McGowan Declaration – Exhibit B

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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DIANE J. SCHROER :

Plaintiff, : Civil Action No.

v. : 05-1090(JR)

JAMES H. BILLINGTON :

Defendant. :

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

Washington, D.C.

Wednesday, September 20, 2006

Deposition of:

CYNTHIA WILKINS,

called for oral examination by counsel for Plaintiff, pursuant to notice, at Wilmer Hale, 1875 Pennsylvania Avenue, NW, Washington, D.C., 20006, before Karen Geddes, Certified Shorthand Reporter, of Alderson Court Reporting, beginning at 9:35 a.m., when were present on behalf of the respective parties:

MS. RUSSELL: Objection to the form of the question, lacks foundation. But you can answer if you understand it.

THE WITNESS: At the time the Executive Order 10450 was promulgated, these were the criteria which were established that were relevant to a security clearance determination for anyone being considered for a security clearance determination, and employment, generally, depending on the relationship to the national security as it's written here.

BY MS. MCGOWAN:

Q. Is there any provision here, in Section 8, that specifies that a transsexual individual is ineligible, categorically, for a security clearance?

MS. RUSSELL: Again, objection to the form of the question.

THE WITNESS: As you asked the question, transsexual, by definition, no.

BY MS. MCGOWAN:

Q. Are there any provisions in here that, in your view, are particularly relevant when

considering the eligibility of a transsexual applicant for a security clearance?

A. Let me answer that this way. Inasmuch as Executive Order 12968 contains the current security clearance adjudicative standards, I think I would prefer to speak to that question in that context.

Q. But with respect to this document, is your answer that this document does not speak specifically to how these standards should be applied when considering a transsexual applicant?

MS. RUSSELL: Same objection, lacks foundation. Objection to the form of the question, relevance.

MS. MCGOWAN: Please answer the question.

THE WITNESS: I think it would be helpful to understand that when the criteria are written, they are written in very short form and might use general descriptions.

In Executive Order 12968, which I am sure we will talk about later, there are two security clearance criteria, sexual behavior and emotional, mental, personality disorders, those are the current

criteria. And if you read the criteria that were written in 10450 many years ago, one would see some correlation between these criteria and the current criteria, but they are not written the same way.

BY MS. MCGOWAN:

Q. I want to turn your attention now to Section 9, which is on the next page, 364, which deals with the Central Index of Security Investigations.

Does the library refer to a central index when assessing an applicant's eligibility for security clearance?

A. At a certain point in the personnel security process, when it is determined that someone is being submitted with their application for security clearance processing, we do check the existing indices of federal agencies to determine if an investigation already exists that could meet our requirements or if there's any information that needs to be evaluated.

Q. And just so that I'm clear, at what precise point in the application process -- you were

talking about when someone is submitted. I just want to make sure I understand what that means. So can you describe to me when in the process that is?

A. Certainly. The -- typically, the manager will submit a personnel action recommendation through library channels, which after certain approvals comes to the personnel security office, and forwards a copy of that individual's application and declaration for federal employment, OF-306, and those documents provide the essential identifying information about the applicant's name, social security number, employment history, to know where they had worked to see who could have done a background investigation, that type of thing.

So at the point in time that the personnel security office receives that documentation that includes the individual's personal background information, at that point we determine whether a clearance is involved or what the sensitivity level of the position is, and at that time, we would contact the appropriate agency to find out if there was an existing investigation or adjudication.

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Q. At any point did the personnel security office receive the information that you just described about Ms. Schroer?
A. No.
Q. Why would that have been the case?
MS. RUSSELL: Objection to the form of the question, vague.
But if you understand the question, you can go ahead and answer.
THE WITNESS: We never received it, so -- we receive the request and paperwork when the individual is going to be offered employment.
BY MS. MCGOWAN:
Q. Are there any circumstances in which the library would check the central index, other than when a candidate had been recommended for employment?
A. At times there are reasons to check on a current employee. For instance, if they are moving from a non-sensitive position to a critical-sensitive position and a new requirement is identified, so that could be on an existing

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employee.
Q. Any other situation that would result in a checking of the index outside of screening an applicant that has been recommended for employment?
A. We also check indices when we need to obtain a clearance certification on someone who is visiting the library. If their own agency doesn't send it forward and someone is visiting and needs access, we will try to find the information this way.
Q. Could an individual, an employee of the library, come to you or come to the personnel security officer, and ask to have the central index checked with respect to a particular applicant who has not yet been offered employment with the library?
A. As a preliminary inquiry, for instance, that could be done. It is done, on occasion, when the manager also indicates that we will be receiving a personnel action recommendation. That helps them to think about time frames, how long before someone might be hired. It might also help them to know

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administratively whether they are going to need to request a waiver of pre-appointment investigation.
Q. Would an employee seeking this pre-screen from the central index be able to do so without suggesting to the personnel security officer that they were on the verge of making an employment recommendation?
A. No. I don't know if those words are always said, but it is understood that when we check an index -- and let me just also say, there is more than the central index in security investigations as referred to in this old Executive Order. It is understood that we are doing that for employment or security clearance eligibility purposes.
MS. MCGOWAN: I am going to move on to the Executive Order we've been discussing by reference. I'm at 12958.
(Wilkins Deposition Exhibit No. 3 was marked for identification.)
BY MS. MCGOWAN:
Q. And again, this was a document produced by the government in response to the discovery inquiry

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regarding the national security requirements for the position at issue here.
Are you familiar with this document?
A. Yes, I am.
Q. And, again, can you please describe for me what this document is?
A. Executive Order 12968 was issued by the White House to follow up on Executive Order 10450 to provide more up-to-date and specific information about criteria for issuing security clearances to government employees, contractors, et cetera.
Q. How is this document used by the library, in particular?
A. I believe it is incorporated by reference in our regulations. This is a foundation document for the guidelines that are issued by Executive Branch for security clearance determinations, and we adhere to those as a matter of policy.
Q. Was this document, this Executive Order, in effect at the time of the hiring of the terrorism specialist at the library?
A. Yes, it was.

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that information affects the suitability or security clearance determination.
Q. Is that information communicated in any written form?
A. She will usually give me a short memorandum.
Q. To your knowledge, has the library ever been presented with the issue of whether or not an individual undergoing a gender transition can satisfy the security eligibility requirements for a position with the library?
A. Not to my knowledge.
MS. RUSSELL: I was just going to object to the form of the question, but --
Q. Can the office of -- the personnel security office contact the health services office for, sort of, more informal consultations?
A. Yes.
Q. When would that be appropriate?
A. I might contact the health services office for preliminary guidance when I need additional background information about a medical issue so that

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I know whether to refer it to them or not.
MS. MCGOWAN: Why don't we take a break and then we will come back and do another session before we do a lunch break. Thank you.
(Recess 10:54 a.m.)
BY MS. MCGOWAN:
Q. We are back on the record from our break, and we were talking about how an individual or an applicant's gender transition would impact the decision of the library about whether or not to accept a prior security investigation or whether or not to conduct a new investigation.
So I want to just ask you, if you would, to spell out, sort of, what are the factors that would impact the length of time that it would take to conduct a supplemental investigation for an individual who informed the library that they were undergoing a gender transition?
MS. RUSSELL: Same objection, to the form of the question and calls for speculation. But you can answer if you understand.
THE WITNESS: The amount of time it would

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take, I believe, would depend on certain factors. As I think we may have already said, it would depend on the information made available to the health services office, what the health services officer had to complete as part of an evaluation, what information resulted from that. So it is speculative. We don't know.
BY MS. MCGOWAN:
Q. And would the fact that an individual is undergoing gender transition mean that it automatically would take longer, or could there be information already in the file that would allow the library to undertake the investigation -- the determination based on that information?
MS. RUSSELL: Objection to the form. But you can answer, if you understand.
THE WITNESS: I think it goes without saying that if an investigation has been conducted that provided full and complete coverage of what apparently was at that time going on and if that investigation fully explored the issue made the information available to the library, then that

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would assist in the process. I do not know, however, if that was the case.
Q. At any point, did the library attempt to ascertain whether or not Ms. Schroer's gender transition had been investigated in connection with the security clearance process?
A. No. Her investigative file was never requested.
Q. Could the library have requested that file?
MS. RUSSELL: Objection, lacks foundation, calls for speculation. You can answer, if you understand.
THE WITNESS: If the personnel security office had been asked to proceed with an evaluation and received the identifying information regarding the applicant, then the personnel security office could have contacted defense, or whoever the holder of the investigation was, for that information.
BY MS. MCGOWAN:
Q. Similarly, with respect to the central index that we were talking about with respect to the

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prior Executive Order -- and I'm sorry if I asked this question, but I don't think I asked this question, but I meant to -- did the library at any time check the index with respect to Ms. Schroer or David Schroer at the time?

A. The personnel security office did not contact any of the investigative agencies with the various investigative indices regarding the applicant.

Q. With respect to Executive Order 12968 -- I'll make sure I have it in front of me -- with respect to Section 3.1, regarding the standards, the access eligibility standards, what do you understand these access eligibility standards to mean with respect to applicants who are under the care of a mental health professional?

A. For instance, in Section 3.1(e), it indicates that no negative inference concerning the standards may be raised solely on the basis of mental health counseling.

However, mental health counseling, where relevant, may justify further inquiry to determine

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if the standards are satisfied.

Q. And when would mental health counseling be relevant with respect to security access for a library position?

A. There is an adjudicative standard called -- and I'm not sure of the order of the words -- emotional, mental, and personality disorders, and under that adjudicative criterion, mental health counseling and conditions and any of the information falling under that standard, is determined -- the relevance of that is determined under that guideline.

So there are times when the information may be considered material and other times when it is not. It's evaluated on a case-by-case basis.

Q. Who at the library makes that ultimate evaluation?

A. The personnel security office, through the director of security, makes determinations on security clearance eligibility. If there is a medical component, medical information, related to that determination, that determination would be

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informed by the health services office.

Q. With respect to the access eligibility -- and again, if the answer is the same, I still need to ask the question to make sure that the answer is the same.

A. I understand.

Q. What do you understand this document to mean with respect to applicants who are undergoing gender transition?

MS. RUSSELL: Objection to the form. But again, you can answer if you understand the question.

THE WITNESS: I would say that the answer is the same. The Executive Order does not set forth the language in the adjudicative criteria and supplemental information, but I believe that the same concept is that in and of itself, an applicant with transgender information, in and of itself it is not disqualifying, but it would evaluated.

BY MS. MCGOWAN:

Q. Looking at Section 3.3 --

A. Yes.

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Q. Actually, one more question before we move on to Section 3.3.

With respect to Plaintiff, was the fact that she was undergoing gender transition evaluated by the library?

MS. RUSSELL: Objection, vague. Also objection to the form of the question and relevance. But you can answer, if you understand the question.

THE WITNESS: I guess I would like to define the word "evaluated." I was advised that this applicant had volunteered this information and asked whether it would be considered during security clearance determination, what impact it would have on the hiring, et cetera. And I indicated that it did appear to fall under one of the security criteria and so it would have to be evaluated.

So I learned of the information, then gave preliminary guidance that we would need to look at this as part of security clearance determination, however, no further evaluation beyond that, i.e., obtaining the security file, interview, referral to health services, ever occurred. So I just want to

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make that distinction for the word "evaluated."
BY MS. MCGOWAN:
Q. And in what context were you asked to provide this guidance?
A. Are you asking me what occurred?
Q. What occurred? I don't know if it was a memo, an e-mail or a meeting.
A. I was called and asked to come to a meeting in CRS, and I was advised that the meeting was to discuss any security clearance impact for an applicant who had reported this information, and then I went to the meeting and we discussed this.
Q. Who was at that meeting?
A. At the meeting were several individuals from the Congressional Research Service. Do you want me to name them?
Q. Yes, please.
A. Charlotte Preece, the Chief of the Foreign Affairs, Defense, and Trade Division -- I might get some of the titles slightly wrong -- Kent Ronhovde, who I believe is counselor to the director of the Congressional Research Service.

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Q. I'm sorry. Just to be clear, Charlotte Preece is the chief for foreign affairs?
A. That's correct.
Q. And then Kent --
A. Ronhovde, R-o-n-h-o-v-d-e, and I believe he is counselor to the director of CRS.
Q. Anyone else at that meeting?
A. Bessie Alkiswani.
Q. I'll definitely ask you to spell that.
A. Okay. That is Alkiswani, A-l-k-i-s -- I never spell it out loud -- s-w-a-n-i, I believe. She is the head of workforce development for CRS -- again, I may be off on some of the names -- and there was another person, Cathy Dees, I'm not sure about that. The name just went out of my head and came back in, but another CRS management official.
Actually, I'd like to correct myself. I'm not sure about that name at all.
Q. Okay.
A. I have absolutely gone blank on that. It's either -- or Diane Duffy. I am totally confused on that.

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Q. Who contacted you about attending this meeting?
A. I believe it was Bessie Alkiswani.
Q. What information, if any, were you provided in advance of the meeting?
A. Basically, what I just said, that they had an applicant to a position that required a security clearance, and the applicant had volunteered transgender information. And my input was requested about how, if at all, it would impact the security clearance process.
Q. When was that meeting, if you remember?
A. I don't, exactly. It was late 2004, very late.
Q. Was a meeting like this common as part of the hiring process?
MS. RUSSELL: Objection, vague. You can go ahead and answer.
THE WITNESS: I wouldn't characterize it as common, but there are times in which information is brought to a manager and they need guidance and they will call for guidance from me.

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BY MS. MCGOWAN:
Q. And during this meeting, did anyone indicate that this applicant was the preferred applicant for the position?
MS. RUSSELL: Objection to the form of the question. But you can answer, if you understand the question.
THE WITNESS: I got the sense that yes, that was the serious candidate for the position.
BY MS. MCGOWAN:
Q. Did you indicate that -- well, let me ask, sort of, tell me what you said in the course of that meeting as far as the advice that you gave.
A. I told them that I believed, based on my reading of the adjudicative guidelines and supplemental information, that it was something that needed to be evaluated.
Q. Anything else?
A. I said that as part of the evaluation, it would need to be referred to the health services office; I told them that it was not disqualifying on its face, standing alone, but needed to be

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evaluated; that it would take some time to go through this process.

Q. Did you discuss what that process would entail at that meeting?

A. Yes. They believed that the applicant had prior service and prior security clearance status. The break in service was not known, however.

I indicated that if the investigation had been conducted some time ago, and I believe the understanding was the break in service was about two years, but that was not exactly clear, inasmuch as the applicant was reporting this as a current pending matter for him, most probably, a new investigation would be needed because the prior investigation would not reasonably have covered something that was occurring right then.

So we discussed that health services would have a role in reviewing medical information and that additional investigation might probably be needed.

Q. At any time after that meeting, did you attempt to ascertain whether or not the information

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had actually been part of Ms. Schroer's prior security investigation?

A. No. I never obtained -- I was never given a copy of the application materials or any of the paperwork that we used to go forward and conduct that type of inquiry.

Q. So now I will move onto Section 3.3(d), actually not (d) as much as it is 3.3 generally. Actually, let me focus on 3.3(d), specifically, which is on page 376.

With respect to this provision, which begins: Access eligibility shall be reapproved for individuals who were determined to be eligible based on a favorable adjudication, how -- if you can explain to me, how does this provision apply in a circumstance where an applicant has a prior security clearance that has been completed within the last five years?

A. Well, Section (d) says, it provides for -- you used the word "reciprocity" earlier. It provides, essentially, for reciprocity. If there is a prior background investigation within five years

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that was favorably adjudicated, if the break in service is not more than two years, and if there is no indication of any change in status, in other words, any new information that might warrant evaluation, and procedurally, this section of the order also asks for the individual to basically submit an updated 86 to say that nothing has changed in their background, appropriate record checks referred to there, in the last line, refers to basically an updated national agency check where the security office is calling the investigative indices to see if there's any additional information to consider.

Q. What does the library do or how does the library attempt to ascertain the existence of new information with respect to applicants who already have a security clearance?

A. When an individual applies for employment, they submit their employment application and whatever attachments they need to, and also a declaration for federal employment form, OF-306. That declaration form contains questions regarding

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criminal history, employment difficulties, federal delinquency, et cetera.

So there are times that new information is developed through that individual's 306. If you are also asking what happened in this particular case?

Q. That was my next question, yes.

A. There are other times when an individual may volunteer information, either during a selection interview, information could be obtained during a reference check or any interactions between the applicant and the library, the individual may provide information.

Q. With respect to ascertaining or attempting to ascertain new information, who at the library is charged with the responsibility of determining whether or not new information exists that may, for example, not have been voluntarily disclosed by an applicant?

A. Well, again, the 306, but that would be a voluntary disclosure. Selecting officials conduct reference checks for employment selection purposes, and then when an application is ultimately referred

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was necessary?
A. Okay. I think that is a two-part question. The service unit identifies whether or not to request a waiver based on their operational need to fill the position without undue delay. We determine whether the waiver process with our inquiries needs to be completed when an individual does not already meet requirements. So they are either lacking in the investigation, it's untimely, or there's no information that needs to be considered.
Q. And so as far as that first piece, when would the director of a service agency -- or how would the director of the service agency ascertain whether or not they need to ask for a waiver?
A. Based on their admission requirements. It's their decision.
Q. Are there any factors specified that go into that determination?
A. The service unit looks at the job that needs to be filled, and it's my understanding, typically they will look at what projects or duties

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that individual -- that incumbent must be performing to meet mission objectives. If they conclude based on the duties of that individual needs to perform that they cannot wait the four months, to six months, to eight months, to a year, for that background investigation to be completed on a pre-appointment basis, they, at that time, request us to entertain the waiver, and then they certify that although the person is being appointed without the background investigation, the retention is subject to the favorable completion of the background investigation and that in a sensitive position, that individual will not have access to classified information until such time that they are determined eligible.
Q. At any point were you asked to render an opinion about whether or not Ms. Schroer would have been eligible for a security clearance waiver?
A. I think that was part of the discussion. CRS typically requests waivers because they must fill their positions in order to do their work for the Congress in a timely manner. And in our

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discussion about what we would have to do, that yes, we would need to evaluate it from a security clearance standpoint, it would involve, at a minimum, a health services evaluation, I'm sure that in the discussion of the time frame and the fact that this was information that needed to be evaluated, I communicated that the waiver would not be the process.
Q. When you say "would not be the process"?
A. Would not be probably approved, because waivers relate to cases where there's no information that requires in-depth evaluation, additional evaluation, without benefit of investigation.
Q. And with respect to the question of whether or not the waiver would or would not have been approved, had CRS requested a waiver in Ms. Schroer's case, on the assumption that they had offered her the position, who would have been the person to make the determination of whether or not to grant the waiver?
A. My boss, the director of security.
Q. And that is Mr. Lopez?

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A. Mr. Lopez. And he would be making that decision based on a recommendation from me.
Q. At any time, did you discuss the matter of a waiver for Ms. Schroer with Mr. Lopez?
MS. RUSSELL: Objection, lacks foundation. But you can answer, if you understand.
THE WITNESS: I think I did. I report to him; he is my boss. And I believe at some point following the meeting, I let him know this had occurred and that that had been my guidance.
BY MS. MCGOWAN:
Q. What else during the course of that conversation with Mr. Lopez happened?
MS. RUSSELL: Objection to the form.
THE WITNESS: Nothing, to my recollection. He seemed to agree with me.
BY MS. MCGOWAN:
Q. At any point, did you discuss Ms. Schroer's eligibility for a security clearance waiver with the head of the library health services office?
A. Not on that day. But shortly thereafter,

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I did mention to her, in general terms, a discussion, and affirmed my understanding with her that that was a matter that I would need to refer to her, and she concurred.
Q. Did she indicate that a waiver would be inappropriate?
MS. RUSSELL: Objection, lacks foundation.
THE WITNESS: I don't have that recollection, but I do remember that she agreed that her office would have to be involved in an evaluation.
BY MS. MCGOWAN:
Q. But she did not make an evaluation about whether or not a waiver would or would not be --
A. I can't recall that.
The reason why background investigations are meant to be conducted pre-appointment and that there is a waiver process, is that they are a valuable source of information and it gives a broad view of the individual, as opposed to just a narrow view. So that is why when there is an issue that is developed during a waiver, the background

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investigation is often requested to be done pre-appointment.
Q. When there is a particular piece of new information that comes to the library's attention that leads to the suspicion that the prior investigation may not be adequate, is there a mechanism for conducting an investigation exclusively on that issue to determine whether a waiver would be appropriate?
MS. RUSSELL: Objection to the form.
THE WITNESS: There are some times when we develop information about a specific issue, either through the 306 or during a waiver inquiry, that we then extend our inquiries to determine if we can get adequate information to make a balanced determination.
If that inquiry can be done by my office, I mentioned credit check earlier, it could also be -- if we are able to conduct a court check, for instance, something like that that can be done relatively easily by my office, we are authorized to conduct inquiries, then we could do that.

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If a broader investigation regarding an individual's background is needed, then we would send it to the Office of Personnel Management for investigation.
BY MS. MCGOWAN:
Q. With respect to Section 8 of 2024-3, which discusses the break in service --
A. Yes.
Q. -- just to be clear, what constitutes a break in service?
A. Separation from the government, retirement from the government, no affiliation from the government -- it's considered break in federal service. Earlier, you asked if a federal contractor is considered to have a break. It depends on if we can get the investigation on a number of factors.
Q. Is it possible to have an active security clearance without at least affiliation with the federal government?
A. I don't believe so. No.
Q. In Section 8, this last line which says: Appointees may be required to execute an updated

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personnel security questionnaire, is that the SF-86 document we have been talking about?
A. That is correct.
Q. In Section 2024-4, the document refers to -- I'll try to find the specific case where the language appears, but we have discussed before this notion that there is a common-sense assessment of an applicant.
Can you describe for me what that means? Actually, it's here in Section 3-A: The determination shall be based on a common-sense assessment.
A. Okay. First of all, this regulation relates to employment suitability, not security clearance eligibility. When we say common-sense assessment, I believe the term "common sense" was originally in one or both of the Executive Orders and that's where it stems from. I believe that it calls for the evaluation to be reasonable, that there should be somewhat of a relationship between the concern and the individual's ability to carry out their position responsibilities and be employed

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evaluation of a background investigation. I was not asked to conduct a background investigation regarding the applicant. We did not conduct a background investigation. We did not make a determination.

BY MS. MCGOWAN:

Q. The next Section, which is 2024-5, involves contractors and volunteers. Is this regulation relevant to the hiring of an employee with the library?

A. I don't believe so.

Q. Okay. I'm not going to go through that in detail if it's not relevant to the facts here.

And then we will turn to Section 2024-6. Turning to Section 3-D -- or actually, Section 3 discusses the security clearance eligibility standards. Which of these standards does the library believe are implicated with respect to transsexual applicants for employment?

MS. RUSSELL: Objection to the form of the question; lacks foundation.

THE WITNESS: I believe that the criteria

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that would be relevant would be found under Section 3-D, item D, which is "sexual behavior," and I, which is "emotional, mental, and personality disorders."

BY MS. MCGOWAN:

Q. With respect to the application of Ms. Schroer, were there any other security clearance factors that you believed were relevant to assessing her application?

A. No.

Q. Section 3-E discusses the "whole person" concept, particularly in that first line. Can you explain what that means?

A. In making a security clearance determination, adjudicators are charged with looking at all of these issues and all aspects of a person's background. Accordingly, the background investigation, for instance, looks at employment, education, residence, law enforcement, financial; it's a broad range of issues.

In addition, when we evaluate the information, we assess it in terms of materiality,

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recency, frequency, and seriousness. So "whole person" means that it is very rare that one specific piece of information would be disqualifying on its face. There are some times in which that may be the case, but, for instance, an example -- I hope these examples are helpful -- if someone reported criminal history, we would look at when it occurred, what was the nature of the charge, was it an isolated event or part of a pattern, did the individual report the information if required, and what is apparent in the rest of that person's life.

If the information -- if it's a pending charge or the information just occurred, and it could be disqualifying on its face, but if it is considered somewhat untimely, we would look at other parts of the person's case to make an overall assessment.

Q. With respect to factors that may be disqualifying on their face, is an individual's gender transition a factor that is disqualifying on its face?

A. No.

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Q. With respect to an individual that is undergoing gender transition, would the whole person concept be applied in a different or specific way for that applicant?

MS. RUSSELL: Objection to the form.

THE WITNESS: Are you asking me what I think would have happened procedurally?

BY MS. MCGOWAN:

Q. With respect to -- I'm just trying to figure out whether or not this "whole person" concept is either discarded or refined with respect to a certain subcategory of applicants.

A. Okay. I think I understand the question.

In a case like this or in a case that required referral to the health services office, if the health services officer found that there was -- that the information was not disqualifying, in other words, that there was not a significant defect in judgement, reliability, that would affect the person holding the security clearance, if they found there was no reason to conclude that it was disqualifying, we would still need to go on and conduct the

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background investigation and consider all of these elements.

If the health services office concluded that the information made available to them through their review was disqualifying in that individual case, then there would be no reason to go on and conduct the rest of the background investigation, because on that one factor, the individual would be considered ineligible.

Q. Didn't the library conduct a whole person evaluation of Ms. Schroer?

MS. RUSSELL: Objection, lacks foundation, relevance. But you can answer, if you understand the question.

THE WITNESS: No. These procedures were not applied, because we were never requested to reach a security clearance determination on the applicant.

BY MS. MCGOWAN:

Q. In Section 3-E, there's discussion of the consideration of mitigating circumstances. I know that we will talk about this a little bit more,

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later, but generally, in the context of this section, what is meant by mitigation?

A. Under each criteria, there are factors that may be disqualifying and then factors that may be mitigating. Are you asking me to discuss that with respect to every criterion? I could give you an example, if you like.

Q. I would say, in general, what is meant by mitigating circumstances? And then later when we focus on the specifics of the subcategories that are particularly relevant here, we can talk about what mitigation means with respect to those specific conditions. So this is more, sort of, generally what is meant by mitigating circumstances?

A. Okay. As I indicated earlier, we look at materiality, recency, frequency, seriousness. It could -- typically, mitigating information might indicate that the issue is untimely if criminal conduct occurred 20 years ago, if there was an alcohol abuse problem and it's no longer ongoing, the person is rehabilitated from drug use. So timeliness is certainly a key.

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The repeated nature of conduct, if an individual said this only happened once, depending on the issue, that could be a mitigating factor.

So mitigating information is information that an individual presents to -- that they hope will reduce the relevance of the information to a current decision.

MR. MCGOWAN: And we will, as I mentioned, this afternoon, go through the -- sort of, what mitigation means in the context of specific concerns.

I'm just going to -- just so folks know from a lunch perspective, I thought we would get through this last section and whatever things, which I don't have particularly very many questions on 2024-8, and then I thought it would be a nice time to break for lunch, take a deep breath and come back this afternoon.

BY MS. MCGOWAN:

Q. In Section 4, there is a discussion of -- that the director of OSEP shall make the final determination. Who is that? What is that?

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A. That is the director of Security and Emergency Preparedness, and that is Ken Lopez. "OSEP" is just the acronym.

Q. Got it. Okay.

And to be clear, while you discussed the matter of Ms. Schroer with Mr. Lopez, did you ever make any formal recommendation to Mr. Lopez regarding Ms. Schroer's eligibility for security clearance?

MS. RUSSELL: Objection to the form.

THE WITNESS: No, I did not.

BY MS. MCGOWAN:

Q. Section 6 refers to proceedings for individuals who are not determined to meet the security clearance requirements.

Is this process available to applicants who are deemed ineligible for security clearance?

A. If the individual is processed for security clearance and is denied access, yes, that would be made available.

Q. Was Ms. Schroer given the opportunity to utilize this process with respect to the assessment

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of her security clearance eligibility?
MS. RUSSELL: Objection, lacks foundation, relevance. Also, objection to the form of the question. But you can answer it, if you can understand it.
THE WITNESS: No. No security clearance determination was requested of the applicant. No background investigation was conducted. No determination was made.
BY MS. MCGOWAN:
Q. Then, finally, with respect to 2024-8, is there anything in this regulation that informs the library's determination of whether an applicant for employment should be deemed eligible for security clearance?
A. This Library of Congress regulation, 2024-8, is focused on employees of the library who have been granted security clearance, and it apprises them of their obligations to safeguard information, execute a nondisclosure agreement, comply with security requirements.
So it does not appear to relate to

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applicants for employment who have not been processed for security clearance.
MS. MCGOWAN: I think this is a good time for a lunch break. So I have ten to 1:00. Perhaps we meet back here at a quarter till 2:00 with the thought we have five minutes to get ourselves reorganized and start an hour from now?
MS. RUSSELL: Actually, I'm going to request we meet at 2:00, because I need to go back to the office and submit something for review. Is that okay?
MS. MCGOWAN: Yes, we can start at 2:00.
(Lunch Recess 12:49 p.m. to 2:05 p.m.)
BY MS. MCGOWAN:
Q. Before we start in any new material, I just want to close the loop on some of the issues we discussed this morning.
The first issue that I wanted to make sure I had the complete picture, was with respect to the meeting that you discussed that you had with Ms. Preece and some other individuals at the library.

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So looking back on who you identified as being at that meeting, I just wanted to make sure that that was a complete lineup of who was at the meeting. So if we could just run through again who was there?
A. Charlotte Preece, chief of the foreign affairs division; Kent Ronhovde, counsel to the director; Bessie Alkiswani, who is head of workforce.
And then there was a name that I couldn't quite remember. I think it's Diane Duffy; the other name I said is someone that I work with currently in CRS administration. So maybe that popped up, but I'm still not 100 percent sure about that last name. I worked with the others more frequently.
Q. So in addition to you, there were four people at the meeting?
A. I think so.
Q. What information was given to you prior to coming to that meeting?
A. As I recall, the information I was given on the phone is that CRS had an applicant for this

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position, and the position would require a top-secret security clearance, and that the applicant had volunteered that he was about to undergo transsexual surgery. And I was asked whether that would have an impact and in what way on the security clearance process.
Q. And who was that phone conversation with?
A. Again, I believe it was from Bessie.
Q. Did you ask her for any additional information for you to have at your disposal prior to this meeting?
A. I can't recall exactly if I asked for anything additional on the phone. When we met in the meeting, I might have asked her, they may have volunteered, I don't know what form this took, but I understood that the applicant had prior military service, held a security clearance in the military and had left, and it was unclear how long, but my sense was that it was about two years. I don't know if they were estimating or if they didn't even know; I don't know.
Q. What other information about the applicant

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was provided to you at the meeting?
A. I believe they referred to the applicant by the first name of "David"; I don't think I knew a last name. I know that the applicant was the serious candidate at that point, and I believe that Charlotte said that when she was following up with him about his candidacy, he requested a luncheon meeting at which point he volunteered this information.
Q. How did you know that David was the serious candidate?
A. Orally. I mean, they told me that.
Q. Do you remember who it was that told you that?
A. I don't know who said the name, but when I was invited to a meeting, it was: We have a candidate that we are interested in for this position.
Q. Did you ask for more information about the status of the applicant's security clearance presently or at the time?
A. I think I probably did. I think I

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probably said: Do we know how long ago that was? to get a sense of when an investigation might have been done, break in service, et cetera.
Q. Were you provided with a resume or any other information to --
A. No.
Q. Was the issue of the break in service relevant to your ability to ascertain the security clearance eligibility for this person?
A. It would be, yes, because if the break in service was over two years, then automatically, a new investigation would be needed. If the investigation -- it was my understanding through the meeting that the break in service was around two years, that's what they were thinking. I reasoned that if the break in service was that long, then logically, the investigation predated that, and it would have been unlikely that an investigation of over two-plus years would have provided information to assist in evaluating what was being portrayed as a very current matter.
Q. With respect to the applicant, were you

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told that the applicant was under the care of a doctor?
A. Probably. I was told that the individual wanted to report as a female and that it was part of the doctor's care and would be undergoing surgery, so I thought there was a doctor involved.
Q. Was there any discussion about the applicant being under the care of a mental health specialist?
A. Not specifically.
Q. And based on that information -- well, actually, let me ask this: Was there any information that you informed those at that meeting that you needed in order to be able to provide them with the feedback that they were looking for?
A. One more time?
Q. Sure. Let me make sure -- I want to know at some level everything that they told you, so let's make sure that I have everything that they told you so that then we can figure out whether or not there were any things, in addition, that you needed to know.

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So you knew that the applicant had prior military service and that had a prior clearance, unclear about the break in service, that the candidate had informed Ms. Preece that she wanted to report to work as a female.
Now, were you informed that the applicant wanted to undergo or had intended to undergo surgical procedures?
A. I think so. I think surgery was mentioned.
Q. What, if anything else, were you told, sort of, as the information being offered to you for your assessment?
A. I'm thinking here for a minute. I think that about sums it up. Obviously, it was that the position required top secret, that they needed to make a hiring decision and effect the appointment very urgently.
Q. Anything else?
A. That's what I can remember right now.
Q. Was there any information offered to you about her current employment, her employment at the

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time she was applying?
A. I don't recall.
Q. So what "advice," if that is the right word, were you being asked to provide this group who asked you to meet with them?
A. Generally speaking, they wanted to know what impact that information, if any, would have on a security clearance process.
Was the information disqualifying on its face? Which I said, no.
What issues did it bring up?
Did it fall under the security clearance guidelines?
I believe I was asked if this would have been a source of leverage, and I said not necessarily, inasmuch as the individual has told you this.
I was asked to speculate whether this would have been considered in a prior background investigation, and I think I said: Probably not, because if there's been a break, and the investigation took place some time ago and this is a

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current matter, it probably would need more investigation.
I was asked how long it would take to determine whether he, the applicant, could be appointed or cleared, or the length of time that the evaluative or investigative process would take.
Q. What was your answer to that last question about how long?
A. I informed them that I saw this as an issue that would need to be referred to health services for an evaluation, first of all, that that could take weeks, but I didn't know exactly.
I told them that we, after that, might have to do a background investigation, which could take an additional lengthy time period.
CRS usually requests a waiver, and I said in this case, because there was information that really needed to be evaluated, it was unlikely that the waiver would be approved.
Q. Is there anything else you said to them as part of your feedback?
A. I think that is it.

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Q. Did you get any follow-up questions or comments back after you shared that information with the folks at the group, people at the meeting?
A. There was discussion about how long. There's always discussion about how long something will take, so a lot of discussion about that, and it would depend on how things played out.
Q. And if you can, tell me as much as you remember of that -- how the conversation about -- you know, what were people interested in finding out more with respect to the issue of how long?
A. Basically, it was how long? How long would it take to -- if they decided to go ahead, to refer it to health services? What kind of an evaluation would be needed; in other words, how long it would take? Whether we would need to do the full background investigation, how long it would take if we had to do that.
Q. Now, in the event that the health services investigation had come back with the recommendation that this was not -- or it did not present a security clearance process, would a further

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background investigation have been required at that point?
A. I don't know for sure. It's speculative. I think it might depend on whether Dr. Charles wouldn't be able to -- what kind of conclusion she made.
She could say: I have been able to fully evaluate this information and there is absolutely no relevance to a security clearance determination, or she could conclude: I've been able to obtain some information, and based on the information I have now, there is no reason not to initiate the background investigation to obtain the other pertinent elements.
So I don't, exactly, know what the outcome would have been.
Q. With respect to the first option that you laid out, in which Dr. Charles said that there was -- she was satisfied that she had enough information to ascertain that there was no relevance, if that were her determination, then what, if any, additional investigation would be

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required in that case?
A. At a minimum, we would want to go and get the prior investigative files to see what coverage had been done; when; look at the individual's experiences since the last investigation, depending on that break in service, what the activities were. After looking at that, we would probably have a better idea.
Q. And for a condition that required an assessment from Dr. Charles, that was not gender identity disorder or no gender transition, but some other mental health condition, would the process have been the same?
MS. DOUDS: Objection, speculation and vague. You can answer the question.
THE WITNESS: Basically.
BY MS. MCGOWAN:
Q. Is there a circumstance where the existence of a mental health condition can be ascertained by Dr. Charles, or whoever is in Dr. Charles' position, as having no relevance for security clearance where no further investigation

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would then be required?
MS. DOUDS: Same objection. You can answer the question.
THE WITNESS: From a practical standpoint, what is often the case is that the investigation has already been conducted and any information regarding a mental health condition or disorder is actually developed through the background investigation. And so at that time, the investigation has already been completed and we have available to us all the pertinent information that relates to all the security clearance criteria, so that assessment by Dr. Charles is not made in a vacuum in that case. That is not the same situation that we had here, where I did not have benefit of a background investigation in front of me that was current and a health evaluation followed. So I think that needs to be understood.
BY MS. MCGOWAN:
Q. But with respect to a candidate who had revealed that they were under the care of a mental health professional for a mental health concern

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other than gender-related concerns, once Dr. Charles had reached the conclusion that she had enough information to decide that there was no link or no relevance of that mental health care to security clearance eligibility, would additional investigation be required?
MS. DOUDS: Same objection. You can answer.
THE WITNESS: It would depend on what investigation that person already had.
BY MS. MCGOWAN:
Q. And in a situation where -- similar to the applicant here, where there had been a prior clearance with an interruption, where the only new information that was available to the library was the mental health care, would additional investigation have been required once the thumbs-up, so to speak, had come from Dr. Charles?
MS. DOUDS: Same objection.
THE WITNESS: And same answer. I mean, it does depend, in part, what type of investigation I'm looking at, the degree of coverage and the amount of

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confidence in Dr. Charles' evaluation. So it is possible that no further work would be needed, but it is possible, also, that we would want to do some further work.
BY MS. MCGOWAN:
Q. What would that depend on?
MS. DOUDS: Same objection.
THE WITNESS: Same answer.
BY MS. MCGOWAN:
Q. Would it depend on the condition itself that Dr. Charles had investigated?
A. I don't think so. I think it has to do with an assessment of whether she was able to obtain sufficient information. Her information is going to, most likely, come from the individual themselves, the individual's practitioner, and she might also employ a consultant who had subject matter expertise in that area.
The background investigation consists of coverage from an individual's fuller background, how their employment, references, neighbors, full range of life activities are being carried out. So it is

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possible, and I'm not saying it would have occurred in this case, I'm just saying that I can see a case where the health services evaluation said: There's no reason not to proceed, but we would still like a fuller picture of that individual's life before granting a security clearance.

Q. I know that we are talking, you know, trying to, sort of, hone in. I'm trying to, sort of, basically eliminate any variability except for the condition itself that lead Dr. Charles to make an investigation.

And so assuming that all other facts about the two applicants are the same, the same level, the same thoroughness, the same credibility of the background investigation, Candidate A has a mental health condition that is gender-identity related, and Candidate B has a mental health condition that is something else, and Dr. Charles has basically, in identical words, told you: I have received all the information I need to determine that this mental health condition does not, in fact, raise any security clearance issues, would those candidates be

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treated differently based on the fact that Candidate A has a gender issue and Candidate B has a non-gender mental health issue?

MS. DOUDS: Same objection.

THE WITNESS: And the answer is no. I think the difference is -- and I don't think I can stress this too much. In most cases, we are already in possession of a completed background investigation, with all of these other pieces of information, which serves as a framework referring a case to health services. So a background investigation may develop information through employment sources, through neighbors, through references, that should reasonably be considered through the health services evaluation, and if that background investigation is not conducted, she may be making an evaluation based on her information, but without benefit of the background investigation.

BY MS. MCGOWAN:

Q. After you provided your guidance and answered any follow-up questions, were you asked to investigate or follow up to find any additional

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information for the folks at that meeting?

A. No. I wasn't given an employment application, I wasn't given a personnel action indicating that this application was going forward, I wasn't asked to get back to them, do name checks or anything.

Q. At any point, was there a discussion of whether or not Dr. Charles should be involved in the conversation that you were having?

A. I think I let it be known that she was not there, I had not been able to contact her, and so I said: This is what I think would happen.

They didn't say let's postpone the meeting for Dr. Charles.

Q. After the meeting -- well, is there anything else that was discussed at that meeting?

A. I think that is it.

Q. After the meeting, did you discuss the meeting with Dr. Charles?

A. I ran into Dr. Charles shortly thereafter, and in general terms, I indicated that this issue had been brought to me and I gave preliminary

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information that this is something that would require evaluation from health services office, and she agreed.

Q. And when you say "this issue," how did you describe the issue to Dr. Charles?

A. An applicant who was transgender who required a security clearance for the position.

Q. Did Dr. Charles say to you what she would do if presented with a transgender applicant?

A. Not in specific terms. Only that she would do an evaluation as part of the security clearance processing.

Q. Did she describe what that evaluation would entail?

A. Not precisely, no. I think she may have said that she might have to get a consultant with subject matter expertise on that.

Q. Did she say anything to indicate how long she thought the evaluation would take?

A. Not specifically. Just said it would take some time.

Q. Did she provide any sort of clarity about

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how much "some time" would be?
A. No. I don't recall, no.
Q. Did you have any follow-up conversations with anyone from that meeting about this issue?
MS. DOUDS: Objection, vague. You can answer it.
THE WITNESS: Over time, we got the new application, the application from another applicant for the same position, so we talked about that.
BY MS. MCGOWAN:
Q. When you say "we," who is the "we"?
A. Probably Bessie. She is my main point of contact for these matters. So I knew another application was forthcoming from another individual.
Q. Is that the first time you learned -- let me strike that and try this again.
When, if at all, did you learn what happened with respect to the applicant that you had discussed at that meeting?
A. I don't know if I can answer when I learned; that's rather precise. There was so much discussion about how much time the background

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investigation and evaluation would take, that -- I sensed from the meeting comments, that they might look at another candidate instead. So when I left the meeting, I knew that that was a possibility, and I don't know when later, precisely, I learned that they had chosen someone else.
Q. Did you speak with anyone from that meeting, whether Charlotte or Mr. Ronhovde or Bessie or this fourth person who may or may not be Diane Duffy, about their decision not to proceed with the applicant that you had discussed at the meeting?
A. I can't remember. I mean, I don't remember calling them up and asking: Hey, what happened to the other applicant?
Again, when I left the meeting, I thought they were going to consider the amount of time that it would take in my process; it obviously was causing them some operational concern. I don't clearly recall any follow up.
Q. I want to turn now to a document that the government provided in discovery, which is number 5.
(Wilkins Deposition Exhibit No. 5

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was marked for identification.)
BY MS. MCGOWAN:
Q. Are you familiar with this document?
A. Somewhat.
Q. What is it?
A. This looks to be DCID 114, which are eligibility requirements for sensitive compartmented information.
MS. MCGOWAN: Here, on the first page, a number of some annexes that are listed, A through E, those annexes were not produced as annexes in discovery. But I believe that the information contained in Annex C, is actually contained in another document, so I just wanted to make sure that we are talking about the same document.
So we will do that first here, which we can mark as 6, which are the excerpts from the "Adjudicated Desk Reference" that the government produced.
(Wilkins Deposition Exhibit No. 6
Was marked for identification.)
BY MS. MCGOWAN:

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Q. Sticking with document number 5, for the moment, which is the Personnel Security Standards, obviously this is the introductory portion, but not the annexes, but what is the purpose of this document?
A. DCID 114, and I'm reading here, I don't work with this on a day-to-day basis, because we do not grant access to sensitive compartmented information, CIA is the cognizant clearing authority.
DCID 114 would be the standards used by the CIA and other special security officers across government who have authority to grant access to sensitive compartmented information. There are going to be some areas in the DCID that are very much like the security clearance criteria in processing for top secret, but they do relate to the SCI adjudication, more precisely, so there could be some differences as well.
Q. And you said this document is used by the CIA and other agencies. Do you know what other agencies use this as their document?

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that, in fact, contains information --
A. I have to get them. I don't refer to these.
Q. -- if that contains information that is, in fact, material upon which the library relies, I would ask to have that information produced. To the extent the annexes are not part of your decision-making process, then it's obviously not relevant here, so we don't need to belabor that point.
I'm going to turn now to what we have marked as Document 6, which is the "Adjudicative Desk Reference." Also, I would like to show you Defendant's answers in this case, which we can mark as Exhibit 7.
(Wilkins Deposition Exhibit No. 7 was marked for identification.)
BY MS. MCGOWAN:
Q. In Plaintiff's document requests to the government, we asked for all documents that Defendant contended supported the defenses asserted in Defendant's answer. And Document 7 is the answer

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in this case, and Page 1 and 2 are where the defenses are listed. So, sort of, make sure that you are familiar with that.
And the third defense, specifically, deals with the national security requirements of the specialist in terrorism and international crime position.
Did you ever make a determination that Plaintiff could not satisfy the national security requirements of the position?
A. No, we never made a determination.
Q. Were you ever asked to determine whether or not Plaintiff could satisfy the requirements of the position?
A. No. I advised them that it was not disqualifying on its face, and the conversation ensued about how long it would take to conduct an evaluation and an investigation in order to reach a determination, but I was never asked to take those additional steps.
Q. Turning back to the ADR, the "Adjudicative Desk Reference," which is Bates stamped as page 445

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to 502, this set of documents -- and we have tried to keep them stapled into the sections that they were -- as they were given to us. These were documents produced in response to that request that I just mentioned, asking for all documents supporting the defenses listed in the answer.
Are you familiar with this document?
A. Yes, I am.
Q. What is it?
A. The Adjudicative Desk Reference is a resource document for personnel security specialists. It, I believe, was compiled -- well, it says right here, the Personnel Security Committee of the U.S. Government Security Policy Board -- which I don't believe exists any longer, but it did at the time that this was promulgated -- it's a tool to help practitioners carry out the processes and determinations related to security clearance adjudication.
The first section there, Adjudicative Guidelines, are -- starting with Guideline A, Allegiance, those are the uniform security clearance

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guidelines that have been established for government employees and consultants, et cetera, who need access to classified national security information. It gives a little overview of the adjudicative process there, also, and basically, it's a resource document for people to have current standards to look at.
The other main part of the Adjudicative Desk Reference, you see there is supplemental information, and that is additional background information relevant to each security clearance criteria that provides the reader with some basic information about what cases may have been relevant to those, what terms mean, what adjudicators should consider, and that's it.
Q. How is this document used by the library during the hiring process?
A. Okay. The Library of Congress regulations already contain the uniform adjudicative guidelines, but they are very brief. These adjudicative guidelines go into a little bit more detail about why a certain topic could pose a security clearance

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concern, apprises the adjudicator of conditions that could raise a security concern under that guideline and could be disqualifying; it also gives, as examples, conditions that could mitigate that security concern.

And so in adjudicating our cases, we have reviewed this information, we are familiar with this information, and when topics come up that we want to deepen our understanding of, or update our understanding of, we will go back to the source document to make sure we understand.

Q. What entity issues this document?

A. According to the first page, the group that promulgated the document was the Personnel Security Committee of the U.S. Government Security Policy Board. That, as I recall, was an organization that worked out of -- I want to say either the Office of Management and Budget, or the Special Assistant to the President; National Security Council, possibly. I cannot remember exactly what it was. This was issued in 1998. Organizationally, some of that has changed in

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government, but as far as I'm aware, it is still pretty current guidance.

Q. And do you know what the entity is now that is responsible for maintaining this set of guidelines?

A. Well, I could give a couple of guesses. I don't know precisely, but I believe the Office of Management and Budget has been given oversight responsibility for the personnel security program. It's carried out, in large part, by the Office of Personnel Management, which sets policy and runs investigations.

The Defense Security Service is a large part of the personnel security community and I believe a precursor to the Personnel Security Committee was the Personnel Security Research Committee and they originally were a defense entity.

So I'm sorry about giving so many, but together, that -- those are the main leaders in the personnel security community and guidelines are set forth from those entities, at present.

Q. Is there an entity or an individual to

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whom someone can turn for guidance, in addition to these guidelines?

A. In my field, personnel security practitioners often call the Office of Personnel Management for guidance, Defense Security Service. There's a network of people on a contact list that we can call.

Q. You said OPM and Defense Security Service. Who else would the library turn to if they had a question about the guidance?

A. On occasion, we will seek guidance from counterparts at different agencies, State Department, FBI, CIA.

Q. Do those entities work from the same document that the library does?

A. I believe so. Agencies may incorporate this guidance in different ways in their own regulations, but I believe that the language is pretty common.

Q. We talked about this before, earlier, with respect to the manual. Is there an -- either, statutory or regulatory requirement that the library

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adhere to these guidelines?

MS. RUSSELL: Objection to the form of the question.

THE WITNESS: The regulation indicates that we will follow federal guidance in the security clearance program as a matter of policy.

BY MS. MCGOWAN:

Q. Turn to -- actually, before we go into this document, with respect to -- on page 448, Guidelines A through M are listed, and I only want to spend time going through the guidelines that were deemed relevant with respect to the assessment of Ms. Schroer's ability to satisfy the security clearance requirements. So can you clarify for me which of these guidelines did the library take into account when addressing that question?

MS. RUSSELL: Objection to the form of the question, lacks foundation. But you can go ahead and answer.

THE WITNESS: The two guidelines that seemed relevant to this case would be Guideline D, sexual behavior; and Guideline I, emotional, mental,

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and personality disorders.
Q. Any other guideline?
A. Those would be the two guidelines.
Q. How did you determine that the guideline regarding sexual behavior was relevant with respect to the applicant?
A. I read the guideline and it indicates that sexual behavior is a security concern if it indicates a personality or emotional disorder. There is a footnote there that indicates that the guideline of emotional, mental, or personality disorders, should also be reviewed as appropriate, and this is on page 452. So I then went to the guideline on emotional, mental, and personality disorders, which is on page 457, and that guideline articulates why that information may pose a security concern and also indicates that there could be the need to involve a mental health professional.
Q. What led you to consider Guideline D in this case?
A. When you read the underlying supplemental information that relates to sexual behavior, it

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provides information that defines terms and discusses different areas that may fall under that guideline, and transgender information was covered under that supplemental information.
Q. Since I don't have the entire document together, I don't know exactly how it's laid out. When you were presented with the information that the library was considering a transgender applicant and you were trying to ascertain what guidance existed, how did you go about doing that? I'll give you an example of what I mean.
A. Please.
Q. Here's this book, and obviously, we only have excerpts. Was there an index in the back where you looked up the term "transgender" and it directed you to certain pages, or did you, sort of, read through and decide what sections you were going to read more closely?
A. Okay. I can tell you what I did. The Adjudicators Desk Reference is actually on my desktop, and when this was presented to me as a transgender issue, I wanted additional information

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to help me understand it, I clicked on the adjudicative guidelines. I am aware that "sexual behavior" might be the term written in the adjudicative guideline, but when you read supplemental information, it's broader than the word "behavior" might indicate.
It's on my desktop, and one can click on "Adjudicative Guidelines" and the issue, and then if you want the supplemental information relating to that issue, you click. And I'm trying to remember this in my mind's eye. When you click on supplemental information relating to sexual behavior, for instance, one can scroll down and read every page, but on the left column of my PC, when it comes up, the text is on the right, and on the left column is basically an index or a table of contents under that supplemental discussion. And if you scroll down, there was a section for "transgender," and I clicked on that, and it took me to the pertinent discussion. When you print it out, however, I think you get the whole thing.
Q. When did you look at the ADR? I know you

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said you went looking in hopes of getting more information. At what point did you consult the ADR?
A. As I recall, I did it after receiving a phone call asking me to come to this meeting that was scheduled not too long after that, and I knew that I did not have personal experience in this kind of case and I didn't know a lot about it. So in order to prepare myself for the meeting, I went to my available resource and clicked for some additional background information.
Q. And was this the first time that you had ever researched or read the provisions in the ADR relating to transsexuality?
A. I think I had -- I have a recollection of basically working through the whole ADR on all the issues. When I obtained it in the first place, and other cases that may have involved different issues, I will go back to the ADR and read through and scroll. So I think I generally knew it was in that area, but I had not researched -- and I'm putting that in quotes -- that particular topic in the ADR before.

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Q. So when you turned to the ADR to investigate about transsexuality, did you know, going in, that the sexual behavior provision was where you would find that information?
MS. RUSSELL: Object to the form of the question.
THE WITNESS: I had good reason to believe it would be in that section.
BY MS. MCGOWAN:
Q. Was it based on your prior experience or your prior review? How did you know to look in that section?
A. Again, based on my prior experience and looking at the ADR over the years.
Q. Let's look at Guideline D, which is the guideline regarding sexual behavior. And we can also have at our disposal pages 474 through 503, which I believe is the supplemental information you were referring to as far as the sexual behavior guideline.
Looking first at the guideline, what did you understand this guideline -- standing alone,

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before referring to the supplemental materials, did you understand this guideline to mean with respect to the relevance of an individual's transsexuality for their security clearance eligibility?
MS. RUSSELL: Objection to the form.
THE WITNESS: Could you ask that again?
BY MS. MCGOWAN:
Q. Looking at the Guideline D, and I want to ask about the supplemental materials, as well, but sticking first with the guideline itself, what did you understand this guideline to provide with respect to how an individual's transsexuality would impact their ability to satisfy the security clearance process?
MS. RUSSELL: Same objection. But you can go ahead and answer.
THE WITNESS: The term "transsexual" or "transgender" is not used in this guideline. Instead, the guideline refers more broadly to behavior that would be a concern if it involved certain things. The term indicates a personality or emotional disorder is one that, based on my past

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experience, can involve a wide range of information and that is why I went on to click on supplemental information to find out if it was addressed.
BY MS. MCGOWAN:
Q. Looking at the disqualifying factors that are laid out here in this guideline, did you believe that an individual who is transsexual would have these disqualifying -- would be disqualified on the basis of these factors, A through D?
MS. RUSSELL: Objection to the form of the question.
THE WITNESS: I would like to point out that the way it's phrased is, "conditions that could raise a security concern and may be disqualifying include." So even those conditions listed here, precisely, if a condition is listed there, one does not immediately make an adverse determination. It's an evaluative process. So no, I did not conclude that transgender would be disqualifying.
BY MS. MCGOWAN:
Q. In your view, is transsexuality a sexual behavior of a criminal nature?

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MS. RUSSELL: Objection, lacks foundation, relevance.
THE WITNESS: Not to my knowledge.
BY MS. MCGOWAN:
Q. Is transsexuality a compulsive or addictive sexual behavior or symptomatic of a personality disorder? And you can break those into two pieces, if you want. Is it a compulsive or addictive behavior?
MS. RUSSELL: Same objection to both pieces, the question that you have asked.
THE WITNESS: Based on the information in the supplemental information which I read, it seemed that it could be symptomatic of a personality disorder.
BY MS. MCGOWAN:
Q. Is transsexuality, in your view, behavior that causes an individual to be vulnerable to coercion?
MS. RUSSELL: Pretty much a standing objection, the two objections are standing, regarding this line of questioning.

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THE WITNESS: That would have to be determined on a case-by-case basis.
BY MS. MCGOWAN:
Q. In your view, is transsexuality behavior that causes an individual to be exploited?
A. Same answer. All of that would have to be considered on a case-by-case basis.
Q. And then with respect to the last part of C, with respect to an individual being under duress, do I understand your answer to be --
A. Individual case by case.
Q. -- a case by case evaluation.
In your view, is transsexuality -- is Factor D implicated by an individual's transsexualism?
A. I couldn't make a judgement on that.
Q. Turning now specifically to the case of the applicant that you were presented with, did you believe that any of these factors were implicated by her case?
MS. RUSSELL: Objection, lacks foundation.
THE WITNESS: It seemed through my reading

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of the information, that it would have to be evaluated to determine whether the case involved a personality disorder.
BY MS. MCGOWAN:
Q. And of these four factors, A, B, C, and D, other than the personality disorder concern, were there any other concerns that you felt needed further investigation based on what you knew about the applicant?
MS. RUSSELL: Objection to the form of the question, lacks foundation.
THE WITNESS: Whether or not these different factors were relevant in this case would have been part of the health services evaluation, but based on the information available to me, it seemed that symptomatic of a personality disorder, certainly needed to be evaluated. Whether any of the other factors would have become apparent, I can't say.
Q. With respect to Factor C, I want to make sure that I am remembering correctly. Did you discuss the coercion? I believe you talked about it

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in terms of using the term "leverage." What did you tell the individuals at the meeting as far as your assessment of this factor, in light of the specific facts regarding Ms. Schroer?
A. It reads: Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress. Typically, one thinks could the individual be blackmailed if this information became known?
When an individual reports information, which was the case here, when the applicant volunteered that information to the selecting official, logically, if one is sharing information, then that tends to offset a concern that the individual could then be blackmailed against that. In a security clearance context, one thinks what if an intelligence officer wanted to blackmail that person and wanted classified information?
So he had told a potential employer, so blackmail in that context, did not seem a high-threat. That being said, sometimes individuals do share information with certain people, but they

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would prefer, perhaps, that certain family members not be aware or whatever the case is; it just depends on the unique circumstances. So I did tell CRS that the threat of blackmail or leverage did not seem to apply in this case.
Q. Turning from Guideline D to what I believe are the guidance documents, which are 474 through 488, which is information about specific sexual practices. Is there -- this was information produced by the government in response to this request, and the place where I think this document begins to have relevance to the issue we are faced with here, at the bottom of 477, with respect to gender identity or role transpositions, is this the section that -- one of the sections that you looked at in assessing the relevance of Plaintiff's gender transition with respect to her security clearance vulnerability?
A. Yes, it is.
Q. What did you understand this section or this information to mean? And to the extent you can, point out, sort of, what sections that you are

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relying on so that we cannot focus on things that were not relevant to your consideration.
A. Okay. I'm looking for the part that I remember reviewing. This section talks about a variety of different matters. But then on page 484, it begins a discussion of transsexualism, and I read that portion prior to going to the meeting, and what made me think that it was an area to be evaluated under the security clearance criteria, would essentially start with paragraph three under that section, which reads: Transsexuals often suffer from moderate to severe personality disturbance.
And then it goes on to say: Any associated personality or adjustment problems would be a security concern.
Q. To the extent that this document says that transsexuals often suffer from moderate to severe personality disturbance, does not suggest that all transsexuals suffer from these conditions; is that right?
A. That's correct.
Q. And so how would you go about ascertaining

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whether or not a transsexual applicant is someone who, either, did or did not have these -- the associated personality disturbance that this document is referring to?
A. That would be a reason to refer the matter to the health services office for evaluation.
Q. And just so I am clear, you are not familiar with what health services would actually do with respect to investigating this matter?
A. No. I know that they can review reports of investigation, but one was not -- we didn't have access to one in this case. They can talk to the individual involved, they can contact the other practitioner, or they could get a consultant with specific subject matter expertise. Beyond that, I don't know what they would do.
Q. Is there any other paragraph or provision in this specific section, from 484 to the top line of 485, that was relevant to your assessment of a transsexual's ability to satisfy the security clearance requirement?
MS. RUSSELL: Objection, lacks foundation.

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Objection to the form of the question.
THE WITNESS: The section does go on to say that: In extreme cases, transsexualism may result in a request for sex-change operation, which is usually granted only after the person has spent at least two years living as a member of the preferred sex.
So that, to me, said, as I believe that an operation was relevant to this case, that this was a case, according to these words, "in extreme cases," and that warranted evaluation.
BY MS. MCGOWAN:
Q. Anything else that you thought was particularly relevant to your assessment?
MS. RUSSELL: Same objections, to the form of the question and lacks foundation.
THE WITNESS: I think that would be it.
BY MS. MCGOWAN:
Q. There is -- there are some additional sections here, from 485 through 488, did you rely on information in any of those sections in developing your assessment of Ms. Schroer's ability to satisfy

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the security clearance requirements of the position?
MS. RUSSELL: Same objection.
THE WITNESS: I think I also considered that inasmuch as the guidance does address transsexuals in the military, that there are those in the military who are transsexuals, some have successful military careers, et cetera, that this would also lead to a conclusion that on its face, it was not disqualifying, that it would have to be evaluated on a case-by-case basis.
BY MS. MCGOWAN:
Q. Any other provision of this section in the reference materials?
A. I think that is it.
Q. Then move to section -- pages 489 through 503 were also produced -- correct me if I'm wrong, but also appear to be additional guidance with respect to sexual behavior as a security clearance issue. Is there any segment or section of this set of the guidance that you relied upon in making your evaluation of Plaintiff's ability to satisfy the security clearance requirements?

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A. Not in this section; 489 through 503, no.
Q. Okay. Is there anything else with respect to Guideline D, regarding sexual behavior as a security clearance concern, that you relied upon in providing your assessment of Ms. Schroer's ability to satisfy the security clearance requirements?
MS. RUSSELL: Objection to the form.
THE WITNESS: The way your question is phrased relates to -- seems to indicate that a decision about security clearance eligibility was made, and it never was. The discussion was about what process would have to be followed in order to consider her for a security clearance.
BY MS. MCGOWAN:
Q. With respect to developing your guidance, or I think the best way to describe it -- well, in formulating your opinion that you were asked to share with the CRS hiring committee about the security clearance concerns that might be presented by a transsexual applicant, in this case, Ms. Schroer, you have identified two guidelines that you looked at in developing your thoughts on that

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subject. We have just gone through Guideline D and some of the -- and the supplemental materials that are providing additional guidance on Guideline D.
Is there any other document or materials upon which you relied when making your assessment about the applicability of Guideline D to the case of a transsexual applicant?
MS. RUSSELL: Objection to the form of the question, lacks foundation, and it assumes facts not in evidence. But you can answer, if you understand the question.
THE WITNESS: As I think I understand the question, those are the documents I relied on in letting them know that it was a matter that we would evaluate during a security clearance process.
BY MS. MCGOWAN:
Q. And now I'll turn to the other guideline, Guideline I. Looking first at the guideline, itself.
A. Yes.
Q. I know we just talked about the fact that Guideline D makes reference to Guideline I as

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another set of guidelines that should be taken into consideration with respect to what guideline you described as sexual behavior.
Other than the fact that Plaintiff was undergoing a gender transition, did you have any reason to believe that there were any other emotional, mental, or personality disorders that would need investigation as part of a security clearance process for her?
MS. RUSSELL: Objection to the form of the question.
THE WITNESS: No.
BY MS. MCGOWAN:
Q. What do you understand the guideline, itself, to say with respect to how transsexualism should be assessed from a security clearance perspective?
MS. RUSSELL: Objection, lacks foundation and to the form of the question.
THE WITNESS: Can you ask that again?
BY MS. MCGOWAN:
Q. Sure. With respect to transsexuality,

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what guidance does Guideline I provide, about how to assess the relevance of that condition to one's ability to satisfy the requirements for a security clearance?
MS. RUSSELL: Same objection.
THE WITNESS: Guideline I does not specifically speak to transsexualism, rather, it's more broadly emotional, mental, and personality disorders. It indicates how, in some circumstances, an emotional, mental, or personality disorder could affect a security clearance eligibility, and it indicates that a mental health professional should be involved in evaluating that information. It provides some conditions that could raise a security concern and could be disqualifying, also some mitigating factors.
It does not specifically address transsexualism, per se, but more a personality disorder, which the supplemental information under the other adjudicative guideline suggested could be relevant to a transgender individual.
BY MS. MCGOWAN:

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Q. With respect to Guideline I, it says that: A credentialed mental health professional should be utilized in evaluating potentially disqualifying and mitigating information.

How does the library -- or who does the library use to evaluate information that falls within this guideline with respect to security clearance?

A. We would refer information to the health services officer. There could be cases in which she would need to obtain the services of a subject matter expert, but she would be considered our mental health professional.

Q. Other than the statement in the guidelines referring to the fact that transsexuals often suffer from moderate to severe personality disturbance, do you have any reason to believe that transsexuals are more likely than other individuals to have emotional, mental, or personality disorders?

MS. RUSSELL: Objection to the form of the question, calls for an opinion.

THE WITNESS: I relied on the statement in

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the supplemental information that indicated that individuals with transsexual issues could suffer from disorders.

BY MS. MCGOWAN:

Q. And so was that the sole reason why you felt as though Guideline I was presented as a security clearance issue with respect to a transsexual applicant?

A. Based on the information I had at that time, yes.

Q. And have you, since, learned any additional information that leads you to believe that -- independent of the guidance, that Guideline I is of particular relevance with respect to transsexual applicants?

MS. RUSSELL: Objection to the form of the question.

THE WITNESS: I have no additional information.

BY MS. MCGOWAN:

Q. Looking at the guidance, which is on page 461 through 473, at page 463, in the third paragraph

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down, the guidelines talk about how adjudicators should not try to be amateur psychologists, but should use professional diagnoses and obtain professional evaluations to assess the relevance of emotional and personality disorders.

First of all, do you agree that that is the guidance given to adjudicators?

A. Yes.

Q. And how does the library attempt to satisfy this guidance?

A. By referring matters that fall into this arena to the health services office.

Q. At any time do you directly contact treating therapists of an applicant for security clearance to make your own determination by talking with the therapist about the relevance of the issue?

A. No. We do that through the health services office, if there was a need to contact a practitioner directly. I can tell you, however, that during background investigations, investigators sometimes do contact the medical practitioner.

Q. And who conducts those background

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investigations for the library?

A. The Office of Personal Management.

Q. And is there any other provision in this guideline upon which you relied to inform your assessment of the relevance of the applicant's gender transition with respect to its security clearance implications?

A. I don't believe so.

Q. The sections of the ADR that I mentioned that we were provided, are there any other provisions of this document upon which you relied when researching the issue of transsexuality and its relevance to security clearance?

A. No. These were the portions.

Q. And as a whole, looking at all of these provisions together, what was your assessment of how an individual's gender transition would impact their ability to satisfy security clearance requirements for the position of terrorism specialist at the library?

MS. RUSSELL: Objection, lacks foundation, and to the form of the question.

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during your tenure as the personnel security officer, ever recommended for employment a transsexual applicant?
MS. RUSSELL: Objection, lacks foundation.
THE WITNESS: Not to my knowledge.
BY MS. MCGOWAN:
Q. Has CRS ever had an employee who was presently working at the library, who then revealed that they were undergoing the process of gender transition, and thus, required a security clearance assessment?
Let me take that second part out of the question. Has CRS -- during your time in the security personnel -- personnel security office -- excuse me -- has there ever been a current employee of the Library of Congress who has indicated to the relevant people that they are in the process of undergoing a gender transition?
A. That, I wouldn't know.
Q. If there had been, would you, as the personnel security officer, have been informed of that, due to security clearance concerns?

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MS. RUSSELL: Objection, calls for speculation.
THE WITNESS: I'm hoping to answer your question, but I don't know that I will. I have never otherwise been contacted about a transgender matter. If someone was undergoing a security clearance and the manager identified whatever information they presented as relevant to any of the criteria, I might be contacted.
BY MS. MCGOWAN:
Q. Okay.
A. That's it.
Q. And with respect to -- we have been talking about this issue of new information coming up or coming to the attention of the library that may or may not require additional -- either additional investigation or more thorough investigation.
Who is the person who determines whether or not new information is of the type that warrants additional investigation?
A. That would be me; my staff.

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Q. And with respect to you and your staff, are there decisions that go through your staff that ultimately do not require your input, or are all decisions at the end of the day ultimately from you?
A. I'm responsible for the program, reporting to the director of security. That being said, the way you phrased your question, my staff do things all day long that they don't bring every matter to my attention.
Q. With respect to whether or not new information does or does not require a new or additional security clearance investigation, who in your office -- and "who" can be plural -- is the person who would make that determination that additional investigation is required?
A. It is normally me. If my staff become aware of new information, and they have a wealth of experience themselves, so they are able to apply the adjudicative standards and knowing: Does this fall under this guideline or that guideline? they typically would bring the matter to me, or if I'm not there, whoever is acting, and we would consider

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what steps we had to take.
Q. And then turning to -- moving beyond the assessment of applicants to now looking at the process of getting the chosen applicant through the security clearance process such that they can fully perform their duties as an employee of the library, just to make sure that I know who is doing what, what agency or individuals, to the extent they are not affiliated with an agency, do the background investigations for the library?
MS. RUSSELL: Objection, asked and answered.
THE WITNESS: If we are initiating a new background investigation, we would send the investigative paperwork to the Office of Personnel Management.
BY MS. MCGOWAN:
Q. And to the extent that it's not a new investigation, what kind of investigation would it be?
A. If we know that another federal agency has completed an investigation that meets timeliness,

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scope, and break-in-service requirements, and there is no new information to be evaluated, we would request a copy of that investigation from the relevant investigative agency. That could be OPM, that could be DSS, that could be State Department, CIA, FBI; there are others, but those are the main.

Q. And to the extent that the investigation file is not deemed to be as complete or as thorough as the library would prefer with respect to the investigation, is OPM the entity to which the library turns to do whatever additional investigation the library wants to see done?

A. In many, many cases that is correct. There may be some very limited inquiries that might be needed. If a prior investigation, for instance -- I won't use the credit check example again. If a prior investigative agency did not verify an individual's degree claim, we can do that easily ourselves, as an example.

If a prior investigation showed an arrest record, but no disposition, we likely will be able to obtain that ourselves through a court check.

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Q. With respect to investigations that OPM is doing on behalf of the library, does the library have any influence over how that investigation is conducted?

A. In what way? What type?

Q. Is the library able to point -- direct OPM to pay special attention, for example, to the financial issues?

A. Okay. In a way. The library chooses the level of investigation and we know what coverage is conducted under that level. If there are matters of particular concern, we could point them out. That being said, they're generally going to be evident on the security form, but certainly we can attach a cover letter that requests certain actions. We don't usually do that.

Q. And then once that investigation is complete, who ultimately adjudicates whether an applicant for employment at the library, a new library employee, will be granted the security clearance?

A. When we use the word "security clearance," we are talking only about those positions that are designated national security. As indicated in the regulations cited earlier, I make the determination in cases involving no unresolved actionable information and then I present to Ken Lopez, the director of security, cases that involve any degree of analysis and weighing of the adjudicative factors.

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Q. In your view, if you were satisfied that a transgender applicant had satisfied all the security clearance requirements, would you have felt it necessary to pass that recommendation on to Mr. Lopez, or is that the kind of determination you could make on your own?

MS. RUSSELL: Calls for speculation and an opinion. But you can answer, if you understand.

THE WITNESS: That is the case that I would have presented to Mr. Lopez. Any time the adjudicative criteria indicates -- let me rephrase it. Any time an investigation or information we have available to us indicates that there is information falling under an adjudicative criteria

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that may be recent, timely, of the moment, where I need to go and get an advisory opinion from health services, I regularly present that type of case for any adjudicative criteria.

BY MS. MCGOWAN:

Q. Okay. I was going to say, you know, with respect to other mental health concerns that needed further investigation, would those be treated any differently than cases involving adjudication of gender-identity-related mental health conditions with respect to who would ultimately be asked to make the final determination?

MS. RUSSELL: Objection, calls for speculation; also relevance. You can still answer, if you understand.

THE WITNESS: As we said earlier, there is quite a wide range of information that can be developed regarding mental health issues. If someone reports marital counseling to me and that individual is subject of a security clearance determination, I may not present that to Mr. Lopez; it is of a nature that is considered relatively

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there and, I believe, can make a final determination. The regulation would be your best source.

Q. The process that the library utilizes to assess and to adjudicate -- to both investigate and adjudicate an individual's eligibility for security clearances, is that process standard throughout the various agencies of the federal government that deal with classified information?

MS. RUSSELL: Objection, lacks foundation.

THE WITNESS: I believe it is somewhat standard, yes. Individual agencies may have their own way of administering the procedures or different offices involved, but the basic policies and operations and processes are quite similar from one agency to another.

BY MS. MCGOWAN:

Q. I want to ask a few questions about the issue of security clearance waivers. I know that we discussed this somewhat earlier.

Was there any work done by the terrorism specialist, or that was part of the job

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responsibilities of the terrorism specialist, that could be performed without an active security clearance?

MS. RUSSELL: Objection, lacks foundation.

THE WITNESS: That's probably a question for CRS, but I would say, most probably it's rare that 40 hours of the week would be involved in classified information.

BY MS. MCGOWAN:

Q. With respect to applicants who are -- well, let's say this. What is the process for determining whether an applicant requires a psychiatric fitness-for-duty evaluation?

A. I don't use that term. When we in our program feel that we need advice, a review by our health services office, we typically describe that as referring the pertinent information to them for their evaluation of its relevance to suitability or security clearance adjudicative criteria.

Q. When an employee has not had a prior security clearance investigation of any kind, how would the process proceed to determine whether or

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not the individual could be granted a waiver to begin work in a classified position prior to completion of a full investigation?

A. It's the same process we discussed this morning. If management submits an individual for appointment to, say, a critical-sensitive top-secret position, we would receive the application, the OF-306, the personnel action recommendation that accompanies that, a request for clearance; we, in personnel security, would initiate name checks with pertinent federal agencies, that would be the investigative indices, any other agency where the person may have worked or sometimes -- this is a case where someone hasn't had a background investigation, but if they are a federal employee, they may not have had the right level, but we will still call the losing security office, we verify the degree, the person at some point is given a conditional offer, we interview the person, we give them the security forms for completion, we get a release for the credit check, we conduct the credit check, and we interview the losing supervisor based

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on the information we have gathered to that point, we determine if we need to conduct any further inquiries and we make, ultimately, a recommendation to the director of security whether the information we have gathered during the preliminary process precludes the waiver approval or not.

Q. How long with respect to an applicant that does not have any prior security clearance filed or does not have a security clearance comparable to the one required for the position, how long does that pre-screening process take in order to determine whether or not they are a suitable candidate for a waiver?

MS. RUSSELL: Objection, asked and answered. But you can answer.

THE WITNESS: It depends on the responsiveness of the other federal agencies and the applicant's availability and if any information is developed that requires further evaluation. But we like to complete them within a week or two.

BY MS. MCGOWAN:

Q. If your office were to determine that an

Page _____ of _____

ERRATA SHEET FOR THE TRANSCRIPT OF:

Notice Date: 10/04/2006
Case Name: Schoer, Diane vs. James H. Billington
Case Number: 05-1090(JR)
Dep. Date: 09/20/2006
Deponent: Cynthia Wilkins
Place: Washington DC
Ref. No.: 8869-1

CORRECTIONS:

Page	Line	Now Reads	Should Read	Reasons Therefore
22	12	... libraries.	Library's	misinterpreted by stenographer
32	17	... 12958.	12968	Witness understood the reference to be to EO 12968 and responded accordingly
~~32~~	~~17~~	~~... 12958~~	~~12968~~	
37	8	to -- that is implicit	to make that decision also - that is implicit	there seems to have been a gap in transcription
98	16	... admission ...	... mission ...	misinterpreted by stenographer
104	16	... investigation on ...	... investigation and on ...	misinterpreted by stenographer
108	9	"dash 4."	"dash 6."	from context, the correct reference is -6
241	5	public trust in national	public trust and in national	misinterpreted by Stenographer

District of Columbia

Subscribed and sworn to before me this 24th day of October 2006

Denise L. McCray, Notary Public

My Commission Expires Oct. 31, 2006.

Denise L. McCray

Cynthia D. Wilkins

Signature of Deponent

10/24/06

Date of Signature