

THE SENATE OF THE STATE OF TEXAS
SITTING AS A HIGH COURT OF IMPEACHMENT

IN THE MATTER OF §
WARREN KENNETH §
PAXTON, JR. §

CHAMBER CONFERENCE
VOLUME 7-1 PM SESSION
SEPTEMBER 13, 2023

The following proceedings came on to be heard in the
above-entitled cause in the Presiding Officer's chambers
before Lieutenant Governor Dan Patrick, Presiding Officer.
Stenographically reported by Kim Cherry, CSR, RMR.

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SENATE IMPEACHMENT TRIAL (in chambers)

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P R O C E E D I N G S

SEPTEMBER 7, 2023

(4:22 p.m.)

PRESIDING OFFICER: Would you like to speak on behalf of your client?

MS. STILLINGER: Why don't you -- thank you. But I guess we're making a record of this, so just if I could put that on the record.

PRESIDING OFFICER: Yes.

MS. STILLINGER: I'm Mary Stillinger and I'm here with Ms. Olson. And I did file a motion to quash, so I have made it clear that it's her intention to claim the Fifth if she is subpoenaed -- or, well, she's been subpoenaed, if she is put on the stand. But I understand you may want to hear that directly from her.

PRESIDING OFFICER: Yes.

(Witness sworn)

PRESIDING OFFICER: So this is a hearing outside of the jurors for the purpose of discussion on quashing the subpoena to testify.

Ms. Epley, I'll turn it over to you.

MS. EPLEY: Thank you, Mr. President.

LAURA OLSON,
having been first duly sworn, testified as follows:

EXAMINATION

1 BY MS. EPLEY

2 Q. Hi, Ms. Olson. Have you and I --

3 THE REPORTER: You'll have to speak up.

4 PRESIDING OFFICER: Speak up.

5 Q. (BY MS. EPLEY) Have you and I spoken before?

6 A. No.

7 Q. And if we were to call you to the stand to talk to
8 you about knowing Ken Paxton, would you be able to do that?

9 A. I would take the Fifth.

10 Q. Through your introduction to the person or having
11 known him at all?

12 A. Yes, ma'am.

13 Q. We wouldn't be able to ask you preliminary
14 questions in regards to where you work or where you live?

15 A. No, ma'am.

16 THE REPORTER: I'm sorry, I couldn't hear.

17 PRESIDING OFFICER: Slow down. Slow down.

18 Say that again.

19 A. I said she's printed that enough, where I live.

20 MS. EPLEY: I think for purposes of this side,
21 Your Honor, we would point out that this is not an inherently
22 criminal trial. It's a political process. And as such, the
23 House Board of Managers would like to call her to the stand
24 and attempt to elicit information and testimony from her.
25 She doesn't have a right to plead the Fifth in regards to

1 preliminary information and her identification in this forum.
2 And then turn it over to defense to see what their position
3 is in regards to that.

4 PRESIDING OFFICER: Turn it over to whom?

5 MS. EPLEY: Turn it over to the defense in
6 regards to what their position is for that.

7 MR. COGDELL: Well, on behalf of Ken Paxton,
8 it's not really our position that matters, it's the position
9 of Ms. Olson and her counsel. That right is -- she owns that
10 right; we don't. So in terms of what Ms. Epley says, I
11 disagree that even -- I mean, certainly she would be able to
12 elicit Ms. Olson's name, but anything beyond that, including
13 her address in this case, in my belief that even describing
14 the address could tend to -- and, again, I'm not representing
15 or trying to represent Ms. Olson, but I think her counsel's
16 concern is that she has exposure in the ongoing federal
17 investigation involving Mr. Paul and Mr. Paxton. And any
18 association with Mr. Paul or Mr. Paxton viewed through that
19 viewfinder could potentially cause her issues, and she would
20 have a Fifth Amendment right to invoke even as to that, the
21 address. But I'll let Ms. Olson's counsel speak for
22 herself.

23 MS. EPLEY: Or I'll be happy to go back --

24 MS. STILLINGER: However, if you want a reply
25 and then I can state our position, that would be fine.

1 MS. EPLEY: Mr. Cogdell is correct, he cannot
2 execute -- or he cannot exercise the privilege on her behalf,
3 but I would have hated to proceed without them weighing in.

4 As he pointed out, we would be able to elicit
5 testimony with regards to her name. No one intends to, in
6 this forum, publish her actual physical address, but to the
7 extent it's necessary to talk about what area of town she
8 lived in to make other documents or information relevant.

9 The fact that she knows Ken Paxton or has worked in the
10 Capitol is not something that implicates any sort of criminal
11 actions on her part. The fact that she worked for Nate Paul
12 and World Class Holdings when we don't intend to ask much
13 about her -- or anything, potentially, about her job
14 functioning other than where did you work? Do you know Nate
15 Paul? How much money did you make?

16 PRESIDING OFFICER: And she's going to take
17 the Fifth on all those issues.

18 MS. EPLEY: Those issues don't implicate a
19 criminal offense. You can't just decide you don't want the
20 ridicule or embarrassment of addressing events or people
21 you've been involved with and be able to plead the Fifth as a
22 protection. There has to be a bandwidth or a burden that's
23 met. And for those issues we don't get close to criminal
24 action.

25 MS. STILLINGER: So with respect to the Fifth

1 Amendment, it is not -- I know this is not a criminal
2 proceeding and Ms. Olson is not a subject of this proceeding,
3 but our concern is not this proceeding.

4 Could I ask, is this a sealed record or is
5 this a public record that we are on right now?

6 PRESIDING OFFICER: Good question.

7 MS. EPLEY: I don't think we would object to
8 being sealed, correct?

9 MR. COGDELL: We would not object.

10 MS. HOLLINGSWORTH: It would be by the rules,
11 so --

12 PRESIDING OFFICER: It may well become
13 public --

14 MS. STILLINGER: Okay.

15 PRESIDING OFFICER: -- at some point. It may.
16 It may. I can't answer that today.

17 MS. STILLINGER: Thank you. I would just say
18 I don't think that I can speak about the details of a federal
19 investigation, and I don't think it would be appropriate -- I
20 don't think the Department of Justice would think that was
21 appropriate. But I also think it is not our burden to
22 explain how certain responses could cause problems for
23 Ms. Olson. I think if there were any necessity for that,
24 that would be more appropriately done in camera with the
25 Court rather than have it be a public proceeding.

1 But I will tell you I've been representing
2 Ms. Olson for a couple of years, and it is a good faith claim
3 and a valid claim of the Fifth Amendment. So it is her right
4 to claim, and she's claiming it. She would testify to her
5 name. If she were called to the stand and asked what is your
6 name, she would answer that. As to where she works, where
7 she has worked, how much she's been paid, what does she do
8 for that salary, she would claim the Fifth as to all of that.
9 And I think it would be a valid claim of the Fifth.

10 So I think -- the reason I filed the motion to
11 quash is that I think there would be no real purpose in
12 calling her to the stand except one -- and I'm not saying
13 that anybody in particular would want to embarrass her or
14 embarrass the Attorney General. I'm not saying that, but
15 that would be one outcome.

16 The other would be potentially a negative
17 inference that people would draw from her claiming the Fifth,
18 and I don't think that's -- that's not evidence. And so I
19 don't think there's any real purpose in calling her to the
20 stand, and I think it's a waste of time.

21 I don't think -- let me just say one other
22 thing -- which I think a lot of that is cumulative, what
23 they're talking about. I think everybody knows that
24 Ms. Olson works at World Class. They have her employment
25 records. They know where she lives. They have her rent

1 records, her lease contracts. I don't think there's any
2 necessity to have Ms. Olson testify. These are not items
3 that could not be gotten anywhere else.

4 So for all of those reasons we're asking to
5 have the subpoena quashed.

6 PRESIDING OFFICER: Any last comment?

7 MS. EPLEY: Yes.

8 MR. DONNELLY: If I may, Your Honor.

9 The Court has identified at this point that
10 this is neither a criminal nor a civil proceeding. Certainly
11 if we were in the civil arena, we would be allowed to ask the
12 question and answer, each and every question for which she
13 would be able to assert her Fifth Amendment right and a
14 negative inference could be drawn from such as counsel has
15 stated. Because we are not in a criminal proceeding
16 because of the -- automatically pleading the Fifth Amendment
17 as to a blanket assertion are unapplicable. We ask that we
18 be allowed to call her to the stand, ask those questions. If
19 under her counsel's recommendation she asserts the Fifth
20 Amendment right, any inference that can be drawn from there
21 would be up to the jury.

22 PRESIDING OFFICER: So considering what her
23 counsel has said, what is there to gain by getting 20 "I
24 take" -- "I claim the Fifth Amendment" 20 times, what is
25 there to gain?

1 MS. GRAHAM: The information, Mr. President,
2 that we would seek to elicit is simply where she lives, where
3 she works, and what is her relationship with Mr. Paxton.
4 Beyond that we would not go into any details about the
5 particular job functions. Your title, I think, is fair game,
6 but as to what she does specifically, that's nothing that we
7 intend to elicit.

8 PRESIDING OFFICER: So how many questions do
9 you have on your list?

10 MS. GRAHAM: Thirteen.

11 MR. COGDELL: From Mr. Paxton's perspective,
12 Mr. President, I couldn't object any more. I mean, they
13 would -- I can't cross-examine the invocation of the Fifth
14 Amendment. It's an inference that I can't cross-examine.
15 There is no evidence I can obtain. The 403 value of it, that
16 is, the prejudicial value of it is extreme, and there is no
17 relevance as all she's doing is invoking the Fifth Amendment.
18 So based upon a balancing test, there's no possible way that
19 the prejudicial value doesn't exceed the probative value.

20 MS. STILLINGER: Judge, could I add one other
21 comment?

22 PRESIDING OFFICER: Yes, ma'am. Yes, ma'am.

23 MS. STILLINGER: I think what the gentleman
24 here was talking about that you can infer a negative --
25 there's a negative inference that can be drawn from the

1 assertion of the Fifth, I think that applies when it is a
2 party.

3 MR. COGDELL: That's correct.

4 MS. STILLINGER: I don't think that it's any
5 witness because -- I'm arguing for Mr. Cogdell because he's
6 not arguing for me, but they can't help it. They don't
7 control whether she takes the Fifth or not, so you can't draw
8 a negative inference as to them because she takes the Fifth.

9 I think the case law he's talking about is
10 when it's a civil case and a party takes the Fifth and then
11 you can tell the jury they can draw a negative inference from
12 that. I don't think it applies to a witness. And I actually
13 do have -- I don't have my computer open right now and I
14 didn't print anything out, but I do have a case about that
15 when it is a witness, it is very prejudicial to the parties
16 or presumably to one party.

17 MS. EPLEY: I think we've sort of covered this
18 before. By virtue of being relevant in a trial, information
19 is prejudicial, that's not a reason to keep it out. When it
20 is a civil case, there's an absolute right to call a person
21 to the stand, to have them invoke the Fifth, and for whatever
22 inferences to be drawn to be --

23 PRESIDING OFFICER: You said when there's a
24 civil case?

25 MS. EPLEY: Yes. And in a criminal case,

1 which this is not -- I recognize we might be using criminal
2 rules, but the implication of a criminal conviction is
3 prison. And so those rules are greater even than this in an
4 impeachment.

5 And so I would -- I would ask the Court to --
6 or the presiding judge to consider the fact of what you had
7 said to us earlier, which is the Senators know that this is
8 out there, that she is a viable witness, that she's present
9 and directly relevant to an Article. And by definition, an
10 affair is not a public forum. There is not another way to
11 get --

12 PRESIDING OFFICER: What Article is she
13 directly --

14 MS. EPLEY: Article VIII --

15 MS. GRAHAM: Article IX, excuse me.

16 PRESIDING OFFICER: Remind me of Article IX.

17 MS. GRAHAM: Article IX is constitutional
18 bribery relating to the affair.

19 MS. EPLEY: Because Nate Paul employs Laura
20 Olson and she's being paid directly --

21 PRESIDING OFFICER: She's not going to answer
22 those questions.

23 MS. EPLEY: She doesn't have to, but we have
24 to attempt to fill that evidence and shouldn't be precluded
25 because she doesn't want to testify in front of the Senate as

1 to her job title.

2 MR. COGDELL: Counsel for Ms. Olson is exactly
3 right. We don't control Ms. Olson's testimony. In fact, if
4 allowed to testify or if she chose to testify, I, in fact,
5 believe the testimony would be beneficial. But I'm not
6 directing counsel or Ms. Olson on what to do. So it's
7 completely unfair for anyone to be able to withdraw a
8 negative inference over something we have no control over.
9 It's 403. The prejudicial impact greatly outweighs any
10 relevance because there is nothing relevant they're going to
11 gain except from her name.

12 (Simultaneous crosstalk)

13 MR. HILTON: Mr. President, just one thing he
14 said. We've agreed to some or all of those records already
15 about employment and residence and all that. So whatever it
16 is they're hoping to obtain --

17 PRESIDING OFFICER: It's already in.

18 MR. HILTON: -- it's already in. There's no
19 reason to go through this public --

20 MS. EPLEY: I really want to parse this out.
21 The question was what kind of questions would you ask. I
22 hope I haven't misled anyone. Did you have an affair with
23 Ken Paxton would certainly be a question. So while you're
24 right, her apartment lease or when she moved from San Antonio
25 to Austin might be in record, Ken Paxton -- to the extent of

1 our allegations -- didn't go out of his way to do favors for
2 someone else because someone moved. He did it because he was
3 having a sexual, intimate relationship with her which confers
4 a benefit. And she's being paid by someone who, our position
5 is, was conspiring with him to -- directly from the State of
6 Texas.

7 MR. DUTKO: Mr. President, I want to point out
8 that all across the news we hear every day about people
9 taking the Fifth Amendment under oath, witnesses, parties.
10 We have the right to call her. You have given us the
11 extraordinary burden, as they point out over and over, beyond
12 a reasonable doubt. One of the Articles we have to prove
13 relates directly to this witness. Even if she takes the
14 Fifth, they have cited no law that allows them to have in
15 here, without the Senate being heard, that we are calling
16 her.

17 PRESIDING OFFICER: So if she is going to take
18 the Fifth, which means you're not going to get any
19 information, then it would seem to me her not answering
20 questions and claiming the Fifth is prejudicial.

21 MS. GRAHAM: If we pare down -- we could pare
22 down our questions, Mr. President, to establish nothing else
23 but the disputed -- heavily disputed fact for which no one
24 else can provide this evidence -- because Mr. Paxton, we
25 cannot compel him to testify -- that, at a minimum, the

1 affair existed. That does not expose her to any sort of
2 crime and it does not incriminate her one way or the other.

3 MS. EPLEY: Well, two things as to that.
4 Right, there's two things occurring. Whether or not the
5 invocation of the Fifth is valid. I don't think it's
6 incumbent -- you have amazing and unlimited powers, so I'm
7 not trying to pretend that you don't, but I don't --

8 PRESIDING OFFICER: I don't think I do, but go
9 ahead.

10 MS. EPLEY: You know, I don't think it would
11 be appropriate for the decision to be made here as to whether
12 she can or cannot plead the Fifth. So let's assume that she
13 will.

14 PRESIDING OFFICER: Well, wait a minute. What
15 do you mean --

16 MS. EPLEY: Well, I mean, you know --

17 PRESIDING OFFICER: -- the decision can't be
18 made here?

19 MS. EPLEY: Well --

20 PRESIDING OFFICER: She's made a motion to
21 quash the subpoena.

22 MS. EPLEY: No, they can make it. I just
23 meant us fighting it out isn't going to change anything. She
24 has the ability to make that decision.

25 PRESIDING OFFICER: Well, I wanted to hear the

1 arguments from all corners.

2 MS. EPLEY: That brings me to the second,
3 though, to your question if we're going to call her, get her
4 name and then her invoke the Fifth, is that not prejudicial?
5 The honest answer is yes, it is.

6 PRESIDING OFFICER: Yes.

7 MS. EPLEY: But it's a prejudice we're
8 entitled to create because we don't have control either over
9 whether she's willing to testify or not. And it's not
10 Mr. Paxton's to assert. And it's not a criminal case, so
11 there isn't a preclusion.

12 PRESIDING OFFICER: Pretty close.

13 MS. EPLEY: It is pretty close. It's also an
14 amazingly high burden in regards to the Senate, it goes
15 directly to an Article, and the inferences they make the
16 defense can argue.

17 PRESIDING OFFICER: Okay. Last word. I'm
18 going to have the last word from you.

19 MS. STILLINGER: Thank you. The last word
20 from me is that -- I do have some cases to cite. I know they
21 said we didn't cite any cases. We just found out late
22 yesterday afternoon that she was going to be called and so --

23 PRESIDING OFFICER: Right.

24 MS. STILLINGER: -- I had to travel here. I
25 filed a motion early this morning. I did not include case

1 law in this. But I am going to just cite a case, if I could
2 cite this for the record. It is a case out of the Texas
3 Court of Criminal Appeals that -- this is a quote: It is
4 error for the State to call a witness who it knows will claim
5 his or her Fifth Amendment privilege. That's Coffey versus
6 State, 796 S.W.2d 175 at 177, note 4. It's an en banc
7 decision out of the Court of Criminal Appeals. It is also
8 cited in United States versus Beechum, which is a Fifth
9 Circuit Case, 582 F.2d 898. I'm sorry, Coffey sites Beechum,
10 not the other way around. And the quote from Beechum is that
11 it is impermissibly prejudicial for the government to attempt
12 to influence the jury by calling a witness it knows will
13 invoke the Fifth Amendment.

14 It goes on to say, Moreover, when the
15 government witness indicates beforehand that he will invoke
16 the privilege, the court may properly refuse to allow him to
17 testify before a jury. Also cites a Court of Appeals case
18 out of El Paso, Castillo versus State, 901 S.W.2d 550.

19 So I apologize for not getting that in my
20 motion. I probably should have supplemented it while I was
21 waiting. I just thought I would be --

22 PRESIDING OFFICER: Well --

23 MS. EPLEY: Sorry, just one last piece. I
24 understand you're absolutely right. I just want the body to
25 be aware that the cases she cited by definition of the title

1 are state and federal criminal offenses. So that is a
2 distinction.

3 I can pose -- I hope my team is not upset by
4 this -- a possible solution. It isn't our fault either that
5 she's unable to testify. Could a statement be made to the
6 Senate body that Ms. Olson has been present but will be
7 deemed unavailable for testimony?

8 MR. COGDELL: I'm fine with that.

9 MR. BUZBEE: That's the statement?

10 MS. GRAHAM: We would like -- we would like
11 the jury -- we would like it to be clear for the record and
12 for the jury to know that if she -- if the motion is granted
13 for whatever reason, she is -- she does not have to take the
14 stand, that it is not because we are withdrawing our right to
15 call her.

16 MR. COGDELL: Well, that's a different
17 statement.

18 MS. GRAHAM: That's why I wanted it to be
19 clear.

20 MS. EPLEY: Well, I'm not the legal -- so can
21 we backpedal what I said?

22 PRESIDING OFFICER: No. I think I was getting
23 to rule in favor of quashing the subpoena, so I think what
24 you offered would be a step more than you were going to get,
25 but no more.

1 MS. EPLEY: Is that okay?

2 MS. HOLLINGSWORTH: Our concern is just
3 because it is an Article, we have a burden, that there is an
4 impression left in the room that we chose not to call
5 Ms. Olson, and we did not do that.

6 PRESIDING OFFICER: Ma'am, how do you feel
7 about that?

8 MS. STILLINGER: That the statement would be
9 Ms. Olson is not available?

10 MS. EPLEY: Ms. Olson is present but has been
11 deemed unavailable to testify.

12 MS. STILLINGER: We have no problem with that.

13 PRESIDING OFFICER: Are you okay with that?

14 MS. EPLEY: I'm okay.

15 PRESIDING OFFICER: Are you okay? I like when
16 we can all come together.

17 (End of chamber conference at 4:40 p.m.)

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C E R T I F I C A T E

1
2
3 THE STATE OF TEXAS) (

4 COUNTY OF TRAVIS) (

5
6 I, Kim Cherry, Certified Shorthand Reporter in and
7 for the State of Texas, do hereby certify that the
8 above-mentioned matter occurred as hereinbefore set out.9 I further certify that I am neither counsel
10 for, related to, nor employed by any of the parties
11 or attorneys in the action in which this proceeding was
12 taken, and further that I am not financially or
13 otherwise interested in the outcome of the action.14 Certified to by me this 13th day of September,
15 2023.16 /s/ Kim Cherry17 KIM CHERRY, CSR, RMR
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