

## S.B. 259 Evidence Declaration Amendments

- (2) If an auditor or investigator provides or obtains evidence in a criminal case that will be used to prosecute an individual for a felony offense, the auditor or investigator shall sign a statement attesting that the evidence was obtained or provided in compliance with state and federal law;
- (3) When a prosecuting attorney discloses evidence to a defendant in a criminal case, the prosecuting attorney shall sign a statement attesting that the prosecuting attorney has complied with state and federal laws on the disclosure of exculpatory evidence to a defendant, including Rule 16 of the Utah Rules of Criminal Procedure.
- (4) A signed statement described in Subsection (2) or (3) shall include an unsworn declaration.
- (5) An individual who fails to comply with Subsection (2) or (3) is guilty of a class A misdemeanor.

*Is it unreasonable to ask government officials and prosecutors to obey the Law?*

## Why is the Legislation needed?

While not explicitly written in the US Constitution, the presumption of innocence is a core tenet of the American justice system.

But what if, a government official obtains or provides evidence in a criminal case that was not provided or obtained in compliance with the law. And as a result, the evidence is inaccurate and incomplete, taken out of context or based on the bias of one individual providing the evidence to the prosecutor.

Simple – The most important presumption, that of innocence, is jeopardized.

## Who Initiated the Investigation

- Sometime before **November 3, 2017**, Jeremy Walker with the State Auditor’s office forwarded a link with audit notes, workpapers and drafts associated with the State Auditor’s Office investigation into the Utah League of Cities and Towns and the Utah Municipal Finance Cooperative II Trust to the Salt Lake County District Attorney’s office.
- **November 3, 2017**, Chief Deputy District Attorney Blake Nakamura directed Salt Lake County Investigator Marcus Garaycochea to initiate an investigation. In doing so he transferred the link, which Mr. Garaycochea described as containing “*very large and included every aspect of the Auditor’s investigation[s].*”

## The State Auditor was unaware of the documents provided

Nakamura: "Did he know that you were going to give us all the documents, including all of these more salient ones, before you actually gave it to us or after you gave it to us. "

Walker: "I would not have given documents without permission, but once I was given permission to give documents, unless specifically told not to, I was going to include everything..."

Garaycochea: "But nothing that we have has not been previously authorized by Mr. Dougall to release to us, right?"

Walker: "He's never limited what I could distribute to you guys. "

Garaycochea: "Okay. So, he's aware of everything we have is what you're saying. "

Walker: "Well, again, he doesn't... he's not part of... he hasn't looked at every document. "

## Jeremy Walker Continues to Add to the Documents on the Link

Deputy District Attorney Mathis: *"Is that something that we could get access to today for the folder..."*

Walker: *"I can add that to the Google Drive."*

Mathis: *"... Because I was about to hire... a law school's worth of law clerks to come in and go through... all this."*

Nakamura: *"And (Mr. Walker) being the person that was involved in this inquiry and this investigation of the auditor's office, you're the best (and only) person we can speak to..."*

Deputy District Attorney Mathis: *"Okay. Is that something that we could get access to today for the folder?"*

Walker: *"Yeah. When I get back to the office... I can add that to the Google Drive."*

## Chief Deputy Blake Nakamura and his Office Directs Information to be Withheld

Nakamura: Now, Jeremy [Walker], what we would say is this, too, we also know where we got them [draft and duplicate reports not issued], ultimately. It was from you. ”

Walker: “Right”

Nakamura: “Okay. On the ask, and then you provided them, but they were not provided originally. ”

Nakamura: “If we asked you to not discuss what we discussed with you with anybody else, you would say?”

Walker: “If that’s the expectation, I would say I spoke with some attorneys about a pending pending potential criminal prosecution, and I’m not allowed to say anything until its over.”

Nakamura: “Jeremy, we’re going to ask you to invoke that catch phrase. ”

Davis: “And the reason we ask you is because it poses some procedural issues that are defined by when we received this information.”

## Walker's Animosity

The District Attorney's Office was aware of Mr. Walker's animosity toward Mr. Bullock and the State Auditor.

Walker: "... so, I mentioned my strong disagreements with the Auditor. My former boss... You know, we follow these standards, professional auditing standards, and Auditor Dougall doesn't feel bound to those as it relates to non-financial audits... So, there's been a lot of turmoil from people in the office about that here's a non-auditor running the show, who doesn't show a lot of give-a-crap about what we consider to be our professional standards. "

## Walker's Stated Justification for Providing the Link

*“So, what these (official) reports indicate, I believe, are the facts and the state auditor’s interpretation of what is our purview, what we can definitively support and not. We disagree on that. We had several elevated conversations about that, and ultimately, the letter rather than the report that really – the reason I put it in the work papers the way I did was in hopes that you guys would get it and it would just tell the story. That’s the real story. Same with this report here. I knew that it probably wasn’t going to see the light of day.”*

## District Attorney's Reliance on Walker's Notes and Drafts

Deputy District Attorney Mathis: *"We probably need to have at least a road map of what we need to look at, where to start and go from. And that's what I'm hoping you can kind of point us in the direction of..."*<sup>9</sup>

Deputy District Attorney Davis: *"I mean, so your ... I love your working draft. The working draft that you have tied out to your ... to all of the... your various working papers, it was... I mean, was my guide to figuring out everything that happened."*

Investigator Garaycochea: *"It's like the bible for this case."*

Deputy District Attorney Kent Davis: *"I want to just to bestow praise on Jeremy."*

## Violation of GRAMA

**January 2019** – Salt Lake County District Attorney charges Mr. Bullock with 7 counts of second-degree felonies.

A motion was filed by Assistant Attorney General Bryan Nalder on **June 29, 2019**, four months before the preliminary hearing, that answered the question of whether the State Auditor was aware of the documents Mr. Walker had made available to the District Attorney. In the second paragraph of the motion filed an assistant Attorney General, it states,

- “... unbeknownst to the Auditor’s office, employee Jeremy Walker had subsequent meetings with individuals from the Salt Lake County Attorney’s Office.”
- “The Auditor is now informed that Mr. Walker provided additional records (other than the audit reports) from the Auditor’s office to the Salt Lake County Attorney’s office, though the Salt Lake County Attorney’s office had not made any formal requests to the Auditor’s office for records. The records officer for the Auditor’s office was not informed of the release of records...”

In short, Mr. Walker and the Salt Lake County prosecutors knowingly and willingly violated the state’s Government Records Access Management Act.

And still the District Attorney's office made no effort to talk to the State Auditor. Instead, once asked by the Attorney General's office for the documents they had received from Mr. Walker, they denied the request.

## Impact of Mr. Walker's and Salt Lake County District Attorney's Violation of GRAMA

Following the motion, a representative from the Attorney General's office made an appearance at hearing two months and ten days prior to Mr. Bullock's preliminary hearing. While not disputing the release of the final audit reports, the Attorney's General's disputed the public release of the draft reports. His justification:

- “*records that would disclose information regarding to allegations of personal misconduct, mismanagement or illegal activity of governmental employee that cannot be corroborated by the State Auditor through other documents or evidence*” are protected.
- And that is why the notes and draft reports were protected under the state Government Records Access Management Act, because “*the State Auditor wasn't able to verify whether or not the veracity of the claims.*”

In short, the very documents Mr. Walker were concerned would not see the “*light of day,*” and the documents the District Attorney relied on in filing criminal charges could not be corroborated by the State Auditor.

## Rule of Law

Rule of law is a principle under which all persons, institutions and entities are accountable to laws that are:

- Publicly promulgated,
- Equally enforced, and
- Independently adjudicated.

## Why Signed Statements?

- Legal Accountability: The oath subjects witnesses to penalties for perjury, which is the crime of knowingly providing false information in a legal proceeding.
- Ensuring Justice: It forces witnesses to focus on facts rather than personal interests, enabling the court to reach a just, fair, and evidence-based decision.
- Preventing Deception: The "whole truth" aspect ensures that witnesses do not mislead the court by omitting crucial details or mixing facts with falsehoods.
- Solemn Obligation: It acts as a profound, traditional promise to tell the truth, often historically rooted in, but not limited to, religious obligations.
- Validating Testimony: It transforms statements into "sworn testimony," which is considered more reliable than unsworn, casual statements.