IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT

DANIEL DOE, et al
Plaintiff,
vs.
STATE OF KANSAS, ex rel KRIS KOBACH, et al
Defendant.

Case No. 2026-CV-112

TRANSCRIPT OF TEMPORARY INJUNCTION
VOLUME III

BE IT REMEMBERED that on the 1st day of October, 2026, the above-entitled matter comes on for hearing before the Honorable JAMES McCABRIA, Judge of Division No. 4 of the Seventh Judicial District of the State of Kansas, at Lawrence, Kansas.

APPEARANCES

For the Plaintiff: Mr. Harper Seldin
Ms. Heather St. Clair
Mr. Doug Dalgleish
Mr. Joshua Block
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For the Defendant: Mr. Kris Kobach
Mr. James Rodriguez
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Mr. Jordan Brewer
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Reported by Nina Copeland Official Reporter, CCR

THE COURT: On the record in 26-CV-112. Doe and others v. State of Kansas. State the appearances.

MR. SELDIN: Good morning, Harper Seldin for Plaintiffs.

MS. SITTON: Good morning, Your Honor, Jocelyn Sitton for Plaintiffs.

MR. DALGLEISH: Good morning, Your Honor, Doug Dalgleish for Plaintiffs.

MS. ST. CLAIR: Good morning, Your Honor, Heather St. Clair for Plaintiffs.

MR. KOBACH: Good morning, Kris Kobach for the State.

MR. RODRIGUEZ: James Rodriguez for the State.

MS. GUST: Erin Gust for the State.

MR. NUSSBAUM: Andrew Nussbaum for the State.

MR. CARSWELL: Dwight Carswell for the State.

MR. BREWER: Good morning, Your Honor, Jordan Brewer for Department of Administration, Secretary Proffitt.

MS. BAKKER: Lynette Bakker for Department of Administration, Secretary Proffitt,

Your Honor.

MR. SMITH: Your Honor, appearing for the Kansas Department of Revenue is Ted Smith.

THE COURT: All right. Thank you. Before I forget, if anyone needs the password for the Wi-Fi for the courtroom, it's all lowercase, all one word, decisiontime.

Okay. The plaintiffs rested yesterday. I know there were some things taken under advisement by the Court. I don't know that any of those are essential to resolving before we proceed with the State's case. Any preliminary matters to take up before we do so?

MR. SELDIN: Just briefly, we had reported our calculation of the time last night. By Plaintiffs' calculations, Plaintiffs have used seven hours and three minutes, Defendants have used five hours and 19 minutes.

My understanding is that, at least for yesterday, the State may also have been keeping time, I'm not aware if there is a difference.

THE COURT: Does State have a -- and that's cumulative for the two days?

MR. SELDIN: Yes, Your Honor.

MR. RODRIGUEZ: Your Honor, we concur

with the time that was kept yesterday and we objected to the time that was different from what we stipulated day one. If it comes up towards the end of this hearing, then we can address it then.

THE COURT: That makes sense to me as well, I appreciate that report.

Anything else, Mr. Seldin?

MR. SELDIN: No, Your Honor.

THE COURT: State, any preliminary matters before we start evidence?

We do have at least one fact witness in the gallery now. We'd just like your guidance on whether they can remain in the gallery, or should be sent outside into the Zoom room.

THE COURT: These are open proceedings, no one's requested sequestration. I don't have any further direction than that.

MS. SITTON: Your Honor, plaintiffs would object to the fact witnesses sitting during the testimony of other fact witnesses.

THE COURT: State have a response to that?

MR. RODRIGUEZ: I think the normal procedure is to invoke sequestration at the beginning of trial, but as I said, we're prepared to

follow your guidance on this.

THE COURT: Well, I view it as, if it's not requested upfront, unless somebody is going to give me a specific concern -- I understand the general concerns, but it seems too late to me to concern ourselves with it, absent some more specific issues.

MS. SITTON: Your Honor, Plaintiffs -- excuse me --

THE COURT: Yes?

MS. SITTON: Plaintiffs understood that the fact witnesses were not available to attend the hearing until today, which is why we have not requested sequestration before this point.

THE COURT: Since the State's amenable, let's go ahead and have them step out, let's proceed that way.

MR. RODRIGUEZ: Thank you, Your Honor.

THE COURT: Anything else, Mr. Rodriguez?

MR. RODRIGUEZ: No.

THE COURT: The State can proceed.

MS. GUST: Your Honor, the State calls Sally Soe.

THE COURT: All right. Ma'am, come forward and be sworn. Right here, I apologize.

SALLY SOE, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MS. GUST

Q. Good morning, Ms. Soe.

A. Good morning.

Q. Thank you for joining us here today.

A. Thank you for having me.

Q. Ms. Soe, are you proceeding under a pseudonym?

A. Yes, I am.

Q. What is your name for these proceedings?

A. Sally Soe.

Q. I'd like to start by letting the Court get to know you a little bit. How long have you lived in Kansas?

A. I moved to Kansas in 2009, so 17 years-ish.

Q. Why did you move to Kansas?

A. My husband's job.

Q. What does he do?

A. He works for the United States Coast Guard, he was an active duty military member and we

got transferred to Topeka.

Q. Do you have any children?

A. I do, I have two daughters.

Q. Do your daughters go to public schools in Kansas?

A. My youngest daughter does currently, and my oldest daughter did, but she is in college now.

Q. Now, I'd like to talk about why we're here today. Have you ever had any concerns with your daughter sharing a restroom with a biological male?

A. Yes, I have.

Q. Why?

A. My oldest daughter wrestled in high school. And her freshman year, there was a boy who identified as a girl, that was on her team for a little bit. And she had to wrestle him and it was a concern of us, me and my husband, that she would be put in a position to share a bathroom and a locker room with this individual.

Q. Were there any other reasons?

A. I mean, yeah. We -- my daughter -- we had an incident in Colorado, and we actually -- I sent my daughter and my niece to the bathroom at a restaurant and she came back very upset and had seen a man in a dress in the bathroom, and so that was

very upsetting for us as well.

I immediately went to the bathroom to see what is going on, because they were both so upset. And she -- there was nobody in there at that time. We went back to the table and they did not want to go back to the bathroom because of that. And so we continued eating, and then a little bit later during our meal, the individual walked by.

It was, in fact, a man in a dress, and they said, there he is, that's him. And so we -- they were just very upset about it.

So yeah, in general, it is a concern of mine that my daughters will have to share a bathroom or a locker room with a man.

There were also some transgender students at my older daughter's high school, so she was, really just didn't want to go to the bathroom during the day at school, and she voiced that to me regularly.

THE COURT: Ms. Soe?

THE WITNESS: Yes, sir.

THE COURT: Is your green light on, on the microphone?

THE WITNESS: No, it's red.

THE COURT: Would you press --

THE WITNESS: The button? Now, it's green.

THE COURT: Yes.

THE WITNESS: Oh, golly. Yeah, that's way better.

THE COURT: That's better, can you --

THE WITNESS: Do I have to start over?

THE COURT: -- closer? No, no, you don't need to start over.

THE WITNESS: I was like, oh my goodness gracious.

THE COURT: That's my fault, can you pull it a little closer?

THE WITNESS: Closer to me? Yes.

THE COURT: Thank you very much.

THE WITNESS: No problem.

BY MS. GUST

Q. So you mentioned concerns at your oldest daughter's school --

A. Correct.

Q. What did you do about those concerns?

A. I did speak to a few members of the school board a few times. I reached out to them via e-mail, asked them if I could have a phone

conversation with them and I did talk to three school members, school board members, asking them about the school's policy about this.

And they basically said that there really isn't one, that they are discussing things, we don't really know at this time, we know this is possibly an issue for the district, we are having some meetings. And basically they just told me there's no answer for me, that there's no policy yet, and just kind of almost kicked the rock down the road.

So obviously, that, that was upsetting for us, you know, that it wasn't being dealt with.

Q. When did this happen?

A. My daughter is a freshman, and she graduated in 2004, so 2020-ish, is that what you're talking about --

Q. She graduated in 2004?

A. No, 2024.

Q. 2024.

A. Sorry, am I not close enough? So yeah, it was about 2020 whenever I first e-mailed or talked to the school board members.

Q. So after you had this conversation with the school board members, what did you do?

A. I mean, obviously, we talked to our

daughter. If she, you know, saw an individual in the bathroom that was a male, that she would notify us immediately, me and my husband, and we can coach her through that, how to handle that.

I e-mailed them again, you know, like, probably about a year later to ask, you know, kind of what the update is on that, and they said -- gave me the same answer.

So that district was not making a policy in regards to that still. So yeah, that's pretty much how we handled that.

Q. Does your youngest daughter go to that same high school?

A. She does not. So our youngest daughter went to the same district as our oldest up until seventh grade, and we decided due to all the issues that we were having with our older daughter with the lack of policy, the lack of leadership, if you will, and the lack of communication with what the district was going to be doing about the bathroom and the locker room situations at school, we decided to move our older -- I'm sorry -- younger daughter to another school in between her seventh and eighth grade year.

Which obviously was an extremely difficult

decision. You know, moving a teenager in the middle of middle school to a new school was very challenging for her, for us, so yeah, we switched districts. So she's in a different district now. She's currently a sophomore.

Q. How did you pick the new school that she goes to now?

A. Sure, so we did a lot of research. There's lots of schools in Topeka. It's a pretty decent sized city, there's also schools all around the city in smaller communities, so we did a bunch of research.

We had some meetings with different principals. We met some of the administrations from some of the private schools, you know, we looked everywhere for the right fit for her and for our family, and we met with the district that she is in now, and we met with the principal and asked him, you know, kind of what their policies were on the locker room, bathroom, gender issue, you know, that everybody is facing right now, and they said that that is not an issue here, we do not allow it. And so we chose to send our daughter to that district.

Q. So you mentioned earlier an incident in Colorado where your daughter told you that she was

in the restroom with a man. Can you describe her reaction when she came back to the table?

A. Yeah, for sure. She was, I would say she was about 11, so you know, tween, pre-puberty kind of age, and she was just genuinely very upset. You know, she back to the table, where my niece, my niece was probably about nine or 10. They came back to the table very upset. We can't go to the bathroom, like visibly, I wouldn't say panicky, but visibly not okay with what was going on. Which, as a mom, that was very concerning for me and my husband.

So yeah, she was -- and she didn't want to go back to the bathroom. So it wasn't -- going to the bathroom was not worth it for her because she felt threatened and she felt very unsafe in that bathroom, so yeah.

Q. How did that make you feel?

A. Mad. You know, obviously, as a mom, my claws want to come out any time my kid, somebody messes with my kid, you know what I mean. So I was upset, I was angry, obviously, I need to say, is this true and kind of find out what is going on, and investigate what's happening and why my daughter feels threatened and why my daughter feels unsafe,

so that's what, that's what we did.

Q. Do you still let your youngest daughter use a public restroom by herself?

A. Absolutely not. No, she's 16 now, we actually just went to Target last week, looking for Homecoming stuff for her and, no, she had to go to the bathroom, and I was like, cool, let's go, I'm going with you. And I literally stood there while she went to the restroom.

So no, it definitely changed how I manage my daughters when they have to go to the bathroom in a public space.

Q. Ms. Soe, have you ever shared a bathroom with a biological male?

A. I have. Yes.

Q. What happened?

A. So I had flown back home to the Kansas City Airport, and there is -- now I know that there is a gender-neutral bathroom in that airport, and I just had to go to the bathroom after I got off the plane and just walked into a bathroom that I thought was a women's restroom.

And I went in, I walked in and then I saw a man coming out of a stall going to wash his hands, and I was like, obviously, like, oh my goodness, I

walked into the men's restroom. Whoops, my bad. And I turned around and went out.

And then I looked around and I was like, oh, this is a gender-neutral bathroom and it was really unnerving for me to see a man in a bathroom, in my bathroom, what I thought was going to be a women's restroom.

Q. How did that experience make you feel?

A. I mean, unsafe. Like, women do very private things in bathrooms. I mean, I know men do too. But women do very private things in bathrooms, you know, you have to go pee, you have your period, you have to change your tampon, you have to, you know, do all these things that are very private and you don't want a man in the bathroom with you.

So as a woman, going to the restroom, I did feel very unsafe and it was very unnerving, and just kind of off-putting.

Q. So you mentioned that you felt unsafe. Did you change your behavior after that experience?

A. Yeah, I mean, I pay attention now a little bit better to what the restroom says. You know, what the sign says when I go to the bathroom. You know, obviously, I'm a little bit more alert in public restrooms than I ever had to be, you know,

before, probably within the last five or six years, I feel like I've become more alert in a bathroom than I was before, so yeah.

Q. Ms. Soe, do you have a problem being in the same room as a transgender person?

A. No, not at all.

Q. Do you dislike transgender individuals?

A. No, I know some, and I think they're great.

Q. When you were growing up in elementary, middle, and high school, do you remember using the restrooms or locker rooms with men?

A. Absolutely not. No, I went to school in the 90's and the early 2000's and never once did I have to deal with anything like this, no.

Q. Why did you decide to participate in this lawsuit?

A. I decided to participate in this because I, obviously, I am a woman, and I feel like -- and I was also in school, and was an athlete, and was in a locker room a lot, and you know, obviously, still to this day do very private things in the bathroom, where you change and you do all sorts of things as a woman in a bathroom. And I have two daughters that, obviously, are my world.

And to see that this issue is affecting them in the basic day-to-day stuff that they have to do, like you have to go to the bathroom, you know. And at school, you have to go deal with your monthly period, and you have to use the restroom at school every day.

And whenever they go to locker rooms for their sports and go to other schools, and you know, they have to go to the bathroom and change into their jerseys.

And they have to, you know, my daughter is a dancer, so she has to go put on her dance costume -- uniform. She'd kill me if she knew I called it a costume, her dance uniform.

She has to go change and change her bra. You know, you have different bras for different events, she has to change her bra. And so she now is so much more alert, and feels so much more vulnerable in bathrooms and I just, I'm not okay with that. That really, really upsets me as a mom and someone who wants to protect my children.

Q. Ms. Soe, do you feel safer using restrooms and locker rooms in publicly owned or leased buildings in Kansas now that SB 244 is in place?

A. I do, I think that this, this bill that

passed, I was happy to see that it passed. I think it's common sense legislative, and yes, I do think it is a great step in the right direction. And yeah, I do feel safer knowing that that's a law here in Kansas.

MS. GUST: Thank you, no further questions.

MS. SITTON: Cross-examination, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION

BY MS. SITTON

Q. Good morning, Ms. Soe.

A. Good morning.

Q. My name is Jocelyn Sitton, I'm one of the attorneys for the plaintiffs --

A. Hello.

Q. -- in this case. Hello. Ms. Soe, you're proceeding under a pseudonym in this lawsuit?

A. That's my right, mm-hmm.

Q. But isn't it true that your family was recently involved in another lawsuit concerning transgender issues partially brought by Attorney General Kobach?

A. Yes, that's correct.

Q. And your family used your real names in that lawsuit --

A. My daughters did. I was not involved in that other than helping them, obviously.

Q. Understood. But isn't it true that there's photos of you and your daughter identified by name on the Alliance Defending Freedom website concerned with that lawsuit?

A. My daughters are, I don't think I am. There may be pictures of me, I'm not sure. But my daughters are.

Q. Would it surprise you to learn that there are photos of you identified by name?

A. Probably not because I was their ride.

Q. And in fact, your daughters appeared at a press conference with Attorney General Kobach?

A. They did, yes. Mm-hmm.

Q. And Ms. Soe, you're not aware of a time that either of your daughters actually used a restroom at their school with a transgender person, is that --

A. Not that I know -- not that they know of, no.

Q. And you don't know whether a transgender student actually used the girls' restroom at your

daughter's school?

A. I mean, I'm not at that school and watch who goes in and out of the bathroom, so no, I cannot say that I witnessed a transgender person using a bathroom, no.

Q. And to your knowledge, you haven't been at a restroom at the same time as a transgender woman; is that right?

A. I mean, I don't know. But -- I don't know.

Q. And you would be uncomfortable sharing a restroom with any transgender person, right? A male or a female?

A. I don't want men in my bathroom. So I think that's what goes -- is the heart of this issue and I think the law deciding where transgender individuals use the bathroom or going down that road is not my call to make. I do not want men in my bathroom or in the bathroom with my daughters.

Q. I understand, but my question is whether you would be comfortable sharing a restroom with any transgender person, whether they are male or female?

A. If they were born men, I don't want a man in my bathroom.

MS. SITTON: Thank you, Ms. Soe.

THE COURT: Any follow-up on that?

MS. GUST: No, Your Honor.

THE COURT: Thank you for your testimony.

THE WITNESS: Yes, thank you.

MR. COMPTON: Next witness, Your Honor?

THE COURT: Yes.

MR. COMPTON: At this time the State calls Tim Tanner.

THE COURT: Certainly, any witness who has completed their testimony is welcome to stay, I just want to make sure that people understand that.

And I assume Counsel knows as well, I understand the State might have some expert witnesses present and they are not subject to sequestration.

MR. COMPTON: Yes, Your Honor.

THE COURT: Just so people are aware, we're trying to get the door lock issue, but sorry about that, sir.

You're going to testify from this chair right here, so if you'll come up and before you sit down, the reporter will administer the oath.

TIM TANNER, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MR. COMPTON

Q. Mr. Tanner, would you please introduce yourself to the Court?

A. Hello, my name is Tim Tanner.

Q. Is that your real name?

A. That's my pseudonym.

Q. Where do you live, Mr. Tanner?

A. Yes, I live in Andover, Kansas.

Q. How long have you lived in Kansas?

A. I have lived at my current residence for 14 years, and in Kansas about 32.

Q. What do you do for a living?

A. I work for a software company as a business analyst.

Q. Why are you here testifying today?

A. I'm testifying here today because my daughter, who went to Andover Central Middle School in the fall of 2024, experienced a biological male entering the women's restroom on her academic wing.

Q. Let's back up a little bit. How many kids do you have?

A. I have two daughters, one is 14-years-old,

and one is 12-and-a-half.

Q. Tell us a little about them.

A. So my oldest, the 14-year-old, she is very musically inclined, school comes easily to her. She plays the violin and sings, as well as is a drum major in high school band, marching band.

My youngest is more of a free spirit. She has to work hard for her grades. She is a dancer and also plays volleyball, and just loves her friends and loves fiercely.

Q. You mentioned an incident with one of your daughters, when did that happen?

A. Yes, that was with my oldest daughter and this would have been in the fall of 2024.

Q. What happened?

A. So my daughter was, as I said, it was in the fall, so it was starting to get a little chilly and I think in the classroom it was a little cold, so she asked to be excused from class and went down to her locker room or her locker, I'm sorry, and got her jacket out of her locker.

And at that same time, a transgender female, biological male, that she was acquaintances with, called across the way from the bathroom area, saying my daughter's name, and my daughter looked

over at F, and said nothing, just thought it very strange that F was going into the same restroom that she typically used.

My daughter did not go into the restroom at the time, and she could not recall ever being in the restroom at the same time as F, but she did, she did think it was very strange and told us about it later that week.

Q. How did your daughter feel about seeing F go into the girls bathroom?

A. She was quite emotional about it, angry and sad. She felt that it was not right that a biological male would enter the same restroom that she uses. It was different than what we've raised her to expect in society, frankly, and it troubled her greatly.

Q. How did you feel about what your daughter told you?

A. I felt angry and upset, that I felt like I had to do something because something at the school was not being properly taken care of. My -- I was on the school board at the time, but just as a parent, I was upset that I couldn't be there to protect my daughter for a violation of what I feel is a common societal rule.

And in the legal world, I didn't feel like I had backing to, to basically enforce that people with the same biological sex as my daughter would use the same restroom, and the biological males would use the men's restroom. So I was quite upset and felt helpless to take any action upon it.

Q. When you said you felt like you needed to protect your daughter, why did you feel like she needed protecting?

A. I felt like she needed protecting because, not because I viewed F as a particular danger to my daughter, but just in general, that this should not be happening at her school, where her primary purpose is to learn and feel safe in that learning. Sorry, could you repeat the question again?

Q. Why do you feel like your daughter needs protecting if there's males in the restroom?

A. I felt like she needs protection because even if F presented no immediate threat, indeed, she did not, my daughter did not go into the restroom at the same time as F, but just as a societal rule, we should not be allowing biological males to enter the bathroom spaces of females because it raises the risk of any number of things of occurring, whether that's physical abuse, sexual assault, battery, any

number of crimes, to just simple lurid interest of what would it be like to be in the same bathroom as biological females as they're getting undressed whether that's in the bathroom or locker rooms and stuff. I hope that answers the question.

Q. To make it a little more concrete, if you were there, and you watched one of your daughters go into a bathroom and you saw a man follow her in, what would you do?

A. If I was able to physically get in the way of what I saw was clearly a biological male entering a female restroom with my daughter, I would block said person from doing so, and direct them to the men's restroom.

But if the biological male was already fully in the restroom, and I didn't feel comfortable following all the way into the restroom, I would open the door and raise a ruckus and call attention until the biological male left that women's restroom.

Q. Did you complain to your daughter's school about this incident?

A. I did not lodge a complaint with them.

Q. Why not?

A. As I mentioned, I didn't feel there was

enough legal backing to state that a biological male can't legally use that restroom, I felt like there was no legal framework for doing so.

As well as, we were somewhat familiar, as I mentioned, with this individual, who attended our church, and I didn't want to bring undue shame or embarrassment to this child, because I see this child as another human being that deserves dignity. But at the same time, we need to be following rules and so that's why I wanted to, I guess, participate in this case to further bolster and strengthen what this law does.

Q. Did you do anything in response to this incident?

A. I discussed with other parents to, I guess notify them that it was occurring, and kind of compare notes. But I mean, other than reaching out to some people and eventually learning of this case, I did not lodge a formal complaint with the school or try to honestly cause a big ruckus, like I said.

Q. Do your daughters still go to that school?

A. They do not.

Q. Why not?

A. We transferred at the end of that school year to a private school, the alma mater where I

attended high school, for a variety of reasons, and this was one of them, was that I felt that I could no longer keep my daughter, daughters safe in this school.

Q. Mr. Tanner, do you think that SB 244 keeps your daughters safer in the restroom?

A. I do believe it does, yes.

MR. COMPTON: Nothing further from the State, Your Honor.

MS. ST. CLAIR: Cross-exam, Your Honor?

THE COURT: Of course, please.

CROSS-EXAMINATION

BY MS. ST. CLAIR

Q. Good morning, Mr. Turner. Do you recall me taking your deposition in June?

A. Yes, my name, my pseudonym is Mr. Tanner.

Q. My apologies.

A. That's okay.

Q. Turner, Tanner, they're about the same. So Mr. Tanner, your daughter was never in the bathroom with her transgender classmate, correct?

A. That's correct.

Q. And during your deposition, and in your declaration, you testified that the incident that

occurred in the hallway was that the 12-year-old transgender girl was a classmate of your daughter's called her name and waived at her, right?

A. That is correct, yes.

Q. And you mentioned you were not personally at the school when that occurred?

A. I was not at the school when that occurred.

Q. When you contacted somebody about being part of this case, you told them that your daughter, nothing especially nefarious or damaging occurred during this incident, correct?

A. Yes, referring to like physical damage or even being in the same bathroom at the same time, yes. That's what I was referring to.

MS. ST. CLAIR: Nothing further, Your Honor.

THE COURT: Follow-up?

MR. COMPTON: No, Your Honor.

THE COURT: Sir, thank you for your testimony.

THE WITNESS: Thank you.

THE COURT: State's next witness?

MR. NUSSBAUM: Yes, Your Honor. Just one moment, we need to grab her.

THE COURT: Again, I feel a little bit silly having to say this, it's an open proceeding and I apologize if these door locks are creating any inconvenience for anybody, I'm trying to get it fixed.

Can we have the name of the witness?

MR. NUSSBAUM: Bailey Boe, Your Honor. State calls Bailey Boe.

THE COURT: Ma'am, come forward. You'll be testifying from this chair right here. And before you take a seat, the court reporter will ask you to take an oath.

BAILEY BOE, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MR. NUSSBAUM

Q. Good morning, Ms. Boe.

A. Good morning.

Q. If you would, please introduce yourself to the Court by the name you're using in this case?

A. Bailey Boe.

Q. How old are you today, Ms. Boe?

A. Eighteen.

Q. And how old were you when you signed your declaration in this case?

A. Seventeen.

Q. Without naming your school, where are you in high school?

A. The Wichita area.

Q. And what year are you in high school, Ms. Boe?

A. I'm a senior.

Q. Did you submit a declaration in this matter?

A. I did.

Q. All right. I'd like to talk to you about the contents of that declaration, and I'd like to take you back to the fall of your sophomore year in high school.

What class did you have that used the girls' locker room?

A. A yoga class.

THE COURT: Ms. Boe, can you pull the microphone just a little bit closer to you, I know it's sometimes awkward to have it right in your face, but it really helps. Thank you.

BY MR. NUSSBAUM

Q. So back to your sophomore year, you said that you had a yoga class?

A. Yes.

Q. Describe the girls' locker room for the judge? What did you see when you walk in?

A. When you walk into the locker room, there's a set of lockers in the middle and it's divided so the right side is more lockers, but if you go all the way back, you can go into the bathroom area, where there's individual stalls and the sinks with toilets.

And then on the left side, there's also more lockers. But if you go back, there's showers with just curtains and in the front of the locker room, there's the coach's office.

Q. And how do the girls change in that locker room, Ms. Boe?

A. Out in the open.

Q. Before any of this happened, how did you change in this locker room?

A. Out in the open.

Q. You describe a student in your declaration; is that right?

A. Yes.

Q. And before your sophomore year, did you know the student you described in your declaration?

A. Yes.

Q. On the first day of your sophomore year,

did you have any doubt that this student was a boy?

A. No.

Q. Why not?

A. Because I had been going to school with this kid since sixth grade, and I knew who he was.

Q. Tell the Court what happened in the girls' locker room on the first day of your sophomore year.

A. So it was the first day of school and I had yoga, which is down in the basement. So I went to the locker room to wait, and usually the teacher will come in and she will assign everyone their own lockers, so we were just waiting in the locker room.

And I sat on the bench, and the teacher came in and she was calling out everyone's names, and then she called this kid's name out, and I recognized it because that was the name that he preferred to go by, but I knew exactly who it was and that he was not supposed to be in there.

Q. Had you noticed the student when you walked into the room?

A. No.

Q. How close was the student to you?

A. He was less than a foot behind me.

Q. Was the student doing anything to you?

A. No.

Q. Describe for the Court what went through your mind when you realized that the boy was in the girls' locker room?

A. It was concerning to know that there was a biological male in a female's locker room, where he should not be. It was definitely unsafe and it just made me super uncomfortable.

Q. Did you say anything to the student at that time?

A. No.

Q. Was that the only day the student was in the girls' locker room?

A. No.

Q. How long was the student in the girls' locker room after that first day of school?

A. For about two weeks.

Q. During those two weeks, did you change clothes in the locker room?

A. I did, but I preferred to use the stalls.

Q. So you went into the stalls to change?

A. Yes.

Q. And why did you do that?

A. Because I did not want to be out in the open with a pair of males eyes looking at me while I changed clothes, it was unsettling.

Q. Did you contact your principal about this incident?

A. I did.

Q. Tell the Court about that.

A. So I had e-mailed the principal right after I knew about the incident. And he told me that he would take care of it, and just have a good rest of the weekend. And when I came back that weekend, the kid was still in there and I was irritated, so I e-mailed him again. And I told him that the problem was not resolved and something needs to be done about it as soon as possible.

And after he said, okay, I'll do it, and I came back the next day and the kid was still in there. I told him that I was going to have a meeting with him.

Q. Tell the Court about that meeting.

A. So the meeting was at the end of school, and I went into his office and this was a very important matter to me, so I thought we were going to sit down and have a good conversation about this, but instead we had about a brief one-minute talk about it.

And I told him all of my concerns and when I said to the principal that there is a boy in the

locker room, he corrected my pronouns and told me that I should be using she instead of him, and that made me very uncomfortable. So I felt shut down and it was awkward and I didn't say anything to him at all after that and he just let me go out of the office.

Q. Why did it matter to you that the principal's response was to correct your pronoun usage?

A. Because I was going to him with a matter that I knew was unsafe and that there was actually a male about to be in the girls' locker room. That was very unsettling. So when I go to the principal asking him for help, and for him to shut me down like that, I knew that my problem was not as big of a problem as he thought it was.

Q. Did you feel like the school was protecting you?

A. No.

Q. Why not?

A. Because rules are put in place so they could protect things and keep everything straight in a line. And the fact that the principal overlooked this and did not care, that was disappointing to know, that I was a student reaching out for help and

he just didn't take it as seriously as I thought he would.

Q. In that meeting, or in those two weeks, did the principal or any other representative of the school ever explain to you how a boy had come to be allowed into the girls' locker room?

A. No.

Q. Did they explain the policy that allowed for that?

A. No.

Q. What did you do when that meeting ended, Ms. Boe?

A. I had walked out of the office, and I was really upset and irritated. And I sat on the bench and I called my dad while I was looking at the principal to let the principal know, like, that he's going to be in a lot of trouble.

Q. Was the student eventually taken out of the girls' locker room?

A. Yes.

Q. How do you know that?

A. I came back the next day after the meeting and the student was no longer there and he had been standing outside the door.

Q. Did you still have yoga class with that

student after the meeting?

A. Yes.

Q. Did being in yoga class with the student make you feel uncomfortable or unsafe?

A. No.

Q. Why not?

A. Because there's a difference when you're in a locker room, in a confined area, where you're supposed to have privacy and safety and that locker room is only meant for boys or for girls. And they are not supposed to switch.

But being in a yoga room where there's a teacher there and it's an open space, it's a public area, you have boys and girls at the same time, it's fine.

Q. Looking back now, how did those two weeks affect you, Ms. Boe?

A. I was really, I was really scared. It was very unsettling and uncomfortable to be in the same room with the boy.

Q. Your declaration uses the word unsafe, what did you mean by that?

A. So just having a biological male in there, you don't know exactly what he's thinking or what he's seeing. And the reason that he's just, why

he's in there, you don't know. And somehow he just ended up in there, so you don't know exactly what can happen.

There's kids that in class they have to use the bathroom, so the teacher will let them go back into the locker room to use the bathroom and some people are in there by themselves and you don't know if he could just walk in there randomly, you just don't know what could happen.

Q. Did those two weeks change what you did and how you acted in locker rooms and restrooms?

A. Yes.

Q. Explain that.

A. So instead of sitting on the bench, I sat against the wall and just made sure, I just kind of knew what he was doing and where he was sitting.

I stopped changing out in the open, I changed in the stalls. And now whenever I enter areas I'm more cautious about who's in there and who's around me, but other than that, I just don't think it was safe for me or any of the girls in the locker room.

MR. NUSSBAUM: Thank you, Ms. Boe. No further questions.

THE COURT: Cross-examination?

MS. SITTON: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. SITTON

Q. Good morning, Ms. Boe. My name is Jocelyn Sitton, I met you during your deposition earlier this year, but I'm one of the attorneys for the plaintiffs in this matter.

Ms. Boe, the student that you describe in your declaration and in your testimony was sitting behind you on a bench in the locker room, correct?

A. Correct.

Q. Okay. And did this student harm you at any point?

A. No.

Q. Did you have any interaction at all directly with this student?

A. No.

Q. At any point?

A. Correct.

Q. Okay. And you never changed in front of this student?

A. Never.

Q. And the student didn't change in front of you in this incident?

A. No.

Q. You aren't comfortable sharing a restroom with somebody whose birth sex is male, but who identifies as a woman; is that right?

A. Yes, I don't want to share a locker -- or a bathroom with a male.

Q. And you also wouldn't be comfortable sharing a restroom with somebody whose birth sex was female, but identified as a man, correct?

A. I don't really know, I've never been in that situation.

Q. But would you be comfortable sharing a restroom with any transgender person, male or female?

MR. NUSSBAUM: Objection, Your Honor, asked and answered.

THE COURT: Overruled.

A. I mean, it would be unsettling to know that there's somebody in there who thinks that way, but it's still a girl.

Q. So just to clarify, by unsettling for somebody to think that way, you're referring to somebody whose birth sex is female, but who identifies as a male, being in the same restroom as you?

A. Yes.

Q. And Ms. Boe, it's true that you yourself have used a men's restroom in a public school, correct?

THE COURT: I'm sorry, repeat the question.

MS. SITTON: Yes.

BY MS. SITTON

Q. It's true that you yourself have used a men's restroom at a public school, correct?

A. No, I used one out, way out in a field. It was at a public school, but it wasn't in a school.

Q. So you used a men's restroom at a public school?

A. Yeah.

Q. Okay. And you did that because there was a long line for the women's room, correct?

A. Yeah.

Q. And you really, really had to go to the bathroom?

A. Yep.

MS. SITTON: There's nothing further, Your Honor.

THE COURT: Follow up, Mr. Nussbaum?

MR. NUSSBAUM: Nothing further, Your

Honor.

THE COURT: Thank you for your testimony. You can step down. You're free to stay or go in the courtroom.

MR. RODRIGUEZ: Your Honor, can we have a short break. Our witnesses are arriving slower and we're going faster than we anticipated.

THE COURT: We're going to take a 10 -- let's just recess till 9:30, simply because of that issue, but also I think I have someone to work on the door issue.

MR. RODRIGUEZ: Thank you, Your Honor.

(A recess was taken.)

THE COURT: We're back on the record. I appreciate the laughter about the door, but it really bothers me because it's an open proceeding and I feel like they can't get through. I've been told it's been fixed, I will keep an eye on it and proceed accordingly.

Mr. Rodriguez, do you have a witness to call.

MR. RODRIGUEZ: Yes, Your Honor. The State calls Bryan Stammer.

THE COURT: Come forward and be

sworn.

BRYAN STAMMER, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MR. RODRIGUEZ

Q. Good morning, Mr. Stammer, can you please state and spell your name for the record?

A. Bryan Stammer, B-R-Y-A-N-S-T-A-M-M-E-R.

Q. Where are you currently employed?

A. Ford County Sheriff's Office in Dodge City, Kansas.

Q. How long have you worked for the Ford County Sheriff's Office?

A. For a little over 15 years now.

Q. Do you have any law enforcement experience prior to Ford County?

A. I do.

Q. Where is that?

A. I worked for a little over two years for the Dodge City Police Department, and previous to that, I worked at the El Paso County Sheriff's Office in Colorado Springs, Colorado.

Q. What year did you begin your law enforcement career?

A. 2008.

Q. Are you a certified law enforcement officer in Kansas?

A. I am.

Q. When did you get that certification?

A. In 2009.

Q. Is it current?

A. It is.

Q. Has your certification ever been disciplined or suspended?

A. No.

Q. What is your current job title?

A. Patrol Sergeant.

Q. And what are your responsibilities in that role?

A. I answer 911 calls for service, I enforce traffic laws, the Constitution of the United States and Constitution of the state of Kansas, statutes of the state of Kansas. I also supervise four deputies that do the same.

Q. Do you personally make stops and arrests?

A. I do.

Q. About how often?

A. I make traffic stops every night, not necessarily arrests every night, it just depends on what I find when I make traffic stops or what calls

that we get.

Q. Do you train deputies that you supervise?

A. I continue education training with them as a supervisor. Previously within my supervision time and before that, I was also a field training officer and I trained many of the deputies that I work with.

Q. How long were you a field training officer?

A. Oh, approximately eight years.

Q. And what did you do in that role?

A. I was in charge of the day-to-day intensive training from a brand new deputy who had never set foot in a patrol car or been a police officer or deputy before, clear through the time that they completed their training or considered trained to be on their own.

Q. As a supervisor, are you responsible for ensuring the deputies that you supervise follow the law?

A. I am.

Q. Are you responsible for ensuring that they follow the policies of the Ford County Sheriff's office?

A. I am.

Q. How did you come to be involved in this

case?

A. I was contacted by my sheriff, Sheriff Bill Carr, and asked if I had any knowledge or information of any situations in which we had contact with someone who identified or appeared to be of a different gender or sex than what they biologically were during the course of our duties.

Q. Did you submit a declaration?

A. I did.

MR. RODRIGUEZ: Permission to approach?

THE COURT: Standing permission.

BY MR. RODRIGUEZ

Q. Do you recognize that document?

A. Excuse me -- yes, I do.

Q. What is it?

A. It's the declaration that I submitted for this case.

Q. Is that a true and accurate copy of the declaration you submitted?

A. It is.

MR. RODRIGUEZ: Your Honor, the State moves to admit.

MR. DALGLEISH: Object, this declaration is based, at least in part, upon

inadmissible hearsay, so we can wait for my cross-examination, but I do object to its introduction now.

THE COURT: I will keep this under advisement, you can proceed with your questioning. Is there an exhibit number, so I can mark it?

MR. RODRIGUEZ: I don't think I remember what exhibit number we're on.

THE COURT: I'm just going to call it 777. You can proceed.

BY MR. RODRIGUEZ

Q. Can you explain what you or your deputies do when you make a traffic stop?

A. Any time we make a traffic stop, we're going to identify the driver, for sure, and possibly any passengers inside the vehicle, if we have reason to do so.

Q. Do you ask for a driver's license?

A. Yes.

Q. What do you do with that license?

A. We notify Ford County Communications, our dispatch center, of the Kansas driver's license number, if they have their driver's license with them. If they don't, we provide the name and date of birth that they provide to us.

Q. And what information do you get back?

A. From Ford County Communications themselves over the radio, we only get back whether the individual is clear of any wants or warrants, and if their driving status is valid or not.

Q. During stops, do you ever search a person?

A. Occasionally, yes.

Q. Are there different types of searches that you do?

A. Yes.

Q. What are those?

A. We have one that is basically a pat search, a terry pat, that it's based on reasonable suspicion, based on the individual, previous contacts with them, other known information about them or the situation in which they have been contacted.

It's basically an exterior pat down, no manipulation of any pockets or anything like that, just to check for weapons and make sure that everything is safe.

And then the second one is a more intensive probable cause search, incident to arrest or whatever the reason that we have probable cause for, and that involves more intrusive, going into

the pockets and searching to make sure there's no contraband or anything like that before we go to the jail.

Q. Can you explain how you perform that search?

A. The second one?

Q. The search incident to arrest?

A. Yes, if I'm searching a male subject, I will use the palms of my hand and first feel around their neckline. Then moving down their chest, through their abdomen to their belt line. I will use the palm of my hand to move around their beltline, under their belly.

Then we'll make it to the back, I will put my fingers inside the beltline, move back around to the front to make sure there's no weapons inside of that beltline.

Then I begin on the outside on one leg and on the inside, I will go from the ankle, moving my way up into the crotch and groin area, pressing up into the male subject, to make sure there is nothing hidden in the underwear or underneath his scrotum.

Then I use this, or go to the other leg and do the same motion. If there's any need to, I'll have them remove their shoes, check inside any

hatbands, pockets, jackets, anything like that, that they have on.

Q. Do you perform the same search on female suspects?

A. No.

Q. Can explain the search that you perform on female suspects?

A. If I have to perform a search on a female subject, I use the back of my hand and the blade of my thumb.

The blade of my thumb will start in the center between both breasts, move outward underneath, with just the blade of my thumb and the back of my hand, back of my hand down the back of their body, down their back to their waistline, where again I use the back of my hand to feel around the waistline to make sure there's no weapons.

And then same thing with the legs, I'll use the backs of my hands on the inside of their legs and I don't move up into the groin or crotch area.

Q. Do you believe the search method you would use for males is more intrusive than the method you use for females?

A. Absolutely.

Q. Is it as effective?

A. The search for females, the search that I use on females is not as effective as the search that I use on males.

Q. Do female officers perform searches in the same way?

A. They will perform a more intrusive search, similar to the one that I perform on males on the females. And vice versa, when they search the male, they will perform a less intrusive search on males also.

Q. Does Ford County have a policy on who should search males and females?

A. We do.

Q. Do you recognize that document?

A. I do.

Q. What is it?

A. It is the Ford County Sheriff's Office policy on transporting and restraining of prisoners.

Q. And how are you familiar with it?

A. I've been trained on it, I've trained my deputies on it.

Q. And is that a true and accurate copy of Ford County's policy?

A. It appears to be, yes.

Q. Can you turn to page three of that document? Can you identify where in that policy is described the search policy that you've just been discussing?

A. Under Section J, transport, sections A, B, C, and D.

Q. To implement this policy, do you need to know a subject's biological sex?

A. Yes.

Q. Is a driver's license one way to find out a person's biological sex?

A. It is.

Q. Can you also ask a person?

A. You could.

Q. Is that as reliable as finding out from a driver's license?

A. No.

Q. Why not?

A. People can identify however they want to identify. They can give you whatever information they want to give you at that time, or refuse to give you any information.

Q. Does Ford County policy treat people differently based on their transgender status?

A. No.

Q. How do you decide whether a male or female officer should search a transgender person?

A. Based on their biological sex, if we can establish that.

Q. And when you search a person, do you need to know their gender identity?

A. No.

Q. Why do you use a less intrusive, less effective search technique when searching a biological female?

A. A male officer or deputy searching a biological female poses several risks of liability, specifically, as well as to personal safety of myself and the facility, due to the fact that that less-intrusive search does not find everything that may be concealed on one's person.

It also tends to cause, in my experience, females that I have to search, some kind of emotional distress or trauma, perhaps, because there's a male authority figure touching them in areas that they don't want to be touched.

Q. And is that why the policy attempts to have female officers search female subjects?

A. Yes.

Q. In your experience, is it uncomfortable

for women to be searched by men?

A. Yes.

Q. Are there any risks to officers from searching women?

A. Yes.

Q. What are those risks?

A. Personal liability, as well as liability to the office itself. As well as physical danger because, again, there are many times that items are not discovered, items of contraband or weapons because of the less intrusive search.

Q. Can you elaborate on the risk to the officer, what do you mean by that?

A. Liability, claims made for sexual misconduct or sexual battery, any kind of inappropriate touching or anything like that.

Q. And why do you think there's an increased risk of an accusation of sexual misconduct?

A. Because you have, again, a male authority figure touching a female in areas that she does not want to be touched.

Q. Does the Ford County search policy, as you described it, help protect the public trust?

A. I believe so.

Q. Why is that?

A. It establishes rules and guidelines that we need to follow, and try to follow, in order to make sure that everything we do is transparent and in the best interest of the people that we come in contact with, whether they be general citizens or a suspect that we are taking into custody.

Q. In your supervisory role, do you regularly ask your deputies about incidents that occur on a shift?

A. I do.

Q. Do they regularly report to you about incidents that occur on their shifts?

A. They do.

Q. Is it your responsibility to know what happens on the shifts?

A. It is.

Q. Are you aware of any incidents where one of the deputies you supervised failed to properly identify the sex of someone they stopped?

A. I am.

Q. What happened?

MR. DALGLEISH: Objection, Your Honor, hearsay.

THE COURT: Repeat the question for me.

MR. RODRIGUEZ: I think the last question was literally, what happened. But I also asked him if he is aware of any incidents where one of the deputies he supervises failed to properly identify the sex of someone they had stopped.

THE COURT: Failed to properly identify?

MR. RODRIGUEZ: Yes.

THE COURT: The objection's hearsay?

MR. DALGLEISH: The objection in hearsay, and if I may do a very brief voir dire of the witness?

THE COURT: Unless he is going to elicit a statement from this deputy, I'm not going to have a hearsay statement to rule on. So if he's describing an incident --

MR. DALGLEISH: I think the issue is the officer has no personal knowledge of the incident, everything relayed to him was via these other officers, which they're not here. So I can pop up when he asks the next question.

THE COURT: So the question is, what happened?

THE WITNESS: One of my deputies, Deputy Hughes, made a traffic stop. During that

traffic stop, he had reason to arrest the driver for not having a valid Kansas driver's license.

As a result of that arrest, he conducted a probable cause search of the person, and upon conducting that probable cause search -- or I'm sorry -- after conducting that probable cause search of the person, he discovered that that person was presenting as male, however that person was actually female.

MR. DALGLEISH: Your Honor, objection, strike the answer. This witness has no personal knowledge of this.

THE COURT: Mr. Rodriguez?

MR. RODRIGUEZ: Your Honor, he receives this report as part of his regular duties. And at a minimum, he is testifying to a report that he receives that reflects concerns of the sheriff's office, and his own concerns of the law enforcement officer.

MR. DALGLEISH: I think that --

THE COURT: What now? What was the last part?

MR. RODRIGUEZ: His own interest as a law enforcement officer, and ensuring that the deputies follow the policy.

MR. DALGLEISH: It's classic hearsay, it's report of another person who is not here subject to cross-examination, there's no exception available for it.

MR. RODRIGUEZ: It doesn't need to be admitted for the truth of the matter stated, it can be admitted for the fact that he received the report and he addressed the violation of policy as he experienced it.

MR. DALGLEISH: If it's not offered for the truth of the matter asserted, it has no relevance.

MR. RODRIGUEZ: I think I just stated the relevance.

THE COURT: Do you have a hearsay exception reference for me?

MR. RODRIGUEZ: Your Honor, I don't think this is hearsay, he is describing a conversation that he participated in, or a report he directly received.

And as I said, we're not eliciting this testimony for the truth of the matter that's being discussed, it's for the truth -- it's for the truth of the report as he experienced it.

THE COURT: For the truth of what?

MR. RODRIGUEZ: Of the report. The fact that he received this report, that he addressed the violation of policy with his officers.

THE COURT: You don't need to admit it for the purpose of his impressions of why these things matter, but I'm not going to accept it as a true event.

MR. RODRIGUEZ: Thank you, Your Honor.

BY MR. RODRIGUEZ

Q. So I think you just described one of your officers who searched a biological female, while believing the person was a man?

A. That's correct.

Q. And did they perform the search that is appropriate for males or females?

A. For males.

Q. When did this occur?

A. April of 2005.

Q. And who were the officers involved?

A. Officer Deputy -- I'm sorry, Deputy Hughes and Deputy McGiltree(ph) was present, but was not involved in the search itself.

Q. Was this a violation of Ford County search policy?

A. It was.

Q. Did you provide guidance to your deputy about how to follow the policy in the future?

A. I did.

Q. And what guidance did you provide?

A. I instructed him to make sure that before taking any action to arrest someone, he needs to check his mobile data terminal to get the full return on the Kansas Department of Revenue driver's license return that's provided to us, as Ford County Communication only gives us their driver status and whether there's clearance of wants and warrants.

However, on our mobile data terminal, and the computer in our vehicle, we get a full printout of their driver's license return, which contains information including their biological sex.

Q. Did you instruct your officers to rely on the driver's license for information about biological sex?

A. Yes.

Q. What were the consequences of your deputies failing to follow policy?

A. Just the training and redirection that he received in that matter. No claims were made or were filed by the suspect.

Q. Are you aware of what effect SB 244 has on driver's licenses?

A. I am.

Q. And what is that?

A. It makes, it makes it to where we can rely on that information as being accurate for their birth gender, birth sex.

Q. Do you think listing biological sex on the driver's license makes it less likely that you or your officers will make a mistake about a person's biological sex?

A. Yes.

Q. Do you know how often it happens that an officer makes a mistake about a stop to arrest a person's biological sex?

A. I don't.

Q. Has it ever happened to you?

A. Yes.

Q. About how many times?

A. I wouldn't be able to give you an exact number, dozens over my career.

Q. Do you think these instances of mistaken identity have occurred less frequently since SB 244 was enacted?

A. I believe so.

MR. RODRIGUEZ: Thank you.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. DALGLEISH

Q. Good morning, Sergeant.

A. Good morning, sir.

Q. First of all, thank you for your service, sounds like you've had a long and storied career in law enforcement.

A. I appreciate that. Thank you.

Q. It's my opportunity to meet you in person, I also had the opportunity to take your deposition. I will tell you, I will basically go over the same ground with you, okay?

A. Sounds good to me.

Q. So you touched on this briefly, but how you got involved in this, is that the Attorney General called Captain John Hunter, then it rolled down to you to try to find some incidents where there was a problem with a transgender person and a driver's license, is that basically the gist of it?

A. I don't know that Captain Hunter was involved. Sheriff Carr contacted me. From my knowledge, that came from him. I don't know where it came from before that.

Q. Right. And you initially reported to your boss that you didn't know of any such incidents off the top of your head?

A. That's correct.

Q. So that's why you embarked to try to talk to other people in your department to see if they had any incidents?

A. That's correct.

Q. And what you related here today was based upon what you talked to them about?

A. Yes.

Q. On the incidents that you described, you were not there?

A. I was not.

Q. You didn't have any interaction with the suspect?

A. Not at that time.

Q. You didn't take any statements from the suspect?

A. Not at that time.

Q. You have no personal knowledge about what happened?

A. No.

Q. The only thing is what Officer Hughes supposedly told you, right?

A. Told me, yes.

Q. Are they alive?

A. Yes.

Q. Do they still work for the department?

A. Yes.

Q. So we can skip a lot of this with those answers.

Let me talk to you about, you gave a long description about, and raised some issues of concern to you and your department about searches incident to arrest or stopping people to make sure that it's safe for you as officers?

A. Yes.

Q. And a part of that is to look for weapons or contraband or tools of escape?

A. Correct.

Q. Standard law-enforcement operating procedures?

A. That's correct.

Q. As I understand it, you're concerned about two things. One, is your physical safety; is that right?

A. My physical safety, as well as the physical safety of the jail staff that we transport these individuals to.

Q. Of course. And also, you mentioned what I would call kind of a liability concern, that if you do it wrong that you might have a claim or something brought against you?

A. That's correct.

Q. So the gist of it, as I understand it from what you described, is if you have what you call a female biological suspect, the first thing you would do is, you would try to call a female officer?

A. That's correct.

Q. But you don't have very many of those in your department?

A. We only have two.

Q. So if that's not possible, you're going to have to do the search yourself.

A. We also do try to call neighboring jurisdictions, the Doge City Police Department or whoever may have one available.

But if there's no female deputy or officer available, then yes, I would have to do that search myself.

Q. Right, and there's going to be a lot of situations where that's going to happen?

A. Yes.

Q. And what you described is, if it was you

doing the search and you have what you call a biological female, you do it very differently. You'd use the back of your hand and be much less intrusive; is that right?

A. That's correct.

Q. And vice versa, if it's a female and a male suspect?

A. That's correct.

Q. And when you are doing that, that type of search, you don't ask them anything about their genitals, right?

A. Not typically in regards to the search, no.

Q. So you talked a lot about this, and how you thought it would be potentially intrusive if you have a dispatch, so I want to see if we can work through an example, okay?

A. Okay.

Q. So let's say you pull over a car, and you make the driver get out of the car.

A. Okay.

Q. You've done that a lot?

A. Yes.

Q. And I'm going to actually use your words about a description of this, the driver is wearing a

dress. With me so far?

A. Okay.

Q. Has breasts.

A. Okay.

Q. Wearing high heels.

A. Okay.

Q. Hair is done up.

A. Okay.

Q. They are wearing makeup.

A. Okay.

Q. And they have dangling earrings. So do you have kind of a mental picture in mind?

A. Yes.

Q. So before SB 244, let's say you get this driver's license, and it's the sex marker on the license says female. With me?

A. Yes.

Q. What procedures are you going to use?

A. I'm going to call a female deputy to come take care of that.

Q. Can't get one.

A. Okay.

Q. What procedures are you going to use?

A. I'm going to use the less intrusive search that's authorized by policy that I need to use.

Q. Right. You're going to use the back of your hands, much less intrusive, just as you described?

A. Yes.

Q. Okay so let's change it a little bit. Let's say that now we have SB 244 in place, same exact person, same exact situation. Now the driver's license sex marker says male, what are you going to do?

A. I'm going to search them as if they're a male.

Q. So you're going to take the fronts of your hands and go all over this person's body?

A. I'm going to be more respectful than the way you described it, but essentially, yes.

Q. So everything that you described, your words were that it would be emotionally distressful to a female for you to use the fronts of your hands to make this search, emotionally distressful to this person?

A. It could be.

Q. Okay. But you're going to just do whatever the driver's license marker says?

A. We're going to have a conversation before I begin that search. Most likely that's the way

it's going to end up. The fact of the matter is, I work in Ford County, Kansas, and southwest Kansas, the overwhelming majority of folks who identify or present themselves as another gender than what their birth gender was or is, still possesses the same sex organs.

I recognize that there could be situations, but that is overwhelmingly the majority is they're going to have the same sex organs, in which case, I'm still going to have to use the same search technique.

Q. So you're going to take the front of your hands and go inside the dress of this person?

A. We're going to do what we have to do. It's a hypothetical situation. I can't tell you exactly what's going to happen, because it hasn't happened to me.

Q. Are you going to take the front of your hands and go inside the waistband of the person as you described, as you would do for a biologically male person?

A. If they're wearing a dress, there is probably not going to be a waistband. So no, not in that situation.

Q. Front and back, both fronts of your hands

all over the person?

A. I'm probably not going to grab their breasts, but yes, I will probably use the fronts of my hands to check underneath them and around them.

Q. But you would grab their breasts if it was a male?

A. I don't grab men's breasts either.

Q. You don't go and you don't check their chest as you described?

A. I move my hands around their chest, but I don't grab their breasts.

Q. Would you move your hands around the breasts of the person that I just described?

A. Yes, as I said, I would move my hands around their breasts.

Q. And do you think that makes the situation less intrusive to this person that you pulled over?

A. I couldn't say for them, I would imagine that they would have some kind of reaction, but I don't know what the reaction would be.

Q. Have you thought about this situation before you testified?

A. Absolutely.

Q. And you said it was rare. Have you had this situation occur?

A. With someone who is fully transitioned and is no longer the same sex they were when they were born, no.

Q. Well, we don't know whether this person's transitioned, right? Because you're not going to inquire about their surgical status, are you?

A. I have never searched anyone whose gender marker on their driver's license, or their Kansas driver's license return was different than the sex organs that they had, to my knowledge.

Q. So this whole situation you've discussed in direct has never happened in your personal knowledge to any adverse affect? Never had it come up?

A. I wouldn't know if it did.

Q. So let's talk a little bit, you voiced, as a law-enforcement officer, you are in a lot of potentially difficult situations. True?

A. That's correct.

Q. And you have to be careful?

A. That's correct.

Q. And in your direct testimony today, you raised a concern about your physical safety?

A. That's correct.

Q. But you can't identify a single

circumstance where you feel you were in physical danger from patting down what you thought was a male, when it turns out not to be a male?

A. I've had plenty of instances where I've felt later, after I realized the subject was hiding things, that I was in personal danger due to the fact that I used a search technique that was less invasive.

And if I can use a search technique that is proper for that person, then I'll be able to have a better feeling about my safety.

Q. But I asked you earlier, I asked you when we talked earlier, could you identify a single specific incident where you felt you were in physical danger from what you thought was a male and it turned out not to be male. Can you give me a specific incident?

A. I'm not sure what you're -- no. I mean, I can't think of a time when I was in the presence of someone who I thought to be a male, and turned out not to be a male, and I felt that I was in immediate, physical danger.

Q. Okay. Let's talk about your liability concern. What I took your testimony to mean is, if you did it, an improper search, like if you used the

front of your hands on somebody that was, as you call them, a biological female, that might lead to some type of claim or lawsuit or something like that, right?

A. That's correct.

Q. But that's never actually happened?

A. Not to me personally.

Q. Never had a complaint filed against you?

A. Not me personally.

Q. And what I like to call the lawyer, the hearsay incident that you described, no complaints stemmed out of that?

A. No, that individual is very well known to most of us. Deputy Hughes was new at the time, and that individual does not take offense to that. He was happy to have been misgendered.

Q. Officer, it seems to me like you take your job very seriously, and you're proud of what you do?

A. Yes.

Q. And you want to protect and serve everybody in your community?

A. Yes.

Q. And treat them with respect?

A. Absolutely.

Q. And courtesy?

A. Yes.

Q. Does that include transgender people as well?

A. Yes.

Q. So with all of your law-enforcement experience, what is this, over almost 20 years of law-enforcement experience?

A. Close to it.

Q. And although you've had some temporary starts and stops when you were working to identify people, ultimately, none of this issue about driver's license marker has prevented you from doing what you needed to do as a law enforcement officer?

A. I'm going to do what I need to do as a law enforcement officer irregardless of what difficulties it may or may not cause. So to say that that did not stop me is tantamount to saying, them having a gun pointed at me didn't stop me. It's still not going to stop.

Because the job, it's gotta get done, it's going to get done. It does not take into account though the difficulties that we face as a result of that.

Q. I know. I have no doubt that you are committed and you're going to get your job done, and

that's why I asked you this question earlier to find out, did anything having to do with the driver's license sex marker ultimately prevent you from doing what you needed to do as a law enforcement officer?

A. No.

MR. DALGLEISH: Thank you.

THE COURT: Redirect?

MR. RODRIGUEZ: Just a few things. I think I neglected to move to admit the Ford County policy. I'd like to admit that.

MR. DALGLEISH: I renew the -- sorry, Your Honor.

THE COURT: The policy.

MR. DALGLEISH: Oh, the policy. No objection.

THE COURT: Mark it 778.

(Defendant's Exhibit 778 was admitted.)

REDIRECT EXAMINATION

BY MR. RODRIGUEZ

Q. And Sergeant Stammer, I think you also possibly misspoke when you identified the year that this happened, I think you said 2005; is that right?

A. That's right.

Q. What was the year?

A. It was '26, I'm sorry.

Q. Have you ever searched a transgender individual in your work?

A. Have I ever searched any or --

Q. Any transgender individual?

A. Yes.

Q. But you've never searched any who also acquired the secondary sex organs of the opposite sex?

A. No.

THE COURT: I'm sorry, repeat the question.

MR. RODRIGUEZ: I asked if he'd ever searched a transgender individual. He said, yes. I asked if he'd ever searched a transgender individual who had also acquired secondary sex, or the sex organs of the opposite sex.

THE COURT: And the answer was?

THE WITNESS: I have not.

THE COURT: Thank you.

BY MR. RODRIGUEZ

Q. So in your experience, what percent of individuals who have a gender identity different from their biological sex, also have the genitals of the opposite sex?

A. I'm sorry, you're going to have to rephrase. Or if you can ask that again, I didn't quite follow.

Q. What percentage of individuals do you encounter in your law enforcement career have the gender identity that is different from their biological sex? So they're transgender, but have also the genitals of the opposite sex consistent with their changed gender identity?

A. I wouldn't know a percentage there is if there's anyone I come in contact with that I didn't know about. But as far as, I know that I've never had anyone, so it would be zero percent in my career.

Q. And you were asked if you ever had a problem with violations of policy, what would you tell one of your subordinate officers who violated a policy and then told you it's no problem, nothing bad happened?

MR. DALGLEISH: Objection speculation. Objection speculation.

THE COURT: And he has testified to his supervisory duties, it's an example, I think -- if you understand the question, you're able to answer it, I'll permit the answer.

THE WITNESS: If one of my deputies came to me with a policy violation or one was discovered and brought to their attention and there was no immediate recourse, no claims filed or anything like that, it's still a policy violation and we still have to talk about it. We still have to train about it. We still have to discuss what steps need to be taken to ensure that that does not occur again and if there is any disciplinary action required that would need to be taken at that time irregardless if that person filed some kind of complaint or claim.

Q. So you believe the policies of a Ford County Sheriff's Office are in place to prevent the possibility of problems occurring?

A. Yes.

MR. RODRIGUEZ: Nothing further.

MR. DALGLEISH: Just one follow-up.

RECROSS-EXAMINATION

BY MR. DALGLEISH

Q. Sergeant, are you telling us you inspect the sex organs of the people that you pull over?

A. No.

Q. So what their secondary sex organs are or are not, you have no idea?

A. As I testified, I wouldn't know -- I don't know personally if there were some that I don't know, I can't testify to that.

Q. Right. So what you do know is, you see physical appearance, right?

A. Yes.

Q. Now, you see a sex marker mandated by SB 244, right?

A. Okay.

Q. So you have no clue what their sex organs are or are not?

A. I mean, I am not looking at them, so unless I ask the question, then no.

Q. You don't search their sex organs?

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

Q. Do you physically touch, when you pat down, whether it's the front of your hands or the back of your hands, do you touch their sex organs?

A. If it's a male, yes, absolutely.

Q. So if you have a male marker on the driver's license, and you have the person that I described, are you going to touch their sex organs?

A. If they have a penis, yes.

Q. How are you going to know if they have a penis if they're standing there in a dress?

A. Like I said, we're going to have a conversation. I'm going to ask them, your driver's license says that you're male, however, you appear to present yourself as female, do you have a penis.

I'll ask that question, that's a professional way to do things in the street when you have to have that done.

Q. So if the person as I described in the dress and breasts, you're just going to search by what they say?

A. I'm going to ask them that question. If they tell me, I have a penis, then I'm going to search them like they're a man.

Q. So you're not going to rely on the sex marker that is now mandated by SB 244?

A. If they tell me they have a different sex organ than what is on their driver's license, then we're going to have even more conversation. If they verify what's on their driver's license, then that is how we're going to search them.

Q. But if you have this conversation, you're going to rely upon what they tell you and not the sex marker mandated by SB 244?

A. It depends on their level of cooperation. I mean, you can tell if someone is being cooperative

with you and giving you good information, or if they're just having a real problem with you and they're not going to tell you, or you think that they're not telling you correctly or whatever the situation is.

In that situation, we're going to do things exactly by the book. It's going to be what the policy says, in front of the camera, probably with a witness, just so that everything is on the up and up, and everything is transparent and we can show what we do and why we did it.

Q. So same example that I gave you, person is completely cooperative, and says I don't want you touching my sex organs. Are you going to take your hands up inside the dress and touch the sex organs of that person?

A. They don't really have a choice when it's a search incident to arrest. They're getting ready to go into a controlled facility, I have to make sure that the facility is safe and they're not carrying any contraband in there.

Q. So your answer is, yes, you're going to take the fronts of your hands and touch every part of their body, including up their dress?

A. Yes.

MR. DALGLEISH: Thank you.

MR. RODRIGUEZ: Nothing further, Your Honor.

THE COURT: Sir, you can step down. Thank you for your testimony.

MR. KOBACH: Your Honor, the State will now call Sheriff Brian Hill.

THE COURT: Sir, come forward and be sworn.

BRIAN HILL, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MR. KOBACH

Q. Good morning, Sheriff Hill, would you please state and spell your name for the record, please?

A. Brian Hill, B-R-I-A-N, H-I-L-L.

Q. And where do you currently work, Sheriff Hill?

A. Shawnee County.

Q. And when you say Shawnee County, at what office do you work?

A. I'm the sheriff of Shawnee County.

Q. How long have you been the sheriff of Shawnee County?

A. Approximately eight years.
Q. Are you a sworn law-enforcement officer?
A. Yes, sir.
Q. How long have you been a sworn law-enforcement officer?
A. Since 1991.
Q. Was 1991 when you first became certified as a law-enforcement officer in Kansas?
A. Yes.
Q. Are you still certified as a law-enforcement officer in Kansas?
A. Yes, sir.
Q. Is that certificate in good standing?
A. Yes, sir.
Q. Have you ever been disciplined or suspended as a law enforcement officer in Kansas?
A. No, sir.
Q. I believe you stated you first started working in law enforcement in 1991; is that correct?
A. Yes.
Q. Where did you first work in law enforcement?
A. The Topeka Police Department.
Q. And what was your position at the Topeka Police Department at that time?

A. Well, I was hired and went into the patrol division. I worked a few years there, and I went into the gang task force. Then I was a narcotics officer, and then I was a detective, and I ended my career as a major case detective doing homicides.

Q. Okay. When you were in the patrol division, your first position in the Topeka Police Department, what were your duties in that position?

A. We were assigned a territory and you answered calls for service and monitored or looked for criminal activity or traffic infractions as you patrol.

Q. So did you do traffic stops while you were in the patrol division?

A. Yes, sir.

Q. Roughly how many? Just ballpark?

A. Thousands.

Q. Did you make arrests?

A. Yes, sir.

Q. In that capacity?

A. Yes.

Q. Would that also be in the thousands or would that be lower?

A. Also assigned patrol when I went to the street crime action team unit. We were technically

assigned patrol, and our job was to drive around the city looking for proactive policing opportunities, and we made dozens of car stops every night.

Q. And then you mentioned that you moved onto the gang task force. What were your duties in the gang task force?

A. Similar, to combat gang violence and narcotics trafficking.

Q. Did you make stops of individuals in vehicles when you were in the gang task force?

A. Yes, sir.

Q. Did you arrest individuals when you were in the gang task force?

A. Yes, sir.

Q. Then you mentioned that you went into the narcotics unit, what were your duties in the narcotics unit?

A. Well, we worked to combat narcotics trafficking in Topeka, that still consisted of doing car stops at times and working with informants and the whole gamut of narcotics investigation.

Q. Did you also make arrests as a narcotics officer?

A. Yes, sir.

Q. And then you stated you also worked, later

after that, worked in the, as a detective. What were your duties as a detective?

A. We were assigned cases that you investigate.

Q. And typically what would investigations involve?

A. Some of the investigations, especially in major crimes still consisted of you going out in your detective car trying to locate individuals and making traffic stops and contacts with people at residences.

Q. And just so we can get the timeline correct, when did you stop being an employee of the Topeka Police Department?

A. In 20 -- the very end of 2016, November, I was shot four times in the line of duty. I took about a year and a half off, retired at that point.

I came back and worked as a school resource officer for a little under a year and then I was elected as the Sheriff of Shawnee County after that.

Q. In what year were you elected Sheriff of Shawnee County?

A. It was a special election in 2018 that I took office in.

Q. And what month of 2018 did you take office?

A. I want to say April, but I'd have to really look on my sheet to make sure, but I think that's right.

Q. Have you been the Sheriff of Shawnee County ever since 2018?

A. Yes, sir.

Q. What are your duties as Sheriff of Shawnee County?

A. Predominantly it's to run the sheriff's office and do administrative duties. But at times, even now, I still go out on the street, been on back calls with deputies and PD officers and still perform policing functions at times.

Q. How many deputies work under you at the Shawnee County Sheriff's Office?

A. We're about 118 right now, I think.

Q. And broadly speaking, can you describe the general duties of the Shawnee County Sheriff's Office?

A. Well, we're responsible for statutorily, you know, serving all the documents out of the courthouse, the warrants to come out of the courthouse. Our warrant officers are responsible

for trying to locate and apprehend those people, and they patrol roughly 557 square miles of Shawnee County doing policing functions.

Q. Is that the entirety of Shawnee County that they patrol or is it the portion of Shawnee County that is not within the municipality of Topeka?

A. Well, they are assigned to territories out in the county, but a lot of the warrants officers are in the city daily, looking to apprehend people with warrants out of District Court.

Q. So if my math is correct, you said you were, after you got shot four times, was it approximately one year that you did not serve as a law enforcement officer?

A. Yeah, it was a little over a year, I think, that I rehabbed.

Q. So subtracting that one year, how many total years of experience do you have as a law-enforcement officer?

A. I don't know, over 32-ish.

Q. So basically you could say from 1991 to the present, minus one year?

A. Yes, sir.

Q. You mentioned that you've made many, many

arrests. Do those arrests include individuals who are listed as wanted on the NCIC?

A. Yes, sir.

Q. And can you tell us what the NCIC is?

A. National Crime Information Center, it's where wanted individuals are logged, it goes out, that police officers will run when we make contact with people to let us know if the person we're dealing with does have a wants.

Q. And are those wants submitted by agencies across the country?

A. Yes, sir.

Q. Have you ever instructed others in law enforcement?

A. Yes, sir. I've been an instructor for the Topeka Police Department Police Academy and Firearms Investigation. I was on SWAT team for several years with tactical. And then in the 2000s, I was an adjunct professor for a few years at Washburn, where I was teaching police investigation courses.

Q. Do you remember the names of those courses?

A. It was a narcotics investigation courses and then I assisted in a tactical training course that they did for their criminal justice program at

Washburn.

Q. Do you set agency policies in the Shawnee County Sheriff's Office regarding arrests?

A. Yes, sir.

Q. Do you set agency policies of the Shawnee County Sheriff's Office regarding other law-enforcement protocols?

A. Yes, as related to the sheriff's office, yes.

Q. In your more than 30 years of law enforcement, have you had experience using driver's licenses to identify individuals?

A. Yes, sir.

Q. And do you have experience using driver's license information to search individuals' criminal histories and other law-enforcement records?

A. Yes, sir.

Q. Did you submit a declaration in this case?

A. Yes, sir, I did.

Q. Please look at Exhibit 8, which is in one of the darker colored binders to your left there, if you can see it. I assume that's volume one, but I could be wrong.

A. This is volume two and three. This is volume one.

Q. Turn to tab eight, please?
A. Tab eight.
Q. Do you recognize that document?
A. Yes, sir.
Q. Is that your declaration?
A. Yes.
Q. And is your signature on the end of it? Page three?
A. Yes, sir.
MR. KOBACH: Your Honor, I move to admit Exhibit 8 into evidence.
MR. DALGLEISH: No objection, Your Honor.
THE COURT: State's Exhibit 8 is admitted without objection.
(Defendant's Exhibit 8 was admitted.)
MR. KOBACH: And Your Honor, the State now offers Brian Hill as an expert witness under KSA 60-456 B in Kansas law-enforcement protocols generally, and specifically in the manner in which driver's licenses, driver's license data plays a roll in identifying individuals.
MR. DALGLEISH: No objection, so long as it's within the scope of the declaration.
THE COURT: Driver's license data for

identifying individuals?

MR. KOBACH: Yes.

THE COURT: Without objection, that is granted.

BY MR. KOBACH

Q. Sheriff Hill, when do law enforcement officers typically deal with a person's driver's license?

A. Predominately during traffic encounters, is probably the most frequent.

Q. Do law-enforcement officers also deal with licenses in the course of an arrest that is not a traffic encounter?

A. Yes, sir.

Q. Is the driver's license the most common identification document law-enforcement officers deal with in law-enforcement encounters?

A. Yes, sir.

Q. So I'm going to ask a little bit about traffic stop protocols. When you pull someone over for a traffic violation, do you always ask the driver of the vehicle for their driver's license?

A. Yes, sir.

Q. And why do you do that?

A. To identify who we're talking to.

Q. And do you ask any passengers for their driver's licenses?

A. Maybe, if they have violated something with the seatbelt restraint or something, but not typically on just a traffic stop.

Q. Do you normally ask the driver for fingerprints during a traffic stop?

A. No, sir.

Q. Once you have the license from the driver, what do you do with it?

A. You verify that it's actually not expired, it's a valid Kansas DL, you'll run the driver's license through your dispatch center and see if there's any warrants for the individual you are encountering.

Q. So just to make sure I understand what you mean, you said you run it through the dispatch center, what are you telling the dispatch center? Are you giving them the name or are you giving them a license number or are you giving them information, or just tell us whatever you --

A. Well, actually just to clarify, the officers nowadays have the in-car computers, and they can run a lot of that themselves.

As a command staff person, I don't have

that and you can run it through dispatch who runs those for you. It's the same computer system, but they're doing it for me. But I would typically pick up the radio, give them the name, date of birth, race, and sex of the individual I'm encountering and I would get a response back as to, if there was anything suspended, the license was suspended or anything like that, or if they had warrants --

THE COURT: Sheriff, I'm sorry, I heard name, date of birth, race and --

THE WITNESS: Sex.

BY MR. KOBACH

Q. And at the end you said your answer was, I believe, and if they have warrants. So by that, do you mean if there is a warrant for their arrest from some jurisdiction in the country?

A. Yes.

Q. You ever heard the term BOLO, B-O-L-O?

A. Yes.

Q. What does that refer to?

A. Just attempt to locate.

Q. Will BOLOs, be on the lookout, what I assume it stands for, are those entered into NCIC, too?

A. No, not always. It's typically for us,

we'll put it out in Shawnee County, would be just as an attempt to locate. They're oftentimes related to domestic cases where an officer has enough PC to make an arrest, and they'll put out an attempt to locate for anybody in jurisdictional area to look for that person to try to detain.

Q. And so, so we all understand how that works, does the BOLO passively pop up when the officer types in the name, date of birth, race, and sex or tells the dispatch the name, date of birth, race, and sex of the individual?

A. That might not even be in NCIC, so it would be in the local databank. So yes, if you put that information in, that's what they're going to give you back.

Q. Make sure I understand, you put that information in, and the computer system will search both the NCIC database and the local database, databank --

A. Yeah, the dispatch will normally do that for you, but yeah.

Q. Okay. Is it important to know a person's biological sex in order to accurately identify them?

A. I believe so, yes.

Q. Why do you think it's important to know a

person's biological sex?

A. I gave this example to you previously in a court case, but if your name is say Pat Smith and you have a warrant and you are a male, that's listed in that NCIC databank as Pat Smith, race, date of birth, male.

And then if you run that in NCIC, and now Pat Smith is a female, I think that could end up being problematic and potentially miss the warrant. Misspelling a name can be problematic in making this a warrant.

Q. So does all of the information you enter, the person's name, the person's sex, and any other information, I believe you said race and date of birth, does it all have to match in order for the warrant to alert the officer that this person is wanted?

A. It doesn't all have to match, cause as we all know, everybody's weight fluctuates, even eye and hair color, people can change that with dying their hair, contacts.

The two constants that have been here since I've been a cop in 1991, is the date of birth and the sex. Race is kind of a constant, but sometimes people mark other or different things. So

out of the four categories, those were the two constants.

Q. I believe you said earlier that if you enter the sex that is not the sex of the individual in the NCIC, you are likely to miss the warrant; is that correct?

A. I think it's potential that you can miss the warrant.

Q. If driver's license sex markers could be changed at will by driver's license holders, meaning that they could just go in and ask and say that I now am a female or I now am a male and I want it changed accordingly, what affect would that have on police officers making roadside stops?

MR. DALGLEISH: Your Honor, object to speculation, foundation. That's not even a scenario of the prior law.

MR. KOBACH: He is an expert witness, he can speculate.

MR. DALGLEISH: Not on -- need to have a factual foundation. People have never been able to just go in and just change, so I object on that basis.

THE COURT: The phrasing objection, I think we need to rephrase.

BY MR. KOBACH

Q. If a person -- if SB 244 -- are you familiar with SB 244?

A. Yes, sir.

Q. And you know that's the law at issue in this case?

A. Yes.

Q. And you know that that does not allow an individual to change one's driver's license sex marker to something other than his or her biological sex?

A. Yes, sir.

Q. If that law did not exist, and people could ask for their driver's license sex marker to be changed and get it changed without reference to their biological sex, what effect would that have on police officers making roadside stops?

A. I think it could dramatically affect them if we're not interfacing these DL changes with the databanks for the information for the wants and warrants.

I've made this statement before. I personally don't care who you are, I simply need to know who you were and your criminal history matters during context.

Q. So let me ask a few more questions about that. In that scenario I just described where SB 244 didn't exist and individuals could change their driver's licenses to a sex marker that does not match their biological sex marker, could you miss a warrant for the person if the sex marker on the driver's license different from the sex listed at the time the want or warrant for that person was issued?

A. I think it's possible, yes.

Q. If you don't know that a person with a firearm -- let me back up a little bit.

Suppose you notice that there's a firearm in the vehicle that you have pulled over, and you don't know that the person driving that vehicle is prohibited from possessing a firearm, is it possible that you would fail to make an arrest because of a changed sex marker on a driver's license?

MR. DALGLEISH: Same objection, Your Honor.

THE COURT: Which is?

MR. DALGLEISH: Speculation, lack of foundation.

THE COURT: I mean he is qualified as an expert in law-enforcement protocols and driver's

license data for purposes of identification. As an expert, he is allowed to answer a hypothetical, so overruled.

A. I think it's potentially possible, if you miss the warrant.

So if I see that gun and that guy's got a felony warrant, I'm going to look further. But if I miss the warrant, I'd have no legal reason in my mind to detain and probably just let the individual go.

BY MR. KOBACH

Q. And just to clarify, when you say if you miss the warrant, you mean if you missed the warrant because the sex on the driver's license doesn't match the sex that the individual was when he or she committed the crime?

A. Yes, yes.

Q. So with the changing of driver's license and sex markers, in the absence of SB 244 hamper the detection of felons unlawfully in possession of a firearm?

A. It could, given the circumstances.

Q. When typically does a law enforcement officer have reason to check a person's criminal history?

A. Well, typically out on the road. The street officers aren't doing that, they are making contact with the people for wants and warrants and going about their patrol duties.

Me as a detective, upon arrest and when individuals are arrested and I'm investigating, I will do a triple I and look into their prior criminal history.

Q. If a law-enforcement officer is attempting to look into a person's prior criminal history, but the sex on the person's driver's license has been changed to a different marker since those crimes occurred, is it possible that the law-enforcement officer will fail to match that person with their criminal history?

A. It's a possibility, typically when they're in custody, we will have enough time to dig into the triple I to accurately identify, and then when they're in custody also, they're going to be taken to the jail where we're going to learn what the sex of the individual is when they're booked in.

Q. Why would you learn, or how will you learn?

A. Well, if they are booked in, they are typically going to dress those individuals in, and

the process to search in the jail, which the sex will be identified.

Q. Are there any other law enforcement scenarios -- I believe I asked this earlier, let me make sure I did.

Other than a traffic stop, are there any law-enforcement scenarios where a law-enforcement officer would ask a person for a driver's license?

A. Any time, if I'm investigating a criminal conduct complaint and I'm trying to speak with somebody and have enough reasonable suspicion to encounter them, I'm going to ask them for identification.

Q. In the case of a domestic violence incident, would an officer typically ask for a driver's license from the individuals?

A. Yes.

Q. Do you believe it's important to have sex be an unchanging aspect of a person in those law enforcement databases?

A. I think it needs to be accurate for identification purposes.

Q. Just so I understand how the NCIC works, if your department wants to enter a warrant or a want, or a wanted person, so the other

law-enforcement agencies can see it, do you have to enter the name of the wanted person, the sex of the wanted person, and the nature of the crime?

A. Yes. Well, you'll enter the information that comes out on warrant jacket. But yeah, typically when they come out, it's name, date of birth, all the information that the investigators can put together in that court proceeding will be on that warrant jacket for you to try to locate those people.

Q. And does that include sex as well?

A. Yes, sir.

Q. Does the NCIC warrants sometimes include the actual driver's license number of the wanted individual?

A. I think it can at times. I guess I'm old enough, they use to have social securities on the driver's license. And then when we went away with that and just started going with the number, the DL number is not as relevant as name, address, date of birth, things that will help us identify where that person is at, on those warrant jackets.

Q. So is it correct to say that an NCIC want or warrant often doesn't include the driver's license number?

A. Yes, sometimes it does not.

Q. In your experience, have you ever failed to correctly identify a person because you had inaccurate information about their biological sex?

A. I have had occasion. I made an arrest one time of an individual that was assaulting somebody in a case. Got them down to the law-enforcement center where I interviewed them, arrested them, put them in jail, thought they were a male and then the jail called me and told me that they were female.

When I had initially looked, I had missed criminal history on the subject as a male, but it popped when I put him back in as a female, I located it in our local database.

Q. So just to clarify what you said, you said when I originally looked, do you mean when you originally typed the person's information into a computer to look for their criminal history?

A. Yes, and this was just information they had told me. And as I sit here today, I don't recall them having an ID. They told me they were a male, gave me a name, I ran them, put them in jail. Then the jail called me and told me, hey, this is a female and then I had to look up and they did have criminal history as a female.

Q. Did you -- strike that. Did this case occur prior to when Kansans were able to change their sex markers on driver's licenses?

A. Yes, sir.

Q. If the case had occurred later in time, and the person had a changed driver's license that did not match their biological sex and that changed license didn't match their driver's license sex when the crimes were committed, would you have missed their criminal history by running the new driver's license with the changed sex?

MR. DALGLEISH: Objection, compound, speculation, lack of foundation.

MR. KOBACH: I don't think it's compound. There's multiple qualifying clauses, but there's only one question.

MR. DALGLEISH: I disagree.

THE COURT: Let's take another run at it.

MR. KOBACH: Okay.

BY MR. KOBACH

Q. Before asking the question, I'm going to state a number of conditions --

THE COURT: I want to, as I understood the testimony, and the instance you were

talking about, the person didn't present the DL to you?

THE WITNESS: Did not, sir.

THE COURT: So we're into the hypothetical question.

MR. KOBACH: Correct.

BY MR. KOBACH

Q. So assuming this incident occurred after people started being able to change their driver's license sex markers, but not before SB 244, so people are able to change their sex markers. And the person did have a driver's license, and you attempted to search that person's criminal history using the sex marker on a changed driver's license. In other words, the sex marker had been changed.

But the crimes had been committed prior to the sex marker change, would you have missed the criminal history by running the new driver's license?

MR. DALGLEISH: Same objection, Your Honor.

THE COURT: Do you understand the question?

THE WITNESS: Yes, sir.

THE COURT: What's your answer?

THE WITNESS: It's a possibility.

BY MR. KOBACH

Q. Let's use the same hypothetical. It occurs in a period when individuals can change their sex markers, and the person did indeed change their sex marker, and you were in your squad car and you check the NCIC to see if there were any wants and warrants for the person.

Is it possible you would have missed a warrant for that individual because of their changed sex marker?

MR. DALGLEISH: Same objections.

THE COURT: I'm sorry, the basis for the objection?

MR. DALGLEISH: Speculation, foundation.

MR. KOBACH: He's an expert witness.

THE COURT: He's being asked as an expert. Overruled.

A. It's potentially problematic and may miss something.

BY MR. KOBACH

Q. Have there been any other incidents where you encountered a criminal who had changed their sex?

A. Yes, sir.

Q. And what did that incident involve?

A. There was an individual that was known to most of us in law enforcement in Topeka that had numerous arrests that was a male, transgender into a female.

And at times, he would be dressed as a female and at times he'd be dressed as a male. It wasn't so much a problem because when he come out on warrants, we knew who he was, so we could locate him.

Q. You said he was involved in various crimes? What were the crimes?

A. Well, narcotics, various assaults. I don't recall everything that he was involved in, but he had a pretty extensive criminal history.

Q. And I believe you answered this, but were there warrants ever -- were there ever any warrants issued for this person?

A. Yes, sir.

Q. Do you remember what crimes led to the warrants for the arrest?

A. Like I say, I believe they were narcotics and assault-type nature.

Q. Now thinking about this case, were these

encounters with this person prior to individuals being able to change their sex marker on the driver's licenses in Kansas?

A. Yes, it would've been in the '90s, so yes, sir.

Q. Now, again, let's suppose that the various law enforcement encounters with this individual had occurred later in time when people were able to change their sex on their driver's licenses. And let's assume that one these warrants was out, meaning there was an active warrant for this person's arrest, indicating his original biological sex as male, but then the individual changes his driver's license sex marker to female and moves to a different jurisdiction, say in a different state, to avoid arrest.

Would a law enforcement officer in that jurisdiction who pulls him over for speeding likely miss the opportunity to make the arrest running, searching for a warrant with a female marker?

MR. DALGLEISH: Your Honor, objection, foundation, speculation. Particularly lack of foundation for some other jurisdiction.

THE COURT: With that in there, I would want foundation.

BY MR. KOBACH

Q. Do individuals who are wanted for crimes sometimes move out of the area in which the crime was committed?

A. Yes, sir.

Q. I think we've already established that the NCIC is a national database used by all law enforcement agencies; is that correct?

A. Yes, sir.

Q. If this individual we were talking about, the one who had wants and warrants out for narcotics violations and assault violations, if that individual moved to Oklahoma after changing his sex on his driver's license to female, and the want was under a male name, would a law enforcement officer conducting a traffic stop in Oklahoma be able to identify that this individual was wanted?

MR. DALGLEISH: Same objections.

THE COURT: Foundation, sustained.

THE WITNESS: And again, I think it's possible.

BY MR. KOBACH

Q. If driver's licenses are always required to designate a person's biological sex at birth, as SB 244 was, will that help officers better locate

wanted individuals?

A. Yeah, any information that is accurate is helpful for us, because we investigate and do our police duties.

Q. Is it also helpful if the information is unchanging, meaning the suspect cannot change it?

A. Yes, it's helpful if it's a constant, yes.

MR. KOBACH: No further questions, Your Honor.

THE COURT: Cross-examination?

MR. DALGLEISH: Yes, sir.

THE COURT: Reporter is asking for a break, I don't know how long you expect, but.

MR. DALGLEISH: Fifteen minutes, probably.

THE COURT: You doing okay, Sheriff?

THE WITNESS: Yes, sir. Thank you.

THE COURT: You can proceed.

CROSS-EXAMINATION

BY MR. DALGLEISH

Q. First of all, thank you for your years of law-enforcement exemplary career and it's much appreciated.

I think this is the fourth time we've been able to talk with each other about these issues. We

probably need to quit meeting like this, but I can tell you that I'm going to cover things that we've covered before that we've been over, all right?

A. Okay.

Q. Now, I want to start with something, you were just given a large number of hypotheticals by Mr. Kobach, do you recall that?

A. Yes, sir.

Q. And I started keeping track of the terms that you were using to answer those hypotheticals. And I want to go over some of those with you.

You said in your response that the outcome that Mr. Kobach was asking you about was, potentially problematic. Do you remember that?

A. Yes, sir.

Q. That's a speculation, isn't it?

A. Well, yeah. Yeah.

Q. The other term you used was in response to one of the hypotheticals was that the result you were being asked about was, your words were, potentially possible. That's a speculation?

A. Yes.

Q. The other term you used was, and you used this is your declaration, that something could happen. Do you recall that?

A. Yes, sir.
Q. And that's a speculation?
A. Okay.
Q. Agree?
A. Yes.
Q. And you said that some of these other hypotheticals were, could be problematic. That was your word?
A. Yes, I'm very hesitant to say always --
Q. Right.
A. -- because there's too many variables to say that. I just know that it's potentially it could happen.
Q. Right. And I think that's honest because when you say something is potentially problematic, you're saying, well, it's possible?
A. Yes.
Q. So instead of talking about things that are problematic or possible or other speculations, I'm going to focus with you on things that actually happened in your experience, okay?
A. Okay.
Q. So let's drill down on this. So how we first met was, you were involved in the earlier SB 180 case that involved driver's licenses, right?

A. Yes, sir.

Q. And what happened was, you or your department were approached by Mr. Kobach searching for law enforcement problems caused by the driver's license sex marker?

A. Yes.

Q. Searching for actual real world things that had happened, right?

A. Yes, sir.

Q. And you talked with people within your sheriff's department who had decades of experience, and you could not identify any single such problem?

MR. KOBACH: Objection, Your Honor, outside the scope of direct examination.

THE COURT: Overruled.

A. I didn't know of anybody offhand, other than the experience that I had. But then again, we had just started allowing people to do that with their driver's license, it hadn't been allowed through a lot of my career.

Q. Well, specifically, after you deliberated this internally, you determined that you didn't know anybody specifically had anything to offer, right?

A. True.

Q. So we went through and we met in court in

the SB 180, did anybody ever tell you what the Kansas Court of Appeals said in that case?

MR. KOBACH: Objection, relevance, and that calls for conclusions of law.

MR. DALGLEISH: Asking whether he was informed of the result.

THE COURT: For what purpose?

MR. DALGLEISH: Conclusion of the law enforcement practices.

THE COURT: Exploring the basis for his expert opinion, overruled.

A. Not in detail about what was actually said. No, sir.

BY MR. DALGLEISH

Q. But nevertheless, you were asked to come again for this case, true?

A. Yes, sir.

Q. But you don't have any more information today than you did what you testified in that case?

A. True.

MR. KOBACH: Objection, calls for a knowledge of what he testified to in that case, and we don't have that transcript in front of us.

MR. DALGLEISH: He knows what he testified, it's his own testimony.

THE COURT: You can ask him if he recalls.

BY MR. DALGLEISH

Q. As you sit here today, you don't have any other information that you just testified to that you didn't have in the earlier case?

A. I don't believe so.

Q. So nevertheless, you were called again by Mr. Kobach to come testify, and respectfully, that's why you're here?

A. Yes, sir.

Q. You used the word that you would want as much as possible for driver's license information to be consistent, remember that?

A. Yes, sir.

Q. And that makes sense. That's helpful, isn't it?

A. Yes, sir.

Q. And you also mentioned the driver's license number. I got to looking at my driver's license number, and it has what's called a K number at the top?

A. Yes, sir.

Q. And I'm old too, but for many decades that K number is on everybody's driver's license, right?

A. Yes.

Q. The K number stays the same?

A. Yes, sir.

Q. If I get fatter, which I have, my driver's license changes, K number is the same?

A. Yes, sir.

Q. I change addresses, K number is the same?

A. Yes, sir.

Q. I lose my hair, which I have, K number is the same?

A. Yes, sir.

Q. No matter what demographic or other information has changed on my Kansas driver's license, the K number is the same?

A. True.

Q. And it's linked in the system --

MR. KOBACH: Objection, Your Honor, he is asking the witness to testify to things that are outside the scope of his expertise and the expertise we stated and clarified him as an expert, about protocols in the division of revenue.

MR. DALGLEISH: First of all, the scope is not limited -- subject to cross-examination is not limited by what you choose to ask. Second of all, you proffered him as an expert. Third of all,

he's testified by personal knowledge of what he knows.

THE COURT: One of the subject matters that I qualified him was driver's license data for identification purposes by law enforcement.

MR. KOBACH: The objection is he is asking about policies of whether the division of revenue changes K numbers ever --

THE COURT: -- Department of Revenue question, it's just in his experience whether the K number can change.

MR. KOBACH: If it's his experience, yes.

THE COURT: Okay. You can answer the question, sir.

THE WITNESS: To my knowledge, I believe the K number stays the same.

BY MR. DALGLEISH

Q. So wherever the person goes or lives or looks like, K number on the license is always going to remain the same?

A. Yes, I believe so.

Q. And you had a little technological change, but when you, God forbid, if you pull me over, when you run my license through your computer in your

car, does it pick up the K number? It's got barcodes and things on it?

A. Again, I run all that through the dispatch center and just give the information. And again, that's what my opinion is, is the problem. Yeah, that stays the same there, and that knowledge is there, that's not interfaced to any other databanks where the warrants are at.

So I simply take the information from that license and I'm running it on NCIC. And if it's different, that's a problem for me as a cop.

Q. Sure. And you know, we all know as we march through life that the information on our driver's license changes over time?

A. It does.

Q. I mean, we all get older, we move.

A. True.

Q. And as a law-enforcement professional, you are used to gathering as much information as you can about a suspect to what you need to do as a professional, right?

A. True.

Q. And you know there's always going to be some differences or mismatches. I mean a classic example would be a person who gets married and

changes their name, right?

A. Yes, sir.

Q. But as a law-enforcement professional, you're able to work through those -- in your experience, it gets worked out?

A. Well, sometimes, there are things that are missed, especially on the road, if you don't have the right information.

Q. It's possible?

A. Yes.

Q. So let's talk about, Mr. Kobach, you alluded to an incident, the one incident you did talk about, you and I have chatted about a bunch of times now, right?

A. Yes, sir.

Q. And this was an incident where a suspect was accused of or stabbed their landlord?

A. Was trying to stab him, yeah.

Q. That's the only incident that you have personal knowledge of?

A. Yes, that was the only one that I had no clue it was not a man when I booked him into the jail.

Q. Right, but ultimately, it all got worked out perfectly well, didn't it?

A. Well, it did. They were in custody, they had time to find out what was going on when they booked them in and I was able to go back and find all that. So yes, sir.

Q. You were able to arrest them?

A. Yes, sir.

Q. You were able to put him in jail?

A. Yes, sir.

Q. The person was identified?

A. Yes, sir.

Q. So what the person's "biological sex" was or not, really didn't ultimately make any difference in that incident?

A. Not in that instance. No, sir.

Q. It didn't present any significant problem?

A. Not for me. I'm not sure what they encountered at the jail when they booked in.

Q. You've had an incredible career, you have 115 law-enforcement officers reporting to you, so you've had an enormous amount of law enforcement experience?

A. I've been doing this a while. Yes, sir.

Q. Not your first rodeo?

A. No, sir.

Q. And I'm going to ask you specific

questions I've asked you before. You don't have any personal knowledge or experience that a problem has ever actually happened from allowing individuals to establish alternate or different identities through the issuance of multiples driver's licenses or government-issued documents, true?

MR. KOBACH: Your Honor, I think that mischaracterizes his prior testimony.

THE COURT: Sir, I want you to listen carefully to the question. If you believe you understand, you can answer it. If you need clarification, you can ask for that.

MR. DALGLEISH: You want me to -- I got a little lost myself.

THE WITNESS: Yeah, you want to repeat that?

BY MR. DALGLEISH

Q. I'll tell you, I've asked you this exact question before, so let me ask it again.

You don't have any personal knowledge or experience that a problem has ever actually happened from allowing individuals to establish alternate or different identities through the issuance of multiple driver's licenses or government-issued documents, true?

A. I don't have anything that I can say, this actually happened. But then again, you wouldn't know, would you?

Q. Let me ask you a similar question. You don't have any personal knowledge or experience that allowing individuals to establish alternate or different identities through the issuance of multiple driver's licenses or government-issued IDs has disrupted law enforcement's ability to effectively determine the identity of individuals suspected of violating the law, true?

MR. KOBACH: Same objection, mischaracterizes his prior testimony.

THE COURT: I don't think you're asking about prior testimony.

Again, if you need a repeat or clarification, you can ask for it. If you feel you understand, you can answer.

A. I don't have anything specific I can point to. No, sir.

BY MR. DALGLEISH

Q. Another question. You have no personal experience of a transgender person changing the sex marker on their driver's license in order to frustrate law enforcement, true?

A. Yes, I don't personally know anybody who's done that.

Q. And you don't know of any incident, in all of your law enforcement experience where a transgender person has evaded arrest because of the sex marker on their driver's license, true?

A. True.

MR. DALGLEISH: Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. KOBACH

Q. Sheriff Hill, the last question asked by opposing counsel said that it was about experience with incidences, with incidents where the individual changed their driver's license marker, do you recall that question?

A. Yes, sir.

Q. The cases that you mentioned were prior to individuals being able to change their driver's license; is that correct?

A. Yes, sir.

Q. Opposing counsel also said -- opposing counsel also said that you could come up with only one incident where a criminal changed his or her apparent sex in a manner that confused or caused

uncertainty for law enforcement officers, but did you mention two cases?

A. Yes, the other individual that was arrested numerous times in Topeka, yes.

THE COURT: Sorry, I didn't hear.

A. Yes, I did talk about a second individual that had numerous arrests in Topeka.

BY MR. KOBACH

Q. And I believe, did you say that the reason officers weren't confused about that individual was because he was well-known to officers in Topeka and all of these incidents occurred in Topeka?

A. Yes.

Q. A wanted individual's warrant on NCIC often will not include the driver's license K number; is that correct?

A. Some people don't have driver's license, so yes, they can still go out on warrant. Yes, sir.

Q. And if your department enters a warrant into the NCIC, you may not have a driver's license K number, would you? Or do you in all cases?

A. Not in all cases, no.

Q. If a wanted individual who committed a crime in Oklahoma then moves to Kansas, the Oklahoma law enforcement agency that entered the individual

into NCIC won't have a K number because he wasn't a Kansas resident yet, correct?

MR. DALGLEISH: Speculation, foundation.

MR. KOBACH: It's obviously speculation.

THE COURT: It's overruled.

THE WITNESS: True.

MR. KOBACH: No further questions, Your Honor.

RECROSS-EXAMINATION

BY MR. DALGLEISH

Q. Sheriff, the second individual that you mentioned, did they abscond or escape?

A. Well, they alluded arrest at times. But no, we knew who he was, so we were able to locate that individual.

Q. You were able to do your job?

A. Yes.

MR. DALGLEISH: Thanks.

MR. KOBACH: No further questions, Your Honor.

THE COURT: Sir, thank you. You can step down. We're going to take a recess, do we have additional witnesses you anticipate before lunch?

MR. RODRIGUEZ: I believe we have one more we can fit in before lunch. Still waiting for confirmation that he is present.

THE COURT: Let's accelerate our discovery of that, but we will come back around 11:15, 11:20.

(A recess was taken.)

THE COURT: Thank you. Please be seated. Appearances are the same. Are we ready to proceed with evidence?

MR. RODRIGUEZ: Yes, Your Honor.

The State calls Robert Jacobs.

THE COURT: Mr. Jacobs, if you'll come forward and be sworn.

ROBERT JACOBS, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MR. RODRIGUEZ

Q. Good morning, Mr. Jacobs. Would you please state and spell your name for the record?

A. It's Robert Jacobs, R-O-B-E-R-T, J-A-C-O-B-S.

Q. Where are you currently employed?

A. I'm employed with the Kansas Bureau of Investigation.

Q. What's your current position?

A. I'm the acting director.

Q. How long have you worked with the Kansas Bureau of Investigation, or the KBI?

A. I've worked for the KBI for approximately 30 years.

Q. What other positions have you held prior to director?

A. I began my career as a part-time telecommunication specialist, working part-time in our sort of dispatch area. I became a crime analyst after about nine months doing that. I served as a crime analyst for three years, and then I was appointed a special agent position.

I was a special agent from 2001 until 2018, when I became an Assistant Special Agent in charge over our crime scene team. In 2020, I was promoted to our executive officer. In 2023, I was promoted to our associate director. And in June of this year, I stepped into the acting director position.

Q. Do you have any law enforcement experience prior to KBI?

A. I do not.

Q. So your entire law enforcement career has

been with KBI?

A. Yes, sir.

Q. Have you ever testified as a witness at trial?

A. I have.

Q. About how many times?

A. Approximately 20.

Q. Were those all in a law enforcement capacity?

A. Yes, sir.

Q. Have you ever testified as an expert witness?

A. I have. Yes, sir.

Q. On what subject matter?

A. Bloodstain pattern analysis.

Q. And how many times have you testified as an expert?

A. One time.

Q. Have you ever offered any expert testimony to the State Legislature?

A. I have, yes, sir.

Q. What was the subject matter of that testimony?

A. Predominantly use of force and officer-involved shooting investigations, as well as

some, I've offered other testimony to the Legislature in my roles as the executive officer on a variety of different subjects.

Q. Did you ever offer testimony to the Legislature regarding law enforcement records?

A. I did. Yes, sir.

Q. What was the occasion of that?

A. We had purchased a new system called the automated biometric identification system. Part of that system would allow for a program called Rap Back, that is a federal program that looks at criminal history records and is a continuous monitor of those.

In order for the federal Rap Back to be instituted in Kansas, we had to change the statute, so I testified on behalf of that.

Q. Are you a certified law enforcement officer?

A. Yes, sir.

Q. When did you get that certification?

A. In 2001.

Q. Is it current?

A. Yes, sir.

Q. Ever disciplined or suspended?

A. No, sir.

Q. Do you hold or have you held any teaching positions?

A. Yes, sir.

Q. Can you describe that?

A. I am an adjunct instructor with Washburn University. I've done that from 2000 until present.

Q. And what kind of courses do you teach?

A. Primarily criminal justice.

Q. Where did you complete your education?

A. I have -- my high school was here in Lawrence. I have an undergraduate degree in psychology from Baker University and sociology. I also have a master's degree in criminal justice from Washburn University.

Q. Do you have any other training or certificates?

A. Yes, I completed the University of Tennessee National Forensic Academy, which is a 10-week program there that deals with crime scene components. I also completed a certified public manager course at University of Kansas.

Q. How did you come to be involved in this case?

A. I was requested to participate in this case by the Attorney General's Office.

Q. You were asked to provide expert testimony?

A. Yes, sir.

Q. Did you submit a declaration of your expert opinions?

A. I did.

Q. In front of you I have what's marked Exhibit 106. Do you recognize that document? It'll be tab six, volume one.

A. What's the tab?

Q. Six.

A. Yes, sir, I do.

Q. Can you describe it?

A. The first part of this is my resume. And the second part is the declaration of my opinions as an expert witness.

Q. Is that a true and accurate copy of the declaration you submitted?

A. Yes, sir.

MR. RODRIGUEZ: Your Honor, we move to admit.

MR. DALGLEISH: No objection, Your Honor.

THE COURT: I'm sorry, what's the area of expertise that we are addressing?

MR. RODRIGUEZ: Right now, I was just moving to admit his declarations evidence. I'll lay a bit more foundation for his expertise and formally proffer that.

THE COURT: 106 is admitted.

(Defendant's Exhibit 106 was admitted.)

BY MR. RODRIGUEZ

Q. What are your responsibilities as director of the KBI?

A. I'm responsible for the day-to-day operations of the entire agency.

Q. Can you give me some details about the day-to-day operations?

A. Sure, our agency is divided into three main areas, we call them branches. We have investigations branch that oversees all of our criminal investigations that's made up of primarily our special agents and crime analysts.

We have an area called our criminal justice services branch, which is made up of our forensic laboratory, as well as our information services division. That branch also has a section that oversees our strategic intelligence for the agency.

And then we have a branch that's the administrative branch, and that branch covers all of our internal facing operations, such as fiscal, human resources, information technology, and areas like that.

Q. And you oversee all of those branches?

A. Yes, sir.

Q. What does the information services division do?

A. The information services division maintains various repositories that are utilized throughout the state, both -- those are accessible to both the public and other law enforcement entities.

We maintain several different repositories of information through our information services division.

Q. And what type of records system does KBI own or maintain?

A. So KBI maintains and some of which are statutorily required, we maintain a record system called the Kansas incident-based reporting system, which is a collection of law enforcement records that are either offense reports and/or arrest reports.

We maintain our offender registration system, which is a collection of individuals, or names of individuals and data on those individuals for people who were convicted of certain crimes in Kansas, in which they are required to register as an offender, according to the Kansas Offender Registration Act.

We have a repository that keeps criminal history information, criminal history record information, and that is utilized in several different, accessible for several different reasons throughout law enforcement.

We have an identification system, that's what I referred to earlier that utilizes the automated biometric information system, or ABIS. That system collects fingerprints on individuals who have been not only arrested, but also noncriminal justice entities use that system as well.

And to explain that a little bit better, if you are applying for licensing or certification for certain jobs in Kansas, you have to have a criminal history record check done, and you have to submit your fingerprints. So both noncriminal justice and criminal justice entities use that repository.

We also have an asset forfeiture repository, which collects information on property and currency that is seized and forfeited by law enforcement throughout the state. That's a civil process, but we collect that information.

We have an in-custody death repository, which keeps track of all individuals and the circumstances around any individual who dies while in the custody of law enforcement or Department of Corrections.

We have a system called E-citation, which collects data on traffic citations and that is used by other entities within the criminal justice system.

We also have a use-of-force database, which keeps information on law enforcement's use-of-force, predominantly use-of-deadly-force in Kansas.

And then finally, we have the scrap metal database or repository and that keeps information on individuals who sell metal to scrap dealers and keeps information both on the items that are being sold and the seller who is selling it.

Q. Are there other record systems that the KBI databases connect to or interact with?

A. There are. We connect to several other databases outside of the state. We also submit data from our repositories to national repositories that are held at the federal level.

Some of those include the National Incident Based Reporting system, the National Offender Registration system, there's a system called Index that keeps track of all law-enforcement records across the state, across the country.

And then there's also a system called the National Crime Information Center, that is a center, the NCIC, that is a system that collects information from various repositories all over the country, and collects -- and law enforcement accesses that when they are trying to identify or learn information about certain individuals.

Q. Do KBI agents rely on these databases?

A. Yes, sir. We do.

Q. Do other law enforcements agents rely on these databases?

A. Yes, sir.

Q. Have you used these records systems in your law enforcement career?

A. I have.

Q. Are you responsible for the accuracy of

these databases?

A. Yes.

MR. RODRIGUEZ: The State offers Robert Jacobs as an expert witness under KSA 60-456 B in law enforcement records management and identification practices, including law enforcement's interest in accurate records and the manner in which driver's license data is maintained on state law-enforcement records systems.

THE COURT: Repeat, please, to make sure I get my note correct.

MR. RODRIGUEZ: Expertise in law-enforcement records management and identification practices, including law enforcement's interest in accurate records and the manner in which driver's license data is maintained on state law-enforcement records systems.

MR. DALGLEISH: No objection.

THE COURT: So qualified.

BY MR. RODRIGUEZ

Q. So I'm going to ask you about the general state interest in consistent law enforcement records. In your opinion, why does KBI maintain record systems?

A. I mentioned some of the records systems

that we maintain, we are statutorily required to do. Others are maintained for the enhancement of the criminal justice process.

Q. And how does law enforcement rely on these systems?

A. Law enforcement relies on these systems when it comes to identification of individuals, location of individuals. They, they look at the backgrounds and the histories of those individuals, so there's a variety of reasons for law enforcement to access those records.

Q. When you say identification, can you explain what you mean by that in a law enforcement context?

A. Well, if we're trying to identify an individual that may be the subject of an investigation, or just to positively identify somebody who is in a traffic stop, or right in front of you, potentially a deceased body, the identification of that individual, there's various different ways and needs to identify an individual.

Q. Is a component of identification associating an individual with other criminal records?

A. Yes, sir.

Q. So is it important that records systems interact with each other?

A. Yes, sir. It is.

Q. Who else depends on records being maintained by KBI?

A. The courts do. They access our records, as well as probation and parole. The public in general accesses those records and the law enforcement in general.

Q. Do you believe it's important that these records are accurate?

A. I do.

Q. Why is that?

A. It helps to prevent the misidentification of an individual. It also helps prevent not identifying somebody when you need to identify them. It also tells us a lot about an individual's backgrounds, if they are a threat to law enforcement or anyone else or have the potential for threat.

There's needs to access and identify those -- access those records for identification purposes in a variety of different circumstances.

Q. Is it important that the records are consistent with each other?

A. Ideally, yes. That's what we want.

Q. What do you think makes law enforcement records reliable?

A. Well, as long as the data is all the same throughout the different records, I think that's the ultimate goal. And that's the consistency within each record to make sure that the records match and you don't misidentify an individual.

Q. Is consistency across record systems also important?

A. It is. It is, yes, sir.

Q. How does a data point that doesn't change compare to one that can change?

A. Well, if you have a data point that can change, then you have the potential for there being a discrepancy in the records. If it changes from one record system to another record system, or even within the same records system, and that can lead to potential misidentification.

Q. From a law-enforcement perspective, what do you consider the most reliable kind of record?

A. There's a concept and it's not just a concept, it can be a reality called the golden record, which is when you have a system that will be, a data point that will be consistent across all systems. That is the end goal of what we try to do

with our records systems, is to have a golden record on each individual.

Q. So is it true that the more consistent information you have in the records, the closer you are to the golden record?

A. Yes, sir.

Q. Do you know what categories or demographic information appears on law enforcement records?

A. Yes, there's obviously a variety of different ones. There's name, date of birth, there's biological sex, there's address, there's height, weight, hair color, eye color, criminal history. If they are a registered offender, there is a registered offender number. There's a variety of different information about those individuals that are in the records.

Q. Which of the demographic data is unchanging?

A. Primarily the name, and the date of birth, and the biological sex.

Q. So biological sex doesn't change?

A. It does not.

Q. Does that make it a consistent data point about an individual?

A. Yes, sir.

Q. Where does law enforcement obtain information about someone's biological sex?

A. Primarily from the driver's license.

Q. Anywhere else?

A. You could obtain it, I believe, from a passport. I don't believe that happens as often as finding it on a driver's license or a state identification card.

Q. How does information from a driver's license get into a law enforcement record?

A. It is submitted into the record through the law enforcement officer that has contact with that individual.

For example, with a situation, if you have an arrest report, or an offender registration, the officer will take that information from the driver's license and submit that directly into the system.

Q. So if the data that's on the driver's license is inconsistent or inaccurate, how does that affect record systems generally?

A. Well, if the data is inconsistent, it could potentially create an error within the system that would need to be addressed to try and make that record as accurate as possible.

Q. Can you tell me which of the record

systems that KBI works with contains information about a person's sex?

A. Yes. We have, all of our records potentially contain information on -- well, all of our records do contain information on an individual's biological sex. Three of those records are required to maintain that information. Those three are offender registration system, our criminal history record system, and our scrap metal record system.

Q. So in the systems, the information about biological sex must come from driver's license?

A. It must come from the person who entered into the system, yeah.

Q. Can you tell me how the demographic information gets into the criminal history system?

A. So when an individual is arrested and they are booked into the jail, an officer will fill out an arrest report and a booking report.

The officer is filling out that report and taking information from the driver's license and putting that directly into their criminal history, it's based on their arrest.

Q. How is the criminal history used by law enforcement?

A. Criminal history is used to look at a person's past. It is also used by the courts to determine sentencing in various criminal cases and to use to determine whether an individual is a danger to others, and looking at their previous history.

Q. What happens if an individual has criminal history and then changes the sex marker on their driver's license and then is subsequently arrested?

A. So with criminal history specifically, with that database, if an individual is arrested and has a data point, such as biological sex, upon their initial arrest, they have one indication of a biological sex.

They then change that data on a driver's license, and then have a second arrest, where that one data point is different. That officer will fill that out, that record, that arrest booking report, and put the new information in.

From there on out, any subsequent contact or arrest with that individual, the officer (indiscernible.) query on that, the officer will only see the most recent data that's in there. They will not see the previous data.

So what will happen when that occurs and

you have that discrepancy within the record, the FBI who audits that system quarterly will identify that as an error, because one record shows one thing, and then that same record shows something different later.

They will identify that error, they will contact the KBI, let us know that we need to fix that error. We will then contact the most recent, the officer who had the most recent contact with that individual, ask him if he can change or fix, if it's appropriate, to fix that error. If it's not, that error will stay in the system forever, until we have another way to fix it.

Q. So to be clear, the FBI only points out discrepancies quarterly?

A. Yes, sir.

Q. And sometimes those discrepancies are resolved and sometimes they can't be?

A. Yes, sir.

Q. What kind of problems might occur as a result of the discrepancy in records?

A. Well, that could, again, misidentification could be the failure to actually identify somebody. If you misidentify somebody and you are taking a law-enforcement action against a person that is not

the person that you are interested in or specifically looking for, that could lead to a deprivation of their constitutional rights, it could lead to just a non -- could reduce the trust in law enforcement in general too.

Q. And the failure of your identification could occur because of inaccurate information about a biological sex, specifically?

A. Potentially, yes.

Q. Could also fail to identify the subject of a warrant with a complete criminal record if you have a discrepancy about the biological sex?

A. Potentially, yes.

Q. Can inconsistencies in the criminal history record system affect other record systems?

A. Yes, it can.

Q. Does listing biological sex on driver's licenses prevent those inconsistencies?

A. It helps to, yes. I agree.

Q. Do you have an opinion about documenting sex on a law enforcement record?

THE COURT: About what?

MR. RODRIGUEZ: Documenting biological sex on the law enforcement record?

A. I think any data point that cannot be

changed, including biological sex is ideal. That is what we want.

We don't want inconsistencies within those records, all law enforcement records, so I do believe it's important to have a data point that is unchanging.

Q. So you believe documenting biological sex on driver's licenses assist law enforcement?

A. Yes, it does.

MR. RODRIGUEZ: Thank you, nothing further.

THE COURT: Cross?

MR. DALGLEISH: Yes, sir.

CROSS-EXAMINATION

BY MR. DALGLEISH

Q. Good morning, Mr. Jacobs.

A. Good morning.

Q. When we met for your deposition, you literally had just been promoted. Congratulations.

A. Thank you.

Q. How do you like being the top person?

A. It's good. Thank you.

Q. A few more meetings? Bureaucracy?

A. My calendar filled up a lot faster than I thought it would.

Q. All right. So you were asked to get involved in this case by the Attorney General?

A. Yes, sir.

Q. You obliged that request?

A. I did.

Q. You understand, you understand this case well enough to know that it has two basic facets, one involving transgender use of bathrooms. Are you aware that?

A. Yes, sir.

Q. You have nothing to do with that here today?

A. No, sir.

Q. And the other issue is driver's licenses?

A. Yes, sir.

Q. And your direct examination was focused upon KBI record systems?

A. That is correct. Yes, sir.

Q. And you've done, you've done a little homework, which we will talk about, when you were first contacted -- I mean, you had had some dabbling with record systems, but that really wasn't the core of your expertise?

A. That's a fair statement, yes.

Q. And so you went and spoke to a Ms. Mattox

in the information services division?

A. I did.

Q. And she prepared a very lengthy document entitled, Driver's License Data and the Impact on KBI Repositories?

A. Yes, sir.

Q. She did that at your request?

A. She did.

Q. And you, you lifted most of that and that's what forms the guts of your declaration that was admitted?

A. Yes, sir. I had knowledge of our systems previous to that meeting with her. I wanted to be as best prepared for today as I could.

Q. Fair enough. But the level of detail you had, you relied upon somebody else to gather that for you?

A. Yes, sir.

Q. Knowing that this case specifically involves driver's licenses, I wanted to talk a little bit about the KBI and it's involvement with driver's licenses.

You had not previously worked in driver's licenses issues for the KBI?

A. No. I guess I don't understand the

question.

Q. The KBI doesn't typically rely upon driver's licenses for its work, does it?

A. In our investigative area, no, we don't.

Q. Right. And KBI doesn't really utilize driver's licenses out in the field?

A. Not the driver's license itself. The data from the driver's license we do look at in our records systems and when we are performing criminal investigations.

Q. Sure, but that's going to generally flow through stops or officers in the field that initiate a stop with a driver's license?

A. Yes, sir.

Q. So you use the word in your direct exam a number of times, that you think it would be, it's always better for records to be consistent?

A. Yes.

Q. Right? I mean consistent is better than inconsistent, right?

A. Ideally, yes.

Q. But the KBI has a wealth of experience of dealing and resolving when there are inconsistencies?

A. Well, when we identify them, yes, we have

to deal with them.

Q. Right. And you got really good at it?

A. Ideally, we don't want to have to. But when it happens, we have to dedicate resources and time to address the discrepancy.

Q. Right. But you know that, of course, things on driver's licenses change constantly?

A. Some do, yes.

Q. Address? Yes?

A. Yes, sorry.

Q. Weight?

A. Yes.

Q. Name?

A. I believe so.

Q. My ever-increasing weight?

A. Yes.

Q. So all those things can generate what you call inconsistencies?

A. Yes.

Q. Right? But the KBI is adept at dealing with that?

A. Yes, sir.

Q. So specifically, when we talk about, you were asked questions about, I think the term was biological sex. Do you know what the history in

Kansas has been regarding how people can enter or change the sex marker on their driver's license?

A. Not specifically.

Q. And so you don't know how that was handled for many years in Kansas?

A. No, sir.

Q. And you don't know what was required for somebody to change the sex marker on the driver's licenses?

A. That's not part of my job performance.

Q. But you do know that you are not aware of any problems that KDOR has ever had with sex markers?

A. Not from a Kansas Department of Revenue standpoint.

Q. I think you also used the word that driver's licenses can contribute to the informational package that the KBI maintains?

A. Yes, the law enforcement accesses.

Q. But the KBI utilizes a wealth of other information as well?

A. We do.

Q. And that can include, well, you talked about it largely in your direct, so I won't plow ground back over it, but among other things,

fingerprints?

A. Yes, sir.

Q. Right? A fingerprint is going to get pretty darn close to the golden record that you're hunting for?

A. Ideally, yes, sir.

Q. And technological changes, retina scanning, all that?

A. That's true, but there has to be -- those fingerprints have to be in the system for a positive identification, and if they're not, it's not useful.

Q. Fair enough. But it's not as if, if you have a change on somebody's driver's license, it's going to be impossible to identify or correlate records?

A. In theory, yes.

Q. Now, you were asked a series of hypotheticals about things that might happen with a sex marker change. Do you remember those?

A. Yes, sir.

Q. And you were careful to use the word in response to the question, well, potentially there could be a problem?

A. Yes, sir.

Q. When you say potentially, at least to me

that means, well, it's possible, right?

A. Yes, sir.

Q. But it hasn't happened yet?

A. Not that I'm aware of, as far as from the KBI's perspective.

Q. So that's what I want to drill down on. So you have, gosh, what, 30 years of law enforcement experience now?

A. Almost 30.

Q. And worked on hundreds of cases?

A. Yes, sir.

Q. And you've supervised -- I don't know, would it be thousands of people over the years, KBI agents?

A. No, we have 415 employees.

Q. A heck of a lot, despite the budget cuts?

A. Yes, sir.

Q. You've involved hundreds of KBI agents and you've worked or been involved with lots of witnesses and perpetrators and victims?

A. Yes, sir.

Q. And you describe, I thought in really good detail, the robust systems that the KBI has developed over the years to keep track of all these records?

A. Yes, sir.

Q. I mean, it even gets down to like scrap metal and all kinds of things. So there's all these records and procedures that you, probably are kind of Darwinian over here, doesn't it get a little better and better over time?

A. Ideally, we hope to improve the systems as much as we can.

Q. Right. And it sounds like it's working extremely well, because I want to, instead of asking you hypotheticals, I want to ask you some specific questions about what's actually happened with the issues relative to this case, okay?

A. Okay.

Q. You're not aware of a problem that the KBI has ever had with a transgender citizen resulting from changing of the sex marker on their driver's license, true?

A. From the KBI's perspective, no, I'm not.

Q. And you cannot identify any criminal investigation that you've been involved in or a problem or difficulty has arisen because a transgender citizen has a changed sex marker on their driver's license, true?

A. That is correct.

Q. So in the totality of your law enforcement experience, you cannot identify any problem in law enforcement, which has resulted from a transgender person changing their sex marker on their driver's license, correct?

A. Not that I'm aware of.

Q. And finally, you cannot identify anybody or anything else within the KBI system, database system, which has resulted in problems from changing the sex marker on their driver's license?

A. Not that I'm aware of.

MR. DALGLEISH: Thank you.

THE WITNESS: Thank you.

THE COURT: Redirect?

MR. RODRIGUEZ: Nothing further, Your Honor.

THE COURT: Sir, thank you. You can step down.

THE WITNESS: Thank you.

THE COURT: We will be taking our noon recess, unless there's a request to proceed differently?

MR. KOBACH: That's fine.

THE COURT: Any further argument on the request to admit the Matthew Moe declaration,

Exhibit 4? It was addressed yesterday.

MR. SELDIN: Your Honor, in the interest of time, we thought that that might be better suited for briefing, along with other evidentiary issues, just so we can maximize the amount of time that we have here today and tomorrow.

MR. COMPTON: Your Honor, we don't think briefing is necessary on the issue. If there's anything Your Honor would like to know, anything we can provide to you, we're happy to do that, but I don't think we need to do briefing on the issue.

THE COURT: Any further comment, Mr. Seldin?

MR. SELDIN: We'd appreciate at least the opportunity to give you a one-pager.

THE COURT: My ruling is, subject to request for reconsideration, it's not being admitted.

You know, and as you're thinking about it, I haven't been given a reason why he didn't appear. So in the absence in that abstract context, it is not admitted.

MR. SELDIN: Your Honor, we would distinguish in this instance between it as a record,

as an exhibit in this proceeding, as opposed to the status of other documents that are attached to the temporary injunction papers, where, again, Your Honor can take them for what they're worth considering the lack of appearance.

So I guess we'd appreciate clarification on whether your ruling is that it's not an exhibit in this proceeding or you're not going to rely on it at all in your decision.

THE COURT: I don't have any request to remove it from the record, it's part of the record, it's been filed. The request was to admit declarations for other parties into the proceedings. I generally consider the evidence presented in the proceeding in making rulings to be there.

MR. COMPTON: Your Honor, to be clear, we would object to the consideration of the declaration on the papers as well.

THE COURT: Of what?

MR. COMPTON: We would object to the consideration of Mr. Moe's declaration that is included with the papers as well --

MR. SELDIN: And again, Your Honor --

THE COURT: It's part of the record, so that's not an issue. What I'm saying is, the

purpose of these proceedings, give the parties an opportunity to present evidence.

If there's a request that I look elsewhere when we get to argument, you can make that request. And if somebody has an objection, they can raise it.

MR. SELDIN: That's fine, Your Honor.

MR. COMPTON: Understood.

THE COURT: Okay. Has the State had a chance to look at the KDOR exhibits and do they have a position?

MR. NUSSBAUM: Not yet, Your Honor. We received them last night, so our position remains the same, subject to amendment once we've had a chance to review.

THE COURT: Anything else outstanding before we recess that the parties want to take up? Hearing nothing.

How many witnesses are we anticipating this afternoon?

MR. NUSSBAUM: The way things have been moving, I imagine we'll be able to get through two additional witnesses this afternoon.

THE COURT: And those will be fact or expert?

MR. NUSSBAUM: Expert, Your Honor.

After that, just to give the Court a sense of the schedule, we have one more fact witness that can only be called tomorrow morning, and then we will rest.

THE COURT: So the two experts and then the fact witness, and the State anticipates resting?

MR. NUSSBAUM: Yes, Your Honor.

MR. KOBACH: And Your Honor, the State is open, if we move at a fairly quick pace, we're open to doing the final argument tomorrow, rather than waiting till next week.

THE COURT: Are we anticipating rebuttal evidence at this point?

MR. SELDIN: We are. Yes, Your Honor we are anticipating rebuttal.

THE COURT: Okay. That's all helpful. We will reassess as circumstances present. 1:15 as a start time? Does that work for everyone or will not work for anyone? You should speak now. Okay. 1:15. Thank you.

(A recess was taken.)

THE COURT: Thank you. Please be seated. Back on the record in 26-CV-112, the

appearances are the same as before the recess.

Is the State ready to proceed with evidence?

MR. NUSSBAUM: Yes, Your Honor, the State calls Dr. James Cantor.

THE COURT: Dr. Cantor, please come forward and be sworn.

JAMES CANTOR, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MR. NUSSBAUM

Q. Good afternoon, Dr. Cantor.

A. Good afternoon.

Q. Please introduce yourself to the Court.

A. My name is Dr. James Cantor. I'm from Toronto, Ontario, Canada.

Q. Describe your educational background for the Court, please.

A. My undergraduate major was in interdisciplinary science concentrating in computer science with minors in physics and mathematics.

I then continued for my master's degree in psychology and neuroscience at Boston University. I completed my PhD in clinical psychology at McGill University in Québec, Canada. And my postdoctoral

studies at the Center for Addiction and Mental Health in Toronto studying a variety of sexual atypicalities.

Q. And I'm sorry, Dr. Cantor. What was your PhD in?

A. Clinical psychology.

Q. And would you describe yourself as a sexual behavioral scientist?

A. Yes, I would. My entire career really was on the basis of studying specifically the atypical sexualities with regard to their boundaries, how to distinguish one from the other, what in development causes typical versus atypical sexualities, and how we can best understand how to handle them and help people live healthy integrated lives in society.

Q. When you say atypical sexualities, what do you mean?

A. I mean that very broadly, it could be anybody whose sexual interest patterns are something unusual, something for which there is a scientific question, because their interest patterns would work against Darwinian principle of facilitating reproduction.

So that would include anything from, if I can call it plain-vanilla homosexuality, it includes

the various gender identities, it also includes a class of atypical sexualities called the paraphilias. Those involve people with any of, again, many different, highly atypical, and sometimes quite dangerous sexualities.

These can range from exhibitionism and voyeurism to paraphilic rape or sexual sadism. And then, of course, the many different types in between such as cross-dressing or a desire to either be, for example, an animal in a community who call themselves the Furries or the people who want to have sexual interaction with an animal.

As I say, some of these, of course, have forensic implications, others are eccentricities, which are atypical, but don't pose a danger to anybody.

Q. Have you published in the field?

A. Yes, widely.

Q. And approximately how many papers, book chapters, things like that, that have been published?

A. Including book chapters as well as peer-reviewed standard journal articles, somewhere between 50 and 60.

Q. What research positions have you held,

Dr. Cantor?

A. My first one was as a postdoctoral fellow, which is either a junior scientist or a very senior student, depending on one's point of view, studying, again, including sexual dysphoria and gender -- I'm sorry, gender dysphoria and gender identity disorders, several of the paraphilias.

The most common of which I studied, or the one I studied the most was pedophilia. And of them, the studies themselves, as I say, come from the other types of atypicalities, which came through the clinic where I was.

Q. And you may have mentioned this, but have you held any positions at the Center for Addiction and Mental Health?

A. Yes, that's correct. I started with those as a postdoc. My next step position there was as a psychologist, then as a senior scientist, and then I was, eventually became the head of the sexual behaviors clinic where then I was in charge of the clinic and its research.

Q. And where was the center located?

A. In Toronto, Ontario, Canada.

Q. Is it associated with University?

A. Yes, it is a teaching hospital of the

University of Toronto Medical School, where I was appointed to the medical school faculty.

Q. Have you held any editorial roles of scientific journals?

A. Yes, I have. I have been on the editorial boards of several sexual behavior related journals, such as the Archives of Sexual Behavior, the Journal of Sexual Medicine, Sexual Abuse, and the Archives of Sexual Behavior. And then I became the editor-in-chief of Sexual Abuse.

Q. Dr. Cantor, have you ever assessed or treated people with gender dysphoria?

A. Yes, I have, beginning in the late 1990s.

Q. Have you ever done professional work to advocate on behalf of or advance the interest of gay, lesbian, bisexual, or other sexual minority populations over the course of your career?

A. I've done professional work, in the sense that it was communicating with people in the profession, but not professional in the sense that any of it was paid. These were just part of my general participation in my profession.

The earliest involvements I had were, again, since I was a student, I gave the first talk of the gay graduated student experience in the

American Psychological Association. I then founded their committee for gay and lesbian interests among graduate students in psychology.

I was one of the founding members in APA, meaning the American Psychological Association. I spell it out to distinguish it from the other APA, the American Psychiatric Association.

So within the American Psychological Association, I was one of the founding members of its first committees looking into gender dysphoria issues. And then I maintained that kind of involvement pretty much throughout most of, especially, my early career.

Q. What do you do now, Dr. Cantor?

A. Currently, I am the director of and founder of the Toronto Sexuality Center, where we reform both sex and couples therapy.

And as time went on, although some of my best known research is in the causes and management of people with pedophilia, because my background is very broad, when more and more lawsuits began emerging in the US over various transgender issues, I was asked to serve as an expert witness in more and more gender related cases in the US.

So I've had to rebalance how my hours were

allocated in order to make time for the number of cases that I was being asked to be involved in.

Q. Have you testified in this courthouse before?

A. Yes, I have.

Q. Do you recall the name of that case?

A. Oh goodness.

Q. Let me ask it this way, do you know what that case was about?

A. Yes, I do. It was one of the several cases that was about the medical transition of minors.

Q. What were you asked to do in this case, Dr. Cantor?

A. For this case, it was to summarize the relevant research in what situations and what the effects are for adults who transition and what ways it can be recognized or not recognized and what the predictable outcomes were.

The second major task was to evaluate the scientific basis of the declarations being provided by the other experts.

MR. NUSSBAUM: Your Honor, the State tenders Dr. Cantor as an expert in clinical psychology, the science of human sexuality,

including the measurement and classification of gender identity and sexual orientation, and the methodology for evaluating scientific research in that field.

THE COURT: Plaintiffs?

MR. BLOCK: Your Honor, we would like to explore on cross on the limits of Dr. Cantor's expertise, but don't think it makes sense to do a voir dire at the outset.

THE COURT: You'll be exploring those limits, or you'll be challenging his ability to testify as an expert.

MR. BLOCK: With respect to -- it depends on how this qualification regarding gender identity is, how broadly that is interpreted. We don't object to him being qualified on the first grounds that was stated.

THE COURT: Clinical psychology.

MR. BLOCK: We have no objection to that.

THE COURT: Methodology for evaluating scientific criteria.

MR. BLOCK: No objection.

THE COURT: And middle one, Mr. Nussbaum, was?

MR. NUSSBAUM: The science of human sexuality --

THE COURT: Wait, wait. Science of human sexuality. Go ahead.

MR. NUSSBAUM: Including the measurement and classification of gender identity and sexual orientation.

MR. BLOCK: Your Honor, it's the measurement and classification of gender identity and sexual orientation is the part that we object to.

THE COURT: And without objection, the first and third will be permitted, and contingently the second as well, subject to later challenge.

Dr. Cantor, can you pull the microphones just a little bit closer.

THE WITNESS: Is that better?

THE COURT: Yes, it is. Thank you.

BY MR. NUSSBAUM

Q. Dr. Cantor, did you prepare a written report in this case?

A. Yes, I did.

Q. And I think there should be a binder open in front of you, open to Exhibit 102, with your

expert report. Does it look like that?

A. Yes, it is.

MR. BLOCK: Sorry, Your Honor, we object. This exhibit is not the version that was submitted with the opposition for the TI. It's an earlier version that was submitted during discovery, but not the version submitted to the Court.

THE COURT: Let me get there.

Okay. What I have is Exhibit 102, it's entitled Supplemental Expert Report of James M. Cantor, PhD?

MR. NUSSBAUM: Yes, Your Honor.

THE COURT: And the objection is?

MR. BLOCK: That's not the report that was submitted to the Court for this litigation. The report submitted to the Court is a different version of the report that is court stamped as being submitted and there's several material changes.

We don't have an objection to him testifying about this declaration, but this is not the declaration that was submitted to the Court.

MR. NUSSBAUM: Your Honor, this is the first I'm hearing about it. We're not aware of any material changes.

I'll note for the record that if you

look at page 188, it's executed on June 16th, 2026, signed by Dr. James Cantor, pursuant to the Court's scheduling order, for the disclosure of expert witnesses. This is what we disclosed to the parties for purposes of this temporary injunction hearing.

MR. BLOCK: Your Honor, we're happy to provide a redline version, comparing this to the version that was filed with the TI. We don't have an objection to him testifying to this, he's sworn to it, but it's not the version that is in the record for the TI.

THE COURT: What it sounds like cross-examination, but if there's not a dispute -- I guess I don't understand what's being told to me. I'm told that's what's 188?

MR. NUSSBAUM: Yes, Your Honor. Page 188 is the Exhibit 102 is his signature.

THE COURT: Has an executed date of June 16, 2026. What is the representation of the State when that document that I'm being asked to consider was presented to Plaintiffs?

MR. NUSSBAUM: As far as I know, Your Honor, this is the version that we discussed to the State or to the Plaintiffs on the disclosure deadline for rebuttal expert reports.

MR. BLOCK: Your Honor, our issue is that it's being authenticated as the report that was prepared in this case. The final version of that report is a different version of this report, that was submitted as Exhibit 4 to their opposition to the motion for TI.

So for purposes of this testimony, we don't object to him testifying, but we do object to it being authenticated as the version of the report that was submitted to the Court.

THE COURT: I don't think the request is to authenticate it as the version submitted to the Court, it's submitted as a declaration that you want admitted as an exhibit in these proceedings?

MR. NUSSBAUM: Yes, Your Honor.

THE COURT: So I'm not trying -- I appreciate that you noticed this, I assume you're going to be able to challenge him on it or ask questions about it, my only other question is when did you learn of these discrepancies?

MR. BLOCK: This morning when we looked at the exhibit and noticed that the paginations didn't match the paragraph numbers, the paragraph numbers didn't match.

MR. NUSSBAUM: I would just state for

the record, Your Honor, they've had their exhibit list since the exhibit list deadline. They've had time to discover since then.

MR. BLOCK: This is the copy in the binder. When you gave the exhibit list, we thought the exhibit was going to be the version that was submitted to the Court, not an earlier version.

THE COURT: So I appreciate the record being made on that, if we discover there's some other issue we need to revisit, I'll be happy to hear it.

But for present, if the testimony is, and I don't think we've ever got to that yet, if he affirms that this is his, and subject to some other objection, the fact that it has some difference between what was presented with the attached motion and now.

Obviously, Dr. Cantor, I'm going to want you to be careful about any review of the document that you're being asked to testify to. Let's go forward and we'll see if we have further objection.

BY MR. NUSSBAUM

Q. So Dr. Cantor, can you take a look at that document for me, and just page through it briefly.

And after you've done that, does this look like an accurate representation of the report that you submitted in this case?

THE COURT: Dr. Cantor, I'm going to ask you a little bit different question. This document that I'm looking at is dated June 16, 2026.

THE WITNESS: Yes, I understand.

THE COURT: Did you execute more than one report on June 16, 2026?

THE WITNESS: I can't say that I recall specifically, sometimes I will resubmit one if there's a typographical error or something minor. I have no recollection of anything substantive changing, other than updating a reference list or something similar. But all of the assertions and substance of it is left unchanged.

Sometimes I will add -- because I have done so many different cases, I'm overlapping material. Parts are relevant to one case or the other, but nothing has changed --

THE COURT: You don't have any memory of intentionally making changes or adjustments to any report that you submitted to the State substantively for this case?

THE WITNESS: Correct, other than,

perhaps, as I said, a copy editor typographical change.

THE COURT: What your testimony, as I'm understanding it is, that may have occurred and you're not recalling, but you specifically recall that you did not change or alter any substance of the report for purposes of changing any opinion or information that you relied on?

THE WITNESS: Yes, that is correct.

THE COURT: Go ahead, Mr. Nussbaum.

MR. NUSSBAUM: Just so I understand, has 102 been admitted? I might have missed that.

THE COURT: It has not. I didn't know if you had other questions.

BY MR. NUSSBAUM

Q. This is the declaration or the report that you submitted in this case, Dr. Cantor?

A. Yes, it is.

MR. NUSSBAUM: Okay. Your Honor, I would move to admit Exhibit 102.

MR. BLOCK: We will just note our objection for the record, that it's not the report.

THE COURT: Noted. And it's admitted and subject to later reconsideration, I suppose.

(Defendant's Exhibit 102 was

admitted.)

BY MR. NUSSBAUM

Q. All right. So Dr. Cantor, we were just talking about your expertise. You're a sexual behavioral scientist. Just very briefly because we were interrupted, remind me what a sexual behavioral scientist is?

A. As a sex researcher, for short, is a very interdisciplinary field. Of course, human sexuality spans a wide, wide range of usual disciplines, ranging from biology in brain differences all the way through cultural differences.

In the particular areas in which I am most involved are what we often called taxonomy, how one sexual behavior pattern differs from another, which ones are actually minor variations of each other, which ones are entirely distinct possibility, distinct phenomena, how we can tell them apart, and what kinds of behaviors we can expect or try to predict from one group versus another.

Q. And when you talk about taxonomy, would that include the measurement and study of things like gender identity and sexual orientation?

A. Yes, exactly. Different people can experience different types of sexual interests, but

express them in completely different ways.

Some people only express them or experience them as part of fantasy, some people try to approximate them, or as best they can, within their real lives.

So if their sexual interests would be the same, even though their behaviors would be different.

Q. I want to talk to you a little bit about methodology and measurement of scientific evidence or analysis of scientific evidence. And I want to talk to you a little bit about Plaintiffs' evidence.

But before we get to there, I want to start with how you evaluated the evidence regarding whether designating bathrooms by sex and also including a sex marker driver's license affects individuals who self-identify as transgender.

Would you summarize the methodology you used to evaluate the body of research that Plaintiffs rely on in this case?

A. The basic criteria I used for that question are the same criteria that I would use in evaluating any research project. Primarily, that involves assessing particular methodology that they use. Research itself ranges from very easy,

relatively inexpensive and relatively fast methods that give us just a general approximation of what might be possible. But those types of very, very quick studies are also very subject to many different kinds of bias.

That is, their findings are quite unreliable. We can never tell with those findings how much of those results are to the actual phenomenon we're looking at, versus the different kinds of bias that are produced by people just saying how they want to be thought of or how they think of themselves, rather than the truth in some objective way.

So we start out with those kinds of preliminary studies, and then work up what we call levels of evidence or a pyramid of evidence, using more and more advanced techniques that rule out the different types of bias, so we can be more confident in their results and whether their conclusions were due to what the actual truth is versus what are the kinds of bias that can interfere with their results.

And what I found, ultimately, is that the evidence being presented by the plaintiffs all belong to the lowest rung, the lowest level of evidence, in which we can only hold very little

confidence.

As higher levels of evidence were presented, the effects were either no longer present, so therefore the conclusions were due to those kind of bias, or the more advanced studies were never conducted at all.

Q. Is the method you used in this case standard in your field?

A. Yes, it is. It forms the basis of all of what today is now called evidence-based medicine.

Q. I want to go to a specific paragraph in your report, I think it's paragraph 20. I'm sorry, it's on page 10, paragraph 22.

A. I'm there.

Q. What I'm looking at here is a pyramid diagram. And I want to make sure that everybody's had the opportunity to get there.

Can you describe what this pyramid depicts, Dr. Cantor?

A. Yes, as I say, this is the standard methods for which all of evidence-based medicine assesses evidence. The lowest rung, as I say, it's widest representing the volume of studies. And because these studies are relatively easy and fast to produce, there are always a larger number of

them, hence the wide at the base, the wide base of the pyramid. But that's also where the best bias kicks in.

Then with each level up the pyramid, so we have fewer and fewer types of studies of that quality, but less and less bias. So there are fewer studies, but they are higher quality and more trustworthy. So that's why a pyramid is the usual way to depict the type of research.

What most, most of the public don't appreciate the implication of this being is that this is the reason why one can't just go by the number of studies. It's usually the case that the largest number of studies are the lowest quality studies.

The most trustworthy studies are the rarer studies towards the top of the pyramid. So the basis in science for evaluating any research question is that it's the quality of the study that matters, not the quantity of studies. But people tend to be more familiar with what's most common, and what they see the most, even though those most common studies are the most bias and least likely to be correct.

So as I say, that's why this is depicted

in a pyramid where the quantity is at the bottom, but the best quality studies, the must trustworthy studies are the rarer ones at the top.

Q. Where in this pyramid do most of the studies that Plaintiffs' experts rely on fall?

A. Nearly all of them were at the lowest rung.

Q. Dr. Scheim testified yesterday that because of the kind of questions social epidemiology is trying to answer, the field of social epidemiology can only rely on low and very low quality evidence. What is your response to that?

A. The most obvious implication is that, that's why social epidemiology really can't be used as the basis for very much -- well, certainly medical policy or other policy.

There's the famous, I don't know if I should call it a slogan, but it's so common, it's almost a cliche, that correlation does not imply causation.

But of course, when one is limited to a certain type data, all one has is correlation and there's no way to know what is causing what. It's only when we can follow up the low level studies with more advanced studies that we can trust them

and therefore base medical policy or public policy upon them.

Also missing from Dr. Scheim's claim was that, even within each of these rungs, there's still, you know, subdivisions within them. Even within a survey, a survey can either be conducted on an entire population, such as in a census, where one can get very accurate numbers, and a fair representative sample of an entire population, or one can just collect data on whoever volunteers to take the study. We call that a convenience sample.

But nothing can be concluded from the convenience sample because we don't know how those people represent the entire population. A convenience sample is generally used just as a pilot study, just to check out who our survey is before we apply it in a more advanced method.

So what Dr. Scheim was skipping, is that even amongst surveys, even amongst methods within social epidemiology, the evidence that was presented was the lowest level type, even within the methods used in social epidemiology.

Q. And we're going to get to this a little bit later, but you just used the term convenience sample. Tell me again, what is a convenience

sample?

A. A convenience sample is essentially when one just recruits whoever is available, such as on the Internet, and one has no control or no way to verify who took a study, who took a survey, if the same person took the survey more than once.

And in these particular studies, they were advertised and circulated by activist groups. So the people taking the survey would be people who belong to the activist groups, and in general, those who agree with the priorities and the agenda of that activist group.

There's no legitimate way to say that the people taking the survey represent any larger community. But that's, again, in Dr. Scheim's materials, that's exactly how he was reporting them.

Q. All right. I want to switch topics briefly from how we evaluate scientific evidence to some terminology. What is the scientifically accepted definition of sex or biological sex?

A. For both of those, they refer to a verifiable and falsifiable fact. They can be tested in an objective way, even regardless of what the person claims. An unconscious body in an ER can be tested, if necessary, for what the status of their

sex or biological sex is. It is a verifiable characteristic, which can be checked and will come out with the same result no matter who asks the question.

Q. And how would you define that term, sex or biological sex?

A. Essentially, it's the commonality amongst all the different ways to measure whether it is genital inspection, blood test testing a person's chromosomes, a person's hormone levels. There are any of many, many different ways to do it, now they all match each other in the great, great majority of cases.

Q. But there is literally a blood test for it, correct?

A. Yes, exactly.

Q. Is there a scientifically accepted definition of gender identity?

A. No, not really, because gender identity boils down to just whatever the person says it is, we don't even have two different sources of information to check against each other, in order to know how reliable it is.

A person's gender identity can just as easily reflect what a person thinks an answer is

supposed to be, according to who they're talking to. Or the person can be using the term because they believe it will get them whatever response, you know, that they want, out of the person that they're talking to.

It's because we have no way to verify it or check it, that it is so easily manipulated.

Q. For you as a sexual behavioral scientist, what's the definition of gender dysphoria?

A. The way I would define it or apply it depends largely on the context. When most people use the term, they're referring to how a person wants to be treated relative to the physical body.

So a person with gender dysphoria generally means somebody who experiences distress or at least reports experiencing distress because they have the biology of one sex, but want to be treated socially as the other.

Q. Is gender dysphoria a recognized psychiatric diagnosis?

A. Yes and no. Different manuals categorize it in different ways. And it changes from edition to edition of those volumes and the various manuals themselves change the terms they use and they often disagree with each other.

Some of them use the term gender dysphoria to describe the basic phenomenon, but there's no objective means of checking whether it's the correct definition, incorrect definition, correct or incorrect definition.

Gender dysphoria itself is also highly ambiguous. In some versions of the American now Physiatric Association, so the other APA, in their diagnostic book, they will use the term gender dysphoria as the name of a diagnosis in their list of mental disorders.

But it is also used as just a general descriptor of the distress itself, regardless of whether there's a formal diagnosis. Very often, it's helpful to think of this as Gender Dysphoria with capital letters to indicate a formal diagnosis, or gender dysphoria in lower case letters for the more everyday use of the term.

Unfortunately, this makes a discussion of the issue very, very complicated. Because in the course of a conversation, people can slip from one to the other and try to use evidence that pertains to one, when actually they're talking about the other.

Q. What about differences of sex development

or intersex, what's the definition there?

A. Those are that various physical and medical issues, in which the various biological mechanisms that determine sex are at a mismatch.

For example, somebody with an atypical set of sex chromosomes. Usually in humans, of course, females are XX, and males are XY, but there are ceratin birth defects for which a person could be XYY or XXY, or X and have no second sex chromosome at all.

So in those issues, again, where a person's biological basis is more atypical in these very, very rare situations, there can be some unusual combination of characteristics or an incomplete set of characteristics.

So male genitalia, but very undeveloped, so it's ambiguous, just a visual inspection if a person is biologically male or female, and it would only be in those cases that ones would even bother with a blood test in order to measure the chromosomes at all.

So such situations exist, but they are still objectively verifiable through blood test. So even though they are some kind of between status very often, they don't represent a third sex, they

are somewhere intermediate, but with an objective verifiable phenomenon, they don't depend upon a person's subjective feelings.

Q. Yesterday, Dr. Turpin testified that the intersex population is approximately two percent of the general population. Do you agree with that number?

A. Not in that context, no. The term DSD or disorders of sexual development can be used very broadly. If somebody uses, somebody can use it to mean any difference or any atypical development of genitalia, so it would include, for example, a diagnosis called hypospadias, which is just in a biological male where the urethra opens at someplace other than the very tip of the penis.

So it counts as a disorder of sexual development because the urethra didn't develop quite normally, but there's no meaningful ambiguity over the person's sex.

So the great, great majority of that two percent, well over 1.9 percent of them are the, as I say the hypospadias conditions, rather than anybody who would meaningfully be called intersex.

The actual intersex people, people for whom their sexual status is genuinely ambiguous is a

small fraction of one percent.

Q. Of less than one percent?

A. Yes, a small fraction of much less than one percent.

Q. I'd like to discuss with you a little bit about what we already touched on, but whether or not sex and gender identity can be objectively determined. Let's start with biological sex, can biological sex be objectively determined?

A. Yes, it can.

Q. How?

A. Any of many different ways, the most common one probably is like what amounts to a genital inspection on an ultrasound. This is what gave rise to what was very popular for a while, the gender reveal parties, when the parents become aware of whether they are going to have a boy, a girl, or twins.

And as I said, the great majority of cases, that's highly accurate. One doesn't have to ask the still unborn fetus which sex they are.

It can be determined by chromosomal analysis. The test used to be amniocentesis, just from the area's cells that are sluffed off from the fetus and can be measured in the uterine

environment.

And then the objective way to do it, at birth, is again, genital inspection, which is accurate in a great majority of cases and there is really no reason to go further than that, unless there is some, some ambiguity or reason to suspect that there's an issue.

Q. Can a person change his or her sex?

A. Not in a meaningful way, no.

Q. Why not?

A. It would require changing every sex chromosome within every cell, just about every cell in the human body. There simply is no technology capable of doing that kind of thing.

We can treat socially, you know, a person any way society or their environment wants to treat them, but the basic biology is present since the moment the person was conceived, literally, in utero.

Q. What about people with differences of sex development, can those be objectively determined?

A. Yes, they can. Either by endocrine analysis or depending on exactly which disorder is in question, chromosomal analysis.

Q. Dr. Cantor, one of the things I've noticed

about how the Plaintiffs use language in this case is they use the word, use the phrase biological sex without qualification --

MR. BLOCK: Objection, counsel's testifying.

MR. NUSSBAUM: I'm setting up a question, Your Honor.

THE COURT: Let's hear the whole question.

BY MR. NUSSBAUM

Q. One of the things I've noticed about how Plaintiffs speak in this case is they refuse to use the phrase biological sex without qualification.

So for example, Mr. Dalgleish during his cross-examination this morning kept saying biological sex in air quotes.

Do you agree with Plaintiffs, is the term biological sex meaningless or undefinable?

MR. BLOCK: Objection, testifying, argumentative, characterizing statements of counsel incorrectly.

THE COURT: Sustained, as to form.

BY MR. NUSSBAUM

Q. Do you think the term biological sex is meaningless or undefinable, Dr. Cantor?

A. No, it's probably one of the most meaningful characteristics in all of biology.

Q. Okay, let's talk about gender identity now. Can gender identity be objectively determined?

A. No, it can't. There's no way to check it beyond a person's declaration of what they believe their identity is.

Q. Yesterday, Dr. Turpin said that there's evidence for biological basis for gender identity, do you agree with that assertion?

A. No, I don't. That would grossly mischaracterize the content of the research literature.

Q. And describe your disagreement with that assertion?

A. What it boils down to is people are confusing gender identity with sexual orientation. For a very, very long time, and one of the other subjects that I study quite a bit is whether people are same-sex attracted or other sex attracted. That does have a very well known series of characteristics including in the human brain.

There have been a set of studies which the word is confounded, where they look at more than one thing at the same time. So when they come up with a

conclusion, they misattribute what gave rise to that difference.

And these kinds of, again, word we use is confounding. In these confounded studies, the researchers will compare a group of people who say that they are transgender, and are also same-sex attracted, and compare that group to people who are both cisgendered and opposite sex attracted, so it's homosexual transsexuals be compared to heterosexual cisgendered people.

So when they find a difference in the brain, we can't tell, is it because they were different in their gender identity or because they were different in the sexual orientation.

And these studies, they report that this is a difference in gender identity, therefore, gender identity is in the brain, when what actually happened is that it's the difference in sexual orientation that gave rise to the differences that were detected.

In the better quality studies, in the studies that control sexual orientation, there was no effect left found for gender identity. The differences that were found were because of the sexual orientation difference, not the gender

identity difference.

So when people start claiming that there's evidence of gender identity differences in the brain, it's only within the confounded studies. When one controls for the confound, there is no more evidence or what was thought to be evidence or what is claimed to have been evidence of gender identity, was actually because of the sexual orientation and not the gender identity.

THE COURT: Dr. Cantor, I think you're saying confound?

THE WITNESS: Yes.

THE COURT: Not compound?

THE WITNESS: Correct, confound with an F.

THE COURT: Thank you.

BY MR. NUSSBAUM

Q. And that was my next question. What is confound or confounding mean in this context?

A. A confound is an extra variable, a third variable or extraneous variable that is being identified as the key difference, which is interfering with what we think is the relationship between the first two variables. So it would be something that's getting in the way of what we think

we're looking at.

A very common situation that much of the public is more familiar with is if we look at, for example, ethnic differences in educational performance.

People very often, depending on their political views will say therefore there's a difference in the basic cognitive ability in whichever ethnic group. But that's not actually what's going on.

Usually it's a socioeconomic issue. It's because of this third variable, which people forgot to account for, the wealth of the family. Once people control for the wealth of the family, there is no more relationship found between ethnicity and educational performance.

So in those cases, it would be the socioeconomic status, which was the confound interfering with our analysis of ethnic status and educational status. So that one is a very common situation that people are familiar with, but people tend to be less accustomed to looking for that in biological differences.

Q. Does gender identity change, especially in minors?

A. It seems to, or at least what people report their gender identity is, seems to change.

There's no good objective way of knowing if the gender identity changed or if the gender identity was the same, and the child in your example, or in your question, came to realize what their gender identity was and that they were mistaken all along.

So without there really being an objective definition of gender identity, we can't tell if it was gender identity itself that changed or a person's awareness of what their gender identity was changed, or simply their self-report changed as they became better to understand just what gender identity meant.

Q. Next, I'd like to talk to you about how the change and how gender dysphoria has been treated.

I think you called this in your declaration, the change from the gatekeeping model of gender dysphoria treatment to the informed consent model. Describe for the Court, what's the gatekeeping model?

A. The gatekeeping model is what was in place ever since medical interventions for medical

transition were first used in the 1950s, up through about 10, 15 years ago.

In those situations, a person would undergo a series of very thorough psychiatric and mental health assessments. They would start, you know, once deemed otherwise mentally healthy, they would start cross-living socially as the other gender.

That would give them the opportunity to appreciate what life would be like approximating it as best they can. They would receive psychological and other supports from the clinical staff, as much as possible. They typically would be undergoing, as I say, psychotherapy at the same time.

And if they continue to be self-sufficient, if they continued to be able to lead healthy, independent lives either maintaining employment full-time, maintaining educational student status full-time, or volunteering successfully in their new gender role for the equivalent of full-time, if after six months to a year, depending on a clinic's criteria, then they would be permitted to take the opposite sex hormones and begin the medical treatment.

So again, they would continue in that real

life experience, or used to called before that, the real life test. If they continue to successful, mentally healthy, and independent for six months to a year, then they would be permitted to undergo surgical transition.

So that's, it was by going through that process, it was by going through the real life test and real life experience that gave people the opportunity to provide genuinely informed, informed consent. They knew what they were getting into. They knew what parts of their life would change. And they could then realize what parts of their life would not change.

They would have been able to differentiate, you know, what they hoped from what were unrealistic expectations and that this would not be a silver bullet that would cure everything they thought in their lives.

And the results were basically, if they were otherwise mentally healthy, they would generally adjust well to their new role and, of course, people who decided it was not for them after all would then cease to transition or stay at whichever status they were, before they engaged in some intervention that couldn't be reversed.

So as I said, that was the standard procedure and that's what the research studied for several generations, which was basically effective for people who were otherwise, as I say, mentally healthy to begin with.

Q. Before we get to the informed consent model, what time period was the gatekeeping model the dominant model for treatment of gender dysphoria or diagnosis of gender dysphoria?

A. As I say, it started at the beginning of the entire history of the procedure, in roughly the 1950s. The big famous case then was Christine Jorgensen, and that continued roughly to 2010. As I say, roughly 15 years ago-ish.

Q. And briefly, why is it described as a gatekeeping model?

A. It was, the permission to transition was controlled ultimately by the mental health staff, psychiatric staff, and medical staff.

A person would apply and need to undergo these assessments by a professional staff, with the appropriate training and experience, and what was deemed the appropriate training and experience in those days was not being a specialist in gender identity, that was no such thing.

THE COURT: Specialist in?

A. Gender identity, there was no such thing. It was a person with a background in sexuality more broadly, a person with a background very similar to mine who had the education and training in each of gender identity, sexual orientation, and paraphilias.

It was only in, as I said, roughly 2010, 2012 that who counted as transgender changed and who counted as an expert in the issue changed for the usual standards of care.

The expectation that a person had a background in sexual orientation or the paraphilias was removed, and all of a sudden in one swoop, without there being any evidence to back it up, that's when the field of gender identity as an expertise was born, by the very people who lacked the training in the other portions of gender identity -- I'm sorry, the other portions of sexuality.

Q. If you would, next please describe for the Court the informed consent model of gender dysphoria diagnosis and treatment?

A. The informed consent model then was essentially what most people would recognize as

cosmetic interventions.

Somebody who today got a facelift, Botox, they just needed to know basically, do you want to do it, can you recite what the potential harms and what the potential benefits are, and that's it.

It was no longer a requirement for the person to cross-live, as the person was -- as long as the person was able to sign the form saying that they were aware of potential benefits and harms, that was that.

The only, it removed any kind of testing. It removed any specific qualifications or opportunities for persons who come to understand or no longer have the opportunity to distinguish between what their future really would be like in a concrete way, versus what's a fantasy of what they hope their future would be like.

It was just, is the person able to come in, pay for the intervention, and be willing to undergo the procedures. So it was, as I say, it was exactly the same procedure that we would use for merely cosmetic procedures.

Q. And is there a difference in the prevalence of gender dysphoria treatment or diagnosis under the informed consent model, to your

knowledge?

A. It's --

THE COURT: I'm sorry, Doctor.

Repeat the question.

BY MR. NUSSBAUM

Q. Is there a difference in the prevalence of gender dysphoria diagnosis or treatment under the informed consent model?

THE COURT: As distinct from?

MR. NUSSBAUM: The gatekeeping model.

A. That's a bit of a chicken and egg kind of a question. The difference in how many people there are with a diagnosis -- the number of people who qualify for the diagnosis or the label is different from the number of people who undergo treatment for it.

So the number of people who would qualify for gender dysphoria as a diagnosis depends on how broad a definition we're using for the diagnosis.

The American Psychiatric Association manual, the DSM uses a relatively narrow definition because it includes as it's criteria, the person experiences distress.

The World Health Organization criteria, the International Classification for Diseases, the

ICD 10 or ICD 11, depending on the country, uses a broader definition, because it doesn't require distress. So long as the person says that they identify as the other sex, that is sufficient.

Where, as I say, the DSM manual has an additional criteria, which narrows down the number of people. So the number of people who qualify for the diagnosis doesn't match up with the number -- for the treatment model that a person receives given that they already qualify for a diagnosis.

Q. Just so we understand, briefly describe the difference or contrast the gatekeeping model and the informed consent model?

A. The gatekeeping model is a lengthy process which occurs over time, and a person may or may not be deemed ready to undergo transition, regardless of what the person him or herself thinks that they are ready for.

In the informed consent model, the person is essentially self-diagnosing and declaring themselves to be ready. So the onus, if it's an error under the gatekeeping model, if somebody transitions when they oughtn't, the physician is responsible. In the informed consent model, if it's an error, the patient is responsible.

Q. Was the change of gatekeeping model to the informed consent model based on new evidence, Dr. Cantor?

A. No, none at all.

Q. Before Senate Bill 244 was enacted, Kansas changed a sex marker on a license based on a physician's letter stating that a person had undergone the appropriate clinical treatment for the change of gender, is that a scientifically validated standard?

A. It can't be. It's begging the question that makes a person wonder, well, what were those appropriate criteria to begin with and what was the basis for declaring that those criteria were appropriate.

It's easy to say the word, but it's meaningless without knowing what the criteria behind it are.

Q. So if it was under the informed consent model, would you view that as a scientifically validated standard?

A. A validated? No. It remains entirely untested.

Q. But if it was under the gatekeeping model, would you consider it a scientifically validated

standard?

A. Yes, for that we have evidence of the conditions under which it's successful.

Q. Okay. I'd like to switch now to talk to you a little bit about the population we're discussing.

When we think about the group transgender individuals, is that a single well-defined population?

A. No, it's not. The term is used many different ways, by many different people. And it's been used in many different ways over time. Even the major manuals that continue to get cited, they themselves point out that the term has changed over time.

So one can't take two different research articles published 10 years apart, both using the same term, but meaning completely different things.

Q. Does every person who identifies as transgender have a diagnosis or gender dysphoria?

A. No, they do not. People just select a label, use it socially. But there's no control over it exactly because it's not a formal term.

Q. Is there any way for a third party, for example, the Court, the Kansas Department of

Revenue, a building administrator, be able to determine whether someone is in a group of so-called transgender individuals?

A. No, there is not. It will boil down to one way or another, whatever the person says they are.

Q. Would your answer be different if we lived under the gatekeeping model?

A. Yes, it was under those times, in those times, under that model it did require a very specific set of criteria, and a very specific set of documentation in order to verify. All of that criteria has since been removed.

Q. I want to talk to you about identity documents. If a state issued ID records an ID holder's biological sex, what does that convey?

A. That would convey the actual objective criteria that can be checked if one was trying to analyze some physical evidence left at a crime scene. For example, one could know the sex of the person by testing blood spatter, for example.

Q. What would a marker based on gender identity record or convey?

A. Really nothing objective. It's nothing other than what the person says how they want to be

treated, and whatever that means subjectively to that person.

Q. I want to talk to you about sex separated intimate spaces, and that aspect of Senate Bill 244.

The plaintiffs in this case argue that bathroom access should be based on gender identity and not biological sex. From a scientific standpoint, what problems would such a policy pose?

A. Well, first, it's essentially unenforceable because any person can be -- if a person is treated however they want to be treated with no basis other than they said that's how they want to be treated, it's not at all clear exactly what the segregation or what the separation of sexes is for in the first place.

It's not even any longer talking about people who are actually transgender. In the original process, a person would be recognized. At the completion of the process, after they've undergone all of the psychological testing, you know, real life experiences, and have completed all of the medical interventions available.

In the informed consent process, the new treatment or the designation in the new sex happens immediately upon their declaration of it. So one

doesn't actually have to be transsexual or transgender to say that one is transsexual or transgender.

So a person who isn't trans can merely say so, and on the basis of that, receive access to private spaces that are meant, are for people's sense of safety and privacy, simply upon the declaration of saying so, with no way to objectively check it or determine if the person is merely manipulating the system for their own interests, rather than being a realistic -- rather than it being accurate.

Q. Is there a reason a scientific literature to think that a rule based on gender identity in sex separated spaces, that some biological males would use such a rule for negative purposes?

A. Well, we have a great deal of evidence suggesting that the risk is more than posed, being based on people who do have a recorded history of committing sex offenses, the most common of them being voyeurism and exhibitionism, flashers and peepers, for example.

Very many of them even have victims who aren't even aware that they are victims. The great majority of them are biological males in private

spaces that are meant for biological females.

So somebody setting up mirrors, or web cams, or someone can view, or on the flip-side, expose themselves to people who are in the area, but the people in the area don't even know that they are being watched, for example.

So what we know about the behavior of exhibitionist and voyeurs is entirely consistent with that being one of the primary motives or the way that they go about committing their crimes.

But when the person is recognized as a biological male, well, then that is itself evidence that the person is invading a space in which they were meant to be kept out.

But if a person can now simply declare themselves as belonging to the other sex, we've shot ourselves in the foot taking away our own ability to enforce these spaces that were meant to ensure the privacy and allow for the modesty of the women and girls using it.

We will have ceased to do, or society will have ceased to do its job about protecting its more vulnerable members.

Q. Have you reviewed Dr. Scheim's declaration in this case, Dr. Cantor?

A. Yes, I have.

Q. Can you briefly summarize or critique Dr. Scheim's testimony in this case?

A. In short, it grossly mischaracterized the content of the research literature, including grossly mischaracterizing, you know, his own conclusions from his own investigation of the research.

It also did what has unfortunately become very, very common in the politicized context of trying to apply the science. The error that I was describing earlier, where people would evaluate science according to the quantity of studies rather than the highest quality studies, is really what permeated Dr. Scheim's report.

The content of it would cite the low level studies without indicating that they were the lowest level studies and would ignore all the higher level studies that demonstrated that the lower level studies were incorrect in the first place.

Q. So I want to talk to you about one data source that you relied on in particular, the United States Transgender Survey. Are you familiar with that?

A. Yes, I am.

Q. And do you think that the United States Transgender Survey is reliable for the kind of conclusions that Dr. Scheim is drawing from that data?

A. No, that is a perfect example of, as I was describing earlier, of a convenience sample. It was distributed by, and the members who took that survey were recruited by activists organizations, who of course have the greatest contact with the people who are themselves interested in the same agenda that that activist group is.

Now, of course, they are perfectly entitled to those opinions, but it is scientifically illegitimate to conclude that those opinions or those results reflect on the population as a whole. A convenient sample, as I say, is used for hypothesis generation or just kind of practice before doing a more advanced kind of study. It's not legitimate to use that kind of work as any kind of a conclusive result.

Q. Just to put a finer point on it, what can a convenience sample show?

A. Really, it can't show much. It would just show that if one takes a straw poll activist, one will probably just find a conclusion that matches

the activist's agenda. A convenience sample doesn't tell us anything about the broader population. But that's exactly how it's being misused.

Q. I want to go back to your declaration in front of you. Would you go to page 111, paragraph 207? Tell me when you're there.

A. I'm there.

Q. What does this table depict, Dr. Cantor?

A. This is the same content --

Q. I'm sorry, Dr. Cantor, I just want to make sure opposing counsel can get there. So I will restate my question.

We're at paragraph 207 of your declaration, page 111. What dos this table depict, Dr. Cantor?

A. This is from Dr. Scheim's own study where he in turn reviewed the content of the research literature, including its quality. And in this, Dr. Scheim's own assessment of basically the same research studies that Dr. Scheim used to form his opinion, all show that one after another that these were primarily very low quality studies, which means that they are primarily or a very high risk of bias one after another after another, with one or two exceptions that were of low quality instead of very

low quality.

So of course, as a whole, the entire body of studies is quite untrustworthy. And in evidence-based medicine in this means of evaluating research, that definition means that the true results are very likely to be substantially different from what these studies have shown.

Q. Dr. Scheim's meta-analysis says that the evidence of the benefits of legal gender recognition were most robust for mental health outcomes, what's your response to that claim?

A. That was a grossly misrepresentation of his own results. Now, the hook upon which that conclusion is hanging, is that suicidality issues were rated as low quality amongst all of the others which were very low quality.

So to declare that this is most robust simply because low quality studies were among even lower quality studies, to use the word robust to describe them is, as I say, as misleading a scientist can be.

To use the word without the rest of the context and describe it most robust as if most of them are robust, but these two were particularly robust, as I say, somebody reading that as a

conclusion will have exactly the reverse idea of what Dr. Scheim's actual, actual findings were.

And so it was then even worse in Dr. Scheim's declaration, which excluded all of these assessment altogether. As I say, it merely left out his own evidence demonstrating how unreliable his evidence was.

Q. Dr. Cantor, how does social or legal recognition of gender identity affect children in particular?

A. As best we can conclude, we see in study after study that when a minor child, generally prepubescent, when they are -- when they still live their lives, or they are required to still live their lives as their biological sex, in the large majority of cases, roughly two-thirds, 80 percent of them, the gender dysphoria ceases or desists by itself, you know, over the course of puberty.

If, however, their social environment permits them to socially transition, if we give them a new name and treat them as the other sex, the great majority of them, their gender dysphoria continues. It seems to be, or the logical, or the most logical conclusion is that recognition, treating them as the new sex is what we call

iatrogenic.

By treating them in the new sex seems to perpetuate the gender dysphoria and then, you know, makes their medical transition more likely, even though it would have gone away had we not recognized them as their new sex.

We seem to be causing the condition to continue, even though it would have resolved itself over time anyway.

Q. Have you reviewed Dr. Angela Turpin's declaration or report in this matter?

A. Yes, I did.

Q. Summarize your primary criticisms of her declaration?

A. The largest part of them really was that it was entirely irrelevant. I had to scratch my head and double, triple check really myself that even I was correct in reading the law correctly and reconciling it with her comments.

The first two-thirds of her declaration was about intersex conditions, but of course, the law itself excuses people with intersex conditions so it was entirely irrelevant.

The rest of her opinions, again, she indicated herself that she was an endocrinologist,

but nothing in her declaration was about endocrinology. It was all about mental health and in the mental health for which she didn't claim to have any expertise, all she did is reiterate what her mostly teenaged patients were telling her.

So her opinions weren't really her opinions. She was just saying what teenagers have told her, but claiming they should have the weight of being a medical expert, but she didn't apply any of her relevant medical expertise.

The studies that she relied on were either unpublished, they weren't peer-reviewed studies at all, or they were relatively eccentric sociopolitical documents really with very little, if any, scientific merit of their own.

And simultaneously, she didn't mention, make use of, or apparently consider any of the actual relevant science that exists.

Q. Okay, I want to talk to you a little bit about some of the things that came up in your deposition, Dr. Cantor.

You describe yourself as someone who has supported the rights of transgender people. Tell the Court about that.

A. I'd sooner say transsexual. Transsexual

was the term that we used until relatively recently because transsexual was a very specific well-defined, well-delineated term referring to people who wanted to live as if, as much as possible, as if they were of the other sex, wherever the circumstances would allow.

For several different reasons, and at the time, the reasons seem to be to just use polite euphemisms. People didn't like using the word sex, people would use the word gender in place of sex, ignoring that they actually meant subtly different things.

So people tended to start using the words transgender, again, avoiding the word sex altogether. It just seemed a euphemism at the time. But as a side effect, that kind of left the door open for this undefined term to mean just about anything anybody wanted it to mean.

So wherever possible, return to the word transsexual because it means something very specific using the criteria, again, which is objective.

So I supported, and still do, support the rights of transsexual people who fit the criteria for which we have evidence of actual success of there being able to live healthy and independent

lives integrated into society.

But the people who don't fit those criteria, which are now very, very largely overwhelmed by a much, much larger number of people who don't at all fit the same criteria and whose backgrounds and needs are largely untested and largely unknown, it's not at all clear who it is we're talking about, and whether they benefit from transition, what types of transition, or if they benefit more from other types of treatment or intervention.

Q. Specifically, I wanted to ask you, did you author a document called A Bill of Transsexual Rights?

A. Yes, I did.

Q. And do you stand by that document?

A. Yes, I do.

Q. You said earlier that you testified in the Lily Loe case?

A. Yes, I did.

Q. And your declaration here omitted your participation in the Loe case?

A. Yes, that was an oversight on my part, both cases came in relatively close to each other, and I neglected to include each case of the

declaration of the other.

Q. And are you aware that the Court in that case found that you lacked the qualifications to opine on the effects of those medications at issue and gave your opinions on the treatment literature little weight?

A. That was the conclusion of the judge, yes.

Q. You've read those findings?

A. Yes, I have.

Q. Have you testified in similar cases in other states, Dr. Cantor?

A. Yes, several.

Q. I want to talk to you about a few of those. First in Missouri, did you testify --

THE COURT: I'm sorry, Mr. Nussbaum, I missed -- I know you both know, tell me the finding of the other Court, lacked qualifications in what?

MR. NUSSBAUM: The Court found, in that Court that you lacked the qualifications to opine on the effects of certain medications, puberty blockers, and gave Dr. Cantor's opinions of the treatment literature in that case little weight. And the question was, have you read those findings.

THE COURT: Yes, I got that he agreed

with you, I just wasn't sure what you were asserting to, but I understand now, thank you. Other states.

BY MR. NUSSBAUM

Q. So you've testified in other states, Dr. Cantor?

A. Yes, several.

Q. And I want to talk to you about a few of those. In Missouri, and for the record, the name of that case is Noe v. Parson, case number 23AC-CC04530.

Did that concern the same kind of law as the law at issue in Lily Loe and this case, in this courthouse?

A. Yes, basically.

Q. And do you know what the outcome of that case was?

A. It supported the law.

Q. It upheld the law?

A. Yes, it did.

Q. Do you know whether the Court relied on your testimony in upholding the law in Missouri's similar lawsuit?

A. As best I can tell, yes. The judge, I don't believe referred to me by name, but the finding itself followed my conclusions pretty

closely.

Q. And a North Dakota case, did you testify there?

A. Yes, I did.

Q. And just for the record, that is T.D. v. Wrigley, case number 082023CV2189. Did that concern the same kind of law at issue as the law issued in Loe and in Noe in Missouri?

A. Yes, it did.

Q. Do you know what the outcome of that case was?

A. Yes, it also upheld the law and it referred to my testimony as significant and quoted several portions of it.

Q. So the Court relied on your testimony in upholding that law?

A. Yes, it did.

Q. What about a case from a Federal District Court in Kentucky called Josephson --

A. That's correct.

Q. Did you testify in that case?

A. Yes, I did.

Q. And do you know if the Court qualified you as an expert in that case?

A. Yes, it did. Specifically there was an

entire Daubert hearing and the judge went through point by point in the necessary criteria and found that I met all of them.

Q. How does your testimony today relate to the testimony you provided in the North Dakota, Missouri, and previous Kansas case, if at all?

A. It largely overlaps in discussing how the relevant sciences is evaluated. The portion that is relevant to minors is, of course, the same.

But today's case is largely relevant to adults, where in the prior cases were primarily about children. Because my clinical background is people ages 16 and up, there was some question about whether clinical experience with children was a necessary component or not, but for today's case, that's largely irrelevant.

Q. One of your previous statements came up at the Loe hearing, this one made me chuckle. You said that your job as an expert is to tie myself up with dynamite and throw myself on the other expert. Do you recall that?

A. I recall saying those words, yes.

Q. What were you saying there?

A. I don't remember exactly what the question was, but that description of the task of an expert

witness was not actually mine, it was a description that was given to me by one of the lawyers I was working with as he was preparing me for the kind of case we were embarking on.

It then became public knowledge when there was a media outlet, again, with its own bias, was asking me about how I became an expert witness for these cases and what my background was. And so I related that story, which they then reported a piece of, and then it just became part of the public record.

Q. In closing, Dr. Cantor, is biological sex objectively verifiable based on valid scientific evidence?

A. Yes, it is.

Q. What about gender identity? Is it objectively verifiable based on valid scientific evidence?

A. No, it's a purely subjective account on the basis of the person of him or herself.

MR. NUSSBAUM: One moment.

Your Honor, I'm informed that the June 16th, June 2026 report is slightly different than what was submitted with the TI declaration. I think there was some responses to several of the

expert witnesses.

But I just wanted to state that for the record. I don't think it's, you know, particularly substantive. And I apologize for the confusion about the one that was printed here. That's all I wanted to say.

I have no further questions and I pass the witness.

THE COURT: We'll take a recess.

MR. BLOCK: Thank you, Your Honor.

THE COURT: And is it Mr. Block?

MR. BLOCK: Yes, sir.

THE COURT: There was a lot of fast talking. Dr. Cantor, you're very fast --

THE WITNESS: I apologize.

THE COURT: Just give some thought to when we resume, give a little space between question and answer, so that we can all keep up. And not just the court reporter, but frankly, I had trouble keeping up. So with that, we will recess until five minutes before the hour.

(A recess was taken.)

THE COURT: We're back on the record in 26-CV-112.

Dr. Cantor, you remain under oath.

THE WITNESS: I understand.

THE COURT: Mr. Block, you can proceed with cross.

MR. BLOCK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BLOCK

Q. Good afternoon, Dr. Cantor. My name is Josh Block, I will be doing your cross-examination today.

A. Good afternoon.

MR. BLOCK: Permission to approach?

THE COURT: Standing permission.

BY MR. BLOCK

Q. Dr. Cantor, I just handed you a document that is stamped on the top as electronically filed 2026, August, 14th. August 14th at 4:00 p.m., do you see that?

A. Yes, I do.

Q. Do you recognize this document?

A. Yes, it seems to be the declaration that I submitted for this case.

Q. Okay. If you could turn to what's marked or what's paginated as, as page 177. Is that your digital signature on that document?

A. Yes, it is.

Q. And what date was it executed on?
A. It's listed here as May 22nd, 2026.
Q. And if you look at page 176, what's the final paragraph number?
A. The final paragraph number on that page is 360.
Q. If you turn back to the document that Mr. Nussbaum was discussing with you, the other version of your declaration.
A. I have it.
Q. If you can turn to the signature page, please. Which I believe is page 188.
A. I'm there.
Q. And you signed that version by pen and not through a digital signature, correct?
A. It was a digital image of my signature that I scanned in, if that difference matters.
Q. Okay. And it's executed on a different date, correct?
A. That's what I have listed on it, yes.
Q. And if you turn to page 187, what is the number of the final paragraph there?
A. 382.
Q. So seeing this document, does it refresh your recollection about whether you made changes

between different versions of your report?

A. Given the numbers, apparently I included a different section, that I don't remember which additional section that was.

And the difference in the dates, again, I don't recall the exact reason, but because of the different dates, I assume there was a push back in the deadline giving me the opportunity to add something that I didn't have time for previously.

Q. Dr. Cantor, I'm going to --

THE COURT: Can you repeat the answer that you just gave.

A. Given the difference in the dates, my assumption is that there was a push back in the deadline, so I was able to include material that I didn't have time for at the earlier submission.

MR. NUSSBAUM: Your Honor, I just want to interject briefly. I think I need to eat some humble pie, but I think there was a mistake of which version --

THE COURT: Let's stop. Dr. Cantor, I'm going to ask you to step out of the courtroom.

(Dr. Cantor left the courtroom.)

THE COURT: I did that, Mr. Nussbaum, out of an abundance of caution. I don't know if

there is going to be questions put to the doctor, I don't want them to hear your information.

MR. NUSSBAUM: I appreciate that, Your Honor, I'm anticipating a long line of cross-examination about this.

So there were two disclosure deadlines. One was the May 22nd disclosure of expert witnesses. We disclosed the first version of his report then.

Then there was then that he had some rebuttal that he added. We disclosed that to opposing counsel on June 16, 2026. I'm looking at an e-mail to Mr. Seldin from my colleague, Mr. Compton, attaching the June 16th declaration, which we admitted into evidence and just examined him over.

The plaintiffs have had that June 16th declaration since June 16th. And we made an error of which we attached to the temporary injunction brief. And plaintiffs were apparently confused, understandably, because we attached it as a TI brief.

But the version that was disclosed before his deposition was the June 16th declaration. And that's what I just talked to him about and

admitted into evidence, but it was just a mistake on my office's side for which version was attached to the temporary injunction brief after his deposition.

THE COURT: Any comment before I recall Dr. Cantor?

MR. BLOCK: No, Your Honor. Just for clarification, we were also confused by the different dates. So the June version was revised after the one that is dated for May?

MR. NUSSBAUM: So we disclosed that with the expert deadline, and then he responded to Dr. Scheim and Dr. Turpin and also made some typographical changes.

THE COURT: Consistent with what I'm understanding you to say, rebuttal deadlines that were part of the case management order?

MR. NUSSBAUM: I'm moving quickly here, I think that's correct, Your Honor. But I think that's correct to the best of my recollection.

MR. BLOCK: That is fine with us. We wanted clarity on whether material was added or subtracted to, subtracted from.

But we are fine. We have no objection to the disclosure of the version that he discussed here.

THE COURT: Okay.

Deputy, could you step out and ask Dr. Cantor to return to the courtroom?

DEPUTY: Yes.

(Dr. Cantor returned to the witness stand.)

THE COURT: Dr. Cantor, thank you.

THE WITNESS: Of course.

THE COURT: Of course, you understand it was procedural issues the Court wanted to take up, it had nothing to do with anything you've said or done to this point.

THE WITNESS: I understand.

MR. BLOCK: Thank you, Your Honor.

THE COURT: Yes, you can proceed.

BY MR. BLOCK

Q. In your testimony today, you're not offering an expert opinion on the best clinical decision for any specific patient, are you?

A. Yes, that is correct.

Q. You're not offering an expert opinion on whether SB 244 is good policy, are you?

A. Correct.

Q. Okay. In your report, you list 15 cases within the past four years where you've testified at depositions, hearings and trials; is that right?

A. That sounds roughly correct, yes.
Q. And in all the cases you listed, related in some way to transgender people or gender transition; is that right?
A. In the past four years, yes.
Q. And for the past, for about the past three years, your work as an expert witness on transgender related issues has accounted for about 80 percent of your paid work; is that right?
A. Of my paid work? Yes, that's correct.
Q. So the other 20 percent of your paid work is from your clinical work, right?
A. Yes, that's correct.
Q. And where did you say you currently worked?
A. At the Toronto Sexuality Center.
Q. And what did you say your position was there?
A. I founded it, it's the name of my private practice.
Q. Are there any other employees at the Toronto Sexuality Center besides yourself?
A. No. I let them, pardon the pun, transition out.
Q. Now, in your current clinical practice

that accounts for 20 percent of your paid work, you only see about six patients a week, right?

A. Of my paid work? Yes, that's correct.

Q. And the focus of your current clinical work is about sex in couples therapy, right?

A. Yes, that's correct.

Q. And none of your patients are transgender, right?

A. Yes, that's correct.

Q. The last transgender patient you saw was at least two or three years ago, right?

A. Yes, that sounds about right.

Q. And the issues that person was receiving therapy weren't about their gender identity, correct?

A. Correct.

Q. Now, in your testimony in discussion with Mr. Nussbaum, you talked about the term transgender; is that right?

A. Yes.

Q. Now, you contrasted that term with the term transsexual, correct?

A. Yes.

Q. And transsexual woman, under that terminology is someone whose birth assigned sex is

male, but did everything they could to medically transition and live full-time as a woman, right?

A. We wouldn't, in the context where we would use the word transsexual, we wouldn't use either transsexual man or transsexual woman, because it was ambiguous.

In general, we would spell it out as either MTF or FTM to disambiguate the possibilities.

Q. So an FTM transsexual, was someone who's birth assigned sex was female, and did everything they could to medically transition and live as a male, right?

A. In general, yes.

Q. And MTF transsexual was someone who's birth assigned sex was male and did everything they could to medically transition, live full-time as a woman, right?

A. In general, yes.

Q. So for purposes of my discussion with you today, I'm going to be using the phrase transgender men to refer to people who have been classified under the old terminology as FTM transsexuals and I'm going to use the phrase transgender women, to refer to people who had been classified under the old terminology as MTF transsexuals. Do you

understand?

A. I do, but as you've described those definitions, they are not entirely consistent. With the word transsexual, again, they would refer to people who have completed the entire process.

The way the term is generally used and the way you were describing it earlier would include people who are in the process of, have made a self-declaration, but have not engaged in any medical procedures and so on.

So as you use them, there's some ambiguity reintroduced into who it is we're talking about.

Q. So I'm referring to it as people who have medically transitioned and followed through with the process, so consistent with an MTF transsexual or an FTM transsexual?

A. If they're entirely postsurgical, then yes, that would be pretty much the same group.

Q. Great.

THE COURT: So I'm clear, he's adopting your definition of MTF transsexual, but he is going to use the phrase transgender woman?

THE WITNESS: Yes.

THE COURT: Proceed.

MR. BLOCK: Thank you.

BY MR. BLOCK

Q. You testified there used to be a gatekeeping procedure for assessing the eligibility and readiness of individuals to undergo medical transition?

A. Yes, that's the term we used to describe that procedure.

Q. And these gatekeeping procures were codified in the 6th version of what was called, WPATHs, standards of care?

A. Yes and no.

THE COURT: Can we have a spelling? WPATH?

MR. BLOCK: It's an acronym, so W-P-A-T-H.

THE COURT: Thank you. Sorry, Doctor.

A. Yes and no. The first point is relatively technical. That organization's name has changed, so when that 6th version was out, it had a different name, so it wasn't listed as WPATH. It was the Harry Benjamin Gender Dysphoria Association or HBGDA, if you will.

The other portion is that it was never at that point recognized as universal set of criteria.

If anything, it was the minimum criteria of the minimum criteria. The majority of clinics use criteria more stringent than that association did.

BY MR. BLOCK

Q. Would you agree with saying the following statement: The last set of criteria, which was associated with successful outcomes are decently, reasonably described by WPATHs standards of care, version six?

A. Within the caveat that I just said, yes, reasonably. Although, again, they were minimal, minimal criteria and individual clinics and individual clinicians could use a higher bar and that the version six of the criteria, specifically allowed for that.

Q. And an independent assessment of the 6th version of WPATH standards of care described that document as being evidence-based, right?

A. Yes.

Q. And you agree with that assessment, that the 6th version of the standard of care was evidence-based?

A. Yes, roughly. The term itself evidence-based has some ambiguities around that, but that's roughly true.

Q. Okay. So I'm going to discuss now this document you discussed previously called the Bill of Transsexual Rights. And I'm going to, just for ease of discussion, hand you and the Court a copy.

THE COURT: Thank you.

BY MR. BLOCK

Q. Does this appear to be an accurate copy of that document?

A. Yes, as best I can tell.

Q. And it is still posted on your website, right?

A. Yes, it is.

Q. Terrific.

MR. NUSSBAUM: Your Honor, this hasn't been admitted into evidence and it's not on Plaintiff's exhibit list, I don't believe.

MR. BLOCK: It's cross-examination and you just discussed the document with him. It is also attached as an exhibit and he was asked about it during his deposition.

MR. NUSSBAUM: To the extent it is impeachment material, I don't think there's any question for which it would be proper impeachment at this point.

BY MR. BLOCK

Q. If you want to turn that document over, I'll ask you some questions, and then we can see if he needs to look at it or not.

Apologies, there's a sea of paper here. So in that document that you were discussing, but aren't looking at now, you said as the fourth item in that document: Transsexual individuals have the right to be recognized in their new gender by their employers and local and federal governments.

Is that right?

A. That sounds roughly true, yes.

Q. And you said, you also said, there are only very few instances where in a person's physical gender is relevant to a government or employer; is that right?

A. Yes, it is.

Q. And there's very many instances where reference to gender is just a social convention. Does that sound right?

A. Yes, roughly.

Q. Great. And then for the sixth item, you said, transsexual individuals have the right during transition to access sex specific public facilities in which their contrary genital status would not be

evident. Does that sound familiar?

A. Yes, it does.

Q. So you are saying they have the right to do it before the surgical transition is even completed, correct?

A. To some extent, a remove the portions for which I say, where their contrary status would interfere with other people.

Q. So you said, for the great majority of instances, a pre-surgical male to female transsexual presenting as female can use a female designated restroom unobtrusively, right?

A. Correct, a majority of them, not all of them.

Q. And you say, only in a few instances, such as public showers would a mismatch between the sex designation of the facility and the person's preoperative status be an issue; is that right?

A. For that specific population, yes.

Q. Great. And you still -- if we returned to the gatekeeping model that existed at that time, you still would agree with every word in this document, right?

A. Yes, I do.

Q. So you also discussed a change in the

standards of care in 2011, where you say the gatekeeping model was replaced with an informed consent model; is that right?

A. Yes, that's correct.

Q. And the informed consent model is roughly reflected in the 7th and 8th versions of WPATH standards of care; is that right?

A. Yes, that's correct.

Q. Now you say, you don't yet have sufficient information to know whether that informed consent model is associated with the same positive outcomes as the gatekeeping model, right?

A. That's correct, it remains untested.

Q. And so in your opinion, no one should ever say that we have evidence that the current criteria are a failure, right?

A. I don't know if I would say it quite that conclusively. It would be more accurate to say that they are, at best, experimental.

Q. You think we currently have no idea whether they work or they don't work, does that sound like language you'd use?

A. No, I would still say it's a bit stronger than that, because there's other explanations for the population who are applying now that are much

more likely than taken at face value, their self report.

We can't say anything definitively, other than the conclusion that these people are genuinely, genuinely transsexual, there's really no evidence of that. But the evidence that these are people suffering from other issues that merely mimic transsexuality, there's a -- that's a much better explanation of what's going on because the evidence we do have is much more consistent with having other issues such as borderline personality disorder or other issues that are interfering with a healthy identity development at all.

So we can't be definitive in either direction, but the much better explanation of the existing evidence is that there are people suffering from other issues that are being mistaken as a gender identity issue.

Q. When you say these people, who are you referring to? What group of transgender people are you referring to?

A. The people who self-identify as transgender.

Q. And in front you, you should have a binder that says defendant's deposition transcripts.

A. Yes.

Q. Do you have that? Binder, should be a white binder. Says on the front, defendant's deposition transcripts?

A. Cover page says plaintiffs' exhibits. Thank you. Now I do, yes.

Q. If you can turn the tab that says James Cantor experts?

A. I have it.

Q. And if you can turn to page 142.

A. I'm there.

Q. At line 22, do you see where it begins, I did not say?

A. Yes.

Q. I'm going to read to you what it says. It says, I did not say and I do not say and no one should say that the current criteria, that we have evidence that the current criteria are a failure. The problem is that we're testing criteria that are entirely untested. We have no idea. Do they work, do they not work, in what ways. Do you know what side effects or unintended effects are more likely now than before. Did I read that correctly?

A. Yes.

Q. So apart from its effect on the

transgender people who are transitioning, you also suspect that removing gatekeeping makes it easier for restroom policies to be abused by people who are not themselves transgender, but who claim to be transgender women to engage in voyeurism or exhibitionism; is that right?

A. Yes, that's a foreseeable consequence.

THE COURT: I'm going to make an inquiry. You just used the term transgender women. Do you understand what that term means? It's adopting your definition, is the agreement that we reached.

THE WITNESS: Yes.

THE COURT: In the question posed, I understand it to be, a person who has completed the transsexual male to female, to include surgical? Is that how you took the question?

THE WITNESS: You are correct, I slipped. A person who has completed the physical transition process wouldn't be able to simply declare it, they would have had to have done it long ahead --

BY MR. BLOCK

Q. Let me amend that. In your bill of rights, when you're referring to MTF transsexuals

who had not yet had genital surgery, but were in the process of transition. Were the people you were writing that document about MTF transsexuals, under your understanding of the term?

A. No, I meant it -- well, it was the only model being done at the time at all.

THE COURT: I don't want to be confused. I understood the distinction you're making, and the testimony he gave about what he put in his bill of rights, but you just used the term that we all agreed had a particular meaning.

So if you want to ask a different question, you can, but I just want to keep us on track with that definition.

BY MR. BLOCK

Q. That make sense, I think the question would be either, had completed or in the process of completing all medical procedures. Would that be a fair amendment to the term transgender man or transgender woman?

A. I'm sorry, could you include that or bring that in the question you want me to apply that to?

Q. So an FTM transsexual, would have been someone whose birth assigned sex was female, but was in the process of transitioning to male and either

had or was in the process of completing all social and medical transition to live full-time as a man.

A. In the context of what I wrote as a Transsexual Bill of Rights, I was referring to people who already had a formal diagnosis, were under medical supervision along the process, and required certain accommodations in order to continue in that process.

Also, the female to male process is not a simple inverse of the male to female process because males, biological males pose risks to biological females, but biological females do not pose the same risks to biological males --

Q. We'll get to that, Dr. Cantor, we're just talking about the terminology here.

But the people you're talking about are people who are not in this fear of exhibitionism and voyeurism, are people who are not themselves transgender, but say they are, in order to engage in voyeurism or exhibitionism. Is that right?

A. I'm sorry, I think I've lost track.

Q. Let me repeat my original question. Apart from its effect on transgender people, you suspect that removing the gatekeeping makes it easier for restroom policies to be abused by people who are not

themselves transgender, but who claim to be transgender to engage in voyeurism or exhibitionism; is that right?

A. Well, when discussed in terms of policy, we're talking about policies that are not using the definitions that you and I have just said we would be using.

Q. Sure, I'm just trying to get to your language. If you turn to your deposition?

MR. NUSSBAUM: Your Honor, I don't think this is proper impeachment. I don't know what he is impeaching about.

THE COURT: I think we're exploring that.

BY MR. BLOCK

Q. Dr. Cantor, I'm just trying to understand from your testimony, my understanding is that you said, the problem with changing a definition to be based on your internal sense of self, is that people who are not actually transgender will, but who are cisgender people that have paraphilias who want to abuse the process, can now walk into a restroom and say, I'm a transgender woman as a way of satisfying their paraphilias. Is that a fair representation of your opinion?

A. Yes. But I don't see how that aligns with using the terms, because were able to do that are now independent of how I use the --

THE COURT: I think we're on a different question.

BY MR. BLOCK

Q. It's not relevant to the terms. You don't have to worry about that.

You're not aware of any study showing that allowing transgender people to use restrooms consistent with their identity actually leads to increase of voyeurism or exhibitionism in women's restrooms, are you?

MR. NUSSBAUM: Your Honor, I just want to offer an objection. I'm not sure if we're on the same page on what the term transgender means. I'm all turned around, so I want to make sure our record is clear.

MR. BLOCK: Sure, I mean transgender in the current --

THE COURT: Sorry, there was a specific transgender woman equated to transsexual -- and I apologize, either MTF or FTM, that was the only definition.

The general term transgender was not

defined --

MR. BLOCK: Correct.

THE COURT: So if we have questions about what's meant, you can ask. Proceed with the questions.

BY MR. BLOCK

Q. So you're not aware of any studies showing that allowing transgender people to use restrooms consistent with their identity actually leads to increases of voyeurism or exhibitionism in women's restrooms, right?

A. Correct, I don't believe that's really been investigated, which is why I refer to it as a foreseeable consequence.

Q. In your declaration in this case, you say, a male exhibitionist exploiting the opportunity to access female designated privacy areas by declaring that he identifies as female, would be able to act out his paraphilia and display himself nude to females; is that right? Is that your opinion in your declaration?

A. Yes, it is.

Q. So I want to ask some questions about how this hypothetical scenario would play out, in the specific context of women's restrooms. Not women's

showers or locker rooms, okay?

So a women's restroom have private stalls around the toilets, correct?

A. In general, yes.

Q. There aren't usually urinals in women's restrooms, are there?

A. Correct.

Q. When people are inside a stall, using the restroom, they're not generally displaying their genitals to other people in the restroom, are they?

A. In general, no.

Q. If a cisgender women in a women's restroom publicly displayed her genitals to others, that would be inappropriate behavior, right?

A. Most people would conclude that, yes.

Q. They'd probably report that to the police if they saw that, right?

A. That's a bit ambiguous. If the policy of the area permitted the situation to occur, there's no violation to report to the police. She would be disempowered from doing that.

Q. I'm talking about a cisgender woman, publicly displays her genitals in a women's restroom?

A. In general, that would go unreported if

I'm correctly -- there's nothing. If a cisgender woman had her genitals or breasts exposed in a women's restroom, that generally would be, there's nothing to report.

Q. It would generally be inappropriate behavior, not the way people typically use women's restrooms, correct?

A. I don't know if I could say that, if a person were breast-feeding or adjusting undergarments.

Q. Do people expose their genitals to breast-feed, Dr. Cantor?

A. You said genitals, although, usually that means specifically a vulva versus a penis, that would not be it. But if a person --

Q. That's my question. So vulva, vulva, do people disclose their vulvas in women's restrooms?

A. In general, not.

Q. And so if a transgender woman exposed her genitals to others in a public women's restroom, that would also be a very, that wouldn't be consistent with how people usually use women's restrooms, right?

A. In general, not.

Q. And if a cisgender man walked into a

women's restroom and displayed his genitals, that would also be inconsistent with how people use women's restrooms, right?

A. Yes, it would.

Q. And I want to ask about voyeurism. If a cisgender woman is trying to peep within the cracks of the stall to look at someone else, that would be inappropriate behavior for her to engage in, right?

A. In general, most people would probably interpret that as trying to see if the stall were empty or not.

Q. So you walk into the restroom, you see someone else peeping through the cracks, like of the side or surreptitiously trying to look in, that would be unusual behavior, right?

A. Again, outside of the behavior usually would be interpreted as trying to see if the stall were occupied or not.

Q. Got it. So if a transgender woman were peeping through the cracks of a women's stall, that would also be unusual behavior, right?

A. Within the same context, although the social interpretation very often would be different, as its purpose is ambiguous.

Q. So I think regardless of your sex assigned

at birth, peeping through stalls in a women's restroom is generally not how people behave in restrooms, correct?

A. Again, there's context and interpretations in which one person's, another interpretation might be more or less likely, but such behaviors are difficult to remove from those contexts.

Q. Sure. Thank you for answering my question. I would now like to talk about transgender men using the men's restroom.

I'll start with the issue of people entering a men's restroom for the purpose of exhibition or voyeurism.

THE COURT: Mr. Block, I'm going to inquire, you're using a particular term.

MR. BLOCK: Yes.

THE COURT: Transgender men.

MR. BLOCK: Yes.

THE COURT: You understand what that term means consistent with the definition you agreed to?

THE WITNESS: Yes, these would then be postoperative.

MR. BLOCK: And just for the sake of consistency, generally transition for FTMs does not

frequently, does not include bottom surgery, correct?

A. Yes, that's correct.

Q. But you would still consider someone who otherwise medically transitioned to be an FTM transsexual, right?

A. Yes, as much as possible.

Q. So you say that paraphilias are almost exclusively found in birth assigned males, right?

A. Yes. That's correct.

Q. And transgender, and transgender men are not birth assigned males, are they?

A. Correct.

Q. They are birth assigned females, correct?

A. Correct.

Q. So there's no particular reason to think that a transgender man, who you discussed is at birth assigned female, would have a paraphilia like exhibitionism or voyeurism, is there?

A. Correct. That's why I point out that the situations are not flip sides to the other.

Q. And there's no particular reason to think that a transgender man would try to gain access to a men's restroom to expose their genitals or to peep on the other men there, is there?

A. That's correct.

Q. And more generally, you say that sex-related offenses are almost entirely committed by birth assigned males, not birth assigned females, correct?

A. That is correct.

Q. So all of these concerns about restroom policies and paraphilias that you've raised simply don't apply to transgender men using men's restrooms, do they?

A. That is correct.

Q. You stated that in your opinion, allowing transgender women to use women's restrooms creates a situation that can be abused by cisgender men, as we've discussed, because it will be hard for women in the restroom to tell the difference between someone who is a transgender woman, who is just using the restroom to go about her business, or a cisgender man saying that they are trans to access the restroom to satisfy their paraphilias, right?

A. That's correct.

Q. Now, I want to talk to you about what happens when a transgender man, under SB 244, is the one that goes into the women's restroom because the law requires him to do so.

You agree that unless the context involves nudity, it can be very difficult to tell the difference between a transgender man and a cisgender man, right?

A. Yes, it can.

Q. So if a fully clothed man walks into a women's restroom, because he wants to satisfy his paraphilias, and he says, it's okay, I'm a transgender man, it may not be easy for the woman in the restroom to know whether he's really a transgender man, or just a cisgender man with paraphilias, would it?

A. That's correct.

Q. So in your hypothetical, the problem is someone would walk in and say, a man would walk in and say, it's okay, I'm a transgender woman. But under the status quo of SB 244, that same person with paraphilias can now walk in and say, it's okay, I'm a transgender man.

A. Hang on, I'm walking through each piece of that. Yes, in general. That would be true. The largest difference being that the physical size of the person overall.

One of the things that doesn't change, for example, is a height, shoulder-width, and so on.

The ones who were born male are physically larger overall, but a female to male transsexual, even though they, if one took a photograph, the person could have a beard and have male facial features, but not be a foot taller than everybody else around them.

Q. So shortness, so someone who is average or shorter height could walk in to a restroom and say, it's okay, I'm a transgender man, right?

A. Yes, if the person's -- and I say this rather self-consciously at five-foot six, but yes, if the overall body size is similar, they would be very hard to distinguish facially.

Q. So earlier during your testimony, you responded, you gave various criticisms of Dr. Scheim's testimony. Did you listen to his live testimony in this case?

A. No, I did not, I was traveling.

Q. So your criticisms were based on his written report, not based on what he said in this case on the stand, were they?

A. That's correct.

Q. And for Dr. Turpin, I'm going to ask the same questions. Were your criticisms of Dr. Turpin based on her live testimony on the stand in this

case?

A. No, just her written report.

Q. And switching topics a little bit, can you administer a blood test to diagnose someone with depression?

A. Are you asking me personally or --

Q. Is it possible for someone to issue, to use a blood test to diagnosis someone with depression?

A. No, there are certain blood parameters that can differentiate groups of people, but they are not accurate enough to say anything about an individual person.

Q. Are you familiar with the condition congenital adrenal hyperplasia?

A. Yes, I am.

Q. Are you aware that some percentage of people with congenital adrenal hyperplasia go on to identify as men, and some percentage go on to identify as women?

A. Yes, I am.

Q. Can you administer a blood test to determine what the gender identity will be for someone with congenital adrenal hyperplasia?

A. No. A blood test can detect the disorder

itself, but not the person's psychological or self-identifying preference.

Q. You discuss differences between the DSM's definition of gender dysphoria and the ICD's definition of gender incongruence. Do you remember that?

A. Yes, I do.

Q. Which document is used in the United States?

A. That's a good question. Different situations use different ones, and there's no shortage of instances that a bit of bait and switch. Within the US, the DSM is often used primarily for billing purposes.

But in other situations, including research sponsored by the NIH, and NINH, because of the problems with the DSM, the entire manual has been entirely rejected and replaced with its own set of criteria, with it's own set of criteria.

The ICD, and like the DSM has many different versions. The US is using version 10, even though the rest of the world has continued on and is now using version 11.

Q. You're not aware of what criteria Dr. Turpin uses in her practice to diagnose people

with gender dysphoria, are you?

A. I don't believe Dr. Turpin reported giving any of the diagnoses, giving the diagnosis at all.

Usually an endocrinologist would affirm an existing diagnosis given by the mental health professional who referred the person to the endocrinologist to begin with.

Q. You don't know what procedures people at the Gender Pathways clinic where Dr. Turpin works use to diagnose someone with gender dysphoria, do you?

A. I have no idea.

Q. Now, you were the editor of, can you tell me which journals you were the editor-in-chief of?

A. The full name of the journal at the time was Sexual Abuse a Journal of Research and Treatment.

Q. And in your position as editor-in-chief, you only published high-quality scientific research, right?

A. The highest quality available as submitted by the various experts in the field, in this portion of the field.

Q. And if someone didn't follow proper scientific methods, you wouldn't have published

their article, would you?

A. I can't, an editor, including an editor-in-chief is not a king. My responsibility is and should be to enforce and maintain (indiscernible.) in the peer-review process. So although I would have my own opinions, that was not my charge.

My charge would be to make sure that the manuscripts were revered by appropriate and qualified peers, and then to follow the recommendations and the feedback by those peer reviewers rather than enforce my own opinion.

Q. But if something grossly departed from scientific principles, you wouldn't publish it. It would have to meet minimal standards, right?

A. In general, yes. I hadn't come across a situation like that in any of those years.

In a hypothetical situation, I would initiate a discussion amongst the various reviewers, like the right to overrule them --

Q. I think you answered the question, Dr. Cantor.

Do you remember that when you were editor-in=chief, the journal published an article called More than a Nuisance by Dr. Cynthia Calkins?

A. Not offhand, no.

Q. Do you remember that you were actually the person that transmitted an e-mail accepting the article for publication?

A. That's a part of the process, yes.

Q. Just a few cleanup questions at the very end. You expressed your views about gender affirming medical care.

Just for clarification's sake, your views about gender affirming medical care for minors differ from the official statement of the American Medical Association, correct?

A. It's not exactly clear what those views are as AMA as they are written, as they're written ambiguously.

Q. I'll ask, do your views differ --

MR. NUSSBAUM: Your Honor, I'd object, he was responding to the question and he should be allowed to finish his answer.

THE COURT: Had you completed your answer?

THE WITNESS: Other than to elucidate what the content of their policies are by my reading.

Q. I didn't ask for -- you answered my

question.

THE COURT: Read back the question. Do you have the question written down?

MR. BLOCK: I do, I can move on to a different question.

THE COURT: It was a good question.

BY MR. BLOCK

Q. I said your views about gender affirming medical care for minors differ from the stated official position of the American Medical Association, correct? That was my question.

THE COURT: Do you feel like you answered, were done? If you feel like you were not allowed to fully answer, you can proceed.

THE WITNESS: The part that I think is relevant and still unstated is that they don't exactly have an explicit statement other than the statement that it should -- the general statement that the decision shouldn't be made by government and governments shouldn't be restricting the regulation of physicians.

But they have not engaged in even their own processes to come up with a policy for what should be done.

Q. And your views about gender affirming care

for minors differ from the views of the American Psychological Association, correct?

A. The same. American Psychological Association has not engaged their own policy to use the procedures of evidence-based medicine in order to produce one. They have not come out with any -- they're called CPGs or clinical practice guidelines.

They haven't produced any. They issued general statements supporting in theory the possibility, but never, you know, which set of criteria or which ones they were. Or they would use ambiguous terms such as appropriate candidates, but never indicated what makes a candidate appropriate.

Q. And your views on gender affirming medical care differ from the position statement of the Endocrine Society, correct?

A. Again, the Endocrine Society doesn't exactly have one, they merely defer that opinion to that of WPATH, which in turn is ambiguous.

And I haven't really expressed any opinion on the use of the current criteria, so much as indicated when people are misstating that their policy is supported by science, when it isn't.

I have no opinion on when it should be done. I only have an opinion when somebody

misrepresents the science in saying that the science supports their opinion.

MR. BLOCK: Thank you, no further questions.

MR. NUSSBAUM: Redirect?

REDIRECT EXAMINATION

BY MR. NUSSBAUM

Q. I only have one question for you, Dr. Cantor. In your conversation with Mr. Block during cross-examination, did you understand the terms trans man and trans woman every time that Mr. Block used them?

A. I'd like to think that I did. But I would have to go back and reread it more slowly in order to double check that.

Q. Is it fair to say you might have had some confusion about those terms?

A. That is very possible, yes.

MR. NUSSBAUM: Thank you. No further questions.

THE COURT: Mr. Block, anything?

MR. BLOCK: No, Your Honor.

THE COURT: Dr. Cantor, give me just a moment before I excuse you.

A small point. Taxonomy?

THE WITNESS: Yes --

THE COURT: First of all, is it T-E-X?

THE WITNESS: T-A-X.

THE COURT: And the definition?

THE WITNESS: Where one category begins and another stops.

THE COURT: Thank you.

Another small point, when you were asked about the 6th version of WPATH, one of your disagreements was, it was no longer the correct acronym? WPATH? Did I understand?

THE WITNESS: Yes, that's correct, it changed its name.

THE COURT: But then you were asked about the 7th and 8th version of WPATH. Did you know what that was a reference to?

THE WITNESS: Yes, by version seven and eight, it had used that new name.

THE COURT: I see, I see what you're saying. Thank you.

I don't have any other questions. Does that bring to mind any questions, Mr. Nussbaum?

MR. NUSSBAUM: No, Your Honor.

THE COURT: Mr. Block?

MR. BLOCK: No, Your Honor.

THE COURT: Dr. Cantor, thank you.

It's quarter till 4:00, do we have another witness available?

MR. COMPTON: We do, Your Honor.

THE COURT: Do we want to take five or ten minutes or is everybody ready to proceed?

MR. COMPTON: This is our last witness of the day.

THE COURT: I understand. You can call your witness.

MR. COMPTON: Yes, Your Honor, the State calls Dr. Alyson McGregor.

DR. ALYSON McGREGOR, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MR. COMPTON

Q. Dr. McGregor, can you please introduce yourself to the Court?

A. I'm Alyson McGregor. I'm an emergency medicine physician. I'm currently an Associate Dean of Faculty Affairs and Development at the University of South Carolina School of Medicine Greenville.

Q. What's your educational history, Dr. McGregor?

A. I graduated with a bachelor's in general biology at the University of New Hampshire. I then graduated with a master's of medical science at Boston University, and then graduated with a medical doctor degree from University School of Medicine and then residency at Brown University in emergency medicine.

Q. Since you graduated medical school, how many years have you spent in clinical practice?

A. That's 23.

Q. What sort of hospitals have you worked in for those 23 years?

A. I have primarily worked at level one trauma centers, which is the referral centers for major city areas.

Q. What makes a hospital a level one trauma center?

A. It has all the available specialties and subspecialties, 24 hours, seven days a week.

Q. Is it fair to say that those are the most well-equipped hospitals in the United States?

A. Absolutely.

Q. In addition to clinical practice, have you had an academic career?

A. I have, yes. I have been an academic

physician researcher from my first job position at Brown University. So I've been studying biological sex and gender identity as it impacts health and disease, especially how it impacts women's health.

Q. Have you published any papers in the field of sex and gender medicine?

A. I have published over 100 peer-reviewed scientific publications in the field of sex, gender and women's health, that's without book chapters, without case reports.

Q. Have you written any books?

A. I have written three books. I was the coeditor of the first textbook on Sex and Gender in Acute Care Medicine. I have also published Sex Matters: How Male-centric Medicide Endangers Women's Health and What We Can Do About It. And then recently, I copublished Why Women Aren't Winning at Health.

Q. Have you received any awards for your publications?

A. I have received over 20 awards. And probably the most significant is that my alma mater at UNH awarded me a doctorate in science, which is an honorary degree awarding me for my work this far in my career.

Q. Across your academic career, have you held any academic positions?

A. I have. I have been as assistant professor at emergency medicine at Brown, then I was promoted to associate professor and then I was promoted to full professor.

MR. COMPTON: Your Honor, at this time, the State offers Dr. McGregor as an expert in emergency medicine and sex and gender medicine.

THE COURT: What was the second one?

MR. COMPTON: Sex and gender medicine.

MR. SELDIN: No objection, Your Honor.

THE COURT: So qualified.

BY MR. COMPTON

Q. Dr. McGregor, do you have any experience treating transgender patients?

A. I do.

Q. Have you published any articles about treating transgender people?

A. I've published a few articles about that, mostly from the perspective of defining the term sex and gender. And so the clinicians can understand what those words mean and how to appropriately look

at both literature and apply it to the person in front of them.

Q. Do you believe that doctors should respect transgender people's self-identification?

A. Yes, of course.

Q. Do your publications reflect that belief?

A. Yes.

Q. Can you summarize for the Court the opinions that you're offering today?

A. I was asked to remark upon what sex as a marker on a driver's license, what clinical context that has downstream.

Q. Are you offering any other opinions?

A. No.

Q. I want to start at the very beginning with the basics, Dr. McGregor. What is sex?

A. So sex is now considered biological sex, which is a multidimensional companion of biological variables.

So that includes sex chromosomes within the cells, XX versus XY, sex hormones, estrogen versus testosterone, internal and external reproductive organs, as well as secondary sex characteristics like hair growth and breast development.

Q. Does everyone have a sex?

A. Yes.

Q. How many sexes are there?

A. Well, there is generally considered in science and research that sex is a dimorphic development process. So you have either XX or XY and then there's continued process of development.

There are variations from that dimorphic process and those variations are lumped within the term intersex, but they are still generally well-accepted criteria that there's a dimorphic process to begin.

Q. When you say it's a dimorphic process, what do you mean by that?

A. As soon as fertilization happens of the egg, that cell, that embryo is either XX if they're female, XY if they're male, and then that in turn develops organs that then regulate the hormones and you have development.

Q. What's the word dimorphic mean?

A. It means starting from one and developing into two areas.

Q. How does a person's sex affect their development and their anatomy?

A. Well, it's the primary driver of the

reproductive anatomy. And then the reproductive anatomy is then responsible for regulating the sex steroid hormones, which then they have their impact on health and disease.

THE COURT: Impacts what?

THE WITNESS: Health and disease.

THE COURT: Thank you.

BY MR. COMPTON

Q. What is gender?

A. Gender is considered a social cultural element. So it is how someone wants to present themselves in society. It is one of the considerations of social determinants of health.

Q. So if we say that someone has the gender of a man or a masculine gender, what does that mean?

A. Well, we use the terms male and female for biological sex. And we use the terms man or woman for gender identity.

Gender identity can be whatever the person wants it to be, and it's usually an outward display of the phenotype which can have more male characteristics or, you know, male characteristics, more female characteristics, a blend of the two, none of them.

Q. When you say it's a display of a

phenotype, what does that mean?

A. Well, genotype is genes, genetics, that's our DNA. Phenotype is our external expression.

Q. Those terms that you just used, man and woman for gender and male and female for sex, are those standard in medical and scientific fields?

A. They are now, they certainly weren't always that way. Most of the start of our understanding of this particular science, male and female were used for animal studies because it's thought that generally animals don't have a gender. And then when we talked about human studies, we use the word gender.

It wasn't until NIH, really, 2016, required sex as a biological variable to be part of any funding decisions for research that we really started to say, we need to disentangle those two terms and make sure that we know which one we're talking about when we're conducting science and research.

Q. In the medical field, is it generally recognized that sex and gender are different things?

A. I would say, yes, generally realized. I think we're continuing to socialize that. Many published research, if you do compare it to years in

the past, the two were used interchangeably. But now we're really, you know, if you're using them interchangeably it's considered not appropriate anymore.

Q. So if someone says gender identity is part of sex; is that accurate?

A. That's not accurate.

Q. Now, I want to talk a little bit more about medicine and driver's licenses. Is a patient's sex a clinically valuable piece of information?

A. Yes.

Q. Why?

A. Knowing a patient's sex, we now know that sex has an impact on how disease develops, how disease is presented, how they may respond to different diagnostic testing, how they may respond to different treatments, their prognosis and their outcomes of disease.

Q. Let's take some of those one at a time, can you give me an example of how a patient's sex would be relevant to the drug dosing?

A. Yes, when we think about drug metabolism that are two concepts, there's pharmacokinetics and pharmacodynamics. And that means how the body

breaks down the drug and what does that drug do to the body before it's eliminated.

So if we consider a drug, say it's a pill that you're swallowing, first that has to be broken down, then it has to be distributed, then it has to be metabolized and then excreted, usually through urine. Every process along that continuum, sex imparts a difference.

Q. Can you give me an example of a drug where dosing is different for males and females?

A. Yes, that's commonly cited example is zolpidem, which is commonly referred to as Ambien, as a sleep aid.

It was initially studied in men and mostly prescribed to women because women are diagnosed with sleep disorders more commonly than men. So that dose that was approved by the FDA was based in male bodies.

After 20 years of prescribing that dose to women, it was realized that women were more likely to wake up in the morning after taking the medication and being impaired still and getting into motor vehicle crashes. So it was really a post-market survey analysis that realized that women were being over-dosed.

How they figured that out is they gave men and women the medication, zolpidem, and found that when they checked the serum concentration of that drug at the same amount of time, women had two times the concentration of that drug still in their system, compared to men.

So the FDA had sex-specific dosing recommendations where women are to start at five milligrams and men start at 10 milligrams.

Q. Can you give us an example of when a patient's sex might be relevant for lab testing and diagnostics?

A. Sure, I think we commonly think of hemoglobin and hematocrit, which is a measure of red blood cells. We've had that as one of our first sex-specific reference ranges in laboratory values, because females have a lower hemoglobin compared to generalized males.

The thought is that it could be due to the fact that we have menses, and so we are losing blood on a cycle. It could also be due to the fact that bone marrow development of hemoglobin in red blood cells is different than in men.

Q. Can you give us an example of how patient sex might be relevant to how a disease presents in

their body?

A. One of the best studied areas is cardiovascular medicine and cardiovascular disease.

So what we now know is that the way, when we think of heart disease, we think of the heart failing or not receiving enough blood supply, usually due to plaque development and rupture.

It turns out that women have smaller hearts, they have smaller arteries that supply them. The way that they develop plaque is different compared to the way that males develop plaque.

Women tend to have microvascular disease, women tend to have female-specific, sex-specific risk factors that men do not have, like autoimmune conditions, peripartum complications. And that's not even getting into the fact that when you have a heart attack, if you're a female versus a male, the way the heart responds to that, the heart failure is different compared to males and females.

The medications that we use respond differently, if you're a male or female, so it goes really all down the line.

Q. Are the things we just discussed the only examples of when a patient's sex is relevant to treating them?

A. No, I think that as I mentioned, if you think about all of the elements of health, disease, presentation, that these things that sex has a part because medical science progresses.

Q. As medical science progresses, does a patient's sex become more or less relevant?

A. It's becoming more relevant.

Q. As an emergency medicine physician, can a patient's drivers's license be a reliable source of information about their sex?

A. If it's accurate, yes.

Q. Do doctors ever rely on a patient's driver's license as a source of information about their sex?

A. Occasionally, yes. So I can think of a few times in my career where that was how I obtained information from, for caring for a patient, by their driver's license. Either the name, date of birth, their sex.

But it's not, usually that process happens at registration, and then for the physicians, that registration piece has downstream affects on decision-support tools and the electronic health record, that sort of thing. So it's an important piece of information that has downstream effects.

Q. When you say it happens at registration with downstream effects, what are you talking about?

A. When the patient is registered, we just, probably within the past several years, we start hopefully collecting biological sex, gender identity, organ inventory, past surgical history, all of that is collected so that it's available for decision-support for physicians. For pharmacists to have alerts, if there is contraindication or if their reference ranges are based on biological sex, that sort of thing.

Q. Is a patient's drivers license ever the source of information about their sex at registration?

A. Yes.

Q. Can driver's licenses be valuable information about a patient's sex for medical personnel who aren't doctors?

A. Sure. I think when we think of medical care, it's very much a team sport.

So I think in nursing, they do protocol orders and medication deliveries. I also think that pre-hospital care from paramedics and first responders, more and more opportunities for the care to start earlier before they reach me in the

emergency department are being developed.

So I think it would generally be helpful in lots of different circumstances.

Q. Does the sex marker on a driver's license tell you everything you would want to know about a patient's sex or sex characteristics?

A. No, it's just one piece of the information and the more information we have, the better we are able to tailor our care.

Q. Is the fact that it's an incomplete piece of information make it useless?

A. No, we would love to have a full, lots of information, as much as possible on our patients. And even in the emergency department, we don't have a relationship, we have to sort of pick it up very quickly. So the more information, the better.

Q. In summary, Dr. McGregor, is sex an important diagnostic tool for doctors?

A. It's incredibly important, and Your Honor, if I could just sort of tell you, that when I first graduated from medical school 23 years ago, I was taught evidence and information that would pull data based on men, and we were to use that treatment data to treat men and women.

And now we realize that outside of the

reproductive organs, that there are important differences between males and females.

And so in 2001 the Institute of medicine published a report, it was a question mark, Does Sex Matter? And I have spent my career, not by myself, but collaborating with researchers across the country, across the world, and when I published my book in 2020, it was to answer that question, sex matters.

And you know, as an emergency physician, sex matters in more ways than we can think. It's not abstract, it can be life or death. It can be getting a medication dose correctly or having it not be effective.

So I think what I wanted to make sure is that we're not competing, sex and gender are not competing against each other. It's just that sex is a biological, a biomedical research. It has more support and funding. When we look at answers and discovery, there is a framework that we can put on it. Where gender is social culture, it doesn't have as much research-funding, it takes longer qualitative research, so there's less evidence.

But I think both are important, and as far as my role here, I was asked to determine what sex

as a marker has on clinical care, and I would say, a whole lot. It really drives downstream decision-making.

Q. Two questions for me to clean up, Dr. McGregor, because I took things a little out of order. Do patients ever come into the emergency department unconscious or without friends and family to speak for them?

A. Of course.

Q. One other thing, there is a set of binders next to you, and one of them is labeled defendant's exhibits, and it should say volume one of three, can you find that binder for me?

A. Volume one of three.

Q. Do you see that?

A. Yes.

Q. Can you turn to tab number four for me? What do you see there?

A. I see it's my report.

Q. Can you flip through that and make sure it's accurate, or an accurate representation of your report?

A. Yes. And fortunately, I only have one version.

Q. I see you wee in the courtroom earlier.

MR. COMPTON: Your Honor, at this time, the State offers Exhibit 104 into evidence.

MR. SELDIN: No objection.

THE COURT: 104 is admitted.

(Defendant's Exhibit 104 was admitted.)

MR. COMPTON: Nothing further for me, Your Honor.

THE COURT: Cross-examination?

Doctor, you doing -- need a break of any kind?

THE WITNESS: No, thank you.

THE COURT: Court reporter? Okay. You can proceed, Mr. Seldin.

CROSS-EXAMINATION

BY MR. SELDIN

Q. Dr. McGregor, good afternoon. We met at your deposition.

A. Good morning, yes.

Q. Good to see you in person.

A. Same.

Q. Dr. McGregor, you just testified that both sex and gender are important, right?

A. I agree.

Q. And Dr. McGregor, you would agree that

when you see an M or an F on a driver's license, that doesn't tell you everything about a person's biological sex, right?

A. I agree.

Q. And just for clarity, I'm going to use biological sex in the sense that you use it, which is, it doesn't include gender entity?

A. That's correct.

Q. Just so we can --

A. Sounds good.

Q. -- start off on the right foot.

A. Okay.

Q. Okay. so when you see the M or the F, it doesn't tell you everything about biological sex, correct?

A. Correct.

Q. So it doesn't tell you everything about chromosomes, or hormones, or anatomy, or secondary sex characteristics, right?

A. Well, if I see an M or an F, and I'm told that that's a representation of, you know, one letter representing sex as a biological variable, which sex is, I can assume it is the sex chromosomes, and then there is the hierarchy of development. So it's unclear whether that marker

indicates whether exogenous hormones are being taken, or different surgical procedures.

Q. So it allows you to make some assumptions, but you don't know for sure, right?

A. It allows me to make assumptions, yes.

Q. And that's, you'd be making assumptions for a person who was cisgender, right?

A. In what way?

Q. So imagine you have a person, you know that they are cisgender, you know that they are not transgender, so their gender or gender identity matches their sex assigned at birth.

They hand you a driver's license, it says F. With respect to chromosomes and hormones and organs, for that person, you'd still be making an assumption that everything lines up, right?

A. Yes, without a conversation. Yes, it would be an assumption -- because the way that you asked the question is, I know that they are cisgender, so by knowing that, I know that their sex and gender identity align, and then I can make assumptions that that means that their chromosomes, or their organs, their hormones, their gender identity are all aligned.

Q. But there are cisgender women who don't

have uteruses, right?

A. Yes.

Q. There are cisgender women who might have atypical levels of hormones for one reason or another?

A. Sure.

Q. There may be, for example, cisgender women who have had mastectomies for health reasons, so they would not have that secondary sex characteristic, right?

A. Correct.

Q. So you'd be assuming that they had those, but you couldn't know for sure, correct?

A. Correct.

Q. And the same is true for a transgender person. If you see someone -- imagine you have a patient, you know that they are transgender, so you know that their sex assigned at birth is female and you know that their gender identity is male.

They hand you a license that says female, you would just be making assumptions about their biological sex at that point, right?

A. Well, it's the same assumptions that I would if it was a cisgender individual. So if there's an assumption that that marker is describing

sex chromosomes, at the very basic.

Q. Other than chromosomes, is there anything else you can be really confident about being correct for that patient?

A. I would have to have a conversation about whether, through their transitioning if it's just their own identity that's transitioned, or if they started to undergo gender affirming medical care, surgical, medication, that sort of thing, to fill in the pieces.

Q. Either way, it's assumptions you are making?

A. Well, I think a proxy for sex is sex assigned at birth, so there's even assumptions within that context as well. So, sure.

Q. You agree that making assumptions based on someone's birth sex could cause a doctor to miss important information, right?

A. Yes.

Q. And that's true for cisgender and transgender patients, right?

A. Exactly.

Q. Dr. Turpin, I think you've been an emergency medicine doctor for over 20 years; is that correct?

A. Yes, and I think you referred to me as Dr. Turpin.

Q. I am -- it's been that kind of day.

A. Of course.

Q. Dr. McGregor --

A. Yes.

Q. For the record, I think she has too, but not in the emergency.

But Dr. McGregor, in your over 20 years of experience as an emergency medicine doctor, you've never encountered a situation where a gender marker in a driver's license interfered with treatment, right?

A. I would not recall. Having been an emergency physician for over 20 years, as we have said, I estimate that's about 40 to 50,000 patients in my career thus far.

Q. Among those patients that you've treated, you only recall specifically treating a single transgender patient, correct?

A. I believe in my deposition we discussed a training scenario, yes. So a transgender individual that we took care of that I used to help teach different aspects about caring for those people.

Q. Right. And we will talk about that

teaching example in a second. But other than that teaching example, you did not have a specific recollection of treating any other transgender patient, right?

A. Not a specific recollection of them individually. But in general, I've taken care of many people, including transgender people.

Q. In fact, when at deposition when I asked if you could estimate, you said you'd basically use a population estimate and multiply that by how many patients you thought you saw overall, right?

A. Yes.

Q. But the only specific recollection was this one teaching incident?

A. I think you asked for an example of, I think you asked for a specific example. I said, I recall this teaching case that I used.

Q. Other than one specific teaching case from about 10 years ago, you do not have any other specific collections of treating transgender patients, right?

A. Specific to their care or having it be something I would remember to today, I would say I don't recall.

Q. And that one specific time, that teaching

case, you don't recall the driver's license playing any role in that case, right?

A. I do not.

Q. And you use that teaching case to talk about why it's important to do an organ inventory, right?

A. That's correct.

Q. So to avoid making assumptions about what body parts someone has or doesn't have, right?

A. Right.

Q. And you have other examples that involve non-transgender people that you use to teach residents, this is why you have to do an organ inventory, right?

A. Correct.

Q. And then you know, I'm surprised I haven't gotten in trouble yet. An organ inventory, is that part of the electronic medical record?

A. It's an option to fill now, so that's relatively new, like I mentioned, in the past several years. That is, most electronic health records have moved towards having that as a tab, but it wasn't always there.

Q. And an organ inventory, does that allow you to indicate for the patient which body parts

they have or don't have?

A. It's a phrase that I think we use now to make sure that we have that sort of shared vocabulary, but it could be something similar to, has a patient had their gallbladder removed or not, do they still have a uterus or not. But I think it's become more of a term that we can use broadly.

Q. And you want to know that information for everybody, right? Whether they still have their gallbladder, if they had a uterus, do they still have it now. That's for everybody, right?

A. Yes.

Q. Again, talking about biological sex the way that you have defined it, you agree that biological sex and gender identity are interrelated, right?

A. Yes.

Q. And you acknowledge there is a literature out there that discusses whether there's a biological basis for gender identity, even if you're not aware of those specifics, right?

A. That's, that's generally true.

Q. And you're not offering an opinion on the etiology of gender identity, right?

A. No.

Q. And what is etiology?

A. Etiology is similar to, what's the cause of it.

Q. So you're not offering an expert opinion on what causes gender identity, right?

A. No.

Q. And then, Dr. McGregor, I think earlier you were talking about reference ranges; is that right?

A. Mm-hmm.

THE COURT: About what?

MR. SELDIN: Reference ranges.

BY MR. SELDIN

Q. And a reference range is, you know, an indication on a medical test about where the numbers should be and are you above it or below it, right?

A. Yes.

Q. And for some tests, there's different reference ranges based on what you call biological sex, right?

A. Yes.

Q. You would agree though that for a patient who presents to the ER, who is taking exogenous testosterone, because they are a transgender man, so their sex assigned at birth is female, their gender

identity is male, it's unknown what reference range you might use in that circumstance for some tests, right?

A. That is a new inquiry of discovery. There have been just a few studies that actually look at what changes physiologically after somebody has been taking exogenous hormones for X amount of time, so that's an exciting new field.

Q. Because things do change?

A. Yes.

MR. SELDIN: One moment.

THE COURT: Certainly.

BY MR. SELDIN

Q. Apologies, lawyering is a team sport.

A. Of course, so is doctoring.

Q. Dr. McGregor, the source of information about a person's sex and gender identity, it doesn't matter clinically, so long as you have reliable information, right?

A. Yes.

Q. And you don't have an opinion about what driver's licenses should say, as a matter of public policy, with respect to sex or gender identity, right?

A. That's correct.

Q. And you're not providing an opinion on what the potential negative consequences of using biological sex on a driver's license would be, right?

A. That's correct.

MR. SELDIN: No further questions. Thank you very much, Doctor.

THE WITNESS: Thank you.

THE COURT: Redirect?

MR. COMPTON: Very brief redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. COMPTON

Q. Dr. McGregor, opposing counsel asked you about a teaching case involving a transgender patient. Can you tell us a little bit more about what happened there?

A. Sure, so level one trauma centers where I've worked is a teaching hospital, so we have lots of learners around, medical students, residents and I'm the supervisor.

So there was a patient who was a transgendered man, who came in after a motor vehicle crash. And I was reviewing the orders that the resident had placed, and for every trauma that comes

in, there are basic orders that are there. And one of them is a pregnancy test.

And so I noticed that the resident did not order the pregnancy test. And so I asked the resident, why, and if they've done an organ inventory, because you could still be a trans man and get pregnant.

So that was where we discussed making sure to ask further questions about the individual that you're caring for, and that was, you know, most of what our discussion was.

Q. Would your student have ordered a pregnancy test or had more information about that patient's sex?

A. I think more information about the -- well, accurate information about the patient's sex, along with accurate information about what organs, what hormones, that sort of thing.

MR. COMPTON: Nothing further, Your Honor.

MR. SELDIN: Briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. SELDIN

Q. And for that teaching case -- you're going to teach everyone today -- for that individual, they

didn't have a uterus, right?

A. They did not have a uterus.

Q. So no need for a pregnancy test there, right?

A. Turns out.

Q. And the lesson that you teach with that teaching case is, taken an organ inventory, right?

A. Yes.

Q. Not check the driver's license, right?

A. Talk to the patient.

MR. SELDIN: No further questions, thank you.

THE COURT: To bring that to a conclusion, the organ inventory is a way to verify what assumptions you should associate with gender marker F?

THE WITNESS: Could you say that again?

THE COURT: The requesting, or performing an organ inventory is another, is in fact, a way to get information about a person who's either told you or showing on the driver's license a female sex.

And much of Mr. Seldin's inquiry, I think can be summed up as, assumptions are an

unavoidable part of practicing medicine, correct?

A. That is correct.

Q. And the goal is to eliminate as many assumptions as possible, with the best quality information you can obtain?

A. I agree.

Q. And this example of the teaching, or the female to male who came in, and did not have a pregnancy test ordered, as you said, as it turns out, was not an issue. But that's -- we don't want to practice on assumptions, we want to get verified information?

A. Absolutely.

Q. You turned to me at the conclusion of Mr. Compton's direct exam, and I want to address what you indicated to me.

2001, this study or article comes out, does sex matter?

A. Mm-hmm.

Q. And 26 years later, the science has answered the question, at least in your experience and research?

A. That's correct.

Q. Two questions: What aspect of medicine or science has had the most impact on answering that

question? Is it genetic research? Is it some other aspect, what has been the dynamic that --

A. It's, it's multiple. Because what we've done, is by conducting a research study and then analyzing the data separately based on females and males, and then discovering a difference. And it's like, wow. Okay, what caused that difference? And then we're backtracking. We have to see, is it because of chromosomes? Is it because of hormones? And so that's where the research has been.

Q. Is it fair to characterize that as, a decision within the medical community to actually make that inquiry?

A. Yes.

Q. So my next question, which might be somewhat anticipated. Today, the article could be, does gender identity matter?

A. I would like to answer that and say that it does matter. Gender identity does matter. It matters differently than biological sex.

It matters in communication styles, therapeutic relationships, comfortability going to, you know, accessing care. It's a social determinant of health.

And so there's research that shows that

gender identity matters, but matters in those ways.

Q. And we have the answer you just gave me because the medical community decided to inquire into those factors?

A. Yes.

Q. And it may discover more 26 years from now --

A. Absolutely.

Q. -- than we know today?

A. Yes, absolutely. It is continuously evolving.

In fact, this morning I saw a new publication from the Biology of Sex Differences Journal, and it was titled Sex and Gender Science: Cultural Integration Into Biological.

So we have teased those two out to study them and now, the next decade is going to be really about, well, how do they interrelate. So it's exciting, it's evolving, and this is just what science is showing us.

THE COURT: Thank you.

Mr. Compton, any follow up from that line of questioning?

MR. COMPTON: I don't think so, Your Honor.

THE COURT: Mr. Block? I'm sorry, Mr. Seldin. I apologize.

MR. SELDIN: I guess it's been that kind of day for you, too. None from me, Your Honor.

THE COURT: At least I didn't call you Mr. McGregor.

MR. SELDIN: Thank you.

THE COURT: Does the State have additional evidence?

MR. COMPTON: Your Honor, we have one additional witness, but they are not available until tomorrow.

THE COURT: I think that's been announced earlier.

MR. COMPTON: I think we're done for the day.

THE COURT: Okay. Any housekeeping matters either side thinks we should address?

MR. SELDIN: No more housekeeping on our end, Your Honor.

THE COURT: General?

MR. KOBACH: One question, should both sides come prepared to do final closing oral argument tomorrow, if we have time?

MR. SELDIN: We anticipate a rebuttal

case.

THE COURT: Can you give me some sense of how or how many witnesses?

While you are discussing that, let me first ask, how long do you anticipate your witness tomorrow on direct?

MR. COMPTON: Twenty minutes, Your Honor.

THE COURT: So let's say max, an hour on one witness.

MR. SELDIN: My hope is it will be under two hours, but not under an hour.

THE COURT: So we'll consume the morning, is your expectation?

MR. SELDIN: Yes, and we're happy to do the arguments on Wednesday, Your Honor, if that still works for you.

MR. KOBACH: Your Honor, we think we can do the argument in one hour per side. And there's no need to draw this out into next week. We'd rather do it in the afternoon tomorrow.

MR. SELDIN: Your Honor --

THE COURT: Go ahead.

MR. SELDIN: I think understanding whether or not that's enough time, it would be

helpful to know how you are intending to have us argue the temporary injunction motion, with respect to the motion to dismiss.

They have overlapped, but not perfect. And I think, you know, it's more appropriate to talk about them one at a time, even though they overlap. And so I think doing that in an hour might be a little tricky.

THE COURT: I'm reminded of what a wise judge told me once, the lawyers know the case way better than the judge does.

I need some time to absorb what I've been told and I want to go back and look at what am I going to be asked to decide, these would be temporary injunctions, motions to dismiss.

So while I don't doubt counsel could be prepared, I think it's going to be more effective to give the Court a chance to catch up. And you know, we can look and see where we end up tomorrow morning, and if something changes. But right now, I'm feeling I need some time to absorb. Okay?

Court reporter need anything from counsel? We'll adjourn until 8:30 tomorrow morning.

(Court ended.)

C E R T I F I C A T E

STATE OF KANSAS)
) SS
DOUGLAS COUNTY)

I, Nina Copeland, Certified Court Reporter, do hereby certify that I am the regularly appointed, qualified, and acting Official Reporter for Division No. 6 of the Seventh Judicial District, Douglas County, Kansas, duly certified under and by virtue of the laws of the State of Kansas. I further certify that on the 1st day of October, 2026, I was present at and reported in voice shorthand the proceedings in the aforementioned case before the Honorable James McCabria, Judge of Division 4 of the District Court of Douglas County, Kansas, and that the foregoing transcript is a true and correct transcript of the proceedings as revealed by my voice notes so taken.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Lawrence, Douglas County, Kansas, this 16th day of October, 2026.

__\s\Nina Copeland_____
Nina Copeland, CCR
Official Court Reporter