McGowan Declaration – Exhibit H

COPY

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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DIANE J. SCHROER, :

Plaintiff, :

vs. : Civil Action #05-1090

JAMES H. BILLINGTON, :

LIBRARY OF CONGRESS, :

Defendant :

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

Washington, D.C.

Thursday, February 22, 2007

Whereupon,

WALTER BOCKTING

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

that you reviewed on page 21?

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

Q Okay.

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

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

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

Q Anything else?

A And I re-read the DSM.

Q Okay. Did you do anything else?

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

Q Which Standards of Care?

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

Q And did you review anything else?

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

Q Yeah, there is.

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

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

A Meet with anyone?

Q Yes.

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

Q And what was discussed during your meeting?

A Just preparing for today, going over --

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

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

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

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

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

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

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

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

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

A That's part of it, yes.

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

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

Q Can you explain what research has been done on the

biological etiological aspect of GID?

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

Q Okay. And what are the studies on humans?

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

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

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

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

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

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

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

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

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

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

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

Q Well, has there been --

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

transsexual females, smaller.

Q But has there been any --

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

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

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

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

A Yes.

Q Has that been replicated?

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

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

A No.

Q Are you familiar with that term?

A No.

Q Do you know whether the term sex is included in that statute?

A No. I mean, maybe there were some references in the initial complaint that I read, but I don't remember that.

Q Well, did you develop any understanding or come to any determinations yourself personally as to what the term sex means in a legal context?

A No, I'm not a legal expert.

Q Okay. Well, how would you define sex?

A I have -- in my report that I think that sex is multifaceted, and that, you know, at birth, sex is assigned usually based on the appearance of the external genitalia. Usually, that's when somebody is assigned, is given a sex. But sex is not one thing, but has multiple components, and knowledge of one or more of these components then results in that sex assignment. Usually, it's only one, and that is the appearance of the external genitalia. But in cases of ambiguous genitalia, other components of sex are assessed and factored into the determination of what the best sexual assignment is.

Q Well, is there a biological basis as to which genitalia will be formed, whether it's the penis or the vagina? I mean, is there a biological basis to that?

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

Q And what is that chain?

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

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

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

Q Okay.

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

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

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

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

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

What is that?

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

Q And what about female to male?

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

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

A No.

Q Can that person give birth?

A No.

Q Does their chromosomal configuration change?

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

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

A No.

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

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

MS. RUSSELL: Yes, Exhibit 40.

BY MS. RUSSELL:

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

A Yes.

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

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

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

BY MS. RUSSELL:

Q When you say support, what do you mean?

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

Q Can you point those?

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

Q And what page is that on?

A Page 20.

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

MS. RUSSELL: Okay.

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

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

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

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

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

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

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

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

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

BY MS. RUSSELL:

Q Which Zucker?

A The first one, 1999.

Q Okay.

A That would be it.

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

A That's the first sentence of my paragraph.

Q Okay.

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

Q That's where the excitement is?

A Yes.

Q Okay.

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

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

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

Q And what population is that?

A I mean clients with gender identity disorder.

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

(Bockting Deposition Exhibit Number 42 marked for identification.)

BY MS. RUSSELL:

Q And can you turn to page 5 --

A Sure.

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

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

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

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

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ERRATA SHEET

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

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

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

Errata Sheet (cont'd)

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

Errata Sheet (cont'd)

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

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ACKNOWLEDGMENT OF DEPONENT

Deposition on Thursday, February 22, 2007

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

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

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

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

NOTARY PUBLIC

State of Minnesota
County of Hennepin

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

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

[signature]

Notary Public
My Commission Expires: 1/31/10

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