

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Willie Jefferson,

Plaintiff

v.

United States Department of Justice,
Office of the Inspector General,

Defendant.

Civil Action No. 01-1418 (GK)

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIE JEFFERSON,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 96-1284 (GK)
)	
JANET RENO, <u>et al.</u> ,)	
)	
Defendants.)	

DECLARATION OF BONNIE LEWIS GAY

Pursuant to 28 U.S.C § 1746, I, BONNIE LEWIS GAY, declare the following to be a true and correct statement of facts:

1. I am an attorney in the Executive Office for United States Attorneys (EOUSA), United States Department of Justice. My present position, since January of 1999, is Senior Counsel in the Freedom of Information Act and Privacy Act (FOIA/PA) Staff of EOUSA. I have worked in this office for ten years, having served seven and a half years as Attorney-in-Charge of the FOIA/PA staff, one year as Acting Assistant Director and one year and two months as Assistant Director.

2. Until recently, my responsibilities included supervising the review of FOIA/PA requests for access to records in this office and 93 U.S. Attorney's offices, acting as a liaison with those other offices concerning requests and litigation, and making the initial agency determinations regarding requests.

3. On June 11, 1999, I testified at a deposition about my involvement in EOUSA's response to Mr. Jefferson's FOIA request. The deposition was conducted by Elizabeth Dewey at the law firm of Piper and Marbury, LLP. Assistant U.S. Attorney David T. Smorodin, who is defending EOUSA's handling of Mr. Jefferson's FOIA request, acted as my attorney during the taking of the deposition.

4. This declaration has the specific purpose of clarifying my deposition testimony concerning my involvement in EOUSA's response to Mr. Jefferson's request.

5. I was represented at the deposition by Mr. Smorodin. From June 11 until present, no attorney at the United States Attorneys Office (USAO) in the District of Columbia contacted me regarding the *Jefferson* case. Mr. Smorodin did not inform me of my duty to reserve my right to view my deposition transcript at the time I was deposed. On June 21, 1999, I requested a copy of my deposition transcript from Douglas N. Frazier, Acting Assistant Director of the FOIA/PA Staff at EOUSA. I never received a copy from him, nor did Mr. Smorodin ever provide me with a copy. I never had the opportunity to read the transcript to check for inaccuracies, and I never signed it. I did not see the transcript of my deposition until August 12, 1999.

6. On June 14, 1999, my supervisor, Jane Bondurant, in the presence of EOUSA Office of Legal Counsel attorney Robin Wink, prohibited me from speaking to Mr. Smorodin or the law firms representing Mr. Jefferson. I learned later that morning that Ms. Bondurant had a meeting with her entire staff — all twenty employees, except for me — to discuss the *Jefferson* case. I was given no explanation as to why I was not invited to the meeting and no explanation as to what occurred at the meeting.

7. On June 21, 1999, Mr. Frazier gave me a letter placing me on administrative leave. See Gay Decl. Appendix A. The letter stated, "This leave status will remain in effect until an inquiry is completed regarding your failure to comply with a Court Order in *Willie Jefferson v. Janet Reno et al.*, and your potentially misleading statements made on June 11, 1999, during a sworn deposition in this same case." The letter also placed me under a gag order and instructed me not to talk to anyone in the Department of Justice except for employees of the FOIA/PA staff. I was also instructed to contact Mr. Frazier once a day to confirm my availability, and I complied. It terminated my unrestricted access to the building, and required me to give up my Department of Justice identification card key and government charge card. The combination lock on the door to the suite in which my office was located had been changed and was not given to me. I returned on June 24, 1999, at the request of Mr. Frazier, to clear out my office in preparation for the arrival of the new Assistant Director, Suzanne Little, on June 28. I was escorted the entire time I was there, 9:00 a.m. to 1:30 p.m., by Administrative Officer Janis Harrington. During my administrative leave, I was asked once to come into the office to locate documents on July 6. I was watched closely by Ms. Little as I located the documents and left after a little over an hour.

8. I was not asked to return to work until July 19, 1999. During my absence, on July 7, 1999 there was a filing with this Court stating that persons who had been the subject of a June 16, 1999, sealed Court filing had been notified, and therefore there was no reason to keep the documents sealed. I was not notified at the time of the unsealing and did not find out that documents detrimental to my interest were filed until I reviewed the documents filed in this case on September 20, 1999 at the Clerk's office. It is my understanding that the Government represented to the Court that I had been notified that I had been referred to the Office of the

Inspector General (OIG) for investigation of statements made in my deposition. To the contrary, I learned only recently that the matter had been referred to OIG. At the time the Government moved to unseal that filing, I had been told only that the matter had been referred to the Justice Department Office of Professional Responsibility (OPR). *See Gay Decl., Appendix B.*

9. My new supervisor, Ms. Little, provided me with a copy of my June 11 deposition transcript on August 12, 1999. After reviewing the deposition transcript, I realized there were mistakes and inaccuracies in the transcript and immediately advised Ms. Little.

10. She advised me to notify OPR as soon as possible, which I did on August 19, 1999. I also copied all DOJ and USAO attorneys who I knew to be involved in the case. *See Gay Decl., Appendix C.* On pages 195-96 of my deposition transcript, I responded that I had seen the Court's Order of February 12, 1999 ordering the production of documents in the *Jefferson* case and had disregarded it. In fact, I had never seen the Court Order prior to the deposition. Prior to my answer, an off-the-record discussion was held to the effect as follows:

Ms. Gay:	I want to see the Court Order you are talking about.
Ms. Dewey:	I do not have a copy of it here.
Ms. Gay:	I do not know whether I have seen it or not.
Mr. Smorodin:	I am sure you did.
Ms. Gay:	I don't know. Well, I guess I must have. Ok. Yes.

After more than five hours of deposition testimony, I was confused and gave an incorrect answer at the encouragement of the attorney who was purportedly representing me — one that I have not been able to set straight until now.

11. In fact, I did not see the Court's February 12, 1999 Order at the time we reviewed and responded to Mr. Jefferson's FOIA request, and I did not see it until August 13, 1999.

12. The EOUSA staff met with Mr. Smorodin on January 26, 1999, before the Court issued its Order. This is the meeting Mr. Smorodin refers to in his declaration of June 16, 1999. Jane Bondurant represented EOUSA at the meeting. Later when we returned to EOUSA she led a meeting and presented us with an itemized list of what had to be done to comply with the Order. To the best of my recollection, no mention was made of providing two copies, one for Mr. Jefferson and one for his attorney. At no time did Mr. Smorodin specifically advise me that a separate copy of the documents in question were required to be delivered to Mr. Jefferson. Without having seen the Order, I believed that service on Mr. Jefferson's attorney was sufficient.

13. The period of time after January 26, 1999 was chaotic for me personally as my daughter delivered her second child the previous night. I had arranged to be with her full-time for several weeks. I returned to work part-time on or about February 23, 1999, the day before the non-public documents were produced to Dave Smorodin. I was in the office on February 24, 1999 and accompanied Ms. Bondurant and Stephanie Boucher in the delivery of the documents. Unfortunately, my daughter experienced serious complications, necessitating my spending a great deal of time with her for another month. Since I was in the office only 2 or 3 days a week until the middle of March, I was not privy to all of the activity regarding the *Jefferson* case.

14. On pages 195-96 of my deposition, I gave testimony to the effect that Ms. Bondurant instructed me to make only one copy of the documents. It appears from the context in the transcript that I was referring to the Court's February 12, 1999 Order. As I stated above, I had never seen that Order prior to my deposition, and I was not given a copy of the Order to review at the time the question was asked. In hindsight, I believe that I was referring to an instance on or about February 26, 1999, when Ms. Bondurant and I were discussing the Court transcripts and

other public documents other than those provided to Plaintiff's counsel on February 24, 1999 in response to the February 12, 1999 Order. Given the similar dates and reference to duplicate copies, I confused the two different events. Another possible source of the confusion is a January 25, 1999 telephone conversation I had with Plaintiff's counsel, E.L. Hoffman, regarding his request, prior to the February 12, 1999 Order, for an index of documents in the boxes in question. Accordingly, as is reflected in my handwritten notes of that conversation, Mr. Hoffman specifically indicated in that conversation that only one copy of the index need be produced. See Gay Decl. Appendix C.

15. During Ms. Dewey's questioning regarding the Court Order on page 196, Mr. Smorodin interrupted me by saying, "I instruct you not to answer the question, for what it's worth." Ms. Dewey left this line of questioning without giving me an opportunity to clarify my original confusion as to what Order she was referring.

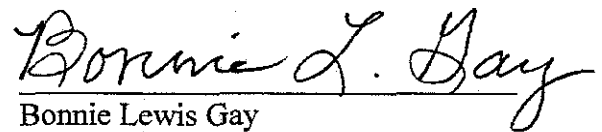
16. Contrary to Mr. Smorodin's June 16, 1999 declaration to the Court, I did indeed inform him, in preparation for my deposition, that Mr. Jefferson was not provided a copy of the documents and again several days before the deposition he called and mentioned during the conversation they were trying to locate the *Jefferson* documents at the jail since he had not received them. I said "the reason is simple: we haven't sent any." Mr. Smorodin did not respond.

17. Since I was transferred to the position of Senior Counsel in January 1999, I have had no direct supervisory role over the FOIA/PA staff in EOUSA. Only Ms. Bondurant has had supervisory authority over Stephanie Boucher and John Boseker, who worked extensively on Mr. Jefferson's request. She gave them weekly to-do lists and supervised their work. I only

reviewed filings and requests on an "as requested" basis. I prepared responses to portions of the interrogatories as to information that I personally had dealt with six months or more previously. Therefore, I was unfamiliar with some of the specific details of the Court's Order.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 12th day of October, 1999.



Bonnie Lewis Gay
Senior Attorney
Executive Office for United States Attorneys
U.S. Department of Justice