

INTV WITH
TAMARA BRADY – ROLL.023

11:05:25	Intv	Just explain to me how you got involved in this case in the first place.
11:05:30	Tamara	Uh, I am a public defender in Colorado and I'm one of two chief trial deputies. Dan King and I are the two chief trial deputies and um, any time there's a capital case in Colorado uh, Dan or I - and in this case Dan and I - uh represent the person, they are qualified and uh our public defenders are appointed. So that's how I got involved in the case, was- it was a capital case in Colorado.
11:06:00	Intv	And so just for the, oh sorry you've got a little bit of hair just coming in there. Okay. Just for the benefit of the British audience who might not really understand what a public defender is, just tell me what you do.
11:06:11	Tamara	Uh, public defenders are lawyers who uh represent people who are charged with crimes who cannot afford to pay for their own lawyer. And in Colorado we have a state system, meaning the state of Colorado has uh one main public defender, Doug Wilson, and we have twenty-one offices throughout the state and Doug Wilson is in charge of staffing and funding the, the, the whole state with public defenders. And so, um, we represent people charged with crimes who can't afford to hire their own lawyer.
11:06:48	Intv	So in this case because of the, the magnitude of the, the crime did that have a part to play in why you got involved?
11:06:56	Tamara	Uh yeah, I think because it was such a large case um that the decision was, the decision was made that Dan King and I would both be on the case, normally it's one of us with the local lawyer and um in this case we decided both of us should probably be on the case and so we were. Um, along with some- the rest of our team. But because of how big it was, um, it was both Dan and I.
11:07:24	Intv	And how high did feelings run about all this?
11:07:31	Tamara	Extremely high, um... you know I never imagined in my wildest dreams that I would be part of a case this

		<p>big. Um, the magnitude of the trauma uh, the sorrow of the the victims and the family and friends of the victims, uh was at times almost suffocating um because you can't help even if you're a defence lawyer you can't help but empathise and sympathise um with people who've had something like that occur in their lives and and so that part was, was very hard um personally, on our entire time. Um and then on the other hand you have a client and you have his family and his issues um also, which are often very sad and um... hard to wrap your head around and soon you feel like you have these two uh stories of trauma um... bumped up against each other and uh and to have to defend someone that everyone in the country, probably the world, despise so much is um certainly a challenge. Certainly personally challenging.</p>
11:08:52	Intv	<p>This all went on for three full years before it reached a conclusion, that in itself must have been particularly hard for you and your team.</p>
11:08:59	Tamara	<p>It was, it was tiring um, it was exhausting. It was trying, um but we firmly believe that no matter uh who is charged and no matter what they're charged with uh, they deserve the best possible defence they can get and so even though we were very sad about what happened in the theatre um we still worked as hard as we possibly could to try and uh keep James Holmes from getting the death penalty.</p>
11:09:31	Intv	<p>There was, there was a huge amount of evidence for everybody to to wade through, a huge amount of expert testimony um, a large number of psychiatrists consulted in this case. Where you surprised by the the differences in opinion across the psychiatric experts consulted?</p>
11:09:49	Tamara	<p>Um, I, we didn't really see that there was that much difference. All of the experts generally agreed that he was (UNCLEAR) was seriously mentally ill. Um they all generally agree that uh, what type of mental illness he suffered from and so we, we didn't really think that experts disagreed all that much.</p>
11:10:13	Intv	<p>There was disagreement on whether or not he could be heldd legally responsible on what he did, wasn't there?</p>
11:10:19	Tamara	<p>Correct, yes. Uh, you know the the legal standard of insanity in Colorado was whether someone is so mentally ill that they're incapable of knowing right from wrong and um... so the the experts in this case applied that legal standard to what they were seeing as far as Mr. Holmes' mental illness and yes there was some disagreement as to whether he met that legal definition.</p>

11:10:48	Intv	But in terms of whether he was seriously mentally ill at the time, there was no disagreement.
11:10:52	Tamara	No disagreement.
11:10:54	Intv	(NAME) put forward an argument that actually Mr. Holmes, it was because he'd broken up with his girlfriend because he dropped out of school and he'd had these long standing thoughts of killing people so therefore... he now had nothing to lose.
11:11:12	Tamara	Correct.
11:11:13	Intv	Do you think that was backed up by the the evidence that was presented?
11:11:18	Tamara	You know as I, as I stated in the closing argument at the end of sentencing um... it, it was our belief that there was overwhelming evidence, uncontested evidence that James Holmes was seriously mentally ill and so um, to try and say that he wasn't mentally ill or that his mental illness didn't affect his actions um, I think was a challenging argument for (NAME) to make.
11:11:49	Intv	Do you think in the end... because of the mental illness argument that's why the jurors shied away from the death penalty?
11:11:58	Tamara	That's what the one juror who spoke uh on camera said, that it was the issue of mental illness and that um one, possibly two others just could not impose the death penalty on someone that was seriously mentally ill.
11:12:15	Intv	Now I, I would like to speak to you in in detail about the evidence in the case but, you're not so keen to do that. What- what is the problem with talking about the evidence in this case?
11:12:26	Tamara	I- I hesitate to talk specifically about James Holmes or about his case um, because normally before I speak about a case I get my client's permission to do that and uh with Mr. Holmes that's not uh, feasible for me to be able to do. I would like to, to go ask him, see if he's okay. If I talk more specifically about his case and these issues in particular, um but Mr. Holmes has been moved out of Colorado to a different state. He's in a prison in a different state under an assumed name for own safety uh, they were worried that they could not keep him safe in the prison here in Colorado and so they moved him. And so just an attempt to even, for me to to try and go visit him I feel would be uh, would jeopardize his safety. Um, and so I- I'm not comfortable trying to go visit because I don't want to jeopardize his safety um and since I don't have that specific consent from him um, I don't feel comfortable talking specifically about details of his case.
11:13:38	Intv	So it's really as as serious as that as far as his, his... position is at the moment that he he, you don't feel

		comfortable as his attorney in contacting in case that puts his safety at risk.
11:13:53	Tamara	True.
11:13:57	Intv	Now, in in his case you... prepared for, and obviously gave him some consent to... using a defence about the the medication he was on, not just the mental illness he was suffering from but the medication he was taking during the period where he became psychotic. Why didn't you use that information in court?
11:14:27	Tamara	Uh, that's an answer that I don't feel comfortable giving again because it would involve (CLEARS THROAT) decisions that our team made, that our team made um... based on on things that perhaps were not admitted during trial and so were not public and again I'd like to give Mr. Holmes some privacy if there's any left to be had for him, uh and and not talk about... strategic decisions that we made concerning that issue. I'm happy to talk in general about concerns that I as a defence lawyer would have in um using an adverse (UNCLEAR) type defence, I'm happy to speak to you in general terms if that would help.
11:15:15	Intv	Tell you what I'm going to go over that again and the only reason is because you said again, you know like referring back and it's just if we use this a standalone answer it's as if you haven't told me that before so, let let me just ask you again. Uh...
11:15:20	Tamara	Ah.
11:15:30	Intv	In your preparation for the-
11:15:41	Intv	Okay.
11:15:47	Tamara	Okay.
11:15:56	Intv	Okay.
11:16:00	Intv	In your preparation for this case you consulted experts and were obviously ready to make a defence based on the medication that James Holmes took, not just his mental state at the time. Why you didn't you use that?
11:16:17	Tamara	Since I don't have Mr. Holmes' permission to specifically to discuss um decisions we made in his case concerning that issue um, I don't feel comfortable talking about that but um I can answer in general... concerns I have as a defence lawyer in using that kind of a defence in uh a criminal trial if that would help?
11:16:38	Intv	Well, well Judge (NAME) for the prosecution says the reason you didn't go over the defence even in mitigation is because you knew you wouldn't win.
11:16:37	Tamara	That's his opinion.
11:16:51	Intv	Well what is in the difficulty in general terms, if you can't talk about the specifics here? I mean, is it difficult to actually and win a case on those crimes?
11:17:01	Tamara	In general terms uh regarding averse drug reaction as

		<p>a defence... as a defence you would have to uh, you would have to run an (UNCLEAR) an involuntarily intoxication defence which means that uh you know, first the jury would have to believe the theory that you're presenting and also uh that would result in an acquittal of the person and so in my experience as a criminal defence lawyer um jurors are very... hesitant to completely acquit by 'not guilty' um someone who they know committed the act and so I, I think it is certainly challenging to run an involuntary intoxication defence to something like murder um, I also worry that in a general sense whether jurors would be convinced of the science behind the adverse drug reaction theory um... a, a couple things I- I worry whether jurors themselves at some point in their lives have taken an (UNCLEAR) and it helped them and so because it helped them um they would reject this theory completely. Or whether they know someone, someone close to them, has taken an (UNCLEAR) and been helped by it and did not have these adverse drug reactions um that they would reject the theory. Or, just that it would scare them too much that that's a possibility, that um as frequently as (UNCLEAR) are prescribed in our country and in our state uh that perhaps these people could all of a sudden have this bad reaction and go kill someone, I think uh jurors would be hesitant to want to believe that um I... worry that uh the fact that the (UNCLEAR) has signed off on these medications and said "yeah, they're good, go ahead and take them, they're safe," um that jurors will say, well if the (UNCLEAR) says it's okay then it must be okay and um... jurors are very suspicious of theories that the defence lawyer presents um, I even even with mental illness which is an established area of medicine um, jurors are very worried that they're being tricked that they're being duped into believing um something that's not true or not real and so if they know the person committed the act and then someone defence lawyer comes in and says yeah they committed the act but it was because they were mentally ill or because uh the had this adverse drug reaction, a lot of jurors think that's just a defence lawyer... having to say to something in defence of their client, that it's not real that it's not legitimate it's just you know the excuse the defence lawyers put on the, or the- the excuse the defendant came up with up. And um, so we're very wary that any information that we put before a jury has to be um... we have to be able to back that up with science and science that they can believe and that, that we think that they may be willing</p>
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		to believe or else they're just going to write us off and not listen to anything we have to say.
11:20:33	Intv	In a sense then does Judge (NAME) not have a point that in a case like this where feelings couldn't be running any higher, where the stakes are so high it's just not a risk that you could take as a defence lawyer?
11:20:47	Tamara	Um, again I'm not comfortable answering um specific questions about our strategy in the Holmes case but in general those are concerns that I would have before I would present that kind of evidence to a jury.
11:21:04	Intv	You did mention (UNCLEAR) just in your closing arguments in court, if you're not happy to talk about the the details perhaps I can just read to you even what you said in court. When you spoke to the jurors you said "The (UNCLEAR) was increased once and increased again and shortly thereafter he begins to order stuff that's completely out of character, that mission took over his friendships, that mission took over his education, that mission took over his life," You clearly believe that (UNCLEAR) played a part here.
11:21:15	Tamara	Sure.
11:21:37	Tamara	Um, I did.
11:21:40	Intv	And you, you went on to say to the (UNCLEAR) if you begin acting aggressive or violent, these are possible side-effects of that medication. He's telling his girl- his girlfriend for the first time of this delusion within five days of starting that medication. So you found the timeline compelling.
11:21:58	Tamara	Yes, as as I stated in my closing argument um... it's either certainly a coincidence or there is something there. The, the timing of when he took the medication, when the medication was increased and his actions. Um, it- it has to cause you to wonder whether the medication didn't play some sort of role in what he was doing.
11:22:21	Intv	And you told the jury what, what you client himself said, "As soon as I started that medication I lost all fear,"
11:22:30	Tamara	Yes.
11:22:31	Intv	You think the evidence pointed in that direction.
11:22:33	Tamara	Yes.
11:22:37	Intv	For a lot of people looking at the evidence, one of the really hard things to understand is just the level of planning involved in this whole attack. It, it wasn't spontaneous, it wasn't just like... a sudden thought that gripped him, this went on for weeks and weeks. Was that a hard thing for you to prepare for as a defence lawyer?
11:23:00	Tamara	Uh, it's hard because the... the, we- we felt that the jury was going to think that the level of planning uh

		would cut against mental illness and as the experts testified to during the trial, the planning was part of the mental illness, the planning was fuelled by his mental illness. Um, it was part of his delusion and part of his psychosis that caused him to do all the things in preparation, you don't remove the planning it's part of the mental illness um and a symptom of the mental illness and so we, we tried to to make sure that the jury understand that through the experts, not taking my words for it, but through the experts the the planning was all part of his mental illness.
11:23:51	Intv	The prosecution argued though that this was simply evidence of all the carefully thought out steps James Holmes was taking in order to kill lots of people which is something he'd thought about for a very long time.
11:24:06	Tamara	That was their theory.
11:24:09	Intv	Was that quite hard to counter in court?
11:24:11	Tamara	Well I think since the experts all said that uh the the planning was all part of his mental illness that the mental illness wasn't just a, a snap moment in time that it was all, he was mentally ill throughout the planning and while the theatre uh... you know we just tried to rely on the testimony of the experts.
11:24:33	Intv	Even though all the psychiatrists agreed that he was seriously mentally ill how- how difficult do you find it in general to convince jurors that, that something so serious can be caused by an illness of the mind?
11:24:49	Tamara	I think certainly we were worried about that um... whether they would believe that the mental illness was linked to what he did and the, I think the fact that all of the experts agreed um... I think that without hesitation they all agreed that he was seriously mentally ill and there's no more we could do to present all of the experts all saying he's seriously mentally ill and that the jurors either were going to believe that or not and um you know I think I even said in my closing, how was experts do we have to present before you believe he's mentally ill? And certainly uh, a handful of experts testified and all said that um all we could do was hope that some, if not all, of the jurors believed what the experts said - the he was seriously mentally ill and that this would never have happened but for his mental illness.
11:25:49	Intv	How difficult was it for you in preparing a defence uh to counter the evidence that, that James Holmes had actually... had... strange thoughts about killing people, really back to childhood?
11:26:03	Tamara	Um, again we just relied on the experts to um explain... you know, his- his fear of people, his anxiety about people um that those things are the symptoms of

		his mental illness and a result of his mental illness um he had never hurt anyone in his whole life, he had never even really been mean to anyone in his whole life so to go from um nothing to what happened in that theatre uh, our position and argument to the jury was the only explanation was a um a psychotic break or a mental illness uh episode, that there was no other rational explanation for what happened.
11:26:52	Intv	What was your own feeling personally when, when the jurors rejected the death penalty?
11:27:00	Tamara	Overwhelming relief. Overwhelming relief. Um it is incredibly, indescribably stressful um to be trying to save someone's life uh, especially in such a long period of time under such um trying conditions and uh worrying that you might not do a good enough job, every day for three plus years um and then for someone to have heard you and uh have the courage to act on it - overwhelming relief. And then gratitude to the juror and jurors, all of them actually for hearing what we said and uh, you know the ones who felt like a life sentence was appropriate um and I'm so grateful that they heard out message and believed and um to, even to the other jurors for allowing those jurors to... to speak their mind and to you know, register their- their request for a life sentence. I'm grateful to all of the jurors.
11:28:13	Intv	That's quite a responsibility for you, basically arguing for someone's life. Was it pretty emotional?
11:28:20	Tamara	It is very emotional uh, you know I think some people think "Oh it's just her job," you know "Oh," you know - and that's not it. This takes over our lives, uh of our whole team and our families and our friends um because it becomes the one thing we have to do to the detriment of family of friends and personal lives and um and we take it very seriously and we truly believe that this person should not be executed and so uh we work as hard as we possibly can to make sure that that doesn't happen.
11:29:00	Intv	Do you feel justice was done in the end here, or would you have liked maybe some more of the information, some more of the evidence to have come out in this case?
11:29:10	Tamara	Well I'm certainly relieved he got a life sentence and um, you know by the end of the case that was our one objective was to make sure he got a life sentence so I am very grateful for that sentence.
11:29:26	Intv	Do you hope that in cases in the future perhaps that the sort of evidence surrounding medication like this might be able to be explored more fully?
11:29:37	Tamara	I would be really interested to watch where this area

		<p>goes. Um... you know, I have watched shows and documentaries and read articles and studies and um you know all the information that I could find on this issue and, and I, you know, I've heard other people talk about this theory and um... looking into it and reading about it, it- it's certainly caught my attention as something that should be studied more. Um, it's certainly caused me to think that if I, or family and friends, were prescribed an (UNCLEAR) uh that I would make sure that the doctor paid very close attention to the person they're prescribing to because I, I wouldn't want this to happen to, this adverse drug reaction to happen to anyone really, specifically uh to people I know. And um, I would, I'm very interested to see where this goes as far as the science, as far as research and whether um... professionals in the United States start doing more with this issue, it seems to me that more people in Europe are uh aware of this issue and following up on this issue uh, less so in the United States uh has been my experience so I'm very interested to see if more is done here in the United States to see if- if that's really an issue.</p>
11:31:20	Intv	In your court experience is it difficult even to find experts who're willing to testify about this?
11:31:26	Tamara	Yes, yeah.
11:31:29	Intv	And what's the hesitation do you think?
11:31:33	Tamara	I don't know whether their hesitation is um... in scaring, what- A, maybe they don't believe that, they just don't think that there's a science for it and so they don't believe there are adverse reactions to these medications or B, they're worried that they'll scare people or um upset drug companies or upset employers, employees, um so- so I- I'm not sure whether it's that they just don't think that this is a scientific issue or medical issue or whether they hesitate to say it out loud, I'm not sure.
11:32:16	Intv	One of the things that I think everybody agrees in, in the, in this case is just... are there any lessons that could be learnt from everything we now know about what happened? For you personally, can you see any lessons that can be learned from this tragedy (UNCLEAR)?
11:32:35	Tamara	The lessons that I've learned and that I hope uh to speak about and that other, other people learned is that um anyone can suffer from mental illness. If you're smart, you can be inflicted with mental illness. If you're middle class, or rich you can become mentally ill. Your parents may love you and raised you perfectly well and you may uh suffer from mentally illness and, and that it's not the stereotypical guy on the park bench uh you

		<p>know, talking to people who aren't there - that that is not the only face of mental illness, that there are people in our society um who are suffering from mental illness and that when they ask for help that we need to take that request seriously um, and and follow up with them and follow them and make sure they get the help that they need um so that these things don't happen that people don't leave and go unnoticed or forgotten about until a tragedy like this happens um, I can't... I know that everyone involved in this case wishes that uh things would have been different, that somewhere, someone would have intervened and and changed the course of what happened. All of us um hope for that but since we can't change that I- I think that we have to seriously consider how we treat mentally ill people um, with medication or however we do that it- it has to be done properly um and and a lot of follow-up to make sure that they don't just walk away and do something like this.</p>
11:34:34	Intv	<p>Okay, that's a lot to end with thank you. Andrew's been listening in so uh-</p>
11:34:45	Intv	<p>Okay.</p>
11:34:53	Intv	<p>What part do you think that (UNCLEAR) played in the development of James Holmes' mental illness?</p>
11:35:00	Tamara	<p>Um... in- in general as far as using adverse drug reaction um issue in a criminal courtroom, I think that one of the hard parts is um teasing out what behaviour is attributable to the mental illness, what behaviour if any is attributable to an adverse drug reaction and um particularly if you have someone who is mentally ill and experts say he or she is mentally ill, um when you add that component of the medication um the concern is you know will that dilute the strength of your mental illness uh defence or um, and- and just not knowing and- and what the jury will do with that, will it confuse the jury? Will it anger the jury? You know they may believe the person is mentally ill, do you add the adverse drug reaction? And the concern is whether that will um will confuse or help or hurt the jury make their decision.</p>
11:36:06	Intv	<p>So you've got to feel very confident about the timeline, about the evidence, before you go ahead with an argument like that?</p>
11:36:14	Tamara	<p>Yes uh, you know if I had my wish there would be some sort of medical test that the person can get and then we can say "Yep, that was it," or "No, that was not it," uh you know, jurors... jurors nowadays that want scientific things, you know they're used to DNA and fingerprints and blood tests and uh genetic testing and I- you know I would feel most comfortable with a</p>

		defence like that if there was some way to show, here's- you know here's the test we did, this proves it, this proves that they reacted badly to that drug. Um, that would be my preference, obviously the science is not there- there yet. Um, you know short of that, having doctors who... uh, you know, can come in and test the (UNCLEAR) based on science or study that that's what it was.
11:37:09	Intv	In a case like this there's a certain amount of "My expert's bigger than your expert," you read the work of Professor (NAME), what do you think of his expertise?
11:37:22	Tamara	Um, Doctor (NAME) clearly is extremely passionate about this issue and he uh... without a doubt believes that there are um reactions that people can have to these drugs and um you know I think his belief in that is a little bit contagious you know, when I first started thinking about the issue I thought well that just makes sense you know? I can take penicillin and I might have a rash and start itching and have a- an allergic reaction to it and you might take penicillin and it cures your infection, everything's fine, and- and so why would we not think that these kind of medications could also cause some sort of adverse reaction in some people, not everyone, clearly the drugs are- are beneficial to many, many people but for some people um do they... you know have unintended consequences and cause suicidal or homicidal um thoughts and um... you know his dedication to this, to this issue um certainly is compelling that he believes it and that he is going through everything he can to educate people and continue encouraging the science and studies and things so that, that more um are aware of the issue and to work on it.
11:38:55	Intv	Okay. Thank you.
11:39:32	Intv	Okay. James Holmes, it's clear from the evidence, thought about killing people from childhood. What part, from the evidence you looked at, do you think that (UNCLEAR) played in that turning into reality, a real act, a plan?
11:39:55	Tamara	What the experts testified to um... was that um when he began taking the medication that it removed his anxiety, it removed his fear and um I- I think there's at least a question of whether, when you remove that fear um, whether thoughts he may have been having before then became actions he then began taking actions, he carried them out. Um, whereas they moved from just thoughts into planning and doing things. Um, that is- is a question um I think hard to tease out whether you know was it just his psychosis coming into full um bloom and- and that was what caused all of this or was

		there a component where the (UNCLEAR) added to it or changed it? That's, that's what I think is hard to know for sure.
11:40:54	Intv	Did you have a view on that?
11:40:56	Tamara	Uh... you know I- I argued that in closing because I thought it- it's at least something we should be asking. It's at least something people should think about, including the jurors, including all of us. We should be thinking "Did that play a role?"
11:41:18	Intv	Okay. Good.