

ALTERATION OF AUDIO TAPE

I. History of Events Following Notice of Appeal

On or about November 4th, 1997, I called Court Transcription Services to inquire about the status of the Notes of Testimony for the September 24th hearing. I was told that Mss. Susan Sherry, court stenographer, could answer my questions. Mss. Sherry returned my call within two days. She informed me that she had not yet started transcribing the Notes because the tape was then in the possession of Attorney Licia Ano, Judge Ford's law clerk.

Approximately a week later, I again called to ask about the status of the transcript, and left a message asking Mss. Sherry to return my call. After a few days, Mss. Sherry called to let me know that she now had the tape and could begin transcribing the Notes. She offered to elevate the priority for this order. I thanked her for her call, and waited for her to call again when the Notes of Testimony were completed.

On November 23, 1997, Mss. Sherry called to report that the Notes were completed, and that I could pick them up at my convenience upon payment of \$54.00. On November 24, I obtained possession of the Notes of Testimony.

Several days later, after overcoming my initial shock, I reported to Mss. Sherry that the transcript was inaccurate, that there were material deficiencies with respect to several material omissions and transpositions. She assured me that this was impossible, that the Notes matched the audio. She then offered me the opportunity to review the document with the tape. I accepted, and made an appointment to exercise the opportunity within several days.

On the date scheduled, Mss. Sherry had the audio tape ready, and showed me how to operate her equipment. She again assured me that the Notes matched the audio, which she and Attorney Ano had confirmed by twice reviewing the transcript with the tape. I understood her to mean that they reviewed it together. I listened to the tape and confirmed that the Notes match the audio tape. I then told Mss. Sherry in the presence of several other court stenographers that the audio tape had

been tampered with. I told them that the tape does not include any of my specific references to the guidelines, among other things.

Mss. Sherry appeared astonished and appropriately indignant with my allegation. Her response gives me confidence that she had no knowledge of, and did not participate in the altering of the tape.

On December 5, 1997, by Order of the Court, I obtained a copy of the audio tape. The original did not play well, so I returned several days later at which time Mss. Sherry graciously made another copy for me.

At some point during or shortly after these events, I called Attorney Susan G. Maurer, and told her that the audio tape of the September 24th hearing had been tampered with. Her response was something like "Why would anyone want to do such a thing?". It was my impression that shock and indignation (or even surprise) were lacking in her response.

I later visited the office of the Clerk of Courts, and spoke with Deputy Clerk William Berndt. Our conversation took place in the front of the office, with several of his staff within earshot. I asked him if there was a back-up copy of audio tapes of court proceedings. He told me there was not, and asked me why I wanted to know. I told him that the audio tape of the September 24th hearing in Judge Ford's court had been edited, and that the Notes of Testimony are inaccurate. I expressed that the integrity of the judicial system was at issue. We then had a disagreement on the Record's Management System then in place for Lehigh County's court system.

On December 8, 1997, I filed a Motion to Correct the Record pursuant to Pa.R.A.P. §1926. I attached an Affidavit signed by me attesting to some, but not all of the material deficiencies in the Notes of Testimony. (R., pp. 35a - 37a)

Shortly thereafter, I requested a conference in chambers with Judge Ford and Attorney Maurer. Judge Ford granted a telephone conference held December 19th, 1997. Attorney Maurer was also on the line. I do not know whether she was on a conference call or in the judge's chambers. Judge Ford stated that he had spoken with Ms. Sherry, who confirmed that the Notes of Testimony match the audio tape, and that was good enough for him.

I stated my opinion that Mss. Sherry had nothing to do with altering the tape. Someone else did it. I drafted a letter to Judge Ford on December 31, 1997. (Attached.)

II. Other Omissions from the Audio Tape

In addition to the eight items listed on the Affidavit dated December 8, 1997, I submit that the following testimony was deleted from the audio tape.

The following issues were presented as argument before the court:

- Rule 1910.16-5(n) states that the children of a first and second family shall receive equal treatment.
- Mother now benefits from a second income in the household. Citing §1910.16-4(b).
- The birth of appellant's daughter on February 3rd, 1997 increased his support allocation for his second family by \$90.00 per month, a material change of circumstances.
- After child care expenses are added, obligor's total support award exceeds 50% of obligor's net income by more than 10%, contrary to §1910.16-5(n) for multiple family calculations, requiring that a deviation from the guidelines be considered.
- A plea to the Court that this case "cries out for" a deviation from the guidelines.
- Appellant (Father) testified that he walked into the mayor's office to demand a job. (*While Judge Ford was directing testimony about his job search efforts.*)
- The entire first page of the Notes of Transcript is a substitution for Judge Ford's opening remarks delivered on September 24th at the 9:30 AM session. The language which I expected to see in the Notes should have contained something very similar to the following:
"If any of you are here today to get a reduction in your support payments, you will save us both a lot of time if you get up and leave right now, because it isn't going to happen (here)."

The evidence suggests that the person or persons who edited the audio tape of the September 24th hearing copied opening remarks by Judge Ford which were delivered on a different date, and cut and pasted them into the adulterated version which was transcribed as part of this record. The Order for Notes of Testimony specifically requested that Judge's Ford's opening statement be included because of the prejudicial tenor of those remarks. (See Notice of Appeal; Order of Court.)

III. ANALYSIS

The audio tape is the official court record of the proceedings. Judge Ford acknowledges that the record was out of the possession of the court stenographer prior to transcribing the Notes of Testimony. It is reasonable to conclude that some person had an opportunity to edit the tape. Based on the materiality of the omissions and transpositions on the Notes, it is reasonable to conclude that the perpetrator was trained in the law.

Altering a court record is an obstruction of justice, a criminal act.

IV. SUMMARY

- Prior to transcribing the Notes of Transcript, the audio tape was out of the possession and control of the court stenographer for a period of time which may exceed three weeks;
- Judge Ford acknowledges that Attorney Licia Ano, his law clerk, had custody of the tape during that period; (See attached letter.)
- A person so inclined would have ample opportunity to alter the tape during that period;
- A more complete investigation of the allegation was warranted.

Respectfully submitted ,

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Attach.: Letter to J. Ford dated December 31, 1997
Letter from J. Ford dated January 21, 1998