

**TESTIMONY OF PAUL MACLEAN TO THE LOUISIANA STATE  
SENATE, NATURAL RESOURCES COMMITTEE ON APRIL 27, 2006**

My name is Paul Maclean. I was born in Thibodaux. At an early age, my family moved to Houma. I have been a resident of Terrebonne Parish since that time.

After graduating in Agriculture from Nicholls State University in 1970, I first worked exclusively in the agricultural industry. Over the last 36 years my work history has evolved into numerous areas of land management and operations upon lands. From approximately 1983 through 1991 those services included the development and daily management of all the activities of an oil and gas production company that grew from one producing well in 1983 to the 38th largest producer of oil in the state during 1989. I am no longer directly involved in daily oil and gas operations. I have continued to provide professional oil and gas land management and consultation services to numerous clients throughout Louisiana and Texas. I have been qualified as an expert witness in Federal Court in regard to oil and gas land issues and have testified in open court on those issues.

It is my intention to supply testimony to this committee pertaining to legislation to address the environmental restoration of Louisiana's public and private lands contaminated because of past or future oil and gas operations.

I present this testimony not on behalf of any organization or group but as an individual citizen of the State of Louisiana.

For many years, I have personally seen the damaging effects that can be in-part remedied by the legislation you are now considering. I have experienced what can happen when the overriding concern of particular oil and gas operators is to maximize profit - at the cost of other stakeholders.

On two different occasions while trying to build independent oil and gas operating companies within this state, I have directly confronted oil and gas operators and/or their various business associates with little interest for the environment and little or no apparent concern for the safety, health and welfare of others.

The first environmental confrontation was in 1986 on a 500-acre tract of land in the Baldwin/Jeanerette/Four Corners area of St. Mary Parish. Based on my most recent research, according to the Louisiana Department of Natural Resources (LDNR) and the Louisiana Department of Environmental Quality (LDEQ) public records, this tract of land remains seriously contaminated. Despite my efforts, involvement in and connection to numerous past and ongoing litigations with regard to the restoration of that particular property, it remains unrestored. The contaminants include (but are not limited to) visible elemental mercury, a non-exempted hazardous material, used in gas measurement meters from the first production on that property in the 1940's. Elemental mercury converts into extremely toxic methlymercury. Numerous "Mercury Advisories" issued by state agencies have clearly declared mercury's threat to the public health – especially the unborn.

As evidence of the measures used by those Potential Responsible Parties (PRP) to escape the timely restoration of that particular land in St. Mary Parish, I first attach a copy of a falsely stated 1988 affidavit signed by an agent (now deceased) of the Office of Conservation.<sup>1</sup> The PRP filed it along with a motion for summary judgment in a 1986 civil litigation in St. Mary Parish District Court before the Honorable Judge Richard T Haik. Based in-part on that affidavit, Judge Haik granted their motion for summary judgment and dismissed the litigation. That decision was later overturned and the case remanded by the Court of Appeal - First Circuit back to St. Mary Parish for a trial on the merits. But all that took years. Years while oil and gas contamination remained on the property and continued to threaten the health of the landowner and the general public.

Even after the agent's wrongful actions were discovered by his immediate superiors, no effort was made to rectify, correct or mitigate the damage done by the agent's false statement. To add insult to injury, as I recall, other agents later testified in a court hearing in New Iberia in support of that affidavit.

As more evidence to show how slowly environmental matters can move, I have attached a copy of a letter dated June 26, 1995 filed in the public records of LDEQ on June 27, 1995.<sup>2</sup> This letter provided evidence over ten years ago that apparently there was mercury in the fish flesh, sediment and/or groundwater of that same St. Mary Parish property. According to LDEQ public records research, visible elemental mercury

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<sup>1</sup> Exhibit A – Affidavit of Thomas P. Hebert dated March 14, 1988.

<sup>2</sup> Exhibit B – Letter from G. Tim Alexander, III, Attorney to Mr. William Schramm dated June 26, 1995.

remained on that property in 2003.<sup>3</sup> I do not believe the mercury reported in 2003 has even been removed.

It is my belief the public has continued to unknowingly fish the waterways down flow from that potential mercury source. In spite of my pleadings to the department for years, I am not aware of any signs being placed in any area alerting the public of this up flow potential health hazard. The public's health has remained unprotected by the same governmental body that has the constitutional power and authority to protect it.

Unfortunately for the landowner and the other stakeholders in that immediate area, LDEQ has not only failed to use its known enforcement powers to environmentally restore the property, quite the opposite has taken place. In 1994 and 1995 an alleged cleanup was suppose to have occurred, under the joint supervision of the attorney/author of the June 26, 1995 letter and the LDEQ. All the mercury was suppose to have been removed from the property at that time. Based on the 2003 findings, it was not.

The state judicial system is not immune to also delaying oil and gas restoration. Attached are two third party affidavits<sup>4 5</sup> of events during and just after a February 21, 2001 district court hearing in St. Mary Parish with regard to my action against the same attorney/author of the June 26, 1995 letter mentioned above. Five years later, despite all my efforts, the district court record has not been corrected to include correct hearing transcript(s). The district court transcript(s) and the court record remains incorrect.

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<sup>3</sup> Exhibit C – Louisiana Department of Environmental Quality Incident Report ID: 65377 dated October, 2003 and its accompanying Field Interview Form dated November 6, 2003.

<sup>4</sup> Exhibit D – Affidavit of Nancy Blanchard dated September 4, 2001.

<sup>5</sup> Exhibit E – Affidavit of Gregory J. Schwab, Attorney dated June 26, 2002.

The wheels of justice do turn slowly. I suggest to you that when oil and gas contamination chronically impacts the public's health, safety and welfare the wheels of justice should be compelled to turn faster. The law can address that by fixing firm action deadlines on the court as well as the regulatory bodies having jurisdiction over the restoration. The public's health, safety and welfare should not be penalized by such judicial delays.

With all due respect to the present LDNR administration, it is my understanding that recently, under the present Commissioner of Conservation, there have been a number of active and working compliance orders filed upon the PRP of that St. Mary Parish property. Even though at least twenty years late, that is somewhat promising. If nothing else, the LDEQ incident and field reports evidencing that mercury visibly remained on the surface of the soil in 2003 and the recent LDNR compliance orders go to in-part show how false the 1988 affidavit and the subsequent misleading testimonies were.

In 1991, the second environmental confrontation (though I was not personally involved in the actual wrong doings) resulted in my becoming a federal witness in a Federal Grand Jury Investigation targeted against certain oil and gas operators and their associates for environmental actions in the Lake Salvador area of Jefferson and St. Charles Parishes. I have nothing more to state about that at this time.

Due to the environmental seriousness of each matter, my refusal to yield, and the personal relationships and/or connections that existed between certain parties in each confrontation, my plans to build an active Louisiana-based oil and gas company have not materialized.

In part due to those personal experiences, I deemed, if an oil and gas operator could not operate within this state without: 1. Uniform rules consistently applied to all operators; 2. Fear of selective enforcement by state regulatory bodies and; 3. Uncertainty as to what the changing political winds may bring to a person not politically connected, then it was best to just not operate here at all. Because of the inherent risks of the business, I believe serious inquiries would show there are many out of state operators that are of the same opinion and have in the alternative simply drilled for oil and gas in other states - to the detriment of economic development in Louisiana.

Since 1992 I have dedicated a large part of my personal time trying to address not only the particular wrong doings of my two specific situations but also the larger issue of restoration of old oil and gas sites on public and private lands across the state.

Whatever the stakeholder interest, the common thread is that they are themselves and/or have, do or will employ Louisiana citizens in some capacity. Persons that actually breathe the air, drink the water, eat the game, live, work and/or recreate in this state.

In my opinion, there are overriding constitutional obligations that you must never forget while you move to enact laws to implement an oil and gas restoration policy for the citizens.

Commonly cited as authority to act is Article IX, Section 1. of the Louisiana State Constitution. It reads as follows:

## **§1. Natural Resources and Environment; Public Policy**

**Section 1. The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.**

Additionally, I submit that Article I, Section 3. is of paramount authority. It reads as follows:

## **§3. Right to Individual Dignity**

**Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.**

I ask that you consider the following sequence with regard to just one of the many known oil and gas contaminants:

Because there are undisputed large quantities of non-exempted hazardous mercury that remain in oil and gas fields throughout the state, and

Because there are high levels of mercury in sampled fish in identified waterways throughout the state, and

Because state agencies have on numerous occasions publicly advised all citizens about the detrimental health effects of mercury (commonly known as the "Mercury Advisories") upon an extremely vulnerable group of persons (the unborn), and

Because the dignity of a person is established at conception, and

Because constitutionally a person cannot be denied the protection of law due to factors related to that person's birth, or that person's age, or the physical condition of that person; therefore,

Article I, Section 3. requires legislation to protect the health, safety and welfare of persons from the effects of mercury - a known oil and gas contaminate.

Let me further reiterate, due to the individual dignity of each person, a specific segment of persons (the unborn) shall not be discriminated against by being denied equal protection under the law from at least the known detrimental health effects of mercury known to exist in large quantities in oil and gas fields across the state. In fact, the state constitution equally protects each person because that person possesses individual dignity - yes - dignity even while that person is uniquely affiliated with and being physically conditioned in the womb.

In my opinion, the constitution and the science is so clear on this that it is unlawful to deviate from the duty just because an individual legislator's personal beliefs may differ.

Data suggests that the poor of our state are particularly susceptible to the harmful health effects of oil and gas contaminants. A properly written law would support the vision and goals of the governor's **Solutions to Poverty (SToP)**'s agenda presently being implemented in every parish of the state. I am a SToP's co-convener in Terrebonne Parish and I can testify that failure to include the concerns of the poor in this new legislation would be adverse to and not in concert with the vision of that statewide program.



A responsibly written law would not only protect the individual dignity and the right of each citizen (rich, poor, born or unborn) to live a healthy and natural life anywhere in the state but it would also breathe new economic life into an independent oil and gas community wanting to enter Louisiana to do serious business. That is economic development waiting on the legislature to act responsibly.

Concerning this assertion, Dr. Paul Templet, a past Secretary of the Louisiana Department of Environmental Quality, has done much work in this area of economic development. That work involves the relationships that exist between the economy, the environment and resulting policy ramifications. According to my research, he has authored over thirty papers in professional journals, contributed chapters to at least five books and has spoken on this topic in many venues. He has worked with the Ford Foundation in regard to state policy in the areas of economy and environment. I have personally heard his presentation. I suggest that this committee take advantage of his knowledge, research and facts. I believe those resources may make difficult choices much easier.

In closing, I would like to request that you consider at least the following when drafting any law:

1. When addressing environmental issues effecting the public's health, safety and welfare, all public bodies such as the LDNR, LDEQ and the various courts of proper jurisdiction should be put on strict deadlines for action. Failure for this to be included in the legislation would tend to perpetuate the disappearance of these regulatory bodies and the court into an enforcement "black hole" where the

contamination is not dealt with in a timely manner. That is detrimental to public health.

2. LDNR and LDEQ should be compelled to immediately combine their individual data bases of information and integrate them for use in a manner to offer rapid access to the history of each oil and gas operator and/or well within the state. The data is already there and available for this purpose. It may even be a matter of simply training individuals in one department to know what is available for their use in another department. The product would be that when a search area is identified for environmental enforcement purposes, both agencies would be able to rapidly access the same data bank to seek out all PRP for action under their jurisdiction. This is simply taking a state asset already paid for by the public and putting it to a specific end use.

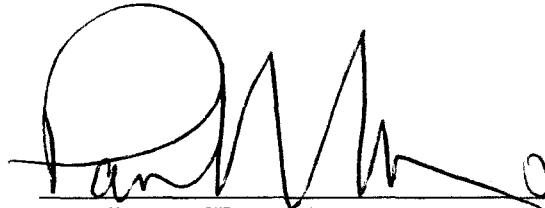
In addition, anytime oil and gas operators take on any operations within the state, some level of reporting requirements to the state should be jointly designed by the departments, in concert with industry, with regard to non-confidential well/operator histories in the area of those operations. Most oil and gas operators already have this sort of historical information developed as a result of their own geologic, lease and well investigative studies within a certain area. It would simply be a matter of putting that non-confidential information in the format required by the departments for their possible future use. This information would quickly complement, support and/or correct the data already within the departments' own systems.

I tend to believe that new operators in an area would be agreeable to identifying earlier operators that pre-existed their operations. That information is exactly what an operator would first need for its own potential defense against pre-existing contamination claims by third parties and go to help its individual proof of innocence in any matter that may arise.

3. When environmental contamination has been identified, that potentially effects the public's health, safety and welfare, the same type of public notification requirements that are successfully used in production unitization proceedings could exist. For unitization purposes, the operator develops an interested party list in the specific area of interest and regular mail and public notice advises the public. If interested parties can be notified for potential royalty income purposes, they certainly can be notified when it comes to their health, safety and welfare. These costs would not be absorbed by the state. They would be borne by the PRP.

4. If public meetings/hearings result, they should be advertised and held in the location of the contaminated land and at a time of day more convenient to the work schedule of the average citizen. That way interested parties may attend and may become part of the process, if they wish. Much like what is done when applying for a commercial saltwater injection facility permit through the Underground Injection Control Division of the Office of Conservation of LDNR. Those meetings/hearings have actually been held in the communities themselves. As with those applications, all costs would be absorbed by the PRP.

This is by no means all I have to write on this subject but I believe I have used enough of this committee's time today. I do not intend on this testimony being the end of my effort to address the issues described. It is but another step in my attempt to contribute to a new vision for this state.



04.27.2006

Date

PAUL MACLEAN

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Houma, Louisiana 70361

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Mobile: 985.856.5345

Fax: 985.851.6951

Email: [mls@cajun.net](mailto:mls@cajun.net)

STATE OF LOUISIANA

PARISH OF ST. MARY

AFFIDAVIT

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in and for the Parish of St. Mary, State of Louisiana, personally came and appeared THOMAS P. HEBERT, who, upon being duly sworn, did depose and state that:

1. Appearer is employed by the Department of Natural Resources, Office of Conservation, of the State of Louisiana as a Conservation Enforcement Agent Class I.

2. Appearer, among other things, is delegated the responsibility of inspecting various oil and gas facilities within Louisiana for the purpose of determining, on a periodic basis, whether such facilities are in compliance with the Statewide Orders of the Office of Conservation insofar as those orders pertain to the storage and disposal of oil and/or gas and the control and disposal of wastes and/or pollutants produced in conjunction therewith.

3. Among the properties which Appearer has personally inspected are the various Blanchard and Herton Wells operated by Tortuga Operating Company in the Jeanerette Field, St. Mary Parish, Louisiana, being the same properties and wells formerly operated by Atlantic Richfield Company.

4. Appearer declared that his last inspection of the Blanchard and Herton Wells occurred March 14, 1988, which inspection was conducted in the periodic discharge of Appearer's duties with the State of Louisiana, and which inspection revealed that the Herton and Blanchard Wells operated by Tortuga Operating Company were in full compliance with the Statewide Orders of the Office of Conservation, that the structural integrity of all storage tanks were in compliance with such orders, that pipeline sales valves were in compliance, that no existent pits were located on the properties inspected, and that the operator's saltwater disposal injection system was in compliance.

5. Appearer further declared that he personally inspected the property for evidence of pollution and based on such inspection,

**EXHIBIT A**

Appearer states that no pollution or damage associated therewith exists on the Blanchard or Herton properties.

THUS DONE AND SIGNED this 14<sup>th</sup> day of March, 1988 at Franklin, Louisiana, before the undersigned competent witnesses and me, Notary, after due reading of the whole.

WITNESSES:

Edmond Walker

Thomas P. Hebert  
THOMAS P. HEBERT

Gregory Rodriguez

Paul Hemmelt  
NOTARY PUBLIC

**MOUTON & ALEXANDER**

ATTORNEYS AT LAW  
100 ASMA BOULEVARD, SUITE 375  
LAFAYETTE, LOUISIANA

NO CLIP

DESK COPY	ORIGINAL
ATTACHMENT	
MAIN	OVERSIZED
OTHER	

G. TIM ALEXANDER III  
JOHN A. MOUTON III

June 26, 1995

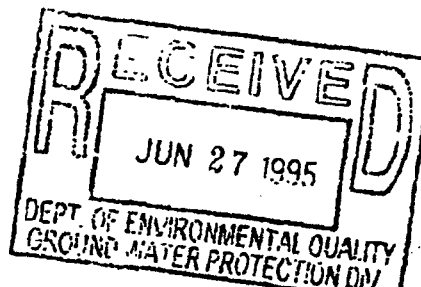
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MAIL TO  
P. O. BOX 3244  
LAFAYETTE LA 70502  
TELEPHONE 318/237-1900  
TELECOPIER 318/237-2607

Mr. William H. Schramm, M.S.  
Geologist, Office of Water Resources  
Department of Environmental Quality  
Ground Water Protection Division  
P. O. Box 82215  
Baton Rouge, LA 70884-2215

Re: Betty D. Blanchard's Farm

Dear Bill:



I am enclosing the test results we got back in recently. I am told they show a groundwater problem from the mercury. I am also enclosing the test results from LSU showing heightened levels in Bayou Choupique sediment samples and in the ditch immediately before it empties into the bayou. Also, methyl mercury I am told tested positive in one of the fish taken from that bayou.

Please let me know what the DEQ believes needs to be done regarding the groundwater situation. Also, could the DEQ advise if it is aware of some easy method to locate the other mercury sites? ARCO's Chuck Roberts stated in his attached deposition that ARCO did not make much use of the well information the DEQ provided to ARCO in doing its very cursory check. I am trying to determine if there is any easier way for the other old mercury sites to be located to cut down on the expenses of locating and cleaning these (15-25) sites. Betty's experts have advised that the only way to locate them is to survey and then go through an expensive and slow process of testing the areas around each old well site. Also, does the DEQ expect to require anything more of ARCO in that regard? I would appreciate an early response from the DEQ.

I am copying Monroe Penrod to keep him abreast of developments in this matter. If he rather than you is the appropriate person to respond to this, I would ask that he do so.

Very truly yours,

G. Tim Alexander, III

GTA/cml  
cc: Mr. Monroe Penrod (w/enc.)  
Blanchard-deq0626 tr

**EXHIBIT B**

INCIDENT REPORT  
Incident ID: 65377Incident Reporter

Received By: Kermit Francis  
Received Date: OCT-27-03 10:32:38  
Dispatch #: s03-4281  
Reported By: John Connolly, Agency Interest  
Phone Desc: 2254057397  
Reporter Title:  
Org Desc: Shiteaux Environmental Services  
Address:

Municipality:  
State Code: LA  
Zip Code:  
Comments:

Incident Description

Incident Type: Release/Spill, Miscellaneous  
Incident Date: OCT-24-03 16:00:00  
Parish: St. Mary  
Municipality: Baldwin  
Location: West of N Penn Rd, South of the RR right-of-way  
Lat/Lon:  
Basin/Segment:  
Substance: Mercury  
Media Impacted: Soil  
Incident Desc: s03-4281 Mercury found on property-kl

Incident Source

Source Name: Blanchard Lease - Hg Remediation  
Address:

Municipality: Adeline  
State: LA  
Phone:  
Parish: St. Mary  
Aid: 114758

Related Permits: 0

Investigation Bill Schramm (ETD) and I met with Nancy Blanchard (property owner), Nancy Degan (attorney for property owner), John Hine (Tortuga Operating), Mike Luke (Linder), and Edmond Walker (Tortuga) at the site. Small beads of mercury was found in the soil below a Barton (non-mercury) meter. The meter present had an inspection date of 1986 on it. Several mercury meter locations on this property have been remediated by ARCO in 1995. Hazardous Waste Division was the overseeing division in 1995. Bill Schramm assisted HWD with the remediation.

Incident Status

Lead Investigator: Samuel Broussard  
Region: Acadiana  
Incident Status: Referred to Remediation  
As Of: 11/12/2003

EXHIBIT C



**LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
FIELD INTERVIEW FORM**

AGENCY INTEREST#: 114758 INSPECTION DATE: 11/6/03 TIME OF ARRIVAL: 10:30 A  
 ALTERNATE ID#: \_\_\_\_\_ DEPARTURE DATE: 11/6/03 TIME OF DEPARTURE: 1:00 P  
 FACILITY NAME: (Blanchard) lease Mercury Am. Site PH#: 337-276-9306  
(ID Type/Number)  
 LOCATION: L&B Line #1 Jenacette Site

RECEIVING STREAM (BASIN/SUBSEGMENT): N/A PARISH NAME: St. Mary

MAILING ADDRESS: \_\_\_\_\_  
(Street/P.O. Box) (City) (State) (ZIP)  
 FACILITY REPRESENTATIVE: \_\_\_\_\_ TITLE: \_\_\_\_\_  
 FACILITY REPRESENTATIVE PHONE NUMBER: \_\_\_\_\_  
 NAME, TITLE, ADDRESS and TELEPHONE of RESPONSIBLE OFFICIAL (if different from above): \_\_\_\_\_

INSPECTION TYPE: ASST PROGRAM INVOLVED: AIR WASTE WATER OTHER HO

INSPECTOR'S OBSERVATIONS: (e.g. AREAS AND EQUIPMENT INSPECTED, PROBLEMS, DEFICIENCIES, REMARKS, VERBAL COMMITMENTS FROM FACILITY REPRESENTATIVES)  
Visited site to confirm presence of Hg Am gas metering station. Visible Hg under meter. Met w/ Operator - Tortuga Operation Co. who purchased field from Arco. Arco replaces Hg meter in 1980's. Tortuga had no Hg meters in operation. Property owner Mr. Mary Blanchard in attendance. Will schedule conference or call on meeting w/ Arco & Tortuga & Blanchard to discuss path forward. Hg at site covered w/ visqueen until remediated. Present: John Hine, Mary Blanchard, Mary Ragan, Danny Snyder, Mike Lake, Edmund Walker

REGULATION	EXPLANATION	REFERRED?
_____		YES NO
_____		YES NO
_____		YES NO
_____		YES NO

PHOTOS TAKEN: ☒ YES ☐ NO SAMPLES TAKEN: ☒ YES ☐ NO (Attach Chain-of-custody)  
 RECEIVED BY: SIGNATURE: [Signature] LANDOWNER John Hine  
(TORTUGA Oper.)  
 PRINT NAME: \_\_\_\_\_  
 (NOTE: SIGNATURE DOES NOT NECESSARILY INDICATE AGREEMENT WITH INSPECTOR'S NOTES)

INSPECTOR(S): W. Schuman CROSS REFERENCE: T65377  
Sam Brussard  
 ATTACHMENTS: \_\_\_\_\_  
 REVIEWER: \_\_\_\_\_

NOTE: The information contained on this form reflects only the preliminary observations of the inspector(s). It should not be interpreted as a final determination by the Department of Environmental Quality or any of its officers or personnel as to any matter, including, but not limited to, a determination of compliance or lack thereof by the facility operator with any requirements of statutes, regulations or permits. Each day of non-compliance constitutes a separate violation of the regulations and/or the Louisiana Environmental Quality Act.

## **AFFIDAVIT OF NANCY BLANCHARD**

I, NANCY BLANCHARD, am an adult individual with an address of P.O. Box 243 Erwinna, PA 18920. I do hereby depose and say as follows:

1. On February 22, 2001, I made a telephone call to Judge Anne Lennan Simon's office, seeking to obtain a copy of the Transcript for Hearing of February 21, 2001, before the Honorable Anne Lennan Simon. I had attended and been present for the entire hearing on February 21, 2001, in the Macleane v. Alexander, et al. litigation.

2. I spoke with Ms. Lisa Decourt, who told me that the price would be Ninety Dollars (\$90.00). At that time I was staying at my home in Louisiana.

3. Immediately after I hung up with Ms. Decourt, I wrote the check and a handwritten note to Ms. Decourt, both of which I put in an envelope and mailed to Ms. Decourt from the New Iberia, LA Post Office.

4. When speaking with her, Ms. Decourt told me that February 23, 2001 was her day off, but that she would begin preparing the transcript on that date anyway.

5. On February 23, 2001, Ms. Decourt telephoned me and told me that the transcript was ready.

6. Ms. Decourt told me that she had not yet received my check, but had not been to the post office yet.

7. Ms. Decourt and I agreed to meet at the Shamrock Filling Station, so that she could give me the transcript that she had prepared.

8. Later that day I reviewed the entire transcript and compared that to my specific recollections as to what had occurred at the February 21, 2001 hearing.

9. It was clear to me that there were entire passages and portions of the February 21, 2001 hearing that were not included in the transcript that Ms. Decourt had prepared.

**EXHIBIT D**

10. As a result, on February 26, 2001, I telephoned Ms. Decourt at the number where I had earlier reached her and was told that she was in St. Martinville in court. I left I message.

11. I then telephoned her at home and reached her there. At that time I asked her about the missing parts to the transcript. At first she resisted responding to my questions and then she became more forthcoming with information.

12. Ms. Decourt and I discussed and agreed upon what was missing from the transcript, including: the repartee at the beginning between Judge Simon and Attorney Gibson; about the word Mr. Gibson had used that Judge Simon had to look up and was so glad to know; discussion related to Judge Simon's impending retirement; the docket; the attorneys who wanted to get on other dockets and those who wanted hers; the dates available in June; the week of vacation Judge Simon had planned in March, during which the trial might be scheduled; and Ms. Hewitt and her ability to juggle dates.

13. In fact, during my discussion with Ms. Decourt, she reminded me about Judge Simon's statement concerning the allegation by Paul Maclean of fraud, the seriousness of that allegation and the need to substantiate it with very clear proof. None of these remarks or dialogues were on the record.

14. Ms. Decourt explained to me that she had worked for Judge Simon for 15 years and that she knew her intimately.

15. Ms. Decourt explained that Judge Simon would sometimes read a transcript after a hearing and say, "Did I really say that? How could I have said that?"

16. While Ms. Decourt did not admit that she had edited the actual transcript, she willingly admitted that specific statements had been removed in her transcription of the tape.

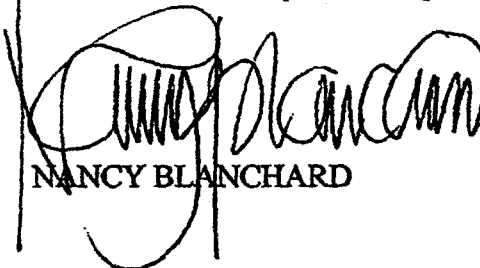
17. I was present during the entire hearing on February 21, 2001 and was very aware of what was said, who said it and the import of the statements.

18. I have an excellent memory.

19. There were numerous facts, circumstances, dialogues and statements made by Judge Simon and Attorney Gibson in court, that were highly relevant to the Paul Maclean case, that did

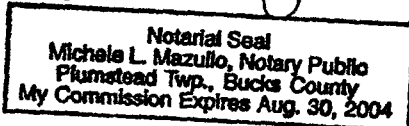
not appear on Ms. Decourt's "Official Transcript". I paid Ninety Dollars (\$90.00) for the Hearing Transcript.

20. The foregoing facts are true and correct to the best of my knowledge, information and belief.

  
NANCY BLANCHARD

Sworn to and subscribed  
before me this 14<sup>th</sup> day  
of September, 2001

  
Notary Public



**PAUL MACLEAN**

\* **16<sup>TH</sup> JUDICIAL DISTRICT COURT**

**VS. NO. 103,096 DIV. "E"**

\* **PARISH OF ST. MARY**

**G. TIM ALEXANDER III**

\* **STATE OF LOUISIANA**

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**AFFIDAVIT**

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**Parish of Terrebonne**

**State of Louisiana**

**BEFORE ME**, the undersigned authority, duly commissioned and qualified in and for the Parish of Terrebonne, State of Louisiana,

**PERSONALLY CAME AND APPEARED:**

**GREGORY J. SCHWAB**


who, being first duly sworn by me, did depose and state:

That I was present at the hearing held on February 21, 2001 in the above entitled matter. I was present before the hearing took place in Judge Anne L. Simon's courtroom and was present during and after the hearing was terminated. Also present at the hearing were at least the Judge, Anne L. Simon, the court reporter, Lisa M. DeCourt, Ms. Nancy Blanchard, opposing counsel, James Gibson, and my client, Paul Maclean. I can certify that both Paul Maclean and Nancy Blanchard were also present before, during and after the hearing on that date and neither of them walked out of the courtroom during the hearing. I can certify that I have read the attached transcription (EXHIBIT A) marked "RECEIVED AND FILED SEP 07 2001 /s/ MARY HEWITT DY. CLERK OF COURT" which said transcript purports to have been a true and accurate transcription as per the REPORTER'S CERTIFICATE purportedly signed by Lisa DeCourt, C.C.R. That I can certify that the transcription is absolutely not a true and accurate transcription of the proceedings had on February 21, 2001. I can certify that there are entire and very relevant dialogues omitted from the attached transcription. Merely by way of example, Judge Simon made a statement such that there were various attorneys who were trying to have things set on her docket and also a statement relative to her retirement. I asked her a number of times what she meant and she hesitantly responded and that dialogue is not contained in the transcription. These statements all occurred in open court right in the middle of the open court hearing - all well within hearing of James Gibson, opposing counsel, Ms. Nancy Blanchard as well

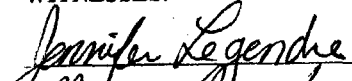
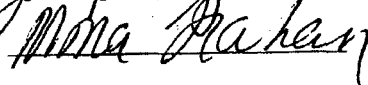
**EXHIBIT E**

as my client, Paul Maclean who were positioned farther away than Ms. DeCourt from the judge when we had this dialogue. There is no doubt that the recording device would have been able to easily pick up at least these dialogues as they were said at the same volume as was all the other open court statements. I am sure that opposing counsel, James Gibson will also remember these dialogues and can also certify that they have been omitted from the attached transcript.

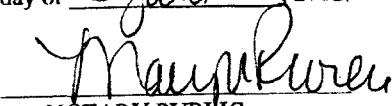
Thus done, read and signed in the presence of the undersigned notary.

  
\_\_\_\_\_  
Gregory J. Schwab

WITNESSES:

SWORN TO AND SUBSCRIBED  
BEFORE ME, THIS 26<sup>th</sup>  
day of June 2002.

  
\_\_\_\_\_  
NOTARY PUBLIC