

Affidavit of Susan Simmons

In the Criminal District Court No.3
Dallas County, Texas

DARLIE LYNN ROUTIER No. F96-39973-MJ	IN THE CRIMINAL DISTRICT COURT NO. 3 OF DALLAS COUNTY, TEXAS
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SUSAN SIMMONS

BEFORE ME, the undersigned authority, on this day personally appeared SUSAN SIMMONS, who, being by me duly sworn on her oath, stated the following:

"My name is Susan Simmons. I am the official court reporter who certified the new record in Darlie Routier V State of Texas, No. 72,795 (Tex.Crim.App.). I swear under penalty of perjury that all of the assertions of fact in this affidavit are true to the best of my knowledge and belief.

THE OFFICIAL COURT REPORTER HAS A DUTY TO
FOLLOW CERTAIN LEGAL AND ETHICAL STANDARDS
FOR PREPARING THE REPORTER'S RECORD

Some of the legal requirements for preparing the reporter's record in a criminal case are addressed to the court reporter. Those requirements include:

The ORDER DIRECTING THE FORM OF THE APPELLATE RECORD IN CRIMINAL CASES in the appendix of the Texas Rules of Appellate Procedure; the Uniform Format Manual for Texas Court Reporters; the definition of unprofessional conduct for a court reporter in V.T.C.A. Gov't Code, Ch. 52,029 (a) (9).

The court reporter has a duty to be familiar with each of those requirements and follow them to the best of her ability because she is the officer of the court who has the duty to apply them.

The official court reporter has no discretion to disregard or modify the plain language of any of the foregoing requirements for preparing her record, unless a court specifically ordered her to do so.

The Texas Court Reporter's Association has adopted the National Court Reporters Association Code of Professional Ethics. In my opinion, the code reflects the standard for ethical conduct for court reporters that is generally accepted by members of the profession in Texas.

MY EXPERT OPINIONS ABOUT SANDRA HALSEY'S WORK PRODUCT AND

RECORD

Ms. Halsey Knowingly Signed a False Certificate on Her Record

I was present when Sandra Halsey testified at the hearing to determine whether her court reporter's license should be revoked. I recall that Ms. Halsey testified, 'I felt at the time I filed the record there was going to be mistakes in it.' I also remember that Ms. Halsey testified that she lied to Judge Francis about the existence of audio tapes of the Routier trial because she feared that those tapes could be used to expose a mistake in her record that would require a new trial for Ms. Routier. Given Ms. Halsey's testimony and everything else that I know about her work in this case, it is my opinion that she knowingly signed a false certificate on her record.

Ms. Halsey Engaged in Unprofessional Conduct

In my opinion, based on Ms. Halsey's testimony at the license revocation hearing and my knowledge of her work in this case, she engaged in three kinds of unprofessional conduct prohibited by Tex.Gov't Code, Ch. .5029 (a) (9):

1. failed to deliver a statement of facts to a court in a timely manner as determined by a court order;
2. produced an inaccurate transcript or statement of facts;
3. produced an incomplete transcript or statement of facts without a court order to do so.

Ms. Halsey Engaged in Unethical Conduct

In my opinion, based on Ms. Halsey's testimony at the license revocation hearing and my knowledge of her work in this case, she violated the following rules of ethics that were adopted by The Texas Court Reporters Association and the National Court Reporters Association:

Be fair and impartial toward each participant in all aspects of reported proceedings; Guard against not only the fact but appearance of impartiality; Maintain the integrity of the court reporting profession.

The Accuracy of Ms. Halsey's Stenography in this Case Was Below the Minimum Acceptable Level for a qualified Court Reporter

In my estimation, I made at least 20,000 changes in the text of the hard copy of the Halsey record that involved the substitution, addition or deletion of a word rather than a mere correction of punctuation, spelling or grammar.

When I testified at a previous hearing in this case, I characterized the main flaw in the Halsey record as pervasive 'editing' problem. That testimony was accurate, but it requires some explanation. 'Editing' is a term of art that I used to describe all of the changes in the record that I made by listening to the audio tapes. The term includes changes of substance as well as changes of grammar, spelling and punctuation.

In my opinion, based on my review of Ms. Halsey's work product, the accuracy of her key stroking clearly fell below the minimum acceptable level for a qualified court reporter.

In my opinion, Ms. Halsey's stenographic notes cannot be certified as true and correct unless they are corroborated by an audio tape of the proceedings.

THE UNCERTIFIED 53 PAGE ENGLISH TRANSLATION
OF HALSEY'S STENO NOTES IN VOLUME 10 OF THE
RECORD SHOULD BE REMOVED UNLESS THE COURT
ORDERS ME TO INCLUDE THOSE PAGES

I refused to certify the reporter's record of the proceedings that were conducted on the morning of October 21, 1996, because I was not given an audio tape of those proceedings and I did not believe that Ms. Halsey's uncorroborated stenographic notes are sufficiently trustworthy to certify that they are a true and correct transcription of what occurred in court.

I was unwilling to certify Ms. Halsey's uncorroborated stenographic notes for two reasons: 1) her key stroking generally fell below the minimum level of accuracy that is acceptable for a qualified reporter; 2) there are discrepancies between her notes and the hard copy of her record of the proceedings which strongly indicate to me that she used an audio tape to edit her record that was subsequently lost or destroyed.

At a prior hearing in this case, I testified that the English translation of Halsey's stenographic notes of the proceedings on the morning of October 21, 1996, did not have any gaps and they appeared to flow smoothly. That testimony was accurate, but I did not intend to suggest that I could vouch for the accuracy of her notes. It is possible to type a totally inaccurate record that flows smoothly and has no gaps in it.

I physically included the uncertified English translation of Ms. Halsey's stenographic notes of the proceedings on the morning of October 21, 1996, in Volume 10 of the record because it was my understanding that Judge Francis wanted me to do so. The rules of appellate procedure and the Uniform Format Manual for Texas Court Reporters do not authorize the court reporter to physically include uncertified material in the text of the reporter's record of her own volition. I would have followed those rules but for my understanding of the judge's wishes. I will remove the uncertified page if the judge allows me to.

THE PARENTHETICAL DESCRIPTION OF NON-VERBAL
FACTS SHOULD BE DELETED FROM THE RECORD
BECAUSE I CANNOT CERTIFY THAT THEY ARE TRUE AND CORRECT

The certificate that I signed at the end of each volume of the record appears to vouch for the accuracy of everything in it, including parentheticals which describe non-verbal answers to void dire questions and the presence or absence of the attorneys, the defendant, the jurors and the judge. Those parentheticals should be deleted from the record because I cannot and did not intend to certify that they are true and correct.

I believed, based on my conversations with Judge Francis, that it was not part of my duty to review the parentheticals in the Halsey record.

I could not certify that any of Ms. Halsey's parenthetical descriptions of non-verbal facts are

true and dorrect because those facts were not recorded on the audio tapes and her uncorroborated stenographic notes are not trustworthy.

I have no opinion about whether Ms. Halsey's parentheticals are, in fact, inaccurate because I did not observe the trial.

MY UNDERSTANDING OF MY AUTHORITY TO
CERTIFY THE REOCD OF A TRIAL
THAT I DID NOT ATTEND

My certificate states that your record is 'a true and correct transcription of all portions of evidence and other proceedings requested by counsel for the parties to be included in the reporter's record in the above styled and numbered cause all of which occurred in open court or in chambers and were reported by Ms. Sandra Halsey' (emphasis added).

I used that certificate because a copy of it was faxed to me by someone at the Court of Criminal Appeals. I do not recall who sent the fax and I did not preserve it. I do not know whether the person at the Court of Criminal Appeals who faxed the certificate to me knew anything about the facts of this case. I do not know whether that person was aware that there was dispute about whether a reporter can certify the record of a trial that she did not attend.

I know that TRAP Appendix, ORDER DIRECTING THE FORM OF THE APPELLATE RECORD IN CRIMINAL CASES (b) (1) (q), provides that the reporter's record must be certified as 'a true and correct transcription of all portions of evidence and other proceedings ... reported by me' (emphasis added).

I am unaware of any other rule, regulation or statute that expressly authorizes a Texas court reporter to certify the stenographic record of a trial that she did not attend.

I know that Section 16.1 of the Uniform Format Manual for Texas Court Reporters gives the official court reporter discretion to use parentheticals to describe significant nonverbal events for the record even if the attorneys and the judge do not instruct her to do so.

It is fair to say that Section 16.1 gives the parties a right to a court reporter who can use her eyes as well as her ears to make the record speak the truth. It is also fair to say that both parties will lose that important benefit in this case if my record is accepted because Ms. Halsey's observations of significant non-verbal events cannot be certified and I did not attend the trial.

I believed that I had the authority to certify the record of a trial that I did not attend, in spite of the fact that there is no rule, statute or regulation that specifically permits it, because I knew that it had been done before in four cases.

I personally used the audio tapes and stenographic notes of a mentally ill reporter who attended a federal trial to certify the record of that proceeding. I know that the audio tapes are now the official record of a federal trial, but I do not recall whether that rule was in effect at that time.

I also know of three Texas trials in which a court reporter who did not attend the trial certified the record. One of those cases is very recent, but I do not know whether the other

two occurred before the Texas Rules of Appellate Procedure became effective in 1986. I do not know whether the original reporters in those cases made audio tapes or what condition they were in. I do not know whether there was any question about the accuracy of the stenographic notes of the original reporters. I do not know whether any questions were raised about the impartiality of the original reporters.

THE MATERIAL AND PROCEDURE THAT I USED TO PREPARE MY RECORD

At a previous hearing in this case, I referred to the audio tapes that I received as Sandra Halsey's audio tapes. That part of testimony was based on what Judge Francis told me outside of the courtroom. I have no personal knowledge of who made those tapes or what may have been done with them before they were placed in my custody

I used the following procedure to prepare my record:

I compared the hard copy of the Halsey record to the audio tapes as I listened to the tapes and kept Halsey's steno notes at hand in case I needed them;

If the hard copy of the Halsey record was perfectly consistent with what I heard on the audio tape and the audio tape was clear, I adopted that part of the Halsey record without referring to her steno notes;

If there was a conflict between the hard copy of the Halsey record and what I heard on the audio tape and the tape was clear, I changed the record to conform to the tape regardless of what her steno notes said;

In the rare instances when the audio tape was not clear or I had difficulty identifying the speaker, I compared the hard copy of the Halsey's record to her steno notes and made a case-by-case judgment about what the record should be.

It is fair to say as a practical matter that I treated the audio tapes as the authoritative record of the trial and only used Halsey's stenographic notes to edit the tapes. I do not believe that any part of my record was based on her uncorroborated notes or contradicted what I heard on the tapes.

MY LIMITED KNOWLEDGE OF THE ACCURACY OF HALSEY'S STENOGRAPHIC NOTES

I was unable to estimate the extent of the discrepancies between the original English translation of Ms. Halsey's stenographic notes and my record because she used tapes to edit her notes before I received those materials. If Ms. Halsey changed any part of the original English translation of her notes to conform to the tapes before she printed out the final hard copy of her record, I did not compare that part of her record to her notes because it was consistent with the tapes. The number of discrepancies between Halsey's notes and the hard copy of her record that I did not detect must be significant if the samples of her record that were reviewed by Judy Miller, Jerry Calloway and Tommy Mullins are representative of her work.

MY UNDERSTANDINGS OF MY AUTHORITY TO USE THE
AUDIO TAPES TO EDIT THE HALSEY RECORD

I know that the reporter's stenographic notes are the official record of a criminal trial under the Texas Rules of Appellate Procedure

I am unaware of any Texas rule, regulation or statute that specifically authorizes the reporter to use audio tapes of the trial to add, delete or substitute a word in the record if the result is inconsistent with her notes.

I know that the Texas and federal rules require that audio tapes be certified by the person who made them when the official record is electronically recorded. I realize that the audio tapes of the Routier trial were not certified.

Notwithstanding the above, I believe that I had the authority to use the uncertified audio tapes of the Routier trial to make deletions, additions and substitutions of words in the record that are inconsistent with Ms. Halsey's stenographic notes. It is a common practice among qualified court reporters to make audio tapes of a trial and use them to add, delete and substitute words in the English translation of their notes without certifying the tapes.

I acknowledge that the distinction between using audio tapes to edit the official stenographic record and using the tapes as the official record that may be erased when so many changes were made. I do not know where the line should be drawn and I do not believe that I have the authority to draw it.

THERE IS NO SPECIFIC AUTHORITY OR PRECEDENT
THAT I KNOW OF FOR CERTIFYING THE REPORTER'S
RECORD IN A TEXAS CASE LIKE THIS ONE.
NOTWITHSTANDING THAT MY RECORD IS A TRUE AND
CORRECT TRANSCRIPTION OF THE VERBAL PART OF
THE TRIAL

It is fair to say that the following statements about this case are true:

- a. I do not have personal knowledge of the accuracy of my record or the integrity of the materials that I used to prepare it because I did not attend the trial or create those materials;
- b. the original reporter's stenographic notes are untrustworthy without corroboration because the accuracy of her key strokes fell below the minimum acceptable level;
- c. the original reporter lied to the court to conceal flaws in her record that might have resulted in a new trial;
- d. the original reporter is not available to answer questions about her work because she exercised her right against self incrimination;
- e. the certificate on my record is different than the one that is required by TRAP Appendix, ORDER DIRECTING THE FORM OF THE APPELLATE RECORD IN CRIMINAL CASES (b) (1) (q)

f. I used uncertified audio tapes to make tens of thousands of substantive editorial changes in the record that conflict with the original reporter's stenographic notes;

g. I cannot certify 53 pages of the record of an important proceeding that occurred on the morning of October 21, 1996, because the audio tape of that proceeding was lost or destroyed;

h. I cannot certify any of the parenthetical descriptions of non-verbal facts;

i. I cannot determine whether there was a hearing about attorney Doug Mulder's conflict of interest that was not reported in Halsey's steno notes or recorded on the audio tapes that I received.

I am unaware of any other Texas case in which a reporter's record was certified under similar circumstances.

I do not know of any Texas rule, regulation or statute that authorizes certification under such circumstances.

I am confident that I have prepared a true and correct transcription of the verbal part of the proceedings in this case that were recorded on the audio tapes that I received. The courts will have to decide whether that is sufficient to certify a record under the unique circumstances that I have described."

[signed]

SUSAN SIMMONS

SUBSCRIBED AND SWORN to before me on this the day of July, 2002.