McGowan Declaration – Exhibit I

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIANE J. SCHROER, Plaintiff,	:	
v.	:	CIVIL ACTION NUMBER: 05-1090 (JR)
JAMES BILLINGTON, Librarian of Congress, Defendant.	:	

Washington, D.C.

Friday, April 4, 2008

Deposition of

PETER R. NELSON

a witness of lawful age, taken on behalf of the Defendant in the above-entitled action, before Cindy Lee Fryer, CVR, Notary Public in and for the District of Columbia, in the United States Attorney's Office for the District of Columbia, 501 Third Street, N.W., Fourth Floor, Washington, D.C. 20530, commencing at 9:56 a.m.

Page 62

a clearance was granted on it. It's only if you are aware. You know, and you're not supposed to proactively go out and data mine the world to try to become aware, unless a complete new investigation is warranted based on passage of time.

Q What about a recent diagnosis of a disorder in the DSM; would that constitute new information?

A That would be, yeah.

Q Would the agency be able to consider that, the gaining agency?

A If they were aware of it, yeah.

Q Now, Mr. Nelson, I'm looking at paragraph 20 in your report, on page seven --

A Uh-huh. Okay.

Q -- how did you come to the conclusion that Ms. Schroer's voluntary admission of her transgender status wasn't given favorable weight?

A I guess the fact that they -- as I recall that they were going to then -- the recommendation on the personnel security person was to launch what would inevitably have been a very time consuming and not to mention costly investigation that would have -- so, if I recall, they had to hire this person within a certain period of time, and then, launching this investigation would have taken far too long, ergo she wasn't to be selected.

Q So your basis for the statement is that Schroer

Page 63

wasn't selected for the position?

A Yeah.

Q Did you read any document to inform you of your conclusion?

A Well, given the fact that someone else is, I guess, in that job now and she's not, that says to me she wasn't selected for the position, and that -- you know, also that the various depositions, as I recall, talked about the recommendation that to go to launch an investigation for something that was not an adjudicative issue, then, ergo, it was -- would have taken too long. So they proceeded to look towards the next best qualified candidate, to my recollection.

Q Mr. Nelson, I believe earlier we were talking about the adjudicative standards.

A Uh-huh.

Q What are those?

A They are a set of common standards that were developed in the mid '90s as a result -- well, they're required by the Executive Order 12968, which document was also directed to be accomplished by the 1994 intel authorization act, following the Ames espionage case.

Q What was it about the Ames case that compelled the government to write these adjudicative standards?

A Well, it was kind of -- you know, as usually

Page 64

happens when there's a crisis like that, everybody runs around and tries to figure out how we can make things better.

Q Uh-huh.

A So among many other things that are in the executive order and the statute was to create a new set of adjudication guidelines that not only addressed some of the issues that were developed as a result of the Ames case, but have a common set of adjudication guidelines, such that if you were cleared with the Department of Defense, you know, your same clearance would work in Justice and Commerce, such that we didn't spent millions and millions of dollars reinvestigating people throughout the government.

Q Were you at all involved in the drafting of --

A I was. I was. I led the group that developed them.

Q And what was the group that developed them?

A It was a personnel security working group under the -- at the time the security policy board, that was kind of like the interagency body that, you know, worked on a variety of different security related issues, including these.

Q And were you involved in any guidelines in particular or all of the guidelines?

A All of them. All of them, yeah. I shared the group that developed them, which relied a lot on the research

Page 65

of a group in the Department of Defense that reported to me, the Defense Personnel Security Research Center in California, which had done a lot of work earlier in the decade on guidelines. And we took that work, that was being done for DoD, and we put it into the interagency process. And then through discussion, coordination, we ended up with a final set of guidelines that was then approved by the president and promulgated in, when was that, '95, somewhere in there. They've since been updated in December of '05. I wasn't directly involved in the update, but the original ones I were -- was.

Q And were there any changes made in the update of December 2005?

A There was. I don't believe there were any in the -- you know, I can't go chapter and verse, you know, to some -- but it was largely in foreign connections, foreign contact, dual citizenship, maybe information technology issues. And there was other tweaking, but I do not recall -- I don't believe there were any changes or certainly any substantial changes to either the sexual guideline or the mental and emotional one.

Q Which guidelines are those?

A You know, they go from "A" to -- what is it? Whatever 13 is in the alphabet, "A" to "L" or "A" to "M," and it's one of those.

Q Was there any finding that all federal agencies always honor reciprocity?
A I do not recall. That would certainly be consistent with the thinking that many of us had at the time, as well as what has been subsequently incorporated in a memorandum from the deputy director of Office of Management and Budget as to reciprocity, dated December 2005, which may well have been based on some of the conclusions in this report, for all I know.
Q What was the document that you just referred to?
A It's the -- it's a document that was put out by Clay Johnson, the deputy director of OMB for management --
Q Uh-huh.
A -- who is the -- he was kind of the appointed czar, pursuant to EO 13381, to oversee the program and the implementation of that statute I referred to earlier, the intel reform act. And, as part of that, one of the many ongoing challenges and issues is the notion of reciprocity, and the attempt to have mutual recognition of other agency security clearances without going to all the expense and costly wasted time of reinvestigating people who have already been investigated and adjudicated. And, in 2005, Clay Johnson put out the memo to all of the federal agencies, laying out the -- it has a matrix in it, as to what the

conditions for reciprocity are.
Q I believe we talked about those conditions earlier, didn't we?
A Yeah. We probably touched on them. One of them is the currency of the prior investigation, which, in his memo, takes it out to seven years, so long as, you know, no break in service. So, yeah, largely the items we spoke of before are the essential elements of that memo.
Q And when was this memo issued?
A If I recall, there was -- there were two of them. There was one -- I can't remember whether the final was -- it was December '05, then there was a follow-up possibly in July of '06, but I may have those dates wrong. But the essential elements were the same.
Q Going back to the PERSEREC report --
A Okay.
Q -- do you know how many federal agencies were used to collect information from this report?
A How many?
Q Yes.
A Whoever we referred to in here. Federal agencies as opposed to contractors?
Q Federal agencies.
A Yeah. So it looks like we had 14.
Q Do you know if anywhere in this report it states

that reciprocity doesn't always work?
A Oh, without reading it, I couldn't say positively, but I would assume, since that's a fact of life back then and now, it -- that it's not working as it was intended.
Q And why is that?
A Because of cultural and environmental bias.
Q What do you mean when you say cultural bias?
A Because federal agencies somehow sometimes think that they have unique requirements, which, in my experience, usually is not true, but that's what they feel. So, ergo, they feel that they enter basically a career posterior mode, that they have to do a full readjudication if not investigation, and -- because they inherently distrust other people's clearance adjudication, most of which is unfounded and inappropriate, but that's what actually happens, albeit to a lesser degree today then it was a couple years ago. It's getting better.
Q Why is it unfounded and inappropriate to distrust other adjudications?
A Because the groundwork has been laid to have not only common standard but a common investigative basis, as well as common training. So between, you know, current policies and training and so forth, the differentiations that may have existed in the past have been minimized, to a large extent. And so once you've been issued a clearance, you

should be trustworthy. If the Army has approved you for top secret and you go over to Department of Justice for a top secret, then Justice really doesn't have any unique security requirements that aren't already contained in the national standards.
Q Are adjudicators at all concerned by the inconsistency of the application of the adjudicative guidelines?
A Just --
MS. MCGOWAN: Object to the form.
THE WITNESS: Yeah. Go ahead.
MS. MCGOWAN: But if you understand, you can answer.
THE WITNESS: Yeah. Somewhat. That's a constant complaint. In many cases, people have purely anecdotal evidence, so if you've seen one case out of a thousand or two thousand, they always refer to that one, but never the other 1,999 that were consistent.
BY MS. DOUDS:
Q In this report, were there any security personnel interviewed who exhibited a lack of trust towards any agencies in particular?
A I don't recall offhand, specifically.
Q Do you know if any of the security personnel interviewed took issue with how military service CAFS

DIVERSIFIED REPORTING SERVICES, INC.
1101 Sixteenth Street, N.W. – 2nd Floor, Washington, DC 20036
Phone: (202) 467-9200 • Fax: (202) 296-3468

ERRATA

In Re: Schroer v Billington

Case No: 05-1090 Date Taken: 04/04/08

Deposition Of: Peter R. Nelson

I hereby certify I have read my deposition and that it is accurate with corrections listed below:

PAGE	LINE	AS TRANSCRIBED	CHANGE TO
8	21	overseas.	overseas forces.
19	20	appeal	appeal process
78	13	Integration	Immigration
77	1	of the	of the office of
84	11	career	cover your

Deponent Signature: Peter R. Nelson Date: 6/06/2008