

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR, in her
capacity as Executor of the estate of THEA
CLARA SPYER,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

10 Civ. 8435 (BSJ) (JCF)
ECF Case

**SUPPLEMENTAL AFFIDAVIT OF
EDITH SCHLAIN WINDSOR**

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Edith Schlain Windsor, being duly sworn, states:

1. I am the plaintiff in this action seeking a refund of the federal estate tax levied on and paid by the estate of my late spouse, Thea Clara Spyer (“Thea”).

2. I submit this affidavit, which contains additional details about my life experiences, in order to respond to certain issues raised by defendant-intervenor, the Bipartisan Legal Advisory Group of the House of Representatives (“BLAG”) in its papers in opposition to the motion I made for summary judgment and in further support of my motion for summary judgment.

My First Marriage to Saul Weiner

3. I understand that BLAG argues in its papers that my first, brief marriage to Saul Weiner in 1951 demonstrates that I had a “choice” about my sexual orientation. As I explain below, that is certainly not the case. What my marriage to Saul Weiner shows is that although I tried to make a “choice” about my sexual orientation by

getting married to a man, I was simply unable to do so. Thus, as a matter of fact, I really had no choice at all.

4. Before I met Thea, shortly after I graduated from Temple University in 1950, I married a man named Saul Weiner in Philadelphia.

5. Saul was my older brother's best friend, whom I had long looked up to and respected. He and my brother were friends throughout high school and "hung out" together at our house. They both served as soldiers in World War II—Saul in the Army in Europe; my brother in the Air Force. Saul often visited my family when he was on leave during the war. During all those years, he thought of and treated me as a "kid sister."

6. When the war ended, Saul and I started college together. By that time, I had matured into a woman, and Saul had noticed. He began asking me out on dates, and I accepted his offers. Although I had had the feeling that I was attracted to women, and not men, since I was a young girl, I never considered the possibility of consummating those feelings with anyone, and I didn't want to. In the context of the homophobia that was so prevalent in the 1950's, I certainly did not want to be a "queer." Instead, I wanted to live a "normal" life.

7. I cared very much for Saul, and I was able to convince myself that I could have a life together with him. He was exactly what most girls wanted in a man. He was big, handsome and strong, yet sweet. I think that if I had been straight, Saul would have been the love of my life. We went to all the dances together and did the things that couples did back then, which did not include physical intimacy prior to marriage.

8. During our third year of college, Saul asked me to marry him, and I accepted.

9. Soon after the engagement, I met and developed, for the first time in my life, strong romantic feelings for another person, a female classmate of mine at Temple University. I fell deeply in love with her.

10. I did not know what to do next, but I had such terribly strong feelings for this woman that I decided I needed to break off my engagement with Saul. I told Saul that I was not ready to get married. Inside, however, I knew that I needed to figure how to deal with my love for this woman.

11. Of course, times were very different then—people did not even talk about being gay or the possibility of having a life with someone of the same sex. I associated my same-sex attractions with shame, and I did not want to be “queer.” In fact, people tried to reassure me that I wasn’t destined to be “queer.” I therefore tried to stick it out with Saul.

12. Although I would get jealous when I saw two women together on the street on a Saturday night, what I thought I really wanted was to be like my older sister—to have a husband, children and lead a “normal” life. Because of the intense social pressure and homophobia, even the woman I fell in love with in college was not interested in staying together in a relationship with me.

13. Meanwhile, Saul persisted and kept asking me out. I loved him and so did my whole family; everyone thought we made a great pair. My time with Saul was wonderful in many ways, although not romantically, as I soon discovered after we were married in May 1951.

14. After the wedding, it did not take long for me to realize that I could not fulfill any of Saul's or my own expectations for the relationship. I couldn't love Saul the way a wife should love her husband, and, after a few months, I told him so. I also explained to Saul that I was yearning for women and that I needed something else in my life. I explained to Saul that he deserved much better, and that I wanted him to have someone in his life for whom he was the most desirable person imaginable.

15. And so, with a heavy heart, I moved back in with my mother. Saul and I soon divorced on March 3, 1952.

16. Saul and I parted on good terms. He later got married to another woman and had a family. He telephoned me on my 70th birthday in 1999 to wish me well.

The FBI Interview

17. I also understand that BLAG makes statements in its opposition papers seeking to minimize the seriousness of the discrimination that existed against gay men and lesbians in the twentieth century. As a result, I would like to tell a story about something that happened to me personally to add some context concerning what things were really like for gay men and lesbians when I was young.

18. After Saul and I got divorced, I moved to New York from Philadelphia, where, in 1955, I began working on a master's degree in applied mathematics at NYU.

19. In order to cover tuition, I worked as a secretary at NYU. I took some computer classes and later sought a technology-related job. I eventually got a job as a research assistant, programming NYU's Univac computer, which was devoted to

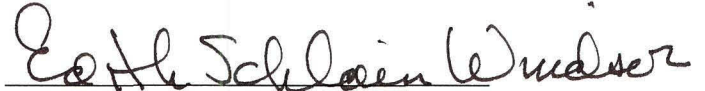
United States Atomic Energy Commission work. Consequently, I had to get “Q” security clearance—a particularly high level of security clearance—in order to perform my duties.

20. While I was waiting to obtain this clearance, I received a letter from the FBI requesting that I attend a meeting with them. Although they explained that I did not need a lawyer for this meeting, it immediately occurred to me that the meeting was really about my homosexuality. In other words, I expected to be asked by the FBI if I was a “queer.”

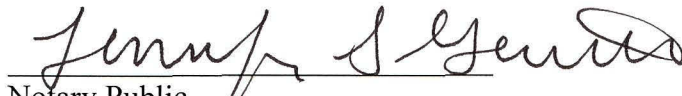
21. Not only did I worry that I might not get the necessary security clearance if the FBI found out that I was “queer,” but I was also very concerned that being “queer” was actually illegal. After I went to the trouble of doing some research, I came to understand that, for women, all that was illegal in New York at that time was impersonating a man. So, I went to the FBI interview dressed even more “feminine” than I usually did—wearing a dress with crinolines and high heels.

22. There was no question in my mind that I would be completely honest with the FBI, even though I knew doing so would likely mean that I would lose the job that I loved. At the time, I was especially frightened because the FBI had asked my building superintendent whether there were people coming and going from my apartment. My superintendent told me that he had told them in response: “just a bunch of college girls.” As a result, I thought for sure that the FBI was “on to me.”

23. As it turned out, the FBI was only following up on a false lead. Fortunately for me, and to my great relief, the FBI agents asked a series of questions about my sisters' friends in the teachers' union, but did not ask me any questions about whether I was a lesbian. And in the end, despite all my fears and anxiety, I received my "Q" security clearance.


Edith Schlain Windsor

Sworn to before me on this 15 day of August, 2011


Notary Public

JENNIFER S. GARRETT
Notary Public, State of New York
No. 01GA621723
Qualified in New York County
Commission Expires September 7, 2014