my shotgun? How old is that?

CHRIS ROBINSON, FIREARMS EXPERT (via telephone): Absolutely, Nancy. The first rule of any gun is to keep it pointed in a safe direction. So it's pointed at the back of her head, when he's supposedly trying to clear the weapon. Well, why is his finger on the trigger of the weapon? When you're trying to clear the weapon, you just pull the bolt to the rear and eject the cartridge case. So why would he be having his finger on the trigger? He had to fire the weapon, so he had to pull the trigger.

GRACE: Matt, what do we know about the blood evidence and the physical evidence at the scene?

MATT ZARRELL, NANCY GRACE PRODUCER (via telephone): OK, so when officers found Danielle, she was in a chair at the computer, with her head slumped forward and a pool of blood at her feet. The bullet actually went through the computer screen she was facing. Cops also discovered that there was a magazine under the bed. The AR-15 was in the closet. The cinnamon whiskey was flushed

down the toilet, and the liquor bottles were thrown into some brush underneath the apartment building.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: Prosecutors claim Nemetz became enraged after learning another man bought his wife liquor.

911 OPERATOR: (INAUDIBLE) shot her?

UNIDENTIFIED MALE: I don't know that part. We just heard the gun go off, and he said there was an accident.

UNIDENTIFIED MALE: Nemetz contends the shooting was an accident.

(END VIDEO CLIP)

GRACE: For those of you just joining us, a young wife found dead, clearly sitting at her own home computer when she's shot in the head. Now, theories abound as to what really happened, but her husband, the only one at home at the time of the shooting beside her -- and they had been very happy up until this point, by all accounts -- was that first, she did it herself. Second, it was an accident, that he was cleaning his gun, and third, a variation on accident. Can those stories all be true? Well, not according to the physical evidence. But look at what we're hearing in court right now.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: The woman that means the rest of your life to -- you didn't go to her aid, did you.

NEMETZ: No, I did not.

UNIDENTIFIED MALE: Mr. Plus (ph) says that you were shaking with anger because he told you someone else got the alcohol.

NEMETZ: That did not happen, sir.

(END VIDEO CLIP)

GRACE: Straight out to Dr. Daniel Bober, forensic psychiatrist joining me out of Miami. Dr. Bober, it's too difficult for me to believe this guy. He's told several stories. Now he's saying he was not shaking with anger. According to one

witness, he was. What do you make of it? Now, you've heard from the friend, joining us today, James Peltier, that said the wife said, I was never afraid of him except when he was drinking.

DANIEL BOBER, FORENSIC PSYCHIATRIST: Nancy, there are a lot of aspects of this story that are very troubling -- the multiple versions that he told about how she died, the attempts to conceal evidence after the crime. We're never really going to know what happened leading up to the moments before her death. But certainly, there is a motive there. And a lot of times it's when people are saying that they weren't thinking what they were doing that they were doing what they were thinking. So I think that he was desperate and he was scared at the last minute and he probably knew that he was going to get caught, and so he attempted to sanitize the scene, if you will. But it just doesn't really add up. His version just doesn't make sense.

GRACE: The changing stories. Unleash the lawyers, Sue Moss out of New York, Ryan Schwartz out of Atlanta, Danny Cevallos joining us out of Philadelphia. First to you, Danny Cevallos. Why didn't he call 911? If this were an accident, as he's saying, cleaning his assault rifle, then why didn't he call 911?

DANNY CEVALLOS, DEFENSE ATTORNEY: He's got a lot of things to explain away. But I think the difference between not calling 911 and bringing in all this evidence that maybe they had arguments and maybe they didn't get along - - you see this all the time in murder cases, and it really is unfair to demonstrate that somebody maybe didn't get along with his wife, and therefore, that's the reason he may not have been cleaning his guns by accident.

GRACE: What's unfair about that?

CEVALLOS: Still it doesn't change the fact -- it's unfair because it goes -- you know as well as I do, Nancy, that yes, it's admissible . . .

GRACE: Well, first of all...

CEVALLOS: . . . but it's really about . . .

GRACE: . . . don't tell me what . . .

CEVALLOS: It's tainting the jury.

GRACE: . . . I know or don't know, number one. I don't need you . . .

CEVALLOS: Well, I'm pretty sure you know that, Nancy.

GRACE: . . . to school me in the law, but thank you. And I'm asking you a direct

question. Are you saying it's unfair that behavioral evidence comes in before the jury?

CEVALLOS: It's -- look, we've decided as a society that it's admissible, but it is problematic because you'd be hard-pressed to find a marriage that doesn't have some disagreement, some strife. And to use that to demonstrate to a jury that that's why somebody really wasn't cleaning his gun by accident seems a little unfair. But to be frank . . .

GRACE: Well, of course, the question that I asked you . . .

CEVALLOS: . . . we have another rule, so . . .

GRACE: . . . was why . . .

CEVALLOS: . . . what can I tell you.

GRACE: . . . didn't he call 911. That was the question. And to Mark Lindquist joining us, the elected prosecutor in Pierce County there in Tacoma. Mark, the reality is, it's highly, highly probative when you are at home, you're the only other person in the home, and you were in the middle of a fast and furious fight with your wife over something that has just happened. I think it's highly probative.

LINDQUIST: Right. And the jury wants to know what happened before the shooting and after the shooting because it helps them appraise the defendant's mental state. What was he doing and why?

GRACE: Candace Trunzo, senior news editor, Dailymail.com, do you really think a jury is going to buy all this waterworks in the courtroom, the crying, the snotting, the sniveling? And he only does that at certain points, for instance, when he's asked a tough question that he doesn't want to answer.

TRUNZO: Well, it's true, but you know, this guy -- he has no record. He has nothing to blemish, you know, a military man, nothing, nothing to take away from the fact that he was an upstanding citizen and a good soldier. So I think the jury could be possibly swayed by this. But what would drive him to shoot this wonderful young wife that he seemed to love? Anybody's guess.

GRACE: OK, are these real or are these crocodile tears?

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

NEMETZ: No, I didn't!

UNIDENTIFIED MALE: Did you intend to hurt your wife?

NEMETZ: I did not! I did not intend to hurt my wife. I never did. I wanted her to be with me forever! I wanted her to be the mother of my child.

(COMMERCIAL BREAK)

The episode was broadcast nationally on February 16, 2016, the same day that PA Lindquist's interview was recorded. Immediately after the broadcast, Mr. Stewart learned of it through Mr. Nemetz's mother. He watched a recording of it later that day. He was amazed by the conduct of PA Lindquist, whom he had considered a friend, and he was very concerned that members of the jury could have seen or heard about the interview.

The next day, February 17, 2016, Mr. Stewart sent an email to Judge Nevin, DPA Greer, and DPA Ausserer to which were attached clips of PA Lindquist's interview on Nancy Grace:

Nancy Grace conducted a show on our case/trial. A member of the prosecutor's office participated.

It was aired on live national television during a time when jurors were released and available to potentially watch tv, unlike if it aired while we were in court. I politely declined to participate as the trial was on-going.

Judge Nevin had seen the broadcast himself while on vacation in Arizona. He was working out at a gym when Nancy Grace happened to come on a nearby television, and he saw Mr. Nemetz on the screen. The sound was turned down, so he did not hear the dialogue. But he immediately became concerned that the show, and PA Lindquist's appearance on it, could prejudice the proceeding. Before leaving for Arizona, he had arranged to communicate by email with counsel in case any issues arose during the recess. The morning after PA Lindquist's interview was broadcast nationally on Nancy Grace, Judge Nevin received and replied to Mr. Stewart's email as follows:

I am aware of the telecast you referenced.

The Motion for Mistrial

The trial resumed on February 22, 2016. On that date, Mr. Stewart filed a Motion to Declare Mistrial and Award Attorney Fees based on PA Lindquist's appearance on Nancy Grace. Before the State's rebuttal witness began his testimony, Judge Nevin reminded the members of the jury that they should inform his judicial assistant if they had "any exposure whatsoever, directly or indirectly, to anything about this case that's been in any form of media, print, broadcast, telecast,

analog, [or] digital” None of the jurors told Judge Nevin’s judicial assistant they had had any such exposure.

Immediately after the State’s rebuttal witness testified, Judge Nevin held a hearing on the motion for mistrial. Mr. Stewart argued the motion on Mr. Nemetz’s behalf, and DPA Greer argued for the State. DPA Greer argued that there was no cause for a mistrial in the absence of any evidence that one or more jurors viewed PA Lindquist’s appearance on Nancy Grace. He added:

Then you have a colorable ethics violation that defense can make, I would presume, to the bar association. To the extent that a Superior Court Judge gets involved, because it does involve an ongoing case, I’m sure that’s part of what Mr. Stewart is arguing here when he asks for sanctions, etcetera, and I’m not here to speak to Mr. Lindquist’s motives, what specifically his mindset was when he spoke. I think only he can factually answer those questions if they need to be answered. It speaks for itself to some extent. Those were decisions he made and they were independent of Mr. Ausserer and I. And so, factually, that resides with him. How can I stand up here and defend something I’m not aware of in the sense of what he said, why he said, what he said, whether he believes this is defensible, justifiable, allowable, those kinds of things. I’m not his attorney. And it is my case, but I’m representing the State, there is a tangential effect on it, obviously, and to the extent that anybody in our office acts in any manner outside or touches on the rules of ethics, we’re, what’s the word, it attaches to us.

Judge Nevin took the matter under consideration and, after a recess, denied the motion for mistrial. Judge Nevin ruled that there was no basis for a mistrial because there was no evidence that any of the jurors had seen or heard the Nancy Grace episode about State v. Nemetz. Judge Nevin added that the propriety of PA Lindquist’s comments on the show was not before the court, since there was no evidence that any juror had heard them.

Closing arguments began the next day, and the jury began deliberating a day later, on February 24, 2016. After seven days of deliberation, the jury reached a verdict on March 3, 2016. The jury did not reach a verdict on the crime of murder in the first degree or the first lesser included crime of murder in the second degree, but found Mr. Nemetz guilty of the second lesser included crime of manslaughter in the first degree. On March 25, 2016, Mr. Nemetz was sentenced to 162 months of confinement. Mr. Nemetz appealed, but he did not make any argument on appeal concerning the motion for mistrial or any other argument which, if successful, would result in a retrial on the original charge of murder in the first degree.

VIOLATION ANALYSIS

RPC 3.6

Preserving the right to a fair trial necessarily entails some limits on the extrajudicial statements that a lawyer may make about a case or a party. RPC 3.6 cmt. [1]. “The theory of our system is

that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.” Patterson v. Colorado, 205 U.S. 454, 462, 27 S. Ct. 556, 51 L. Ed. 879 (1907) (Holmes, J.). If Justice Holmes had lived a century later, he might have added tabloid television to the list. Extrajudicial statements by prosecuting attorneys are more likely than those by other lawyers to affect a party’s right to an impartial jury and a fair trial, because a prosecuting attorney speaks with “the inherent authority of the government.” Attorney Grievance Commission v. Gansler, 377 Md. 656, 835 A.2d 548, 559 (2003).

RPC 3.6 (Trial Publicity) limits the extrajudicial statements that any lawyer, including a prosecuting attorney, may make about a civil or criminal case. RPC 3.6 must be read in conjunction with the comments to the rule and the Guidelines for Applying Rule 3.6 (“Guidelines”), as well as RPC 3.8(f). RPC 3.6 cmt. [8-9].

RPC 3.6(a) sets forth a general prohibition against making statements that a lawyer knows or should know will have a “substantial likelihood” of materially prejudicing an adjudicative proceeding. RPC 3.6 cmt. [3]. RPC 3.6(a) provides:

A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

One relevant factor in determining whether an extrajudicial statement will have a “substantial likelihood” of materially prejudicing an adjudicative proceeding is the nature of the proceeding. RPC 3.6 cmt. [6]. “Criminal jury trials will be most sensitive to extrajudicial speech.” Id. Another relevant factor is the timing of the statement. Broadcasting extrajudicial statements during trial “greatly magnifies the risk that a jury will be tainted by undue extrajudicial influences.” State v. Polk, 415 S.W.3d 692, 696 (Mo. Ct. App. 2013).

RPC 3.6(b) provides a “safe harbor” provision that allows a lawyer to make certain types of statements notwithstanding the general prohibition set forth in RPC 3.6(a). See In re Brizzi, 962 N.E.2d 1240, 1248-49 (2012); Gansler, 835 A.2d at 563.⁵ RPC 3.6(b) provides:

Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

⁵ Gansler, 835 A.2d at 562-63, discusses an earlier version of the Model Rules of Professional Conduct (MRCP) in which the safe harbor provision was in MRPC 3.6(c).

- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of the person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

These types of statements “should not in any event be considered prohibited by the general prohibition of [RPC 3.6(a)].” RPC 3.6 cmt. [4]. Of particular relevance to this case is the safe harbor for “information contained in a public record,” RPC 3.6(b)(2). The Guidelines also reiterate some of the safe harbor provisions of RPC 3.6(b), providing, *inter alia*, that a lawyer involved in the litigation of a criminal case “may state without elaboration . . . [t]he information contained in the public record.” Guidelines, § I.B.(2).

On the other hand, there are certain types of statements that are “more likely than not to have a material prejudicial effect on a proceeding,” particularly when they refer to a criminal case. RPC 3.6 cmt. [5]. These are:

- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
- (3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of

physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

RPC 3.6 cmt. [5]; Guidelines, § I.A. Because of this, such statements are rebuttably presumed to have a substantial likelihood of materially prejudicing an adjudicative proceeding. Brizzi, 962 N.E.2d at 1245-46; see also Board of Professional Responsibility, Wyoming State Bar v. Murray, 143 P.3d 353, 356 (2006) (extrajudicial statements expressing opinion as to guilt of criminal defendant presumptively improper). Of particular relevance to this case are the provisions concerning (1) the credibility of a party or witness and (4) any opinion as to the guilt or innocence of a defendant.

RPC 3.8(f)

RPC 3.6 applies to all lawyers, not just prosecuting attorneys, although the extrajudicial statements of prosecuting attorneys pose a heightened risk of materially prejudicing an adjudicative proceeding. RPC 3.6(a); Brizzi, 962 N.E.2d at 1246; Gansler, 835 A.2d at 559. But unlike other lawyers, “[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate.” RPC 3.8 cmt. [1]. In addition to the risk of materially prejudicing an adjudicative proceeding, “a prosecutor’s extrajudicial statement can create the additional problem of increasing public condemnation of the accused.” RPC 3.8 cmt. [5]. To address this problem, RPC 3.8(f) places additional limits on the extrajudicial statements that a prosecuting attorney may make about a criminal case. RPC 3.8(f) provides that “except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose,”

The prosecutor in a criminal case shall . . . refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

The explanatory comment to RPC 3.8(f) provides that nothing in the comment is intended to restrict statements that comply with the safe harbor provisions of RPC 3.6(b). RPC 3.8 cmt. [5].

Application to PA Lindquist's Extrajudicial Statements

In his response to the grievance, PA Lindquist states (through counsel) that his statements on Nancy Grace complied with RPC 3.6 and 3.8(f) because each statement "had its source in the public record." Some of the statements PA Lindquist made during his two interviews on Nancy Grace did convey, more or less "without elaboration," information contained in the Declaration for Determination of Probable Cause. Guidelines, § I.B.(2). Some of PA Lindquist's statements about Mr. Nemetz's experience with firearms and the statements Mr. Nemetz made about the shooting fall into this category. The Declaration for Determination of Probable Cause is a "public record," so these statements fall within the safe harbor of RPC 3.6(b)(2) insofar as they do not go beyond quotations from or references to the contents of that public record. RPC 3.6 cmt. [4]; Guidelines, § I.B.(2); Brizzi, 962 N.E. 2d at 1247; Gansler, 835 A.2d at 569.

But many of PA Lindquist's statements go well beyond "information contained in a public record" and do not fall within any of the safe harbor provisions of RPC 3.6(b). For example:

- In his first Nancy Grace interview, PA Lindquist stated that Mr. Nemetz "gave basically three different stories, which obviously undercuts his claim that this was an accident." That Mr. Nemetz gave three different stories may be "information contained in a public record," RPC 3.6(b)(2), but whether that "undercuts his claim that this was an accident" is clearly PA Lindquist's own opinion about the evidence, as well as a statement about Mr. Nemetz's credibility.
- In his first Nancy Grace interview, PA Lindquist stated that Mr. Nemetz "may have imagined that she was doing something, cheating on him, to me that just gives him motive to murder her." He added, "I don't think there's a jury out there that will say, maybe she was cheating and therefore this is manslaughter. On the contrary, they will say that's motive for murder." PA Lindquist's opinions about what Mr. Nemetz "may have imagined" or about what "gives him motive to murder her" are just that: PA Lindquist's opinions, not "information contained in a public record." The same is true of PA Lindquist's prognostications about what a jury "will say." The clear import of that statement is, moreover, that a jury not only will say but should say "that's motive for murder."
- In his first Nancy Grace interview, PA Lindquist stated that Mr. Nemetz's "claims that it was an accident just don't make sense." What Mr. Nemetz's claims are may be "information contained in a public record," but the assertion that those claims "don't make sense" is PA Lindquist's own opinion about the evidence and a statement about Mr. Nemetz's credibility.
- In his first Nancy Grace interview, PA Lindquist stated, "I think the motive of jealousy makes it more clear that this was intentional." What PA Lindquist may think about Mr. Nemetz's motive and intent is his opinion, not "information contained in a public

record.” It is, moreover his opinion about what he himself would say, in his second Nancy Grace interview, was the ultimate issue to be determined: “That’s the whole defense. And that’s the whole question. Was this an accident? Was it intentional?”

- In his second Nancy Grace interview, PA Lindquist reiterated his opinion about Mr. Nemetz’s motive, and editorialized about what, in his view, the evidence “suggests:” “And the motive in this case was jealousy. The evidence suggests the defendant thought Danielle was fooling around with another soldier. Even if that’s not true, the point is the defendant suspected that.” Some of the evidence may be “information contained in a public record,” but what that evidence “suggests” and the inferences to be drawn from it are not.
- In his second Nancy Grace interview, PA Lindquist also expressed his evaluation of certain evidence, as well as certain putative facts that were not in evidence. He opined, for example, that “the defendant’s experience with firearms is critical to the case.” And even though there was no evidence of a fight immediately before the shooting, PA Lindquist agreed with Nancy Grace that “it’s highly, highly probative when you are at home, you’re the only other person in the home, and you were in the middle of a fast and furious fight with your wife over something that has just happened.”
- Finally, in his second Nancy Grace interview, PA Lindquist framed what in his view was “the whole question” to be answered by the jury, and then summed up his own answer to that question: “And that’s the whole question. Was this an accident? Was it intentional?” “And it’s his actions combined with his statements . . . and his experience with firearms that add up to murder, rather than an accident.” PA Lindquist’s summing up of the evidence and his opinion on the ultimate issue of fact are not “information contained in a public record.” They are his personal assessment of the evidence and his opinion as to the guilt or innocence of the defendant.

Because these statements do not fall within any of the safe harbor provisions of RPC 3.6(b), it must be determined whether they had a “substantial likelihood” of materially prejudicing an adjudicative proceeding or of heightening public condemnation of the accused when made by the elected Pierce County Prosecuting Attorney on a nationally broadcast tabloid television show before and during a criminal jury trial. It is not determinative of this question that Judge Nevin found no evidence that any juror had actually viewed the Nancy Grace episode about State v. Nemetz, because RPC 3.6 and RPC 3.8(f) do not require that an extrajudicial statement cause actual prejudice to a criminal defendant or a proceeding. Brizzi, 962 N.E.2d at 1245. In determining the likelihood of prejudice from a prosecuting attorney’s extrajudicial statements, the statements must be viewed in the context in which they are made at the time they are made, not in hindsight. Id.; Gansler, 835 A.2d at 571.

Many of PA Lindquist’s statements on Nancy Grace fall into the categories of statements that are “more likely than not to have a material prejudicial effect on a proceeding,” particularly when

they refer to a criminal case. RPC 3.6 cmt. [5]. Statements in these categories are rebuttably presumed to have a substantial likelihood of materially prejudicing a proceeding. Brizzi, 962 N.E.2d at 1245-46. Among them are PA Lindquist's statements about Mr. Nemetz's credibility, such as the statement that Mr. Nemetz's "claims that it was an accident just don't make sense" and the statement that certain evidence "undercuts his claim that this was an accident." See RPC 3.6 cmt. [5](1); Guidelines, § I.A.(1). Still more troubling are statements that amount to PA Lindquist's opinion as to Mr. Nemetz's guilt or innocence, such as the statement, "I think the motive of jealousy makes it more clear that this was intentional," and the statement that "it's his actions combined with his statements . . . and his experience with firearms that add up to murder, rather than an accident." See RPC 3.6 cmt. [5](4); Guidelines, § I.A.(4). A prosecuting attorney's opinion of guilt is especially likely to create prejudice, since his words carry the authority of the government and are especially persuasive in the public's eye. Brizzi, 962 N.E.2d at 1246; Gansler, 835 A.2d at 572.

Other considerations in determining whether PA Lindquist's extrajudicial statements had a "substantial likelihood" of materially prejudicing a proceeding or heightening public condemnation of the accused include the nature of the proceeding and the context and timing of the statements. The proceeding at issue here is a criminal jury trial, and criminal jury trials are the "most sensitive to extrajudicial speech." RPC 3.6 cmt. [6]. The statements were made on a nationally broadcast television show, which even the trial judge happened to see by chance. That particular show was notorious for its sensationalism and its "one-sided view" of the stories it covered, and by appearing on it PA Lindquist lent it his "inherent authority" as the elected Pierce County Prosecuting Attorney. "Nancy Grace to Leave HLN After More Than a Decade," New York Times, June 30, 2016; Gansler, 835 A.2d at 559, 572. Finally, allowing those statements to be broadcast while the trial was in recess and just days before the jury began its deliberations greatly magnified the risk of materially prejudicing the proceeding. Polk, 415 S.W.3d at 696.

Given the nature of PA Lindquist's extrajudicial statements, the nature of the proceeding, and the context and timing of the statements, it appears that PA Lindquist may have violated RPC 3.6 and RPC 3.8(f). It also appears that PA Lindquist may have violated RPC 8.4(d), which prohibits "conduct that is prejudicial to the administration of justice." Conduct prejudicial to the administration of justice includes violations of accepted practice norms. In re Disciplinary Proceeding Against Longacre, 155 Wn.2d 723, 741-42, 122 P.3d 710 (2005). Accordingly, we will be forwarding this matter to a Review Committee with our recommendation that a hearing should be ordered under ELC 5.7(d)(5). The Review Committee has wide discretion, and may dismiss the grievance, dismiss with an advisory letter, issue an admonition, or order the matter to a hearing for a public determination of the violations and the appropriate disciplinary sanction. ELC 5.7(d).

SANCTION ANALYSIS

The Washington Supreme Court has held that the American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) ("ABA Standards") provide the

appropriate framework to impose disciplinary sanctions. In re Disciplinary Proceeding Against Halverson, 140 Wn.2d 475, 492, 998 P.2d 833 (2000); In re Disciplinary Proceeding Against Johnson, 114 Wn.2d 737, 745, 790 P.2d 1227 (1990). The ABA Standards require examination of (1) the duty violated, (2) the lawyer’s mental state, (3) the extent of actual or potential injury caused by the lawyer’s conduct, and (4) aggravating and mitigating factors. The nature of the duty violated together with the lawyer’s mental state and any actual or potential injury determine the presumptive sanction to be applied.

ABA Standards std. 5.2 applies to government lawyers who violate RPC 3.6 or 3.8(f), or engage in conduct that is otherwise prejudicial to the administration of justice. See, e.g., Murray, 143 P.3d at 357; American Bar Association Annotated Standards for Imposing Lawyer Sanctions 271-285 (2015). Under ABA Standards std. 5.22, suspension is the presumptive sanction “when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.” “Knowingly” means having “conscious awareness of the nature or attendant circumstances of the conduct,” not conscious awareness that the conduct violates the RPC. In re Disciplinary Proceeding Against Egger, 152 Wn.2d 393, 415-16, 98 P.3d 477 (2004) (citing ABA Standards, Definitions).

In this case, it appears that PA Lindquist had conscious awareness of all relevant attendant circumstances, including the substantial risks involved in making an appearance on Nancy Grace while the trial of State v. Nemetz was ongoing. Everyone else who knew of the proposed second interview—DPA Greer, DPA Ausserer, and Ms. Songer—thought it was a bad idea and strongly opposed it. Their concerns were conveyed to PA Lindquist, but he wanted to do the interview anyway. Given the nature of PA Lindquist’s extrajudicial statements, the nature of the proceeding, and the context and timing of the statements, as discussed above, it appears there was a “substantial likelihood” that PA Lindquist’s statements would materially prejudice an adjudicative proceeding or heighten public condemnation of the accused. In other words, it appears there was “potential injury to a party or to the integrity of the legal process.” Consequently, the presumptive sanction appears to be suspension under ABA Standards std. 5.22.

We believe the following aggravating factor identified in ABA Standards std. 9.22 may be raised:

- (i) substantial experience in the practice of law (admitted 1995).

We believe the following mitigating factor identified in ABA Standards std. 9.32 may be raised:

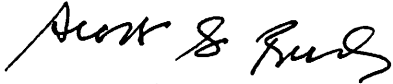
- (a) absence of a prior disciplinary record.

Aggravating or mitigating factors may cause the sanction to vary from the presumptive sanction.

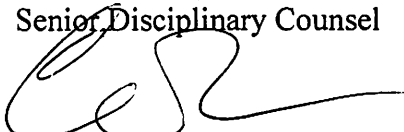
CONCLUSION

For the reasons set forth above, the Office of Disciplinary Counsel is recommending that the Review Committee order this matter to hearing. The Review Committee will advise you of its decision.

Sincerely,



Scott G. Busby
Senior Disciplinary Counsel



Erica Temple
Disciplinary Counsel

DOCUMENTATION⁶

1. Disciplinary Counsel's analysis letter (with attachments, if applicable)
2. Grievance
 - Grievance received on May 4, 2016
3. Respondent's response to grievance and/or deposition
 - Response received on June 22, 2016
4. Additional correspondence (from respondent, grievant or third parties)
 - July 6, 2016 letter and attachments from John Cain
5. Client File (all or selected documents)
6. Court and other records (including dockets)
 - Court records, State v. Nemetz, Pierce County Superior Court No. 14-1-04212-6
 - Docket, State v. Nemetz, Pierce County Superior Court No. 14-1-04212-6
 - Transcript of Nancy Grace episode, December 3, 2014
 - Transcript of Nancy Grace episode, February 16, 2016
7. Witness statements and/or depositions (other than Respondent's)
 - January 21, 2016 Verbatim Report of Proceedings, State v. Nemetz
 - February 22, 2016 Verbatim Report of Proceedings, State v. Nemetz

⁶ In accordance with the General Rules, the following personal identifiers will be redacted from the documents sent to the Review Committee: Social Security numbers, financial account numbers, drivers license numbers, telephone numbers, and dates of birth of minor children.

APPENDIX A



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NANCY GRACE

Toddler Dies in House Fire While Mom Smokes Pot; Cops: Husband Fatally Shoots Wife in Head Because Another Man Buys Her Alcohol

Aired December 3, 2014 - 20:00 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

NANCY GRACE, HLN HOST: Breaking news tonight. Live, Oregon. Mommy admits, I was stoned, when she's caught outside in a nearby gazebo, texting

away while her little boy, 4-year-old Andre, dies as their home burns down in a horrific blaze.

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: Twenty-three-year-old Niya Sosa-Martinez is accused of recklessly causing the death of her 4-year-old son. She was abusing marijuana.

(END VIDEO CLIP)

GRACE: We're going to be showing you photos of what happens to addicts.

And tonight, live, Lakewood, Washington. Friends, family, relatives in shock as her husband, Skyler Nimitz (ph), walks free, police honing in on Nimitz when his young wife, Danielle (ph), found seated at her home computer, shot dead in the back of the head after police say a neighbor buys her alcohol while Nimitz away on a military training op.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: She was found slumped over, dead from a single gunshot wound.

UNIDENTIFIED MALE: The defendant shot his wife because he believed she was cheating on him.

UNIDENTIFIED MALE: Investigators say he found out someone had purchased alcohol for his wife, Danielle. Enraged, prosecutors say, Nimitz shot her as she sat at the computer.

UNIDENTIFIED MALE: A foster dad left a 10-month-old baby inside a car, windows up, on a 90-degree day. Hours later, when he rushed outside to get the baby, it was too late.

(END VIDEO CLIP)

GRACE: Good evening. I'm Nancy Grace. I want to thank you for being with us.

Bombshell tonight. To Oregon. Mommy admits, I was stoned, when she's caught outside in a nearby gazebo, texting away while her little boy, 4-year-old Andre, dies when their home burns down in a horrific blaze.

Straight out to Brett Larson, investigative reporter. What happened?

BRETT LARSON, INVESTIGATIVE REPORTER: Nancy, this is just terrible. She's -- she rushes outside. It's in the middle of the day. She goes and sits

at a gazebo, and starts texting friends as though nothing has happened while her 4-year-old toddler dies of smoke inhalation inside the house. Firefighters show up, find the house ablaze, get everything under control, only to find that the 4-year-old is, in fact, dead inside.

GRACE: So -- and there was at no point, Brett, when she tries to save the little boy, the 4-year-old child? Isn't it true she just kind of yells at the house, Come out, come out, but never once tries to save him?

LARSON: Yes, she attempted to scream and to coax the child out of the home, but at no point, actually, got up and did what I assume would be the maternal thing to do, run towards a door, try and break a window, try and do something to save your 4-year-old toddler before he dies of smoke inhalation while the firefighters are there. At least tell them that he's still inside. She didn't even do that.

GRACE: Well, where was she when the fire breaks out, Brett Larson?

LARSON: She was inside the house when the fire broke out, and then got herself out very quickly...

GRACE: Doing what?

LARSON: ... and started screaming. Well, she was...

GRACE: Doing what?

LARSON: She was inside smoking marijuana. She admitted that to the authorities when they showed up.

GRACE: So she's stoned while the house goes up in flames with the baby inside. Who is she texting? Why is she sitting outside, seemingly disinterested, with her legs crossed? I mean, she's acting like she's on a break at work while her house is burning down with the baby inside.

LARSON: Yes, we don't know who, actually, she was texting. We just know that neighbors thought that it was very unusual. And it is very unusual, when your house is on fire, to be sitting across the street or nearby in a gazebo, using your phone to text your friends. I don't know what she was texting them, maybe, Hey, my house is on fire, how crazy is that? But I mean, you know, she's stoned. She's got a rap sheet and she's sitting there texting friends while her house burns down.

GRACE: With me right now, deputy chief of the Keizer Police Department, Jeff Kuhns is with us. Chief, thank you for being with us.

JEFF KUHNS, DEPUTY CHIEF, KEIZER POLICE DEPARTMENT (via telephone): Thank you, Nancy. I appreciate it.

GRACE: You know, I'm overwhelmed because the mom never tried to rescue the 4-year-old. Do we know how the fire started?

KUHNS: Right now, we still are investigating that, alongside with our partners from the Oregon State Fire Marshal's office. We did process the scene over the course of three days after the fatal fire, collected a lot of evidence. And as you know, that evidence is customarily sent off to a crime lab, where it is analyzed, and we are awaiting the results. And once we know and know for sure the cause of the fire, that cause will be released.

GRACE: Could I ask you, do the police know who was so important that she texted them while her 4-year-old boy was dying in the fire?

KUHNS: We do not know at this time. We have seized the cellular phone that was in use, that the mother was using in the gazebo. Those facts are correct. But at this time, we do not know who she was texting. That phone is being analyzed.

GRACE: Also, Justin Freiman, I want to take a quick look at the story of the foster dad who gets high on pot while he's watching "Game of Thrones." I guess he was watching the red wedding. But long story short, he's high on pot, watching "Game of Thrones" while his tot, his baby, dies out in a hot car. What happened, Justin?

JUSTIN FREIMAN, NANCY GRACE PRODUCER (via telephone): That's right, Nancy. This man leaves his baby strapped in the hot car, over 90 degrees outside,

goes into the house and has marijuana with his partner, watches "Game of Thrones." And apparently, they heard a baby crying in the show, and that's what reminded them, Oh, my gosh, the 10-month-old is in the car. By the time they get out there, it's too late.

GRACE: So they leave the baby strapped in the car. The baby dies. And foster dad is inside getting high on pot and watching "Game of Thrones"? Do I have that right?

FREIMAN: That's right, Nancy. It was the foster dad leaves the kid in the car, goes inside, watches TV, gets high, and then realizes, Oops, baby's in the car.

GRACE: And Brett Larson, before I go back to our original story about the mommy who says, I was stoned, and leaves the 4-year-old in the home while

she sits outside texting, stoned, and the baby dies in the house fire -- before I take you back to that, what can you tell me about this huge pot delivery that some idiot sends, what was it, FedEx, to the wrong address?

LARSON: Yes, apparently, now is the time of year where you can try and slip a few things into the mail, given the vast amounts of stuff that we're

shipping around. So somebody thought to themselves, Why not send a bunch of marijuana, 30 pounds at a time, for a total of 90 pounds, shows up in front of a store, a clothing store. It shows up.

The manager finds it out front and says, What is this? Thinking it's a mistaken delivery, opens it up, finds the marijuana, contacts the authorities, who are now trying to track down whoever sent the pot by via FedEx.

GRACE: Unleash Norm Kent, please, president of the National Organization for the Reform of Marijuana Laws. Also joining me, Brad Lamm, addiction

specialist, founder of Breathe Life Healing Centers.

First to you, Brad Lamm. I want to focus on the two deaths of the children, all right? I don't want to drag FedEx into this about delivering marijuana, but I want to talk about these two dead children. You've got a 4-year-old child, another toddler, both dead while the parents are high on pot. What about it, Brad Lamm?

BRAD LAMM, ADDICTION SPECIALIST: Nancy, to folks who say there really are no repercussions to folks who get addicted and struggle with pot, I'd say

these are cases in my own back yard. I grew up in Oregon. It's really ground zero of pot there in the Walanda (ph) Valley. And pot slows your reaction time. For some folks, it will make you very paranoid and delusional. And then other people will smoke pot and it won't do anything negative for them.

So I think this is a clear-cut case of somebody who has a problem with it, and people like Norm Kent, who you have on frequently, will probably join in the conversation and say, Hey, you're hysterical and pot's not the problem, it's people that are the problem.

GRACE: You know, Norm Kent, I want to go to you on this because, typically, you say that there's no violence or no harm associated with pot.

I guess you want us to believe everybody's just kicked back on their sofa, getting high, watching, what, cable TV?

So could you help me out here? The mom says when police pull up, I'm stoned! Her 4-year-old child dies as her house burns down. She's sitting there texting. Then you've got the foster dad high on pot, watching "Game of Thrones" while his child dies in a hot car just outside, about 30 feet away.

NORM KENT, NORML PRESIDENT: Well, the global answer to your question, Nancy, would be that the misuse of something is not a pragmatic argument

against the fair and responsible use of it.

GRACE: Whoa, whoa!

LARSON: The specific response would be...

GRACE: hat do you mean by the global answer? Who fed you that line? Because you've never pulled that on me before.

KENT: I've been saving that...

GRACE: So what, did you read that on the Internet, the global answer?

KENT: I've been saving that as...

GRACE: What do you even mean by that? Do you know what you mean by that?

KENT: Yes, I do.

GRACE: What? What do you mean by the global answer?

(CROSSTALK)

KENT: ... the thousands and maybe hundreds of thousands of people who are using marijuana responsibly, either medically or recreationally, shouldn't be penalized because we have come upon a part of the population that's negligent and irresponsible. In fact, the person you're talking about, the Sosa-Martinez woman from Oregon, if the truth be told, she was already convicted of child neglect. She was on probation. You might want to question why the judge had her out on the street...

LAMM: Why was she a neglectful parent in the first place?

GRACE: Yes, you know what? Let's get to the bottom of that.

(CROSSTALK)

GRACE: Put Norm Kent up, please. The reason she was neglectful to start with is because she's a pothead...

KENT: Well, no, maybe, Nancy --

GRACE: ... and she doesn't have the energy or the motivation to take care of her children.

LAMM: You know, the reason why people turn to...

(CROSSTALK)

GRACE: You're the one that brought it up.

LAMM: ... and to escape.

UNIDENTIFIED MALE: And I would like to know what her story is and what is it that she might need treatment for.

GRACE: With me is the deputy chief there in Keizer, Oregon. Jeff Kuhns is with us. He is in charge of the case, 4-year-old little boy, Andre, dies a horrible death. He dies in a house fire. We're waiting for the arson division to tell us the exact cause of the fire.

But what I know is this. The mom mother never tried to go in, according to our reports, to save the son. She made no effort whatsoever. And when police arrived, she was sitting in a gazebo near her home, sitting there with her legs crossed, texting. And she says, I'm stoned.

She was as high as a kite, Chief. Did she even know what was going on around her?

KUHNS: Yes, that's correct. We believe, and our investigation has showed, the mother was actually inside the apartment when the fire began. She made

it out. However, her 4-year-old son did not. He perished in this terrible, terrible fire.

What we saw when we arrived -- and I was the first responder that day -- was a mother who appeared to be under the influence, who was sitting under a gazebo, texting on a cell phone. There were no outward signs, no indications, no fear, no yelling, no screaming that, My son is inside that apartment and you need to rescue him. We saw the exact opposite of that.

GRACE: Now, this is what else we know. According to a witness, the mom, who was stoned, goes over, sits in a gazebo and starts texting like nothing's happening. And I'm reading from the statement of the witness. "We couldn't figure out what the H she was doing. She tried to get a burning mattress out of the house, never tried to get her kid out. She tried to coax her child out by calling in to him. She didn't even try to pull him out. She wasn't crying."

To Deputy Chief Kuhns, what was her demeanor?

KUHNS: I would say it was exactly that. There were no outward or obvious signs that anything other than her apartment was on fire, that was wrong. She was sitting there on her phone, texting. She was not indicating to first responders, police or firefighters, that her infant or young son was inside the apartment.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: A mother charged with manslaughter and her little boy gone forever. She was abusing marijuana the day the fire broke out in her

Keizer apartment. Investigators tell me the mother and her son were inside when the fire started.

UNIDENTIFIED MALE: A man gets high on pot and watches "Game of Thrones" while his 10-month-old foster baby dies inside a hot car!

(END VIDEO CLIP)

GRACE: One mom stoned out of her gourd when police arrive at the scene, her 4-year-old child in the home as she sits outside and texts, high on marijuana, as the child dies. Another father gets high and watches "Game of Thrones" while his toddler dies, strapped in, in a hot car, just a few feet from where he sits, watching TV.

But tonight, joining us, Norm Kent, president of the National Organization for the Reform of Marijuana Laws, insists marijuana should be legalized. Wouldn't you agree, Norm Kent, that marijuana is a gateway drug to other drugs, like cocaine, heroin, methamphetamine?

KENT: No. For the past 40 years, eminent doctors like Lester Grinspoon (ph) and others have demonstrated marijuana is no such gateway drug, and it's a falsification of the truth to say otherwise, just a complete misrepresentation of fact. Marijuana can be a gateway to inner awareness, higher learning, better experiences in life...

GRACE: Did you just say...

(CROSSTALK)

KENT: In Colorado...

(CROSSTALK)

GRACE: Wait, wait, wait. Please clear something up. Did you just say -- everybody, that's from Rehabs.com. You can go there and see the full video and more faces of drugs.

Did you just say marijuana leads to inner -- what, did you say inner enlightenment?

KENT: Yes, I absolutely said that.

GRACE: OK. OK, to Brad Lamm. What do you make of it? We are showing the faces of drugs right now, a real-time progression of people on drugs. Kent

insists it's not a gateway drug.

LAMM: And so Nancy, for people like Norm that are talking out of both sides of their mouth, I think...

GRACE: I'm not sure that's what he's talking out of, but go ahead.

LAMM: But there are people like Dr. David Smith (ph), who was the founder of the Haight-Ashbury clinic, who says, full stop, amen, pot is a gateway drug to other drugs. In my own life, you know, I'm a recovered meth addict and alcoholic. Pot was the very first thing that set me into active addiction many, many, many years ago, Nancy.

GRACE: You know what, Brad Lamm? Let's see Brad Lamm and Norm Kent, please. I remember the first time I had to use the worst curse word ever in front of a jury, that I had never used, ever. But I was quoting what a defendant said during a sex attack. And I read the statement to the jury.

Well, you know, the next time I had to read a statement like that in front of a jury, it wasn't so mortifying anymore. Then the third time, I just ripped it off, just like that, no problem. And I'm wondering, psychologically, Brad Lamm, is once you get over the hurdle of using an

illegal drug, it's just that much easier to use the next drug. You don't really think anything about it.

LAMM: Agreed, Nancy. And people that get addicted -- that's one in five adolescents that start smoking pot as teenagers -- are going to get addicted and sick because of their relationship with pot. So at Breathe, that's who we're treating, people that are having -- coming into treatment, need to go to rehab because they are wounded and they are addicted, full stop.

GRACE: OK, to you, Norm Kent. Explain to me why you think marijuana should be legalized and why -- and don't quote some doctor we've never heard of -- why you say it's not a gateway drug.

KENT: Well, to start with, it should be legalized because I believe in the responsible use and management and taxation of an herb that millions of Americans are using effectively without harming others or hurting themselves.

GRACE: Well, don't you think this a bad time...

KENT: And it's a taxable revenue source...

GRACE: ... to bring that up, since this mom just let her son fry, burn, smoke inhalation, while she sits outside, high on pot?

KENT: What part of her being a convicted child-neglected mom, who was on probation...

GRACE: Who was stoned.

KENT: ... using heroin and methamphetamine, did you not hear?

GRACE: So?

KENT: The cops say her home was strewn about it. Yes, maybe...

(CROSSTALK)

GRACE: You said that. The cop never said that.

(CROSSTALK)

LAMM: I would bet...

KENT: That's in the police report you sent out.

LAMM: I would bet that this young lady, when she started off as a young gal, a young teenager -- I would bet you -- because I see this in most of my clients that we work with -- that alcohol or pot was the very first time that they introduced a substance into their pretty little brain as teenagers. And that's just how it works.

So all these people that are calling for legalization, I hear you. It may not be right to lock people up instead of treat them, but pot does have a negative impact on many people's lives. And this mom, she would tell you she loves being a mom. It was the most important thing in her life. Bull! The most important thing in her life was addiction!

KENT: Well, I don't disagree with you there, Brad. And I don't disagree with you in the fact that marijuana use or abuse could be dealt with more effectively as a public health crisis, rather than a criminal law enforcement technique. So we do have some common ground, despite the fact that you never want to admit to it.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Seth Jackson (ph) left his foster baby inside a car on a 90-degree day, went into his home, smoked marijuana and watched "Game of Thrones" for about two hours.

UNIDENTIFIED FEMALE: The mother made it out alive. Police tell me her son died of smoke inhalation, that she was abusing marijuana.

(END VIDEO CLIP)

GRACE: One dad is high, watching "Game of Thrones" -- I guess it was the red wedding night -- while his child dies, strapped into a car outside. Another mom, high as a kite on pot, lets her house burn down as she sits outside texting and forgets to tell the fire department that her baby is inside, dying.

With me, special guest Jeff Kuhns, the deputy chief of the Keizer Police Department, Norm Kent and Brad Lamm, along with our panel.

To Deputy Chief Jeff Kuhns, again, thank you for being with us. I've been reading over what Norm Kent keeps spouting out, that she had a child neglect charge back in 2012, and I'm looking at that right now. And actually, what it says is that a deputy district attorney, Katie Suever (ph), noted during arraignment that she had a child neglect in 2012, was on probation, and had been twice since found in the possession of marijuana.

To Chief Kuhns, is that true?

KUHNS: To the best of my knowledge, that is factual information.

GRACE: So Chief, when the fire department gets there, she's so stoned she never even mentions her son is inside?

KUHNS: She did not mention it to us or any of the first responders that I am aware of. Like I stated earlier, we arrived and she was sitting across the way from this apartment that was fully engulfed in flames and smoke, texting and/or using a cellular telephone.

GRACE: To Dr. Bill Manion, medical examiner, forensic pathologist. Dr. Manion, the child died of smoke inhalation. Do you believe that maybe minutes could have counted? How long does it take a human to die of smoke inhalation?

DR. BILL MANION, MEDICAL EXAMINER, FORENSIC PATHOLOGIST (via telephone): You're right, it would take minutes to die of smoke inhalation. Usually,

if the smoke is very heavy, the person will become unconscious within one to two minutes. And then if they can be resuscitated, you have maybe a three or four-minute window to get to them. So a total of five to six minutes in a heavy, smoky fire. If it's not too smoky and just gradual, maybe up to 8, 9, 10 minutes if rescue can get in there and get to the child.

GRACE: To Norm Kent and Brad Lamm joining us. So Norm Kent, you keep talking about responsible use of marijuana. She's found twice since her neglect charge of her child because she's high on pot all the time with marijuana. She says she's stoned on pot that night.

And in the moments, the minutes that she sat there texting, failing to tell the firefighters her son was inside, his life could have been saved in those few minutes, Norm Kent. But you go on and on and on about responsible marijuana use.

NORM KENT, PRESIDENT, NATIONAL ORGANIZATION FOR REFORM OF MARIJUANA LAWS: His life could have been saved and was tragically lost, because he had a

neglectful, irresponsible parent, that was appropriately criminally charged and maybe not properly supervised by the criminal justice system or her probation officer. And that's the fault that we should be looking at.

BRAD LAMM, ADDICTION SPECIALIST: But Norm, part of the responsibility for this very issue has to lie with the way that you and groups like you have

messaged that pot is no big deal. It's a generational thing, I know.

But for many people who struggle and get addicted to pot, they will do knuckleheaded things like this. Families will be interrupted. Children will die. This is not a drug that people use without repercussions.

(COMMERCIAL BREAK)

GRACE: And now we go live, Lakewood, Washington, friends, family, relatives in shock after husband, Skyler Nimitz walks free. Police hone in on Nimitz when his young wife, Danielle, found, seated at her home computer, shot dead in the back of the head, after police say a neighbor buys her alcohol while Nimitz is away on a military training ops.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Prosecutors say after Skyler Nimitz shot his 19-year-old wife in the back of a head with an AR-15.

UNIDENTIFIED MALE: They had his and her AR-15 rifles. This was apparently her rifle.

UNIDENTIFIED MALE: He made up several stories, first saying she shot herself and then claiming that her death was an accident.

UNIDENTIFIED FEMALE: He told you his wife was dead?

UNIDENTIFIED MALE: Yes.

(END VIDEO CLIP)

GRACE: Straight out to Juniper Rose, a reporter with "Eureka Times Standard," thanks for being with us. I don't quite understand this scenario. So the husband has been away on training operations for the military. He comes home, I don't understand what the -- the situation was for him to come home, his wife is seated at her home computer. She's shot in the back of the head. What do we know?

JUNIPER ROSE, REPORTER, "EUREKA TIMES-STANDARD" (via telephone): So what we've been told and what prosecutors have stated in charging papers is that

he returns home from his training, found a bottle of whiskey at his house, learned from a co-worker that this whiskey had been purchased for his wife by another man.

And Skyler Nimitz became visibly angry at this time about two hours later is when he allegedly shot her in the back of the head, while she was o at her computer.

GRACE: To Matt Zarrell, also joining us on the story. Matt, what do we know about the crime scene itself? What can we learn?

MATT ZARRELL, NANCY GRACE PRODUCER (via telephone): We know that the path of the bullet specifically, the bullet within the completely through

Danielle's head. It went through the back of the head, exited through her left eye, and went through the computer screen that she was facing. When police arrived on the scene, they found Danielle in a chair at the computer with her head slumped forward and a pool of blood at her feet.

GRACE: OK. When police arrive, Matt Zarrell, was there any indication of a struggle, of a fight, of marital discord, anything at all?

ZARRELL: No, but police made note immediately, Nancy, that he, the husband, was not the person that called 911. The police were called when neighbors heard a gunshot and called for help.

GRACE: OK. Matt, let's take it from the top. What do we know about the day that Danielle was shot?

ZARRELL: Well, we know that the husband was at a training op, and when he got home, apparently there was this whole issue about this bottle of alcohol that a co-worker was there with the husband and the wife in the house, and when the husband discovered that another man, not the coworker, had bought his wife alcohol, he became, quote, "furious, and visually upset, clenching his fists and unclenching it, like he was very, very angry."

GRACE: So how does he find out about the booze?

ZARRELL: Well, apparently he is in the house and he sees this bottle of cinnamon whiskey. And he asks the coworker about it, and says, thank you - he actually tells the coworker, thank you for buying my wife this bottle of alcohol.

And the coworker says, well, I didn't buy it, this person bought it. And as soon as the husband heard that it wasn't this coworker, that's when he allegedly became furious.

GRACE: Whoa! OK, what was the caliber of the weapon, Matt Zarrell?

ZARRELL: It was an AR-15, which is an assault rifle commonly used in the military.

GRACE: Hold on. Juniper Rose joining me, "Eureka Times Standard," he shot her with an assault rifle?

ROSE: Yes. So the assault rifle, he had left it at home for his wife, for protection while he was away at training, was actually her rifle and he said that he was going to put the rifle away when he returned home.

And one of his original stories, which he went through several different accounts while he was talking to the police, one of the original accounts was that he was actually trying to put the rifle on safety when he accidentally shot her in the back of the head.

GRACE: OK. Let me get this straight. He says the assault rifle was his wife's. Why? Because he bought it -- he says he bought it for her? Just what every woman wants, an assault rifle. So who buy the gun to start with?

ROSE: He had. He had 11 guns -- he had grown up with guns his entire life, he was in the military, he had training both, of course, including, you know, how to put a rifle on a safety. That was one of the reasons why it was kind of a fishy aspect of the story, when he was he was attempting to put it on safety when it went off.

GRACE: OK. Because I've never heard of trying to put your assault rifle on safety, as you're holding it pointed at the back of your wife's head. Hold on, Matt Zarrell and Juniper Rose.

I'm being joined right now by James Pelletier, a close family friend of Danielle's. He says that Danielle was like a daughter to him. Mr. Peltier, thank you for being with us.

JAMES PELTIER, CLOSE FAMILY FRIEND OF VICTIM VTEL (via telephone): Thank you, Nancy.

GRACE: I've heard a lot of stories, Mr. Peltier, but I've never heard one like this. That the husband actually says he's trying to put his assault rifle on safety, as he's pointing it at the back of his wife's head, never heard that one. What do you make of the fact that he has walked free on bond?

PELTIER: We just can't believe that somehow they let him out on bond, let him return back to the military base under armed guard. We're really confused by that and the lowering of his bond. And as far as what you're talking about there, his story of, you know, of it being an accident. We don't believe it's an accident and I believe forensic evidence will come out to prove that that wasn't an accident. And he's had so many stories that he's told and five of them, I believe. And every single story has a lie in it.

GRACE: I don't understand why his bond, why a judge lowered his bond, Mr. Peltier? What's your understanding of that? Why is he walking free?

PELTIER: Well, at the time there's a court date and we're all down here in the Eureka area, the rest of Danielle's family, and none of us were notified that there was a court date for a bail hearing for him.

And apparently he had a couple of days' time to rally some letters from his family members and friends and some of his superiors in the military wrote some letters to, and there was, I think, 30-some letters that were wrote.

And somehow, the commissioner decided that it was OK or just, justice, I guess, to lower the bail from \$1 million down to \$350,000. So once it was lowered to \$350,000, they made terms to, you know, require him to be on base in a secured barracks under armed guard, and return back to the base. Couldn't be just walking the streets, but for \$350,000 bail, that's \$35,000 that someone has to have to get out. And to me, that's just ridiculous.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

DISPATCH: 911, what are you reporting?

UNIDENTIFIED CALLER: I think someone has just been shot in my neighborhood.

DISPATCH: The male told you that his wife was dead?

UNIDENTIFIED CALLER: Yes.

DISPATCH: Is she breathing?

HUSBAND: No. Danielle?

DISPATCH: Danielle was the one shot and he accidentally shot her?

UNIDENTIFIED CALLER: I don't know that part. We just heard the gun go off and he said it's an accident.

(END VIDEO CLIP)

GRACE: It is not fitting together for me. What we have is a young wife, Danielle Nimitz, found, shot dead in the back of the head, sitting at her home computer. Her husband has given several different stories about what happened.

But one of them is as he was trying to put his assault rifle on safety and accidentally did that as he was pointing at the back of her head. I'm hearing in my ear, I'm just now being joined by special guest, Pierce County prosecuting attorney, Mark Lindquist. Mark, thanks so much for being with us.

MARK LINDQUIST, PIERCE COUNTY PROSECUTING ATTORNEY (via telephone): Happy to be here, Nancy. Thank you.

GRACE: Man, you've got a tough job. I remember the ten years that I prosecuted felonies, every day, I would think, well, I've seen it all now, until the next day. How many stories, Mark Lindquist, do we know that Skyler Nimitz gave about the shooting death of his wife?

LINDQUIST: He gave basically three different stories, which obviously undercuts his claim that this was an accident. Initially, he claimed his wife shot herself. Second, he claimed the weapon went off accidentally when the stock bumped against his leg.

And third, he admitted that he pointed the gun at the back of her head, and took off the safety and pulled the trigger, but claimed he didn't know the gun was loaded.

GRACE: Now this is the problem, Mark Lindquist, as you probably already know. Some people out there will think, if he thought his wife was having an affair, whether she was or wasn't, that that will somehow lower the charge or nullify the charge. But as I have the "I was mad" argument is not a legal defense under the law, Mark.

LINDQUIST: Right. And actually I think the motive of jealousy makes it more clear that this was intentional.

GRACE: Why do you say that, Mark?

LINDQUIST: Well, first, let me step back a little and note that this defendant is highly trained in the use of firearms and it doesn't make any sense that he would point a loaded gun at the back of his wife's head, click the safety off and pull the trigger. We know the number one rule of gun safety is assumed all guns are loaded.

GRACE: You know what, Mark? Even when I would bring a gun in as evidence, number one, I hate handling guns because I'm the victim of gun violence.

But always, even after my investigator would hand me the gun in open court, I would turn it away from the jury and down to the ground if I wanted to

demonstrate anything because of the number one rule of gun safety is assume it's loaded. Go ahead, Mark.

LINDQUIST: And always point the gun in a safe direction. He knows what he's doing with guns. He's angry for whatever reason, whether it's an actual affair or imagined affair, and his multiple claims that it was an accident just don't make sense.

GRACE: An accident? Was there a point where he said his wife shot herself?

LINDQUIST: Yes, that's what he told the neighbor initially.

GRACE: Why is it that the neighbor -- you know what? Unleash the lawyers. In addition to the prosecuting attorney, Mark Lindquist, with me, Randy Kessler, Alex Sanchez and also with me, Dr. Ish Major, board certified psychiatrist out of New York.

Doctor Ish Major, first to you. When does jealousy take over your body so somehow it makes sense to you to murder your wife?

DR. ISH MAJOR, BOARD CERTIFIED PSYCHIATRIST: You know what? It sounds like he was building up and got to a point where he was in a jealous rage.

The question I have, Nancy, is what is the history here? Guys just don't come home and get jealous and shoot their wife in the back of the head. So I'm betting there's a history of violence, maybe abuse or in the very at least intimidation going on.

GRACE: Randy Kessler, Alex Sanchez, taking that into account what Ish Major has just told us, give me your best defense, Alex Sanchez, I'm braced.

ALEX SANCHEZ, DEFENSE ATTORNEY: The best defense is that he's going to be ending up pleading manslaughter in this case on the grounds of extreme

emotional disturbance. He was in the military, under stress. He comes home and finds out his wife may be having an affair with somebody.

Somebody is giving alcohol --

GRACE: It was a bottle of liquor.

SANCHEZ: Yes, bottle of liquor, but what is that for? What do you think is going on there?

GRACE: Are you asking me to speculate because a family friend gives this family a bottle of liquor. Let me ask you something, when you go to a Christmas party or a dinner, I bet you give people a bottle of wine. Does that mean you're sleeping with the lady?

SANCHEZ: The first thing you need to do is get real. A man is giving a bottle of alcohol to a man's wife while this guy is away. That doesn't look good and he has intentions that are inconsistent with the marital vows.

GRACE: OK, to Mark Lindquist, Pierce County prosecuting attorney. That's a perfect argument to a jury when some defense attorney tries this, is how many people on a jury, whether they drink or not, how many times when they go to a party or a dinner or get together, do they take a bottle of wine?

Does that mean you're sleeping with the lady that lives there? No, it does not. I guess, you're ready for that, Mark.

LINDQUIST: I'm a prosecutor, not a psychiatrist, so I look at the evidence, and the fact that he may have imagined that she was doing something, cheating on him, to me that just gives him motive to murder her. I don't think there's a jury out there that will say, maybe she was cheating and therefore this is manslaughter. On the contrary, they will say that's motive for murder.

(COMMERCIAL BREAK)

GRACE: Randy Kessler, did you know there was also a cover up at the scene?

RANDY KESSLER, DIVORCE/DEFENSE ATTORNEY: No, I didn't know that. But the prosecution has a tough case because they've got to get inside his head and

prove intent. He was a military guy, use to weapons, and he might have been acting out. They've got to prove it was not an accident, that his finger didn't slip, that he intended to kill his wife who he loved and there's no reason to think he wanted her dead.

GRACE: Everyone, we're talking about Skyler Nimitz and the death of his wife, Danielle. But let's stop and remember American hero, Army Corporal Dale Fracker Jr. 23, Apple Valley, California, Bronze Heart, Purple Heart, as a little boy, his father would sing "Amazing Grace" every night at bedtime.

Parents Dale Sr. and Legiah, brother, Herman, served Marines, Fiance Tracy. Dale Fracker, Jr. American hero. Drew up next. I'll see you tomorrow night, 8:00 sharp Eastern. Until then, good night, friend.

END

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APPENDIX B

Shows By Category:[Return to Transcripts main page](#)

NANCY GRACE

Husband on Trial for Murder of Wife; Caught on Tape: Sheriff Tasers Elderly Woman; Schoolgirl Orders Hit on Mom. Aired 8-9p ET

Aired February 16, 2016 - 20:00:00 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

NANCY GRACE, HLN HOST: Breaking news tonight. Friends, family, relatives in shock after husband Skylar Nemetz walks free. Police hone in on Nemetz

when his young wife, Danielle, found seated at her home computer, shot dead in the back of the head after police say a neighbor buys her alcohol at her

request while Nemetz was away on military training. And it infuriates Nemetz to the point he was, quote, "shaking with anger."

(END VIDEO CLIP)

UNIDENTIFIED MALE: Enraged, prosecutors say, Nemetz shot her as she sat at a computer at the couple's Lakewood apartment.

911 OPERATOR: Is she breathing?

UNIDENTIFIED MALE: No. Danielle?

911 OPERATOR: Danielle was the one shot and he accidentally shot her?

UNIDENTIFIED MALE: He made up several stories, first saying she shot herself, then claiming her death was an accident.

(END VIDEO CLIP)

GRACE: Caught on tape, a Hamilton County sheriff caught red-handed as he tasers a woman to the floor all over an earring?

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: Ah!

UNIDENTIFIED MALE: Well, Nancy Mason (ph) is brought into the Hamilton County jail charged with theft. She refuses to take off her jewelry before

being booked.

UNIDENTIFIED FEMALE: Ah!

UNIDENTIFIED FEMALE: You broke my arm.

UNIDENTIFIED MALE: I didn't break your arm. You broke it.

(END VIDEO CLIP)

GRACE: She needs to go! Bone-chilling words from a school girl. She texted her 20-year-old boyfriend in the Army. Mommy's body found covered in stab wounds to her head, her neck, her torso, Mommy dumped in a shallow grave, blood evidence leading back to Mommy's car. Other texts to the little 8th grader to her adult tattooed boyfriend, quote, "Mommy's lying about my age and just do it!"

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: Police say Jamie Silvonek (ph) helped her boyfriend murder her mother.

UNIDENTIFIED FEMALE: "She needs to go, Caleb, right now."

UNIDENTIFIED FEMALE: In a text message sent that night, teenage Silvonek said, quote, "I want her gone."

(END VIDEO CLIP)

GRACE: Good evening. I'm Nancy Grace. I want to thank you for being with us.

Bombshell tonight. Friends, family, relatives in shock after husband Skylar Nemetz walks free. Police hone in on Nemetz when his young wife, Danielle, is found still seated at her home computer but shot dead in the back of the head, blowing off her face.

Police say a neighbor had bought Danielle alcohol at her request. He stopped by the liquor store while Nemetz away on military training. And when he found out the neighbor had done that favor, it infuriated Nemetz so much, he was to the point he was, quote, "shaking with anger."

Straight out to Candace Trunzo, senior editor, Dailymail.com. Candace Trunzo, I know that this episode apparently infuriated Nemetz, the husband.

He was away for about two weeks on some military training op. And he was the one that told his wife to go to the liquor store and have it there when he got home. He had been dry for two weeks. He wanted X, whatever liquor -- oh, it was, like, cinnamon vodka or...

CANDACE TRUNZO, DAILYMAIL.COM (via telephone): Cinnamon whiskey, yes.

GRACE: Whiskey, that's right, cinnamon whiskey. I never heard of it. It's got, like, a devil on the side with a pitchfork.

But long story short, he asked her to go get the liquor. And she then mentions it to a neighbor, who stops by the liquor store, brings it, drops it at the house. And he gets furious. But I don't see that as enough of a motive.

So what I want to talk about, Candace Trunzo, is the physical evidence. I want to start with the physical evidence. What do we know, Candace?

TRUNZO: Well, we know that when the police arrived, they found her sitting at her computer. She was shot through her left eye. She was shot in the back with an AR-15 assault weapon, through the back, went through the eye, into the computer.

GRACE: Wait, wait, wait! Did you say an assault weapon?

TRUNZO: Yes. An AR-15 assault weapon.

GRACE: Guys, I'm being joined right now -- hold on, Candace Trunzo from Dailymail.com. In my ear, I'm hearing we have special guest joining us, Mark Lindquist, the Pierce County elected prosecutor.

Mark, thank you so much for being with us.

MARK LINDQUIST, PIERCE COUNTY PROSECUTOR (via telephone): Thank you, Nancy.

GRACE: Mark, I know that you are on a break from court, so I want to ask you a couple of quick questions. I know all about the amendment to the Constitution that gives us the right to bear arms. I'm fine with bearing arms. But an assault weapon at home? Why did he have an assault weapon at home, Mark?

[20:05:00]LINDQUIST: The defendant was highly experienced with firearms. He actually had 15 different weapons in his apartment. He'd been handling guns since he was 4 years old. He actually builds AR-15s. He buys the parts and puts them together. And he customized the weapon in this case for Danielle. So...

GRACE: Wait, what does that mean? I think I know my way around a weapon from being a prosecutor for so many years, but what do you mean he customized an AR -- an assault weapon for his wife?

LINDQUIST: He put together the parts and he balanced the weapon in a way that it would be ambidextrous, so it could be used on either shoulder.

GRACE: You're seeing the scene of the shooting. We've heard everything from an accident to she was the one holding the weapon, to a mistake. I'm trying to get a line on what exactly the defense is going to be. And there you see Danielle Nemetz and Skylar in their happy times.

And as a matter of fact, it was stated in evidence that there had been no argument leading up to the shooting. But it's only him and her in the room, isn't that right, Mark Lindquist?

LINDQUIST: Right. But we can look at what happened before they were alone together in the room. Initially, as you pointed out, the defendant said Danielle shot herself. Later he said that he shot her accidentally. And now at trial, he's saying that he doesn't remember pulling the trigger.

GRACE: You know what? You just brought up something really interesting, Mark Lindquist. I'm just getting it straight out of the courtroom. Listen to this.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

SKYLAR NEMETZ, CHARGED WITH MURDER: No, I didn't!

UNIDENTIFIED MALE: Did you intend to hurt your wife?

NEMETZ: I did not! I did not intend to hurt my wife. I never did. I wanted her to be with me forever! I wanted her to be the mother of my child.

(END VIDEO CLIP)

GRACE: OK, straight to you, Ryan Schwartz, defense attorney out of the Atlanta jurisdiction. Why is he crying now? Because from what I understand, the day of the shooting, Ryan Schwartz, he wasn't crying. After his wife accidentally shot herself in the head as she was sitting at her home computer, it's my understanding he actually kicked some evidence under the bed and hid some other evidence. But in court, it's, Wah, wah.

RYAN SCHWARTZ, DEFENSE ATTORNEY: Well, again, Nancy, this is an accident. Accidents happen every day. He's obviously upset because he didn't intend

to kill his wife.

GRACE: OK, you know what? I hear you. I hear you. But I want to analyze what this guy says on the stand again. Oh, yes, he's crying now! Run it again, Liz.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

NEMETZ: No, I didn't!

UNIDENTIFIED MALE: Did you intend to hurt your wife?

NEMETZ: I did not! I did not intend to hurt my wife. I never did. I wanted her to be with me forever! I wanted her to be the mother of my child.

(END VIDEO CLIP)

GRACE: Mark Lindquist joining me, the elected prosecutor in Pierce County. Mark, has he been crying like that the whole time?

LINDQUIST: No, he hasn't. But -- and as you know, Nancy, prosecutors don't have to prove motive, but jurors always want to know the motive, right? And the motive in this case was jealousy. The evidence suggests the defendant thought Danielle was fooling around with another soldier. Even if that's not true, the point is the defendant suspected that.

GRACE: Unleash the lawyers. Joining me out of Atlanta, Ryan Schwartz, and out of New York, family lay attorney and victims' rights advocate, Susan

Moss.

Susan Moss, did you see him turning on those waterworks? You know, he wasn't crying that day.

SUSAN MOSS, VICTIMS' RIGHTS ATTORNEY: No, I actually didn't see any tears at all. Apparently, he didn't go to the Jodi Arias school of learning how

to cry! But domestic violence is violence, and domestic violence that leads to murder is murder!

More women die at the hands of their partner than any other disease or any other reason! The facts here is that this was a man who was intense on

control! And when he thought that his wife was receiving gifts, in this case alcohol from the neighbor, that's when he went crazy! That's what happened in this case, and that's what I believe they'll prove!

GRACE: But isn't it true, Candace Trunzo, senior news editor, Dailymail.com, he's the one that asked for the liquor? He started the whole thing.

TRUNZO: He did. He was texting -- I mean, he couldn't wait to get his hands on that bottle of cinnamon whiskey. He was texting her, Please get me the whiskey, please get me the whiskey. And for whatever reason, she didn't get it. She got a neighbor get it, and the neighbor was a man. The neighbor was a man, and he suspected something was going on between this man and Danielle, that she was cheating on him.

GRACE: With me right now, renowned forensic pathologist Dr. William Morrone joining me out of Madison Heights. Dr. Morrone, thank you for being with us.

[20:10:00]It's my contention, and I think the district attorney agrees with me -- I've got him right here with me, Mark Lindquist -- Dr. Morrone, this is absolutely impossible to have been self-inflicted. Yes, no.

DR. WILLIAM MORRONE, FORENSIC PATHOLOGIST: Absolutely. You can't shoot yourself in the back of the head with a rifle. Absolutely.

GRACE: Now, why do you say that?

MORRONE: Well, it's going to take holding it in such a way that you can pull the trigger, and you can't put that far enough behind you even with a short barrel. And this is a small, petite woman, and the legal distance between the chamber and the tip of the barrel is mandated by the state, and that has to be certain distance. She would have had to have been reaching three feet behind her head...

GRACE: Ridiculous!

MORRONE: ... to get to the trigger to shoot herself in the head so it would come out the eye. And that round is going over a thousand feet a second. That's why it penetrates bone twice.

GRACE: Joining us on a break is Mark Lindquist, the Pierce County elected prosecutor. Again, Mr. Lindquist, thank you for being with us, joining us out of Tacoma.

Mark, I want to look at the facts. I mean, as you said, the state doesn't have to prove motive, although the jury likes to think they know the motive

because it helps them put together the puzzle, like we all want to do.

LINDQUIST: Right.

GRACE: But what you've got to rely on, as you accurately pointed out, is the hard forensics. What can you tell me about what was found in that room? How do we know she had been sitting at her computer at the time she was shot in the head?

LINDQUIST: There's really no dispute that she was sitting at the computer when she was shot in the head. And at this point in the trial, the defense is arguing not that she shot herself, but rather that it was an accident. That's the whole defense.

And that's the whole question. Was this an accident? Was it intentional? And that's why the defendant's experience with firearms is critical to the case. But it's not just that physical evidence, it's the behavior afterwards.

GRACE: Right.

LINDQUIST: The defendant never called 911. He never called for help. He seemed more focused on cleaning up the scene, disposing of the liquor bottles...

GRACE: Oh!

LINDQUIST: ... than getting help. And it's his actions combined with his statements...

GRACE: Behavioral evidence.

LINDQUIST: ... and his experience with firearms that add up to murder, rather than an accident.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

[20:16:00]911 OPERATOR: So the male told you that his wife is dead?

UNIDENTIFIED MALE: Yes.

UNIDENTIFIED MALE: Prosecutors say after Skylar Nemetz shot his wife in the back of the head with an AR-15, he made up several stories.

NEMETZ: I did not intend to hurt my wife! I never did!

(END VIDEO CLIP)

GRACE: There you see Skylar Nemetz on the stand defending himself and claims that he, in cold blood, shot down his young wife. Apparently, motive, he had been away for about two weeks on a training op with the military and demanded over and over, texting and calling, that she have a certain kind of liquor at the house when he got home.

Well, a neighbor stopped by the liquor store and got it for her, and when he found out this neighbor was actually a man, he allegedly goes berserk to the point that he was actually shaking.

With me right now, special guest, in addition to Mark Lindquist, the elected prosecutor in that jurisdiction, James Peltier, friend and neighbor of the victim, Danielle Nemetz.

James, thank you for being with us.

JAMES PELTIER, FRIEND AND NEIGHBOR (via telephone): Thank you, Nancy.

GRACE: I'm just so stunned that this situation escalated to the point where she is gunned down dead sitting at her home computer. What can you tell us about their relationship? What did you ever observe?

PELTIER: Well, there was some red flags on one occasion that really stood out to us the last time she came down to Humboldt County to visit us, and he was fighting with her and ended up smashing her cell phone to the ground. And I had conversations with Danielle. He just basically dumped her at our house, didn't even come in and say hi or anything. And I talked to Danielle and asked her if she was afraid of him or in fear, and her response was, Only when he's been drinking.

GRACE: "Only when he's been drinking." Everybody, that's home video of Danielle from YouTube. Let's listen to it.

(BEGIN VIDEO CLIP)

DANIELLE NEMETZ, VICTIM: I'm so excited! OK, is there a card? OK. Read your card first. I'm so excited! OK.

(END VIDEO CLIP)

GRACE: There you see Danielle apparently reading a gift and a card from her husband, clearly deeply, deeply in love with him.

I want to go through the physical evidence. Matt Zarrell, I want to walk through the blood evidence and why we know his story is a lie. But first, listen to him. We just got this from the courtroom.

(BEGIN VIDEO CLIP)

NEMETZ: And I was trying to clear the weapon, and I didn't do it correctly and I made a terrible mistake. And the weapon went off in my hands and it struck the back of my wife. It hit her in the head. And she died.

(END VIDEO CLIP)

GRACE: Christopher Robinson, firearms expert with Chris Robinson Forensics, former crime lab director out of Orlando -- Chris, that is a crock of BS, what I just heard. I'm not a gun expert like you, but I know that, what he just said, is a lie. I mean, really? I was cleaning my shotgun? How old is that?

CHRIS ROBINSON, FIREARMS EXPERT (via telephone): Absolutely, Nancy. The first rule of any gun is to keep it pointed in a safe direction. So it's pointed at the back of her head, when he's supposedly trying to clear the weapon. Well, why is his finger on the trigger of the weapon? When you're trying to clear the weapon, you just pull the bolt to the rear and eject the cartridge case. So why would he be having his finger on the trigger? He had to fire the weapon, so he had to pull the trigger.

GRACE: Matt, what do we know about the blood evidence and the physical evidence at the scene?

MATT ZARRELL, NANCY GRACE PRODUCER (via telephone): OK, so when officers found Danielle, she was in a chair at the computer, with her head slumped

forward and a pool of blood at her feet. The bullet actually went through the computer screen she was facing.

[20:20:00]Cops also discovered that there was a magazine under the bed. The AR-15 was in the closet. The cinnamon whiskey was flushed down the toilet, and the liquor bottles were thrown into some brush underneath the apartment building.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: Prosecutors claim Nemetz became enraged after learning another man bought his wife liquor.

911 OPERATOR: (INAUDIBLE) shot her?

UNIDENTIFIED MALE: I don't know that part. We just heard the gun go off, and he said there was an accident.

UNIDENTIFIED MALE: Nemetz contends the shooting was an accident.

(END VIDEO CLIP)

GRACE: For those of you just joining us, a young wife found dead, clearly sitting at her own home computer when she's shot in the head. Now, theories abound as to what really happened, but her husband, the only one at home at the time of the shooting beside her -- and they had been very happy up until this point, by all accounts -- was that first, she did it herself. Second, it was an accident, that he was cleaning his gun, and third, a variation on accident.

[20:25:09]Can those stories all be true? Well, not according to the physical evidence. But look at what we're hearing in court right now.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: The woman that means the rest of your life to -- you didn't go to her aid, did you.

NEMETZ: No, I did not.

UNIDENTIFIED MALE: Mr. Plus (ph) says that you were shaking with anger because he told you someone else got the alcohol.

NEMETZ: That did not happen, sir.

(END VIDEO CLIP)

GRACE: Straight out to Dr. Daniel Bober, forensic psychiatrist joining me out of Miami. Dr. Bober, it's too difficult for me to believe this guy.

He's told several stories. Now he's saying he was not shaking with anger. According to one witness, he was.

What do you make of it? Now, you've heard from the friend, joining us today, James Peltier, that said the wife said, I was never afraid of him except when he was drinking.

DANIEL BOBER, FORENSIC PSYCHIATRIST: Nancy, there are a lot of aspects of this story that are very troubling -- the multiple versions that he told

about how she died, the attempts to conceal evidence after the crime. We're never really going to know what happened leading up to the moments before her death. But certainly, there is a motive there.

And a lot of times it's when people are saying that they weren't thinking what they were doing that they were doing what they were thinking. So I

think that he was desperate and he was scared at the last minute and he probably knew that he was going to get caught, and so he attempted to sanitize the scene, if you will. But it just doesn't really add up. His version just doesn't make sense.

GRACE: The changing stories. Unleash the lawyers, Sue Moss out of New York, Ryan Schwartz out of Atlanta, Danny Cevallos joining us out of Philadelphia.

First to you, Danny Cevallos. Why didn't he call 911? If this were an accident, as he's saying, cleaning his assault rifle, then why didn't he call 911?

DANNY CEVALLOS, DEFENSE ATTORNEY: He's got a lot of things to explain away. But I think the difference between not calling 911 and bringing in

all this evidence that maybe they had arguments and maybe they didn't get along -- you see this all the time in murder cases, and it really is unfair to demonstrate that somebody maybe didn't get along with his wife, and therefore, that's the reason he may not have been cleaning his guns by accident.

GRACE: What's unfair about that?

CEVALLOS: Still it doesn't change the fact -- it's unfair because it goes -- you know as well as I do, Nancy, that yes, it's admissible...

GRACE: Well, first of all...

CEVALLOS: ... but it's really about...

GRACE: ... don't tell me what...

CEVALLOS: It's tainting the jury.

GRACE: ... I know or don't know, number one. I don't need you...

CEVALLOS: Well, I'm pretty sure you know that, Nancy.

GRACE: ... to school me in the law, but thank you. And I'm asking you a direct question. Are you saying it's unfair that behavioral evidence comes in before the jury?

CEVALLOS: It's -- look, we've decided as a society that it's admissible, but it is problematic because you'd be hard-pressed to find a marriage that

doesn't have some disagreement, some strife. And to use that to demonstrate to a jury that that's why somebody really wasn't cleaning his gun by accident seems a little unfair. But to be frank...

GRACE: Well, of course, the question that I asked you...

CEVALLOS: ... we have another rule, so...

GRACE: ... was why...

CEVALLOS: ... what can I tell you.

GRACE: ... didn't he call 911. That was the question.

And to Mark Lindquist joining us, the elected prosecutor in Pierce County there in Tacoma. Mark, the reality is, it's highly, highly probative when you are at home, you're the only other person in the home, and you were in the middle of a fast and furious fight with your wife over something that has just happened. I think it's highly probative.

LINDQUIST: Right. And the jury wants to know what happened before the shooting and after the shooting because it helps them appraise the defendant's mental state. What was he doing and why?

GRACE: Candace Trunzo, senior news editor, Dailymail.com, do you really think a jury is going to buy all this waterworks in the courtroom, the crying, the snotting, the sniveling? And he only does that at certain points, for instance, when he's asked a tough question that he doesn't want to answer.

TRUNZO: Well, it's true, but you know, this guy -- he has no record. He has nothing to blemish, you know, a military man, nothing, nothing to take away from the fact that he was an upstanding citizen and a good soldier. So I think the jury could be possibly swayed by this. But what would drive him to shoot this wonderful young wife that he seemed to love? Anybody's guess.

GRACE: OK, are these real or are these crocodile tears?

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Skylar, did you point the weapon at your wife?

NEMETZ: No, I didn't!

UNIDENTIFIED MALE: Did you intend to hurt your wife?

NEMETZ: I did not! I did not intend to hurt my wife. I never did. I wanted her to be with me forever! I wanted her to be the mother of my child.

[20:30:00] (COMMERCIAL BREAK)

GRACE: Caught on tape, a Hamilton County Sheriff tases a woman, old enough to be a grandma, to the floor. She's screaming in pain and it's all over a single earring.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: She refuses to take off her jewelry before being booked. He fired the taser, sending her crashing to the ground. In her lawsuit, Mason says four other deputies and the Chattanooga police officer who arrested her did nothing to protect her from the attack.

(END VIDEO CLIP)

[20:35:00] GRACE: Why are the others just standing around while grandma gets tasered over an earring?! We have several videos from different vantage points. I want you to decide what you think. Liz, could you roll the video with sound, please.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: All right, step right over there or you will be --

UNIDENTIFIED FEMALE: I will report you.

UNIDENTIFIED MALE: Report all you want to. I will not keep telling you.

(SCREAM)

UNIDENTIFIED MALE: All right, now will you be able to get up and place your earring on this -- on this?

UNIDENTIFIED FEMALE: I think I can. (ph)

UNIDENTIFIED MALE: You can? Get up and place your earrings --

(END VIDEO CLIP)

GRACE: Straight out to Bill Lockhart, assistant programming director, WGOW. Bill, what happened?

BILL LOCKHART, ASSISTANT PROGRAM DIRECTOR WGOW: Well, Ms. Mason was picked up for theft. She had been accused of stealing some items from a store at

Hamilton Place Mall, was taken to central booking at the county jail. Apparently things were going along as planned when she was compliant, but became a little bit frustrated during the booking process, and as you saw on the video, there was very little warning between the "I don't have to tell you again" and the time that the taser was deployed by Sergeant Terrell.

GRACE: Wow. Hold on, guys. We've got video from another vantage point. Liz, let's see it from the other vantage point. Here we go. Now, there she is.

They're patting her down. Later, this sheriff, this sergeant says, she wouldn't agree to be patted down. She was patted down. She's talking about the jewelry -- boom! She gets tasered. Back it up again, Liz, if you don't mind, very quickly -- straight back to Bill Lockhart, assistant program director, WGOW. And look at the other sheriffs just standing around. Tell me something, Bill, what was the threat? What threat did this 61-year-old grandma pose to four grown men? Explain?

LOCKHART: Well, apparently when she gave a little bit of pushback questioning why she should give up her earrings, that's when things turned. And there was about, I don't know, 20 - 25 seconds of dialogue and then he administered his stun gun, his taser.

GRACE: Joining me right now is Matthew Horace and Robin Flores, the lawyer for the grandma who was tased. Matthew Horace is a former ATF executive, senior V.P. at FJC Security. Matthew, I'm stunned. Did you hear what Bill Lockhart just said from WGOW? She gave 25 seconds or so of pushback. In other words, she was talking. The grandma is talking.

She's saying, what -- ow! Why do I have to take off my earring for a booking photo? Why?! And they taser her to the ground! Could you take me to, Matthew Horace, please?

MATTHEW HORACE, LAW ENFORCEMENT & SECURITY EXPERT: Well, Nancy, as you know, the rules of engagement in the penal system are very different than

they are on the street. This was a situation of noncompliance. The deputy gave her lawful instructions, she didn't follow them, and subsequently she

was tased --

GRACE: Put him up.

HORACE: She wasn't injured.

GRACE: Matthew, you know what, I respect you. I almost always agree with you, but that is the biggest line of B.S. I heard since O.J. Simpson said he was going to kill himself in that Bronco, okay, while he was calling all the defense lawyers. Matthew, the woman is saying, why do I have to take off my earring for a booking photo, and they taser a grandma! And this ain't the streets. This is there at booking (ph) and there's four hulking security guard -- I mean sheriff standing there, watching.

They let it happen and -- put Matthew back up. Matthew Horace, she breaks her arm. She does break her arm. She goes, "I think you broke my arm." And

the sergeant says, "I didn't break it, you broke it." That's okay with you?

HORACE: The sergeant gave her a lawful demand. She didn't follow and it was legal.

GRACE: Take off your earring? Take off your earring? Are you serious? Are you standing by that? You're going to go down with the ship? I am not going

down with you and the other rats on the ship. No! Robin Flores, I'm all about following a cop's orders, okay? I follow cop's orders. They give me orders whenever I've been pulled over for whatever reason.

I do it and I shut the hay up, and whether I think it's right or wrong. But, I mean, really? The woman breaks her wrist falling. This is a grandma, for Pete's sake! And they tase her and they all stand there and watch her fall to the floor? Help me, Robin! Help me understand.

[20:40:00] ROBIN FLORES, ATTORNEY FOR WOMAN TASED: Well, clearly, as we claim in our complaint, there was an excessive use of force. You're using a

step up from hands or maybe restraining somebody in a chair, to using a second-level impact weapon, other than a gun. And the question would be in our complaint is, why was that amount force necessary to get her to comply to remove her earrings?

GRACE: I understand. You know, I'm going to go to Dr. William Morrone as well, renowned forensic pathologist. Dr. Morrone, explain to those who don't know what it feels like to get tasered.

WILLIAM MORRONE, FORENSIC PATHOLOGIST: A taser disrupts all of the electrical activity in the body, between the nerves and the muscles.

And

the purpose is to paralyze you. Its actual amount of energy is measured in joules. A joule, 1 to 2 joules, is what it takes to restart the heart when somebody is in a code and they apply the paddles to the chest.

And it's the equivalent of plugging somebody into the wall. Its hard electricity, it hurts from head to toe. And everything in your body just crumples up and sometimes, when muscles contract, they break the bones on people who have thinner bones or are elderly. Very painful.

GRACE: You know, I know they're saying, it would have been so easy to say, "Lady, look, I don't want to taser you. Take off your earring, please." I mean, for Pete's sake. This is a lady, a grandma, and what did she do? What? Steal some jewelry from Walmart or Kmart? Okay, for those of you that have never seen what happens with a taser, look at CNN's Rick Sanchez.

(BEGIN VIDEO CLIP)

RICK SANCHEZ, CNN ANCHOR: I'm about to receive 50,000 volts of electricity. Do it. Ahh! Ohh! It hurts.

(END VIDEO CLIP)

[20:45:00] (COMMERCIAL BREAK)

GRACE: "She needs to go." Bone-chilling words from a schoolgirl, words she texted to her 20-year-old boyfriend in the army. Mommy's body then found covered, covered in stab wounds, to the head, the neck, the torso. Many of them fatal, each in themselves. The mother then dumped in a shallow grave. Blood evidence, we discover, leads back to the mother's car. Now, there are other reported texts from the little eighth grader that were sent back and forth to her adult tattooed boyfriend quote, saying, "mom is lying to you about my age, and just do it."

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: "I love you. We can do this." Police say Jamie Silvonek helped her boyfriend murder her mother.

"Please do it. I'm going to throw up."

Police say Barnes stabbed the girl's mother.

"I'm trusting you."

The mother was found dead in a shallow grave.

(END VIDEO CLIP)

GRACE: This girl, a schoolgirl, had been dating a grown man, a 20-year-old guy in the Army covered in tattoo:. She's like 13 years old at the time.

Jamie Silvonek, then, apparently, believe it or not, is believed to be the mastermind -- talking the boyfriend, Caleb Barnes, into murdering her mom,

Cheryl. I want you to listen to the texts that we have obtained.

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: Caleb, if she asks about your age, say 16 and a half again, and that the reason you said 20 is you're used to lying about it to

fellow soldiers in the army to avoid harassment so when you're in stressful scenarios, it just comes out.

She needs to go, Caleb. Right now. You don't understand. She threatened to throw me out of the house. I want her gone. I just need you to be able to

come over, so we can do whatever necessary. I'm going to go to the bathroom while you do it, okay? I'll come right out as soon as you're done. Why

don't we wait until we get in the car with her?

UNIDENTIFIED MALE: Fine.

UNIDENTIFIED FEMALE: That would be easier for you, I would guess. Caleb? Caleb, leave the age thing alone. Just do it. Caleb! Caleb. Seriously, what

are you doing? Caleb, I'm serious. She's lying. Please do it. I am going to throw up. I can't stand her lying to you like this. Caleb, respond to me.

UNIDENTIFIED MALE: We'll talk later.

UNIDENTIFIED FEMALE: What the actual -- she's lying about my age. Just do it. Caleb, I'm about to cry. What is going on? Please don't leave.

UNIDENTIFIED MALE: She's out here with me.

UNIDENTIFIED FEMALE: Do something, please. Caleb? I'm trusting you.

UNIDENTIFIED MALE: There's no way she could fake a passport.

UNIDENTIFIED FEMALE: Caleb!

UNIDENTIFIED MALE: Baby, I love you.

UNIDENTIFIED FEMALE: Where are you? Come in the basement. I need to talk to you.

(END VIDEO CLIP)

GRACE: What they're talking about, Solomon Jones joining me, morning host at WURD, as the girl, Silvonek is telling the older guy -- the army boyfriend, 20 years old -- that she is of legal age, such as 18 years old. And the mom, who is now dead, found buried in this shallow grave under the snow, multiple stab wounds, is saying, no, she's not. She's 13. She's just about to turn 14, share's her passport. And so Solomon, WURD, they are texting back and forth while the mom is saying, look at her passport! Is that what happens, Solomon?

[20:50:00] SOLOMON JONES, MORNING HOST WURD: Yeah, that's what happened. I mean, the two of them met at a concert when Jamie was 13 and Barnes was 20.

The soldier who was based at Fort Mead in Maryland began dating this middle-schooler, shortly after that. And when the mother discovered the relationship, Jamie told her boyfriend she wanted her parents dead. And so, this whole thing, you know, develops where the mother is pushing for them to be apart and the more the mother pushes for them to be apart, the more Jamie pushes for them to be together. It was just -- the whole thing planned and plotted by this 13-year-old girl.

GRACE: Solomon, also -- It's incredible and also, what we are learning now is a secret deal going down. The media was not alerted. Nobody knew where

this girl, who masterminded a brutal murder of her own mother, is getting a light deal and they totally -- they did not put it on a calendar. They didn't make it public. So, she could get a light deal and we wouldn't find out about it.

You know, what's also interesting, Matt Zarrell, is how they did this. The mom they -- she was trying to go along with them. He wanted to take the girl to a concert. She said fine, I'll drive you. They go out to eat. They go to the concert. They come back. Then they both attack the mom as she's in the car stabbing her horribly about the face and the neck and the torso. The daughter is there in the backseat while her mom is getting stabbed, Matt Zarrell. And the mom actually begged for her life. We understand that she actually said, "take my daughter, just don't kill me."

[20:55:00] (COMMERCIAL BREAK)

UNIDENTIFIED FEMALE: Prosecutors say Cheryl Silvonek told her 14-year-old daughter to stop dating 20-year-old Barnes.

GRACE: Well, can't you hear those texts, Danny Cevallos?

CEVALLOS: Let's say, you know what Nancy, I'll take a different (inaudible). Let's say you're right, this was a -- it sounds like a lot of premeditation, sounds like a lot of planning but let's not forget she's a juvenile and we have a schizophrenic approach to juvenile law. We say juveniles are different, they belong in a different court unless they do something really, really bad and in that case, we charge them like adults. It doesn't make sense.

GRACE: You know, Ben Levitan, telecommunications expert joining us, we can even identify the time and the date these texts were sent.

BEN LEVITAN, TELECOMMUNICATIONS EXPERT: Nancy, we can also identify the location. They were apparently texting each other while they were both in the car moments away from killing this mother. Nancy, this is a murder that was plotted out on text messages. I don't know how any lawyers can get around the fact that we have a transcript of their plotting, Nancy.

GRACE: You know, another thing, and Matt Zarrell, the reason she threatened to throw the daughter out is because she kept being found naked over and over in the house with a grown man in the Army covered in tattoos. And tell the defense lawyers Matt Zarrell what happened after they murder the mom.

ZARRELL: So, after they murder the mom, they go to Walmart and get cleaning supplies and then they go back to the house where police find them naked in bed.

GRACE: Again, okay, we'll keep you updated as this goes on. Right now, a secret deal apparently going on without the media finding out about it.

And Happy Birthday to Tom Cartwright, retired lawyer who can still crack a contract and every Palm Sunday sings a solo in church Jerusalem. Here he is with teacher and wife Mary.

Let's stop and remember, American hero Colorado Deputy Sheriff Derek Geer, 40, killed in the line of duty. A Navy vet, served the law enforcement 15

years, committed to community and family. Widow Kate, two children. Derek Geer, American hero. Drew up next exclusive tomorrow at 9:00, parents of an

autistic teen behind bars for setting a fire that kills his brother. Thanks to our guests but especially to you for being with us. Nancy grace signing

UNIDENTIFIED FEMALE: She threatened that throw me out of the house. I want her gone.

UNIDENTIFIED FEMALE: Police say Jamie lied to Barnes telling him she was 17.

UNIDENTIFIED FEMALE: She just goddamn lied to you about my age and now she's pulling this? I love you. We can do this.

UNIDENTIFIED MALE: Next time we're out of sight.

UNIDENTIFIED FEMALE: Okay, baby, I love you. We can do this. We'll just drive her car then, right?

UNIDENTIFIED MALE: No, that leaves us as the suspects.

UNIDENTIFIED FEMALE: Then what will we do?

UNIDENTIFIED MALE: Five back and get mine, drive.

UNIDENTIFIED FEMALE: Damn, I thought we were going to six back. We can just drive hers, we will have to. I want her to shut her face and stop being

fake. She just goddamn lied to you about my age and now this?

GRACE: Unleash the lawyers, Sue Moss, Ryan Schwartz, Danny Cevallos. First to you Sue Moss, did you hear these texts? This was planned so far in advance and this little girl is the mastermind.

MOSS: That's right and her -- this woman's only crime was trying to protect her daughter. Trying to protect her daughter from a 21-year-old apparently sociopath. Now, the reality is at some point, this daughter is going to get out of jail and when she does, she's going to be younger than when her mother was brutally killed and I hope to heck she will remember this the rest of her life and what an absolute brutal crime she was a mastermind of.

GRACE: Well, the reality is Ryan Schwartz, that she's going to get out of jail a lot sooner than we think because of a secret deal that went down without the media finding out about it, but Ryan, what I'm asking about to you is the level of pre-planning. How can you get away from that? That's premeditated murder?

SCHWARTZ: Well, Nancy, we don't know the full level or the full extent of the pre-planning that took place. We don't know all the evidence. We don't

know all the facts yet.

off. I'll see you tomorrow night 8:00 sharp eastern but until then, good night friend.

[21:00:00]

END

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