

# *Sex, Lies & Audiotape (Part I)*

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by Edgar J. Steele

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The jury never heard even a *hint* about the single most important piece of evidence in my defense at trial: *proof* that the government's evidence, the two recordings, were phony. Without those recordings, the government's case against me literally disappeared.

What's that? You say that there must be something wrong? That I am failing to tell you everything? Nope. Ask *anybody* who was at that pre-trial hearing that took longer than my *entire* defense at trial. Judge Winmill ruled that I could *not* present any evidence disputing the authenticity of the audiotapes.

## *Why?*

Why? For two reasons, said the judge - one for each of the two forensic audiology experts we flew in from New York and New Mexico, respectively, for the hearing *and* the trial.

## *Not Qualified?!?*

The first expert, Dennis Walsh, with over *20 years* experience in handling and analyzing audio recordings for the New York City Police Department, who owns a company that does *nothing but analyze recordings*, was declared "not qualified" to render an opinion. Not qualified? Excuse me? Walsh was doing this *before* it was science! In a moment, I will give you Walsh's conclusions; then you will see why the government had to prevent his testimony at *any* cost.

## *Irrelevant?!?*

My second expert, Dr. George Papcun (pronounced "Pap'-sun"), could not possibly be deemed unqualified, given the fact that he is *the* world's leading expert in forensic audiology. Papcun *literally* invented the discipline's terms and wrote the book "that others throughout the world rely upon." Papcun couldn't testify, said the judge, because he was *irrelevant*, because nobody had put the *authenticity* of the tapes into question. Yes, you heard that correctly, regardless of how ridiculous it sounds. And the judge said it right out loud, with a straight face. Why wasn't the listing of Walsh and Papcun as experts with the court (and filing their written opinions that the recordings were false) *enough* to put the authenticity of the recordings "into question?" Why didn't my husband-wife-privileged jailhouse call, in which I averred the "tapes" *had* to be false, enough to trigger the authenticity issue? For that matter, why wasn't my "not guilty" plea enough? Why wasn't my expert's testimony for 1- $\frac{1}{2}$  days in a pretrial hearing "enough?" Incidentally the judge ruled that I had *waived* that privilege, so that the call became the source of yet *another* federal charge calling for 20 years in prison.

Then the judge said he *might* change his mind if a "party to the recordings" (this phrase later was to mysteriously disappear from the trial transcript) testified during the upcoming trial (then just 3 days away) that "something" had been deleted or added to them. B-b-but, Judge - that leaves only Larry Fairfax, the Idahun Hit Man, since *I* wasn't really a "party" to them. Of course, I was *alleged* to be a party, which means I *was* a party to them, since in America, we are guilty of all state-charged crimes until we *prove* our innocence. *Prove*. Well, yes, in my case that word seems not to exist, I admit.

So, Judge, you are saying that, if I waive my Constitutional right *not* to take the stand, I might somehow be able to dispute the recordings' authenticity? *Really?* Of course, you *know* that a defendant always testifies *last*, if at all? You are forcing me to choose between my constitutional rights and a key witness? *The* key witness? I felt as though I had "gone through the looking glass" and now was subject to the tyranny of the Red Queen.

I don't know if Judge Winmill knew that Dr. Papcun long ago had prepaid

\$48,000 (non-refundable) for his and his wife's dream vacation of a lifetime to Tahiti, scheduled to depart just two days later. Dr. Papcun had offered to stay for the trial *despite* that vacation (that could *not* be rescheduled), *if* the judge ruled that he *could* testify and *if* we could put him on the stand *early*, out of order and ahead of the state's case against me. But the judge said Papcun *couldn't* testify, so off he flew to Tahiti.

### ***When Yes Means No***

I honestly don't know if the judge knew about Dr. Papcun's vacation plans *before* the trial, but he sure knew about them during the second week of trial when he inexplicably reversed himself, saying Papcun (but *not* Walsh, of course) could testify at trial, *provided* he was in the courtroom at 8:30 am, two days later.

The US Attorney knew about Papcun's vacation in advance, because she secretly was requiring the jail to provide her recordings of all my calls from jail, *even those made to lawyers*, during which I discussed Papcun at length. Now it was too late to subpoena Papcun, but we *could* (just) get him back on the next commercial flight if we hurried. He agreed to come back, but asked if there was any other way. We thought there *was* another way.

Yes, I know I promised to quote for you *both* experts' written opinions, but a couple more incredible twists to the Papcun saga yet remain to be told.

My lawyer informed the judge that Dr. Papcun was on the other side of the world and, though there just barely was enough time to get him back to Boise by commercial jet by the Judge's deadline and though he was willing to come, could we simply have him testify by videophone satellite uplink, over the Internet? "Yes," said the judge.

However, the very next morning, with only 24 hours to go, the judge acceded to the US Attorney's renewed demand that Papcun testify *only* in person. Why? So that she could "more effectively cross-examine" Dr. Papcun! Yes, there *is* that US Constitution "guarantee" that all defendants have a *right to confront* all witnesses against them at trial. I guess it's only fair to allow that same

right to the government, after all. But, Judge, we *did* rely on your (pre-second-flip) flop when we passed up the chance to get Dr. Papcun back by your deadline. That is, the flop that you made before your first flip. *Flip-flop-flip*. I guess this section *really* should be titled "When No Meaning Yes Really Means No." Keep in mind that this selfsame US Attorney had cross-examined *both* Dr. Papcun and Mr. Walsh *in person* and on the *same* witness stand, just 3 days before trial, for  $1-\frac{1}{2}$  days!

### ***When Rights Become Wrong***

What's more, this is the *same* judge who ruled that *I* had no constitutional right to confront witnesses against *me* at trial, thereby allowing the videotaped deposition of Tatiyana Loganova to be played for the jury. *Her* deposition took place on the other side of the world, too, in Ukraine (going the other direction, though). *Once again*, so much for *my* Constitutional rights.

The smell arising from this sordid little interlude just gets stronger, doesn't it? Well, hold on, because it gets *worse* believe it or not.

### ***The Stench of Real Injustice***

With less than 24 hours to go, the *only* way we now could get Papcun to Boise by 8:30 am the next morning would be by charter jet. We found one, incredibly enough, located in Hawaii, from where it actually could make it to Tahiti, pick up Dr. Papcun and fly him to Boise just prior to the Judge's deadline... for \$180,000! *Cash in advance*, of course.

My friends sucked it up and calculated that, together, they could just barely pull together \$180,000 that same morning. When they called the jet charter company back, however, less than one hour after getting the all-clear signal from it, the tension on the phone line was palpable. No, they didn't want to rent us the jet, after all. No, they had no idea who could or would, on such short notice. "Have a nice day." <click> With that, my hopes for an acquittal disappeared.

I couldn't challenge the recordings, so the jury was forced to conclude they were *real*, of course. The only thing my lawyer could say during closing argument was that there was a "problem with the recordings," and that only because my wife and daughter both had sworn on the stand they were phony and that it didn't even sound like my voice in many places. Despite the fact that my wife and daughter literally are the world's leading experts on how I sound and, though their testimony went *unrefuted*, the government convinced the jury that I really *had* said all those terrible things.

### ***The Audiotape***

Now, let's see what Dr. Papcun said in his pretrial written report:

"Both recordings contain numerous electronic signatures... such as would be caused by dubbing... and/or editing..."

"Both recordings contain gaps..."

"Both recordings are of poor quality... with the recording volume at a very low level, which would conceal irregularities and defects in the recordings."

"There are discrepancies in the relative volumes of the speakers."

(On one of the recordings) "there appears an extraneous voice."

"... I conclude, within a reasonable degree of scientific probability that the recordings... are unreliable."

"With commonly available methods, it is possible to remove material, insert material and alter the meaning of conversations."

Dr. Papcun also noted that "electronic transients may be caused by various events such as the following: turning equipment on and off, changing components, connecting or disconnecting components, microphone malfunctions, other equipment malfunctions (and/or) attempts at splicing or otherwise editing or modifying recordings." *Every single one* of the foregoing "events" was ruled out by uncontroverted evidence presented by the government, all except the *last* item, that is: "*attempts at splicing or otherwise editing or modifying*

*recordings."*

Remember my *other* expert, Dennis Walsh, the one with over 20 years in examining audio recordings? He adopted *all* of Dr. Papcun's conclusions and went even *further*. Walsh's written opinion also said:

"I conclude, with a reasonable degree of scientific probability that the recordings *contain different speakers purported to be that of Edgar Steele.*" (emphasis added)

In direct testimony on the witness stand during the 1- $\frac{1}{2}$  day pretrial hearing on audiology experts, Mr. Walsh went still further and stated his *certainty* that the tapes had been "manufactured" and were wholly unreliable.

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