Attachment B

COPY

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

- - - - - - - - - - - - - - -x

DIANE J. SCHROER, :

Plaintiff, :

vs. : Civil Action #05-1090

JAMES H. BILLINGTON, :

LIBRARY OF CONGRESS, :

Defendant :

- - - - - - - - - - - - - - -x

Washington, D.C.

Thursday, February 22, 2007

Whereupon,

WALTER BOCKTING

the Witness, called for examination by Counsel for the Defendant, pursuant to notice and agreement of counsel as to time and place, at 501 3rd Street, NW, Washington, D.C., where were present on behalf of the parties:

APPEARANCES:

On Behalf of the Plaintiff:

SHARON McGOWAN, Esquire

125 Broad Street

18th Floor

New York, New York. 10004-2400

212-549-2593

On Behalf of the United States:

BEVERLY RUSSELL, Esquire

501 3rd Street, NW

Washington, DC

202-514-7232

Q And what did that entail?
A His supervision?
Q Yeah, the supervision.
A Weekly meetings with him, as well as staff meetings where different cases were -- and I had the opportunity to bring up cases for review.
Q And do you recall how many cases of GID that you reviewed with Mr. Coleman or under his supervision?
A Many, because this is a huge clinic. It's probably the biggest program in the country. And so we had like -- I probably did like four, saw four new patients every week at that time.
Q So would you say you saw, what, 200 patients over a year period?
A At that -- well, and I wasn't working 50 weeks a year. But hundreds.
Q Hundreds.
A Yeah.
Q Now, were all of these -- these patients, were they all diagnosed with GID?
A Not all.
Q Okay.
A Only for those that a diagnosis would apply.
Q Okay.
A Which was many of them, but not all.

Q Okay. And approximately what percentage were diagnosed with GID?

A I'd say probably 80 percent.

Q Okay. I'm going to ask you a little later how that diagnosis was made.

A Sure.

Q So what was your -- did you have any training after working under the supervision of, I guess, Mr. Coleman, for one year? Did you have any additional --

A Yes. The second year my supervisor was Dr. Metz, M-e-t-z, Michael Metz. He just took over that job from Dr. Coleman.

Q Okay. And did you continue to do the same type of work --

A Yes.

Q -- under Dr. Metz? And how many patients did you see while under the supervision of Dr. Metz?

A I think the second year, there were fewer patients, because when I came in the first year, I was doing assessments also on some patients who had already been coming to the clinic. Because patients are usually at our clinic for about two years, sometimes even longer.

Q Now, as far as the patients, I mean, where do they come from? Are they local or national? I mean --

A It's regional. I mean, my first intake was actually

a person from Dutch Harbor in Alaska. You know, in Holland, it's such a small country. People don't travel that far, but -- so we see occasionally -- that's my point -- people from different parts of the country, but the bulk of our patients is from the upper midwest, so from Minnesota and the neighboring states, the Dakotas, Wisconsin, Iowa, Illinois, Kansas City.

Q Okay. And after your training with Dr. Metz, was there any additional training beyond -- after that?

A After two years, the weekly supervision meetings with the individual supervisors stopped, but ever since, we do have what we call intervision. So with my colleagues, we meet and discuss cases, consult with each other. But also after these two years, I became a supervisor. The second year, I was trained gradually in being a supervisor. And so then I supervised people who were doing the fellowship after I had completed it, along with my colleagues.

Q So how many years would you say you've been working with individuals who have GID?

A Well, I think if you also include the research, it would be since 1986. But in terms of doing my own evaluations and providing the treatment, that is since 1988.

Q And are you still treating individuals with GID?

A Yes.

Q And approximately how many number of patients do you

have?

A At this point, we see about 80 new patients every year that present, and about 60 really enroll. So there are some people that come for a session or two sessions, maybe three of them. But the people that stay is about 60 per year.

Q Now, I mentioned earlier, this deposition is being taken in the case Schroer v. Billington. What is your understanding of your relationship to this litigation, your connection to this litigation?

A Well, my understanding is that I was asked to comment on several questions, give my expert opinion on several questions about what is sex gender, what is transsexuality, what is the common treatment approach, so really to educate with regard to my expertise in this area.

MS. RUSSELL: Are we going -- still going in numerical --

COURT REPORTER: I think so. That would probably make sense.

MS. RUSSELL: Do you recall which number?

COURT REPORTER: Why don't we start at 40 and we won't overlap with anything.

(Bockting Deposition Exhibit Number 40 marked for identification.)

BY MS. RUSSELL:

Q I'm going to show you what's marked as Exhibit 40.

And can you just review that?

(Witness reviewed document.)

BY MS. RUSSELL:

Q Does this look like the report that you provided?

A Yes, I recognize it. It is my initial report.

Q Okay.

MS. RUSSELL: Then let's mark this as Exhibit 41.

(Bockting Deposition Exhibit Number 41 marked for identification.)

BY MS. RUSSELL:

Q Do you recognize the exhibit that was marked as 41?

A Yes. It's my supplemental report.

Q Okay. Now, when did you first learn of this case, of this Schroer v. Billington case?

A Of the case, I learned when I was contacted by, I think, Sharon McGowan.

Q And when did she contact you?

A This was in 2005 or '6. I think it was early 2006.

Q And what is your understanding of the -- or do you have an understanding of the basis of the litigation, or why the suit was brought?

A I did receive a copy of the complaint.

Q Okay.

A And I did read that.

Q Okay.

that you reviewed on page 21?

A Kiuijver. That's K-i-u-i-j-v-e-r.

Q Okay.

A And I actually found the citation on Auster and Olm (phonetic) on page 20 that I had not read before when I was looking for a source to really support my understanding of social sex role. And that's it.

Q Now, did you do anything to prepare for your deposition today?

A Yes. I just read my reports again. I read the report that I received a copy of of Dr. Schmidt.

Q Anything else?

A And I re-read the DSM.

Q Okay. Did you do anything else?

A I also read a section of the Standards of Care.

Q Which Standards of Care?

A The Harry Benjamin International Gender Dysphoria Association Standards of Care, and I read the citation of Dr. Schmidt by Reiner (phonetic) cited in his report on follow-up of children born with ambiguous genitalia.

Q And did you review anything else?

A I do note that I want to make sure that I am familiar with the citations in Dr. Schmidt's reports. I don't have it in front of me, but maybe there's another one that I --

Q Yeah, there is.

A -- that I read. You know, those citations. Maybe I'm missing that.

Q Okay. Did you meet with anyone as far as preparing for this deposition?

A Meet with anyone?

Q Yes.

A Last night. Meet with Sharon McGowan and Ken Choe.

Q And what was discussed during your meeting?

A Just preparing for today, going over --

Q What did they say with regard to preparing for today?

A Going over again the essential points of my report, as well as the report of Dr. Schmidt. And I learned from them a little bit of how Dr. Schmidt responded in his deposition to one or two points of my report.

Q Now, what did you -- or what were considered the essential points of your report?

A I think that the definition what is sex, what we know about the etiology of sex and gender, the -- how widely accepted the Standards of Care are, and what the standing of the Harry Benjamin Association is within the field. And also, we talked about the scientific evidence supporting the efficacy of sex reassignment.

And we talked a little bit about how broad -- this

was one of the points in Dr. Schmidt's report that we discussed, how much research is there in this area. And that's, I think, one of the points I make in my supplemental report that comes from Dr. Schmidt. There is little evidence, only case studies, whereas I'm familiar with a large body and a growing body of research. It goes way beyond the case studies.

Q Now, when you say large body of research, what are you referencing?

A I'm talking about research that has been conducted, or the number of peer reviews, empirical research articles in this field.

Q Now, does that research body also include research done on the biological basis of transsexualism?

A That's part of it, yes.

Q Is there a large body -- would you say there is a large body of research on the biological basis of transsexualism?

A I think there is a growing interest in that area that has slowly been increasing since the 1960s. And I think the research that is being done in terms of etiology is on biological determinants. There is little research. There has been some, but there's less focus right now on the psychosocial influences.

Q Can you explain what research has been done on the

biological etiological aspect of GID?

A It really all focuses on the sexual differentiation of the brain. And a lot of the research is animal research where they've studied that, and particularly how -- androgen exposure. So exposure to testosterone, effects and development of the brain and sexual behavior. But then they've also extended that line of research to humans.

Q Okay. And what are the studies on humans?

A Some of the studies are on structural differences in the brain, in the hypothalamus, between men and women, and where transsexuals fall in that regard. But there's also a large body of research on, for example, left-handedness and right-handedness, the size of middle finger, other things that point towards determinants of development of sex that are part of the brain, the development of the central nervous system.

Q Do any of these studies that you are aware of assert that there is conclusive evidence of a biological or etiological basis for GID?

A I think the studies that I'm familiar with just present the evidence that they have found, and some of them are more compelling, you know, than others.

Q But do the studies conclusively show that there is a biological -- a causal relationship between biology and GID?

A I don't think that one can say at this point that the evidence is conclusive.

Q So is it fair to say that at this time there is no conclusive evidence that there is a causal relationship between biology and gender identity disorder?

A I'm having difficulty with the question, because I think there is no conclusive evidence that points exactly to which factors determine what part of gender identity development. But I think that looking at -- evaluated in the larger scope of the research, it's clear that biology, you know, plays a role in sex and gender. Sex and gender are not free of biology.

Q Yeah, but I'm talking about gender identity disorder.

A Gender identity disorder is something that biology is a part of it.

Q Okay. But what research out there -- is there any research out there that asserts or states conclusively that there is a relationship between biology and gender identity disorder?

A I think there is research that has been conducted and is being conducted to uncover those determinants.

Q Well, has there been --

A For example, the study by Zhou and by Kiuijver shows that there are structural main differences, and that certain areas of the hypothalamus of male-to-female transsexuals are consistently more similar in size than those of non-

transsexual females, smaller.

Q But has there been any --

A And different -- and I was going to say and different from males, from transsexual males. So when one looks at that article, that is quite compelling.

Q Now, you say it's compelling, but is it proof that there is?

A It is evidence, so it is proof. Yet in science, one doesn't base conclusions on one study. The study needs to be replicated.

Q Well, has that -- now, the study that you mentioned, I think, was the Zhou study?

A Yes.

Q Has that been replicated?

A Well, Kiuijver did a similar study with similar findings. And then there is really quite -- there's more evidence coming from -- in the animal research field of the impact of androgen exposure on the brain and sexual behavior. And now, as I said, where the field is at is really to see what of that is generalizable to humans. And the Zhou and Kiuijver study are one of the pioneering -- are two of the pioneering studies in this area.

Q Are you familiar with the act or the statute known as Title 7 of the Civil Rights Act of 1964?

A No.

Q Are you familiar with that term?
A No.
Q Do you know whether the term sex is included in that statute?
A No. I mean, maybe there were some references in the initial complaint that I read, but I don't remember that.
Q Well, did you develop any understanding or come to any determinations yourself personally as to what the term sex means in a legal context?
A No, I'm not a legal expert.
Q Okay. Well, how would you define sex?
A I have -- in my report that I think that sex is multifaceted, and that, you know, at birth, sex is assigned usually based on the appearance of the external genitalia. Usually, that's when somebody is assigned, is given a sex. But sex is not one thing, but has multiple components, and knowledge of one or more of these components then results in that sex assignment. Usually, it's only one, and that is the appearance of the external genitalia. But in cases of ambiguous genitalia, other components of sex are assessed and factored into the determination of what the best sexual assignment is.
Q Well, is there a biological basis as to which genitalia will be formed, whether it's the penis or the vagina? I mean, is there a biological basis to that?

A Yeah, there is a chain in development that, you know, is also biological.

Q And what is that chain?

A Well, the sex chromosomes play an important role. The hormones play an important role. Whether the body is receptive to those hormones then determines the development of the internal and external genitalia.

Q Now, are males identified medically as having -- or biologically as having XX chromosomes? Is that your understanding?

A Well, most -- we assume that most babies born with a vulva most likely have an XX chromosomal configuration. That's not always the case.

Q Okay.

A But in the majority of cases, it is, as far as we know.

Q Now, is it true that generally, females are identified as having XY chromosome?

A Generally true. I think there are people who are assigned to female sex or who reassign their sex later in life who have an XY chromosomal pattern.

Q I don't understand what you mean by that.

A For example, there might be children who are born with ambiguous genitalia, their chromosomes might be XY. But for example, their body might not be receptive to the

testosterone that is being produced. And so when they are born, their genitalia are closer to the female side than to the male side, because their real genitalia has not been able to be developed, because they developed under the influence of testosterone.

Q Are those intersex?

A Yes. And so in those cases, these children are usually assigned the female sex.

Q Okay. These are intersex? People that are identified as intersex individuals?

A I think there is some different definitions of the word intersex and how broad that definition really is, but yes, some people refer to this as intersex. But I prefer to use the term children born with ambiguous genitalia or disorders of sex development. Because sometimes, you know, genitalia are not -- or they are ambiguous because also, the external genitalia might -- there may not be -- the corresponding internal genitalia may not be present, so that's still ambiguous genitalia.

I tend to shy away from the term intersex because it's so unclear. Different people define the range of conditions that fall under the heading of intersex differently.

Q Okay.

A It's a term that's not very well defined. There's

lack of consensus on what is really intersex.

Q Can individuals who have ambiguous genitalia also have gender identity disorder?

A Yes.

Q Explain under what circumstances a person with ambiguous genitalia can have.

A If a person with ambiguous genitalia, say, is assigned to female sex, but then as the child grows up and the gender identity of that child becomes apparent, that child could turn out to have a male gender identity, and then would -- might reassign their sex and change gender roles to living in the male gender role.

Q Okay. Is that consistent with the DSM that an individual can be both -- can have both ambiguous genitalia and have GID?

A They would get the diagnosis gender identity disorder not otherwise specified, so -- which -- 302.6 code. 302.85 code excludes that specifically. But so one then gives the diagnosis of general identity disorder not otherwise specified, and at the particular physical condition, or intersex condition, if you will, to note the actual diagnosis in the DSM.

Q Just to be clear, how do you define general identity disorder?

A Well, I define it consistent with the DSM

definition, and that's what it is. And those are the criteria that are applied.

Q Now, am I incorrect in stating that the DSM states that an individual with an intersex condition cannot also have GID?

A They cannot have the diagnosis of 302.85.

Q Which is --

A General identity disorder of adulthood or of childhood and adolescence. But if they are dysphoric about the sex that was assigned to them at birth, they will meet criteria for 302.6, gender identity disorder not otherwise specified.

Q What is the relationship between chromosomes and genitalia? Is there any relationship between the two?

A The chromosomes are one of the many components of sex. It is believed that the chromosomes play some role in initiating the presence or absence of testosterone, and that affects the development of the internal and external genitalia at certain critical periods during sexual development.

Q Now, can chromosomal configuration be changed?

A No.

Q Would you agree or can you just offer your opinion on this statement that the presence or absence of the Y chromosome determines sex?

A I think that that would be an overstatement. I

think that actually, the presence of the Y chromosome plays a role in what sex develops, yes. But it's not the single determinant of sex.

Q Do you have a definition for biological sex?

A I find it difficult, because biology is -- well, I think biology plays a role in all those different components of sex. If we're talking about somebody's general behavior, there is also a biological part of that. So whether somebody, you know, is more aggressive or -- I think most of human behavior also have a biological component.

Q Is the term biological sex used in the medical profession?

A Yes. But I think it's almost like a simplistic term.

Q How is it used in the medical profession?

A Well, it's usually -- when people use biological sex, they refer to the sex assignment at birth.

Q And --

A Which, again, is based on the appearance of the external genitalia.

Q And the external genitalia is development biologically how? Do we know that?

A We know some of that. But there's a lot to be learned about that process.

Q Okay. And so chromosomes -- is there a causal

relationship between chromosomes and genitalia?

A Chromosomes are, as far as I understand it, a part of that developmental process. But clearly, in some children with XY chromosomes, the external genitalia may develop appearing female.

Q And those are what you would call individuals with abnormal genitalia? Or ambiguous --

A They would fall within what we now call disorders of sex development. In this case, there is these two components of sex, you could say, are not in alignment.

Q What two components of sex are not in alignment?

A The chromosomes and the external genitalia for the purposes of our discussion now.

Q Okay. So absent abnormalities or anomalies, absent that, is it true or do you agree that from a biological perspective that males are identified as having XX chromosomes? Putting aside anomalies or abnormalities.

MS. McGOWAN: Object as to form.

THE WITNESS: Yeah. I'm unclear. Rephrase the question.

BY MS. RUSSELL:

Q Okay. If a males does not have -- or if an individual does not have abnormal genitalia biologically, and if the individual has developed a penis, biologically, is that individual considered a male? Putting aside -- you know,

What is that?

A That in case of a male-to-female sex reassignment, that they create a vagina out of -- usually, the outer skin of the penis becomes the inner lining of the vagina.

Q And what about female to male?

A Female to male will have their breasts removed and a male-appearing chest created. And they may also -- they tend to have a hysterectomy, and also, they may have testicle implants inserted in the labia majora. And their clitoris is enlarged as a result of hormone therapy. They can release that so that it looks like a small penis, and they can extend the urethra so that the person can stand peeing.

Q Now, for an individual who has a sex reassignment from male to female, is that individual able to produce ovaries?

A No.

Q Can that person give birth?

A No.

Q Does their chromosomal configuration change?

A No. I mean, they have experimented with transplant of ovaries, but, you know, that's in its infancy. That's -- surgery.

Q Is a female-to-male transgendered individual able to produce sperm?

A No.

Q Looking at your expert reporter, or turning to your expert report, the original --

MS. McGOWAN: We're talking about Exhibit 40?

MS. RUSSELL: Yes, Exhibit 40.

BY MS. RUSSELL:

Q And on pages -- looking at 20 through 23 --

A Yes.

Q -- can you just point out -- and you may have done this, and I apologize if I'm asking you to do the same thing again -- which studies document a causal relationship between biology and GID or sex identity?

MS. McGOWAN: Object on grounds of form, but you can answer if you understand.

THE WITNESS: Well, I can let you know which articles report on research or reveal research that support a biological determinant.

BY MS. RUSSELL:

Q When you say support, what do you mean?

A The evidence supports that there is a biological determinant involved in the development of gender identity disorder.

Q Can you point those?

A Yeah. The article by Cohen-Kettenis and Gooren, "Transsexualism: A Review of Etiology, Diagnosis, and Treatment."

Q And what page is that on?

A Page 20.

MS. McGOWAN: It's the fourth from the bottom.

MS. RUSSELL: Okay.

THE WITNESS: I think that it is reviewed in the book of Cohen-Kettenis and Pfaefflin, "Transgenderism and Intersexuality in Childhood and Adolescence."

The article by Diamond and Sigmundson makes the argument that biology plays a very important role and presents a case that supports that argument.

The article by Kiuijver shows -- says that male-to-female transsexuals have female neural numbers in olympic nucleus.

I think the book by Money and Ehrhardt includes a discussion of biological factors, and also defines the various components of sex. I'm not sure about the Money and Hampson article. That applies directly to your question, possibly. I think -- on the first one.

MS. McGOWAN: I'm sorry -- the two. Okay.

THE WITNESS: Yeah. Because the second one clearly addresses that. Because imprinting. You know, it's imprinted in. This is part of the development of the brain.

And the citation by Phoenix. Zhou is that article that I referred to earlier about the structural differences in the human brain that show that male-to-female transsexuals

have the same size of this nucleus as females and significantly smaller than those of males.

And I'm sure that Zucker in that article on page 23 reviews also the evidence for biological factors.

BY MS. RUSSELL:

Q Which Zucker?

A The first one, 1999.

Q Okay.

A That would be it.

Q Okay. On page 8 of your report, paragraph 19, the first sentence, you said, "What causes gender identity disorder remains unknown." Is that an accurate statement of your position?

A That's the first sentence of my paragraph.

Q Okay.

A It goes on to say that "Biological factors, hormonal genetic brain structure, and psychosocial factors -- are going to most likely interact. But research is still in its infancy, and findings to date are inconclusive." And I go on to say I think that the focus of the research now is on the biological determinants. That's where the excitement is right now.

Q That's where the excitement is?

A Yes.

Q Okay.

A That's where we have made discoveries and findings, significant findings.

Q Do you know whether other experts agree with your opinion that sexual identity has four -- actually, strike that question. Do you know of experts who disagree with your opinion that sexual identity has four components: -- sex, gender sex, social sex role, and sexual orientation?

A Generally, I find agreement with that. I mean, some people add even more components. But I think that these are four main ones that I find helpful when thinking about this particular population.

Q And what population is that?

A I mean clients with gender identity disorder.

Q I am going to show you -- I don't know what exhibit you're on. Forty-two?

(Bockting Deposition Exhibit Number 42 marked for identification.)

BY MS. RUSSELL:

Q And can you turn to page 5 --

A Sure.

Q -- and read the last three lines? And then go to page 6 and read the remainder of that paragraph.

A So this is from Dr. Schmidt's report.

Q Yes, this is from Dr. Schmidt's report.

A "In his conclusion, Judge Robertson states, 'There

FREE STATE REPORTING, INC.

1378 Cape Saint Claire Road

Annapolis, Maryland 21409

ERRATA SHEET

In re: Schroer vs. Billington
Deposition of: Walter Bockting
Taken on: February 22, 2007

At the time, the above-named deponent desired to make the following changes:

PAGE	LINE	AS TRANSCRIBED	CHANGE TO
6	1	Artur	Otto
8	6	including from treatment	including treatment
9	6	going on 18	going on 19
10	25	an -- dissertation,	an All But Dissertation,
12	25	Goorem	Gooren
13	16	Golene	Green
14	12	in individual therapy	and individual therapy
20	8	sex gender	sex, gender
24	17	Nate Cole (phonetic)	Mate-Kole
24	24	Kiuijver	Kruijver
24	24	K-i-u-i-j-v-e-r	K-r-u-i-j-v-e-r
25	2	Kiuijver	Kruijver

Errata Sheet (cont'd)

PAGE	LINE	AS TRANSCRIBED	CHANGE TO
25	2	K-i-u-i-j-v-e-r	K-r-u-i-j-v-e-r
25	4	Olm	Ohm
25	22	I do note that I want to	I know that I wanted to
26	8	meet	met
27	4	report that comes	report in response to the report that comes
27	4	Schmidt. There is	Schmidt: His opinion is that there is
27	11	peer reviews	peer reviewed
27	22	research. There has	research, there has
28	5	exposure. So	exposure, so
28	5	effects and	affects the
29	14	part of it	part of
29	22	Kiuijver	Kruijver
29	23	main	brain
30	4	transsexual males	nontranssexual males
30	15	Kiuijver	Kruijver
30	21	Kiuijver	Kruijver
32	18	Generally true.	Generally true?
33	3	real genitalia has	"normal" genitalia have

Errata Sheet (cont'd)

PAGE	LINE	AS TRANSCRIBED	CHANGE TO
33	4	to be developed	to develop
33	17	there may not be	they may not be
34	17	which -- 302.6 code	which is 302.6 code
34	19	general	gender
34	20	at the	add the
34	23	general identity	gender identity
35	8	general identity disorder	gender identity disorder
40	17	general	gender
44	21	opportunities by	opportunities, by
48	10	non-population	non-transgender population
48	23	impact the	impact of the
55	11	Kiuijver	Kruijver
55	21	imprinting. You	imprinting, you
55	22	in. This	in, this
55	22	of the brain	of, the brain

FREE STATE REPORTING, INC.

1378 Cape Saint Claire Road

Annapolis, Maryland 21409

ACKNOWLEDGMENT OF DEPONENT

Deposition on Thursday, February 22, 2007

I, Walter Bockting, do hereby acknowledge that I have read and examined pages 1 through 62 inclusive (plus attachments), of the transcript of my deposition, and that: (check appropriate line.)

_____ The same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.

__XX__ Except for the changes noted on the attached errata sheet, the same is a true, correct and complete transcription of my deposition.

Dated: 5/18/2007 **Signed:** [signature]

NOTARY PUBLIC

State of Minnesota
County of Hennepin

On this 18th day of May, 2007, before me, the undersigned officer, personally appeared Walter Bockting, known to me (or satisfactorily proven) to be the person whose name is subscribed to within the instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof I hereunto set my hand and official seal.

[signature]

Notary Public
My Commission Expires: 1/31/07

ROBERT MATTHEW KIRBY
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2010