

Sandra Halsey Disciplinary Hearing (1)

1 TRANSCRIPT OF PROCEEDINGS

2

3 BEFORE THE

4

5 TEXAS COURT REPORTERS CERTIFICATION BOARD

6

7 AUSTIN, TEXAS

8

9

10

11 IN THE MATTER OF THE * CAUSE NO. 99-0308-07

12 DISCIPLINARY HEARING *

13 OF SANDRA HALSEY *

14 *****

15 BEFORE THE HONORABLE SID HARLE,

16 CHAIRMAN PRESIDING

17 *****

18 EXCERPT OF DISCIPLINARY HEARING

19 *****

20 BE IT REMEMBERED that on the 5th day of

21 June 1999, the above-entitled and numbered cause

22 came on for hearing in the State Bar Building, 1414

23 Colorado, Austin, Travis County, Texas, before the

24 Honorable Sid Harle, Chairman, whereupon the

25 following proceedings were had, to-wit:

CHAPMAN COURT REPORTING SERVICE

(512) 452-4072

1 APPEARANCES:

2

3

FRANK J. KNAPP

4 Assistant Attorney General

Administrative Law Division

5 209 W. 14th & Colorado Street

P.O. Box 12548

6 Austin, Texas 78711-2548

(512) 463-2100

7 Fax: 463-2063

FOR THE COMPLAINANT

8

GEORGE R. MILNER and RONALD L. GORANSON

9 Milner Lobel Goranson Sorrels Udashen &

Wells

10 Chateau Plaza, Suite 1500

2515 McKinney Avenue, LB 21

11 Dallas, Texas 75201

(214) 651-1121
12 Fax: 953-1366

FOR THE RESPONDENT

13
14
15
16
17
18
19
20
21
22
23
24
25

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 PROCEEDINGS

2 June 5, 1999

3

4 (At the conclusion of a portion of this
5 trial, which is not transcribed for the
6 purposes of this record, the following
7 proceedings took place in open court with
8 all parties present:)

9 LINDSEY ROBERTS,

10 having been first duly sworn testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KNAPP:

13 Q. Mr. Roberts, will you state your full name
14 for the record, sir.

15 A. It's Lindsey Charles Roberts.

16 Q. Are you an attorney in the State of Texas?

17 A. I am, sir.

18 Q. And you've been licensed for how many
19 years?

20 A. Since 1992.

21 Q. Where are you employed at this time?

22 At the Dallas County District Attorney's
23 Office.

24 Q. Are you one of the attorneys that have
25 been assigned to represent the State in the appeal

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 of the Routier case?

2 A. I am.

3 Q. And you've heard Mr. Cooper say that he
4 had filed motions to clarify and supplement the
5 appellate record in this case?

6 A. Yes, sir.

7 Q. At the time that you reviewed the
8 reporter's record, did you find that Exhibit 70 and
9 98 were missing?

10 A. It was back in October. Mr. Cooper
11 started having some discussions with us and then
12 formally filed his motion to clarify. And it
13 indicated that, I believe, there were two exhibits
14 missing and there were a few pages missing from the
15 transcript and the discrepancy in the juror note.

16 So I began to look. And yes, in our copy, we were
17 missing State's Exhibit No. 70 and 98.

18 Q. And did you have any conversations with
19 Ms. Halsey concerning the location of those two
20 exhibits?

21 A. I began to look for those. And I went and
22 talked to Ms. Halsey and asked her to look for them
23 and she did. And then on -- I think on maybe a
24 separate occasion, we had another discussion in
25 which she had said that these were left in the

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 possession of the defense attorneys at trial or
2 maybe one of their investigators.

3 Q. Were you able to locate such exhibits or
4 did somebody else locate them?

5 A. It was me.

6 Q. All right. And where did you find them?

7 A. Well, what I had done was I began asking
8 the attorneys, I looked through our files to see if
9 we had extra copies and things of that nature.

10 And -- and Ms. Halsey had indicated in one of our
11 previous conversations that there were -- because
12 this was on a change of venue down in Kerrville,
13 there was some transition from Kerrville back to
14 Dallas after the trial, so there were a number of
15 exhibits left in Kerrville in the possession of the
16 district clerk down there, which were later
17 transferred to the district clerk in Dallas. So I
18 made a few phone calls and talked to, I believe it's
19 Linda Orr, whoever is the District Clerk in Kerr
20 County. I think that's her name. But to see if,
21 perhaps, these were left down there in some way,
22 shape or form.

23 And she'd indicated to me that everything
24 that she'd had in her possession was transferred
25 back to Dallas. And she faxed me inventory lists of

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 all the exhibits that had been left in Kerrville and
2 also another list which was her transferring
3 possession of all those exhibits to the Dallas
4 County Clerk. And on both the fax of what was left
5 in Kerrville and what was transferred ultimately to
6 Dallas were Defense Exhibit 70, which I believe was
7 Special Agent Brantley's file, and 98, which were
8 personal letters written by Darley Lynn Routier as
9 having been left in Kerrville and transferred
10 ultimately in the possession of the Dallas County
11 clerk's office.
12 So then I went to the Dallas County
13 Clerk's Office, down on the second floor of the
14 building and talked to the evidence registrar. And
15 within a day or so, they had gone down to the
16 evidence locker and pulled Defense Exhibits 70 and
17 98. And I had copies made of all those exhibits and
18 distributed them to Mr. Cooper and whoever, I guess,
19 and one to the Court. So I had essentially found
20 them where they were suppose to be.
21 Q. All right. And would somebody that was
22 familiar with the judicial system in filing exhibits
23 and everything have much of difficulty in tracking
24 these exhibits down?
25 I shouldn't think so.

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 Q. Sometime during this period, did you ask
2 Ms. Halsey if any audiotapes existed for the Routier
3 case?
4 A. I did.
5 Q. And what was her response to you?
6 A. That there were audiotapes for the jury
7 selection, but there were no audiotapes for the
8 trial on the merits.
9 Q. Were you present at a hearing on
10 October 30 of 1998, before Judge Robert Francis
11 concerning the existence of audiotapes for the
12 evidentiary and the sentencing portion of the
13 Routier case?
14 A. I was.

15 Q. Did you hear Ms. Halsey testify at that
16 time?

17 A. I did.

18 Q. And what did she say then under oath
19 concerning the existence of such audiotapes?

20 A. She had -- she again said that there
21 were -- to her knowledge, there were tapes of the
22 jury selection, but that the battery had failed in
23 the microphone and the recordings
24 the merits were inaudible and, therefore, there were
25 no audiotapes for the trial on the merits.

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 Q. Was there also a prehearing conference
2 scheduled on November 12, 1998, before Judge
3 Francis?

4 A. There was.

5 Q. And at that time, initially, was
6 Ms. Halsey still insisting that there were no
7 audiotapes of the trial portion?

8 A. She was.

9 Q. Okay. And did she later admit on that day
10 that there, in fact, may be such audiotapes?

11 A. That's right.

12 Q. Did you accompany Ms. Halsey that day to
13 retrieve such tapes?

14 A. I did.

15 Q. And what happened? Where did you go and
16 where did you find them?

17 A. Well, it was late in the evening. It was
18 probably about 7:00, I think, and the courthouse had
19 pretty much closed down. Mr. Cooper, myself,
20 Judge Francis and Ms. Halsey were really the only
21 people left. Ms. Halsey thought -- or said that she
22 thought these tapes were at her storage facility out
23 in Plano. And it was decided that I would accompany
24 her to the facility and take custody of the tapes to
25 bring them back.

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 So Ms. Halsey and I left from the
2 courthouse and drove out to the -- I think we first
3 went to her house and then went to the storage
4 facility, were able to get into the storage facility
5 and get the tapes.

6 Q. Was this a storage facility that was

7 maintained and rented by Ms. Halsey?

8 A. To my knowledge, yes.

9 Q. And was there various other things in the
10 storage facility?

11 A. There were. It's one of these public
12 storage where you raise a -- you have a padlock and
13 a key and you raise it. It's in an inside
14 building. And, you know, I think I remember seeing
15 maybe some Christmas decorations and things of that
16 nature, just boxes of materials.

17 Q. How much space did the tapes take up in
18 the storage facility?

19 A. They're -- I thought I saw some earlier.
20 They're just your regular banker boxes and there
21 were two of them. There were -- one box was full
22 of, I think we ultimately counted something like 140
23 audio cassette tapes. And the other box was
24 stenographic notes from the jury selection.

25 Q. Were these boxes clearly marked Routier

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 case? And I don't know, did it also say on one,
2 perhaps, audiotapes?

3 A. I remember specifically on the one that
4 was sitting on top was marked Routier jury
5 selection. And then on the underneath was another
6 box. And I believe it was also marked Routier. I
7 don't think it said audiotapes on it, but I'm not
8 sure.

9 Q. And were these -- well, let me see. Let
10 me back up.

11 Were these tapes then filed with the Court
12 in the Routier case?

13 A. Yes, sir, the following morning. I had
14 also taken -- the Judge had asked me and -- with
15 Mr. Cooper's agreement to take custody of all,
16 not -- you know, all the audiotapes and all the
17 stenographic notes for the Routier trial. And
18 Ms. Halsey, I believe, had a third box of
19 stenographic notes that was from the trial on the
20 merits and maybe some pretrial hearings. So I took
21 all three of those, and the following morning,
22 turned them over to Judge Bobby Francis.

23 MR. KNAPP: Pass the witness. Excuse
24 me.

25 Q. (By Mr. Knapp) On, I believe, November 12

CHAPMAN COURT REPORTING SERVICE

1 of 1998, when Ms. Halsey admitted that there were,
2 in fact, some audiotapes, who else was present at
3 that time?

4 A. Well, I believe, like Mr. Cooper had said,
5 we were having a pretrial conference to try and, I
6 guess, see what we were going to do the next
7 morning. And it was decided that we were going to
8 make one last, I guess, you could call it, another
9 run at Ms. Halsey to try and see if she would admit
10 that there were audiotapes. And Judge Francis
11 called Ms. Halsey on the phone and asked her to come
12 down to the courthouse. And it was Steve Cooper,
13 Ms. Sue Coryett (phonetic), who was the head of the
14 appellate decision, and myself, Judge Francis. Then
15 Ms. Halsey showed up a little while later with her
16 daughter --

17 Q. What was her daughter's name?

18 A. I believe it's Susan Crowley.

19 Q. And what function did Susan --

20 Susy Crowley play in this, in the preparation of the
21 reporter's record?

22 A. It's my understanding that she was used as
23 a scopist to help prepare at least a portion of the
24 transcript, what -- the vast majority of which was
25 the trial on the merits.

CHAPMAN COURT REPORTING SERVICE

(512) 452-4072

1 Q. Right. At this meeting, at some point,
2 did Ms. Crowley say anything about the existence or
3 nonexistence of audiotapes prior to Ms. Halsey
4 admitting that there were such audiotapes?

5 A. Well, as Mr. Cooper had said, the Judge
6 wanted to meet with Ms. Halsey privately, took her
7 back into her chambers and Ms. Crowley stayed in the
8 courtroom. And we all stayed around for a little
9 while. I don't know how long it took. It was an
10 hour or more than an hour. They had a
11 conversation.

12 The Judge then released Ms. Halsey. And
13 we all -- Mr. Cooper and I, I think, at that point
14 went back to the -- Judge Frances' chambers. He
15 said, "She still insists there are no audiotapes."
16 And I did ask permission -- we'd been told not to
17 talk to Ms. Halsey anymore about a week before that
18 or a couple of days. I asked permission to try one
19 more time to ask her again. And he said, "That's

20 fine. And then tell her and her daughter that they
21 are subpoenaed and they need to be here at 9:00
22 tomorrow morning."
23 So I walked back into the courtroom and I
24 talked to Ms. Halsey. And her daughter was sitting
25 at counsel table. And Ms. Halsey had said, you

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 know, "Why do they keep insisting that there are
2 audiotapes?" And I said, "Well, I mean, based upon
3 the review of the record by these other court
4 reporters, I mean, the only conclusion anybody could
5 come to was that there were either audiotapes used
6 to supplement the record or they're just making this
7 stuff up. I mean, somehow." And -- and I can't
8 remember exactly what was said, but at some point in
9 time, you know, I had said that, "Well, you know,
10 we're going to have to go forward with the hearing.
11 We're going to have -- you need to be here again at
12 9:00 tomorrow morning. You're going to testify
13 again under oath and your daughter is going to have
14 to testify under oath." And it was at that point, I
15 think, that her daughter said, "Can we have a
16 minute?" And I stepped out of the room, left them
17 alone in the courtroom for a little while. And I
18 think at this time, I was joined by, actually one of
19 the trial prosecutors on the case, Toby Shook.
20 And either Ms. Halsey or her daughter, I
21 think it was her daughter, came back out into the
22 hallway and called us back into the courtroom. And
23 that was when Ms. Halsey said, "What would happen if
24 there were audiotapes?" And we had previously
25 discussed this with the administration of our

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 office. And at that point in time, we were prepared
2 to offer use immunity for her prior testimony -- her
3 prior statement that there were no -- just in order
4 to secure audiotapes, because the audiotapes, at
5 this point, were going to be the way we would verify
6 this record, if at all, to salvage the appeal.
7 So we told her that she wouldn't be
8 prosecuted for her perjury if she would just give us
9 those tapes. And she indicated to me that there
10 were tapes. And that's when I went back into
11 Judge Frances' chambers and told her that there are

12 tapes. And that's when we began the discussion of
13 how we were going to retrieve those.
14 MR. KNAPP: Pass the witness.
15 THE COURT: Mr. Roberts, for the
16 purpose for the lay members, would you define use
17 immunity for us, tell us what that is.
18 THE WITNESS: Use immunity is that --
19 I guess there are two forms of immunity,
20 transactional immunity and use immunity.
21 Transactional immunity is a flat, we will not
22 prosecute you for that offense. Use immunity is
23 more limited in the sense that we won't prosecute
24 you using that statement. I suppose if you could
25 prove it up, perjury some other way, you would be

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 able to actually prosecute a case.
2 THE COURT: Okay. Thank you.
3 Mr. Goranson, Mr. Milner?
4 CROSS-EXAMINATION
5 BY MR. MILNER:
6 Q. Mr. Roberts, how long after the actual
7 trial was it until some question about the missing
8 two exhibits came up?
9 A. It was -- that would have been October of
10 last year. So --
11 Q. So the concern is in October of '98. When
12 was the trial?
13 A. I believe jury selection was in October of
14 '95 -- '96. And the trial on the merits was in
15 January of '97.
16 Q. So it's a substantial number of months
17 later; is it not?
18 A. Yes, sir.
19 Q. Over a year, in fact?
20 A. Yes, sir.
21 Q. How many exhibits were introduced at the
22 trial altogether?
23 A. I couldn't even guess, but it's hundreds.
24 Q. So we have two out of those hundreds that
25 they can't ready find?

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 A. And then ultimately a third, the laser
2 disk.
3 Q. All right. That's not unusual in lengthy

4 trials, is it?

5 A. I have heard of it happening before.

6 Q. All right. And Ms. Halsey told you that
7 she thought they were in the possession of the
8 defendant's attorneys or the investigator?

9 A. That's right.

10 Q. All right. And so far as you know, that's
11 what she thought?

12 A. Sure.

13 Q. All right. It turns out that they were --
14 had been introduced into evidence, they were with
15 the clerk in Kerrville, transferred back to Dallas?

16 A. That's correct.

17 Q. All right. The -- when you talked to
18 Ms. Halsey about the laser disk, you told her -- she
19 had called the rental agency and talked to a lady
20 there and they didn't know where the disk was?

21 A. That's what she said, yes.

22 Q. All right. Were you present when the
23 owner testified concerning his finding of the disk
24 immediately after it was shipped back to him
25 immediately after the trial?

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 A. I was -- I contacted him and he had told
2 me that, "I have it." And so I made arrangements
3 for him to come back and turn it in.

4 Q. But he also told you that he had taken it
5 out of the machine and kept it in his personal
6 possession?

7 A. That's right.

8 Q. So as far as you know, he's the only one
9 that knew that?

10 A. That's right, as far as I know.

11 Q. All right. Now, concerning the
12 audiotapes, Ms. Halsey testified that -- well, just
13 give us her explanation as to why there were no
14 tapes, for the guilt-innocence phase of the trial?

15 A. At that hearing?

16 Q. Up until she told you in, what, November?

17 A. She -- I believe it was at that hearing
18 that she indicated that there was a battery failure
19 in a microphone that caused there not to be audible
20 audiotapes.

21 Q. And was that her insistant version to
22 everyone who asked about why there are no tapes?
23 That is, the batteries didn't work. I didn't
24 realize it needed batteries. And she told you that

25 she had tried a couple of them and all she heard was

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 static?

2 A. That's right.

13 Q. Now, when you were there in November, on
4 the -- her daughter was not subpoenaed to come down
5 to the day that you're talking about, was she?

6 A. No, she was subpoenaed for the following
7 morning.

8 Q. Following day. All right. And Ms. Halsey
9 went and talked to Judge Francis for a considerable
10 length of time?

11 A. Yes, sir.

12 Q. And after that, came out and you talked to

13 Ms. Halsey and her daughter, Susy?

14 A. Yes, sir.

15 Q. And you conveyed to her your concern about
16 the Routier case being reversed because you couldn't
17 get a certifiable record?

18 A. Yes, sir.

19 Q. Is it fair to say to the Board that
20 Ms. Halsey was quite concerned about that, too. She
21 did not want Ms. Routier to get a new trial for that
22 reason?

23 A. She was concerned, yes.

24 Q. And she appeared frightened, did she not?

25 A. Yes.

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 Q. All right. And she told you that there
2 were tapes, but did she also tell you she's not sure
3 where they were?

4 A. Yes.

5 Q. And that she had looked everywhere, except
6 for the storage area in Plano?

7 A. I believe that's the case. I think that's
8 what she said.

9 Q. Now, when you went out to the storage
10 area, Ms. Halsey was talking to you on the way out,
11 telling you the same thing, "I'm not sure it's going
12 to be here. I sure hope it's here. I'm praying
13 it's here." That's basically what she was telling
14 you?

15 A. That's right.

16 Q. All right. You get there, you find the

17 tapes. Subsequently Ms. Simmons is appointed by the
18 Court to, in effect, create a record or determine
19 whether or not a record that can be created that's
20 certifiable for appellate purposes?
21 A. That's correct.
22 Q. And would you tell the Board what
23 Ms. Simmons has concluded, based on her study?
24 A. It's in the process. And she has finished
25 the trial on the merits. She was given the

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 audiotapes, the stenographic notes, computer disks,
2 everything that was normally used to create an
3 appellate record. And she has created a record on
4 the trial on the merits. And now, she is in the
5 process of reviewing the same materials, but all for
6 jury selection. That way we'll have a complete set,
7 so to speak.

8 Q. But concerning the guilt-innocence phase,
9 which is the subject matter here, Ms. Simmons has
10 already testified in Dallas that the record is
11 certifiable, in her professional opinion, has she
12 not?

13 A. She has.

14 Q. All right. Now, during 1998, when you
15 were working with Ms. Halsey in an effort to get the
16 two missing exhibits, were you aware of a lot of
17 personal problems she was having at that time?

18 A. I had heard rumors. I mean, I knew there
19 was a separation or perhaps even an impending
20 divorce between her and her husband.

21 Q. Well, during that period, you knew her
22 husband had left her for a younger woman, did you
23 not?

24 A. I heard that. I didn't know that.

25 Q. And that the younger woman was in the

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 courthouse family, was she not?

2 A. I think I've heard she's a jailer or
3 working over in the jail in some capacity.

4 Q. All right. You know that Ms. Halsey,
5 in '98, was undergoing counseling?

6 A. I had no idea.

7 Q. You know that her father died during that
8 period?

9 A. No, sir.
10 Q. Concerning the record that Ms. Simmons has
11 examined, you've looked at Ms. Simmons' record, have
12 you not?
13 A. I haven't read it for substance. I mean,
14 I've seen portions of it, but -- but at least at
15 this point, we're still waiting on the jury
16 selection. And I don't know that anybody has
17 actually really begun to review.
18 Q. Okay. But as you sit there, you're not
19 able to cite one instance of any substantive
20 difference between the Halsey record and the Simmons
21 record, are you?
22 A. Well, without having reviewed it, no.
23 Q. All right. And no one in your office has
24 reviewed that?
25 A. No, I don't believe. I mean, we've done

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 portions, but because the appeal is sort of in
2 limbo -- I mean, we have -- right now, at this
3 point, we have three boxes. we have the Halsey
4 record, we have the redline record and then we have
5 the Simmons record. And I don't -- I mean , no one
6 has gone back and has been reviewing it for
7 substance.
8 Q. Well, let me ask you if Mr. Cooper or
9 Mr. Losch, the attorneys for Ms. Routier, have
10 either of them come to you contending there's any
11 substantive difference between the Halsy record and
12 the Simmons record?
13 A. At this point, the Judge has given 120
14 days for Mr. Cooper to lodge his objections. And
15 we're anticipating that within that motion, we'll be
16 receiving notice of what he intends to assert as
17 being substantive changes or differences that are
18 capable of destroying the appeal.
19 Q. Okay. But as you sit there now, you
20 are -- your position is, it's a certifiable record?
21 A. I hope so.
22 Q. And assuming that it's a certifiable
23 record, then Ms. Routier is going to get her appeal
24 that she's entitled to, is she not?
25 A. That's correct.

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 MR. MILNER: Those all, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. KNAPP:

4 Q. Let me ask you: Has the State filed a
5 motion to keep Ms. Halsey from appearing as a court
6 reporter in Judge Faith Johnson's district court in
7 Dallas?

8 A. We have.

9 Q. And why did the State do this?

10 A. Out of concern because of what had
11 happened here. Out of concern and our concern that
12 she not sit as a court reporter until this is
13 resolved.

14 Q. And how long have you been practicing in
15 criminal cases in the State of Texas?

16 A. Six years with the District Attorney's
17 Office.

18 Q. Have you ever had a problem like this with
19 the record before?

20 A. No, sir.

21 Q. When Ms. Halsey -- when you -- was an
22 order filed to the State's motion ordering that
23 Ms. Halsey not operate as a court reporter in
24 Judge Johnson's court?

25 A. Was an order --

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 Q. Was there an order of the Court? In other
2 words, after you filed -- after the State filed the
3 motion, was there an order signed that Ms. Halsey
4 should not appear as an official court reporter?

5 A. I don't know that I know of a specific
6 order. And I'm a little -- I am a little hazy on
7 exactly what happened down there. There are three
8 other prosecutors down there. But it was a decision
9 made on behalf of the office that we file motions
10 whenever she does sit as a court reporter. I think
11 even after leaving -- or no longer being used in
12 Ms. Johnson's court -- or Judge Johnson's court,
13 excuse me -- that she did sit or was going to sit in
14 Judge Barker's court, a county criminal court, on
15 misdemeanor cases. And I think we filed the same
16 motions in there, but that judge didn't remove her.

17 Q. All right. So she has been reporting, as
18 far as you're aware, in that particular court?

19 A. She did about a week or two. And then I
20 don't think she has since.

21 Q. Do you know what she's doing at this time?

22 A. I believe she's working in some capacity
23 with the county clerk's in the cashier's office.
24 MR. KNAPP: Pass the witness.
25 MR. MILNER: No further questions,

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 Your Honor.
2 THE COURT: Board questions?
3 MS. MILLER: My name is
4 Monica Miller.
5 THE WITNESS: Yes, ma'am.
6 MS. MILLER: In your affidavit, you
7 have got in here where it states, "In one of the
8 boxes more than 100 audiocassette tapes specifically
9 labeled the date, volume number and page
10 references." Has there ever been any -- has it ever
11 been ascertained whose handwriting notations the
12 page references were?
13 A. Well, that next morning I -- Toby Shook
14 and I had a brief conversation with Ms. Halsey's
15 daughter and -- in which we talked about the
16 audiotapes. And she confirmed for us that she was
17 the scopist and that she did use those tapes in
18 scoping the record.
19 MS. MILLER: Right?
20 THE WITNESS: And that they were
21 audible. And then, you know, we were -- our concern
22 was, you know, is it a complete set and can somebody
23 else listen to it and verify this record? And she
24 said that she felt certain somebody could. And we
25 did ask her about the handwriting. And she said it

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 appeared to be her mother's handwriting.
2 MS. MILLER: Which would lead to the
3 conclusion, if she had page references to the trial,
4 pages on the tapes, that she had to have known of
5 the existence of the tapes at that time?
6 THE WITNESS: That would be my --
7 MS. MILLER: She had page trial
8 numbers on the tapes?
9 THE WITNESS: That would be my
10 conclusion. Whoever it was that put that there
11 obviously should know that they're tapes.
12 MS. MILLER: That's all.
13 THE COURT: That was board member

14 Monica Miller for the record.
15 Anybody else? Mr. Alvarez.
16 MR. ALVAREZ: Mr. Roberts, my name is
17 Albert Alvarez. Do you recall how long the meeting
18 was between Ms. Halsey and her daughter when she
19 asked you to step out? How long did that meeting
20 last?
21 THE WITNESS: Five minutes, 10
22 minutes at the most.
23 MR. ALVAREZ: Thank you.
24 THE COURT: Anybody else?
25 Mr. Lombard.

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 MR. LOMBARD: Mr. Roberts, my name is
2 Jim Lombard. I'm a little bit confused on exactly
3 what was said at the hearing, I believe, it was on
4 November the 12th, concerning the tapes. Did
5 Ms. Halsey say that there were not any tapes,
6 period, or did she say that she thought that there
7 were tapes that weren't inaudible?
8 THE WITNESS: It's really something
9 that's sort of evolved over time. This was -- this
10 all really took place over a couple of weeks. You
11 know, when we initially had the review by
12 Jerry Callaway and Judy Miller and Tommy Mullins, I
13 mean, everyone concluded there have to be tapes.
14 MR. LOMBARD: Okay.
15 THE WITNESS: And so we continued to
16 confront Ms. Halsey. And at times -- you know, she
17 began with, "No, there are no audiotapes. There
18 just are no, there are no." And then it became,
19 "There are for the jury selection. There aren't
20 for the trial on the merits." And then it became,
21 "There are for the jury selection. There aren't
22 for the trial on the merits because of a battery
23 failure." I mean, it just sort of progressed over
24 time and it may have been over a couple of weeks.
25 Then ultimately, at the hearing where she testified

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 under -- you know under oath, it was that there are
2 no audio -- there are audiotapes for jury selection,
3 but none for the trial on the merits because of a
4 microphone failure.
5 MR. LOMBARD: Again, I guess the

6 reason for my confusion, I haven't been to that many
7 criminal trials. But those that I have been to, and
8 civil trials for that matter, it seems to be fairly
9 apparent when the reporter is changing out a tape
10 recorder as a trial is progressing. And I guess I'm
11 trying to find out if she was simply denying that
12 she had ever done this during the trial, she had
13 never changed out these tapes, and therefore, there
14 were no tapes in existence at all, or if her
15 position was that there were possibly tapes that
16 weren't audible?

17 THE WITNESS: It ultimately became,
18 there are possibly tapes that were un audible. And
19 think that's when -- and had she indicated to Judge
20 Francis that she had destroyed them because they
21 were in audible?

22 MR. LOMBARD: Did either you or
23 anyone else ever ask -- when we were talking about
24 the in audible -- that possibly they be produced and
25 somebody else try to listen to them?

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 THE WITNESS: What was that again?

2 MR. LOMBARD: When she was taking the
3 position that there may have been tapes that were
4 in audible, did you or anybody else ever ask
5 Ms. Halsey, "Well, can we, you know, try to see if
6 somebody else can possibly listen to these tapes"?

7 A. Exactly. I mean, that's what the
8 judge's -- I mean, his whole point. But then she
9 ultimately said that they had been destroyed.

10 MR. LOMBARD: Okay. Destroyed or
11 missing?

12 THE WITNESS: Destroyed, I think is
13 what she told Judge Francis. But again, that's s in a
14 private conversation between the two of them in
15 chambers before she admitted that there were.

16 MR. LOMBARD: Thank you.

17 THE COURT: Mr. Cohen.

18 MR. COHEN: Good morning,
19 Mr. Roberts. My name is Mike Cohen. We do the same
20 thing for a living. I'm also an Assistant D.A. and
21 I prosecuted in Bexar County and have been so for
22 about 13 years. I have never heard of anything like
23 this before. But what I'd like to do is kind of
24 focus on this hearing of October 30th. I have never
25 heard of having to give a court reporter use

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 immunity in trying to put together an appellate
2 record. Have you ever done anything like that?
3 THE WITNESS: No.
4 MR. COHEN: What degree of felony or
5 what degree of offense was it that you were giving
6 her immunity for?
7 THE WITNESS: You would buzz me on
8 something like that, wouldn't you? I believe -- I
9 believe it would be a State jail felony, unless --
10 and there's a materiality aspect to it. And if it's
11 found to be material or there's something else it
12 would jump it up to maybe a third-degree felony. So
13 State jail punishable anywhere from 180 days to five
14 years -- or two years in jail, I'm sorry. And a
15 third-degree two to 10 in the penitentiary.
16 MR. COHEN: It's a felony, right?
17 THE WITNESS: It is.
18 MR. COHEN: Regardless, it's a crime
19 of moral turpitude that you had to give her immunity
20 for?
21 THE WITNESS: It is.
22 MR. COHEN: In this proceeding,
23 there's some conclusions that this Board will have
24 to make regarding whether or not Ms. Halsey did, in
25 fact, commit some disciplinary punishable actions.

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 One decision we have to make is whether or not she
2 committed any type of fraud or dishonesty. Do you
3 have an opinion whether or not that was committed on
4 October 30th?
5 THE WITNESS: Well, based upon -- I
6 guess, based upon the facts that we had before us,
7 we felt the need to offer use immunity in order to
8 receive the tapes. So I believe, you know, the
9 position of our office was that an offense had been
10 committed.
11 MR. COHEN: That constituted a fraud
12 or misrepresentation to the Court?
13 THE WITNESS: Yes, sir.
14 MR. COHEN: In Ms. Halsey's response
15 to this Board, she has never -- unless I missed it,
16 has never given us an explanation as to why she made
17 those false remarks under oath. Did she ever tell
18 you why, why she told the Court the tapes didn't

19 exist?
20 THE WITNESS: That -- that afternoon
21 or early evening when she did tell me about those
22 tapes, she said that when she saw the discrepancies
23 between -- I mean, and this is what it all stemmed
24 from was the jury note and transcription about
25 Darin's testimony. She said that it scared her and

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 that she thought that something like that would
2 cause a reversal. And it just scared her and she
3 decided to do what she did.
4 MR. COHEN: All right. Thank you,
5 sir.
6 THE COURT: Any other Board
7 questions? Mr. Lombard.
8 MR. LOMBARD: I have one more
9 question.
10 THE WITNESS: Yes, sir.
11 MR. LOMBARD: Concerning the use of
12 audiotapes at capital murder trials. Is it required
13 the reporter audiotape in addition to taking her
14 stenographic recording?
15 THE WITNESS: You'd probably have to
16 ask one of these court reporters. I've kind of
17 gotten a bit of a crash course in this. I'm not
18 sure that it's required. It's certainly
19 recommended. As far as, I know in the civil courts,
20 they use audio a great deal more. The jeopardy
21 here, I think, that we face is that the same is not
22 done in criminal courts. In civil courts, they all
23 actually have an order from the Supreme Court
24 permitting the record to be audio taped and that to
25 be the certified record. In criminal courts we

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 don't have that.
2 MR. LOMBARD: Are you saying the
3 audiotape in a civil trial is --
4 THE WITNESS: It essentially -- it's
5 not just used as a supplement. It actually can be
6 used as the transcript. But, again, you know, I'm
7 sure a court reporter would be a better witness on
8 something like that.
9 MR. LOMBARD: Thank you.
10 THE COURT: Any other questions from

11 the Board?
12 Chair just has one question, Mr. Roberts.
13 You said this all developed, as far as the inquiry
14 into the audio tapes, developed over a two-week
15 period?
16 THE WITNESS: It seemed more than
17 that. It was -- you know, it begun in mid October
18 and then ultimately ended on November 12th, I
19 believe. Give or take about two months.
20 THE COURT: So during that time
21 period -- during that time period can you estimate
22 for the Board, through you, through members of our
23 office, through Judge Francis, through the defense,
24 how many actual requests were made of Ms. Halsey for
25 those audiotapes?

CHAPMAN COURT REPORTING SERVICE
(512) 452-4072

1 THE WITNESS: I mean, she and I had
2 several conversations over the several weeks.
3 Probably five in and around there, give or take.
4 And then Judge Francis and Mr. Cooper -- I mean, it
5 was -- he -- Mr. Cooper was present at some, not
6 present at the others. So I'd ball park it say
7 maybe at maybe 10, 12.
8 THE COURT: Thank you very much. Any
9 other follow-up from any of the attorneys?
10 MR. KNAPP: No, Your Honor. But I
11 may want to recall this witness and ask that he not
12 be discharged at this time.
13 THE COURT: Okay. If you could stay
14 with us, Mr. Roberts. Thank you.
15 We're going to take about a 10-minute
16 recess and we'll resume in about 10 minutes. Thank
17 you.
18 MR. GORANSON: We'd like to call
19 Justice Kinkeade, Your Honor.
20 THE COURT: I'm going to waive the
21 oath for any justices that testify. Proceed.
22 (Excerpt concluded.)