

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JACQUELINE STEVENS,)
)
Plaintiff,)
)
vs.)
)
ERIC HOLDER, JR.,)
Attorney General of the United)
States, et al.,)
)
Defendants.)
)

CIVIL ACTION NO.:
1:12-CV-1352-ODE

**PLAINTIFF'S STATEMENT OF MATERIAL FACT AS TO WHICH
THERE IS NO GENUINE ISSUE TO BE TRIED**

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**PLAINTIFF'S STATEMENT OF MATERIAL FACT AS TO WHICH THERE IS NO
GENUINE ISSUE TO BE TRIED**

Pursuant to Local Rule 56, Plaintiff submits this Statement of Facts as to Which there is no Genuine Issue to be Tried.

1. Plaintiff Stevens is a Professor of Political Science and Legal Studies at Northwestern University in Evanston, Illinois. She is the author of scores of articles and two major books in her field, STATES WITHOUT NATIONS: CITIZENSHIP FOR MORTALS, published by the Columbia University Press in 2009, and REPRODUCING THE STATE, published by Princeton University Press in 1999. Stevens was awarded a Guggenheim Fellowship for 2013 – 2014. (Plaintiffs' Responses to Federal Defendant Mooney First Set of Interrogatories, Ex. 1).

2. Since 2008, Professor Stevens' work has focused on deportation, including U.S. immigration courts' adjudications and the alarming number of U.S. citizens who have been wrongly deported.

3. EOIR singled out Stevens for special attention because of her writings, attention that included tracking Stevens' visits to EOIR courtrooms throughout the country and blocking Stevens' access to court proceedings.

4. On June 13, 2008, Stevens published a post on her blog, “States Without Nations,” with the headline, “U.S. Citizen Falsely Imprisoned by ICE since August 31, 2006, Immigration Court Malfeasance.” [Doc. 157, p. 7].

5. In the blog, Stevens explained that Defendant Cassidy had terminated a U.S. citizen’s deportation proceeding in 2006 (because he was a U.S. citizen) but ICE appealed and the citizen remained in custody.

6. EOIR failed to insure service of the appeal on the indigent citizen’s pro bono attorney.

7. Two years later, in 2008, the citizen’s attorney learned that his client was still in custody and that EOIR’s oversight denied his client the opportunity to be released on bond pending appeal.

8. Defendant Cassidy two years later, per the remand, issued a written opinion again terminating the deportation order, but in the order Defendant Cassidy altered the timeline, changing the date of his first order from August 31, 2006 to May 13, 2008, thus erasing from the official record the two years of hardship created by this egregious mistake. (Id.).

9. On June 17, 2008, an EOIR official forwarded Stevens’ post to Cassidy. The same day, Cassidy sent an email reply, stating “[REDACTED]. Further resent the implication that I LIE or would risk my career to cover-up for

anybody!” The Federal Defendants claim that the redactions to this email are privileged under the deliberative process privilege.

10. In March and April, 2009, Stevens published posts on EOIR’s practice of excluding members of the public from immigration proceedings in detention facilities, work that appeared as well in a June 6, 2009 article in Nation entitled “Secret Court Exploit Immigrants.”

11. Again Stevens’ March and April 2009 publications attracted an unusual amount of attention at EOIR, and were circulated to a number of EOIR officials. [Doc. 157, pp. 11 – 16].

12. In April, 2009, Stevens published on her blog an account of Defendant Cassidy’s deportation of Mark Lyttle, a U.S. citizen.

13. In December, 2008, Defendant Cassidy enter orders deporting Lyttle to Mexico. Lyttle was born in North Carolina, speaks no Spanish, has no relatives in Mexico, and has two brothers serving in the United States Army.

14. Stevens' post was highly critical of Cassidy.

15. Stevens also noted that Cassidy improperly recorded the hearing.

16. On April 27, 2009, EOIR’s Elaine Komis sent an email to Fatimah Mateen, then with EOIR’s Office of Legal and Public Affairs, with a link to Steven’s blog post, stating “Two Jackie Stevens stories that unfairly portray Judge

Cassidy's adjudication of this case. He is concerned because the blogs are on Benders." [Doc. 157, p. 18]. ("Benders" refers to Benders Immigration Bulletin, published by LexisNexis.)

17. The same day, on April 27, 2009, Ms. Mateen told Ms. Mooney: "Also, I just received a call from IJ Cassidy. He said that he had received calls and emails from AILA¹ and other attorneys concerning this." [Doc. 157, p. 19].

18. Significantly for this case and this motion, the attention that EOIR directed at Professor Stevens was not limited to EOIR's public relations staff, but extended to EOIR administrators like Defendant Smith.

19. On April 28, 2009, Ms. Mateen wrote: "I have spoken [with] ACIJ [Defendant] Smith, . . . [who] said that Cassidy is very sensitive and concerned about his public reputation." [Doc. 157, p. 20].

20. Several weeks later, after more negative publicity surfaced, Defendant Smith emailed his colleagues: "I talked with him [Cassidy] Friday and told him not to take it personally." [Doc. 157, p. 21].

21. EOIR Assistant Direct Fran Mooney testified that EOIR singled out Professor Stevens for special treatment and attention "because she had been critical of the agency." (Mooney Dep. at 37).

¹ "AILA" refers to the American Immigration Lawyers Association."

22. After Stevens' critical articles were published, but before any of the events leading to this litigation, EOIR's public relations routinely notified Defendant Smith in EOIR's Falls Church Virginia headquarters when they learned that Professor Stevens would be attending immigration proceedings somewhere in the country. (Smith Dep. at 32, 37).

23. Similarly, on the eve of Professor Stevens' first visit to the Atlanta Immigration Center in June of 2009, Atlanta Court Administrator Cynthia Long distributed an email to 11 EOIR court staff in Atlanta, four immigration judges, and four EOIR officials in Falls Church, Virginia notifying them of Stevens' and Lyttle's upcoming visit to Atlanta to obtain some of Lyttle's records. (Smith Dep., Ex. 26). This level of attention was unique. (Long Dep. at 53-54). *See also* Long Dep. at 51-52 (agreeing that there was an "enormous amount of attention" given to Professor Stevens).

24. EOIR has no general requirement that visitors to Immigration Courts "check in" with EOIR prior to attending court proceedings. "Ordinarily the public can come in and attend hearings." (Smith Dep. at 84).

25. When Stevens came to the Atlanta Immigration Center, court personnel told Stevens that she needed special permission to attend court proceedings. (Id.).

26. Atlanta Court Administrator Cynthia Long acknowledged that Stevens had been singled out. (Long Dep. at 65).

27. On October 7, 2009, Professor Stevens and Mr. Lyttle sat in Defendant Cassidy's courtroom to observe three cases listed on his 1:00 p.m. docket. (Cassidy Affidavit, p. 3).

28. Defendant Cassidy entered the courtroom and asked each person attending the proceeding to identify themselves.

29. Cassidy then left the courtroom out the back door without explanation.

30. Cassidy then called Court Administrator Long and told her that Stevens and Lyttle, who Cassidy identified to Long by name, had to leave the courtroom. (Smith Dep. at 29 – 30, 32).

31. Several minutes later, Defendant Long entered the courtroom and told Stevens and Lyttle that they had to leave because asylum hearings were scheduled. (Long Dep. at 29).

32. Stevens and Lyttle complied. (Long Dep. at 30).

33. Long testified that Stevens "wasn't happy about it," but did not recall Stevens or Lyttle being disrespectful or acting inappropriately in any way. (Long Dep. at 33).

34. After a lengthy conversation during which Long would leave the lobby on occasion and return, Long said they could return to the courtroom.

35. Stevens and Lyttle sat down in the empty room and waited.

36. A few minutes later, Long entered the courtroom again and informed them that there were no more hearings scheduled for the day.

37. Defendant Cassidy's account of the day has now been proven to be false. In an email, Cassidy told other federal officials that the first hearing had been closed and that, "in Jackie's presence, he advised the respondents and their attorneys that a member of the media was present and asked if they wanted an open or closed hearing. Both respondents advised they wanted a closed hearing (sexual abuse case)." [See Order, January 16, 2013, Doc. 55, p. 4; Plaintiff's Ex. 37, page 4 - 5].

38. The transcript of the entire hearing is now in the record, however, and it shows that no attorney requested a closed hearing and that Cassidy never ordered a closed hearing. [Doc. 96-6, *passim*].

39. In January, 2010, Professor Stevens and Mr. Lyttle visited the Stewart Immigration Center, a facility in Lumpkin, Georgia. Because immigration judges typically sat in Atlanta, Stewart detainees would have hearings via teleconference.

40. On the morning of January 14 2010, Defendant Cassidy (in Atlanta)

sent Defendant Smith (in Falls Church) an email stating, “Ms. Jackie Stevens and Mark Lyttle are at Stewart today.” [Doc. 157, p. 22].

41. That morning, no dockets were posted in Stewart, making it impossible for Stevens to ascertain Cassidy’s docket that day.

42. Dr. Stevens asked Court Administrator Bethune if she could view the dockets.

43. Mr. Bethune said that he was having a problem printing them.

44. There is no evidence that Mr. Bethune was having any genuine problem printing the dockets.

45. Later in the day, Bethune reported to EOIR’s headquarters that Stevens had asked “why no calendar was posted” and that Bethune “informed her that we had computer problems that prohibited us from printing at that time,” but provided in his email to his supervisor no further detail on the alleged computer problem or its planned remedy. [Doc. 157, p. 23].

46. Upon the next visit of Stevens and Lyttle, in April, 2010, to Stewart, Bethune immediately emailed EOIR’s public relations officials in Falls Church and Defendant Smith, stating that Stevens and Lyttle “want access to view the court hearing today . . . Please advise!” (Plaintiff’s Ex. 37, p. 36).

47. Given that the public by regulation presumptively has access to court

proceedings, there was no reason for Bethune's inquiry unless Professor Stevens had been singled out for special treatment.

48. On June 22, 2009 Cassidy told EOIR Atlanta staff to inform Stevens that he was sick and that therefore she could not observe his hearings.

49. There is no evidence that on June 22, 2009 Cassidy was sick or that he did not hold hearings on that date.

50. Defendant Cassidy has refused to sit for a deposition and has refused to produce documents that would prove, one way or the other, whether he was out sick on June 22, 2009.

51. For the dates in January and April 2010 that Stevens was at Stewart, Court Administrator Bethune did not to post dockets for hearings for Cassidy's Stewart detained docket and told her only immigration Judge Pelletier was conducting hearings for respondents detained at Stewart. There is no evidence that Cassidy did not hold Stewart hearings in person or by televideo on those dates.

52. Dr. Stevens visited the EOIR's Atlanta office by herself on the morning of April 19, 2010.

53. Her appearance triggered a number of email notifications and telephone calls throughout the EOIR bureaucracy.

54. Defendant Cassidy immediately called EOIR public relations official

Susan Eastwood in Falls Church, and told her that Stevens was in his courtroom observing. (Ex. 37, page 37).

55. Eastwood then circulated the news to four other EOIR officials. (*Id.*).

56. Dr. Stevens attracted this scrutiny “because she had been critical of the Agency.” (Mooney Dep. at 37).

57. Security guard notes obtained in discovery corroborate Stevens’ account that, upon her arrival, EOIR official Marion Crosby told Stevens that “she needed permission to sit in on court.” [Doc. 157, p. 24].

58. In depositions, EOIR officials acknowledged that this was incorrect and a violation of federal regulations: court proceedings are presumptively open; no one is required to obtain permission to sit in on court proceedings. (Smith Dep. at 84).

59. Again, in depositions EOIR officials acknowledged that Stevens was singled out for this unlawful treatment. (Long Dep. at 65).

60. After some delay, Stevens was allowed into Defendant Cassidy’s courtroom, where Cassidy was conducting hearings with Stewart detainees via videoconference.

61. At some point, Cassidy told Assistant Atlanta Court Administrator Marion Crosby to tell Stewart Court Administrator Bethune that Stevens was in the

Atlanta courtroom. (Plaintiff's Ex. 15).

62. In his deposition, Defendant Smith (to whom Bethune and Crosby reported) could not identify any legitimate reason why Bethune would need to know that Stevens was in the Atlanta courtroom. (Smith Dep. at 95-96).

63. After several brief afternoon hearings, Cassidy left the dais and, standing in front of Stevens and a courtroom empty except for his assistant, told Stevens that he was asking her to leave the courtroom. [Doc. 69, Paragraph 47].

64. Stevens asked Cassidy if the respondent had asked for a closed hearing.

65. Cassidy responded: "No – the respondent is pro se." *Id.*

66. Cassidy told Stevens that he could order guards to remove her from the courtroom.

67. Cassidy then left the courtroom by the door behind the bench.

68. Cassidy then again called Susan Eastwood at EOIR headquarters, and Eastwood reported to her colleagues at headquarters that Cassidy "had to ask Jackie to leave the courtroom while he conferred with counsel." (Plaintiff Ex. 37, page 38).

69. Before Cassidy returned, Professor Stevens left Cassidy's courtroom and walked down the hall to the EOIR waiting room (Stevens Dep. at 84), where

she was observed by EOIR personnel sitting quietly and writing in her notebook. (Plaintiff's Ex. 37, p. 83).

70. About fifteen minutes after leaving the courtroom, three Federal Protective Service (hereinafter "FPS") guards came to the waiting area.

71. One of them reached for his handcuffs and told Stevens "It's time to leave." [Doc. 69, ¶53].

72. Professor Stevens asked the guards why they were telling her to leave the building, but she received no response.

73. Stevens then rose and walked toward the exit and out the building, accompanied and surrounded by the armed, uniformed security personnel.

74. Stevens heard one of the guards tell another guard: "Judge Cassidy wants her out of here! He wanted her out of the building!" [Doc. 69, ¶ 54]. *See also* Stevens Dep. at 89 ("I heard the guard tell another guard, he wants her out of here. He wants her out of the building. I heard that myself, personally.").

75. Cassidy then called Eastwood at EOIR headquarters for a third time that day.

76. According to Eastwood: "Judge Cassidy just called to advise that Jackie had to be escorted out of the building." (Plaintiff's Ex. 37, p. 38).

77. In a subsequent email to Defendant Smith, Cassidy stated "at no time

did I ask anyone to remove her.” (Plaintiff’s Ex. 9).

78. Officer Hayes has confirmed through counsel that Cassidy gave him the order to evict Stevens from the building. [Doc. 84-3, p. 2 (“On April 19, 2010, Judge Cassidy directed Paragon’s security guard, Nathaniel Hayes, to escort Plaintiff from the Atlanta Immigration Court.”)].

79. Hayes’ account is further confirmed by a transcript of his telephone conversation with the FPS dispatcher just moments after the incident occurred. (Plaintiff Ex. 37, pp. 74-75 (Dispatcher: “Who asked you to escort her off? The judge?” Hayes: “The judge, yes, ma’am.”)).

80. EOIR Assistant Director Frances Mooney testified in her deposition that she had heard that Defendant Cassidy directed the guards to escort Stevens out of the building. (Mooney Dep. at 39).

81. FPS official Summers told Stevens that he had heard that Defendant Cassidy had directed the guards to escort Stevens out of the building. (Plaintiff’s Ex. 47, p. 21).

82. That Cassidy gave the order to the guards is further confirmed by the total absence of any other plausible explanation for the guards’ conduct.

83. The best Atlanta Court Administrator Long could offer was that the guards evicted Steven because they “wanted her to leave the building.” (Smith

Dep. at 74).

84. Significantly, the email in which Cassidy denies ordering the guards to evict Stevens was written *before* the release of the transcript of the conversation between the dispatcher and guard Hayes.²

85. In an affidavit submitted *after* the release of the transcript, Defendant Cassidy does not deny that he gave the instruction and, indeed, avoids the topic entirely. [Doc. 96-3].

86. By contrast, Plaintiff's published account of the incident, which is true to the transcript, appeared long before the transcript was released. (Plaintiff's Ex. 37, page 41).

87. Cassidy has refused to give live deposition testimony; he or his lawyers are unwilling to subject Cassidy to cross-examination.

88. Thus, the only admissible evidence establishes, without contradiction, that Cassidy directed the FPS guards to evict Dr. Stevens from the building.

89. It is undisputed that Cassidy has and had no jurisdiction or authority over the guards. "Federal Protective Service guards, the building guards, do not work for the Executive Office of Immigration Review or the Department of Justice." (Reid Dep. at 82).

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90. Lauren Alder Reid, a lawyer in EOIR headquarters, agreed that EOIR “would not have jurisdiction over whether [Stevens] stayed in the building.” (Reid Dep. at 82). *See also* Summers Dep., *passim* (explaining that FPS does not report to EOIR and that EOIR officials have no jurisdiction or authority over FPS guards).

91. Defendant Cassidy has no jurisdiction over FPS security personnel.

92. Defendant Cassidy has no authority over FPC security personnel.

93. There is no connection between Plaintiffs presence in the EOIR waiting room on April 19, 2010 and any adjudication of which Defendant Cassidy participated.

94. On April 27, 2010, Stevens submitted a formal complaint against Cassidy to EOIR Assistant Chief Immigration Judge Mary Beth Keller in accordance with EOIR’s procedures. (Plaintiff’s Exs. 37, p. 41 (Stevens’ Complaint), 42 (EOIR Procedures), 43 (EOIR Procedure flowchart).

95. Keller is not a “judge,” but an administrator, and is responsible for handling complaints against immigration judges.

96. Within hours of receiving Stevens’ complaint, Keller sought to coordinate this investigation with agency officials trying to ban Stevens from immigration proceedings. (Plaintiff’s Ex. 45).

97. Keller was fully aware that EOIR's Public Relations team had been tracking Stevens for almost two years by this time, attempting to ban her, and protecting Defendant Cassidy's body of work.

98. Keller coordinated her investigation with them – in her words – “to avoid a right hand/left hand scenario.” *Id.*

99. In an email dated April 28, 2010 (the day after Stevens filed her complaint), Charles Miller of the Department of Justice's Public Affairs Office emailed DOJ colleagues Matthew Miller and Tracy Schmalzer:

The Executive Office for Immigration Review has asked our opinion concerning the potential banning of a blogger from an immigration court in Atlanta.

Jacqueline Stevens, a professor at U.C. Berkeley and editor of an immigration blog, has been disruptive in the court and was removed recently during a hearing. She has been quite vociferous over the past few years in regard to immigration matters. She has also written for the Nation.

All that said, her blog does not appear to have much of a following. I have not seen any pickup or mention of her pieces by more mainstream media immigration reporters.

What do you think? EOIR would like our opinion by noon today so they can make their decision.

(Plaintiff's Ex. 37, page 56).

100. The Federal Defendants have withheld production of, or severely redacted, documentation relating to the government's consideration of banning

Dr. Stevens.

101. Before initiating an investigation into the merits of Dr. Stevens' complaint against Defendant Cassidy, EOIR approached the Justice Department in consideration of "banning" Dr. Stevens from EOIR court proceedings.

102. Keller delegated the responsibility of disposing of the complaint against Cassidy to Defendant Smith.

103. Defendant Smith was supposed to be neutral and fair, and not be predisposed one way or the other with respect to Plaintiff's misconduct complaint against Defendant Cassidy.

104. Before being appointed as the investigator of Plaintiff's misconduct complaint against Cassidy, Smith had been actively involved in EOIR's efforts to shield Cassidy from the negative publicity arising from, among other problems, his controversial deportation of U.S. citizen Mark Lyttle.

105. Smith also coordinated the efforts of EOIR's public relations team in tracking Dr. Stevens' movements in and out of EOIR courtrooms.

106. Smith and Cassidy also were long-time friends. Smith testified: "I believed him to be truthful." (Smith Dep. at 79).

107. Smith, who had spoken with Cassidy on April 19, 2010, chose not to interview Guard Hayes, and did not review the transcript of the call between Guard

Hayes and the dispatcher before reaching his decision exonerating Cassidy and dismissing Dr. Stevens' complaint.

108. About the transcript, Smith testified: "I did not know it existed, so I did not ask for it." (Smith Dep. at 78).

109. Smith testified as follows:

Q: Given that the officer there [in the transcript] says that he was instructed by the judge to remove Ms. Stevens from the building, had you had that prior to issuing your opinion, would you have changed your opinion in any way?

A: No.

Q: Why is that?

A: Because I had considered the information that I had been provided. I believed the witnesses who I talked with and who provided me statements. I knew these people. I had known them for, at that point in time, five years for most of them . . . (Smith Dep. at 79).

110. Smith testified as to the transcript: "I did not find that to be accurate." (Smith Dep. at 53).

111. Smith's belief was that the security guards on their own "made that determination that she had to leave the building." (*Id.*).

112. Smith did not interview Professor Stevens or Guard Hayes, who received the order from Cassidy and evicted Stevens from the building, or Betsy Schuster (Smith Dep. at 54), the only other person in the courtroom with Stevens.

113. Keller, who delegated the matter to Smith, confirmed that she never undertook on her own, “at any point, to evaluate the quality of Judge Smith’s investigation into Judge Cassidy’s misconduct relating to Ms. Stevens.” (Keller Dep. at 42).

114. EOIR regulations, however, required Keller to monitor complaints “to ensure proper and expeditious handling and resolution. (Plaintiff Ex. 42).

115. Keller testified that she was unaware of Smith’s friendship with Cassidy, but had she known of this it “probably” would not have had an impact on her decision to assign Stevens’ complaint to Smith. (Keller Dep. at 27).

116. As to the transcript of the telephone conversation that confirmed Stevens’ account and contradicted Cassidy’s account, the most Keller would say is that it “might” have been germane to the investigation of Cassidy’s conduct. (Keller Dep. at 36).

117. When she was reminded that Cassidy’s account was contained in a report to Smith, Cassidy’s superior, Keller testified as follows:

Mr. Brown: If Judge Cassidy lied to Judge Smith, would that concern you?

Ms. Keller: If a Judge lied to a supervisor, it would concern me.

By Mr. Brown: Particularly in the context of responding to a citizen who was lodging a misconduct complaint against that Judge,

correct?

A: Sure.

(Keller Dep. at 82).

118. The likelihood that Defendant Cassidy lied and obstructed an investigation, however, has not concerned anyone associated with the Federal Defendants enough to do anything about it:

Mr. Brown. . . . Since this lawsuit was filed, are you aware of any investigation by the United States into whether Judge Cassidy was lying to Judge Smith in connection with Ms. Stevens' complaint about Judge Cassidy's conduct.

Ms. Keller: No, I am not aware.

(Keller Dep. at 83).

119. Keller testified that she had no plans of her own to further investigate Cassidy's conduct. In her view, such an investigation would be "inappropriate" because "we're in litigation." Id.

120. Keller has never been an actual judge in any case. Smith has not adjudicated any case since being promoted to ACIJ in 2008.

Respectfully submitted this 14th day of October, 2014.

/s/Bruce P. Brown

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CERTIFICATION OF FONT

Counsel for Plaintiff certifies that this document has been prepared in a Times New Roman, 14 point font and otherwise complies with Local Rule 5.1C.

This 14th day of October, 2014.

Bruce Perrin Brown
Georgia Bar No. 064460

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CERTIFICATE OF SERVICE

I hereby certify that I have, this date, filed electronically the foregoing Statement of Material Fact as to Which There is No Genuine Issue to Be Tried with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification to the attorneys of record.

This 14th day of October, 2014.

/s/Bruce P. Brown
Bruce Perrin Brown