McGowan Declaration – Exhibit D

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

----------X

DIANE J. SCHROER, :

Plaintiff, :

v. : No. 05-CV-01090 (JR)

JAMES H. BILLINGTON, :

Defendant. :

----------X

Washington, D.C.

Friday, March 14, 2008

Deposition of FRANCIS T. MIKO, a witness herein, called for examination by counsel for Plaintiff in the above-entitled matter, pursuant to notice, the witness being duly sworn by DENNIS A. DINKEL, a Notary Public in and for the District of Columbia, taken at the offices of WilmerHale, LLP, 1825 Pennsylvania Avenue, N.W., Washington, D.C. at 9:28 a.m., Friday, March 14, 2008, and the proceedings being taken down by Stenotype by DENNIS A. DINKEL, FAPR, CRR, and transcribed under his direction.

Page 26

you were never formally the selecting official.
Were there any times in which you acted as sort of the informal or a de facto selecting official?
MS. RUSSELL: Objection to the form of the question. You can go ahead and answer.
THE WITNESS: I guess what I meant was the selecting official in every case I can remember was the head of the division. The person whose section someone was being hired for would typically -- their judgment would have some -- you know -- greater influence. So that in that sense, usually I concurred with the selections.
If it was someone for my section, there weren't too many cases where I was opposed to the choice that was made.
BY MS. McGOWAN:
Q. And in how many cases were the hires for an individual who would be working for you?
A. In the course of my career -- this is where my recollection is fuzzy -- but trying -- at least eight, I think.

Page 27

Q. And how many of the hiring processes in which you were involved was Charlotte Preece the selecting official formally?
A. In all cases, once she became the assistant director for that division. Before then, it was whoever her predecessors were.
Q. Turning to the hiring process for the terrorism specialist position specifically --
A. Yes.
Q. Tell me how you first got involved in the hiring of the terrorism specialist?
A. We had a very senior analyst, Audrey Cronin -- a very accomplished and very renowned specialist on terrorism -- leave us on rather short notice. This was at the height of when congressional attention was focused on the issue. And I became involved at the point where she informed us that she would be leaving to take another position, and it was clear that we needed to get someone of similar caliber and senior experience on board.
Q. And did Ms. Cronin tell you how soon she would need to depart CRS?

Page 28

A. Yes. I believe she did. I can't remember exactly.
Q. Who else was involved in -- let me ask you this: What happened next after Ms. Cronin --
A. I think in addition to telling me as her immediate supervisor, she also went and talked to Charlotte Preece about her decision; and almost immediately we discussed how to deal with it.
Q. Tell me about that discussion.
A. Well, Charlotte and I agreed -- first of all, we agreed that we had to make a request to fill this position and that it -- the request would be made at a more senior level so that we could get someone with the considerable experience.
We didn't have time to bring in someone -- typically, we often hire more junior people and bring them on; but in this case, we felt there was a void and we couldn't do that.
Q. And when you say that you wanted to make a request at a more senior level, are you referring to -- to whom you would be making the request?
A. No. No. No.

Page 29

Q. Or the individual --
A. The GS level of the individual we wanted to bring on.
Q. And how would the GS level of the position impact the hiring process if at all?
A. It wouldn't impact the process. It just -- it meant we were looking for a different kind of candidate.
Q. And was there any process that was required for establishing the position at a high GS level?
A. It required approval from the director's office.
Q. Anything else?
A. No.
Q. I honestly don't mean that as a trick question. I want to make sure you get out everything you want to tell me.
A. Okay.
Q. At this point in your conversation with Ms. Preece, did you discuss anything else related to filling the terrorism specialist position?

Page 54

A. I believe so. I would not have necessarily known he had gone to the War College.
Q. What did he say to you in the context of that conversation?
A. That he was top notch, that he was -- that he was one of the stars of the -- of that War College class.
Q. Anything else that he said to you at that time?
A. No.
Q. Do you recall roughly when in the interview process Mr. Pagliano came to you with this information?
A. It was after the interview process was over.
Q. By after the interview process, you mean all the interviews?
A. All the interviews I think but before we made our selection.
Q. And you mentioned that you followed up with Mr. Pagliano. Tell me about that?
A. Well, in the sense that here was a person

Page 55

who did have information and -- was interested in what he had to say about the candidate.
Q. You had more than one conversation with Mr. Pagliano?
A. I'm not sure.
Q. What were you interested in finding out from Mr. Pagliano? What did you ask him?
A. I didn't have specific questions. I was just -- at that point I was very much -- I was leaning towards selecting him, recommending him, and I just wanted confirmation.
Q. Anything else from your recollection of your conversation with Mr. Pagliano?
A. No.
Q. And as a result of your conversation with Mr. Pagliano, did you feel as though you had gotten the confirmation you were looking for?
A. Yes.
Q. Did Mr. Pagliano express any reservations about Ms. Schroer?
A. No.
Q. Did you have any reservations about

Page 56

Ms. Schroer?
A. No.
Q. This first line here under the panelists' names on page 153, am I right, is that your signature?
A. Yes.
Q. At what point were you asked to sign this form?
A. This was when we had our formal panel meeting where each of our scores were recorded on the candidates; and we discussed the scores and why one of us maybe gave someone a higher or lower score. This was again the standard process.
Q. And in the course of that conversation, what was discussed with respect to Ms. Schroer?
A. I think -- you know, there was a consensus, a strong candidate. I believe some of my numbers are lower, but maybe I ranked everyone lower. I don't know. I think he was my top candidate.
Q. And what about Charlotte Preece? What was --
A. As I recall, it was her top candidate,

Page 57

too.
Q. And Mr. Bowman?
A. I believe he may have had someone he ranked higher, but I can't remember for sure.
Q. Okay. In Mr. Bowman's ranking, do you know where Ms. Schroer fell?
A. It was very high, too. But maybe not the top.
Q. Do you recall if she was the number two?
A. Number two or number three I would think.
Q. Do you recall who Mr. Bowman's top choice was?
A. I don't remember.
Q. Was it Mr. Rollins?
A. I'm not even sure if it was Mr. Rollins. If you give me the list, I might remember.
Q. I think I may have that list in here somewhere. I don't have it in front of me right now.
A. Okay.
Q. Did anyone in the course of that conversation express any concerns or reservations about Ms. Schroer?

Page 58

A. No.
Q. Were you involvement in the interview -- before I move on, is there anything else you can recall about the interview and discussion process with respect to Ms. Schroer?
A. No.
Q. Were you involved in the interview of a candidate by the name of John Rollins?
A. Yes.
Q. What do you recall regarding his interview?
A. He was also very strong, very impressive. He was -- I mean to me, they were the top two candidates. A lot of similarities in their backgrounds. Both of them gave very good answers to all the questions in the interview. Both were very poised. Both were very articulate.
In the end, I gave the highest score to Schroer.
Q. What was or were the factors that tipped you in favor of Ms. Schroer as opposed to Mr. Rollins?

Page 59

A. I think --
MS. RUSSELL: Objection to the form of the question. But you can answer.
THE WITNESS: I think it was actually his responses to our broadest questions that allowed the person to -- you know -- allowed us to see the thought process of the person and I was most impressed with Ms. Schroer's answers.
BY MS. McGOWAN:
Q. Anything else?
A. No. Again, both of them were very strong, and the difference was relatively small.
Q. Is there anything else regarding the interview with Mr. Rollins that you recall?
A. No.
Q. Did you have any discussion with Mr. Rollins about whether he was currently in possession of a security clearance?
A. No, I don't believe so.
Q. Was there any discussion about Mr. Rollins' contacts in the government or military?
A. The same type of probing questions that we

Page 60

gave to Ms. Schroer showed that he, too, had very high level contacts in key agencies.
Q. Was there any discussion about when Mr. Rollins would be able to begin as the terrorism specialist if selected?
A. Not at that point.
MS. McGOWAN: Let me show you a document that we will mark as number 49.
(A document was marked for identification as Exhibit No. 49.)
MS. McGOWAN: This is a document that has been produced by the government in discovery. It is marked PO 540 through PO 571. The PO reflecting that it is governed by a protective order in this case to protect the information. Take a moment to review this.
BY MS. McGOWAN:
Q. Do you recognize this document?
A. Yes.
Q. What is it?
A. It's the interview, the structured

Page 61

interview and my notes on Mr. Rollins' responses.
Q. And again looking at that first page, the date that's listed is November 8, 2004?
A. Yes.
Q. Am I right that that reflects the date of the interview?
A. Yes.
Q. And these notes were written contemporaneous with the interview?
A. During the interview.
Q. Just taking a moment to review your notes, if that stimulates your recollection about anything else that you recall from the interview, I would ask you to tell me about that.
(Pause.)
A. As I note here, I note his strengths --
Q. When you say here, what page are you looking at?
A. Actually, I'm looking at page 10.
Q. Which has been marked as the page that is PO 546?
A. His strengths were very heavily on

Page 62

terrorism more so than on the topic of other international crime. It confirms that I felt he was also a very strong candidate.
Q. Anything else?
A. No.
Q. Looking at page 35 of this document that's been labeled 571, is this your ranking of Mr. Rollins?
A. Yes, it is. Yes.
Q. Did you have any concerns or reservations about Mr. Rollins?
A. No. Just comparing my scores for the two of them.
No, I didn't.
Q. And again at the time you filled out this form, did you have any discussion with any of the other committee members?
A. No.
MS. McGOWAN: I have a document that I would ask you to look at that we'll mark number 50.
(A document was marked for identification as Exhibit

Page 63

No. 50.)
MS. McGOWAN: This is a document produced by the government in discovery Bates-stamped PO 616 and 17. Take a moment to look at that.
BY MS. McGOWAN:
Q. Do you recognize this document?
A. Yes. Compilation of all the scores.
Q. And at the time you filled out that form, did you have any discussions with the committee members about Mr. Rollins?
A. Yes. It was at that point I think that we agreed that the two top candidates were Mr. Schroer and Rollins.
Q. Was there any discussion by anyone on the selection committee about any reservations regarding Mr. Rollins?
A. No.
Q. Was there any discussions specifically comparing the relative strengths of Ms. Schroer and Mr. Rollins in the context of that meeting?
A. Yes.
Q. Tell me about what was discussed.

Page 64

A. We weren't in total unanimity. As I said, I believe Mr. Bowman had another top candidate. But I think we all agreed that both of them were very strong and that in the end, it was a very tough choice between the two, because they were very good.
Q. Anything else?
A. No.
Q. And why was plaintiff, Ms. Schroer, viewed as stronger than Mr. Rollins?
MS. RUSSELL: Objection to the form.
THE WITNESS: I think my sense was their backgrounds were very similar, but the most recent background of Mr. Rollins had been in the area of homeland security, which is obviously very appropriate to the position; but it wasn't quite -- his most recent experiences were quite as internationally focused as Schroer's were.
I'm only referring to my own thinking, because I can't remember exactly why the others felt the way they did; but I also thought on the question that really allowed him to show his range of knowledge and ability to analyze the terrorism issue,

Page 65

I think he gave the best response at the interview.
BY MS. McGOWAN:
Q. Anything else that was discussed?
A. I think we agreed to go forward to do reference checks on both of them.
Q. Do you recall -- well, at the end of that meeting, were the candidates narrowed down to a smaller group at that point?
A. To two, yes.
Q. Let me show you a document that was marked in a prior deposition as Exhibit No. 25, which is a document that was produced by the government in discovery and has been Bates-stamped as number 148.
Ms. Russell, I think you have a copy in your binder there.
Do you recognize this e-mail?
A. I didn't remember the e-mail, but yes.
Q. What is it?
A. It's just an assignment of who would do which reference checks for each of the two candidates.
Q. And to the extent that there is a third

Page 66

individual, Mr. Rollins, Mr. Schroer, David Schroer, and Cal Britvek listed in that -- B-r-i-t-v-e-k -- who is Cal Britvek?

A. He -- I think now, because I didn't remember, but I think he was the other leading candidate; and he may have been Steve Bowman's top choice.

Q. Was there any additional discussion or person or by e-mail among you, Mr. Bowman, and Ms. Preece regarding the next steps relating to these candidates?

A. We did the reference checks; and then convened and discussed based on those; and I think at that point, we agreed that Dave -- David Schroer was our top candidate and John Rollins was the backup.

Q. And so did you speak to any references for Ms. Schroer?

A. Yes. I must have been the one that I listed here as having called Major General Dell Daley, and again it was a glowing reference.

Q. Do you recall speaking to someone by the name of Kalev Sepp in connection with Ms. Schroer's

Page 67

application? S-e-p-p and the first name is K-a-l-e-v.

A. I don't remember, but you know, I don't remember for sure. Is that -- if you can refresh me on who that person was.

MS. McGOWAN: Let me have this document marked, number 51.

(A document was marked for identification as Exhibit No. 51.)

MS. McGOWAN: This is a document produced by the government in discovery, Bates-stamped number 119, reference check form.

BY MS. McGOWAN:

Q. Do you recognize this document?

A. Yes. I wrote this.

Q. Is this your handwriting? I didn't --

A. Yes.

Q. Okay. Can you walk me through -- most of the writing is clear, but if you can walk me through what you have written here?

A. Clearly, the response to the first

Page 68

question was he was both a friend and had worked with him over an extended period in various settings. It was really an outstanding review.

As I said here, it was -- if anything -- over the top because there were no qualms expressed or anything. It was a very strong endorsement of the candidate.

Q. Relative to other reference checks that you've done for individuals, would you characterize this as one of the strongest recommendations you've received?

A. Yes. Yes.

Q. Anything else that you recall about your conversation with Dr. Sepp?

A. No.

Q. Do you recall speaking to someone named Jeff Brady in connection with Ms. Schroer's application for the terrorism specialist position?

A. Again, I don't remember.

MS. McGOWAN: Let me mark this No. 52 for identification.

(A document was marked for identification as Exhibit No. 52.)

MS. McGOWAN: Take a moment and take a look at this.

THE WITNESS: This is not my handwriting.

BY MS. McGOWAN:

Q. Okay. We won't worry about that document then.

Do you recognize whose handwriting that is?

A. I would guess it is Charlotte Preece.

Q. Are you familiar with Charlotte Preece's handwriting from other contexts?

A. Pretty much. I am pretty confident it's hers.

Q. Do you recall speaking to anyone by the name of Marc Alderman in connection with Ms. Schroer's application for the terrorism specialist position?

A. Again, I don't remember.

MS. McGOWAN: Let me mark this document number 53.

Page 69

Page 70

(A document was marked for identification as Exhibit No. 53.)

THE WITNESS: This is certainly not my handwriting.

BY MS. McGOWAN:

Q. This is a document produced by the government in discovery Bates-stamped number 149. Am I right you said that is not your handwriting?

A. No.

Q. Do you recognize this handwriting?

A. I think it may also be Charlotte.

Q. Okay. Charlotte Preece?

A. Yes.

Q. Okay. Turning back to document number 51 that we've marked, which are the notes from your conversation with Dr. Sepp, did you create these notes contemporaneous with your conversation?

A. Yes. I was writing as I was talking.

Q. And was this form the way in which -- or a way in which you conveyed the results of your

Page 71

reference check to the other members of the committee?

A. Yes.

Q. Was there any other way in which you conveyed the results of your reference check with the committee?

A. No.

Q. Did you have any in-person meetings with the committee again?

A. Oh, yeah. We sat down together to discuss.

Q. And what did you discuss?

A. Well, how to move forward from there; and I think Charlotte was going to put forward the recommendation to the -- both to human resources and also to the front office that we wanted to move ahead with recommending David Schroer.

Q. In the context of that meeting, where you discussed the results of your reference check, did the other individuals report back about their reference check?

A. Yes.

Page 72

Q. What did they say?

A. Again, I believe that the reference checks came back very positively from all references on both candidates.

Q. And with respect to Ms. Schroer, did anyone report back about hearing any concerns or reservations from the references?

A. No.

Q. Do you recall speaking to any references for Mr. Rollins?

A. If I did, I don't remember very specifically.

Q. Do you recall speaking to an individual by the name of Sallie McDonald in connection with Mr. Rollins' application?

A. It rings a bell but it may only be from the fact it was on list here.

MS. McGOWAN: Let me mark this document here as number 54.

(A document was marked for identification as Exhibit No. 54.)

Page 73

MS. McGOWAN: This is a document that was produced by the government in discovery and Bates-stamped PO 697.

BY MS. McGOWAN:

Q. Take a look at that. Do you recognize this document?

A. That's my handwriting.

Q. Okay. Again as we did with the prior reference check form, if you could walk me through what Sallie McDonald -- your notes are here with respect to your reference check for Mr. Rollins with Sallie McDonald?

A. Again, it was an extremely strong recommendation. The person had an extended association with John Rollins, although only one year as a supervisor of his. But again it was an outstanding -- an outstanding recommendation, very strong in every sense, and raised no doubts about his capabilities.

Q. And did you have any concerns or reservations about Mr. Rollins that you specifically asked the reference check about?

Page 74

A. No.
Q. And were there any concerns or reservations that the reference --
A. I cannot --
Q. -- check offered?
A. No. No.
Q. Anything else that you can tell me about your conversation with Sallie McDonald?
A. She said this was the highest caliber person she'd ever worked with. That about sums up her perspective.
Q. Do you recall speaking to someone by the name of Patrick Hughes in connection with the application of John Rollins?
A. No. Specifically, no. Again, I may have.
MS. McGOWAN: Have this document marked number 55 which was produced by the government in discovery and is Bates-stamped PO 696.
(A document was marked for identification as Exhibit No. 55.)
BY MS. McGOWAN:

Page 75

Q. If you could review this document for a moment?
A. Again, not my writing.
Q. Okay. Do you recognize the handwriting?
A. I would guess it is again Charlotte but I'm not as sure of this.
Q. Okay.
A. But I think it is Charlotte.
Q. Was -- were there any other individuals other than you, Mr. Bowman, and Ms. Preece who conducted reference checks?
A. No. No.
Q. Did Ms. Preece have any -- what did Ms. Preece say in the context of your conversation with you and Mr. Bowman about her reference checks?
A. Again, she said about both for Rollins and for Schroer that they were outstanding recommendations. I don't remember anyone raising any flags or doubts with her or any of us.
Q. Was there any discussion about Ms. Schroer asking that her boss Walt Kreitzberg not be contacted as part of a reference check?

Page 76

A. I don't remember any discussion of that. I mean that, could have been -- sometimes one would -- could raise questions; but on the other hand, it could also just be in case they weren't going to get the job, they didn't want their boss to know that they were looking.
So I don't remember that -- it may have come up, but I don't remember.
Q. So how did the panel choose who its top candidate ultimately was going to be?
A. Well, based on this discussion, I think both Charlotte and I had given Schroer our top rating. Both of us were very enthusiastic about both. I think Steve Bowman also was very enthusiastic about both, even if he may initially gave the strongest score to someone else.
And based upon the fact that both Charlotte and I had ranked them 1 and 2, I think the decision was made to move ahead to recommend Schroer.
Q. And with respect to that decision to move ahead, what was involved in that? What did moving ahead mean?

Page 77

A. Well, in the first instance, I think it was either a memo or a request from Charlotte to the human resources office to move forward recommending him; and I think it also meant that the director had to be given the recommendation for final determination.
Q. So at that point what was your next involvement with the terrorism specialist selection?
A. Okay. As I recall, at that point, I left; and I was on travel for, I think might have been a couple of weeks or something.
So I left, believing that we were going to recommend and move forward on selecting Mr. Schroer.
Q. Prior to your leaving, did Ms. Preece tell you about any conversation she had had with Ms. Schroer about salary concerns?
A. No.
Q. Prior to your leaving, did Ms. Preece at any point tell you that she was writing a hiring recommendation memo for Ms. Schroer?
A. I believe so. I mean that was the decision that was made, so that I believe that that

Page 78

was my expectation.
Q. And did she discuss with you at all what she would say in this memo? Did she seek any input from you about --
A. No. And she had gotten my input on who I wanted.
Q. And do you know if she sought any input on the hiring memo from Mr. Bowman?
A. Yeah. I'm sure she did.
Q. Did you have any discussions with her about that specifically, about her consulting with Mr. Bowman on the hiring memo?
A. I think it was -- you know -- I think we're talking about really the same meeting at which we vented our views on who should get the nod, and he was there, too.
Q. At that point -- to sort of wrap it up -- was there anything else that you discussed with either Charlotte Preece or Steve Bowman about sort of wrapping up the hiring process, as you understood it?
A. No.
Q. At some point, did you learn that

Page 79

Ms. Preece had not, in fact, recommended Ms. Schroer for the position?
A. Yes.
Q. Tell me about how and when you learned that?
A. For whatever reason while I was away, I didn't have access to my work, to my e-mail.
So when I got back from my trip, and I think I was still home, I logged in to my e-mail, and I saw some reference to the fact that the recommendation had gone forward for John Rollins.
That was the first I heard that something other had happened.
Q. Had you had any voice mails when you got back from anyone waiting for you, regarding the terrorism selection process?
A. Probably yes.
Q. Okay. Do you recall how -- when it was that you came back from your traveling and were reconnected to the process?
A. I can't remember. I would have to dig for that, because right now I'm not even a hundred

Page 80

percent sure where I was.
Q. And was this e-mail that you read something that was sent to a work e-mail account?
A. Yes. It was -- I can't remember if it was the actual request that he be hired or if it was just some reference to it; but anyway, it let me know that the selection had moved forward for Rollins rather than Schroer.
Q. And what was your reaction to this news?
A. Well, I immediately sought out Charlotte or she sought me out maybe even before I sought her out to tell me what had happened.
Q. Okay. And what did she tell you?
A. That I guess she called him to indicate that she was going to make a recommendation that he be selected, and that he asked for a meeting with her; and I believe they went to lunch together.
And I guess it was at that meeting that Ms. Schroer indicated that he would be reporting as Diane Schroer; and --
Q. And what else did Ms. Preece say as far as what happened next?

Page 81

A. Okay. I know that she was -- it was very clear she was very troubled by the decision she had to make and that she sought out advice and guidance before doing anything.
And that she really agonized over it; but ultimately decided that it would be in our best interests to move forward on John Rollins.
Q. With respect to why she thought it would be in everyone's best interest to go forward with Mr. Rollins, what did she tell you?
A. I think her concern was his -- not his qualifications to do the job, but availability and readiness to jump in and do the job from day one, given what he told her about the process he was involved in and how things would move forward.
I believe she told me also that she spoke to our personnel security head to find out if -- if these revelations, if they would make it difficult or impossible to move forward on a security clearance for the candidate.
Q. And with respect to the process that was -- that Ms. Schroer was involved in at that

Page 82

point, how did Ms. Preece explain what she understood that process to be?
A. Well, that there would be some surgeries, that there would be some extended psychological counseling, and I believe that the personnel security officer indicated that this would be a real impediment to getting a security clearance any time quickly or soon.
Again this is secondhand. But that's what I understood.
Q. And with respect to the first two pieces about the surgery and the extended psychological counseling, did Ms. Preece tell you how she had that understanding that that was the process?
A. I think he told her. If I understand correctly, I believe he told her what was ahead.
Q. And what did Ms. Preece say with respect to how the fact that Ms. Schroer was involved in this process that might involve surgery or counseling, what did Ms. Preece say to you regarding how the fact that Ms. Schroer was involved in this process led her to decide to go with Mr. Rollins?

Page 83

A. I know that she said that this was a really tough thing for her, a very rough period of examination; but I think based on her consultations with senior management, with the personnel security officer, I think she believed that this was the right decision. That's all I can tell you.
Q. Did Ms. Preece say anything to you about Ms. Schroer showing her pictures during lunch?
A. Yes.
Q. Do you recall what she told you about that?
A. Well, you know, she was -- frankly, she was very surprised. I mean she was not prepared, and she was a bit shocked; but yes, she told me that he had shown her pictures.
Q. And did she explain what the pictures were?
A. Of him as a woman, I think, how she would look when she went into work.
Q. Did she describe at all what Ms. Schroer looked like or was wearing?
A. I don't recall specifically. I mean I

Page 84

don't remember. We later saw pictures and stuff, but that was not from Charlotte, that was because it became quite public.
Q. Did Ms. Preece say anything about her opinion regarding how Ms. Schroer looked in those pictures?
A. No. I mean that was certainly not something that I -- that caught my attention.
Q. Was there any discussion about how much or whether or not Ms. Schroer actually looked like a woman when dressed in female clothing?
MS. RUSSELL: Objection to the form.
THE WITNESS: I don't remember that.
BY MS. McGOWAN:
Q. Did Charlotte Preece use any particular phrases to describe Ms. Schroer's process, such as transgender migration?
A. Again, I don't remember that.
Q. What did you discuss with Ms. Preece regarding her view on how this information from Ms. Schroer would impact Ms. Schroer's readiness to start on day one, as you said?

Page 85

A. I remember -- I don't remember specifically; but there was a feeling that without, first of all, that there would be some absences because of this. But also that the delays in getting or maybe not even getting the security clearance would have made it very tough to do that job.
Q. Anything else?
A. I can't remember.
Q. With respect to the concern about absences by Ms. Schroer, do you recall --
A. No.
Q. -- more --
A. I don't remember specifically. I think it was just that there were to be surgeries. I don't remember that.
Q. Did Ms. Preece say anything about concerns over Ms. Schroer being distracted as a result of her gender transition?
A. I think that was a concern. I don't remember those words, but yes, I think there was a concern.
There was also a concern that -- whether

Page 86

the contacts -- I think there was a concern that one of the selling points of this candidate was their network of contacts; and I think she did raise the question of would these same -- would the same network be available in the same way in light the new situation.

Again I don't remember exactly how that came up.

Q. Was there any discussion at all about how many of Ms. Schroer's contacts already knew this information about her?

A. We didn't -- certainly, from my references and the discussion of reference checks and so forth, I had no inkling that there was an awareness of this. Certainly among the people that we talked to.

Q. Did Ms. Preece say anything to you about going back to those reference checks and finding out whether or not they had been aware that this was going on with Ms. Schroer?

A. No.

Q. And with respect to the concern about Ms. Schroer's revelations either impacting or making

Page 87

it difficult for her to complete the security clearance process either quickly or at all, what did she tell you about those concerns?

A. This was not her opinion. This was what was told to her by the personnel security.

Q. And did she tell you in what context she had gotten this information?

A. Well, she had gone to seek guidance specifically given these new factors, would it be possible to move forward; and I guess got the response that it would not, at least not quickly.

Q. Did you have -- did she tell you why the personnel security office had that view?

A. Not specifically.

Q. Did she tell you -- did she tell you about any -- in any greater details what would be involved above and beyond the normal security process for Ms. Schroer as a result of this revelation?

A. No. I don't remember anything specific.

Q. Did she tell you anything about how much longer a security clearance process might take for Ms. Schroer in light of this information?

Page 88

A. No. I can't remember. I don't remember.

Q. What is your understanding of why it would take longer for the process, the security clearance process for Ms. Schroer in light of her revelation of this information?

MS. RUSSELL: Objection. Lack of foundation.

THE WITNESS: No. I don't know what precedents for this is or how it's been dealt with in the past.

Maybe it was based on previous experience. I don't know. But I got the sense that maybe while this psychological counseling was underway and so forth, that it would at least have to wait until that process had been completed.

But I'm not sure about that. This is just speculating.

BY MS. McGOWAN:

Q. And do you have any other basis for your impression that it would have taken longer for the security process in light of this information from Ms. Schroer?

Page 89

A. No. No.

Q. Did you and Ms. Schroer talk about how she felt in the aftermath of this lunch with Ms. Schroer as a personal matter?

A. I think she was shocked and she was upset. She was upset about the decision she had to weigh and make. It wasn't just her decision, because she did consult with -- I know she consulted with the director, with the counsels. So she didn't just make this decision on her own.

Q. And did she say why she found it upsetting?

A. I think -- you know -- we were ready to enthusiastically move forward. I think she was -- I think -- she was really in a quandary personally. I can't tell you any more.

Q. And did she say why she felt like she was in a quandary?

A. Well, she obviously -- we had found a top notch candidate. We were enthusiastic about moving forward; and this came out of left field, and she -- she was not pleased with the choices.

Page 90

Q. And did she say anything about why this information about Ms. Schroer changed her view of Ms. Schroer as the top candidate?
MS. RUSSELL: Object to the form. Lacks foundation.
BY MS. McGOWAN:
Q. Let me ask you this: In the course of her explaining what happened, did Ms. Schroer -- did Ms. Preece tell you the point at which she decided that Ms. Schroer was no longer a viable candidate for this position?
A. As I recall, she had --
MS. RUSSELL: Same objection. Go ahead and answer.
THE WITNESS: She had the meeting; and I think she decided to sleep on it. She didn't immediately go to anyone. I think she -- the next day, after having thought about it, went and talked to the people she thought she needed to talk to to get -- you know -- to confirm what should or shouldn't be done.
But she at that point decided that it was

Page 91

not the best choice.
BY MS. McGOWAN:
Q. In your conversations with Ms. Preece, did she ever say that -- you know -- she had wanted to go forward with Ms. Schroer? Notwithstanding this revelation?
A. No.
Q. Did she express any sentiment along those lines of wanting to figure out how to make it work, so to speak, with Ms. Schroer?
MS. RUSSELL: Objection to the form.
THE WITNESS: My sense was she had sympathy and that she -- you know -- was not pleased to change her mind; but I don't remember anything more than that.
BY MS. McGOWAN:
Q. But was it your sense from Ms. Preece that once she heard this information from Ms. Schroer, she knew that she probably had to make a different choice?
A. Yes. It was my sense, based on her -- again -- consultations with the other people.

Page 92

Q. You are hearing all this after the fact?
A. After the fact. I should emphasize the decision had been made. I wasn't asked for my opinion.
Q. In your conversation with Ms. Preece, did she indicate that she had ever tried to contact you to try to get your input?
A. I just can't remember, but I don't think she was able to contact me. I don't know if she tried or not. I think also maybe because of how close the two candidates were and we felt comfortable with either one and we could make a strong case for either one, she felt -- you know -- that it wasn't as essential to get my opinion on it because I had already made clear that I would be very happy with either of them.
Q. What did you say to Ms. Preece as she was telling you the story?
A. Well, I was astounded. It was astounding; but it was a fait accompli. I didn't even argue with her or anything.
Q. Recognizing that this was already water

Page 93

under the bridge, so to speak, did you have any views about whether or not this information about Ms. Schroer should have taken her out of the running so to speak for the position?
MS. RUSSELL: Objection to the form.
THE WITNESS: You know, based on what was told to me, I accepted that this was the right decision. I can't even -- since I didn't have to make that decision, I don't want to hypothesize on what I would have done, because I don't know. I wasn't put in the position. I didn't have those discussions with the senior managers.
BY MS. McGOWAN:
Q. Let me ask you this: What would you have wanted to know about Ms. Schroer's situation in assessing whether or not your recommendation would have been to either go forward with Ms. Schroer or go with Mr. Rollins?
MS. RUSSELL: Objection. Calls for speculation. Also as to the form.
THE WITNESS: As the line supervisor, my main interest was having someone to do the work that

Page 94

I needed to assign; and so my concern would have been in regard to the extent to which that would have been possible with that candidate.
BY MS. McGOWAN:
Q. Anything else?
A. No.
Q. Did -- in your conversation with Ms. Preece, was there any discussion about attempting to ascertain whether or not this information from Ms. Schroer about her gender transition had already been vetted in any way as a security clearance matter?
A. No. My assumption was it hadn't been before.
Q. But to your knowledge, Ms. Preece never talked about following up to find out whether or not this was information that was already in the security clearance system, so to speak?
A. No.
Q. To the extent you said your assumption was that, you said it hadn't been vetted --
A. Well, I don't know.

Page 95

Q. In talking about how Ms. Preece reached her decision to go forward with Mr. Rollins, did she ever -- did she discuss any concerns about Ms. Schroer's credibility with Members of Congress or their staffs?
A. That may have been a concern but I remember the discussion mostly with regard to credibility with the community that he had worked in.
Q. With respect to these credibility concerns either with Congress or with other contacts, tell me what was discussed with regard to what the concern was?
A. I think the sense was that in the eyes of those people, this was not the person that they knew and had dealt with. It was unclear whether -- you know -- in the new situation, whether she would have the same access and ability to work with those people.
Q. Why was that concern there that she might not have these contacts anymore?
A. Well, I don't know that I can articulate it.

Page 96

I mean I think for one thing -- I mean -- I think that even -- there was a sense that this was -- there was a sense that he presented himself in one way before the interview and everything and then only afterward did we find out and -- that that was not -- you know -- the way he presented himself -- the way he presented himself was not the way -- there was an element of feeling that information should have come forward during the interview.
Q. Is that something that you discussed specifically with Charlotte?
A. I believe that was something that she did express.
Q. Did she say anything about when she thought Ms. Schroer should have communicated this information?
A. I don't recall.
Q. Why was it relevant for the committee to know that information prior to when Ms. Schroer had disclosed it?
MS. RUSSELL: Objection to the form.
THE WITNESS: I mean again I could state

Page 97

my own opinion, but I can't tell you what Charlotte's thinking was exactly.
BY MS. McGOWAN:
Q. So what's your view?
A. I understand that I probably thought if you came forward with this information before, that maybe that would have tipped the decision against him. I can see why he didn't come forward with it; but --
But it was a very relevant piece of -- very relevant part of who he was.
Q. And how was it relevant for purposes of his application for -- for her purpose -- how was it relevant for her purposes for her application for the terrorism specialist position?
A. What I can -- I mean, from my perspective, the most important factors were the ability to do the job from day one and also the ability to rely on the same network of resources in the same way as he could have before.
Q. And how did Ms. Schroer revealing or -- how did the fact that Ms. Schroer revealed the fact

Page 98

she was transitioning from a man to a woman impact those two concerns that you had about ability to do the job starting from day one and ability to access contacts?

A. Not knowing exactly what was involved, what the steps were that Ms. Schroer had to go through and so forth, I can't really say. I know that the people he gave as being his contacts knew him as David Schroer rather than as Diane Schroer.

I don't know if that would have made a difference or not.

Q. Anything else?

A. (No audible response.)

MR. CHOE: You have to say it audibly.

THE WITNESS: Sorry. No.

BY MS. McGOWAN:

Q. In the context of talking about whether or not the same contacts would be available to Ms. Schroer, in the course of that conversation we talked about the fact that she had known these individuals as David but would now be Diane, why did you think that the networks would not necessarily

Page 99

want to interact equally with Diane Schroer?

MS. RUSSELL: Objection to the form.

THE WITNESS: Well, you know, again I never had to make that -- I wasn't there to decide this, so I'm not sure. I can speculate.

BY MS. McGOWAN:

Q. What's your sense?

A. My guess is the sort of Special Forces environment and everything, that a person might not be as much seen as part of the fraternity, but that doesn't -- that's just -- I didn't have to make that decision.

Q. Did Ms. Preece talk to you at all about concerns regarding Ms. Preece not being -- I'm sorry. Did Ms. Preece talk to you at all about her concerns regarding Ms. Schroer being able to access her prior network?

A. Again, I think that was one of the issues raised.

Q. Anything else you recall regarding the conversation of that piece?

A. Huh-uh. No.

Page 100

Q. Was there any conversation that you had with Ms. Preece about concerns over how Members of Congress or their staffers would interact with the plaintiff as Diane Schroer?

A. I don't remember that specifically. She may have mentioned that.

Q. Was there any discussion about how others at CRS might interact with the plaintiff if she came to work as Diane Schroer?

A. She may have expressed concern about the timing and so forth. But I can't remember specifically if she did or how she did. But certainly I would have wondered how the people in our division would have approached the transition.

It would be the transition if the transition had already occurred as opposed to sort of being in process.

But that was not -- that was not a major point of discussion.

Q. And when you said the timing, is that --

A. I meant timing by the fact that she was undergoing the transition rather than having

Page 101

completed the transition.

Q. Did Ms. Preece say anything to you about Ms. Schroer had put the Library in an awkward position?

A. I don't remember specifically stating it in those terms.

Q. Was there any discussion at all, whether in those terms or different language, conveying that Ms. Preece felt as though she had been set up?

A. I think she wondered about that.

Q. Did she articulate anything about that in her discussions with you?

A. I'm trying to remember if there was anything specific.

No. I just -- I can't remember think of any.

Q. In your conversation with Ms. Preece, you mentioned that she said that she spoke to individuals from the personnel security office?

A. Yes.

Q. Did she mention Cynthia Wilkins specifically?

Page 102

A. Yes.
Q. Did she say who else she had spoken to in the course of making her decision?
A. Well, I'm sure she spoke to the director. I'm sure she spoke to Kent Ronhovde, who is the director's counsel.
Q. And did she mention anyone else she had spoken to?
A. Not that I can remember.
Q. Did she say anything to you about talking with Gary Pagliano about this information?
A. I don't remember her telling me that, but I'm sure she probably would have because he was so much -- I mean, he made a very forceful recommendation. She may have gone back.
Q. Was there any -- either in the context of this conversation with Ms. Preece or any other time, did you learn if there were any other factors that resulted in Charlotte Preece recommending John Rollins as opposed to Diane Schroer for the position?
A. I don't remember any of those.
Q. Did you have any other discussions with

Page 103

Charlotte Preece about the hiring decision for the terrorism selection specialist position after the one we've been discussing now?
A. No. Insofar as it was a done deal. I mean, again my concern at that point was getting John Rollins on as soon as possible.
Q. Am I right that you were going to be John Rollins' direct supervisor?
A. Yes.
Q. When -- do you recall when John Rollins began, roughly, relative to the hiring process, how long it took before he started?
A. I think -- I can't remember exactly, but I think it was like mid-January or so.
Q. And did Mr. Rollins have access to classified information from day one?
A. He got it very quickly, if it wasn't day one, because he had had -- he had had high level security clearances and he was very quickly able to get that recertified.
Q. With respect to getting Mr. Rollins' clearance from wherever it needed to be to the

Page 104

Library so that he could perform his duties, were you involved at all in that process?
A. No. No.
Q. Did you ever have any conversations with Mr. Rollins about getting his security clearance matters in order so that he could perform his duties?
A. No. Because I think that's -- you know, that's part of the process handled by the personnel security office. So I would not have been involved in that.
Q. Did you have any conversations upon your return with anyone else about what had transpired in your absence regarding the terrorist specialist position?
A. At some point, I know that -- at some point I know that I got a lot of questions about it, curiosity about it.
I'm not sure how -- I can't remember how soon after.
Q. So you got questions or you asked questions?
A. No. I got questions.

Page 105

Q. Who did you get questions from?
A. Well, at some point it became very public. I'm not sure exactly when that was; but then at that point, a lot of people knew about it and were asking.
Q. And what did you tell individuals when you were asked?
A. Basically, at that point, it was all on the public record. I didn't tell them anything they hadn't read or heard; and -- you know -- got very different reactions from different people.
Q. And tell me who you remember talking to?
A. I remember being asked -- first of all, I think there was some discussion among managers of the decision, so I think some of the managers were aware of it and did speak to me about it.
I think colleagues and people in my section, it was quite a bit later that they were aware.
Q. And with respect to the other managers, who -- which other managers?
A. It would have been other section heads, part of the management team that we have our weekly

Page 130

guess that's how long she's been there. So both as families, as -- we've been close.
Q. Anything else?
A. No.
Q. How -- is she your supervisor?
A. She was my immediate supervisor. Not anymore.
Q. The joy of being retired.
Have you -- I'm sorry if I asked this before, but in connection with your position, were you required to hold a security clearance?
A. Yes.
Q. And what level of clearance were you required to maintain?
A. Top secret.
Q. Were you also required to have SCI access?
A. No. I never had to have that.
Q. And has any entity other than the Library ever held a clearance for you?
A. No.
Q. In the course of your supervision, have you ever been or had an applicant or employee who

Page 131

needed to transfer a clearance over from another agency to the Library?
A. Yes. But I wasn't involved in that process.
Q. And based on your knowledge of having supervised individuals, what do you know about transferring clearances from one agency to another?
A. About the process of transferring? Really very little. I think that it's between the personnel security office and personnel security office. I believe the Library would make a request to have it transferred, and then it would happen.
Q. Have you ever in your experience had an issue with an employee have a delay getting a security clearance transferred?
A. No.
Q. Has there ever been a case where there's been any delay in getting a clearance transferred from another entity to the Library?
A. Not that I can remember specifically.
Q. And how many instances are we talking about where you've had individuals with issues

Page 132

regarding transferring a security clearance? So I know the pool that we're talking about.
A. I don't recall many issues. In fact, I'm not sure I can recall a single other instance.
Q. And putting aside individuals who had any concern or problem, how many employees that you supervise that you know about have had to transfer clearances from another entity to the Library?
A. I don't recall many having to transfer. I mean, a lot of them had to get security clearances; but I don't recall too many cases, at least in my section, where it was a case of transferring security.
I'm trying to remember, but I don't think I can remember any.
Q. In your role as supervisor -- hold on a moment.
MS. McGOWAN: We're close to done. Maybe we can take a break and then we can wrap up and get you on your way.
THE WITNESS: Okay.
MS. McGOWAN: Let's go off the record.

Page 133

(Recess.)
BY MS. McGOWAN:
Q. Do you recall when Ms. Cronin announced that she would be vacating the position of terrorism specialist?
A. I don't exactly. Nor do I remember exactly how much notice she gave us. She gave us a few weeks.
Q. Do you recall if it was while Congress was in session or during a break?
A. I cannot remember.
Q. Other than the fact that this was an unexpected vacancy, was there any reason why this terrorism specialist position needed to be filled in an urgent or prompt manner from your perspective?
A. We only had two senior terrorism specialists. She was incredibly productive and incredibly busy; and Congress was relying on us very heavily on terrorism issues at the time.
So I would say it was probably in that period, it was the busiest area for us.
Q. Did the subject matters covered by the