

IN THE UNITED STATES DISTRICT COURT, DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS, EASTERN DISTRICT ARKANSAS
WESTERN DIVISION

FILED

NOV 20 1997

JAMES W. MCGORMACK, CLERK

DEP. CLERK

CIVIL ACTION
NO. LR-C-94-290

PAULA CORBIN JONES,
Plaintiff,

v.

WILLIAM JEFFERSON CLINTON

and

DANNY FERGUSON,

Defendants.

Judge Susan Webber Wright

(UNDER SEAL)

NOTICE OF FILING OF PLEADING IN ANCILLARY PROCEEDING

President Clinton, through counsel, hereby notifies the Court that the enclosed brief, President Clinton's Response to Paula Jones' Mischaracterization of Judge Wright's Ruling, was filed on November 17, 1997 in the ancillary proceeding pending

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before Judge Merhige in the Eastern District of Virginia, Richmond Division on the motion to quash of third party Kathleen Willey.

Respectfully submitted,

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Dated: Washington, D.C.
November 19, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAULA CORBIN JONES	§	
	§	
Plaintiff	§	
	§	
v.	§	
	§	
WILLIAM JEFFERSON CLINTON	§	C.A. NO. 97-MC-16
	§	(UNDER SEAL)
and	§	
	§	
DANNY FERGUSON,	§	
	§	
Defendants.	§	

**PRESIDENT CLINTON'S RESPONSE TO PAULA JONES'
MISCHARACTERIZATION OF JUDGE WRIGHT'S RULING**

In view of this Court's decision not to transfer this ancillary matter to the trial judge in Arkansas, President Clinton submits this response to ensure that the Court is accurately informed about the trial judge's discovery ruling before the Court hears the pending motion to quash filed by third-party witness Kathleen Willey. Contrary to plaintiff's contentions, the trial court did not rule that discovery such as this -- discovery that relates only to alleged conduct that occurred in the White House while Mr. Clinton was President -- could go forward. Indeed, the defendant's conduct as President is wholly irrelevant here, because plaintiff's claims are

premised on civil rights statutes that apply only to state officials acting under color of state law.

I. **THE TRIAL COURT DID NOT RULE THAT DISCOVERY COULD GO FORWARD, WITHOUT LIMITATION, INTO EVENTS THAT OCCURRED IN THE WHITE HOUSE OR SINCE THE DEFENDANT BECAME PRESIDENT.**

On November 6, 1997, Paula Jones submitted a Memorandum ("Jones Mem.") that significantly mischaracterizes the discovery ruling by the trial court. Plaintiff contended that the Willey deposition should be allowed to proceed because the "Arkansas Court has refused to limit discovery in advance" (Jones Mem. at 4), thereby implying that Judge Wright's ruling extended to events occurring at the White House. This simply is not so.

The trial court did not address, much less order, that plaintiff was entitled to discovery into events that occurred after Mr. Clinton became President. To the contrary, during the conference call in which Judge Wright made the ruling to which plaintiff refers, Judge Wright stated that plaintiff's interrogatories and requests for admissions -- which called for information relating to his conduct with women while he was President -- were "overbroad." Thus, the Court clearly did not rule that discovery could go forward without limitation

into conduct that occurred while the defendant was President.¹

Moreover, as plaintiff's counsel is aware, Judge Wright stated at the outset of the conference call that the issue before her was whether depositions of three former Arkansas state troopers could proceed. In ruling that they could, the trial judge stressed that for purposes of Rule 26, the trooper's testimony might be relevant to plaintiff's allegations that the defendant acted under color of state law, as required to make out plaintiff's claims in Counts I-II, which are premised on 42 U.S.C. §§ 1983 and 1985. Hence, to the extent that Judge Wright permitted discovery to go forward without "pre-defined limits" (Jones Mem. at 4), she did so only with respect to discovery bearing on the defendant's conduct while he was a state official -- not as President.

¹ The October 20, 1997 conference call in which Judge Wright made these remarks, which was held pursuant to a confidentiality order, was recorded, but has not been transcribed.

II. CONDUCT THAT OCCURRED AFTER THE DEFENDANT BECAME PRESIDENT IS IRRELEVANT TO PLAINTIFF'S CLAIMS.

The Willey discovery is of no conceivable relevance to plaintiff's lawsuit. Plaintiff's primary claims are based on the federal civil rights laws, 42 U.S.C. §§ 1983 and 1985, which by their terms apply only to state and local officials acting under color of law, and not to federal officials such as the President. See American Science and Engineering, Inc. v. Califano, 571 F.2d 58, 63 n.8 (1st Cir. 1972); Madden v. Runyon, 899 F.2d 217, 225 n.3 (E.D.Pa. 1995). Ms. Willey has stated in her affidavit that she did not work for the defendant in his capacity as a state official, and did not know Ms. Jones or anything about plaintiff's state employment. Hence, whatever Ms. Willey has to say about President Clinton's conduct when he was no longer a state official is irrelevant to whether he violated those laws.²

² Ms. Willey's testimony, which purports to relate to events in the White House in Washington, D.C. in late 1993, also is not relevant to or probative of the issue of whether the President's alleged conduct with plaintiff more than two years earlier constituted the tort of outrage under Arkansas law.

III. THIS COURT SHOULD NOT PERMIT PLAINTIFF TO TAKE DISCOVERY THAT INTRUDES INTO THE WHITE HOUSE, ESPECIALLY ON MATTERS OF NO RELEVANCE TO PLAINTIFF'S CLAIMS.

Throughout this litigation, plaintiff has taken the position that her lawsuit should be allowed to proceed because she is seeking to hold the President accountable for alleged conduct he undertook before he became President, and that this litigation therefore would not interfere with that office. Now that these arguments have carried the day with the Supreme Court, one of plaintiff's very first discovery requests -- this subpoena to Kathleen Willey -- aims to inquire into the defendant's conduct as President. Furthermore, this discovery is being vigorously pursued by plaintiff's new counsel, including the Rutherford Institute -- an organization aligned with political opponents of the President.

Plaintiff's effort to reach within the White House for this kind of discovery could require the Court to take on a whole host of difficult issues about the proper scope of inquiry into internal White House functions.³ It is simply unnecessary for the Court to shoul-

³ See Nixon v. Fitzgerald, 457 U.S. 731, 756 (1982) (Presidents are absolutely immune from liability for conduct taken "within the outer perimeter" of their official duties). Plaintiff asserts that the Willey allegations fall outside the ambit of Fitzgerald be-
(continued...)

der these burdens, even if the discovery in question could be deemed in some fashion to be of some attenuated relevance to plaintiff's claims.

For all these reasons, as well as those stated in our earlier papers, we respectfully submit that Ms. Willey's motion for a protective order should be granted.

Respectfully submitted,

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November 18, 1997

³(...continued)

cause a President's sexual misconduct is ipso facto outside the scope of his official duties. Jones Mem. at 9. Fitzgerald, however, expressly rejected the argument that improper conduct necessarily falls outside the scope of "official conduct." See id. at 756-57. Indeed, Fitzgerald itself involved a federal employee who claimed that President Nixon had violated his constitutional rights. The Court nonetheless recognized that the President was absolutely immune, in part because it did not want to "second guess" a President's conduct of his office or to parse which of the President's "innumerable 'functions'" encompassed a particular action. Id. at 755-756.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 1997, a true and correct copy of the Notice of Filing was served via federal express and first class United States Mail postage prepaid to:

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