

DECLARATION OF HERBERT JOE, M.A., J.D., LL.M., B.C.F.E.

"I, Herbert Joe, declare that: I am over the age of eighteen, of sound mind, have never been convicted of a felony or crime of moral turpitude, and am competent to make this Declaration. All facts recited in this affidavit are within my personal knowledge and are true and correct.

"Yonovitz & Joe, L.L.P., a registered partnership based in Dallas, Texas, is a team of forensic audio/video analysts, experts and consultants. We have been forensic audio/video experts for over fifty-eight combined years. Our diverse legal, forensic, academic, research and clinical experience includes scientifically objective, verifiable and generally accepted analyses of audio and video evidence including, but not limited to, the forensic authenticity and originality analyses of audio or video evidence, voice/speaker identification or elimination via aural-acoustic-spectrography, digital enhancement of audio or video recordings, transcription development and verification, forensic analyses of sound, noise and acoustics, etc. We have been retained in thousands of cases involving thousands of recordings throughout the U.S., Canada, Mexico, the United Kingdom, Australia, Singapore and the United Arab Emirates, and have testified in state and Federal courts in civil and criminal matters throughout the U.S., as well as overseas. Representative clients include Steptoe & Johnson (Wash., D.C.), Shearman & Sterling (NYC), Simpson Thacher & Bartlett (NYC), Armstrong Teasdale (Kansas City), Ford & Harrison (Memphis), Rawle & Henderson (Philadelphia), McAfee & Taft (OKC), Bracewell & Patterson (Houston), Akin Gump (San Antonio), Jones Day (Dallas), Haynes & Boone (Houston), Thompson & Knight (Dallas), Vinson & Elkins (Dallas), Jenkins & Gilchrist (Dallas), Wal-Mart Stores, Inc., Georgia-Pacific, LLC, Coastamare Shipping Comp., Motorola Corp., Vivint, Inc., BankOne, BlueCross BlueShield, Shell Oil Co., United Parcel Service, Inc., Shell Texaco & Saudi Refineries, Inc., Reliant Energy, 7-Eleven, Inc., Evercom Systems, Inc., Public Prosecution Office of the Abu Dhabi (United Arab Emirates) Judicial Department, U.S. Attorney's Office (NM), Mississippi Attorney General's Office, Harris County (Houston) Attorney's Office, Harris County Sheriff's Office, City of Austin, City of San Angelo, City of Galveston, Plano (TX), Phoenix and Akron (OH) Police Depts., Dallas, Maricopa (Phoenix), Tulsa (OK), Harris (Houston), Tarrant (TX), Fulton (GA) and Summit (OH) County DA's Offices, Washington, D.C., Houston, Little Rock, South Dakota, DuPage County (IL), Green County (PA), New Mexico, New Hampshire and New Jersey Public Defender's Offices, Kentucky Department of Public Advocacy, Louisiana Crisis Assistance Center, Oklahoma Indigent Defense System, the Associated Press (AP), ABC, BBC, FOX-TV, etc. High profile cases include the *Branch Davidian* case; consultations include TMZ, *CSI: Miami* and *People Magazine* and recent speaking engagements include the 2002, 15th Annual Criminal Litigation Seminar, the 2003 annual convention of the American Speech & Hearing Association, the 2004 26th World Congress of the International Association of Logopedics and Phoniatrics, the 2005 annual conference of the Center for International Legal Studies, the 2005 3rd Annual Forensics Seminar, the 2006 4th Annual Forensics Seminar, the 2007 annual meeting of the North Carolina Bar Association, the 2007 5th Annual Forensics Seminar, the 2008 6th Annual Forensics Seminar, the 2009 Spring Meeting of the Forensic

Expert Witness Association, the 2009 7th Annual Forensics Seminar, the 2010 8th Annual Forensics Seminar, the 2010 2nd Pan American/Iberian Meeting on Acoustics (Cancún), the upcoming (Nov.) 2011 9th Annual Forensics Seminar and the upcoming (Nov.) 2011 annual meeting of the American Speech & Hearing Association.

"I am the managing partner of Yonovitz & Joe, L.L.P. I have 4 degrees, including 2 science degrees (B.S., M.A.) and 2 law degrees (J.D., LL.M.). The following are a result of my expertise and experience in the area of forensic audio/video: Board Certified Forensic Audio/Video Examiner; Diplomat, American Board of Forensic Examiners; Diplomat, American Board of Law Enforcement Experts; Licensed Instructor, Texas Board of Private Investigators; Member, Evidence Code Committee of the Oklahoma Bar Association; Former Board Member, Forensic Expert Witness Association; Board of Legal Advisors, American Guild of Court Videographers; Charter Member, Legal Advisory Board, American College of Forensic Examiner Institute; Member, The Forensic Commission; Fellow, American Guild of Court Videographers; and Fellow, American College of Forensic Examiners. I am also a Certified Mediator, licensed to practice law in Texas and Oklahoma, a Registered Patent Attorney with the United States Patent & Trademark Office, a Registered Patent Agent with the Canadian Intellectual Property Office, a Member of the College of the State Bar of Texas, and Adjunct Faculty (Grad. Law Classes) at the University of Phoenix. My 24-year involvement in the area of forensic audio/video includes expert testimony in state and Federal courts in civil and criminal cases throughout the U.S., as well as overseas, giving regional, national and international presentations, authoring peer-reviewed publications and being interviewed or consulted with many of the entertainment and news industries domestically and foreign.

"We have been retained by Ms. Laura Adams of North Richland Hills, TX and her Austin attorney, Mr. Richard E. Wetzel, in reference to the video evidence in the *Roy Adams* case. My partner, Prof. Yonovitz, and I have previewed the video segment at issue. Officer Deana MeRae Ramsour states that when her in-car video recording system is turned off (be her), there is a "...delay of a couple of seconds from when you turn the video off." (l.13-14, p.113, pre-trial hearing transcript) However, this is materially inconsistent with the video evidence reviewed. Here is a timeline of the relevant events in the June 12, 2004 video at issue, as based on the video evidence received:

02:31:18	car stops
02:31:19	
02:31:20	brakes off
02:31:21	
02:31:22	door opens
02:31:23	
02:31:24	
02:31:25	
02:31:26	
02:31:27	
02:31:28	

02:31:29
02:31:30
02:31:31
02:31:32 female officer (Ramsour) appears in video
02:31:33
02:31:34
02:31:35
02:31:36
02:31:37
02:31:38
02:31:39 video stops

It appears that the police car stops at approx. 02:31:18, the car's brakes are released 2 seconds later at 02:31:20. The car door opens 2 seconds later at approx. 02:31:22. It is most likely that Officer Ramsour manually turns off the recording system around the time that she opens the car door, *i.e.*, at approx. 02:31:22. She does not appear in the video until 02:31:32. (Officer Ramsour has stated that she has reviewed the video at issue. (line 16, p.112, pre-trial hearing transcript))

"There is an approximate window of ten (10) seconds from the time that she likely manually turns the recording system off (*i.e.*, around the time she opens the car door) and the time she appears in the video. There is no more video in the evidence received at time 02:31:39, which represents an approximate seven (7) second window from the time Officer Ramsour appears in the video and the time the video terminates.

"There is a finite amount of time that it takes to manually shut off the video recording system, open the car door, step out of the car and walk into view of the recording system. This finite amount of time is less than ten (10) seconds (for the reasons described above) but much more than, say, one second, which is added to the seven (7) seconds in which Officer Ramsour appears in the video.

"In sum, the video purportedly stays on for up to seventeen (17) seconds, but more than eight (8) seconds. This interval of time is materially inconsistent with:

1) the testimony of Sgt. Williamson, who states that any delay "would be very minimal if there is...", like a "[s]econd or two..." (lines 1-9, p.225, trial testimony); and

2) information from technical support of Kustom Signals, Inc. of Lenexa, KS, the maker of the Eyewitness In-Car video system (see line 1, p.159 of the trial testimony; it is more than likely that the system used in Officer Ramsour's car was Kustom Signal's Eyewitness 2 system). According to Kustom Signals: there may be an approximate 2 second delay when the stop-record (off) button is depressed (in the Eyewitness 2 system). This time accounts for the fact that depressing the button sends a digital signal to the recorder (record head) to tell it stop, the transport mechanism takes time to release, and it takes time for the record head to retract away from tape. All of this transpires within approximately 2-3 seconds. The technical support personnel explicitly

stated that any delay above 3 seconds would be very unlikely and very surprising. Consequently, a delay of 7-17 seconds is inexplicable from a technical standpoint.

(Another remarkable event is that from the time of the video presented (02:27:12 through 02:31:39 = 4m27s), the wireless microphone is turned on 4 separate times; however, it is remarkable that the microphone was manually turned on approximately eight (8) seconds before the video was allegedly turned off. This begs the question of why one would consciously turn on the microphone to record an event but then allegedly turn off the video recording system eight seconds later.)

"One obvious explanation is that the recording has been edited or deleted at that point. One way to verify or dispute the relevant statements of Officer Ramsour is to gain access to the putative original video, 2 or more random videos recorded by Officer Ramsour soon *before* the incident and 2 or more random videos recorded by Officer Ramsour soon *after* the incident. Since the "delay" mechanism is consistent for each in-car recording system, one would expect to see 7-17 second delays on every other random video by Officer Ramsour before and after the incident at issue, or not.

"Since authenticity of the video evidence is a legitimate issue in this case, the most thorough and objective forensic authenticity analysis is necessarily based on forensic examination of the putative original recording (or the highest generation available). Forensic analyses of the putative original recording (or highest generation available) could and should resolve most or all authenticity issues, *i.e.*, a scientifically-tenable explanation of how the video evidence at issue is authentic, or demonstrate with objective evidence to the contrary.

"Therefore, 1) on-site access to the putative original video evidence, or the highest generation thereof, for non-invasive, non-destructive digital mastering (copying) is needed to determine whether these recordings are true and accurate reproductions of the events that they purport to record; 2) on-site access to the video evidence actually played at trial for non-invasive, non-destructive digital mastering (copying) is needed to determine whether such video evidence is a true and accurate reproduction of the original or the highest generation of recording available, and whether these are reliable recordings in and of themselves.

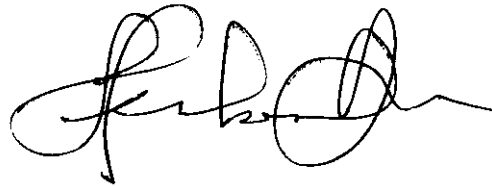
"Since all of our relevant equipment is portable, the recordings at issue do not need to leave the care, control or custody of the custodian of the evidence. Any one may monitor our making the digital master of the recordings delineated above. Such non-invasive, non-destructive digital mastering of the video evidence is standard operating procedure to get the best available evidence for proper forensics analyses of the video evidence.

"In fact, gaining non-invasive, non-destructive access to the putative original audio and video evidence (and putative original recorder(s)) for on-site access is standard operating procedure for forensic audio/video examiners, whether in civil or criminal cases, and regardless of which side of the bar we are being retained in.

Examples of on-site noninvasive, non-destructive digital mastering of putative *original* evidence (after previewing copies) in criminal cases for us include the FBI Field Office in Tampa, FL, FBI Field Office in Chicago, Mississippi Attorney General's Office, Abu Dhabi (United Arab Emirates) Judicial Department, Harris County (Houston) Sheriff's Office, Dallas Office of the Drug Enforcement Agency, City of Austin, City of Galveston, City of San Angelo, Tarrant County (Fort Worth) DA's Office, Maricopa (Phoenix) County DA's Office, Texas Department of Public Safety, etc.

"When given access to the audio/video evidence outlined above, we will need to know in advance the make and model of the putative original recorder(s), the format of all of the relevant audio/video evidence, and the number of recordings available.

"I declare nothing further."

A handwritten signature in black ink, appearing to read 'Herbert Joe', with a stylized, cursive script.

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