

# Affidavit of Susan Simmons

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

STATE OF TEXAS

AFFIDAVIT OF FACT

## AFFIDAVIT OF 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 assertion of fact in this affidavit are true to the best of my knowledge and belief.

### **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 ANN. §52.29(a) (9) as implemented by the Texas Standards and Rules for Certification of Certified Shorthand Reporters, Section IV, B:

1. fail 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 State 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 Record

In my estimation, I am 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.

If the original English translation of the word in Halsey's steno notes was substantively different than the audio tape, it is fair to say this difference was due to Halsey's inaccurate key stroking of that word.

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 refuse 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 because there were 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 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 voir 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 believe, 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 correct because those facts were not recorded on the audio tapes and her uncorroborated stenographic notes are not always trustworthy.

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

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

The certificate I signed and attached to each volume of record was based on a form provided to me by Judy Miller who was one of the court's experts who initially reviewed excerpts of the Halsey record. I had contacted Judy Miller about what kind of certificate I should use and she advised me she would contact George Miller, then chief deputy clerk of the Court of Criminal Appeals. It is my understanding from Judy Miller that Mr. Miller faxed her the certificate and she in turn faxed it to me.

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.

**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 key 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 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 ACURACY 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 didn't 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 UNDERSTANDING 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 statue 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, but Judge Francis provided the audio tapes to me to use in attempting to create a new record.

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 there is a distinction between using audio tapes to edit the official

stenographic record and using the tapes as the official record. 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 TRANSCRIPT OF THE VERBAL PART OF THE TRIAL.**

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

- a. the original reporter lied to the court to conceal flaws in her record that might have resulted in a new trial;
- b. the original reporter is not available to answer questions about her work because she exercises her right against self incrimination;
- c. 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);
- d. I used uncertified audio tapes to make substantive editorial changes in the record that conflict with the original reporter's stenographic notes;
- e. 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;
- f. I cannot certify any of the parenthetical descriptions of non-verbal facts;
- g. 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 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 transcript 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]

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Susan Simmons

SUBSCRIBED AND SWORN to before me on this the 20th day of August, 2002.

[signed]

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Charlotte J. Kennedy  
NOTARY PUBLIC, State of Texas