IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIANE J. SCHROER, Plaintiff, v. JAMES H. BILLINGTON, Librarian of Congress, Defendant.	No. 05-cv-1090 (JR)

PLAINTIFF'S AMENDED PRETRIAL STATEMENT

Pursuant to Local Civil Rule 16.5, Plaintiff Diane J. Schroer, by her undersigned counsel, submits this pretrial statement:

1. Statement of the Case

This case is brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

Plaintiff Diane J. Schroer, a twenty-five year veteran of the U.S. Armed Services, is a transgender woman. Although designated male at birth, Plaintiff has a female gender identity. In August 2004, Plaintiff applied for a position as Specialist in Terrorism and International Crime with the Congressional Research Service of the Library of Congress. In mid-December 2004, Charlotte Preece, the selecting official, informed Plaintiff that she was Preece's top choice for the position, and after brief salary negotiations, Plaintiff indicated that she would accept the job.

On December 20, 2004, Plaintiff met Preece for lunch and shared with her that Plaintiff was a transgender woman, has a female gender identity, and would be transitioning from living as a male to living as a female on a full-time basis, consistent with her gender identity. In the course of doing so, Plaintiff showed Preece photographs of Plaintiff presenting as a female dressed in feminine professional attire. Less than twenty-four hours later, Preece called Plaintiff and informed her that, after a long and restless night, Preece had decided that Plaintiff was "not a good fit" for the Library. Instead, Preece selected her second-choice candidate, John Rollins, a non-transgender man, for the position.

In this lawsuit, Plaintiff alleges that the Library's decision not to hire her was motivated by the selecting official's belief that Plaintiff did or would not conform with sex stereotypes, and was also motivated by the fact that Plaintiff is transgender, both of which constitute discrimination "because of sex" in violation of Title VII.

2. Statement of Claims

Plaintiff alleges that the Library's actions constitute discrimination "because of sex" in violation of Title VII. Plaintiff alleges that the Library's decision was based on sex stereotypes and on her gender identity, both of which are forms of discrimination because of sex. Plaintiff alleges that sex is not a BFOQ for the position, yet the Library refused to hire her based on reasons related to her sex, including her perceived gender non-conformity and her gender identity. Plaintiff alleges that any asserted non-sex-based reasons for the Library's decision are pretextual, and that the Library's decision not to hire Plaintiff was, in fact, because of her sex.

3. Statement of Defenses

Not applicable.

4. Witness Schedule

Plaintiff's proposed witness list is set forth below.[1] Plaintiff may also call at trial any person identified on Defendant's proposed witness list, and may call additional witnesses solely for impeachment purposes.

Expect to Call

Walter Bockting, Ph. D.* (expert witness)
Department of Family Medicine and Community Health,
University of Minnesota Medical School
1300 South Second Street, Suite 180
Minneapolis, MN 55454
Testimony: Gender identity is part of a person's sex.
Time Est.: 2.5 hours

Dr. Rick Brennan, Major, U.S. Army (Retired)
8501 South Terrace Rd
Tempe, AZ 85284
Testimony: Brennan's role in the application process as one of Ms. Schroer's references; Ms. Schroer's qualifications; Ms. Schroer's focus and lack of distraction during her transition; Ms. Schroer's effectiveness and professional credibility in the counter-terrorism community.
Time Est.: 20 mins.

Martha Harris* (expert witness)
Banyan Counseling Center, Inc.
2820 School Street
Alexandria, VA 22303
Testimony: Plaintiff is a transgender woman; Plaintiff has a female gender identity; Plaintiff's transition to living full-time as a woman was the appropriate course of action for Plaintiff from a medical perspective; Plaintiff had no other co-morbidities or other stressors that would have prevented her from performing the duties of the Terrorism Specialist, or that would have presented any issue regarding Plaintiff's stability, judgment, reliability, and/or ability to safeguard classified information.
Time Est.: 1 hour

[1] Time estimates are for direct examination only.

Peter R. Nelson* (expert witness)
28 Christopher Lane
Sterling, VA. 20165
Testimony: Plaintiff's disclosure regarding her transgender status would not necessarily have caused security clearance delay, nor should it have, in light of the protocols in place for handling information of the kind disclosed by Plaintiff.
Time Est.: 2.5 hours

Diane J. Schroer
7211 Burtonwood Place
Alexandria, VA 22307
Testimony: The events and circumstances leading to Ms. Schroer's non-selection for the Terrorism Specialist position; Ms. Schroer's qualifications and performance; Ms. Schroer's ongoing effectiveness and professional credibility in counter-terrorism community; Ms. Schroer's ongoing ability to handle top-secret classified information; Ms. Schroer's female gender identity and the circumstances surrounding her gender transition.
Time Est.: 3 hours

May Call

Bryan D. Brown, General, U.S. Army (Retired)
13435 Carnoustie Circle
Dade City, FL 33525
Testimony: Brown's role in the application process as one of Ms. Schroer's references; Ms. Schroer's qualifications; Ms. Schroer's focus and lack of distraction during her transition; Ms. Schroer's effectiveness and professional credibility in the counter-terrorism community.
Time Est.: 20 mins.

Dr. Eleanor Criswell, Ph. D.
312 S. Washington Street, Suite 3B
Alexandria, VA 22134
Testimony: Ms. Schroer's female gender identity and transition; her knowledge regarding Ms. Schroer's ongoing ability to safeguard sensitive information, and inquiries related to this issue.
Time Est.: 20 mins.

Gary Heckman, Major General, U.S. Air Force (Retired)
3823 Bosworth Court
Fairfax, VA 22031
Testimony: Heckman's role in the application process as one of Ms. Schroer's references; Ms. Schroer's qualifications; Ms. Schroer's focus and lack of distraction during her transition; Ms. Schroer's effectiveness and professional credibility in the counter-terrorism community.
Time Est.: 20 mins.

Dr. Kalev I. Sepp, Ph. D., Deputy Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, Lt. Col., U.S. Army (Retired)
7818 Elba Rd.
Alexandria, VA 22306-2560
Testimony: Sepp's role in the application process as one of Ms. Schroer's references; Ms. Schroer's qualifications; Ms. Schroer's focus and lack of distraction during her transition; Ms. Schroer's effectiveness and professional credibility in the counter-terrorism community.
Time Est.: 20 mins.

Library of Congress Witnesses[2]
c/o Julia Douds, Library of Congress
101 Independence Ave, SE
Washington, DC 20540

- Charlotte Preece
Testimony (if needed): Participation in / knowledge about hiring process.
Time Est.: 2 hrs.

- Cynthia Wilkins
Testimony (if needed): Participation in / knowledge about hiring process; knowledge of personnel security / security clearance policies and procedures at Library.
Time Est.: 1 hr.

- Sandra Charles, M.D.
Testimony (if needed): Participation in / knowledge about hiring process; knowledge of health-related aspects of personnel security / security clearance policies and procedures at Library.
Time Est.: 45 mins.

- Francis Miko
Testimony (if needed): Participation in / knowledge about hiring process.
Time Est.: 20 mins.

- Steve Bowman
Testimony (if needed): Participation in / knowledge about hiring process.
Time Est.: 20 mins.

- Gary Pagliano
Testimony (if needed): Participation in / knowledge about hiring process.
Time Est.: 20 mins.

[2] Plaintiff does not anticipate calling these witnesses to present live testimony. Rather, Plaintiff expects to introduce testimony from these witnesses by deposition.

- Kenneth Lopez
Testimony (if needed): Participation in / knowledge about hiring process; nowledge of personnel security / security clearance policies and procedures at Library.
Time Est.: 20 mins.

- Daniel Mulhollan
Testimony (if needed): Participation in / knowledge about hiring process.
Time Est.: 20 mins.

- Bessie Alkisswani
Testimony (if needed): Participation in / knowledge about hiring process.
Time Est.: 20 mins.

- Kathryn Deese
Testimony (if needed): Participation in / knowledge about hiring process.
Time Est.: 20 mins.

5. Exhibit List

Plaintiff's proposed exhibit list is set forth below. Plaintiff may also introduce at trial any exhibit identified on Defendant's proposed exhibit list.

EXPECT TO INTRODUCE

Description	**Bates Nos.**	**Date (if applicable)**
Schroer Declaration for Federal Employment	113-14	10/27/04
Schroer list of references	115	12/08/04
Bowman reference check notes for Schroer	117	12/10/04
Preece reference check notes for Schroer	118	n/a
Miko reference check notes for Schroer	119	n/a
Schroer online application	120-28	09/17/04
Schroer Curriculum Vitae	129-131	n/a
Position announcement and description	136-43	09/20/04
Alderman reference check notes	149	n/a
Interview Referral List	151-52	11/16/04
Schroer Final Interview Rating Form	153-54	11/19/04
Final Referral List	155	12/29/04
Banks e-mail with updated schedule of interviews	165	10/28/04

Description	Bates Nos.	Date (if applicable)
Preece e-mail (Subject: Version 2)	205	12/21/04
Preece e-mail (Subject: Draft re terrorism position)	206	12/21/04
Crediting Plan Questionnaire (marked up)	288-94	08/10/04
Executive Order 10450	360-66	n/a
Executive Order 12968	367-80	n/a
Library of Congress Regulation 2024-4	391-93	n/a
Library of Congress Regulation 2024-6	397-403	n/a
Rollins Final Interview Rating Form[3]	PO 616-17	11/19/04
Preece draft hiring memorandum for Schroer	707	n/a
Library of Congress leave policies	776-88	03/18/08
Schroer photographs	10763-65	n/a

MAY INTRODUCE

Description	Bates Nos.	Date (if applicable)
Preece memorandum	1-2	01/24/05
Miko notes from Schroer interview	3-35	10/27/04
Bowman notes from Schroer interview	48-80	10/27/04
Preece notes from Schroer interview	81-112	10/27/04
Interview schedule	150	n/a
Library EEOC right to sue letter	175-76	03/07/05
Library EEOC investigative file	183-92	02/17/05
Structured Interview Guide (with annotations)	245-80	08/17/04
Adjudicative Desk Reference excerpts	445-503	n/a
Preece calendar entry	769	12/20/04
Schroer identification documents	10001	n/a
Office of Workforce Development spreadsheet	10659	08/04/04
Memorandum from Preece to Smith	10663	12/14/04
Library of Congress Merit Selection and Promotion Plan	10667-84	06/19/01
Terrorism Specialist position announcement (version first produced and used by government at Schroer deposition)	10686-89	n/a

[3] Documents labeled "PO" are governed by the Protective Orders entered in this case (Rec. Docs. 25 & 27).

Description	**Bates Nos.**	**Date (if applicable)**
Schroer online application (version first produced and used by government at Schroer deposition)	10690-98	n/a
Schroer USCG Headquarters identification badge	10810	n/a
Schroer military commendations	10811-10853	Various
Schroer Electronic Questionnaire for Investigations Processing (e-QIP)	PO 10861-PO 10890	03/02/06
Excerpt from Taber's Cyclopedic Medical Dictionary	n/a	2005
Diagnostic and Statistical Manual of Mental Disorders (DSM) pp. 576-82 (4th ed. text revision 2000) (American Psychiatric Association)	n/a	2000
Harry Benjamin International Gender Dysphoria Association Standards of Care (6th ed. 2001)	n/a	2001
CRS Report for Congress, "Special Operations Forces (SOF) and CIA Paramilitary Operations: Issues for Congress"	n/a	01/04/05
CRS Report for Congress, "U.S. Special Forces (USOF): Background and Issues for Congress,"	n/a	04/14/06
Curriculum Vitae of Walter O. Bockting	n/a	n/a
Curriculum Vitae of Martha L. Harris, LCSW	n/a	n/a
Resume / Curriculum Vitae of Peter R. Nelson	n/a	n/a
Response to Plaintiff's Interrogatory No. 1	n/a	07/21/06
Response to Plaintiff's Interrogatory No. 7(g)	n/a	11/22/06
Response to Plaintiff's Interrogatory No. 11	n/a	03/23/07
Response to Plaintiff's Interrogatory No. 28	n/a	02/21/08

6. Deposition Designations

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MULHOLLAN DEPOSITION DESIGNATIONS

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ALKISSWANI DEPOSITION DESIGNATIONS

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ALKISSWANI DEPOSITION DESIGNATIONS (cont'd)

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ALKISSWANI DEPOSITION DESIGNATIONS (cont'd)

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87	1
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97	17-22
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DEESE DEPOSITION DESIGNATIONS (cont'd)

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INTERROGATORY RESPONSE DESIGNATIONS

Interrogatory	Brief Description	Date
Response to Pl. Interrog. No. 1	Preece was selecting official	07/21/06
Response to Pl. Interrog. No. 7(g)	Information provided to Wilkins in advance of December 21, 2004 meeting	11/22/06
Response to Pl. Interrog. No. 11	Reporting and clearance dates for Rollins	03/23/07
Response to Pl. Interrog. No. 28	Defendant's decision was due in part to concerns about distraction and need to take leave to deal with gender identity issues	02/21/08

7. Damages Sought

With the Court's approval, the parties agreed to bifurcate the adjudication of this case into a liability phase and a damages phase. Rec. Doc. 26 & Minute Order (Sept. 26, 2006). Accordingly, the parties do not intend to present evidence regarding damages at this trial.

8. Other Relief Sought

With the Court's approval, the parties agreed to bifurcate the adjudication of this case into a liability phase and a damages phase. Rec. Doc. 26 & Minute Order (Sept. 26, 2006). In the event that there is a finding of liability, Plaintiff will seek all relief (legal and equitable) to which she is entitled by law.

Respectfully submitted,

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Date: July 28, 2008