

# MEANS-LAW

## MARK L. MEANS

### Attorney at Law

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August 13, 2020

***Re: August 4, 2020 Correspondence from The Church of Jesus Christ of Latter Day – Saints addressed to “General Authorities, General Officers, and the following leaders in the United States and Canada: Area Seventies, Stake, Mission, District, and Temple Presidents; Bishops and Branch Presidents; Member of the Ward and State Councils”***

To Whom it May Concern,

On or about 8/4/20 I received a copy of the above correspondence issued and signed by the First Presidency of the LDS Church. This correspondence was released on the second day of the preliminary hearing in the *State of Idaho vs. Mr. Chad Daybell* (Fremont County, State of Idaho Case No.: CR 22-20-0755. By way of association of alleged offenses, relevant to *State of Idaho vs. Mrs. Lori Vallow (Daybell)*).

I find this correspondence troubling and disturbing. Please note that despite its attention “To” church leaders (as listed above), the letter was and is obviously intended and addressed to “leaders and members<sup>1</sup>” of the LDS Church, despite its forwarded attention.

I find the correspondence alarming and concerning based on the following:

- (1) **LDS DOCTRINE**: It is well established<sup>2</sup> LDS doctrine that “A Latter-day Saint should strictly obey every law of God, *including the constitutional laws of the land in which he lives, and do it with a good and honest heart.*”<sup>3</sup> Furthermore, said doctrine states that “*Civil authority is of divine origin...*”<sup>4</sup> This doctrine (scripture) is above any self-proclaimed “long-standing policy” that now attempts, at least at first glance to circumvent the laws of our land.

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<sup>1</sup> Membership of LDS church stands at approximately 16,565,036 throughout the world. See <https://newsroom.churchofjesuschrist.org/facts-and-statistics>.

<sup>2</sup> “long-standing policy” as cited in (said) 8/4/20 Correspondence.

<sup>3</sup> “The Rule of Law”, First Presidency Message by President Marion G. Romney, Second Counselor in the First Presidency of the LDS Church. See at: <https://www.churchofjesuschrist.org/study/ensign/1973/02/the-rule-of-law?lang=eng>

<sup>4</sup> (*Doctrine and Covenants Commentary* [Deseret Book Co., 1954], p. 339.)

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This doctrine of compliance with the laws of the land is called into question by its own employees when the LDS Media Relations Manager, *Mr. Sam Penrod*, states that members of the LDS religion “shouldn’t get involved in any type of case...” when clearly a religious, civic, and social duty to participate in our system of justice with a “good and honest heart” exists.

If that were the extent of the correspondence nothing further would be warranted, but Mr. Penrod when asked if the LDS “policy” “...would prevent a church leader from responding to a subpoena...” Mr. Penrod stated “...they cannot speak to that...”<sup>5</sup>

President Thomas Jefferson stated it best in an 1802 letter that there must be a “...*wall of separation between the church and state*.”<sup>6</sup> Here, the LDS church has attempted to circumvent this wise principle.

- (2) **CONFLICT OF INTERESTS & FAILURE TO DISCLOSE**: The correspondence cites the LDS member handbook/instruction book “*LDS Church Handbook: Serving in the Church of Jesus Christ of Latter-Day Saints*, 38.8.26.1” with a reminder that prior to any involvement in criminal/civil cases they must “**consult**...” with LDS church legal counsel. Key phrase, the LDS church “...*legal counsel*.”

Many person(s) would not appreciate the difference between speaking with church legal counsel and their own personal legal counsel. Here, this correspondence fails, *one must assume intentionally*, to explain to the person(s) (hereby mandated to “consult” with church legal counsel prior to involvement in legal cases) the difference and potential personal and legal ramifications of engaging in possibly incredibly sensitive conversations with CHURCH legal counsel NOT said person(s) own personal legal counsel.

It is clear in said correspondence that the concern of the LDS church is focused on itself not being “...implicated in legal matters.” and or incurring damages by way of “involvement” in said legal matters. This “concern” is in direct conflict with religious organization putting the interests of its member(s) first and foremost.

Member(s) and Person(s) must know and should have been told by way of this correspondence that in calling the provided LDS legal counsel they are by way discussing legal (possible confidential) matters with the ***LDS church legal Counsel***, not their own personal legal counsel. That the mandated consultation(s) are most likely NOT privilege, not protected from subpoena or liability and that said Church legal counsel’s sole duty of

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<sup>5</sup> See <https://www.fox13now.com/news/local-news/fox-13-investigates-lds-church-urges-leaders-to-not-participate-in-any-type-of-court-case>

<sup>6</sup> Thomas Jefferson in his 1802 letter to the Danbury Baptist Association.

representation is to the Church not the person(s), member(s), leader(s), and in some situations the victim(s).<sup>7</sup>

- (3) **CONFIDENTIALITY LAW & UNLAWFUL PRACTICE OF LAW**: Please note that there exist in most, if not all jurisdictions, the clergy (bishop)-penitent (member) privilege. This privilege is one of the oldest and most well-recognized privileges in the United States. The 8/4/20 correspondence should have educated leaders of the LDS church of such a privilege and expressly stated no intention of acquiring confidential information through these mandated telephonic communications. Again, the correspondence failed to do such, and one must presume an intentional omission given the tremendous LDS church resources.<sup>8</sup>

In summary, and quite possible an over simplification, If a member of a congregation (ward/stake) enters into a conversation with said leader(s) of the LDS church with the intent of said conversation remaining confidential, said leader(s) is barred from disclosing contents of said conversation without the express permission of said member(s).<sup>9</sup>

This limitation of disclosure includes any LDS PEC Meetings, Ward Council, Bishopric Meetings or the like disclosures, regardless of intentions of the Leader(s). *This privilege applies even when calling the LDS church legal counsel as mandated this correspondence.* Violating this privilege could lead to potential legal and civil liabilities. Please note there is NO waiver of this privilege when you call Church legal counsel.

Furthermore, please note that Church legal counsel is most likely only licensed to practice law in the State of Utah.<sup>10</sup> For Church legal counsel to discuss criminal and or civil cases with persons residing outside of the State of Utah could be construed as the unlawful practice of law if the Church legal counsel is not licensed in said person(s) state of residence.

In summary, the “conversation” between the Church legal counsel and member(s)/leader(s) is possibly not confidential, possibly unlawful, intended to protect the LDS church, possibly subject to subpoena.

- (4) **OBSTRUCTION OF THE CIVIL AND CRIMINAL SYSTEM**: The LDS church has clearly stated, by way of this correspondence, that its “*long standing policy*” is that any and all member(s)/leader(s) “...*must*...” consult with church legal counsel prior to testifying or communicating to relevant parties/attorneys in any legal matter.

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<sup>7</sup> Please see the attached reports regarding previous

<sup>8</sup> See: [https://www.washingtonpost.com/investigations/mormon-church-has-misled-members-on-100-billion-tax-exempt-investment-fund-whistleblower-alleges/2019/12/16/e3619bd2-2004-11ea-86f3-3b5019d451db\\_story.html](https://www.washingtonpost.com/investigations/mormon-church-has-misled-members-on-100-billion-tax-exempt-investment-fund-whistleblower-alleges/2019/12/16/e3619bd2-2004-11ea-86f3-3b5019d451db_story.html)

<sup>9</sup> Subject to mandatory disclosure laws, varying from State to State.

<sup>10</sup> Both telephone numbers provided in correspondence appear to be routed LDS Church Headquarters, Salt Lake City, Utah.

This mandatory reporting obligation appear to be created to forewarn the LDS church officials of potential criminal and or civil litigation/liabilities and place the member(s)/leader(s) in potentially awkward civil and or criminally liable positions.

The person(s) calling church legal counsel are calling because they believe themselves to be possible witness(es)/party to a forthcoming legal proceeding and I would wager wanting to do the *right thing*. These potential legal conversations are littered with negative legal ramifications for the member(s) and leader(s). **Including but not limited to: witness intimidation, witness tampering, obstruction of justice, jury tampering, creating jury bias, coercion, obfuscation of fact/evidence, and or make it impossible to find an impartial jury in an LDS majority populated jurisdiction.**

This correspondence attempts to further and or create this culture supporting a “*code of silence*.” It is clear from the correspondence that prior to communicating with legal officials’ member(s)/leader(s) “...*must contact Office of General Counsel at Church Headquarters*...”. We are left to speculate regarding what the advice of General Counsel to the member(s)/leader(s) maybe but given the statements of damaging (damages) and or implications in legal matters in the correspondence, it appears much less like speculation and more like mitigation.

History clearly illustrates when one operates in a code of silence, justice and victims suffer at a disproportionally and alarmingly high rate. Our current set of societal affairs clearly illustrates the horrific effects of a code of silence.

By way of issuing this correspondence on the second day of preliminary hearing in the above said case (corresponding State of Idaho vs. Mrs. Lori Vallow (Daybell) the LDS Church has told approximately twenty-six percent (26%) of the residents of the State of Idaho to contact Church legal counsel to enter into a code of silence and to only discuss their potential knowledge of this case and any other civil or criminal case after filtering said “knowledge” through the lens that is the LDS Church. These LDS residents make up possible jury pool members, witnesses, judges, prosecutors, police officers, detectives, deputies, police chiefs/captains, and other elected and nonelected officials throughout the State of Idaho.

By way of this correspondence, and undoubtably being read from the LDS pulpit, the LDS church has tainted the Court’s ability for full disclosure by LDS witnesses, evidence procurement, jury pool, and the like. That in turn affects our guaranteed basic fundamental right of right to an impartial jury and the lawful and controlling presumption of innocence until proven guilty.

This “policy” is at least disturbing and at worse, criminal.<sup>11</sup>

Ironically, the spokesperson for the LDS Church, Mr. Penrod, stated to KSL that the LDS Church “...just doesn’t want to get involved in these matters.” By way of sending this correspondence to all leaders and members on said day cited above, the LDS church is now directly, unnecessarily and undoubtably involved.

Regards,  
*Mark L. Means*  
Mark L. Means  
Attorney

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<sup>11</sup> Approximately 426,000 members of the LDS church reside in State of Idaho (one out of every four citizens of the State of Idaho are LDS. Making up 132 LDS Stakes comprised of 1181 LDS wards See: <https://newsroom.churchofjesuschrist.org/facts-and-statistics/state/idaho>. Ninety-eight percent (98%) of Madison County, State of Idaho residents are LDS. See: <https://jesusinidahofalls.com/2014/10/16/religious-makeup-of-southeastern-idaho/>. Fifty-Seven percent (57%) of Bonneville County State of Idaho residents are LDS. *Id.* Sixty-eight percent (68%) of Fremont County, State of Idaho are LDS. See: [https://www.bestplaces.net/religion/city/idaho/st.\\_anthony](https://www.bestplaces.net/religion/city/idaho/st._anthony).

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THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS  
OFFICE OF THE FIRST PRESIDENCY  
47 EAST SOUTH TEMPLE STREET, SALT LAKE CITY, UTAH 84150-1200

August 4, 2020

To: General Authorities, General Officers, and the following leaders in the United States and Canada: Area Seventies; Stake, Mission, District, and Temple Presidents; Bishops and Branch Presidents; Members of Ward and Stake Councils

Dear Brothers and Sisters:

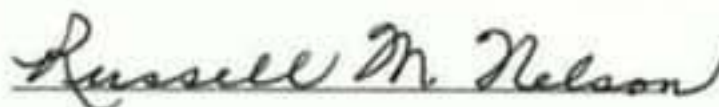
Involvement in Legal Proceedings

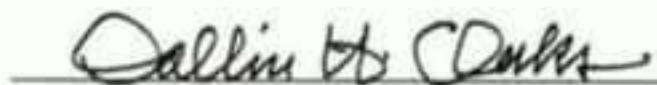
We remind leaders and members of a long-standing policy that Church leaders should not involve themselves in civil or criminal cases regarding members in their units, quorums, or organizations without first consulting with Church legal counsel (see *General Handbook: Serving in The Church of Jesus Christ of Latter-day Saints*, 38.8.26.1, ChurchofJesusChrist.org). This same policy applies to leaders corresponding with court personnel on behalf of criminal defendants or others, including through email.

However well intentioned, Church leaders sharing information in legal proceedings can sometimes be misinterpreted and even damaging. Such sharing can be especially harmful to victims and their families. Following the Church's policy also keeps the Church from being inappropriately implicated in legal matters.

If a leader believes he or she should testify or communicate in a legal matter or if a leader is being required to do so by legal process, that leader must contact the Office of General Counsel at Church headquarters at 1-801-240-6301 or 1-800-453-3860.

Sincerely yours,

  
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Russell M. Nelson

  
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Dallin H. Oaks

  
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Henry B. Eyring  
The First Presidency