

EXHIBIT A

Pl. OutServe's Resp. to Defs.' Interrogs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

PATRICK M. SHANAHAN, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

V.

PATRICK M. SHANAHAN, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

**PLAINTIFF OUTSERVE-SLDN. INC.’S OBJECTIONS TO
DEFENDANTS’ FIRST SET OF INTERROGATORIES**

Pursuant to Local Rule 26(C) and Federal Rule of Civil Procedure 33, Plaintiff OutServe-SLDN, Inc., through undersigned counsel, provides the following objections and responses to Defendant’s First Set of Interrogatories. In presenting these objections, Plaintiff does not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on any appropriate ground.

OBJECTIONS TO SPECIFIC INTERROGATORIES

Interrogatory No. 1. Explain in detail the basis of the allegations or assertions that each individual plaintiff in *Harrison v. Shanahan*, Case No. 1:18-cv-641 (E.D. Va.), and *Roe v. Shanahan*, 1:18-cv-1565 (E.D. Va.), and each declarant identified by OutServe in those cases, are members of OutServe.

Objection: Plaintiff OutServe objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product privilege.

Response: Each of the named plaintiffs, the declarants, and Airmen identified in the Declaration of Peter Perkowski is a member of communities that OutServe-SLDN serves: that is, each is an active duty member of the Armed Forces, and each identifies as LGBTQ and/or living with HIV. In addition, each of the named plaintiffs, the declarants, and the Airman identified in the Declaration of Peter Perkowski, has taken steps to become a member of OutServe, as follows:

Plaintiff Nick Harrison is member of OutServe-SLDN's Chapters and Forums and participates in Chapter activities, subscribes to OutServe-SLDN's mailing list; donates to OutServe-SLDN, has accessed OutServe-SLDN's services, and serves on OutServe-SLDN's Military & Veterans Advisory Council ("MAC"). Specifically, SGT Harrison was added to OutServe-SLDN's Positive Forum on 8 February 2014, and he joined the OutServe-SLDN Network Facebook Group on March 7, 2012. In addition, when deployed to Kuwait in or around 2012, SGT Harrison participated in activities of the Kuwait chapter, including by attending and helping organize social events. SGT Harrison first accessed OutServe-SLDN's legal services by communicating with the OutServe-SLDN legal team and asking for legal advice and assistance on or about 15 June 2016. SGT Harrison subscribed to OutServe-SLDN's mailing list prior to 20 August 2018 and has been receiving and viewing newsletters and other communications since then. (SGT Harrison was added manually to the mailing list, along with all other subscribers, on 20 August 2018 when OutServe-SLDN's communications team re-calibrated the newsletter distribution lists to separate the members' newsletter and the media contacts list.) SGT Harrison joined the MAC in October 2018. SGT Harrison has also made donations to OutServe-SLDN.

Plaintiff Roe is a member of OutServe-SLDN's Chapters and Forums, subscribes to OutServe-SLDN's mailing list, and has accessed OutServe-SLDN's services. Specifically, Plaintiff Roe was added to OutServe-SLDN's Positive Forum on 19 December 2018. Plaintiff Roe first accessed OutServe-SLDN's legal services by contacting the OutServe-SLDN Legal Help Desk, through the "Contact Us" page on OutServe-SLDN's website, on 31 May 2018, and requesting legal advice and assistance. Plaintiff Roe subscribed to OutServe-SLDN's mailing list on 31 May 2018 and has been receiving and viewing newsletters and other communications since then. (Plaintiff Roe was added manually to the mailing list, along with all other subscribers, on 20 August 2018 when OutServe-SLDN's communications team re-calibrated the newsletter distribution lists to separate the members' newsletter and the media contacts list.)

Plaintiff Voe is a member of OutServe-SLDN's Chapters and Forums and has accessed OutServe-SLDN's services. Specifically, Plaintiff Voe was added to OutServe-SLDN's Positive Forum on 21 June 2018. Plaintiff Voe first accessed OutServe-SLDN's legal services by contacting a member of the OutServe-SLDN legal team by email on 21 June 2018, requesting legal advice and assistance.

██████████ has accessed OutServe-SLDN's services. Specifically, ██████████ first accessed OutServe-SLDN's legal services by contacting a member of the legal team in mid-to-late June 2018, requesting legal advice and assistance.

Senior Airman K.R. is a member of OutServe-SLDN's Chapters and Forums and has accessed OutServe-SLDN's services. Specifically, SrA K.R. was added to OutServe-SLDN's Positive Forum on 3 January 2019. SrA K.R. first accessed OutServe-SLDN's legal services by contacting a member of the OutServe-SLDN legal team in late December 2018, after Plaintiffs filed the Complaint in *Roe v. Shanahan*, and requesting legal advice and assistance.

Senior Airman S.H. is a member of OutServe-SLDN's Chapters and Forums and has accessed OutServe-SLDN's services. Specifically, SrA S.H. was added to OutServe-SLDN's Positive Forum on 26 December 2018. SrA K.R. first accessed OutServe-SLDN's legal services by contacting a member of the OutServe-SLDN legal team on or about 17 December 2018, after Plaintiffs filed the Complaint in *Roe v. Shanahan*, and requesting legal advice and assistance.

Senior Airman D.N. is a member of OutServe-SLDN's Chapters and Forums and has accessed OutServe-SLDN's services. Specifically, SrA D.N. was added to OutServe-SLDN's Positive Forum on 6 January 2019. SrA K.R. first accessed OutServe-SLDN's legal services by contacting a member of the OutServe-SLDN legal team on or about 20 December 2018, after Plaintiffs filed the Complaint in *Roe v. Shanahan*, and requesting legal advice and assistance.

Staff Sergeant J.B. is a member of OutServe-SLDN's Chapters and Forums and has accessed OutServe-SLDN's services. Specifically, SSgt J.B. was added to OutServe-SLDN's Positive Forum on 5 January 2019. SSgt J.B. first accessed OutServe-SLDN's legal services by contacting a member of the OutServe-SLDN team on or about 21 December 2018, after Plaintiffs filed the Complaint in *Roe v. Shanahan*, and requesting legal advice and assistance.

Senior Airman Q.S. is a member of OutServe-SLDN's Chapters and Forums and has accessed OutServe-SLDN's services. Specifically, SrA Q.S. was added to OutServe-SLDN's Positive Forum on 22 February 2019. SrA Q.S. first accessed OutServe-SLDN's legal services by contacting the OutServe-SLDN Legal Help Desk, through the "Contact Us" page on OutServe-SLDN's website, on 5 January 2019, after Plaintiffs filed the Complaint in *Roe v. Shanahan*, and requesting legal advice and assistance.

Interrogatory No. 2. Describe in detail when OutServe was created, its purpose and mission, and its membership requirements.

Objection: Plaintiff OutServe objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product privilege. Plaintiff further objects that this interrogatory is vague and ambiguous with respect to its use of the terms “created,” “purpose,” “mission,” and “membership requirements.” Plaintiff will interpret this interrogatory to be asking when OutServe was established under its bylaws, the mission that OutServe was established to accomplish, the work that OutServe performs on behalf of its members, and who is permitted to become a member of OutServe and by what process.

Response: OutServe-SLDN was created on or about October 2012 through the merger of two organizations: Servicemembers Legal Defense Network, and OutServe. Servicemembers Legal Defense Network had been in existence since 1993; it was formed to advocate for the end of the policy commonly known as Don’t Ask Don’t Tell, and to provide free legal services to lesbian, gay, bisexual (“LGB”) Service members and veterans affected by the policies prohibiting open and authentic service by people identifying as LGB. OutServe began in 2010; first known as “Citizens for Repeal,” it was one of the first member-based organizations to represent the interests of LGB people who were serving in uniform. On 31 December 2017, the non-profit organization known as the Military Partners and Families Coalition merged into OutServe-SLDN.

OutServe-SLDN is a non-partisan, non-profit, legal services, watchdog and policy organization that represents the U.S. LGBTQ+ military community—Service members, veterans, civilian Department of Defense, and their spouses and families—worldwide. The organization’s purpose and mission combine the missions, goals, and purposes of its constituent organizations

and expands them: to address and end, through litigation, policy advocacy, and education, all forms of unequal or unfair treatment against members of its community based on sexual orientation, gender identity, or HIV status. To accomplish this, the agency engages in activities that fall into three main buckets: legal services and advocacy; education; and membership and chapter services.

Legal services and advocacy: OutServe-SLDN provides pro-bono advocacy and legal services for people in the communities it serves. Advocacy or policy work includes interfacing with members of Congress, their staff, and Congressional Committees to change or approve legislation and regulations affecting Service members who identify as LGBTQ or who are living with HIV, as well as working directly with the Department of Defense, the Secretary of Defense, and the Service Secretaries on the same issues. Legal services work includes writing and submitting amicus briefs in cases involving issues of concern to its communities; filing and litigating impact litigation to change Department of Defense policies; directly representing—in administrative, disciplinary, and criminal proceedings—service members who identify as LGBTQ or who are living with HIV; and providing legal assistance, cultural-competency consultation, education and information, and training to Judge Advocate General defense lawyers in all Service branches.

Education: OutServe-SLDN provides education services to its members, to the broader LGBTQ/HIV+ military and veteran communities, and to partner organizations that provide services to the LGBTQ/HIV+ military and veteran communities, such as the Veterans Administration. OutServe-SLDN's educational products include: (1) OutServe Knowledge Online (OSKO), a monthly online podcast featuring prominent speakers that brings critical information to our members by creating an online repository of information and resources

specific to the LGBTQ/HIV+ military and veteran communities; (2) Advancing Care through Education (ACE), a portfolio of educational workshops and trainings—within and outside military community, including non-profits, social-service and health-care providers, government agencies, universities, and community groups—tailored to serve and advocate for the broader LGBTQ/HIV+ military and veteran communities and covering topics from the basics of what it means to be an LGBTQ and/or HIV+ Service member or veteran, trauma-informed-care practices, client-provider interaction best practices, and more; and (3) Rainbow Shield, a certification program that bridges the gap in culturally competent services for the LGBTQ/HIV+ veteran community by educating Veteran Service Organizations (VSOs) and other veteran service providers and advocates with training and information relevant to the communities we serve.

Membership and Chapter services: OutServe-SLDN is, in part, a membership organization, or the functional equivalent of a membership organization. OutServe-SLDN administers 54 chapters worldwide, including 35 in the continental United States and 19 outside the continental U.S., that are geographically based. OutServe-SLDN also has 20 additional special group forums, which are identity based, one of which is the “Positive Forum” for people living with HIV. All of OutServe-SLDN’s chapters and forums are listed here: https://www.outserve-sldn.org/chap_forum/. The chapters and forums are not just social groups: because Service members who are LGBTQ+ and/or living with HIV are minority groups that are still sometimes marginalized, stigmatized, or ostracized in the military, the chapters allow these Service members to establish emotional support networks and to exchange information that is importance for career advancement and professional growth. The chapters also provide a direct link for Service members to access services and programs that OutServe-SLDN offers.

Membership requirements: Although OutServe-SLDN provides services to the broader LGBTQ/HIV+ military and veteran communities—including spouses and families, and civilian Department of Defense workers—as well as to partnership organizations who provide complementary services to the military and veteran communities, membership in OutServe-SLDN is limited to people who: (a) identify as LGBTQ or live with HIV and (b) are serving, have served, or want to serve in the U.S. Armed Forces, including the Army, Navy, Air Force, Marines, and Coast Guard. To become a member, a person who falls within those demographics need only take one or more of the following actions: (1) join one of OutServe-SLDN’s Chapters or Forums, (2) sign up to OutServe-SLDN’s mailing list, (3) donate, (4) access OutServe-SLDN’s services, or (5) serve on OutServe-SLDN’s Board of Directors or Military & Veterans Advisory Committee.

Interrogatory No. 3. Describe in detail how OutServe has suffered direct injury in *Harrison* or *Roe*.

Objection: Plaintiff OutServe objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product privilege.

Response: OutServe-SLDN has suffered direct organizational injury at least in the following way: it has been required to divert the organization’s resources, at a minimum in the form of dollars and personnel time, to address and counteract policies, actions, and decisions from the Department of Defense and Service branches that harm its members who are living with HIV. Specifically, as related to the allegations of the Complaints in *Harrison v. Shanahan* and *Roe v. Shanahan*, OutServe-SLDN personnel have been required to divert organizational resources, funds, and personnel time as follows:

- Advocating before Congress to bring awareness to, request investigations about, and pass legislation concerning policies that limit Service members with HIV from deploying worldwide without a waiver, and the adverse effects of those policies;
- Interfacing with individuals within the Department of Defense (DoD) and Service branches on behalf of Service members with HIV who are adversely affected by the challenged policies;
- Assisting Service members with HIV who are adversely affected by the challenged policies to navigate and self-advocate before the Disability Evaluation System;
- Assisting Service members with HIV who are adversely affected by the challenged policies to prepare, submit, monitor, and press forward with waiver and/or exception-to-policy requests to avoid or minimize the effects of the challenged policies;
- Assisting Service members with HIV facing adverse administrative action as a result of the challenged policies; and
- Litigating against the DoD and Service branches to change policies that harm Service members with HIV.

In addition to the above, OutServe-SLDN's mission including programs and services designed to assist and support Service members who identify as lesbian, gay, bisexual, transgender, or queer and/or who are living with HIV. These programs and services include at least legal and quasi-legal administrative assistance, education, and social support. According to estimates, approximately 1,200 Service members are living with HIV, and there are approximately 350 new diagnoses every year among all branches of the Armed Forces. By involuntarily separating Service members with HIV, OutServe loses a constituency to provide services. That is, current government policy prevents OutServe from providing support and assistance—in the form of

legal and quasi-legal administrative assistance, education, and social support—to its members with HIV. Thus, government policy directly harms OutServe-SLDN’s ability to accomplish its mission.

Interrogatory No. 4. Explain when the individual plaintiffs in *Harrison* or *Roe* joined and became members of OutServe.

Objection: Plaintiff OutServe objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product privilege. Plaintiff objects that this interrogatory is vague and ambiguous with respect to its use of the phrase “joined and became members of OutServe.” As Defendants have not defined the terms “joined” and “became,” it is unclear how they are different. Plaintiff will interpret this phrase to mean “became members of OutServe.”

Response: See OutServe-SLDN’s Response to Interrogatory No. 1.

Interrogatory No. 5. Describe in detail how members of OutServe maintain good standing.

Objection: Plaintiff OutServe objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product privilege.

Response: To maintain good standing as a member of OutServe-SLDN, a member merely needs to take one of the following actions: (1) continue being a member of one of OutServe-SLDN’s Chapters or Forums, (2) continue receiving OutServe-SLDN’s mailing list, (3) make additional donations, (4) continue using OutServe-SLDN’s services, or access such services again, or (5) continue serving on OutServe-SLDN’s Board of Directors or Military & Veterans Advisory Committee.

Interrogatory No. 6. Describe in detail Sgt. Harrison's employment history since the termination of his employment as a Presidential Management Fellow.

Objection: Plaintiff OutServe objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product privilege. Plaintiff objects to this interrogatory because it seeks information neither relevant to Plaintiff OutServe's claims, nor reasonably calculated to lead to the discovery of such information; Sgt. Harrison's employment history has no bearing on whether Defendants acted unconstitutionally in creating their HIV-related policies or in applying those policies to Sgt. Harrison or other similarly situated members of OutServe.

Response: Since this interrogatory is not directed to Plaintiff OutServe-SLDN, it has no response. For a response to this interrogatory, see Plaintiff Harrison's Response to Interrogatory No. 6.

Dated: March 15, 2019

/s/ Scott Schoettes

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above document was served on this 15th day of March, 2019, to the following counsel of record via electronic mail.

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/s/ Andrew R. Sommer

EXHIBIT D

Blevins Deposition

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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NICHOLAS HARRISON, et :
al., :
Plaintiffs, :
v. :
PATRICK M. SHANAHAN, in : No
his official capacity as : 1:18-cv-641-LMB-IDD
Acting Secretary of :
Defense, et al., :
Defendants. :

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(Caption continued on next page)

██████████ ██████████ ██████████

Deposition of OUTSERVE-SLDN, INC.,
By and through its Designated Representative
ANTHONY BLEVINS
Washington, D.C.

Thursday, February 28, 2019
9:35 a.m.

Job No.: 262768
Pages: 1 - 236
Reported By: Jessica Croxford, RPR

1 (Caption continued from previous page)

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3 RICHARD ROE; VICTOR VOE; :

4 and OUTSERVE-SLDN, INC., :

5 Plaintiffs, :

6 v. :

7 PATRICK M. SHANAHAN, in :

8 his official capacity as : No.

9 Acting Secretary of : 1:18-cv-1565-LMB-

10 Defense; HEATHER A. : IDD

11 WILSON, in her official :

12 capacity as Secretary of :

13 the Air Force; and the :

14 UNITED STATES DEPARTMENT :

15 OF DEFENSE, :

16 Defendants. :

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1 Deposition of ANTHONY BLEVINS held at the
2 offices of:

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U.S. Department of Justice
1100 L Street, NW
Washington, D.C. 20005
(202) 307-0334

Pursuant to notice, before Jessica Croxford,
RPR, Notary Public in and for the District of
Columbia.

1 letters?

2 MS. CUTRI-KOHART: Numbers or letters?

3 THE REPORTER: Whatever you guys prefer.

4 MS. CUTRI-KOHART: Okay. I'm going to
5 call it "A."

6 (Exhibit A was marked for identification
7 and is attached to the transcript.)

8 THE WITNESS: Am I talking loud enough?

9 THE REPORTER: Yeah. You're great.

10 Actually, if you guys could maybe slow
11 down just a little bit.

12 MS. CUTRI-KOHART: Oh. Sorry.

13 THE REPORTER: If you could slow down
14 just a little bit for me, that would be
15 awesome.

16 MS. CUTRI-KOHART: Will do.

17 THE REPORTER: Thank you so much.

18 Q Okay. Have you seen this notice before?

19 A Let me just -- yes.

20 Q Do you understand what a 30(b)(6)
21 witness is?

22 A I do.

23 Q Do you understand what's in this notice?

24 A I do.

25 Q So you understand as a 30(b)(6) witness,

1 you're testifying on behalf of your nonprofit
2 organization, OutServe?

3 A Yes.

4 Q And then you understand that OutServe
5 has designated you to testify on its behalf as
6 to the topics in this notice?

7 A Yes.

8 Q And then you understand an organization
9 like OutServe can't speak to itself. So as a
10 30(b)(6) witness, you're speaking on behalf of
11 OutServe's knowledge, not just on your personal
12 experience?

13 A Yes.

14 Q And do you understand as you answer all
15 my questions today, you will be speaking on
16 behalf of OutServe?

17 A Yes.

18 Q Now, let's look at the list of topics in
19 this notice if you want to take a second to
20 look at them.

21 Do you understand that you need to be
22 prepared to testify on these topics today on
23 behalf of OutServe?

24 A Yes.

25 Q Okay. So we're here to talk about two

1 cases today. The first is a lawsuit, Harrison
2 v. Shanahan, and the second is called Roe v.
3 Shanahan. Both are pending in the Eastern
4 District of Virginia.

5 OutServe is a plaintiff in both of those
6 cases; is that correct?

7 A Yes.

8 Q Let's talk a little bit about what did
9 you do to prepare for this deposition.

10 So what did you do to prepare to come
11 today?

12 A I met with my attorney -- my legal and
13 policy director, Peter Perkowski, for a few
14 hours. We looked over some declarations. We
15 looked over this document.

16 Q What other documents did you look over?

17 A Just the declarations in this document.

18 Q Just the declarations in this document.

19 Did you bring anything with you today,
20 any document with you today?

21 A No.

22 Q And did you speak with anybody else
23 besides Peter?

24 A Just Mr. Perkowski.

25 Q Okay. And have you discussed this

1 deposition at all with anybody else at
2 OutServe?

3 A No.

4 Q None of the other employees at OutServe?

5 A No.

6 Q None of the board of directors?

7 A No.

8 Q None of the board of advisors?

9 A No.

10 Q Okay. So you haven't discussed this at
11 all.

12 Have you been asked to provide any
13 materials or documents in connection with this
14 lawsuit?

15 A No.

16 Q You have not provided any materials or
17 documents in connection with this lawsuit at
18 all?

19 A We have as OutServe, yes. Sorry. I
20 apologize.

21 Q Sorry. No. That's -- you personally
22 have not?

23 A Correct. OutServe has.

24 Q But OutServe has?

25 A Okay. Thank you for that clarification.

1 Q Okay. So let's get started. Before we
2 get into too many of the details, I want to
3 know a little bit more about you.

4 Can you tell me about your education?

5 A Yes. I got my Bachelor of Arts in
6 English, writing, and literature from the
7 University of Colorado, Denver. I got any
8 Master of Business Administration, my Doctorate
9 of Jurisprudence from Willamette University
10 College of Law.

11 Q Can you tell me what years
12 approximately?

13 A Oh, man. I got my BA in writing in
14 2014, maybe '15, and then I graduated with my
15 JD and my MBA in January.

16 Q Oh. Congratulations.

17 A Thank you.

18 Q So let's talk about your work history.
19 Let's start with your work at OutServe.

20 Your position at OutServe is? What is
21 it?

22 A I'm the executive director.

23 Q Is this a full-time position?

24 A It is.

25 Q Do you have any other

1 positions/employment alongside of your position
2 at OutServe?

3 A I do not.

4 Q Okay. What did you do before you served
5 as executive director at OutServe?

6 A So I've been with OutServe since 2015.
7 I came on as a law clerk and slowly moved my
8 way up in the legal and policy department. I
9 was the manager of operations and then the
10 director of operations, and I took over as
11 executive director in December.

12 Q And can you tell me approximately the
13 dates of each of those positions at OutServe?

14 A I'll try. I was an intern from -- for
15 almost all of 2015. I was promoted to manager
16 of operations in, I want to say, January 2016.

17 In June 2017, I was -- I was promoted to
18 director of law and policy operations. And
19 then -- oh, I missed -- I missed a title. I
20 apologize. In October of last year, I was
21 promoted to vice president of operations and
22 strategy. And then in -- like I said, in
23 December I was promoted to executive director.

24 Q Okay. And then before 2015, before you
25 started at OutServe, what did you do before

1 that?

2 A I was in school. I had a few
3 internships. I worked with the Obama White
4 House in January through June of 2012. I
5 worked as an education fellow for The Mission
6 Continues where I focused on teaching high
7 school kids about finances in -- right before I
8 went to law school, July 2014 through December
9 2014.

10 Q Okay. And does that cover kind of all
11 your law school internships?

12 A Yes.

13 Q And then before -- before law school,
14 what did you do?

15 A I was in the Navy. I was in the Navy
16 from 2007 through 2011.

17 Q Okay. 2007 to 2011; is that correct?

18 A Yes, ma'am.

19 Q Did you serve overseas at all during
20 that time?

21 A I did.

22 Q Can you tell me about that?

23 A I can tell you I served in Guam.

24 Q Okay. What was your position in the
25 Navy?

1 A My rating was a cryptologic technician.
2 I served as the information assurance officer
3 for the Western Pacific and Indian Oceans.

4 Q And was that your only assignment in the
5 Navy?

6 A The only assignment that was not
7 education-based, yes.

8 Q Okay. And tell me about your
9 education-based assignments.

10 A Of course. The first school I went to
11 was Nuclear Power School. I went to school to
12 be a nuclear reactor operator. That was from
13 2007 through the end of 2008. And then I was
14 selected to go to cryptologic technician
15 school. They were reopening that position in
16 the Navy. I went to Pensacola, Florida, for
17 that, left that job that June, and then went
18 directly to Guam.

19 Q Okay. And you stated -- the way you
20 stated that you can tell me you served in Guam,
21 is it possible you might have served overseas
22 in other places and cannot tell me?

23 A No.

24 Q Okay.

25 MR. PERKOWSKI: Is that a no, you can't

1 tell her or, no, you didn't serve overseas?

2 A No.

3 Q Thank you for the clarification.

4 A I did not -- there is no other place
5 overseas that I cannot tell you about.

6 Q Okay. Thank you.

7 Are you still in the military in any way
8 such as the reserves?

9 A No.

10 Q No. So what type of departure from the
11 military did you have?

12 A I had an honorable discharge.

13 Q Did you ever serve aboard a ship while
14 you were in the Navy?

15 A I was not assigned to a ship, no.

16 Q Did you spend time on a ship at all?

17 A Not deployed. I did -- I worked on
18 equipment on submarines.

19 Q Okay. But in -- domestically?

20 A No.

21 Q Oh.

22 A While I was in Guam.

23 Q While you were in Guam?

24 A Yes.

25 Q Thank you for the clarification.

1 Let's go back to your duties at
2 OutServe. Tell me again when you started as
3 executive director.

4 A December.

5 Q December. Can you tell me about the
6 duties you have as executive director?

7 A Of course. I manage all aspects of the
8 organization. I supervise all of our
9 employees, manage all of our programs. I
10 report directly to the board of directors and
11 all of the employees report directly to me.

12 Q Can you describe what a typical day at
13 OutServe would be like?

14 A There is no typical day. It -- it
15 depends on what the -- the initiative I'm
16 working on is. For example, yesterday was all
17 about policy. I tried to make sure throughout
18 the week I focus on all aspects of our program.
19 So I'll spend time working on our education
20 program, time working on our policy program,
21 and then time working on our legal department.

22 Q How many people work at OutServe as
23 employees that you manage?

24 A I'm the sole full-time employee.
25 There's about ten individuals that work with

1 me.

2 Q And are they part-time employees or
3 volunteers?

4 A A mix of both.

5 Q Okay. Can you approximate how many are
6 on payroll and how many are volunteers?

7 A Two of them are paid and all the rest
8 are volunteers.

9 Q And you supervise all of them on a
10 day-to-day basis?

11 A Yes, ma'am.

12 Q Okay. You mentioned you started at
13 OutServe as a legal intern.

14 Did you work as a volunteer at all with
15 OutServe before that?

16 A I did. I was actually a client of
17 OutServe back in 2010. After my case was
18 completed, I became a volunteer. I helped
19 found the chapters, the chapter in Guam,
20 actually. And I assumed that position until I
21 got out of the Navy. And then after my Obama
22 White House internship, I began volunteering as
23 the events director.

24 Q Can you explain what you mean by "a
25 client of OutServe"?

1 A I had a case in conjunction with Don't
2 Ask, Don't Tell.

3 Q Okay. And when did you found the Guam
4 chapter of OutServe?

5 A 2010. I'm not positive on the month. I
6 apologize.

7 Q What does that entail, founding a
8 chapter?

9 A That's a great question. So I was the
10 point of contact for OutServe headquarters in
11 the region. I was responsible for ensuring all
12 of the programs were administered within my
13 area of responsibility, which was Guam and the
14 Mariana Islands. I was responsible with making
15 sure we had connections with the community, the
16 local community as well as the individuals
17 stationed in OutServe -- or stationed there
18 that were part of OutServe, our membership.

19 Q And how do you reach out to the -- can
20 you explain how you reached out to the local
21 members in Guam?

22 A By "local members," do you mean --

23 Q Or the local -- you said you've reached
24 out to the local OutServe community.

25 Can you explain how you did that reach?

1 A Just for clarification, you mean the
2 service members or the networks that I made,
3 like the people that lived there?

4 Q Let's start with the service members.

5 A Okay. Thank you.

6 Word of mouth, really, and then we used
7 social media.

8 Q Okay. And then how about the local
9 people that lived there?

10 A Those were all word of mouth.

11 Q Word of mouth.

12 And when you say you used social media,
13 can you explain a little bit more about that?

14 A Sure. We use Facebook platforms mostly.
15 So we have about 81 chapters throughout the
16 world, and they all have their own Facebook
17 group and a Facebook page.

18 Q Okay. And we'll talk a little bit more
19 about that as we get further into the
20 deposition.

21 Okay. So I'm sure this is a favorite
22 topic of yours, but let's talk about OutServe
23 generally.

24 A Of course.

25 Q Tell me what OutServe's purpose is.

1 A We have a very broad mission. Our --
2 our goal is to provide free and direct services
3 for LGBTQ and HIV-positive service members.
4 And I really group those into three buckets.

5 THE REPORTER: Slow down just a little
6 bit.

7 A Sorry. So we have three -- I get very
8 excited about this. The legal and policy
9 bucket, the education bucket, and then the
10 membership services bucket or the chapters
11 bucket.

12 Q Okay. Can you tell me more? Let's
13 start at the beginning. The legal and policy
14 service bucket, what does that mean?

15 A Of course. So we provide pro bono,
16 direct advocacy services in the form of, you
17 know, direct representation, class action
18 lawsuits, writing letters on behalf of clients,
19 making sure that they are being properly
20 advocated for. And we do the same on the
21 policies side as well, speaking with members of
22 congress up at the federal and the state level.

23 Q Okay. And now the education bucket.
24 What does that mean?

25 A So we have education both for members of

1 the community, so our service members'
2 families, veterans, and then we have education
3 for service providers for that community. So
4 we want to make sure that those service
5 providers are able to actively, effectively,
6 and efficiently support our mutual
7 constituencies. And then our members are able
8 to actively -- what's the -- like, advocate for
9 themselves.

10 Q So what do you mean by "service
11 providers"?

12 A So veterans service officers are folks
13 that help to make sure our veterans receive
14 benefits. We work a lot with health care
15 individuals. We have -- we've done a few
16 trainings with folks on the state level, like
17 the Department of Labor, Department of Veterans
18 Affairs, stuff like that.

19 Q And then your last bucket was you said
20 the membership bucket?

21 A Yes.

22 Q And what does that mean?

23 A So that's everything that entails
24 supporting our membership, mostly the chapter
25 services. So when we're doing private events

1 supporting them -- excuse me; I have a cold --
2 supporting them at their commands for different
3 events, stuff like that.

4 Q Okay. When was OutServe founded?

5 A So OutServe-SLDN is a merged
6 organization. The SLDN portion of OutServe was
7 founded in 1993 and OutServe was founded in
8 2010.

9 Q Let's talk about SLDN for a minute.

10 What was its original purpose when it
11 was founded in 1993?

12 A The original purpose was to combat Don't
13 Ask, Don't Tell.

14 Q And then can you tell me a little bit
15 about its merger with OutServe and how that
16 came about?

17 A Of course. After Don't Ask, Don't Tell
18 was repealed, SLDN wanted to shift the focus of
19 its mission, and OutServe was already around
20 and providing a lot of the services SLDN was
21 looking to do, so the merger just happened
22 naturally.

23 Q So the two organizations now are
24 effectively one?

25 A Yes, ma'am.

1 Q And I think we covered this at the
2 beginning of the deposition, but I want to make
3 sure we're all in agreement that when I talk
4 about OutServe, especially about its history,
5 we're encompassing SLDN in those questions.

6 Is that a good understanding?

7 A Yes. Thank you.

8 Q Okay. Has OutServe's purpose changed
9 over time from that 2010 period to present?

10 A It has.

11 Q Can you describe a little bit about
12 that?

13 A Of course. We now more actively
14 advocate for our HIV-positive members, which
15 wasn't happening in 2010. We noticed that that
16 was in need, that our members wanted us to
17 advocate on their behalf for.

18 Q Can you tell me a little bit how that
19 evolution came about? When it came about, for
20 instance.

21 A We founded the HIV chapter, the forum,
22 in -- about seven years. That's when we first
23 learned there were individuals living with HIV
24 that considered themselves members and we
25 considered them members as well that were

1 proceedings, the DES, court-martials, and also
2 just generally exceptions to policies or
3 waivers, how does OutServe become involved?
4 Does the service member contact you?

5 A Yes. A service member contacts us.

6 Q How do they know to contact you?

7 A Many of them are already members.
8 They're part of our Positive Forum and they
9 know that we provide these types of service
10 to -- to that specific constituency.

11 Also from word of mouth. So individuals
12 that are living with HIV within the service
13 member community, when they receive services
14 from us and they're happy with it, they speak
15 to their friends who need the same services.

16 Q Okay. Kind of going back to the bigger
17 picture about OutServe, I want to talk just a
18 little bit more about OutServe's general
19 organization.

20 What OutServe's tax status?

21 A We are a 501(c)(3).

22 Q Okay. I have here a copy of OutServe's
23 bylaws. Here you go. Exhibit B.

24 (Exhibit B was marked for identification
25 and is attached to the transcript.)

1 Q First of all, are these the latest
2 version of the bylaws that I'm looking at?

3 A Yes, ma'am.

4 Q It says on the top this is the first
5 amended and restated bylaws.

6 Do you see that at the top of the page?

7 A Yes, ma'am.

8 Q Do you know when this revision was
9 adopted?

10 A June 2018. Let me double-check.
11 Correct. June 9, 2018.

12 Q Can you tell me what was changed between
13 this and the previous revision of the bylaws?

14 A I actually don't recall. My apologies.
15 I don't recall which changes between this and
16 the original.

17 Q Okay. You knew you were here as a
18 corporate witness, right?

19 A Yes, ma'am.

20 Q And the bylaws are one of the topics
21 that you were offered to testify on today?

22 A Yes, ma'am.

23 Q And that you knew you were supposed to
24 prepare for information that wasn't necessarily
25 within your personal knowledge?

1 A Yes, ma'am.

2 Q Okay. Can you talk generally about the
3 history of the bylaws and revisions that may
4 have occurred between OutServe's founding and
5 the present?

6 A Of course. We -- do you mind if I take
7 just a second?

8 Q Oh, absolutely.

9 A Thank you.

10 MS. BERMAN: And we'll ask your counsel
11 to provide a copy of the previous version of
12 the bylaws after the deposition.

13 A I do recall. I apologize.

14 Section 6 I know we -- was amended. My
15 predecessor's name -- title was changed from
16 executive director to the president and CEO.

17 Q And just to be clear, you're referring
18 to Article III, Section 6, correct?

19 A Yes, ma'am. On page 4.

20 That's the only change I can recall.

21 Q Okay. Let's talk a little bit about the
22 bylaws. The bylaws describes a board of
23 directors.

24 How many people serve on your board?

25 A We currently have 12 individuals serving

1 on the board of directors.

2 Q And how long does a board member serve
3 for?

4 A So they are elected to a term of three
5 years, and they can do up to two terms. So
6 they can do up to six years.

7 Q Okay. And I have here -- we'll call
8 this Exhibit C.

9 (Exhibit C was marked for identification
10 and is attached to the transcript.)

11 Q Is this list you're looking at as
12 Exhibit C your current list of board of
13 directors? And you can take a minute to read
14 down the list.

15 A Three of the individuals listed on the
16 board of directors have recently resigned
17 their -- their position.

18 Q Who are those people?

19 A Sharon Bracket.

20 Do you need me to list where they are on
21 the list?

22 Q No. You can just state their names.

23 A Robert Dockendorff and Lee Reinhart are
24 no longer on the board.

25 Q And have they been replaced --

1 A No, ma'am.

2 Q -- with people that are not on this
3 list?

4 A No, ma'am.

5 Q Okay. So there's nobody serving on the
6 board that is not currently on this list?

7 A No, ma'am.

8 Q Okay. So you mentioned members of the
9 board of directors are elected.

10 Can you describe how that election
11 process works?

12 A Just for clarification, do you mean
13 elected onto the board or elected as an
14 officer?

15 Q Let me just step back a minute.

16 How are members of the board of
17 directors selected?

18 A We have a nominations committee. So
19 they -- they provide an application and our
20 nomination committee reviews it and the full
21 board votes.

22 (Reporter clarification.)

23 A We have a nominations committee. So an
24 individual that is interested in joining the
25 board will submit an application to the

1 nominations committee. The nominations
2 committee will review it, and then the full
3 board will vote on whether or not they will be
4 added to the board.

5 Q Who serves on the nominations committee?

6 A We have -- Joshua Fontanez serves on our
7 nominations committee and Monique Clarke.

8 Q So other board members serve on the
9 nominations committee?

10 A Yes, ma'am.

11 Q And do any nonboard members serve on the
12 nominations committee?

13 A No.

14 Q Okay. And then -- what you're saying is
15 the members on the existing board vote on
16 bringing in new members of the board?

17 A That's correct.

18 Q How was the initial board established
19 when the organization was founded?

20 A The then -- the founding executive
21 director reached out to a few individuals and
22 asked them to join the board of directors.

23 Q And formed the board?

24 A Yes, ma'am.

25 Q Okay. How often do the new member

1 selections occur for the board of directors?

2 A Do you mean when the nominations

3 committee --

4 Q Yes. When does the nominations

5 committee propose new board members?

6 A Every six months.

7 Q Every six months.

8 What are the duties of the people who

9 serve on the board?

10 A They govern the organization. So I

11 report directly to them. They're my bosses?

12 They -- they assist with other aspects of the

13 organization as well, like fundraising.

14 Q What do you mean by "govern the

15 organization"?

16 A So they set the mission of the

17 organization and our strategic goals.

18 Q Do different members of the board have

19 different individual duties?

20 A Yes.

21 Q Can you describe that in a little bit

22 more detail?

23 A Of course. Our treasurer serves as the

24 chief finance officer of the organization. We

25 have two co-chairs that serve -- they assist me

1 more than the other board members. I speak
2 with them more often for governance issues. We
3 also have a few individuals that help
4 specifically in their areas of expertise, like
5 communications.

6 Q Okay. Is there any board member
7 specifically tasked with dealing with your
8 HIV-related initiatives?

9 A Yes.

10 Q Who is that?

11 A Wesley Reynolds.

12 Q And what does that mean? What is his
13 involvement in those initiatives?

14 A Wesley Reynolds is living with HIV
15 himself, and he ensures that the strategic
16 mission and goals of the organization align
17 with the -- our members that are living with
18 HIV.

19 Q So does he provide any guidance on legal
20 strategy?

21 A No.

22 Q But policy he does work on?

23 A No. He mostly works with the -- he
24 mostly works with the membership aspect of our
25 HIV work.

1 Q Can you explain a little bit more what
2 that means?

3 A Sure. So he's a member of the Facebook
4 organization. He makes sure that when people
5 ask questions, those are appropriately answered
6 in a timely fashion, provides information when
7 people ask, like, what next steps are in the
8 process and stuff like that.

9 Q Okay. How many times does the board
10 meet a year -- in a year?

11 A Twelve.

12 Q Monthly, then?

13 A Yes, ma'am.

14 Q Okay. And so this year, say, 2019, how
15 many times would they have met this year so
16 far?

17 A So far, we've met twice.

18 Q Twice.

19 What topics are generally discussed at
20 board meetings?

21 A I provide an update on what we've done
22 in the organization, the successes that we've
23 had, the issues that we are seeing. They talk
24 a bit about our strategic goals to make sure we
25 are -- we're meeting those and whether or not,

1 based on the needs of our members, those need
2 to be pivoted in any way.

3 Q Are the -- either the Harrison or the
4 Roe lawsuits discussed at the board meetings?

5 A They receive vague updates.

6 Q What do you mean by "vague updates"?

7 A We do not provide the board of directors
8 with specific information about the updates.
9 We just let them know that they are happening
10 and basic seeing of where the cases are at that
11 point in time.

12 (Reporter clarification.)

13 A Basic -- make sure that they have a
14 basic understanding of where those cases are at
15 that time.

16 Q And before OutServe decided to enter
17 these lawsuits as a plaintiff, was it discussed
18 in more detail at the board meetings? Or --

19 A No. So when we speak with the board of
20 directors, we make sure they have a basic
21 overall understanding, however, because a lot
22 of the issues that we do see with our
23 membership, especially within the HIV-positive
24 community, we know that those could become
25 policy or legal decisions. We do not provide

1 specific information to the board.

2 Q How about the board's involvement in
3 OutServe's decision to actually become a
4 plaintiff in a lawsuit? Is that discussed in
5 more detail?

6 A Yes, ma'am. That is -- they -- that
7 is -- we make sure that it aligns with the
8 strategic goals, and they are involved in that
9 conversation.

10 Q Okay. Does the board prepare minutes of
11 its meetings?

12 A It does.

13 Q How are the officers of the board of
14 directors selected?

15 A They are elected by the other sitting
16 board members.

17 Q Okay. And does this list on
18 Exhibit C -- it lists the names of the
19 officers. Is this the most current list of
20 officers or has any changed?

21 A No, ma'am. Those have changed.

22 Q Can you give me the names of the current
23 officers?

24 A Yes, ma'am. Wesley Reynolds remains the
25 co-chair, Joshua Fontanez is now a co-chair,

1 Jeffrey Mueller is now the treasurer, and
2 Monique Clarke is now the secretary.

3 Q Okay. Who were the officers when
4 OutServe made the decision to file the Harrison
5 lawsuit?

6 A The individuals that are listed here on
7 this document were the officers at that time.

8 Q Okay. The individuals listed on
9 Exhibit C?

10 A Yes, ma'am.

11 Q And how about the Roe lawsuit?

12 A The individuals listed on Exhibit C.

13 Q Okay. When we talked a little bit about
14 OutServe's purpose and these three general
15 buckets, can you tell me a little bit more
16 about the specifics of OutServe's current
17 initiatives in those -- in those general areas?

18 MR. PERKOWSKI: Objection. Vague.

19 Q Let's start with the -- the membership
20 bucket. Are there specific initiatives ongoing
21 in that bucket that you can describe in more
22 detail?

23 A Of course. So our membership -- after I
24 answer this question, do you mind if I go blow
25 my nose?

1 Would you say that the committees do
2 touch on HIV policies in the military as part
3 of their broader missions?

4 A So our events committee, we do events
5 focused around HIV-positive service members.
6 For example, they'll discuss it. Those larger
7 conversations happen within the entire board,
8 though, not a specific committee.

9 Q Okay. Let's talk about Article IV of
10 the bylaws, which is entitled Membership.

11 What does "membership" mean in this
12 section?

13 A So this section is recurring [sic] to
14 our requirement under Delaware law for our
15 members of the board of directors to be
16 designated as members of the organization.

17 Q Okay. And how does a person become a
18 member as described in this section?

19 A As described in this section, these are
20 members of the board. So they go through the
21 nominations committee.

22 Q We've talked about what the election
23 means already and when they're held.

24 This section also refers to an annual
25 meeting. What is the annual meeting compared

1 to your monthly meetings that we talked about
2 before?

3 A Sure. So the members of our board of
4 directors are located throughout the country
5 right now and soon to be the world with an
6 individual moving soon. So those largely
7 happen via BlueJeans or Skype or phone. The
8 annual meeting is when they all come together
9 and meet in person.

10 Q And when is the annual meeting held?

11 A Around Pride. Last year, it was June.
12 I think this year, it's going to be May.

13 Q At last year's annual meeting, were the
14 Harrison and Roe lawsuits discussed?

15 A Yes.

16 Q Can you describe a little bit about the
17 level of detail in which they were discussed?

18 A Again, very vague. We provided a
19 document from the legal department where we
20 basically talked about the current standing.

21 Q Did the board weigh in at all during
22 those discussions, or was it more of a status
23 update?

24 A A status update.

25 Q How about the previous annual meeting?

1 Were either the Harrison or Roe lawsuits being
2 contemplated at that time or discussed?

3 A My recollection is no.

4 Q How about HIV-related lawsuits in
5 general? Was that discussed at all at the
6 previous annual meeting?

7 A My recollection is that they did discuss
8 HIV-positive issues, yes.

9 Q Including the potential to bring a
10 lawsuit or more administrative proceedings,
11 sort of?

12 A More administrative proceedings.

13 Q Okay. OutServe also has an advisory
14 council; is that correct?

15 A Yes, ma'am.

16 Q Can you explain what that is?

17 A Of course. When I took over the
18 organization, I thought it was important to
19 have our membership have more of a stake in the
20 organization. So they -- these are all
21 actively serving individuals, military spouses,
22 or veterans within the LGBT or HIV-positive
23 community, and they really advise myself and my
24 staff on the programmatic elements that we have
25 in the organization to make sure that our

1 memberships' voices are being heard and
2 directing how we're moving forward.

3 Q So how do they meet?

4 A They meet virtually right now, so
5 BlueJeans and via phone. We are also planning
6 on having them -- or trying to have them meet
7 in May as well.

8 Q And how do they provide recommendations
9 to yourself and the board? In what form do
10 they provide their recommendations?

11 A Usually verbally. I have -- during the
12 meeting, so verbally or we'll discuss it.

13 Q Okay. How often do they meet?

14 A Once a month.

15 Q Okay. So who exactly is serving on the
16 advisory council in terms of where do they come
17 from? How are they selected?

18 A So these were all individuals that are
19 stakeholders within the LGBT or HIV-positive
20 military and veteran communities. We went
21 through an extensive interview process. I -- I
22 had a list of folks that I recommended to the
23 board of directors, and they -- they gave me
24 the go-ahead to establish the board of advisors
25 after that.

1 Q So they applied for the position. How
2 did they learn that there was an advisor -- a
3 board of advisors being formed to apply to?

4 A They -- they were directly reached out
5 to by myself or my predecessor.

6 Q So there wasn't any form of general
7 requests for nominations or applications?

8 A No, ma'am.

9 Q Okay. When did you establish the first
10 advisory council?

11 A October 2017.

12 Q Okay. And if you look at the list of
13 members in Exhibit C, is that the current
14 membership list, or have there been changes?

15 A There are two additions.

16 Q And who are those?

17 A So Brynn Tannehill, that's B-R-Y -- did
18 you need me to spell it?

19 Q Go ahead and spell it for the reporter.

20 A B-R-Y-N-N. Tannehill is
21 T-A-N-N-E-H-I-L-L. And then we have
22 Matthew Phelps, and Phelps is P-H-E-L-P-S.

23 Q And nobody on that list has left the
24 advisory board?

25 A No, ma'am.

1 Q And how often do you select new members
2 for the board? Is there a cycle -- or the --
3 sorry. The board of advisors. Is there a
4 cycle?

5 A We -- we -- it hasn't happened yet.
6 However, it's going to be an annual sort of
7 assessment.

8 Q Okay. And in the future, do you plan on
9 having an open application, or is it going to
10 follow the same process where you contact
11 people and ask them to apply?

12 A It will be an open application.

13 Q And in terms of that selecting members
14 of the board of advisors, how did you perform
15 that selection?

16 A Do you mean the interview process?

17 Q Yes.

18 A I -- I spoke with them about the charges
19 of the board of advisors and asked them -- I
20 wanted to make sure they had the time for it.
21 This board is very important to me because I
22 want to make sure that the mission of our
23 organization is strategically aligned with the
24 needs of our members. So I don't want people
25 sitting on the board that can't actively

1 contribute to that.

2 I also wanted to make sure that we had
3 diversity in terms of identities and services.
4 So we have somebody living with HIV on it. We
5 have people who identify as lesbian on it. I
6 wanted all of the membership to be able to see
7 themselves on this board. And then I wanted to
8 make sure that their competencies were able to
9 contribute to the organization.

10 Q And you made the decision as to who
11 served on the board. Did you consult with
12 anybody else, other staff members or the board
13 of directors?

14 A So my predecessor and I did. We did
15 consult with all of our staff members and we
16 did speak with the board of directors about it
17 as well.

18 Q And did the board of directors have any
19 form of vote or confirmation in terms of your
20 selections of people, or did they delegate the
21 selection entirely to you?

22 A They delegated it.

23 Q Okay. How did you identify these people
24 that you invited to serve on the advisory
25 council?

1 A I came up with a list of folks that I
2 thought would be good. Not all of them ended
3 up making it on the board. My predecessor did
4 as well. But we also received names from the
5 board of directors and then my staff. And then
6 after every conversation we had with an
7 applicant, we asked them, "Is there anybody
8 else you think we should speak with?"

9 Q And of the people that didn't make it on
10 the board of advisors, why was that?

11 A We wanted to keep it fairly small. We
12 didn't want, you know, a board of, like, 30
13 people. And we -- we also wanted to make sure
14 that we kept spots for specific identities. We
15 didn't want all white lesbians, for example.

16 Q And are all the members that you invited
17 to apply to be on the advisory council, were
18 they already members of OutServe?

19 A Yes.

20 Q And they're currently members of
21 OutServe as well?

22 A That's correct.

23 Q Okay. Can you explain a little bit more
24 about what the advisory council does to provide
25 you with direction or advice or ideas?

1 A Of course. So their charge is really to
2 make sure that our programmatic elements -- I'm
3 trying not to apologize, but I --

4 Q If you need more water after you finish
5 the question, just let me know and you can --

6 A So are we starting --

7 Q We need to finish the question. Yeah.

8 A No. I mean, I'll restart my answer. Is
9 that okay?

10 Q Oh, okay.

11 A Yeah. So the board of advisors' charge
12 is really about the programmatic elements of
13 the organization. So when we have -- first, we
14 had them assess, really, all of the programs
15 that we currently have to make sure that
16 they're meeting the needs of our membership.
17 We're not doing anything that we don't need to
18 do or that one of our sister organizations in
19 the community's already doing, reinventing the
20 wheel.

21 They're working in needs assessment
22 right now. So a survey that's going to go out
23 to all of our membership in which we'll be able
24 to get feedback from them to see how our
25 mission can pivot, what we can continue doing,

1 what we should change doing. And we speak
2 about this during our monthly meetings.

3 Q Okay. Was the advisory council involved
4 in OutServe's decision to become a plaintiff in
5 either the Harrison or Roe suits?

6 A No.

7 Q Have they been involved in any way in
8 the Harrison or Roe suits?

9 A No.

10 Q Are they involved in any way in
11 providing advice on legal initiatives of
12 OutServe?

13 A No.

14 Q To your knowledge, are you aware if they
15 ever discussed any of the HIV-related lawsuits
16 at the advisory council?

17 A To my knowledge, no.

18 Q Do you go to the advisory council
19 meetings? Or --

20 A I do.

21 Q Okay. Do members of the advisory
22 council get paid for their services?

23 A No.

24 Q Do they get reimbursed for expenses?

25 A No.

1 Q Okay. So they are entirely volunteer?

2 A That's correct.

3 Q How much time do they need to devote to
4 be participants on the advisory council?

5 A So that varies by person. When they
6 applied, I told them no more than 15 hours a
7 month with, you know -- I -- I told them, "You
8 won't have to do more than five hours of work a
9 week" and we fall within that rhythm.

10 Q Okay. Besides meeting, what do they do
11 as work?

12 A So they're working on the needs
13 assessment, like I mentioned. A lot of them
14 are also working on our membership services.
15 So a lot of them were leaders in our local
16 chapters. And I want to make sure, again, that
17 our members feel represented by the
18 organization at-large. So half of them are
19 working on the needs assessment; half of them
20 are working on how to better strengthen our
21 chapters.

22 Q What does that mean? How do you work on
23 better strengthening the chapters?

24 A So it's kind of a pseudo-needs
25 assessment. Basically, they're going in and

1 saying -- for example, OutServe Germany is our
2 chapter in Germany. "How can OutServe
3 headquarters better support the work that
4 you're doing on the ground?" or "How can we
5 better communicate with you?"

6 Q Okay. And I see on this list that
7 Nick Harrison is listed as a member of the
8 advisory council.

9 This is the same Nick Harrison that's
10 the plaintiff in one of these lawsuits?

11 A That's correct.

12 Q And when did Nick Harrison join the
13 advisory council?

14 A In October 2017.

15 Q So at its founding?

16 A Or -- yes, at its founding.

17 Q And he is still a member of the advisory
18 council?

19 A That's correct.

20 Q Okay. Are either the plaintiffs in the
21 Roe or Voe lawsuits members of the advisory
22 council?

23 A No.

24 Q Have they ever been?

25 A No.

1 an undergrad. And all of our legal and policy
2 interns are law students.

3 Q Where is your staff located?

4 A So we're a distributed team. Our
5 headquarters is in D.C. However, our staff are
6 throughout the country.

7 Q Your paid staff, are they in D.C.?

8 A Just myself. So --

9 Q Go ahead.

10 A Corrine Cole is in Oregon and
11 Peter Perkowski is in California.

12 Q Okay. And then your volunteer staff
13 is --

14 A Again, distributed. We have folks in
15 Georgia. We actually have one person in
16 Germany. A lot of them are on the eastern side
17 of the United States.

18 Q And how are your staff involved in
19 selecting OutServe's initiatives or
20 recommending projects?

21 A So we have staff meetings, and those are
22 virtually held through BlueJeans where I
23 basically talk about the strategic direction of
24 the organization. I want to hear, for example,
25 what they're hearing from our members through

1 the chapter services, what they're hearing
2 through the legal department. And then we
3 collaborate -- a very democratic process -- on
4 how we can best address those -- what programs
5 we can bring up.

6 Q Do you make the final decision or is it
7 done through consensus or is it done through a
8 recommendation to the board? How are final
9 decisions made?

10 A I -- I really try and do consensus-based
11 decision-making. However, everything needs to
12 fall within the strategic direction of the
13 organization, and I want to make sure that we
14 don't deplete our resource, so I have the final
15 say.

16 Q Can you tell me how your staff was
17 involved in OutServe's decision to become a
18 plaintiff in the Harrison and Roe suits?

19 A So only the -- the legal and policy
20 staff, so Peter Perkowski and Corrine Cole were
21 involved, and -- and they basically provided
22 the information that they knew and provided
23 their recommendation.

24 Q Can you explain a little bit more on how
25 they would do that and what they would include

1 in their recommendation?

2 A So each department has department
3 meetings as well. Because we're a distributed
4 staff, it's important for them to be able to
5 collaborate with each other outside of email.
6 So during -- that was discussed during one of
7 the department meetings. And a recommendation
8 would essentially be "I think we should pursue
9 this" or "I don't think we should pursue this."

10 Q How are the -- your staff volunteers
11 involved in selecting OutServe's projects?

12 A For clarification, are you referring
13 specifically to legal and policy projects or
14 projects as a whole?

15 Q Projects as a whole.

16 A So the same way. I treat my volunteer
17 staff members very similarly to my paid staff
18 members with just -- I don't expect as much
19 time because they're volunteers. So we also
20 have calls frequently. I want to hear what
21 they're -- what they are hearing on the ground
22 and what their recommendations are to address
23 it.

24 Q And OutServe has other volunteers that
25 you wouldn't consider staff; is that right?

1 A Correct.

2 Q And how are those other volunteers
3 involved in -- in directing OutServe's projects
4 or initiatives?

5 A So our biggest pool of volunteers who I
6 do not consider staff are our chapter leaders,
7 and those are the folks that lead the chapters
8 and the forums for our membership. So they're
9 my eyes and ears on the ground. We -- I -- I
10 speak with them frequently. I want to make
11 sure that the concerns that are seen are being
12 addressed. And then occasionally before we
13 launch a program, we'll have them do, like, a
14 test drive of it to make sure that it meets all
15 of the needs.

16 Q And were any of that type of volunteers
17 nonstaff volunteers involved in OutServe's
18 decision to bring the Harrison or Roe lawsuits?

19 A No.

20 Q Not at all?

21 A No.

22 Q Okay. Okay. Let's talk about your
23 local chapters. How many local chapters does
24 OutServe have?

25 A We're up to 81 chapters and forums.

1 Q Eight-one?

2 A Yes.

3 Q You said chapters and forums.

4 What does that mean?

5 A So they're basically run the same. I
6 make the distinction because the chapters are
7 very location-based whereas the forums are
8 identity-based.

9 Q So what would a forum look like?

10 A We have forums for folks that are
11 serving in the Navy, forums for folks that
12 identify as trans, that are living with HIV.

13 Q But they would be geographically
14 dispersed?

15 A Correct.

16 Q Okay. How does the national
17 organization work with the local chapters?

18 A So we push the programs down through our
19 chapter leaders, the folks that manage the
20 chapters and the forums. And just for
21 clarification, when I say "chapters," I'm also
22 lumping in the forum leaders. They help us
23 push that out to their membership on the ground
24 or distribute it if it's a forum. And then
25 they report back up as well. So if they

1 receive feedback or if they're having -- if
2 they're hearing any issues or concerns, they
3 report that back up to us.

4 Q And how do you push that down to them?
5 Electronically? Via telephone? In person?

6 A So we -- we, again, use Facebook.
7 Social media, right? We have a secret group
8 for all of our chapter leaders.

9 Q So there's one secret Facebook group
10 that all of your chapter leads are on?

11 A That's correct.

12 Q Okay. And then your forums, can you
13 list what your forums are?

14 A Yeah. I'll try and get all of them.

15 Q Okay.

16 A They are all on the website as well. We
17 have one for bisexuals, transgender
18 individuals, people living with HIV, one for
19 each of the services. We have rank specific,
20 so E1 through E5 and then officers and junior
21 officers. We have some based on religious
22 identities.

23 I think I covered them all.

24 Q So how do -- let's just focus on local
25 chapters for a minute, and then we'll go to

1 forums.

2 How do your local chapters meet?

3 A So that varies. It depends on how easy
4 it is for them to meet in person. For example,
5 our chapter in Afghanistan. It's -- it's more
6 difficult because they're spread out and just
7 the duty. So, for example, in Afghanistan,
8 they try and get coffee once a week. My
9 Germany chapter just had a family dinner where
10 they got together and, you know, they shared a
11 meal together. They watched RuPaul's Drag
12 Race. Yeah.

13 Q Okay. So would you say some chapters
14 have regular meetings and some are more ad hoc?
15 Or --

16 A I wouldn't say ad hoc. I would just say
17 that the way that they are able to interact
18 with their members is a little bit different
19 because of how distributed they are. So as
20 opposed to getting together in person, they
21 might just have regular phone calls or the
22 in-person meetings might be less frequent.

23 Q And how -- in general, how often would
24 you expect a chapter to meet with each other?

25 A It's usually once every two weeks.

1 Q Okay.

2 A Yeah.

3 Q Now, how about the forums, which
4 obviously are geographically dispersed? How do
5 they meet?

6 A Virtually.

7 Q Virtually?

8 A There's -- I apologize for speaking over
9 you. There's folks that are co-located within
10 those forums. So, for example, if folks that
11 are living with HIV or folks that are
12 transgender are stationed together, they'll
13 organize something together with them. But
14 mostly the meetings happen virtually.

15 Q And by "virtually," what do you mean by
16 that?

17 A Via phone, Skype.

18 Q Do they also meet on their Facebook
19 groups, or is that not considered a meeting?

20 A I mean, they're consistently posting on
21 their Facebook group and sharing information,
22 yes.

23 Q Okay. So you -- going back, you said
24 the national organization pushes initiatives
25 down to chapters. What does that mean?

1 A So when we launch a program, we don't
2 want, you know, our membership to find out via
3 Tweet. We want it to come from, you know, our
4 leadership, our chapter leaders. So we'll say,
5 "Hey, this education program was just launched.
6 You should take advantage of it," and our
7 chapter leaders will post that. Our forum
8 leaders will post that.

9 Q Does the national organization direct
10 chapters towards any particular activity?

11 A So, again, because of -- so chapter
12 initiatives are really based on the needs of
13 the membership. So what a chapter in Germany
14 might need might be completely different from
15 Minnesota. So we don't say, "You need to meet
16 every two weeks to have a family dinner."
17 However, there are aspects that we say need to
18 occur, such as sharing initiatives that are
19 happening.

20 Q Okay. And how about local chapters
21 providing direction or advice to the national
22 organization? How does that work?

23 A Do you mean, like, when they report up
24 to me?

25 Q When they report up to you.

1 A Sure. So I try and meet with all the
2 chapter leaders -- it's a little difficult
3 because they're all over the world -- once
4 every two to three months. So I will host,
5 like, a -- either a Facebook Live event or --
6 you know, where I'm on camera and they can see
7 me and they can type in question, or I'll try
8 and pull it onto BlueJeans or Skype where we
9 can all see each other and have a dialogue.

10 Additionally, they -- they use Facebook
11 a lot. So they'll post on there, like, "This
12 is what we're seeing" and -- yeah.

13 Q So you mentioned chapter leaders.

14 Do all the local chapters have leaders?

15 A So because of the nature of the
16 military, people PCS and move around a lot. So
17 I do have two individuals that cover down for
18 all of the chapters that don't have an
19 identified leader because they're on
20 deployment, for example. So there's always a
21 leader over a single chapter.

22 Q Who are those two individuals?

23 A So they're members of my staff.

24 Ashley Carothers -- volunteer staff.

25 Ashley Carothers and Matthew Hardwig.

1 Q And they just fill in for leaders when a
2 chapter doesn't have a leader?

3 A Exactly. We want to make sure that
4 there's continuity in the chapters and their
5 operations and their membership gets what they
6 need.

7 Q How are chapter leaders selected?

8 A They go through an application process.
9 So they will first fill out an application and
10 submit it to Ashley and Matthew, the two
11 volunteer staff members that oversee it.
12 They'll do the first interview. Then it will
13 go up to me. I'll do an additional interview.
14 And we make the decision as a consensus after
15 both of those interviews are done.

16 Q And so members of the chapter, do they
17 have any feedback on who becomes the leader?

18 A They do. We have the final say. We
19 want to make sure that the individual in this
20 position, because they kind of become a
21 representative of the organization, fits
22 into -- agrees with the strategic direction and
23 stuff like that. We do, however, put out calls
24 for folks, like "Hey, we need a chapter in
25 this. Can you guys recommend somebody who you

1 think would be good?"

2 Q How often do the leaders change?

3 A It depends on the assignment, where they
4 are. So in, for example, Afghanistan, that
5 could change every year just because of those
6 assignments. However, here locally, especially
7 in the continental United States, we have a lot
8 of reservists and veterans that are involved,
9 so there's more continuity there.

10 Q So is there a specific time period in
11 which you ask for or receive new applications
12 to be leaders, or is it done on circumstance?

13 A So that's continually ongoing. So
14 there's no set time within the military when
15 people PCS because they're striving for that
16 continuity. So we're always accepting
17 applications.

18 Q Okay. And so in general, somebody would
19 leave as a leader because they've left the
20 location where the chapter is?

21 A Correct. So if -- for example, if my
22 chapter leader in Minnesota got transferred to
23 Germany, he would not automatically become the
24 chapter leader of Germany.

25 Q Is there an expected term of service for

1 a chapter leader, like, say, a veteran or
2 retiree who's fixed in place? Would they have
3 a fixed term of service?

4 A So when we interview them, we ask them
5 to do at least two years just for continuity
6 purposes. However, if they need to leave for
7 medical reasons or something, we're not going
8 to hold them to it.

9 Q And then how about the forums? Is the
10 process the same? Is it different?

11 A Exactly the same.

12 Q Exactly the same. Okay.

13 And since those -- they can be a chapter
14 leader anywhere in the world, would they have a
15 fixed term of service?

16 A So we understand that folks' desires to
17 remain involved fluctuates, so we ask our forum
18 leaders to do two years as well. However, they
19 can certainly continue that if they'd like to
20 and if the members of their forum are happy
21 with their leadership.

22 Q How do you assess if the members of the
23 forum are happy with the leadership?

24 A I ask. Or, you know, they're very vocal
25 as well. We've had a few folks message and

1 say, "Hey, we're not getting any leadership. I
2 think you need to make a leadership change."

3 Q So when somebody's a member in one of
4 your local organizations or forums, what does
5 that mean?

6 A I don't think I understand the question.

7 Q For example, say I am now in Germany and
8 I would like to become a member of your German
9 chapter, how do I join?

10 A So there's a few ways. We always try
11 and make sure everybody is added into the
12 Facebook chapter because that's where a lot of
13 the information is pushed out. However, we
14 don't -- not everybody uses Facebook, so we
15 have Instagram pages, Twitter pages. They can
16 join those as well. Not every chapter does
17 have those. They -- but by -- just by going to
18 the meeting, they're considered a member of the
19 chapter.

20 Q Okay. And do you consider all of the
21 members of your local chapters members of the
22 national organization?

23 A We do.

24 Q Now, how about the forums? How does one
25 become a member of a forum?

1 A The exact same way. So we have the
2 Facebook group. They'll join into that.
3 Because that's more dislocated, membership of
4 the forum is more being added into that forum's
5 social media. And when they're a member of
6 that social media group, they are considered
7 members of the national organization as well.

8 Q We'll talk about a little bit about this
9 in more detail --

10 A Sure.

11 Q -- in a little bit.

12 So were any of your local chapters or
13 forums involved in OutServe's decisions to
14 become a plaintiff in either the Harrison or
15 the Roe suit?

16 A No.

17 Q Was there any discussion about becoming
18 a plaintiff in, say for instance, your
19 HIV-positive forum?

20 A No. We did not discuss whether or not
21 we should become a plaintiff in that forum.

22 Q Okay. Let's just jump to another topic
23 here really quickly. Does OutServe's legal and
24 policy initiatives involve any contact with
25 current members of Congress?

1 (A recess was taken.)

2 BY MS. CUTRI-KOHART:

3 Q I think it's time to -- we've kind of
4 talked around your membership, but I want to
5 talk more specifically about what it means to
6 be a member in OutServe.

7 A Sure.

8 Q So first of all, just as a point of
9 clarification, your bylaws talk about members,
10 but those are members of the board, correct?

11 A You're referring to --

12 Q Sorry. I'm referring to Article IV,
13 Membership.

14 A That's on page 5.

15 Yes. That's referring specifically to
16 the members of the board of directors.

17 Q But now we're going to go talk about
18 actual members of OutServe. Can you explain
19 the difference?

20 A Of course. So the members of OutServe
21 are folks -- so we really define "membership"
22 in four ways. So if they identify as a member
23 of the LGBT military and veteran community and
24 they donate to us, we consider them members.

25 Likewise, if they identify the same and

1 they are a member of our chapters and forums,
2 they're considered members.

3 If they subscribe to our newsletters
4 with those same identities, they're members.

5 And then -- oh. If they access our
6 services and they use those identities, they're
7 members.

8 And we do have a fifth category, but
9 it -- so if they're a member of a -- like, a
10 volunteer leadership position like the MAC or a
11 chapter leader, they're also a member, but they
12 also fall into other categories.

13 Q So it would be that plus --

14 A Yes.

15 Q -- another category?

16 And is this definition reflected
17 anywhere in your bylaws?

18 A No.

19 Q Is it reflected anywhere else in your
20 kind of organizational documentation?

21 A It's a common understanding. It's not
22 memorialized in a document, no.

23 Q Does a -- let's -- I'm trying to think
24 of the way to break this down.

25 First of all, the five ways you

1 described, are there any other ways beyond that
2 to become a member of OutServe?

3 A No. Those -- those are the five broad
4 categories we use.

5 Q Okay. So now talking about these five
6 broad categories, do the people that enter into
7 any of these arrangements, are they positively
8 aware that they are becoming a member of
9 OutServe by doing that? For instance, let's
10 talk about Category 4, when somebody calls to
11 ask legal advice. Would they fall into
12 Category 4?

13 A Yes.

14 Q Which is accessing your services?

15 A Yes.

16 Q Do they know when they call you to ask
17 for legal advice, they are becoming a member of
18 OutServe?

19 A We --

20 MR. PERKOWSKI: Objection. Calls for
21 speculation. Lacks foundation.

22 Q Go ahead and answer if you can.

23 A So we commonly say, "Thank you for your
24 service," and then we ask them if they would
25 like to be connected in any other manner,

1 though we don't say, "You are now a member of
2 OutServe," no.

3 Q Let me ask the same question about a
4 newsletter subscription.

5 So how does somebody subscribe to the
6 newsletter?

7 A Through a link on our website.

8 Q And when they follow that link, does it
9 say anything that says, "By subscribing to this
10 newsletter, you're becoming a member"?

11 A It says, "Thank you for your
12 membership."

13 Q It does say, "Thank you for your" --

14 So before or after they subscribe to the
15 newsletter, does it -- does it inform them
16 they're becoming a member?

17 A After they subscribe, they're
18 informed -- it says, "Thank you for your
19 membership."

20 Q Okay. How about when somebody donates
21 to OutServe? How do they get notified that
22 they have become a member of OutServe?

23 A They receive a receipt and a thank-you
24 letter. However, it doesn't say "You are now a
25 member."

1 Q Okay. And when they actually make the
2 donation, is there any indication that by
3 making the donation, they're becoming a member?

4 A I don't believe so.

5 Q Okay. How about by joining a chapter
6 and forum? How does somebody know that they
7 have become a member by joining a chapter or
8 forum?

9 A By virtue of being in -- a member of the
10 secret social media groups, Twitter --

11 Q And do those social media groups say
12 "This is a group for members" in their
13 description, for instance --

14 A Yes.

15 Q -- or somewhere else?

16 Can you give me an example of what those
17 social media groups would say?

18 A Sure. So there's usually -- in, like,
19 the -- I don't recall the name of the section.
20 The About Us or the Info section, it'll say,
21 like, "Common guidelines for the community."
22 It'll say, "As a member, you're not going to
23 participate in these activities," like cursing
24 at each other, stuff like that.

25 Q Does it say "as a member of the Facebook

1 group" or "as a member of OutServe"?

2 A Neither. It says "as a member."

3 Q It just says "as a member"; it doesn't
4 clarify --

5 A Correct.

6 Q -- a member of what?

7 A Correct.

8 Q Okay. Is -- is it possible that
9 somebody might join a Facebook group and never
10 know that they've become a member of OutServe?

11 MR. PERKOWSKI: Objection. Form.

12 Q You can answer if you can.

13 A No. Because they're all secret groups.
14 When they get added, they have to accept the
15 add to the group. So whenever you are added to
16 a group, one of the chapter groups or the forum
17 groups, you have to actively acknowledge that
18 you're in the group.

19 Q So you know that you're in the Facebook
20 group. But is it possible that somebody could
21 join the Facebook group without knowing that
22 that has, by virtue of joining, made them a
23 member of OutServe?

24 A I don't feel comfortable speculating
25 that. However, in my own case, no.

1 Q Do your members get any form of
2 membership number or ID?

3 A No.

4 Q Do you keep kind of a general list of
5 members?

6 A Solely through the chapter leaders
7 themselves. Headquarters doesn't have a master
8 list.

9 Q So to be a member of OutServe, you have
10 to be on some sort of chapter list?

11 A No.

12 Q No.

13 So if you're not on a chapter list and
14 you're not kept in a list of members at
15 headquarters, how do you know if that person is
16 a member or not?

17 A So we'll go through the five buckets I
18 mentioned. We'll see if they're a donor and if
19 they identify as part of the community.

20 We do have donors that do not identify
21 as part of those communities who we do not
22 consider members. We'll go through to make
23 sure -- see if they're in a chapter or a forum.
24 We will see if they subscribe to a newsletter,
25 and then I'll contact my staff to see if

1 they've accessed services before.

2 Q So I just want to clarify one thing.

3 Let's use the donor bucket.

4 A Sure.

5 Q You say they have to both be a donor and
6 be a part of the LGBT community?

7 A No. They need to identify as an LGBT or
8 HIV-positive military or veteran. So we have
9 LGBT donors who do not identify -- or who did
10 not serve or are a part of a military family
11 who we do not consider members.

12 Q Would you consider an HIV-positive
13 heterosexual donor a member?

14 A Yes.

15 Q As long as they were in the military?

16 A Yes. Yes.

17 Q As long as they were a service member?

18 A Yes.

19 Q And that would be -- you'd use that same
20 identity definition for somebody who, say,
21 accessed services?

22 A Correct.

23 Q In terms of joining -- in terms of the
24 other two buckets, either joining chapters and
25 forums or newsletter subscriptions, do they

1 also have to have the identity in addition to
2 their join? Is the identity a requirement for
3 all your forms of membership?

4 A Yes. Yes. And they're not exclusive.
5 So, like you said, a heterosexual HIV-positive
6 individual and a gay non-HIV-positive
7 individual are both -- have the same level of
8 membership.

9 Q Okay. So somebody -- say, for example,
10 a non-HIV-positive heterosexual who subscribes
11 to your newsletter, would you consider that
12 person a member?

13 A Not part of the LGBT community and not
14 HIV-positive, no.

15 Q Okay. So they have to have both the
16 identity and --

17 A And the service.

18 Q And the -- and fall into one of these
19 four or five --

20 A Unless they are --

21 Q -- services?

22 A So let me clarify. "Service," we
23 include in that people that are actively
24 serving, people that have served, and people
25 that are part of military families -- we

1 consider that service -- and folks that are
2 aspiring to serve. So we lump them into what
3 we call "future warriors."

4 Q That was actually going to be my next
5 question.

6 So I just want to summarize this to make
7 sure I understand it correctly: So the
8 identity that you would expect would be
9 somebody who is either LGBT -- part of the LGBT
10 community or HIV-positive?

11 A Yes.

12 Q And either in the service, formally in
13 the service, or aspiring to be in the service?

14 A Correct.

15 Q And then they have to have that identity
16 plus they have to fall into one of your four
17 buckets: a donor, a member of a chapter or
18 forum, a newsletter subscriber, or they have
19 access to your services in some way?

20 A Correct.

21 Q And once they have those combination of
22 items, then you would consider them a member?

23 A That's correct.

24 Q Are there any other ways to become a
25 member of OutServe?

1 A There's other ways to be involved but
2 not to be considered a member, no.

3 Q Okay. Let's talk about the benefits
4 members of OutServe get.

5 Is there a magazine?

6 A We no longer have a print magazine. We
7 do have -- we converted to a blog.

8 Q And when did you do that?

9 A They stopped doing the magazine in 2011,
10 and we restarted the blog late last year.

11 Q Okay. Is there -- and you said there's
12 a newsletter?

13 A There is.

14 Q Tell me about the newsletter.

15 A So the newsletter we try and do monthly.
16 Sometimes it's more frequently. That -- in it
17 we put the successes of the community so that
18 we can all have these little celebrations. We
19 talk about some of the programs that we're
20 doing so to make sure that people know they can
21 access some of the programs that we have. And
22 then we try and do a highlight of, like, a
23 service provider that, you know, we partner
24 with or -- like, if Pride Month is coming up,
25 for example, or Military Family Month is coming

1 up, for example, do a highlight on that. So --
2 yeah.

3 Q Does every member receive a newsletter?

4 A Only if they're subscribed for the
5 newsletter.

6 Q And say if somebody donates to OutServe,
7 would they be asked to subscribe to a
8 newsletter?

9 A They're given the opportunity, but it's
10 not -- we're not saying "you need to
11 subscribe," no.

12 Q Likewise, say somebody accessed your
13 services, would they be given the opportunity
14 to subscribe to a newsletter?

15 A They're given the opportunity to become
16 more involved, yes. So -- so we'll say, "Would
17 you like to subscribe to our newsletter?"
18 "Would you like to access some of our chapters
19 and forums?"

20 Q And how about if somebody were to join
21 one of your chapter -- local chapters or
22 forums? Would they be subscribed to the
23 newsletter?

24 A So we push out pretty regularly,
25 probably a couple of times a year, "Hey, we

1 have a newsletter. You should subscribe" kind
2 of thing.

3 Q Can all of your members ask OutServe
4 legal questions?

5 A Yes.

6 Q Can nonmembers ask OutServe legal
7 questions?

8 A Yes. Because if they have that identity
9 and then they ask us for questions, they become
10 a member. If they don't have that identify,
11 however, and they ask us questions, we'll try
12 and find other folks who can assist them
13 because it doesn't fall within our mission.

14 Q How about somebody who is asking a
15 question on behalf of somebody else? So
16 somebody who doesn't have the identity but is
17 inquiring on behalf of a friend or a loved one?

18 A So we get that frequently. We -- we
19 usually say, "You need to connect us with the
20 individual who is seeking assistance." And if
21 they have, you know, power of attorney or
22 permission to speak on behalf of that
23 individual, we'll try and set up a call to
24 include the individual that we would be
25 assisting.

1 Q Okay. But that person would not become
2 a member?

3 A No.

4 Q Out of curiosity, has your definition of
5 "membership" changed over time?

6 A No.

7 Q So as far as you know, this has always
8 been what's defined "members" at OutServe?

9 MR. PERKOWSKI: Objection. Vague as to
10 time.

11 Q So OutServe in its current form was
12 founded in 2010, right?

13 A So, clarification, when you're saying
14 "OutServe," are you referring -- SLDN was
15 founded in 1993.

16 Q Yeah. In its current form, in its
17 merged OutServe --

18 A Merged? Okay.

19 Q -- SLDN form, it was 2010, right?

20 A Yes.

21 Q So has the membership -- what defines a
22 "member" changed in the time -- in that period
23 of time to present?

24 A No. Donating -- donating, accessing
25 services, being a member of the chapters or

1 forums, yeah.

2 Q Okay. It's been the same?

3 A Yes.

4 Q And then before the merger, to the
5 extent that you know, was it different to
6 become a member of the SLDN organization?

7 A So SLDN did not -- it was not a
8 membership organization. OutServe was. So the
9 -- the definition of "members" from OutServe,
10 which was accessing services, being part of the
11 chapters, and all of that came from that
12 aspect.

13 Q Okay. So the pre-merged OutServe used
14 the same definition of "members"?

15 A Correct.

16 Q Okay. Let's talk about OutServe's
17 social media groups.

18 It sounds like you have a number of
19 them?

20 A Yes. Too many.

21 Q Can you -- let's start at the beginning.

22 Can you describe generally the -- the
23 spectrum of social media groups that OutServe
24 maintains?

25 A Do you mean the platforms?

1 Q The platforms and then the types of
2 groups.

3 A Sure. So we have Facebook, Twitter,
4 Instagram and LinkedIn. Facebook is our most
5 robust, and that's where we have the individual
6 chapters and the forums that people can access.

7 We also have an overall network group
8 where all of the individuals that are part of
9 the chapters and forums are also part of that.

10 We have a public page, which is more for
11 the community at-large.

12 On Twitter, we only have one account,
13 and that's more pushing out information for the
14 general community.

15 Instagram, anybody can follow, so that's
16 not specific membership. General community
17 again. It's just where we share pictures to
18 celebrate with the world at-large.

19 And LinkedIn, I must confess, we don't
20 do much with.

21 Q Okay. Can any member of OutServe join
22 any one of OutServe's social media groups?

23 A Can you -- can you --

24 Q Could any member of OutServe join any
25 one of OutServe's social media groups?

1 A Yes.

2 Q So there's no restriction? If you're a
3 member of OutServe, you can join any group?

4 A Yes.

5 Q Can you describe the -- you've talked
6 about how you have forum-specific groups. Can
7 you describe a little bit more about those?

8 A Sure. So, again, those are circled
9 around identity. So somebody that does not
10 identify as bisexual would not be allowed to
11 join the forum for bisexuals.

12 Q So -- but those would be a social media
13 group, too?

14 A Yes.

15 Q So there would be some restrictions on
16 joining some media groups based on identity?

17 A Yeah. Based on identity and for the
18 chapter-specific. Thank you for the
19 clarification. You need to be in that location
20 to be part of that chapter.

21 Q Okay. Does OutServe have social events,
22 in-person social events?

23 A Yes, we do.

24 Q Can any member attend those in-person
25 social events?

1 A Yes.

2 Q Are there any social events that are
3 restricted by identity?

4 A No.

5 Q Are there any social events that are
6 restricted by geographic region?

7 A We have events that are specific for the
8 geographic region. But if we have somebody
9 that's in town, they're invited.

10 Q So it would be fair to say any member
11 could attend any social event?

12 A Yes.

13 Q Okay. How about -- can nonmembers
14 attend social events?

15 A Yes.

16 Q Okay. Are there any restrictions on
17 that?

18 A We do have some events that are specific
19 for members. For example, family dinners that
20 our chapters might hold in their region, we
21 don't invite members of the public to. That's
22 specifically for the members.

23 Q And how about the social media groups?
24 Can nonmembers join the social media groups?

25 A So nonmembers are allowed to "like" our

1 public page, follow our Twitter, and follow our
2 Instagram. They are not allowed -- with the
3 exception of individuals who we work closely
4 with for policy-related reasons or that are
5 assisting our members, they're not allowed to
6 be part of the private or the secret groups.

7 Q Can you restate for me?

8 A Sorry.

9 Q So nonmembers that are part of your
10 policy initiatives?

11 A So individuals that assist OutServe in
12 being able to -- so, like, we have strategic
13 partnerships, for example, because we want to
14 make sure that the folks that are serving our
15 members also have that identity. And I -- you
16 know, my whole staff isn't transgender. So we
17 might have folks that, with consensus of the
18 group, are allowed to join one of those secret
19 groups.

20 Q Okay. And what do you mean by "with
21 consensus of the group"? How is that achieved?

22 A So we're very concerned about the
23 anonymity of our individuals, especially with
24 the current administration and the climate that
25 they're serving under, so we want to make sure

1 they're comfortable with an individual from the
2 outside that doesn't identify with the -- that
3 isn't also serving or doesn't identify with
4 them joining amongst their ranks.

5 So we will say, "Is everybody okay with
6 this?" We'll set a deadline. Usually, it's
7 like a day or two for them to -- to post, "No,
8 I'm not okay with this" or message us directly
9 or something, and then that's how we achieve
10 consensus.

11 Q Okay. So do members participate in your
12 advocacy efforts, OutServe's advocacy efforts?

13 A We -- so we just did the Storm the Hill
14 Day. We brought five members with us, yes.

15 Q Okay. Could nonmembers participate in
16 something like that?

17 A Yes.

18 Q Okay. Does OutServe provide networking
19 opportunities?

20 A We do.

21 Q Can you describe those a little bit?

22 A Of course. We focus these a lot around
23 military spouses and folks that are getting
24 ready to leave the service. Traditionally,
25 those folks within our community, because of

1 their identities, are not given the same
2 experience as -- in the civilian sector. So
3 if, for example, they're looking to break out
4 into a specific community, we'll make direct
5 connections. When we host events, we always
6 try and bring in members of the community that
7 they can network with or that are willing to be
8 mentors, stuff like that.

9 Q Okay. And could nonmembers participate
10 in these networking events?

11 A So can you clarify, please? Like --

12 Q Like, so if you had something where you
13 brought -- like, as you just described, where
14 you bring in members of the community to meet
15 people about job prospects after -- after
16 leaving the military. If somebody was a non --
17 not a member of OutServe by virtue of one of
18 these four topics we talked about, could they
19 still participate in the event?

20 A I don't think that's ever happened in
21 the past. Only members have ever been invited
22 to or attended those events. However, if
23 somebody reached out and said, "Can I attend?"
24 I don't think I would turn them away.

25 Q Are there any other benefits that we

1 haven't discussed, discrete benefits along
2 these lines?

3 A The camaraderie, I think, is one of the
4 best benefits that they get. They're no longer
5 alone. They're no longer -- I -- I mean, they
6 might be alone because they're the only person
7 in Germany that's transgender. But now they
8 have, you know, scores of other folks that
9 identify the same way, and just by virtue of
10 knowing somebody else out there has that
11 identity and is going through the same
12 struggles is really important.

13 Q Are your members obligated in any way to
14 attend meetings?

15 A No. They're not kicked out if they do
16 not attend a meeting.

17 Q Do your members ever vote on anything?

18 A So we -- we try and do the
19 consensus-based decision-making with our
20 chapters as well and our forums as well, so
21 members are invited to provide feedback.
22 Occasionally, we might do a poll, like vote
23 "yes" or "no," but those are more around "Can
24 this person be added" or "Where do you want to
25 go to eat for this event," stuff like that.

1 Q Not voting in terms of strategic
2 direction or OutServe policy initiatives?

3 A So they provide advice and suggestions
4 and they voice their concerns. However, they
5 don't vote on those issues specifically, no.

6 Q Okay. Do the members have to -- do the
7 local chapters maintenance, like, a member list
8 or any sort of directory of members?

9 A So that is automatically created by
10 virtue of the Facebook group. They
11 additionally have folks that don't use social
12 media, for example, that want to be included.
13 They'll have a list of those folks as well.

14 Q Okay. And how does OutServe communicate
15 with its members writ-large besides the
16 newsletter and the blogs that we've already
17 talked about?

18 A Social media largely.

19 Q Okay. And so that relies on those
20 members joining the social media groups to
21 receive the communication?

22 A And if they don't have social media, our
23 chapter leaders will reach out to them
24 directly.

25 Q Do you also do emails?

1 A Our chapters have emails, so each
2 individual chapter has their own email account
3 and members are -- communications happen
4 through those, yes.

5 Q Okay. And then how do members
6 communicate to OutServe as a national
7 organization?

8 A Headquarters? They can -- a lot of its
9 through social media again. They can call us.
10 We have a hotline. Each member of my staff
11 also has, like, a Google Voice number where
12 they can call them personally. We have emails.
13 We also have web forms on our website where
14 they can write it in and then it will go to a
15 member of my staff and they'll contact them.

16 Q Are members involved at all in selecting
17 the leadership of OutServe, either its
18 executive director or members of the board?

19 A Other than encouraging folks to
20 nominate, no. They don't -- they aren't able
21 to vote or -- like, nobody voted on my
22 position, for example.

23 Q How about in terms of selecting members
24 of the board? Can any member nominate a member
25 of the board or any member can submit a

1 nomination to the nominating committee?

2 A Yes.

3 Q Is that correct?

4 A Yes.

5 Q Okay. Can a nonmember submit a
6 nomination to the nominating committee?

7 A Yes.

8 Q Do members select leaderships -- we've
9 already talked about this. Members do not
10 select the leadership of their local chapters;
11 you select -- the executive director selects
12 the leadership?

13 A Correct. Well, just to clarify, it's
14 consensus-based with me and my two staff
15 members that run the chapter.

16 Q And can local -- members of the local
17 chapters nominate leaders to you?

18 A Yes. However, when they nominate the
19 folks, we speak to the individual that was
20 nominated to make sure they actually want to --

21 THE REPORTER: "To make sure" what?

22 A They actually want to serve in the
23 position.

24 Q Besides the ways we've already
25 discussed, are there other ways that members

1 can be involved in deciding which projects or
2 initiatives OutServe pursues as an
3 organization?

4 A So just to clarify, contacting
5 headquarters directly, contacting their chapter
6 leaders, contacting members of the military
7 advisory council through phone, email, social
8 media, a web form. Yeah.

9 Q Okay. Do members of OutServe pay any
10 dues?

11 A No. They're not required to pay dues.

12 Q Is there voluntary dues?

13 A We don't call it "dues." We call it
14 donations. Several of our members do provide
15 donations.

16 Q And how -- how do voluntary donations
17 work?

18 A So they are not required to donate, but
19 they're given the opportunity, like at the end
20 of our newsletter or one of our -- the emails
21 that we push out at the bottom, it might say,
22 "Are you interested in supporting this program?
23 You can donate here."

24 Q Is there any form of, if you're a
25 member, we suggest you donate this much

1 annually or anything like that?

2 A So when they go to the website, we have
3 listed \$10, \$20, and \$50, and then Other. But
4 those are the only suggestions we provide.
5 We -- most of our members are lower enlisted
6 and they generally can't donate very much. I
7 have a few folks that might only give \$5 a
8 month, but they're still members even though I
9 have other people that give 250 a month. So
10 we -- we -- we don't like to define membership
11 based on how much they give, just that they're
12 giving.

13 Q Okay. Do they pay dues to local
14 chapters in any way?

15 A No.

16 Q So, obviously, you can't -- membership
17 can't lapse for unpaid dues, right?

18 A No.

19 Q If somebody would like to leave
20 OutServe, how do they -- how do they resign
21 their membership?

22 A They can unsubscribe from the
23 newsletter, stop their donation, leave the
24 social media groups, stop accessing our
25 services. And they usually just say, "We no

1 longer" -- "I no longer want to be affiliated
2 with your organization."

3 Q So do they have to positively affirm
4 with you that they no longer want to be
5 affiliated with the organization?

6 A No. Just by virtue of no longer being
7 in those four categories, they're no longer a
8 member.

9 Q So how does that work with a one-time
10 donor? So, for instance, for example, say
11 somebody donates to you in 2016 and you now
12 consider them a member because of their
13 identity and they want to leave the group,
14 would they have to contact you to tell you that
15 they no longer want to be a member?

16 A No. That's a great question. So the
17 donation is based on the -- the year. So if we
18 get somebody that donates in 2016, they're a
19 member for 2016. But in 2017, you know, I'll
20 send an email out saying, "Hey, would you like
21 to donate again?" and kind of -- and that's not
22 specifically to those individuals that donated.
23 That's more of a end-of-year appeal kind of
24 thing.

25 Q So to clarify, you only consider donors

1 members in the year in which they've donated?

2 A Correct.

3 Q And so if they have not donated in the
4 year and they're not part of any of the other
5 categories, they're no longer members?

6 A Correct.

7 Q When somebody unsubscribes from the
8 newsletter and do not fall into any of your
9 other categories of membership, does that
10 immediately halt their membership?

11 A Yes. By virtue of no longer being part
12 of any of the other categories and them -- and
13 then unsubscribing, they're no longer connected
14 to the organization. So I would no longer
15 consider that individual a member.

16 Q How about contacting OutServe for
17 services? Does the membership -- is it like
18 donors? Does it extend through that year or is
19 it in perpetuity?

20 A So we like to always be connected to our
21 former clients. So we have folks, you know,
22 from several years back that I consider members
23 still.

24 Q How would one of those people resign
25 their membership?

1 A No longer being involved with -- so most
2 of the individuals that would fall into this
3 category still attend events. So by their no
4 longer attending and no longer being involved,
5 I would consider the membership resigned.

6 Q So they would have to be in one of your
7 other categories of members?

8 A No, not necessarily. So, for example,
9 if I had an individual that accessed services
10 in 2010 but still came to our annual gala but
11 isn't a member of, you know, the chapter or
12 forum, I would consider him a member. However,
13 an individual in 2010 that accessed services
14 but doesn't attend our annual gala, I would not
15 consider that individual a member.

16 Q For example, say somebody calls and has
17 one phone conversation with your legal
18 services, doesn't join any of your other
19 categories of members, and you never hear from
20 them again, when does that person cease to be a
21 member?

22 A I would consider -- so we usually give a
23 grace period. After they access our services,
24 it's -- we like to incorporate --

25 THE REPORTER: I'm sorry. Could you

1 slow down and repeat that?

2 THE WITNESS: Sorry. Yes.

3 A Accessing our services is usually a last
4 resort for them. They want to continue their
5 service. They feel like they're not being
6 given the opportunity to do so. And after we
7 finish those services with them, I like to give
8 a grace period of two to three months because
9 they want to be left alone, and then they can
10 come back and get re-involved.

11 And after that grace period, if they're
12 no longer in any of those other categories,
13 that's when I would consider their membership
14 terminated.

15 Q What if somebody accesses your services
16 for a specific issue before the military and is
17 involved in your services over time for that
18 specific issue and then that issue closes and
19 you never hear from them again, when does that
20 person cease to be a member?

21 A So, like, for clarification, they
22 contact us for Don't Ask, Don't Tell and then
23 Don't Ask, Don't Tell's repealed?

24 Q Yeah. And they had continuing contact
25 with you for a while.

1 A Sure. And they're no longer in those
2 buckets?

3 Q And they still identify in those
4 buckets, but they have no more -- they still
5 identify with the identity, they're LGBT and
6 they're a service member, but their issue has
7 been resolved.

8 A And they're no longer, like, a member of
9 a chapter?

10 Q Right. They don't fall into any of the
11 other buckets.

12 A It would still be the grace period, the
13 two to three months.

14 Q Okay. So once you cease hearing from
15 them for two to three months after their issue
16 is resolved.

17 Let's talk about the social media
18 groups. So somebody can become a member by
19 virtue of joining one of your forums, correct?

20 A Yes.

21 Q And that is true if they join the forum
22 but never participate in the forum?

23 A But virtue of being in the forum, we
24 consider that participation. Inactive
25 participation is not lessened in our eyes.

1 Q Do they immediately cease to be a member
2 when they leave the group?

3 A We, again, do that two- to three-month
4 grace period. A lot of -- in social media, a
5 lot of people get upset about random stuff and
6 they want to come back in a week later, you
7 know. So we give that grace period as well.

8 Q But there's no grace period to
9 unsubscribing from the newsletter?

10 A I -- I -- no, I don't. Unless they
11 resubscribe, I consider them no longer members
12 because it's -- they're no longer involved in
13 any other capacity. The individual that
14 unsubscribed from the social media groups may
15 still be attending the events in person, but an
16 individual unsubscribing that also isn't
17 attending events, I would not consider a
18 member.

19 Q So you're kind of describing a hybrid
20 category of membership for people who attend
21 events such as your gala where they can
22 maintain their membership when otherwise it
23 would lapse.

24 Can you -- can you explain a little bit
25 more about that?

1 A Yeah. So the folks that attend our
2 events and our gala are continuing to help us
3 celebrate. They're providing some of those
4 needed benefits to our memberships so that --
5 the camaraderie. A lot of them are success
6 stories. So they may have been kicked out
7 under Don't Ask, Don't Tell. A lot of our
8 folks are facing similar possible
9 circumstances, living with HIV and identifying
10 as trans, and seeing them as successful members
11 of the community is a service we want to
12 continue providing.

13 Q So am I correct in stating that if
14 somebody -- in these other categories where we
15 talked about the two- to three-month grace
16 period, if they attend an event during that
17 grace period, that would extend their
18 membership when it otherwise would have lapsed?

19 A Yes.

20 Q How about if they attend an event
21 outside of that grace period? Does that renew
22 their membership?

23 A Yes.

24 Q For how long?

25 A This situation's never happened. It

1 would depend on the event. So the frequency of
2 the event. If it's the family dinner, I would
3 consider the two- to three-month grace period
4 again because those happen so frequently. If
5 it's the gala, however, I would extend that
6 grace period to the next year because they may
7 only want to be involved in an event of that
8 caliber.

9 Q And are any of these policies we're
10 talking about -- are they written down anywhere
11 or documented anywhere?

12 A They're not memorialized on paper, no.

13 Q Okay. Would you say that your
14 understanding of the policy is shared by
15 members of your staff?

16 A Yes. And members of our membership --
17 our membership as well.

18 Q Okay. And how would these policies be
19 communicated to your membership?

20 A Like, how they're members?

21 Q Yeah. And how they could leave their
22 membership.

23 A Oh. So that would likely only be
24 communicated if somebody came to a member of my
25 staff or an advisory board or a volunteer and

1 communicated, you know, they were upset or
2 something. We would not actively communicate
3 "You can leave for three months," for example.

4 Q I want to explore the joining by virtue
5 of joining your social media groups such as
6 your Positive Forum.

7 A Sure.

8 Q When somebody joins that forum -- first
9 of all, how do they find out about the forum?

10 A So that's where we use our other social
11 media platforms. We do something, like, a
12 "chapter shout-out," so where I highlight some
13 of the events that a chapter is doing. And we
14 kind of let them know that chapters throughout
15 the world are doing something similar.

16 On our website, we also have all of the
17 chapters listed with their email addresses so
18 people can contact them directly.

19 And then word of mouth. So if an
20 individual PCSs or changes station -- excuse
21 me -- to Germany and meets other folks with --
22 that are members of OutServe, you know, they
23 can tell them about it, too. We encourage that
24 a lot.

25 Q We'll come back to that in a minute.

1 Can you tell me, are there any other
2 circumstances besides which -- those we have
3 already discussed and which somebody can let
4 their membership lapse or leave or resign their
5 membership?

6 A Can you rephrase the question?

7 Q Are there -- besides what we have
8 already discussed, are there any other ways
9 that a person can either resign being a member
10 of OutServe or let their membership lapse?

11 A If an individual openly advocates
12 against a position of the organization, for
13 example, decides they want to -- all gays
14 should go to Hell and shouldn't be part of the
15 military, I would no longer consider them
16 members.

17 Q Do they get notified they're no longer a
18 member?

19 A I would reach out to them directly, yes.

20 Q Okay. Let's go back to the Facebook
21 group.

22 How many private Facebook groups does
23 OutServe maintain?

24 A Eighty-two. So all of our chapters and
25 forums. And then we have a network group

1 for -- that every -- overall.

2 Q Okay. So there's a national network
3 group?

4 A Yes.

5 Q And then 81 other groups, and all those
6 other groups are either associated with local
7 chapters or forums?

8 A Correct.

9 Q Do you have any other groups for any
10 other purpose besides that?

11 A We have one for the board of directors
12 where they can -- you know, because of
13 dislocated camaraderie, as another one for the
14 staff, but not for membership.

15 Q Okay. So you call these groups
16 "private." What does that mean?

17 A So on Facebook, you are able to make
18 it -- make a group public or private. So that
19 indicates an individual not in the group cannot
20 see who is a member of the group. They need
21 permission to join the group and they cannot
22 see what is posted or shared in the group.

23 Q Can the public see that the group
24 exists?

25 A I don't believe so, no.

1 Q And who moderates the group?

2 A Staff members and chapter leaders.

3 Q And by "moderate," I mean who allows new
4 members to join? It would be staff members?

5 Or --

6 A Chapter leaders.

7 Q Chapter leaders.

8 Nobody else, though?

9 A No. Only staff members and chapter
10 leaders are given administrative privileges.

11 Q Okay. Are the posts in the groups
12 searchable?

13 A I don't think I understand the question.

14 Q Like, could somebody go into the
15 Facebook search bar and say I'm looking for --
16 you know, type in "Army"?

17 A OutServe?

18 Q OutServe Holloman Air Force Base or
19 something like that.

20 A I think if you were in the group on
21 Facebook, you can search in or pop in and
22 Google. I could be wrong about that. But,
23 like, a general member of the world would not
24 be able to do that, no.

25 Q Are the groups -- the existence of the

1 groups advertised or marketed in any way?

2 A Solely by virtue of highlighting them
3 through social media, in our newsletter, and on
4 our website, and then the lists that we have on
5 our website.

6 Q How do your moderators -- when somebody
7 makes a join request to the group, how do your
8 moderators determine whether they should be
9 allowed to join?

10 A So anonymity and protection of my
11 members is of chief importance to me, so we vet
12 them. We make sure that they actually do fall
13 into those identity categories, and those are
14 through conversations with the individual. Or
15 if, for example, they're a well-known member
16 that is transferring from Germany to Colorado,
17 we don't need to re-vet them, and that they
18 identify with one of these areas of service as
19 well.

20 Q So by conversations, how are those
21 conversations held? Phone? In person?

22 A Yeah. It varies on the person. It can
23 be via phone. It can be via Skype or
24 BlueJeans.

25 Q Would you ever allow somebody to join

1 the groups by virtue of electronic
2 communication only?

3 A Only if they were previously vetted.

4 Q Okay. How do you confirm somebody is
5 HIV-positive to join the HIV-positive group?

6 A So we don't require them to submit their
7 medical documentation by any means. But
8 because that's one of the more sensitive
9 groups, the leader's private, so they need to
10 be added by a member of the staff or a chapter
11 leader directly so that they can't, for
12 example -- so on our website, we list "Andy
13 Blevins is the chapter leader of Colorado. You
14 can contact him here." Because the
15 HIV-positive group is so sensitive, we don't do
16 that. We say "listed privacy." So a member of
17 the staff would take care of that.

18 Q What -- I know that many people on
19 Facebook use their full names, but there are
20 other people that use pseudonyms or initials as
21 their Facebook identity.

22 Are people allowed to join your private
23 groups if their Facebook identity is a
24 pseudonym?

25 A I mean, we would vet them to make sure,

1 you know, that they still fall within that.

2 But we don't discriminate based on the name

3 they use on Facebook, no.

4 Q Okay. So it's possible that the other

5 members of the group might not exactly know who

6 else is in the group?

7 A No. I would not say that. So

8 especially -- since we're talking about HIV

9 forums specifically, I'll use that.

10 The HIV forum is very small.

11 Everybody -- it is very interactive in that.

12 We don't have "lurkers," I would call it, or

13 people who -- like, "what is he doing here"

14 because we worry about the comfort of folks.

15 Every time we add somebody to one of those

16 forums, we introduce them as well.

17 Q How many people are in your Positive

18 Forum?

19 A I think it's about 90 right now.

20 Q Okay. Is there -- has there been, like,

21 a kind of a max and min size? Has it grown and

22 contracted?

23 A It's been between like 75 and 100.

24 Obviously, when we found it seven years ago, it

25 was much smaller, but --

1 Q Can you describe the specific
2 qualifications a person must have or
3 characteristics to join that particular forum,
4 the HIV forum?

5 A So they need to be HIV-positive or
6 living with HIV. They need to also identify as
7 a member of the service, so be actively
8 serving, be a veteran, or be a future warrior.

9 Q So aspirational members can join the
10 group?

11 A Yes.

12 Q Okay. Does OutServe moderate the
13 discussions in the group? Let me give you
14 specifics. Does OutServe ever delete any
15 discussions or comments in the groups?

16 MR. PERKOWSKI: About any group, or are
17 we still talking about Positive Forum?

18 Q Let's talk about any group.

19 MS. CUTRI-KOHART: Thank you for the --

20 A So we don't censor. Certainly not. We
21 encourage open and honest dialogue. However,
22 if a member is attacking another member, we
23 would delete that, and then we would contact
24 the individual that made the disparaging
25 remarks.

1 Q Does OutServe ever remove somebody from
2 a group?

3 A Yes.

4 Q Under what circumstances is somebody
5 removed from the group?

6 A If they violate a code of conduct.

7 Q Can you describe the code of conduct
8 more specifically?

9 A Sure. So, again, we're fostering an
10 environment -- I'm trying to speak slowly. I
11 apologize.

12 THE REPORTER: I appreciate it.

13 A We're fostering an environment where
14 people feel welcomed and supported. So if
15 somebody is going out of their way to ensure an
16 individual does not feel that way, they
17 shouldn't be a member of that community.

18 Q Okay. If you remove a member from a
19 group, is that the same as removing them from
20 membership of OutServe, or can they stay a
21 member of OutServe?

22 A So if we have to remove somebody from
23 the group, we consider that membership
24 terminated, and they are contacted directly by
25 myself.

1 Q Okay. Does OutServe propose topics of
2 discussion in the groups?

3 A We do -- we encourage our chapter
4 leaders and staff members to bring up relevant
5 information or ask questions. But headquarters
6 doesn't say "Now I want you to ask them about
7 this" or anything like that.

8 Q Does OutServe's staff or leadership ever
9 respond to posts or questions in the group?

10 A Yes.

11 Q Can you give me an example of how that
12 would occur?

13 A For example, when we were storming the
14 hill yesterday, somebody posted a picture and
15 said "Is" -- "Are these OutServe members?"

16 And I commented "Yes."

17 Q Okay. Would you also -- would staff or
18 leadership of OutServe ever respond to a policy
19 or a legal style question in the groups?

20 A Yes. We would say "contact us," and
21 then we would list our contact information.

22 Q But you wouldn't provide a summary of
23 any information; you would require a phone call
24 or a more direct contact before --

25 A So --

1 they still admit -- do they still participate
2 in the -- in the process of allowing people to
3 join the Positive Forum or only --

4 A No.

5 Q Okay. Only the local chapter presidents
6 do?

7 A Correct.

8 Q Okay. Or leaders, I guess.

9 Were -- in any of your Facebook groups,
10 was OutServe's decision to become a plaintiff
11 in either the Harrison or Roe suit discussed?

12 A No.

13 Q How about the progress of the suits in
14 general? Have they been discussed in any of
15 your Facebook groups?

16 A We've provided -- like, overall, like,
17 "This is happening," but we haven't gone into
18 specifics or anything.

19 Q In terms of comments from members in
20 response to your summaries, what type of
21 comments have you received?

22 A Overwhelmingly supportive.

23 Q Anything of substance besides, like,
24 just positive affirmation?

25 A No.

1 Q So no ideas or additional information
2 that could go into the lawsuits?

3 A So we've had armchair quarterbacking, of
4 course, but those are not --

5 THE REPORTER: You've had what?

6 A Armchair quarterbacking. Sorry. I'll
7 define that. Individuals who think that they
8 can provide that strategy and advice. However,
9 it's not taken into consideration by my legal
10 and policy team.

11 Q Okay. So is it even communicated to
12 your legal and policy team? Do they see it?

13 Or --

14 A No.

15 Oh, can I clarify? I apologize.

16 Q Absolutely.

17 A So the members that are part of those
18 groups see it, but we don't have a staff
19 meeting where I communicate it.

20 Q Right. Let's move on to talk about
21 OutServe's financing. As you mentioned, dues
22 are not required.

23 Can you tell me what OutServe's
24 approximate annual budget is?

25 A This year, it's 250,000.

1 Q Okay. Does -- are all -- are OutServe's
2 funds dedicated to certain initiatives, or can
3 you direct the funds to various projects?

4 A So when people donate, they have the
5 option to donate to a specific program.
6 However, the undesignated donations, I can
7 direct.

8 Q And can you give me the breakdown of the
9 budget, how much is designated, how much is
10 undesignated?

11 A Right now, none of it is designated.
12 It's all undesignated.

13 Q So now it's all undesignated.

14 In the past, have you ever had a budget
15 designated specifically for HIV-related
16 programs?

17 A Not that I recall.

18 Q What are the sources of OutServe's
19 funding?

20 A Personal donation is the largest. We
21 also get bequests, individuals leaving money to
22 us in their will. And we're working on grants
23 and corporate sponsors as well.

24 Q Are you currently in receipt of any
25 grants or other awards of that nature?

1 A Currently, no.

2 Q And do you have any corporate sponsors?

3 A No.

4 Q Do you receive any in-kind donations?

5 A We do.

6 Q Can you describe those?

7 A Sure. In-kind donations largely are
8 around our legal initiatives, so people
9 providing -- firms providing legal support in
10 our lawsuits and some of the administrative
11 stuff we do, like discharge upgrades.

12 Q What are -- do you have any other
13 fundraising efforts?

14 A We do appeals. So we email a letter
15 where we ask folks to donate money. We are --
16 we do events where we make and ask at the end,
17 and that's it. That covers it.

18 Q Are your board members expected to
19 donate?

20 A They are.

21 Q When you say your annual budget is
22 \$250,000, does that account for in-kind
23 donations? Or what would the approximate value
24 of the in-kind donations you receive be?

25 A Last year, we received \$4.5 million in

1 in-kind donations.

2 Q And how would you describe the bulk of
3 that? In legal services? Or --

4 A Entirely legal services.

5 Q Entirely pro bono legal services?

6 A Yes.

7 Q How much of the \$250,000 part of the
8 budget, so not the in-kind donations, comes
9 from OutServe's members?

10 A The majority come from the personal
11 donations.

12 Q Personal donations.

13 And an in-kind donation of services, how
14 much of that comes from OutServe's members
15 versus external organizations?

16 A You mean like the pro bono?

17 Q Yeah.

18 A Those are -- none of those are for
19 members. Those are all exclusively external
20 firms.

21 Q Of the member donations, how much of
22 that funding comes from board members versus
23 regular members?

24 A Our board members have a give/get
25 requirement of \$2,500 a year.

1 Q That's the minimum requirement, though,
2 correct?

3 A Correct. Yeah.

4 Q Do they -- are most board members at the
5 minimum requirement, or do they contribute the
6 bulk of your annual budget relative to your
7 members?

8 A Most of them are at the minimum. We
9 also have a lot that are actively serving who
10 do a little bit less with the consensus from
11 the board chairs.

12 Q How much of OutServe's funding comes
13 from members of the advisory council?

14 A So the advisory council does not have a
15 required give/get. However, a lot of them do
16 provide personal donations. I don't have a
17 percentage. Because they don't have a
18 give/get, we don't track a percentage from
19 them.

20 Q Okay. Can you describe what -- do you
21 get -- in addition to your in-kind legal
22 services, do you get other in-kind donations
23 such as, like, office space or office supplies?

24 Or --

25 A No.

1 Q Nothing like that?

2 A No.

3 Q Okay. What's OutServe relationship with
4 Lambda Legal?

5 A They are one of our sister
6 organizations. We work with them frequently,
7 and they also are co-counsel in a few of our
8 lawsuits.

9 Q How does OutServe approach Lambda Legal
10 for assistance -- for co-counsel assistance?

11 A My predecessor approached their
12 executive director and legal director.

13 Q And now -- would you describe it as an
14 ongoing relationship now?

15 A Yes.

16 Q Okay. So when OutServe takes on a new
17 case, does Lambda Legal also vet it before you
18 decide to take it on? Or --

19 A No.

20 Q So Lambda Legal is not a participant in
21 the decision of OutServe to take on cases?

22 A Correct.

23 Q Is Lambda Legal involved in the decision
24 of OutServe to become a plaintiff in cases?

25 A That is discussed by the litigating

1 team.

2 Q Which would include Lambda Legal?

3 A That would include Lambda Legal.

4 Q Do we need to take another break or do
5 you want to keep going?

6 A Can I get more water?

7 (A recess was taken.)

8 BY MS. CUTRI-KOHART:

9 Q So I want to go back to donations.

10 Since donating when combined with the
11 identity of being LGBT and a member of the
12 service makes you a member, can you quantify in
13 some way how many donations would come from
14 people who would not become a member after they
15 donate?

16 A So folks that are not part of the
17 service and identities, I would approximate
18 about 75 percent of our donations come from
19 people we consider members and the other
20 25 percent come from folks we consider allies.

21 Q Okay. And then I just want to kind of
22 clean up a few things about membership before
23 we move on to the next subject.

24 You do not maintain a list of all the
25 members of OutServe; is that correct? One

1 list?

2 A One -- no, we do not have one list.

3 Q And members are not required to register
4 with OutServe in any way as a member?

5 A No.

6 Q There are -- you do have a list of
7 donors, however?

8 A Yes.

9 Q And on that list, you can identify which
10 donors have become members of OutServe and
11 which ones haven't?

12 A We do not mark on that list if they are
13 a member, no.

14 Q So how do you identify from your donors
15 which ones have become members?

16 A That's usually from firsthand knowledge
17 of the individual. Looking over the document,
18 they know that they're a service member or a
19 military spouse, or we will need to -- if we
20 need to, we'll vet them and go back and check.

21 Q And then in terms of memberships in the
22 forums or local chapters, you only really
23 maintain a list of people who are not in your
24 social media group?

25 A Correct.

1 Q And then the social media group itself
2 maintains the list of the people that are in
3 it?

4 A Correct.

5 Q Okay. And then you do have a list of
6 newsletter recipients?

7 A Yes.

8 Q Okay. I think that covers -- covers how
9 you keep lists of members.

10 Okay. We're going to talk about the
11 individual plaintiffs in these cases now.

12 How many of OutServe's members as a
13 population group would you estimate are living
14 with HIV?

15 A Of our members? So actively serving or
16 future warriors, I would estimate probably 100.
17 And that's just accounting for a few folks that
18 don't have social media, so they're not part of
19 that Positive Forum. And not including
20 actively serving and future warriors, so like
21 HIV-positive veterans, for example, I would
22 estimate another 40 to 50.

23 Q And how many estimated total members
24 does OutServe have?

25 A Seven thousand.

1 Q Of the OutServe members living with HIV,
2 what approximate number of them are -- would
3 you describe as future warriors?

4 A Future warriors. I would probably say
5 15 to 20.

6 Q Okay. And then how many have been
7 denied accession in other ways such as moving
8 from enlisted to officer ranks?

9 A Like, an approximate number? Is that
10 what you're asking?

11 I would approximate five to ten.

12 Q Okay. And then how many would you
13 estimate are currently -- how many would you
14 estimate have already been discharged against
15 their wishes because they're HIV-positive?

16 A Discharged based solely on their HIV
17 status? I would, again, approximate five to
18 ten.

19 Q And would -- just to clarify, is
20 those -- are discharges that they would
21 otherwise not want to be discharged, or is that
22 just total discharged? because some people want
23 to be discharged, right?

24 A No, of course, of course.

25 I would consider that the people who

1 want to continue serving.

2 Q Have you been contacted by OutServe
3 members who are living with HIV who would like
4 to be discharged from the military in light of
5 their diagnosis?

6 A Not that would like to be but that have
7 accepted that that's going to happen and no
8 longer want to fight it.

9 Q How often does OutServe get contacted by
10 service members regarding the military's HIV
11 policy?

12 MR. PERKOWSKI: Objection. Vague.

13 A Can you rephrase?

14 Q How many times has OutServe
15 approximately been contacted by service members
16 seeking advice on the military's HIV policies?

17 A Like, number of times per week? Is that
18 what you're asking?

19 Q Yes. That would be fine.

20 A Just -- sorry.

21 Q It's a small population, right? So...

22 A Yeah.

23 I would say, like, a couple of times a
24 month, two or three times a month.

25 Q And how do those contacts typically

1 occur?

2 A Those typically occur by contacting
3 staff directly. So a web form, emailing us
4 through the legal help desk or our personal
5 emails, or calling our staff phones.
6 Occasionally, we'll get folks in the group who
7 will ask a question and then we'll say, "Hey,
8 can you contact us?"

9 Q And those contacts, how many are
10 existing service members versus people looking
11 to join the military?

12 A The majority are existing service
13 members.

14 Q To the extent you know, when was the
15 first time someone contacted OutServe seeking
16 advice regarding military accession with HIV?

17 A Accession. I know back almost two
18 decades ago, folks contacted the legal help
19 desk. I want to say the 2000 era.

20 Q And how about the first time someone
21 contacted OutServe regarding discharge?

22 A Can you --

23 Q I'm sorry. The first time somebody
24 contacted OutServe regarding a pending
25 discharge as a result of their HIV diagnosis.

1 A I would again say the 2000 era.

2 Q And can -- in both of those categories,
3 can you describe the circumstances of the
4 contacts?

5 A They contacted the legal help desk at
6 that point in time. OutServe and SLDN had not
7 merged, so they contacted SLDN. And SLDN was
8 not a membership organization, so the only way
9 for an individual to contact SLDN was through a
10 web form, email or phone.

11 Q Okay. So now we're going to talk about
12 the individual plaintiffs. Can you tell me --
13 we're going to start with Harrison v. Shanahan.

14 Can you tell me when Nick Harrison first
15 became involved in OutServe?

16 A Nick Harrison has been involved since
17 around 2010, I want to say.

18 Q How did he become involved in OutServe?

19 A As a member of our chapters.

20 Q So his first involvement was as a
21 member?

22 A Yes.

23 Q And was this before or after he was
24 denied accession?

25 A He became a member when he was still

1 enlisted, so he had not -- yeah. Before he was
2 denied accession.

3 Q And was this before or after he was
4 diagnosed with HIV?

5 A It was before he was diagnosed with HIV.

6 Q I want to explore a little bit about
7 what you mean when you say Mr. Harrison is a
8 member of OutServe.

9 A Sure.

10 Q So he is a member because --

11 A Mr. Harrison is a member of my board of
12 advisors. So he's a member by virtue of that.
13 He's a member because he accessed our legal
14 services. He receives the newsletter. He has
15 donated. He's a member of the chapters and
16 forums.

17 Q And which local chapters -- chapter or
18 chapters is Mr. Harrison currently a member of?

19 A Mr. Harrison is in the National Capital
20 Region chapter in the Positive Forum.

21 Q And has Mr. Harrison been a member of
22 any other chapter or forum in the past?

23 A Yes. Before he moved to the National
24 Capital Region, he was part of the group that
25 he was stationed in. I don't recall where that

1 was, though. I don't recall where it was.

2 Q When you say Mr. Harrison is a member of
3 the Positive Forum and also the capital region
4 local chapter, does that mean he is a member of
5 those Facebook groups?

6 A Yes, ma'am.

7 Q Okay. And is he a member of either of
8 those -- that local chapter or that forum by
9 any other way besides a membership in those
10 Facebook groups?

11 A He attends events. He provides some of
12 those discreet networking opportunities for the
13 other members.

14 Q And was Mr. Harrison a member of those
15 Facebook groups at the time this lawsuit was
16 filed?

17 A Yes.

18 Q Is Mr. Harrison an active participant in
19 your forums? Does he comment or post?

20 A Yes.

21 Q In both his local chapter group and the
22 Positive Forum?

23 A Yes.

24 Q You said Mr. Harrison donated. When was
25 the last time Mr. Harrison donated?

1 A In December.

2 Q And how frequently does Mr. Harrison
3 donate?

4 A Every two to three months, he provides a
5 donation.

6 Q Can you quantify Mr. Harrison's
7 donations?

8 A It's usually in the realm of 100 to
9 \$250.

10 Q And when did he begin donating?

11 A I don't recall.

12 Q Do you know when Mr. Harrison subscribed
13 to the newsletter?

14 A I do not recall.

15 Q So we've talked about Mr. Harrison's
16 participation on the board of advisors. Is he
17 still a member of the board of advisors?

18 A Yes, ma'am.

19 Q Has he ever held any other leadership
20 positions in OutServe?

21 A No.

22 Q Did he become a member of the board of
23 advisors before or after he was denied
24 accession? Do you recall? I don't remember
25 the date he was denied accession, so --

1 A After.

2 Q After.

3 What does Mr. Harrison do on the board
4 of advisors?

5 A Mr. Harrison is part of the contingent
6 that is focusing on the needs assessment.

7 Q Okay. Has Mr. Harrison ever been
8 employed as staff by OutServe?

9 A No.

10 Q Has he ever been paid by OutServe?

11 A No.

12 Q Has he ever been -- Mr. Harrison ever
13 been reimbursed for expenses by OutServe?

14 A No.

15 Q Did Mr. Harrison contact OutServe about
16 bringing this suit or did OutServe seek
17 Mr. Harrison out?

18 A Mr. Harrison contacted us.

19 Q And how did he make that contact?

20 A He contacted a member of my legal staff.

21 Q And he proposed the lawsuit right away,
22 or did he propose another measure?

23 A He initially contacted them --

24 MR. PERKOWSKI: I want to be careful not
25 to get into attorney-client privileged

1 information, so I'm going to interpose an
2 objection and instruct you not to provide
3 communications -- details of communications.
4 But you can answer the question to the extent
5 you can without revealing communication between
6 the client and the lawyers.

7 A Okay. Can you restate your question,
8 please?

9 Q Did Mr. Harrison -- when Mr. Harrison
10 contacted OutServe's staff, did he propose
11 bringing the lawsuit or did he propose other
12 policy action?

13 MR. PERKOWSKI: I'm going to repeat the
14 objection. And I don't think that one can be
15 answered without revealing protected
16 communication, so I'm going to instruct you not
17 to answer.

18 Q Did Harrison ever talk to nonlegal staff
19 at OutServe about policy advocacy or legal
20 advocacy concerning his case?

21 A No.

22 Q Before the time of the lawsuit, was
23 OutServe involved in Mr. Harrison's accessions
24 waiver request?

25 A I don't recall.

1 Q When did OutServe first become aware of
2 Mr. Harrison's accessions waiver request?

3 A I would approximate the beginning of
4 2018.

5 Q Was OutServe at all involved in
6 Mr. Harrison's request for exception to policy?

7 A Sorry. There's a lot of stuff I'm
8 trying to remember.

9 I don't believe so.

10 Q And just to clarify, OutServe -- you
11 don't believe OutServe was involved in
12 Mr. Harrison's request to exception to policy
13 to access as a commissioned officer?

14 MR. PERKOWSKI: Objection. Asked and
15 answered.

16 Q Was OutServe -- why don't you answer
17 anyway. Go ahead and answer anyway.

18 A I -- I don't recall.

19 Q Was OutServe involved in Mr. Harrison's
20 request for an exception to policy to donate
21 organs?

22 A To -- I'm sorry?

23 Q To donate organs?

24 A Organs?

25 Q Yes.

1 A I don't believe so.

2 Q I just want to clarify. You do know you
3 were offered to testify as a corporate witness,
4 correct?

5 A Yes.

6 Q And you're supposed to be aware of
7 information such as when -- whether OutServe
8 was involved in these -- either in the waiver
9 or exception to policy, correct?

10 A Yes.

11 MR. PERKOWSKI: Objection. Asked and
12 answered.

13 Q Okay. I just wanted to make sure you
14 also knew you were supposed to prepare for that
15 information even if it wasn't in your personal
16 knowledge. Okay.

17 Has there been other ways in which
18 Mr. Harrison has been involved with OutServe
19 that we have not discussed here today?

20 A No.

21 Q Okay. Let's go to Roe versus Shanahan.
22 First of all, you're aware that the two
23 plaintiffs in this case are proceeding under a
24 pseudonym, correct?

25 A I do.

1 Q When I refer to Mr. Richard Roe in this
2 deposition, I'm referring to Plaintiff
3 [REDACTED]. Do you understand?

4 A Yes, ma'am.

5 Q And when I refer to Victor Voe in this
6 deposition, I will be referring to Plaintiff
7 [REDACTED] Do you understand?

8 A Yes.

9 Q And are you okay with me continuing, in
10 this deposition, calling these two Mr. Roe and
11 Mr. Voe?

12 A Yes.

13 Q And if I call them Mr. Roe and Mr. Voe,
14 you will know the individuals who I'm referring
15 to, correct?

16 A Yes.

17 Q Okay. So we're going to start with
18 Mr. Roe.

19 When did Mr. Roe first become involved
20 with OutServe?

21 A The beginning of 2018.

22 Q And was this before or after OutServe
23 became involved in the Harrison litigation?

24 A This was -- do you mind if I write down
25 the pseudonyms so I don't forget?

1 Q Yeah. Sorry.

2 A I apologize.

3 Q Mr. Roe -- Mr. Roe is [REDACTED]

4 A Okay. Thank you.

5 Q And Mr. Voe is [REDACTED]

6 A And can you repeat your question,
7 please?

8 Q Okay. Did Mr. Roe become involved in
9 OutServe before or after OutServe began the
10 Harrison litigation?

11 A Before.

12 Q And Roe -- Mr. Roe did provide a
13 declaration in support of the Harrison motion
14 for preliminary injunction?

15 A That's correct.

16 Q And did Mr. Roe become a member of
17 OutServe before or after he provided this
18 declaration?

19 A He became a member when he accessed our
20 services, which was before he provided the
21 declaration.

22 Q Okay. So let's talk about that for a
23 second.

24 How did -- how did Mr. Roe become a
25 member of OutServe?

1 A By contacting our legal department.

2 Q And when did that happen?

3 A The beginning of 2018.

4 Q And is Mr. Roe a member by virtue of any
5 other method?

6 A Mr. Roe is additionally a member of the
7 Positive Forum. And he -- those two avenues.
8 So he accessed our services and he's a member
9 of the forum.

10 Q When did Mr. Roe join the Positive
11 Forum?

12 A The beginning of 2018.

13 Q So "beginning," you mean, like, winter,
14 January, February, March?

15 A Yes, ma'am.

16 Q Okay. Did Roe join the Positive Forum
17 after accessing legal services or before?

18 A After.

19 Q Did Mr. Roe join the Positive Forum
20 after OutServe decided to bring litigation on
21 his behalf or before?

22 A I believe it was before.

23 Q Does Mr. Roe pay any dues to OutServe?

24 A No.

25 Q Does -- is Mr. Roe a member of a local

1 chapter beside the Positive Forum?

2 A I don't believe so.

3 Q Does Mr. Roe participate actively in the
4 Positive Forum online?

5 A Yes, he does.

6 Q Does that mean he posts?

7 A He occasionally posts and he responds to
8 other posts.

9 Q Has Mr. Roe ever held a leadership
10 position in OutServe?

11 A No.

12 Q Has Mr. Roe ever been on the member -- a
13 member of the board of directors of OutServe?

14 A No.

15 Q Has Mr. Roe ever been a member of the
16 board of advisors of OutServe?

17 A No.

18 Q Has Mr. Roe ever been employed as staff
19 by OutServe?

20 A No.

21 Q Has Mr. Roe ever been paid by OutServe?

22 A No.

23 Q Has Mr. Roe ever been reimbursed for
24 expenses by OutServe?

25 A No.

1 Q Has Mr. Roe ever made a donation to
2 OutServe?

3 A I don't believe so.

4 Q How did OutServe first become aware of
5 Mr. Roe's case?

6 A He contacted our legal department.

7 Q And how did he contact your legal
8 department?

9 A I believe he contacted them through the
10 legal help desk.

11 Q Did OutServe -- was OutServe involved in
12 Mr. Roe's evaluation under the Disability
13 Evaluation System?

14 A I believe so.

15 Q At what part of that process did
16 OutServe become involved?

17 A Like what stage?

18 Q At what stage. Yeah.

19 A When he was with the Medical Evaluation
20 Board.

21 Q So that's relatively early on in the
22 process?

23 A It's more towards the middle.

24 Q Okay. And how did OutServe assist in
25 Mr. Roe's processing through the Disability

1 Evaluation System?

2 A He spoke with members of our staff about
3 what was occurring and what his options were.

4 Q Did the staff provide advice on how to
5 provide statements or otherwise information
6 into the system?

7 A I believe so.

8 Q Did the staff provide any educational
9 services to Mr. Roe about how the system
10 worked?

11 A No formal education aside from ensuring
12 he understood what was going on.

13 Q Did Mr. Roe seek any other advice from
14 OutServe along the way as he processed in the
15 disability system?

16 A I don't believe so.

17 Q Has there been any other ways that
18 Mr. Roe has been involved in OutServe that we
19 have not discussed?

20 A No.

21 Q Okay. Let's talk about Mr. Voe. When
22 did Mr. Voe become involved with OutServe?

23 A Winter of 2018.

24 Q And was this before or after OutServe
25 initiated the Harrison litigation?

1 A After.

2 Q Okay. Was it before or after OutServe
3 initiated the Roe litigation?

4 A I believe it was before.

5 Q How is Mr. Voe a member of OutServe?

6 A Mr. Voe is a member of the Positive
7 Forum, and he accessed our services.

8 Q When was his first indicia of
9 membership? When -- what was the first thing
10 he did to become a member?

11 A He accessed our services.

12 Q And when was that?

13 A Again, the winter of 2018.

14 Q And then when did Mr. Voe join the
15 Positive Forum?

16 A He was invited to join after his initial
17 conversation with our legal staff. So winter
18 of 2018.

19 Q How does that invitation work?

20 A After the initial conversation, my staff
21 asks them if they would like to be connected
22 with other individuals that are having the same
23 experiences or have. And if they affirm that
24 they do, we add them the -- to the forum. If
25 they state that they don't want to, we do not.

1 Q Okay. Did Mr. Voe become a member of
2 the Positive Forum before or after you brought
3 the suit on his behalf?

4 A I believe it was before.

5 Q Does Mr. Voe pay any dues?

6 A We do not charge dues, but he does not
7 provide donations, no.

8 Q So Mr. Voe also has not made any
9 donations now or in the past?

10 A Not to my recollection.

11 Q Is Mr. Voe a member of any local
12 chapters beyond the Positive Forum?

13 A I don't believe so.

14 Q Or is he a member of any other forums?

15 A I don't believe so.

16 Q Is Mr. Voe a participant in the Positive
17 Forums? Does he comment or post?

18 A He does.

19 Q How often?

20 A I would say he engages in posts more
21 often than he posts.

22 Q Has Mr. Voe ever held a leadership
23 position in OutServe?

24 A No.

25 Q Has he ever been a member of the board

1 of directors?

2 A No.

3 Q Has he ever been a member of the board

4 of advisors?

5 A No.

6 Q Has he ever been employed as staff?

7 A No.

8 Q Has he ever been paid by OutServe?

9 A No.

10 Q Has he ever been reimbursed for expenses

11 by OutServe?

12 A No.

13 Q Has Mr. Voe -- we already -- he's never

14 made a donation to OutServe?

15 A Not to my recollection.

16 Q How did OutServe first become aware of

17 Mr. Voe's case?

18 A I believe he contacted us after hearing

19 about the work we've been doing in this area.

20 Q So OutServe did not seek Mr. Voe out?

21 A I don't believe so.

22 Q Was OutServe involved in Mr. Voe's

23 processing in the Disability Evaluation System?

24 A I don't believe so.

25 Q So OutServe did not become involved in

1 Mr. Voe's case until after the SAFPC made their
2 final recommendation to discharge Mr. Voe?

3 A I believe that's correct. I don't
4 recall.

5 MS. BERMAN: Okay. I'm going to note
6 for the record, for the individual plaintiffs
7 that we've talked about, if plaintiffs' counsel
8 could provide -- since the witness didn't know
9 the answer for Mr. Harrison whether the
10 organization was involved with his requests for
11 an exception policy or a waiver, and also, I
12 guess, for Mr. Voe where he's not recalling
13 whether OutServe was involved in his DES
14 processing, if you could provide that
15 information after the deposition since this is
16 a 30(b)(6) witness.

17 MR. PERKOWSKI: Sure. You're free to
18 ask the witness if there are any documents that
19 will refresh his recollection. Any of these
20 issues, by the way, I will rehabilitate him
21 because he's -- the witness has already stated
22 he did his diligence and there's a lot to
23 remember.

24 MS. BERMAN: I understand. I'm just
25 saying if there are -- if you do know the

1 answer or you have documents that would easily
2 give us the answer for those specific
3 questions.

4 MR. PERKOWSKI: I do know the answers.
5 I know all the answers.

6 MS. CUTRI-KOHART: We can get to that.

7 MR. PERKOWSKI: Did you want to go off
8 the record and discuss?

9 THE REPORTER: Do you want to go off the
10 record?

11 MS. BERMAN: I don't think we need to.

12 MS. CUTRI-KOHART: Yeah.

13 MS. BERMAN: We'll talk about it.

14 MS. CUTRI-KOHART: We can deal with it
15 later.

16 BY MS. CUTRI-KOHART:

17 Q Are there any other ways that Mr. Voe
18 has been involved in OutServe that we haven't
19 discussed?

20 A No.

21 Q Kind of going back. Are there any --
22 any documents that would help you refresh your
23 recollection on -- on whether OutServe was
24 involved in Harrison's waiver requests?

25 A Yes. His declaration.

1 Q Okay.

2 A Yes. Documents would help refresh my
3 memory.

4 Q And how about for Mr. Roe and Mr. Voe?

5 A Yes.

6 Q And what would those documents be?

7 A His declaration would be helpful.

8 Q Okay. I want to -- we'll get to that in
9 a bit. I want to talk about some other people
10 that have been involved in these lawsuits and
11 their involvement in OutServe.

12 We're going to start with the
13 declaration of Peter Perkowski that was offered
14 in support of Roe and Voe's motion for
15 preliminary injunction.

16 And we'll call this -- are we up to
17 Exhibit D now? Exhibit D?

18 (Exhibit D was marked for identification
19 and is attached to the transcript.)

20 Q So we've talked a little bit about
21 Peter Perkowski.

22 Could you remind me his role in
23 OutServe?

24 A Mr. Perkowski's my legal and policy
25 director.

1 Q This declaration references several
2 airmen. The first one is mentioned in
3 paragraph 8.

4 Senior Airman KR, initials KR. He is a
5 senior -- this person is referred to by a
6 pseudonym in this declaration, correct?

7 A Yes, ma'am.

8 Q This is Senior Airman [REDACTED]; is that
9 correct?

10 A Yes, ma'am.

11 Q And I'm also going to introduce your
12 initial disclosures in the Roe case. We'll
13 call this Exhibit E.

14 (Exhibit E was marked for identification
15 and is attached to the transcript.)

16 Q Your initial disclosures reference on
17 page 3 Service Member C1.

18 A Yes, ma'am.

19 Q Is this also Senior Airman [REDACTED]

20 A Yes, ma'am.

21 Q Okay. Just so we're clear on who we're
22 talking about, I'm going to refer to this
23 person as "KR" for the rest of this deposition.
24 If I refer to him as KR, I am going to be
25 referring to Senior Airman [REDACTED] Do you

1 understand that?

2 A Yes.

3 Q So let's -- why don't you tell me when

4 KR became involved with OutServe.

5 A In November of 2018.

6 Q And was this before or after OutServe

7 began the Harrison litigation?

8 A This was after.

9 Q And was this before or after OutServe

10 became involved in the Roe litigation?

11 A This was after.

12 Q How is KR a member of OutServe?

13 A The senior airman is a member of the

14 Positive Forum and he has access to our

15 services.

16 Q Which came first? Accessing your

17 services or joining the Positive Forum?

18 A Accessing the services.

19 Q And how quickly after he accessed your

20 services did he join the Positive Forum?

21 A I believe he waited a bit. I believe he

22 was recently added.

23 Q Okay. And when did he access your

24 services again?

25 A Late 2018.

1 Q Is KR a member by any other way? Does
2 he -- has he made a donation?

3 A He has not.

4 Q Is he a member of any local chapters or
5 other forums besides the positive forum?

6 A I don't believe so.

7 Q Does he participate in the Positive
8 Forum such as making posts or commenting?

9 A He does.

10 Q How regularly?

11 A He participates more regularly than he
12 posts.

13 Q What does that mean?

14 A Commenting on other posts.

15 Q Okay. Has KR ever held a leadership
16 position in OutServe?

17 A No.

18 Q Has he ever been a member of the board
19 of directors of OutServe?

20 A No.

21 Q Has he ever been a member of the board
22 of advisors of OutServe?

23 A No.

24 Q Has he ever been employed as staff by
25 OutServe?

1 A No.

2 Q Has he ever been paid by OutServe?

3 A No.

4 Q Has he ever been reimbursed for expenses
5 by OutServe?

6 A No.

7 Q Has he ever made a donation to OutServe?

8 A No.

9 Q We talked about that already. Okay.

10 When did OutServe first become aware of
11 KR's situation with the military?

12 A Do you mean his HIV status?

13 Q His HIV status or his processing through
14 the DES system.

15 A When he contacted us in late 2018.

16 Q For the legal services?

17 A Yes, ma'am.

18 Q Okay. Has OutServe been involved with
19 KR's DES process?

20 A He -- I don't believe he contacted us.
21 And when he was originally put into the DES
22 system, that happened in 2016. And he
23 originally contacted us in 2018.

24 Q Has OutServe ever considered bringing
25 suit on behalf of KR?

1 MR. PERKOWSKI: Objection.

2 Attorney-client privilege. Attorney work
3 product.

4 Q Has OutServe ever engaged in policy
5 advocacy on behalf of KR?

6 A Other than what he contacted us for, no.

7 Q Are there any other ways in which KR has
8 been involved in OutServe that we have not yet
9 discussed?

10 A No.

11 Q Oh. I want to go back to my question
12 to which your attorney objected.

13 Did OutServe ever consider bringing a
14 suit on behalf of KR and you?

15 MR. PERKOWSKI: I objected on privilege
16 and work product.

17 MS. CUTRI-KOHART: And are you
18 instructing your client not to answer?

19 MR. PERKOWSKI: Yes. Thank you.

20 BY MS. CUTRI-KOHART:

21 Q Okay. Let's move on to the next person
22 referenced in this declaration, which is Senior
23 Airman SH, which begins in paragraph 13.

24 This is Senior Airman [REDACTED]
25 is that correct?

1 A Yes, ma'am.

2 Q And this person is also referred to in
3 the initial disclosures as Service Member C2?

4 A Yes.

5 Q Okay. And this service member is called
6 by the pseudonym Senior Airman SH, right?

7 A Yes.

8 Q And I will continue to call him "SH."
9 When I refer to SH in this deposition, I will
10 be referring to Senior Airman [REDACTED]

11 [REDACTED]

12 Do you understand that?

13 A Yes.

14 Q Can you tell me when SH became involved
15 with OutServe?

16 A SH contacted us the end of 2018.

17 Q And how did SH contact you?

18 A Through the legal department. Oh --

19 Q Sorry. Go ahead.

20 A Oh. Accessing services.

21 Q So SH is a member -- became a member of
22 OutServe through the access of services?

23 A Yes, ma'am.

24 Q Is SH a member in any other way?

25 A SH is also a member of the Positive

1 Forum.

2 Q And when did SH join the Positive Forum?

3 A Shortly after he was -- he contacted us
4 for services.

5 Q Okay. Did SH contact you for services
6 before or after OutServe became involved in the
7 Harrison litigation?

8 A After.

9 Q And how about, was it before or after
10 OutServe became involved in the Roe case?

11 A After.

12 Q Has SH ever made a donation?

13 A No.

14 Q Does SH receive the newsletter?

15 A I don't believe so.

16 Q Is SH a member of a local chapter or
17 other forum besides the Positive Forum?

18 A I don't believe so.

19 Q Does SH participate in the Positive
20 Forum?

21 A He does.

22 Q Describe his participation.

23 A He occasionally posts and he comments on
24 others' post.

25 Q How often?

1 A A couple of times a month.

2 Q Has SH ever held a leadership position
3 at OutServe?

4 A No.

5 Q Has SH ever been a member of the board
6 of directors of OutServe?

7 A No.

8 Q Has SH ever been a member of the board
9 of advisors of OutServe?

10 A No.

11 Q Has SH ever been employed as staff by
12 OutServe?

13 A No.

14 Q Has SH ever been paid by OutServe?

15 A No.

16 Q Has SH ever been reimbursed for expenses
17 by OutServe?

18 A No.

19 Q Has SH ever made a donation to OutServe?

20 We've already answered that one. Sorry. My
21 list.

22 Has OutServe been involved in SH's DES
23 process?

24 A I don't believe so.

25 Q Did OutServe ever consider bringing suit

1 on behalf of SH?

2 MR. PERKOWSKI: Objection.

3 Attorney-client privilege and work product.

4 Instruct not to answer.

5 Q Are there any other ways that SH has
6 been involved with OutServe that we have not
7 discussed?

8 A No.

9 Q Okay. Next, in paragraph 18 is Senior
10 Airman DN. This is paragraph 18 of the
11 declaration.

12 This is Senior Airman [REDACTED]; is
13 that correct?

14 A Yes, ma'am.

15 Q And that he is referred to as the
16 pseudonym DN in this declaration?

17 A Yes.

18 Q And he is also Service Member C3 in the
19 Roe initial disclosures; is that correct?

20 A Yes.

21 Q I am going to continue to call him "DN."
22 When I refer to DN in this deposition, I am
23 referring to Senior Airman [REDACTED].

24 Do you understand?

25 A Yes.

1 Q Tell me when DN became involved with
2 OutServe.

3 A December of 2018.

4 Q Was this before or after OutServe became
5 involved in the Harrison litigation?

6 A After.

7 Q And was this before or after OutServe
8 became involved in the Roe litigation?

9 A After.

10 Q How did -- how did DN become a member of
11 OutServe?

12 A Accessing our legal services.

13 Q Did he then join the Positive Forum?

14 A He was added to the Positive Forum, yes.

15 Q He was added or he requested a
16 membership?

17 A He was invited. And then because staff
18 has to make the addition, he was then added.

19 Q Okay. How soon after he requested your
20 services did he become a member of the Positive
21 Forum?

22 A It was not immediately. He also waited
23 a couple of weeks.

24 Q Okay. Is DN an active participant in
25 the Positive Forum?

1 A He is.

2 Q Can you describe his participation?

3 A He both posts and comments on others'
4 post.

5 Q How regularly?

6 A A few times a month.

7 Q Has DN ever made a donation?

8 A No.

9 Q Is DN a member of any local chapter?

10 A I don't believe so.

11 Q Is he a member of any other forum
12 besides the Positive Forum?

13 A No.

14 Q Does he receive -- does DN receive the
15 newsletter?

16 A No.

17 Q Has DN ever held a leadership position
18 at OutServe?

19 A No.

20 Q Has DN ever been a member of the board
21 of advisors of OutServe?

22 A No.

23 Q Has DN ever been employed as staff by
24 OutServe?

25 A No.

1 Q Has DN ever been paid by OutServe?

2 A No.

3 Q Has DN ever been reimbursed for expenses
4 by OutServe?

5 A No.

6 Q How did OutServe first become aware of
7 DN's situation?

8 A When he contacted us for legal services.

9 Q Has OutServe been involved in DN's DES
10 process?

11 A I don't believe so.

12 Q Did OutServe ever consider bringing suit
13 on behalf of DN?

14 MR. PERKOWSKI: Objection.
15 Attorney-client privilege and work product.

16 Instruct not to answer.

17 Q Are there any other ways in which DN has
18 been involved in OutServe that we have not
19 discussed?

20 A No.

21 Q Okay. The next person we're going to
22 talk about is -- begins in paragraph 28 and is
23 referred to as Senior Airman QS.

24 This is Senior Airman [REDACTED]; is
25 that correct?

1 A That's correct.

2 Q And he is referred to by a pseudonym in
3 this declaration as QS; is that correct?

4 A Correct.

5 Q I'm going to continue to call him "QS"
6 in this deposition. When I refer to QS, I will
7 be referring to Senior Airman [REDACTED]

8 Do you understand?

9 A Yes.

10 Q Okay. QS is in the National Guard,
11 correct?

12 A Correct.

13 Q Can you tell me when QS became involved
14 with OutServe?

15 A The beginning of 2019. So I believe it
16 was -- no. The end of 2018. December of 2018.

17 Q So this was after OutServe became
18 involved in the Harrison litigation?

19 A Yes.

20 Q And this was after OutServe became
21 involved in the Roe litigation?

22 A Yes.

23 Q How is QS a member of OutServe?

24 A QS accessed our legal services and he's
25 also a member of the Positive Forum.

1 Q So which came first?

2 A He accessed our services first.

3 Q Approximately when?

4 A I believe QS accessed our services at
5 the beginning of 2019. I want to say January.

6 Q And when did he join the Positive Forum?

7 A Shortly thereafter.

8 Q His joining is relatively recent, but
9 has he been an active participant in the
10 Positive Forum?

11 A Yes.

12 Q And by that, you mean -- what does he --
13 how does he participate?

14 A Building camaraderie, commenting on
15 posts, posting.

16 Q Okay. How often would you say he posts
17 or comments?

18 A A couple of times a week.

19 Q A couple of times a week. Okay.

20 Has he subscribed to OutServe's
21 newsletter?

22 A I don't believe so.

23 Q Has he ever made a donation to OutServe?

24 A No.

25 Q Is QS a member of any local chapter or

1 other forum?

2 A I don't believe so.

3 Q Has QS ever held a leadership position
4 in OutServe?

5 A No.

6 Q Has he ever been a member of the board
7 of directors of OutServe?

8 A No.

9 Q Has he ever been a member of the board
10 of advisors of OutServe?

11 A No.

12 Q Has he ever been employed as staff by
13 OutServe?

14 A No.

15 Q Has he ever -- has QS ever been paid by
16 OutServe?

17 A No.

18 Q Has QS ever been reimbursed for expenses
19 by OutServe?

20 A No.

21 Q How did OutServe first become aware of
22 QS's situation?

23 A When he contacted us for legal services.

24 Q Has OutServe been involved in any way in
25 QS's discharge process?

1 A Yes.

2 Q Can you describe that involvement?

3 A We had some policy initiatives in which
4 we advocated on his behalf.

5 Q Can you describe in more detail how you
6 advocated on his behalf on --

7 A We contacted the governor's office.

8 Q And what was the outcome of that?

9 A His discharge was stayed.

10 Q And how did you contact the governor's
11 office?

12 A Via phone and email.

13 Q Through a direct contact?

14 A Yes.

15 Q Did you personally contact the
16 governor's office?

17 A I did as well as other members of the
18 litigation team.

19 Q Okay.

20 A Just to clarify, I'm not a member of the
21 litigation team. But I did, and then members
22 of the litigation team.

23 Q Did other constituents of the governor
24 contact his office on OutServe's behalf?

25 A No.

1 Q Did OutServe ever consider bringing suit
2 on behalf of QS?

3 MR. PERKOWSKI: Objection.
4 Attorney-client privilege. Work product.

5 Instruct not to answer.

6 Q Are there any other ways QS has been
7 involved in OutServe that we have not
8 discussed?

9 A No.

10 Q Okay. Let's go back to the Harrison
11 case.

12 A Okay.

13 Q I will give you another document in a
14 minute.

15 MS. CUTRI-KOHART: What exhibit number
16 are we on?

17 THE REPORTER: F.

18 (Exhibit F was marked for identification
19 and is attached to the transcript.)

20 Q Oh. Conveniently, this is already
21 labeled Exhibit F. Coincidentally.

22 I've labeled Exhibit F a declaration of
23 [REDACTED] which was filed in
24 support of Harrison's motion for preliminary
25 injunction.

1 Can you tell me when [REDACTED] became
2 involved with OutServe?

3 A [REDACTED] became with [sic] OutServe
4 when he began accessing our services the middle
5 of 2018.

6 Q Was this before or after OutServe became
7 involved in the Harrison litigation?

8 A This was after.

9 Q And then it was also after OutServe
10 became involved with the Roe case as well?

11 A Yes, ma'am.

12 Q Is [REDACTED] a member of OutServe?

13 A We do consider him a member of OutServe,
14 yes.

15 Q How do you consider him a member of
16 OutServe?

17 A By utilizing our services.

18 Q And when was the last time [REDACTED]
19 contacted you for services?

20 A [REDACTED] has been in communication
21 with members of our litigation team, Lambda
22 Legal. I don't believe he's spoken personally
23 with any member of staff on OutServe. However,
24 he still uses our legal service, so we consider
25 him a member.

1 Q And you consider him a member by virtue
2 of him using Lambda Legal services as well as
3 OutServe?

4 A I did not characterize it as Lambda
5 Legal services. It's involved with the
6 services we're providing. So, yes, by virtue
7 of the services we are providing, he is a
8 member.

9 Q Okay. Is [REDACTED] a member of any
10 local chapter?

11 A He is not.

12 Q Is he a member of any of your forums?

13 A No.

14 Q Does [REDACTED] receive a newsletter?

15 A No.

16 Q Has [REDACTED] ever made a donation to
17 OutServe?

18 A I don't believe so.

19 Q Has [REDACTED] ever held a leadership
20 position at OutServe?

21 A He has not.

22 Q Has he ever been a member of the board
23 of directors of OutServe?

24 A No.

25 Q Has he ever been a member of the board

1 of advisors of OutServe?

2 A No.

3 Q Has he ever been employed by OutServe?

4 A No.

5 Q Has he ever been paid by -- has

6 [REDACTED] ever been paid by OutServe?

7 A No.

8 Q Has [REDACTED] ever been reimbursed
9 for expenses by OutServe?

10 A No.

11 Q When did OutServe first become aware of

12 [REDACTED]

13 A When our litigating partners with
14 Lambda Legal informed us that he had contacted
15 them.

16 Q Okay. Was OutServe or Lambda Legal
17 considering bringing suit on behalf of

18 [REDACTED]

19 MR. PERKOWSKI: Objection.

20 Attorney-client privilege and work product.

21 Instruct not to answer.

22 Q Did [REDACTED] contact Lambda Legal
23 before he contacted OutServe?

24 A That's correct.

25 Q And then did Lambda Legal refer

1 [REDACTED] to OutServe?

2 A Through the legal services that we're
3 providing at -- associated with this case, yes.

4 Q Okay. Are there any other ways
5 [REDACTED] has been involved with OutServe
6 that we haven't discussed?

7 A No.

8 Q Has [REDACTED] ever expressed any sort
9 of interest in leaving membership at OutServe?

10 A No.

11 Q Okay. And I think that is the end of
12 the question about [REDACTED]

13 I want to circle back and just ask a few
14 follow-up questions on some things we discussed
15 through the deposition.

16 MS. BERMAN: Do you want to take a break
17 before we do that and they can talk and we can
18 talk?

19 MS. CUTRI-KOHART: Yeah. Why don't we
20 do that, and then you can talk about --

21 MS. BERMAN: Yes. And then we should be
22 done.

23 (A recess was taken.)

24 BY MS. CUTRI-KOHART:

25 Q So I just want to circle back and ask

1 some follow-up questions on a variety of
2 topics, so they're going to be a little
3 disconnected.

4 A Okay.

5 Q But let's start in the beginning about
6 your background. You served in positions at
7 OutServe before you were the executive
8 director.

9 Can you describe your duties in those
10 other positions?

11 A Of course. So my first position, I was
12 a chapter leader for Guam back in 2010. And as
13 the chapter leader, I was kind of the regional
14 director for the region, so I received input
15 from headquarters. And then I made sure -- I
16 kind of pushed what we were doing with the
17 chapter with regards to programming and events
18 with my membership, and then I reported back up
19 the chain to see, like, what I was hearing so
20 that we can provide that input for the
21 strategic direction of the organization.

22 After that, I became the events
23 director. So I coordinated two national galas.
24 And then I came back in 2015 as a legal intern
25 where I assisted with the help desk claims that

1 came in, specifically related to discharge
2 upgrades and name change corrections and then a
3 few other miscellaneous things that came in.

4 I received a promotion to legal and
5 policy associate thereafter. I had the same
6 duties. I received an additional promotion to
7 legal and policy manager. I had the same
8 duties, and we added supervision of other
9 interns and clerks.

10 After that, I received a promotion to
11 director. I had the same duties. And then we
12 added in supervision of other individuals that
13 are focusing just on policy, not just legal.
14 And then I had more strategic input into the
15 operations of the organization.

16 After that, we received -- my -- my
17 predecessor's title changed to president, so my
18 title changed to vice president of operations
19 and strategy. And with that, I kind of moved
20 away from the legal and policy department and I
21 was more supervising all of the staff when it
22 comes to the strategy and operations of the
23 organization, providing input to my predecessor
24 in that regard.

25 And then the most recent promotion was

1 to executive director, and now I -- the staff
2 reports to me and I run the organization.

3 Q At several times throughout the
4 deposition, you talked about something that
5 happened when you were in operations?

6 A Yes.

7 Q What period of your tenure at OutServe
8 does that refer to?

9 A That refers to both when I was the --
10 let me get the titles right -- both when I was
11 the vice president of operations and strategy
12 and the director of legal and policy
13 operations.

14 Q Okay. And then you also talked about
15 how you became involved in OutServe during your
16 own -- your own -- I don't want to use the word
17 "case," but your own Don't Ask, Don't
18 Tell-related questions?

19 A Yes.

20 Q Can you describe a little bit more of
21 the circumstances of that?

22 A Sure. I was being investigated under
23 Don't Ask, Don't Tell because information was
24 found online that led the people I was serving
25 under to believe I was homosexual. This was

1 under the enactment of the Don't Ask, Don't
2 Tell policy. So at the time, being openly gay
3 was not allowed. And I contacted the
4 organization for assistance.

5 Q Was there anything beyond an
6 investigation, any sort of administrative or
7 court-related process?

8 A No.

9 Q And the investigation, what level was
10 that investigation occurring at?

11 A I'm not sure I understand the question.

12 Q You said that you were being
13 investigated for online activities in violation
14 of the --

15 A Oh, okay.

16 Q Yeah.

17 A So, basically, my -- people in my
18 command looked at my Facebook page, and I
19 listed on there that I was gay. So the -- that
20 was just command level. It didn't move up
21 beyond that.

22 Q Okay. And did anything else stem from
23 that?

24 A No.

25 Q Okay. On to a different topic, I want

1 to talk about your forums again. Specifically,
2 we talked a little bit about what it says in
3 the -- it's probably in, like, the "About Me"
4 or the "Terms of Service" or whatever that is
5 in Facebook's section of forums that it says
6 about membership.

7 A Right.

8 Q Can you explain a little bit more about
9 what it says there?

10 A So there, we -- we really want to just
11 provide the contact information for the folks
12 that are leading or administering the chapters
13 so folks know who to reach out to if they need
14 to. And we also kind of want to speak a bit to
15 the code of conduct that we try and have. So,
16 again, you're not going to curse at people,
17 you're not going to try and invalidate their
18 experiences, and stuff like that.

19 Q And you don't know if that language says
20 something about becoming a member of the forum
21 or a member of OutServe?

22 A I think it just uses the term "member."
23 It doesn't define "forum" or "OutServe."

24 Q Is it possible -- can we get a copy of
25 that About forum to -- to clarify what exactly

1 it says for the Positive Forum and maybe an
2 example if it's different from a local chapter?

3 A Sure.

4 Q If they're the same, then I just need
5 one.

6 A They should be the same.

7 MS. CUTRI-KOHART: Okay. So if that's
8 okay with you?

9 MR. PERKOWSKI: We'll -- we will
10 consider that, yeah.

11 Q Okay. And then the next thing I want to
12 talk about is the vetting process for those
13 forums.

14 When people are being vetted to join the
15 forums, are they -- when they're being vetted,
16 does the person that contacts them tell them
17 what it means to join the forum or explain the
18 forum in any way?

19 A So, again, that changes. Are we
20 speaking specifically about the Positive Forum?

21 Q Yeah. Let's speak about the Positive
22 Forum.

23 A Okay.

24 Q Does the person who contacts them talk
25 to them about what being a part of that forum

1 means?

2 A So that would only come up in
3 conversation after they have already been in
4 communication with my staff. And the staff
5 does indicate the benefits of the forum, yes.

6 Q And do those benefits include being told
7 they're going to be a member of OutServe if
8 they join the forum?

9 A The typical jargon is "Would you like to
10 be a member?" Yes.

11 Q A member of the forum or a member of
12 OutServe?

13 A Again, we don't differentiate. When
14 you're a member of the forum, you are a member
15 of OutServe. So we just say, "Would you like
16 to be a member?"

17 Q Okay. Let's jump to a different topic
18 now where we talked about OutServe's
19 involvement in other people's process besides
20 the named plaintiffs -- the named plaintiffs
21 and the declarants that we talked about today.

22 You said that you have -- OutServe has
23 been involved in other DES processes or
24 administrative processes of HIV-positive
25 service members.

1 Were you involved in any processes -- I
2 just want to clarify based on something you
3 said -- any processes that were not exclusively
4 because of the person being HIV-positive but
5 included the person being HIV-positive?

6 A I'm not sure I understand your question.

7 Q So if somebody was being put through the
8 DES process or other administrative process for
9 discharge who were HIV-positive, but that was
10 not the only reason that they were in the
11 process.

12 A I don't believe so.

13 Q So all the ones you've been involved in
14 have been exclusively for HIV-positive service
15 members?

16 A I believe that's correct.

17 Q Okay. And of those that were for
18 HIV-positive service members, were they all
19 asymptomatic HIV-positive service members?

20 A Can you define?

21 Q Were any of those service members
22 showing any signs of progressive clinical
23 illness or other immunodeficiency?

24 A So these individuals received the proper
25 treatment, which indicates that they would not

1 be showing the illness progressing.

2 Q So all the DES cases or other
3 administrative cases you've been involved with
4 have been virally suppressed.

5 Would you describe it as virally
6 suppressed?

7 A Yes.

8 Q And on appropriate antiretroviral
9 treatment?

10 A Yes.

11 Q You mentioned some people had given up,
12 I believe were the words you used, and decided
13 to accept a discharge.

14 A I don't think I said "give up." I
15 believe I stated they no longer wanted to
16 fight.

17 Q Okay. In those cases, were they all
18 asymptomatic?

19 A Yes. All individuals that are known to
20 have HIV in the military receive proper
21 treatment and they are asymptomatic.

22 Q So you weren't involved in any cases
23 where a person decided to stop fighting that
24 they were showing progressive clinical illness
25 or immunodeficiency?

1 A I don't believe so, no.

2 Q And in any of those cases, did those
3 people have other medical conditions besides
4 HIV that contributed to their decision to stop
5 challenging the process?

6 A I'm not sure I -- other medical
7 conditions besides HIV?

8 Q Yeah. Was HIV the only medical -- the
9 exclusive medical condition that was leading to
10 their discharge?

11 A The exclusive medical condition, yes.

12 MS. CUTRI-KOHART: Okay. I think we're
13 okay. Okay. I believe that's all the
14 questions that we have, so...

15 MR. PERKOWSKI: I do have some
16 clarifying questions.

17 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
18 BY MR. PERKOWSKI:

19 Q Andy, first I want to talk about the
20 personal donations in terms of the
21 organization's budget.

22 Do you remember that testimony?

23 A Yes.

24 Q You mentioned that the -- that personal
25 donations make up the bulk of the agency's

1 budget.

2 How much kind of percentage-wise would
3 you say the personal donations made up the
4 budget?

5 A A hundred percent or nearly a
6 hundred percent. Almost all of our money comes
7 from personal donations.

8 Q And of those personal donations, how
9 much in a percentage basis come from members?

10 A I would -- I would estimate 75 percent.

11 Q Okay. I want to talk a little bit about
12 membership -- the members' involvement in
13 the -- involvement or input in the direction of
14 the agency, okay?

15 A Okay.

16 Q In terms of selecting the leadership of
17 the agency, what type of input do members have?

18 A When you refer to "the agency," are you
19 referring to the chapters or the overall
20 organization?

21 Q Let's take it one by one.

22 So in terms of selecting the board of
23 directors, what kind of input do members have?

24 A They can apply themselves and they can
25 recommend. They do not vote themselves,

1 however.

2 Q So when you say "recommend," that means
3 making a nomination?

4 A Yes.

5 Q Can they provide input in other ways on
6 existing board members?

7 A Yes. If they -- if they believe an
8 individual is not -- is not appropriately
9 representing the organization, they can make
10 those feelings known.

11 Q And in terms of the staff of the
12 organization, what input do members have in
13 selecting staff, if any?

14 A They don't.

15 Q In terms of providing feedback on staff,
16 can they do that?

17 A Yes. I encourage it.

18 Q And in what way?

19 A I frequently contact our members and ask
20 them how their interactions with our staff
21 members went. I -- I want to make sure that
22 we're providing the services that our members
23 need and deserve. That -- that's actually why
24 we started, you know, our trauma-informed care
25 process --

1 (Reporter clarification.)

2 A -- trauma-informed care process because
3 our members had indicated they felt like our
4 staff members were rushing through the services
5 that we were trying to provide to them. So we
6 completely revamped that program because of
7 input from the members.

8 Q And in terms of the chapter leadership,
9 what input do members have in the selection of
10 those people?

11 A It's similar to the board of directors
12 wherein they can nominate themselves or other
13 people. Additionally, if they don't like a
14 chapter leader, the way they're running the
15 chapter or representing the organization, they
16 can make those feelings known as well.

17 Q And switching gears a bit here, I want
18 to talk about the involvement of members in
19 kind of the strategic direction or services of
20 the organization.

21 A Okay.

22 Q So what input do members have -- I think
23 there was a lot of testimony -- correct me if
24 I'm wrong -- about members not having input on
25 the strategic decision-making in specific

1 cases.

2 Is that fair?

3 A That's correct.

4 Q In terms of overall strategy of the
5 provision of the services of the organization,
6 what input do members have, if any?

7 A So I characterize us as both a proactive
8 and a reactive organization. A lot of the
9 proactive strategy comes down from the board of
10 directors. However, all of the reactive
11 strategy comes from our membership. So that's
12 what they're experiencing, what they're seeing,
13 what they're afraid of. And then we use that
14 information to figure out what strategies we're
15 going to take, what programs we're going to
16 develop to serve them.

17 Q And members themselves serve in various
18 roles throughout the organization?

19 A Yes.

20 Q Such as what?

21 A Chapter leaders, members of the military
22 advisory council. When we have galas, a lot of
23 them volunteer. Events throughout the country,
24 a lot of them will meet up.

25 Q Great. You were asked a series of

1 questions about three individual plaintiffs and
2 then five additional people who were
3 participating in these lawsuits. Do you
4 remember that?

5 A Yes.

6 Q What did you do to prepare for giving
7 those -- that testimony and answering those
8 specific questions about those people?

9 A I met with Mr. Perkowski, my legal and
10 policy director; I reviewed declarations; and I
11 reviewed the notice of deposition.

12 Q How much time did you spend reviewing
13 that documentation?

14 A Over the last week, I would estimate ten
15 hours.

16 Q And how much time did you spend meeting
17 with me to prepare?

18 A Three hours, I believe.

19 Q The testimony you've given and
20 responding to questions about those specific
21 circumstances for those specific individuals,
22 is it to the best of your memory?

23 A Yes.

24 Q Are there things that you could review
25 that would improve your memory to the extent

1 that it might have failed today?

2 A Yes.

3 Q What would those things be?

4 A The declarations of -- from the
5 individuals. Or I believe Mr. Perkowski's
6 declaration has information in it as well.

7 Q Are there other documents that you
8 didn't review that might have additional
9 information?

10 A Yes.

11 Q Such as? Like, for example, their
12 involvement in the Positive Forum and when they
13 contacted --

14 A Oh, yes. That information could easily
15 be found on the Facebook pages, so the
16 membership list.

17 Q And to the extent there is documentation
18 that provides details that you didn't give
19 today or that even conflicts with your memory,
20 would you say that those -- that documentation
21 is a better representation of the facts, or is
22 your memory a better representation?

23 A Those documents are a better
24 representation.

25 MR. PERKOWSKI: Okay. That's all the

1 questions I have.

2 EXAMINATION BY COUNSEL FOR THE DEFENDANTS

3 BY MS. CUTRI-KOHART:

4 Q Okay. Just a few really quick questions
5 on what you were just asked about.

6 When you talked about the breakdown of
7 member versus nonmember donations, I just want
8 to break that down just a little bit further.

9 A Sure.

10 Q Of the member donations, how many were
11 -- what approximate percentage is from existing
12 members and which approximate percentage is
13 from people who became members by virtue of
14 their donation?

15 A I would estimate that 90 percent of that
16 75 percent were from existing members, and the
17 other 10 percent of that 75 percent became
18 members by virtue of their donation.

19 Q The next question I have, as we were
20 talking about making a nomination to the board
21 of directors, I just want to clarify: Only the
22 nominating committee can nominate somebody to
23 be on the board of directors; is that correct?

24 A So -- so to clarify, the nominating
25 committee receives the applications and then

1 they review and then they push forward to the
2 board of directors. However, anybody is able
3 to nominate to the nominating committee.

4 Q Okay. So when you spoke about members
5 nominating people, that's what you mean, is
6 referring them to the nominating committee?

7 A Agreed. Or yes. Sorry.

8 Q And you mentioned the military advisory
9 council. I just want to make sure our language
10 is totally clear: That's the same as the board
11 of advisors?

12 A Yes. They are our board of advisors.
13 Their official name is the Military and Veteran
14 Advisory Council. However, colloquially
15 they're known as "the Military Advisory
16 Council" or "the MAC."

17 Q Okay. And then the final question. As
18 we were talking about your preparation for
19 today's deposition, you mentioned there were
20 things that you did not review that you could
21 have.

22 Can you explain why you did not review
23 these other documents, the Facebook group, that
24 might have been -- better informed your -- your
25 testimony today as a 30(b)(6) witness?

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY

2 PUBLIC

3 I, Jessica Croxford, Registered Professional
4 Reporter, Certified Court Reporter and Notary
5 Public, the officer before whom the foregoing
6 deposition was taken, do hereby certify that
7 the foregoing transcript is a true and correct
8 record of the testimony given; that said
9 testimony was taken by me stenographically and
10 thereafter reduced to typewriting under my
11 direction; that reading and signing was
12 requested; and that I am neither counsel for,
13 related to, nor employed by any of the parties
14 to this case and have no interest, financial or
15 otherwise, in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand and affixed my notarial seal this 11th
18 day of March, 2019.

19 My commission expires: May 14, 2022

20 
21 _____
22

23 Jessica Croxford

24 NOTARY PUBLIC IN AND FOR

25 THE DISTRICT OF COLUMBIA

EXHIBIT F

Harrison *Declarant 1 (D1)*

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

RICHARD ROE, VICTOR ROE, and)
OUTSERVE-SLDN, INC.,)

Plaintiffs,)

vs.)

JAMES N. MATTIS, in his official)
capacity as Secretary of Defense;)
HEATHER A. WILSON, in her)
official capacity as Secretary of)
the Air Force; and the United)
STATES DEPARTMENT OF DEFENSE,)

Defendants.)

DEPOSITION OF
[REDACTED]

Taken on Behalf of the Defendants

DATE TAKEN: March 5, 2019
tIME: 10:06 AM - 11:43 AM
PLACE: [REDACTED]

1 APPEARANCES:

2 On Behalf of the Plaintiff:
OS SLDN

3 BY: PETER E. PERKOWSKI, ESQ.
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5

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U.S. DEPARTMENT OF DEFENSE

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9

-and-

10

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1 that's the case for a lot of people.

2 Q. And to make sure I'm clear, you're required
3 to tell your chain of command about your non-deployable
4 status or about your HIV status?

5 A. HIV status.

6 Q. And shifting --

7 A. Your commanding officer.

8 Q. And to change topics a little bit, are you
9 familiar with the organization Outserve?

10 A. Yes, mm-hmm.

11 Q. What do you know about the organization?

12 A. They advocate for gay, transgender, LGBT
13 community, and HIV positive individuals.

14 Q. How did you first learn about Outserve?

15 A. Through the court case. I think Shanahan.

16 Not Shanahan. I forget the individual's name. And

17 then the article. Someone sent me a link to the

18 article, and I looked down at the bottom of the article

19 and saw who was represented them.

20 Q. And was that your friend you mentioned at the
21 start of the deposition today?

22 A. Yes.

23 Q. Can you recall when that was?

24 A. It was actually in June. Shortly after I

25 found out I was deferred.

1 Q. And if I recall right, is it correct that
2 your friend shared the information about the court case
3 with you because you had shared your experience about
4 the deferral?

5 A. Correct.

6 Q. To the best of your understanding, what do
7 you know to be Outserve's mission?

8 A. To advocate and, you know, represent that
9 people -- regardless of the situation they've been not
10 been treated well or -- unfairly or discriminated
11 against because of their sexuality or their health
12 status.

13 Q. And I know you said you were first introduced
14 through your friend to Outserve in the court case in
15 June. How long after that did you first become
16 involved with the organization?

17 A. I think it was I want to say July, August
18 time period.

19 Q. July or August?

20 A. Mm-hmm.

21 Q. And how did you first contact Outserve?

22 A. I just called. I -- it was call and e-mail.
23 I think I called and e-mailed.

24 Q. In that call and e-mail, were you
25 specifically seeking legal representation?

1 A. Well, I was curious about the case they were
2 working, and they explained to me what was going on and
3 I said hey, this is my situation, and let me know if I
4 can help. And this is how it -- they told me that you
5 can help by -- you know, after a while they told me
6 we're going to court and this may help our case if you
7 can explain your story.

8 Q. Were you speaking with attorneys? Do you
9 recall?

10 A. I believe they were attorneys, yeah.

11 Q. Do you consider yourself to be a member of
12 Outserve?

13 A. I think at this point, yes. Because, I mean,
14 they're helping -- I mean, I'm a part of this so I mean
15 I think it's appropriate. I mean, I haven't signed any
16 membership pledge or anything like that, but I think me
17 supporting them, I support them and what they are
18 trying to achieve, especially when it comes to
19 supporting our service members.

20 Q. When you say you support them, do you mean
21 ideologically, mentally support them, or do you mean
22 that in some other way?

23 A. Ideologically.

24 Q. And so you said you would consider yourself
25 to be a member now?

1 A. I think I'd have to at this point unless
2 someone tells me something different I think because
3 I'm involved in this and I support what they are doing.

4 Q. When would you consider yourself to have
5 become a member?

6 A. I guess the question -- I mean, would it be
7 when I signed the affidavit, you know, that I'm coming
8 to the court case? I have not signed anything that
9 says I'm a member on paper or anything like that. But
10 I would say just me being a part of the case, I would
11 consider myself a member, you know, them. But I have
12 not signed a declaration or anything like that.

13 Q. You mean regarding membership?

14 A. Yes, regarding membership.

15 Q. Do you recall when you signed the declaration
16 that was put forward in litigation?

17 A. I don't recall. Might have been this fall or
18 something like that.

19 Q. In your mind, what does it mean when you say
20 that you consider yourself to be a member of Outserve?

21 A. Just a member of supporting the case.
22 Supporting, you know, what they're trying to do to help
23 service members.

24 Q. Supporting the litigation about the HIV
25 policy?

1 A. Yeah.

2 Q. Do you know anything further about how one
3 goes about becoming a member of Outserve?

4 A. What I understand is, you know, you can sign
5 up or whatever. But also just supporting their causes,
6 you know, is considered membership. You're not paying
7 membership. You're just a member. You consider
8 yourself a member.

9 Q. How do you sign up?

10 A. I have no idea.

11 Q. Okay. Do you pay any dues to Outserve?

12 A. I do not.

13 Q. Are you a member of a local chapter at all?

14 A. No.

15 Q. Do you know whether Outserve has local
16 chapters?

17 A. I believe they do, yes.

18 Q. Do you receive newsletters or other regular
19 information from them?

20 A. I follow them on Twitter, but I don't get any
21 newsletters.

22 Q. Do you know on which social media platform
23 Outserve is active?

24 A. Twitter, I think Instagram. I don't recall
25 any others right now.

1 Q. Okay.

2 A. Yeah.

3 Q. Do you engage with Outserve on social media?

4 A. No.

5 Q. No?

6 A. Just dealing with the case.

7 Q. Are you active on any online forums?

8 A. No.

9 Q. And so you said Twitter. Do you just receive
10 their Tweets or do you engage?

11 A. I just receive them. I don't Tweet anything
12 so --

13 Q. Me either.

14 A. I just listen or watch.

15 Q. Were you ever invited to join an Outserve
16 social media group?

17 A. Other than Twitter, that's it.

18 Q. Just Twitter?

19 A. Yes.

20 Q. Who invited you to join the Twitter?

21 A. I forgot his name. He was the first person I
22 talked to who was working the case. Do you remember
23 the gentleman's name? He was in Chicago.

24 MR. PERKOWSKI: Scott?

25 THE WITNESS: Yes. Scott comes to mind, but

1 I can't be certain. I believe it's Scott. I'd
2 have to check my records.

3 BY MS. BAILEY:

4 Q. To the best of your knowledge, is Scott an
5 attorney?

6 A. I think he is, yeah.

7 Q. So you did mention this, but just to make
8 sure. Are you a member of a Facebook group with
9 Outserve?

10 A. No.

11 Q. Okay. Are you on Facebook?

12 A. Yes.

13 Q. Do you have any understanding about of what
14 the purpose of Outserve's social media groups is?

15 A. My only understanding that is it's basically
16 a forum to discuss what's going on as far as
17 discrimination against LGBTQ, HIV positive. A forum to
18 discuss what's going on and what cases are being
19 brought to courts. That's my understanding.

20 Q. When did you first start following Outserve
21 on Twitter?

22 A. Probably in the fall.

23 Q. Have you ever stopped following them and then
24 rejoined?

25 A. No. It's been continuous.

1 Q. Have you ever had any leadership position
2 with Outserve?

3 A. No.

4 Q. You have not been on their Board of Directors
5 or anything?

6 A. No.

7 Q. Have you ever been paid by Outserve?

8 A. No.

9 Q. Have they reimbursed you for any expense?

10 A. No.

11 Q. Have you ever given them a donation?

12 A. No.

13 Q. And so I guess you've never been employed by
14 them either, right?

15 A. No.

16 Q. Did you first discuss your situation with
17 them right when you contacted them in July or August?

18 A. Yes.

19 Q. I want to make sure I'm clear. When I asked
20 whether you sought legal representation, it sounded as
21 if -- well, were you -- in your mind were you
22 specifically seeking legal recommendation or more
23 seeking information on the case?

24 A. Information, yeah.

25 Q. Did you know anyone else that was involved

1 with the lawsuits before you contacted Outserve?

2 A. No.

3 Q. And did you ever consider participating as a
4 named plaintiff in the lawsuits?

5 A. Well, I told them that, you know, I would
6 participate, that my name would be I guess withheld.

7 MR. PERKOWSKI: Let's be careful not to
8 reveal attorney/client communication. You can tell
9 what you considered personally.

10 BY MS. BAILEY:

11 Q. I'm only asking about your personal
12 considerations, and not what was communicated with an
13 attorney.

14 A. I don't mind, but I didn't want my name made
15 public. But, you know, I think my understanding is
16 that that was an option. A court can do that, kind of
17 conceal the name. But I can certainly give testimony.

18 Q. At this time are you considering
19 participating as a named plaintiff? In other words,
20 suing the Army yourself?

21 A. No.

22 Q. Has Outserve assisted you in any other way
23 regards your HIV status?

24 A. No.

25 Q. So has your involvement with them been

1 related just to the lawsuit specifically?

2 A. Just this case.

3 Q. Okay. And has there been any other
4 involvement with them in any way that we haven't
5 discussed or I didn't ask you about?

6 A. No, not that I recall.

7 Q. Let's go off the record.

8 (Informal discussion held off the record.)

9 (Brief recess taken.)

10 BY MS. BAILEY:

11 Q. [REDACTED] you are still here and under oath.

12 A. Okay.

13 Q. I only have a few more questions for you.

14 A. Sure.

15 Q. The medical treatment you've received since,
16 and specifically for your diagnosis, has that all been
17 through the military or have you also seen civilian
18 medical providers for your HIV?

19 A. It's all military.

20 Q. And so where has that treatment been?

21 A. Typically at [REDACTED] I have done some
22 stuff when I was out in [REDACTED],
23 but typically -- also went up to -- what was the

24 [REDACTED] I mean, it's [REDACTED]
25 [REDACTED]. So basically those [REDACTED] locations. But

1 A. Like I said, it takes you -- you're two years
2 out of your cycle and you're having to rebuild up
3 reputation because people are kind of wondering why you
4 were pulled out of command, you know, when I could not
5 explain it.

6 Q. The current job, [REDACTED], is that a
7 deployable position?

8 A. It can be.

9 Q. Were you ever told why you were eligible for
10 that job being classified as non-deployable but you
11 weren't eligible for the [REDACTED] because you were
12 non-deployable?

13 A. No. I mean I -- there are -- you can -- to
14 go TUY, and I don't want to say, you know, and correct
15 me, I don't want to go too far into policy, but if I
16 inform my command surgeon, which I have at [REDACTED], of
17 my status and get permission based on, you know, him
18 checking with my doctor, whatever, then it's
19 permissible for me to go TDY certain locations, you
20 know, within my AOR. But not a combat zone.

21 Q. But your -- that's your speculation? No one
22 ever told you that's why you could have the current job
23 as opposed to the one that's been withdrawn?

24 MS. BAILEY: Objection. Form.

25 THE WITNESS: No.

1 BY MR. PERKOWSKI:

2 Q. Are you command eligible now?

3 A. Yes, for the [REDACTED] again.

4 Q. Are you eligible for other commands?

5 A. Not that I'm aware of.

6 Q. Why are you eligible now to your knowledge?

7 A. What was stated to me was that, you know, the
8 policy still -- they hadn't rewritten the AR yet, but
9 they said, you know, you're eligible for command again
10 because, you know, there's a -- I'm considered
11 deployable with limitations. And -- but I don't know
12 what that means so -- but they are still saying that I
13 can only compete for the command that I originally was
14 slated for. The command, you know, category I was
15 originally slated for which was [REDACTED]

16 [REDACTED]

17 Q. So you've been told you're classified as
18 deployable with limitations, but you don't know what
19 that means?

20 A. I do not.

21 Q. Do you know whether it means that you're not
22 in danger of being involuntarily separated from the
23 Army?

24 MS. BAILEY: Objection. Form.

25 THE WITNESS: I believe that's the case, but

1 I'm not sure. No one has told me I'm being
2 separated at this point.

3 BY MR. PERKOWSKI:

4 Q. You mentioned that the Army is redoing an AR
5 which I think is an Army Regulation, right?

6 A. Correct.

7 Q. Are you referring to AR600-110 which is that
8 regulation that governs HIV, soldiers with HIV?

9 MS. BAILEY: Objection to form.

10 THE WITNESS: I believe so.

11 BY MR. PERKOWSKI:

12 Q. Have you been told anything about the
13 revisions to AR600-110?

14 A. I talked to a couple of people. I talked to
15 my counselor at [REDACTED]. She's like a social
16 worker for our -- patients there, and she said they're
17 revising it and possibly there will be some revisions
18 of restrictions on what we can and can't do. But she
19 hasn't told me exactly what those would be.

20 Q. So no details?

21 A. No details, no.

22 Q. I want to move into your diagnosis with HIV.
23 When were you diagnosed?

24 A. [REDACTED]

25 Q. What rank did you have at the time?

1 A. [REDACTED]

2 Q. And you're [REDACTED] now?

3 A. Yes.

4 Q. So you've promoted [REDACTED]

5 A. Yes.

6 Q. What treatment are you on?

7 A. One pill a day Triumeq.

8 Q. Does that pill have any special storage or
9 handling requirements?

10 A. Not that I'm aware of.

11 Q. You don't have to put it in the a
12 refrigerator, for example?

13 A. No.

14 Q. You can take it where you need?

15 A. Yes.

16 Q. And you've been on a one-pill-a-day treatment
17 since -- excuse me.

18 You've been on a one-pill-a-day treatment
19 since 2008?

20 A. No. My first was three pills a day, but
21 since then medications have evolved and I've gotten on
22 one pill a day. Actually, I'm sorry. I was at two
23 times a day at one point when I first got diagnosed.
24 Three pills two times a day.

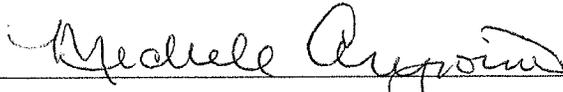
25 Q. Do you remember when you moved to the one

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CERTIFICATE OF REPORTER

THE STATE ([REDACTED])
COUNTY OF [REDACTED]

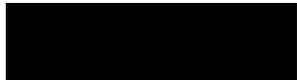
I, MICHELE ANZIVINO, State of [REDACTED] at
Large, certify that I was authorized to and did
stenographically report the foregoing proceedings and
that the transcript is a true and complete record of my
stenographic notes.



MICHELE ANZIVINO
Notary Public - [REDACTED]
My Commission No.: [REDACTED]

EXHIBIT G

Roe Deposition



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Transcript of



Thursday, March 14, 2019

Roe, et al. v. Shanahan

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1 receiving it.

2 MR. ABBUHL: Can we go off the record for a
3 second.

4 [Recess.]

5 BY MR. ABBUHL:

6 Q. We're going to change topics a little
7 bit and ask you some questions about your
8 relationship to OutServe now.

9 A. Okay.

10 Q. When would you say you first learned
11 about OutServe?

12 A. I would say while I was in the MEB
13 process.

14 Q. Remind me when that started.

15 A. It started [REDACTED]

16 Q. Do you think you learned about OutServe
17 in [REDACTED]

18 A. No. It would have been at the end of
19 the MEB process.

20 Q. Do you have an estimate of a month?

21 A. Probably, around April of 2018.

22 Q. And how did you learn about OutServe?

1 A. There was an individual who sent me a
2 link about the Harrison case.

3 Q. When you say "a link", was that a link
4 to a website or something else?

5 A. It was a link to their website.

6 Q. OutServe's website?

7 A. Correct.

8 Q. And the link discussed the Harrison
9 case?

10 A. Correct.

11 Q. Who was the individual who sent you that
12 link?

13 A. His name?

14 Q. Sure.

15 A. [REDACTED]. Do you need the last name?

16 Q. Please.

17 A. [REDACTED]

18 Q. Could you spell that?

19 A. Accurately? Can I use my phone?

20 Q. Is it something close to [REDACTED]

21 A. I believe it's [REDACTED] but I'm not a
22 hundred percent sure.

1 Q. [REDACTED] approximately?

2 A. Yes.

3 Q. Who is [REDACTED]

4 A. A friend.

5 Q. In the Air Force?

6 A. Yes.

7 Q. How do you know [REDACTED]

8 A. We are in the same career field.

9 Q. [REDACTED]

10 A. Yes.

11 Q. When did you meet [REDACTED]

12 A. I do not recall.

13 Q. Have you been stationed together?

14 A. No.

15 Q. Where has [REDACTED] been stationed?

16 A. I know he's currently stationed in

17 [REDACTED]

18 Q. Do you know anywhere else he's been

19 stationed?

20 A. I do not.

21 Q. Why did he send you the link about the

22 Harrison case?

1 A. I asked him for a character statement.

2 Q. You asked him for a character statement
3 to submit in your medical processing?

4 A. Correct.

5 Q. He knew about the Nick Harrison case and
6 sent you the link?

7 A. Correct.

8 Q. You said that was the first you had
9 heard of OutServe. Correct?

10 A. To my knowledge, yes.

11 Q. When you said it's a link to an OutServe
12 website, was it a Facebook page or a normal website
13 or what was it?

14 A. Normal website.

15 Q. Not Facebook?

16 A. No.

17 Q. What was on the website page?

18 A. It was an article about the case.

19 Q. Was there anything else on the page you
20 looked at?

21 A. Not that I recall.

22 Q. Did you click around the page at all?

1 A. I don't think so.

2 Q. So you think you just read that one
3 article at the time?

4 A. Correct.

5 Q. When did you first contact OutServe?

6 A. After I sent the appeal to the Secretary
7 of the Air Force.

8 Q. How did you contact them?

9 A. It was through their help desk. I
10 called and left a message.

11 Q. Roughly, when was this?

12 A. I believe it was the end of May 2018.

13 Q. What do you mean by "help desk"?

14 A. It was a phone number that I called and
15 left a message. I don't know how to be more specific
16 about it.

17 Q. How did you hear about -- how did you
18 learn of the phone number to call?

19 A. I believe I found it on their website.

20 Q. Was this sometime after you first read
21 the page about Harrison?

22 A. Yes.

1 Q. So you went back to the website at some
2 point?

3 A. I believe so, yes.

4 Q. What did you look at on the website
5 after that first time you read about the Harrison
6 case?

7 A. It just said their phone number to
8 contact them.

9 Q. Do you remember looking at anything on
10 their website besides the article about the Harrison
11 case or the phone number for their contact
12 information?

13 A. I signed up to receive their newsletter.

14 Q. Did you do anything else on their
15 website?

16 A. Not that I recall.

17 Q. Did anyone tell you that OutServe might
18 be able to assist you in the medical evaluation
19 process?

20 MR. PERKOWSKI: Objection, vague as to time
21 and potentially attorney-client privilege.

22 BY MR. ABBUHL:

1 Q. I'll rephrase. Before you called the
2 help desk, did anyone tell you that you should
3 consider calling OutServe for assistance?

4 A. Besides my friend sending me the
5 article, as to his intentions of what I should do
6 with it, I can't speak to that, but I suppose that.

7 Q. Nothing else?

8 A. No.

9 Q. So you, on your own, went back to the
10 website to look for a phone number to call?

11 A. Yes.

12 Q. Did you think that -- let me rephrase.
13 Why did you think that OutServe might be able
14 to assist you at that point?

15 A. I guess after reading the article about
16 the Harrison case.

17 Q. After reading the article about the
18 Harrison case, you thought that they might be able to
19 help you in a similar way?

20 A. Yes.

21 Q. Can you tell me everything else you
22 remember about what was on the website?

1 A. I don't recall what was on their
2 website.

3 Q. And you said you initially left a
4 voicemail after calling the OutServe help desk.
5 Correct?

6 A. I believe so, yes.

7 Q. Did someone contact you back?

8 A. Yes.

9 Q. Roughly, how long did it take for
10 someone to call you back?

11 A. I don't recall.

12 Q. Was it more than a week?

13 A. I don't believe so.

14 Q. Was it about a day?

15 A. Possibly.

16 Q. Did you reach out to OutServe for legal
17 advice?

18 A. Yes.

19 Q. Did you have any other reasons for
20 contacting OutServe when you left a voicemail on
21 their help desk?

22 A. No.

1 Q. Aside from reading the article about
2 Harrison, did you know any other service members
3 involved in this lawsuit or in Harrison before you
4 called the OutServe help desk?

5 A. Can you repeat that?

6 Q. Did you know Sergeant Harrison
7 personally before you called the help desk?

8 A. No.

9 Q. Did you know your co-plaintiff, Victor
10 Voe, before this lawsuit?

11 A. No.

12 Q. When someone called you back after you
13 left the voicemail, who was it that called you?

14 A. My attorney.

15 Q. Mr. Perkowski?

16 A. Correct.

17 Q. Did anyone else contact you from
18 OutServe?

19 MR. PERKOWSKI: Vague as to time.

20 BY MR. ABBUHL:

21 Q. Did anyone else contact you from
22 OutServe soon after you left the voicemail on the

1 help desk?

2 A. I believe someone may have, but I don't
3 remember their name.

4 Q. Do you remember if they were an
5 attorney?

6 A. I do not.

7 Q. Did that person legally represent you or
8 give you legal advice?

9 A. No.

10 Q. What did they tell you?

11 MR. PERKOWSKI: Objection, attorney-client
12 privilege to the extent that person worked for legal
13 staff.

14 BY MR. ABBUHL:

15 Q. Do you know if that person worked for
16 legal staff?

17 A. It's the individual I think I talked to,
18 then yes, but I don't recall if that's it.

19 Q. That's fine.

20 MR. PERKOWSKI: You can say who you think it
21 is.

22 THE WITNESS: I believe I spoke to Andy

1 Blevins, but I can't recall for sure.

2 MR. PERKOWSKI: I'll represent at the time,
3 Andy Blevins was legal staff.

4 MR. ABBUHL: Thank you.

5 BY MR. ABBUHL:

6 Q. Have you ever been invited to join an
7 OutServe social media group?

8 A. Yes.

9 Q. Which social media group?

10 A. It was a Facebook page.

11 Q. What was the Facebook page?

12 A. The name of it?

13 Q. Yes.

14 A. OutServe-SLDN. It was a forum for
15 positive individuals.

16 Q. Is that sometimes known as the Positive
17 Forum or Poz Forum?

18 A. Yes.

19 Q. Who invited you to join?

20 A. My attorney.

21 Q. Mr. Perkowski?

22 A. Correct.

1 Q. When did he ask you to join?

2 A. I do not recall.

3 Q. When you joined the Positive Forum, was
4 there any information about what the group was about
5 that you could read before you joined?

6 A. Not that I recall.

7 Q. On the forum, was there anything like an
8 "About This Group" or "Group Info" section?

9 A. Not that I recall.

10 Q. Is there a Code of Conduct?

11 A. Not that I recall.

12 Q. Any other terms of service?

13 A. Not that I recall.

14 Q. Was there anything on the Positive Forum
15 about membership in OutServe?

16 A. No.

17 Q. After you joined the Positive Forum, was
18 information made available to you about being an
19 OutServe member?

20 A. Can you repeat that?

21 Q. After you joined the Positive Forum,
22 were you given any information about membership in

1 OutServe?

2 A. On the forum?

3 Q. Sure.

4 A. Not that I recall.

5 Q. Just to be clear, you don't recall any
6 information on the forum about OutServe membership?

7 A. Correct.

8 Q. Are you a member of any other OutServe
9 social media group besides the Positive Forum?

10 A. I believe I follow their Facebook page
11 and possibly their Instagram.

12 Q. For the record, what does it mean to
13 follow a Facebook page?

14 A. To, I guess, follow something, you see
15 the different postings under that group.

16 Q. So if someone posts something on the
17 Facebook page of OutServe and you're following it, it
18 will show up on your page?

19 A. Yes.

20 Q. What did you have to do to follow the
21 OutServe Facebook page?

22 A. Click "follow".

1 Q. Did anyone invite you to do that?

2 A. No.

3 Q. Have you looked at the OutServe Facebook
4 page?

5 A. Yes.

6 Q. On the OutServe Facebook page, is there
7 any information about membership in OutServe?

8 A. Not that I recall.

9 Q. Nothing like an "About This Group" or
10 "Group Info" section?

11 A. I'm sure there probably is. I just
12 don't remember specifics.

13 Q. You don't remember seeing one?

14 A. I don't remember reading one if there
15 was one.

16 Q. So you're not sure if there is such
17 information about like an "About This Group" or
18 "Group Info" page; is that correct?

19 A. Yes.

20 Q. But you are sure that you haven't read
21 it yourself?

22 A. Can you repeat that?

1 Q. Are you sure that you have not read
2 anything like a "Group Info" page or "About This
3 Group" section on the OutServe Facebook group?

4 A. Correct.

5 Q. And you said you might follow OutServe
6 on Instagram. Correct?

7 A. I believe so.

8 Q. But you're not sure?

9 A. Correct.

10 Q. When do you think you began following
11 the OutServe Facebook page?

12 A. I don't know.

13 Q. Do you have an estimate?

14 A. A couple months ago, possibly.

15 Q. Do you think it was before or after
16 January 1, 2019?

17 A. After.

18 Q. I know you said you're not sure if you
19 follow them on Instagram, but when would you have
20 guessed you started following OutServe on Instagram,
21 if you did?

22 MR. PERKOWSKI: Objection, form.

1 MR. ABBUHL: You can answer.

2 MR. PERKOWSKI: You can answer.

3 THE WITNESS: I honestly have no idea.

4 BY MR. ABBUHL:

5 Q. Do you think you -- if you follow
6 OutServe on Instagram, do you think you would have
7 began following OutServe on Instagram after January
8 21, 2019?

9 A. Possibly.

10 Q. You don't know?

11 A. I do not know.

12 Q. Are you a member of any other OutServe
13 social media groups?

14 A. No.

15 Q. Are you a member of the OutServe
16 Facebook group, broadly speaking, beyond the Positive
17 Forum?

18 MR. PERKOWSKI: Objection, ambiguous.

19 BY MR. ABBUHL:

20 Q. Let me rephrase. So the Positive Forum
21 is a subset of the larger OutServe Facebook group.
22 Correct?

1 A. Correct.

2 Q. And you're a member of the Positive
3 Forum. Correct?

4 A. Correct.

5 Q. Are you a member of the larger OutServe
6 Facebook group?

7 A. By member, I like and follow their
8 Facebook page.

9 Q. Did you have to request to become a
10 member of the OutServe Facebook group?

11 A. No. It's not private.

12 Q. Is the Positive Forum private?

13 A. Yes.

14 Q. So you asked to be a member of the
15 Positive Forum. Correct?

16 A. I was added.

17 Q. You were added?

18 A. Yes.

19 Q. I believe you said you were added by Mr.
20 Perkowski. Correct?

21 A. Correct.

22 Q. Did you ask Mr. Perkowski to add you?

1 A. I don't recall.

2 Q. Do you remember if Mr. Perkowski
3 suggested to you that you should be added to the
4 Positive Forum?

5 MR. PERKOWSKI: Objection, attorney-client
6 privilege.

7 If the discussion was in connection with
8 seeking or receiving legal advice, then I instruct
9 you not to answer; otherwise; you may answer.

10 THE WITNESS: Can you repeat the question?

11 BY MR. ABBUHL:

12 Q. Do you remember if Mr. Perkowski
13 suggested to you that you should be added to the
14 Positive Forum?

15 MR. PERKOWSKI: Same objection and
16 instruction.

17 THE WITNESS: I do not believe that he
18 suggested I should be added.

19 BY MR. ABBUHL:

20 Q. Did he say something like I would like
21 to add you to the Positive Forum Facebook page?

22 MR. PERKOWSKI: Objection, same objections as

1 before.

2 THE WITNESS: Not that I recall.

3 BY MR. ABBUHL:

4 Q. Did you ask to be added to the Positive
5 Forum?

6 MR. PERKOWSKI: Objection, asked and
7 answered.

8 BY MR. ABBUHL:

9 Q. You can answer.

10 A. No.

11 Q. So you did not ask to be added to the
12 Positive Forum?

13 A. Correct.

14 Q. But someone then must have called you.
15 Correct?

16 A. Correct.

17 Q. And it was Mr. Perkowski who added you?

18 A. Correct.

19 Q. Did he tell you that he was going to add
20 you to the Positive Forum?

21 A. I don't recall.

22 Q. You don't remember if you were informed

1 ahead of time whether you would be added to the
2 Positive Forum?

3 A. I do not recall, no.

4 Q. Have you ever left any of OutServe's
5 social media groups?

6 A. No.

7 Q. If you wanted to leave an OutServe
8 social media group, how would you do it?

9 A. I suppose I would unlike and unfollow
10 them.

11 Q. There isn't anything else you would have
12 to do to stop being a member of the social media
13 group?

14 A. I suppose I would also have to request
15 to no longer receive newsletters.

16 Q. Do you get the newsletters through the
17 social media groups?

18 A. No.

19 Q. So that's a separate process?

20 A. Correct.

21 Q. Why did you join the Positive Forum?

22 A. I accepted the invite to be added, I

1 guess, to talk to other individuals going through the
2 same or similar circumstances.

3 Q. Did you have any other reasons for
4 joining?

5 A. No.

6 Q. How do you participate in the Positive
7 Forum?

8 A. You mean particularly or anyone?

9 Q. You, particularly.

10 A. I would say either by liking and/or
11 commenting about different postings.

12 Q. Any other ways?

13 A. Not particularly.

14 Q. How often do you comment on other
15 postings?

16 A. I don't have a specific number.

17 Q. Have you ever commented?

18 A. Yes.

19 Q. Would you say you do it once a month?

20 A. I'd say more than monthly, but less than
21 weekly.

22 Q. How often do you like other posts?

1 A. I would say the same.

2 Q. Do you ever meet members of the Positive
3 Forum in person?

4 A. No.

5 Q. And by in person, I mean not via
6 Facebook.

7 A. Yeah.

8 Q. Are there any other ways you interact
9 with people from OutServe while you're on Facebook?

10 MR. PERKOWSKI: Objection, ambiguous.

11 BY MR. ABBUHL:

12 Q. You can answer.

13 A. Can you repeat it one more time?

14 Q. Do you interact with anyone else from
15 OutServe while you are on Facebook?

16 MR. PERKOWSKI: Same objection.

17 THE WITNESS: I would say no.

18 BY MR. ABBUHL:

19 Q. Are you aware of any other OutServe
20 social media groups besides the ones we already
21 mentioned?

22 THE WITNESS: AMP is not OutServe. Right?

1 MR. ABBUHL: You have to answer.

2 MR. PERKOWSKI: Yeah.

3 THE WITNESS: I would say no then.

4 BY MR. ABBUHL:

5 Q. What would you say the purpose is of
6 OutServe social media groups?

7 A. The purpose? I would say to represent
8 the issues of the LGBTQ community within the
9 military.

10 Q. The purpose of the social media groups
11 is to represent the LGBT issues within the military?

12 A. Yes.

13 Q. What do you mean by "represent"?

14 A. I would say to, I guess, like put them
15 out there to show on a social network that there are
16 people out there that will represent you if you're in
17 the military within the LGBT community.

18 Q. Is it fair to say one of the purposes is
19 to be a support network?

20 A. Yes.

21 Q. Are there any social purposes to the
22 social media group?

1 A. Can you rephrase that?

2 Q. Like is it ever used for people to get
3 together and hang out?

4 A. Not that I'm aware of, but it may be.

5 Q. Are you aware of any other purposes of
6 the OutServe social media groups?

7 A. No.

8 Q. Have you ever donated to OutServe?

9 A. No.

10 Q. I believe, earlier, you mentioned you
11 received a newsletter from OutServe; is that correct?

12 A. Yes.

13 Q. Could you describe the contents of the
14 newsletter?

15 A. No.

16 Q. Why not?

17 A. I just don't recall them.

18 Q. How often do you read the newsletter?

19 A. I believe they're sent out monthly.

20 Q. Do you read every one you get?

21 A. Not every one.

22 Q. What percentage would you say you read?

1 A. Maybe half.

2 Q. So of the ones you have read, what's
3 typically contained in the newsletter?

4 A. I do not recall at this time.

5 Q. Normally, are there articles?

6 A. Usually, yeah.

7 Q. About how many articles?

8 A. How many do they send?

9 Q. In a single newsletter?

10 A. Oh, I would say just one.

11 Q. Is there anything else in the
12 newsletters besides articles?

13 A. Not that I recall.

14 Q. Roughly, how long is a single
15 newsletter?

16 A. A few paragraphs.

17 Q. How is it delivered to you? Is it
18 E-mail? Paper? Facebook posts?

19 A. E-mail.

20 Q. So you'll get an E-mail which will have
21 a few paragraphs in it about a single topic,
22 generally?

1 A. Correct.

2 Q. Do you know who sends it out?

3 A. I receive them from different people.

4 Q. Do you remember from who?

5 A. Andy Blevins.

6 Q. Anyone else?

7 A. I believe Kai Blevins also.

8 Q. Anyone else?

9 A. Not that I recall.

10 Q. Who are Andy and Kai Blevins?

11 MR. PERKOWSKI: Currently?

12 MR. ABBUHL: Yes, currently.

13 THE WITNESS: Members of OutServe. I don't

14 know their official title.

15 BY MR. ABBUHL:

16 Q. When you would get newsletters from Andy
17 or Kai Blevins, would it mention what their role in
18 OutServe is?

19 A. I don't believe they do.

20 Q. What's the subject line of the E-mail
21 when you receive a newsletter?

22 A. I'm not sure.

1 Q. Does it mention OutServe?

2 A. Yes.

3 Q. Does it have the word "newsletter" in
4 the subject?

5 A. I would assume so, but --

6 Q. You're not sure?

7 A. I'm not sure.

8 Q. When did you first begin receiving the
9 newsletter?

10 A. I believe the end of May.

11 Q. Of 2018?

12 A. Correct.

13 Q. How is it that you began to receive the
14 newsletter? Did you request it?

15 A. Yes.

16 Q. How did you request it?

17 A. Their website.

18 Q. Was there a link on the website that
19 mentioned a newsletter?

20 A. I believe so.

21 Q. Did you provide your E-mail address?

22 A. Yes.

1 Q. Do you know who else receives the
2 newsletter?

3 A. I would assume anyone else that requests
4 it.

5 Q. Do you know is it sent to all OutServe
6 members?

7 A. Not to my knowledge.

8 Q. On the newsletter, does it say anything
9 like "members only" or "OutServe only" or anything
10 like that?

11 A. Not to my knowledge.

12 Q. And you said you began receiving it at
13 around May 2018. Right?

14 A. Correct.

15 Q. And that it's sent monthly?

16 A. Correct.

17 Q. So there's been, roughly, nine to ten
18 such newsletters sent to you?

19 A. Possibly.

20 Q. How many of those would you say you
21 read?

22 A. I would say, still, about half.

1 Q. Five or so?

2 A. Probably.

3 Q. Have you ever had to do anything to make
4 sure you continued to receive the newsletter?

5 A. No.

6 Q. If you wanted to stop receiving the
7 newsletter, what would you do?

8 A. I assume request that it stop being sent
9 to me.

10 Q. Respond to the E-mail?

11 A. I'm sure there's an unsubscribe button.

12 Q. There is an unsubscribe button?

13 A. I would assume so, yeah.

14 Q. But you're not sure?

15 A. I'm not sure.

16 Q. Do you receive other communications from
17 OutServe?

18 MR. PERKOWSKI: Objection, vague.

19 THE WITNESS: Such as?

20 BY MR. ABBUHL:

21 Q. What other types of communications do
22 you receive from OutServe?

1 A. I would say none.

2 Q. None? OutServe doesn't E-mail you
3 anything besides the newsletter? And I'm going to
4 set aside any legal advice you get from counsel.

5 A. No.

6 Q. Does anyone ever message you on Facebook
7 from OutServe, again, putting aside any legal advice?

8 MR. PERKOWSKI: Objection, vague.

9 THE WITNESS: I would say no.

10 BY MR. ABBUHL:

11 Q. Does OutServe have a blog?

12 A. Not that I know of.

13 Q. Are you involved in a local chapter of
14 OutServe?

15 A. No.

16 Q. Are you involved in any forums, online
17 forums, besides the Positive Forum?

18 A. Within OutServe?

19 Q. Correct.

20 A. No.

21 Q. Have you ever been employed by OutServe?

22 A. No.

1 that each individual plaintiff in Harrison v.
2 Shanahan -- it gives a case number -- and Roe v.
3 Shanahan -- it gives a case number -- and each
4 declarant identified by OutServe in those cases are
5 members of OutServe.

6 Correct?

7 A. Correct.

8 Q. Then on page 2, there is a response to
9 that interrogatory. Correct?

10 A. Yes.

11 Q. And, again, the response discusses
12 Plaintiff Roe. Correct?

13 A. Correct.

14 Q. You are Plaintiff Roe. Correct?

15 A. Correct.

16 Q. It says Plaintiff Roe is a member of
17 OutServe-SLDN's chapters and forums. Correct?

18 A. Correct.

19 Q. What does that mean?

20 A. That I'm a member of their Positive
21 Forum.

22 Q. What does the word "chapters" mean?

1 A. They have local chapters.

2 Q. So but you earlier said you are a member
3 of the Positive Forum, but not the chapter. Correct?

4 A. I guess that would depend on how you
5 define "chapter", because there's -- leadership
6 chapter or are you defining it geographically?

7 Because if it's geographically, then I fall
8 within that chapter. I'm just not on their
9 leadership team.

10 Q. What do you mean by the geographic
11 chapter?

12 A. So there's a chapter for [REDACTED] So
13 by virtue of being stationed in [REDACTED]
14 geographically, I would fall within the [REDACTED]
15 Chapter.

16 Q. So you are a member of the [REDACTED]
17 Chapter of OutServe?

18 A. If you're defining it geographically,
19 but no. I'm not on the leadership team.

20 Q. You don't have to be -- I'm not asking
21 if you're a member of the leadership team, but do you
22 consider yourself a member of the [REDACTED] Chapter

1 of OutServe?

2 A. Yes.

3 Q. And why do you consider yourself a
4 member of the [REDACTED] Chapter of OutServe?

5 A. Because I'm a member of OutServe and I
6 am geographically located in [REDACTED]

7 Q. So anyone who's a member of OutServe is
8 automatically a member of the geographic chapter
9 where they reside; is that right?

10 A. I would say so, yes.

11 Q. Have you ever participated in any the
12 [REDACTED] Chapter's activities?

13 A. No.

14 Q. Is there a [REDACTED] Chapter Facebook
15 group?

16 A. No.

17 Q. What does it mean to be a member of
18 OutServe's [REDACTED] Chapter?

19 MR. PERKOWSKI: Objection, asked and answered.

20 BY MR. ABBUHL:

21 Q. You can answer.

22 A. Can you rephrase it?

1 Q. [Pause.]

2 A. Actually, I'll answer. So like I stated
3 earlier, membership with OutServe is any voluntary
4 association with other LGBTQ members within the
5 military. So by virtue of, more or less, associating
6 myself with other members in [REDACTED] that would
7 be participating in the [REDACTED] chapter of
8 OutServe.

9 Q. So you participate in the [REDACTED]
10 Chapter of OutServe by socializing with other LGBTQ
11 military members in [REDACTED]

12 A. Correct.

13 Q. Do you participate in the [REDACTED]
14 Chapter of OutServe in any other way?

15 A. No.

16 Q. If you jump to the sixth line down in
17 the response, it says: "Plaintiff Roe subscribed to
18 OutServe-SLDN's mailing list on 31 May 2018 and has
19 been receiving and viewing newsletters and other
20 communications since then."

21 Correct?

22 A. Correct.

1 Q. What does it mean by "other
2 communications"?

3 A. I would assume that it means any other
4 form of communication besides receiving the
5 newsletter.

6 Q. Can you give me examples of other
7 communications you've received besides the
8 newsletter?

9 A. No.

10 Q. The next sentence says: "Plaintiff Roe
11 was added manually to the mailing list along with all
12 other subscribers on 20 August 2018 when
13 OutServe-SLDN's communications team recalibrated the
14 newsletter distribution list to separate the members
15 newsletter and the media contact list."

16 Correct?

17 A. Correct.

18 Q. What does that mean?

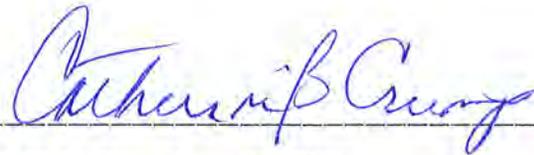
19 A. That I voluntarily provided my E-mail
20 address to receive the newsletter on that website.

21 Q. Did you do that on August 20, 2018?

22 A. I'm not sure as to the date I did it.

CERTIFICATE OF NOTARY PUBLIC

I, CATHERINE B. CRUMP, the officer before whom the foregoing deposition was taken, do hereby testify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto nor financially or otherwise interested in the outcome of the action.



CATHERINE B. CRUMP

Notary Public in and for the
District of Columbia

My Commission Expires: October 31, 2022

EXHIBIT H

Voe Deposition



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Transcript of 

Friday, March 15, 2019

Roe, et al. v. Shanahan

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Alderson Reference Number: 84364

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10 ALSO PRESENT: KRIS CARTER, ESQ.

11 United States Air Force

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I N D E X

WITNESS: [REDACTED]

EXAMINATION	PAGE
By Mr. Skurnik:	6

EXHIBIT NO.	DESCRIPTION	IDENTIFIED
1	- Notice of Deposition	7

1 group myself in with the rest, yes.

2 Q. So I would like to switch gears a bit to
3 a different topic and I would like to ask some
4 questions about OutServe and your relationship with
5 OutServe. So my first question is how did you first
6 learn about OutServe?

7 A. A friend.

8 Q. What friend?

9 A. A fellow service member.

10 Q. Who is this fellow service member?

11 A. [REDACTED]

12 Q. And what did [REDACTED] tell you?
13 How did [REDACTED] make you aware of OutServe?

14 A. He informed me of the support group on
15 Facebook.

16 Q. And was this the first time you had
17 heard about OutServe?

18 A. Yes.

19 Q. What did you do after you were informed
20 about this support group on Facebook?

21 A. He sent me an invitation to join.

22 Q. This is [REDACTED]

1 A. Yes.

2 Q. Did you accept that invitation?

3 A. I did.

4 Q. Can you describe this support group?

5 A. It is a group of people who are
6 HIV-positive within the military or veterans who talk
7 about shared experiences, things that they're going
8 through in the military in regards to HIV.

9 Q. Do you know the name of the support
10 group?

11 A. Yes. OutServe-SLDN Positive Forum.

12 Q. Did you ever post in this forum?

13 A. Yes.

14 Q. Were these your own posts or did you
15 comment on other people's posts?

16 A. Both.

17 Q. How often would you say you posted on
18 the forum?

19 A. Occasionally.

20 Q. What did you post about?

21 A. I asked general inquiries about others'
22 MEB processes.

1 Q. And MEB, what does that mean?

2 A. Medical Evaluation Board.

3 Q. How often would say you checked the
4 Positive Forum?

5 A. A couple of times a week.

6 Q. Would you check it every time you went
7 on Facebook?

8 A. No.

9 Q. How many times would you say you either
10 commented or posted in the Positive Forum?

11 A. Specifically, I can't recall.

12 Q. Can you estimate it?

13 A. Roughly, 20 to 30 times.

14 Q. Are there any other OutServe groups in
15 which you are a member?

16 A. No.

17 Q. Is Facebook the only social media
18 platform in which you interact with OutServe?

19 A. Yes.

20 Q. You don't follow OutServe on Twitter or
21 Instagram?

22 A. No.

1 Q. Have you heard of the companion case to
2 this lawsuit, Harrison v Shanahan?

3 A. Yes.

4 Q. When did you first hear about that?

5 A. This past summer.

6 Q. How did you hear about it?

7 A. Through posts within the support group.

8 Q. Did you know any of service members
9 involved in the Harrison lawsuit?

10 A. Personally, no.

11 Q. Did you personally know any of the other
12 service members involved in this lawsuit?

13 A. Yes.

14 Q. Which ones?

15 A. [REDACTED]

16 Q. And that's the Roe plaintiff; is that
17 correct?

18 A. Yes.

19 Q. So did you contact anyone from OutServe
20 based on your interaction in the Facebook group?

21 A. Yes.

22 Q. Who?

1 Q. Why do you participate in it?

2 A. Shared experiences. It's helpful to
3 hear what others have had to go through. It calms
4 your mind.

5 Q. Have you ever donated any money to
6 OutServe?

7 A. No.

8 Q. Have you ever received a newsletter from
9 OutServe?

10 A. No.

11 Q. Other than through the Positive Forum,
12 do you receive -- or through your lawyers, do you
13 receive any communications from OutServe?

14 A. No.

15 Q. You're not on an E-mail list or anything
16 like that?

17 A. No.

18 Q. Are you involved in a local chapter of
19 OutServe?

20 A. No.

21 Q. Have you ever been employed by OutServe?

22 A. No.

1 that.

2 Q. On Instagram or Twitter, do you follow
3 any OutServe members?

4 A. I don't have either accounts.

5 Q. Do you participate with OutServe in any
6 way that we haven't yet discussed?

7 A. No.

8 Q. Do you consider yourself a member of
9 OutServe?

10 A. Yes.

11 Q. Why is that?

12 A. I joined their Facebook support group.

13 Q. Is that all you have to do to become a
14 member?

15 MS. INGELHART: Objection, calls for
16 speculation.

17 BY MR. SKURNIK:

18 Q. You can answer the question.

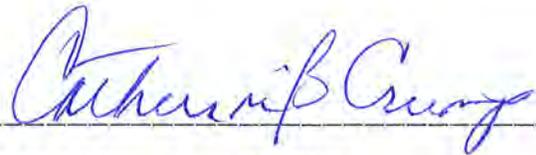
19 A. I don't know.

20 Q. Why do you consider yourself as having
21 been a member just by joining the Positive Forum?

22 MS. INGELHART: Objection, possibly a

CERTIFICATE OF NOTARY PUBLIC

I, CATHERINE B. CRUMP, the officer before whom the foregoing deposition was taken, do hereby testify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto nor financially or otherwise interested in the outcome of the action.



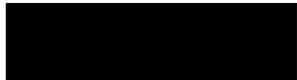
CATHERINE B. CRUMP

Notary Public in and for the
District of Columbia

My Commission Expires: October 31, 2022

EXHIBIT I

K.R. Deposition



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Transcript of



Monday, March 25, 2019

Harrison, et al. v. Shanahan

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Alderson Reference Number: 84719

1 ***** C O N F I D E N T I A L *****
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF VIRGINIA
4 ALEXANDRIA DIVISION
5

6 -----
7 RICHARD ROE; VICTOR VOE; and :
8 OUTSERVE-SDLN, INC., :
9 Plaintiffs, :
10 v. : Civil Action No.
11 PATRICK M. SHANAHAN, in his : 1:18-cv-1656-LMB-IDD
12 official capacity as Acting :
13 Secretary of Defense, et al., :
14 Defendants. :
15 -----

16 Deposition of [REDACTED] a Plaintiff
17 herein, at the offices of United States Department of
18 Justice, 1100 L Street, N.W., Washington, D.C.,
19 commencing at 9:31 a.m. on Monday, March 25, 2019
20 and the proceedings being taken down by stenotype and
21 transcribed by Catherine B. Crump, a Notary Public in
22 and for the District of Columbia.

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15 Washington, D.C. 20530

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1 continued in the Air Force, would you think that you
2 will have to deploy in the future?

3 A. Yes, ma'am. It's a possibility.

4 Q. Why do you think that?

5 A. I have seen a lot of people in my career
6 field deploy, especially being over at [REDACTED]
7 It's a highly deployable place.

8 Q. Okay. Where have the other people in
9 your position deployed to?

10 A. Qatar, Afghanistan, Korea, and Turkey.

11 Q. Okay. Sounds adventurous.

12 I want to kind of switch gears now that I know
13 a little about your career and talk about your
14 relationship with OutServe. When did you first learn
15 about the existence of OutServe?

16 A. Around 2015, right after I got to
17 [REDACTED] in August, a couple months after.

18 Q. How did you learn about OutServe?

19 A. Through a friend.

20 Q. Was the friend a member?

21 A. Yes, ma'am.

22 Q. And did you join OutServe at that point?

1 A. Yes, ma'am.

2 Q. In 2015?

3 A. Yes, ma'am.

4 Q. How did you join OutServe?

5 A. I started going to the meetings and I
6 started going to -- volunteering at the events that
7 they were having.

8 Q. There's a local chapter in [REDACTED]

9 A. Yes, ma'am.

10 Q. Can you tell me about how they meet?

11 A. They meet -- they try to meet once a
12 week at like a nice restaurant and talk about the
13 different things that we have going on in the
14 organization.

15 Q. Okay. So you try to go to those?

16 A. Yes, ma'am.

17 Q. How often do you go to those restaurant
18 meetings?

19 A. I try to make it at least one a month.
20 Back then, I was in it a lot. I used to go all the
21 time.

22 Q. But you go less now?

1 A. Yes, ma'am.

2 Q. How often do you go now?

3 A. Every now and then, not a lot.

4 Q. Okay. Did you also join any of
5 OutServe's social media groups?

6 A. Yes, ma'am.

7 Q. Can you tell me about that?

8 A. The Facebook OutServe Positive Forum
9 group.

10 Q. When did you join that group?

11 A. That was December of last year, 2018.

12 Q. Have you been in any other Facebook
13 groups with OutServe?

14 A. No, ma'am.

15 Q. Does your local chapter have a Facebook
16 group?

17 A. Yes, ma'am.

18 Q. Are you a member of that?

19 A. Yes, ma'am.

20 Q. So you're a member of the Positive Forum
21 and a member of the [REDACTED] local chapter of
22 OutServe?

1 A. Yes, ma'am.

2 Q. So was your very first contact with
3 OutServe going to a meeting, a dinner meeting or
4 lunch meeting or something like that?

5 A. Yes, ma'am.

6 Q. Have you ever also contacted OutServe by
7 telephone?

8 A. No, ma'am.

9 Q. Have you ever called their legal
10 hotline?

11 A. Yes, ma'am.

12 Q. You have. When you called their legal
13 hotline, when was that?

14 A. This was the end of November, the
15 beginning of December.

16 Q. Of 2018?

17 A. Yes, ma'am.

18 Q. Now I want you to listen to my questions
19 very carefully, because I don't want you to disclose
20 what you've talked to lawyers about.

21 A. Yes, ma'am.

22 Q. Just the circumstances of the contact.

1 A. Yes, ma'am.

2 Q. So when you called the legal hotline, do
3 you remember who you talked on the phone?

4 A. Yes, ma'am.

5 Q. Who was that?

6 A. Peter.

7 Q. Did you talk to anybody else at OutServe
8 on the telephone?

9 A. No, ma'am.

10 Q. How often did you call them?

11 A. It was only once.

12 Q. Okay. Have you also contacted OutServe
13 at all via E-mail?

14 A. No, ma'am.

15 Q. Have you contacted them via Facebook
16 direct message?

17 A. No, ma'am.

18 Q. Have you contacted them by way of any
19 other form of social media, such as Instagram or Snap
20 Chat?

21 A. No, ma'am.

22 Q. When did you become aware of the

1 Harrison and Row lawsuits?

2 A. That was the end of November, going into
3 December.

4 Q. How did you learn about them?

5 A. Through a friend.

6 Q. What did the friend tell you?

7 A. That there is this court case going on
8 right now that I should try to get onto.

9 Q. Was that friend a member of OutServe?

10 A. Yes, ma'am.

11 Q. Had you ever met any of the plaintiffs
12 in this case?

13 A. No, ma'am.

14 Q. Were you invited to join the Positive
15 Forum Facebook group before or after you contacted
16 OutServe to talk about this case?

17 A. After.

18 Q. Did you know about its existence before?

19 A. No, ma'am.

20 Q. Okay. So in all your kind of local
21 chapter meetings, that sort of thing didn't come up?

22 A. No, ma'am.

1 Q. And who invited you to join the Positive
2 Forum?

3 A. Peter.

4 Q. So we're going to talk a little bit
5 about the Positive Forum and talk about your local
6 chapter's Facebook group. So let's start with the
7 Positive Forum.

8 A. Okay.

9 Q. When you joined that group, was there
10 information that you could read about the group
11 before you joined?

12 A. Sorry. I couldn't hear you over my
13 coughing.

14 Q. That's okay.

15 When you joined the Positive Forum, before you
16 joined the group, so before you clicked the join
17 button on Facebook --

18 A. Right.

19 Q. -- was there any information you could
20 read about the group before you joined?

21 A. No, ma'am.

22 Q. How about after you joined the group; is

1 there some information, such as like an "about this
2 group" or group info that you can read?

3 A. No, ma'am.

4 Q. Are you sure?

5 A. I believe so.

6 Q. Okay. Have you seen any like Codes of
7 Conduct or terms of service anywhere on the group?

8 A. I don't understand the question.

9 Q. Sometimes Facebook groups, on their like
10 banner page will have something like who can be a
11 member or here's how you should behave respectfully
12 to other group members or things like that. Have you
13 seen anything like that about the group?

14 A. No, ma'am.

15 Q. How often do you participate in the
16 Positive Forum?

17 MR. PERKOWSKI: Objection, ambiguous.

18 THE WITNESS: Can you like rephrase the
19 question?

20 BY MS. CUTRI-KOHART:

21 Q. Absolutely. Can you describe how you
22 use the Positive Forum?

1 A. To stay updated with current events.

2 Q. Current events regarding HIV?

3 A. Yes, ma'am.

4 Q. How often do you read the Positive

5 Forum?

6 A. A couple of days throughout the week.

7 Q. Do you ever comment on other people's

8 posts?

9 A. Yes, ma'am.

10 Q. How often do you do that?

11 A. Not all the time, not likely, every once

12 in a while.

13 Q. Do you ever initiate a new post?

14 A. No, ma'am.

15 Q. Have you ever left the Positive Forum?

16 A. No, ma'am.

17 Q. Have you ever met any members of the

18 Positive Forum in real life?

19 A. Yes, ma'am, but that was before the

20 Positive Forum group.

21 Q. Can you explain a little bit more what

22 you mean by that?

1 A. So one of the members that came in
2 there, I knew him before he was in the Positive Forum
3 group.

4 Q. Okay. I understand.

5 So you haven't met somebody on the Positive
6 Forum and then met him for the first time after?

7 A. No, ma'am.

8 Q. So now let's talk about the Facebook
9 group for your local chapter.

10 A. Yes, ma'am.

11 Q. How often do you read that?

12 A. Not that often.

13 Q. Once a year? Once a month?

14 A. Once a month.

15 Q. Okay. Do you ever comment on that
16 group?

17 A. No, ma'am.

18 Q. Do you ever initiate posts in that
19 group?

20 A. No, ma'am.

21 Q. Is that group very active? Are there
22 lots of posts or very few posts?

1 A. Very active.

2 Q. It is active, okay. As we've already
3 discussed before, you've met those people in real
4 life?

5 A. Yes, ma'am.

6 Q. Can you -- what do you think is the
7 purpose of the Positive Forum Facebook group?

8 A. To educate and inform the members in the
9 group regarding HIV.

10 Q. Do you think it has any other purposes?

11 A. Yes. Probably some that I'm not aware
12 of.

13 Q. How about the Facebook group for your
14 local chapter; what is the purpose of that group as
15 you understand it?

16 A. To build a strong community.

17 Q. Okay. Any other purposes that you can
18 think of?

19 A. No, ma'am.

20 Q. Have you ever left the local chapter of
21 OutServe?

22 A. Could you rephrase the question?

1 Q. Have you ever -- let's start with an
2 easy one. Have you ever left the Facebook group for
3 the local chapter of OutServe?

4 A. No, ma'am.

5 Q. Have you ever decided you don't want to
6 be a member of local chapter of OutServe?

7 A. No, ma'am.

8 Q. Have you ever donated any money to
9 OutServe?

10 A. Yes, ma'am.

11 Q. When?

12 A. \$10 when I first joined back in 2015.

13 Q. Any since?

14 A. No, ma'am.

15 Q. Have you ever received OutServe's
16 newsletter?

17 A. No, ma'am.

18 Q. I think they send their newsletter like
19 an electronic E-mail. Have you ever received that
20 electronic E-mail?

21 A. No, ma'am.

22 Q. Have you ever read OutServe's blog?

1 A. Yes, ma'am.

2 Q. Can you tell me about when you read it?

3 A. I do not recall at the moment.

4 Q. How often have you read their blog?

5 A. Once a month maybe.

6 Q. Let's talk about your participation in
7 the local chapter again. Have you ever served in a
8 leadership position of your local chapter?

9 A. No, ma'am.

10 Q. Any form of coordinating position, such
11 as like a social organizer, anything like that?

12 A. No, ma'am.

13 Q. How about the Positive Forum; have you
14 ever served in any form of leadership position in
15 that?

16 A. No, ma'am.

17 Q. Have you been employed by OutServe?

18 A. No, ma'am.

19 Q. Has OutServe ever paid you for anything?

20 A. No, ma'am.

21 Q. Have you ever had any expenses
22 reimbursed by OutServe?

1 A. No, ma'am.

2 Q. Have you volunteered on behalf of
3 OutServe?

4 A. Yes, ma'am.

5 Q. Can you tell me about your volunteer
6 experience?

7 A. I volunteered at a [REDACTED]

8 [REDACTED].

9 Q. When was that?

10 A. This was the fall time of 2016.

11 Q. Okay. Why did OutServe have [REDACTED]

[REDACTED]
12 [REDACTED]
13 A. So for the [REDACTED] [REDACTED] a lot of
14 organizations and squadrons get together [REDACTED]

[REDACTED]
15 [REDACTED]
16 Q. Okay. [REDACTED]

[REDACTED]
17 [REDACTED]
18 A. Yes, ma'am.

19 Q. And the money goes to OutServe?

20 A. Yes, ma'am.

21 Q. Did the money go to OutServe like the
22 big organization or did it go to your local chapter

1 of OutServe?

2 A. I'm not aware of where the money went.

3 Q. Okay. Have you volunteered any other
4 times for OutServe?

5 A. No, ma'am.

6 Q. We've kind of talked about various
7 leadership positions. Have you ever served in any
8 form of leadership capacity for OutServe?

9 A. No, ma'am.

10 Q. So you've never been a member of
11 OutServe's Board of Directors?

12 A. No, ma'am.

13 Q. Board of Military Advisors?

14 A. No, ma'am.

15 Q. We've talked about Facebook. Do you
16 follow OutServe on any other social media platform?

17 A. No, ma'am.

18 Q. So not on Instagram?

19 A. No.

20 Q. Twitter?

21 A. No, ma'am.

22 Q. Do you follow any individual folks from

1 OutServe on Twitter, such as your attorney here or
2 anybody else?

3 A. No.

4 Q. How about OutServe on LinkedIn?

5 A. No, ma'am.

6 Q. Do you participate in OutServe
7 activities in any other way besides what we've
8 already discussed?

9 A. No, ma'am.

10 Q. Do you consider yourself a member of
11 OutServe?

12 A. Yes, ma'am.

13 Q. Why do you consider yourself a member of
14 OutServe?

15 A. Because I'm a LGBT airman or military
16 member. Yeah.

17 Q. So do you think all LGBT military
18 members are members of OutServe?

19 A. If they join, then yes.

20 Q. What do you understand somebody has to
21 do to join OutServe?

22 A. To my knowledge, attend the meetings and

1 say you want to be a member.

2 Q. Now that you are using OutServe for
3 legal advice, how often are you in contact with
4 OutServe?

5 A. Fairly often.

6 Q. Weekly?

7 A. Weekly.

8 Q. Monthly?

9 A. Weekly.

10 Q. I want to talk about when OutServe
11 started assisting you legally. You were referred to
12 the Disability Evaluation System, it looks like
13 several years ago now. Did OutServe assist you at
14 all in the disability process or only after you got
15 your letter from SAFPC?

16 A. After.

17 Q. They did not help you at all before that
18 time period?

19 A. No, ma'am.

20 Q. Has OutServe ever helped you ask for a
21 waiver or an exception to policy?

22 A. No, ma'am.

1 Q. Has OutServe helped prepare or draft any
2 of your administrative documents in the DES system
3 for you?

4 A. No, ma'am.

5 Q. Has OutServe contacted anyone on your
6 behalf in the military?

7 A. No, ma'am.

8 Q. Has OutServe done anything else to
9 assist you that we have not talked about?

10 A. No, ma'am.

11 MS. CUTRI-KOHART: Do you want to take break
12 or are you good to keep going?

13 MR. PERKOWSKI: It's up to you.

14 THE WITNESS: I'm good.

15 MS. CUTRI-KOHART: Do you need more coffee or
16 anything?

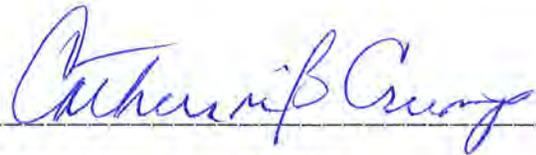
17 THE WITNESS: No. I'm still working on this.

18 BY MS. CUTRI-KOHART:

19 Q. Okay. I'm going to change subjects
20 again. I want to ask you a little bit about your
21 medical status. You're HIV-positive; is that
22 correct?

CERTIFICATE OF NOTARY PUBLIC

I, CATHERINE B. CRUMP, the officer before whom the foregoing deposition was taken, do hereby testify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto nor financially or otherwise interested in the outcome of the action.



CATHERINE B. CRUMP

Notary Public in and for the
District of Columbia

My Commission Expires: October 31, 2022

EXHIBIT J

*Pl. OutServe's Suppl. Resp. to Defs.' First Set
of Interrogs.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

PATRICK M. SHANAHAN, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

V.

PATRICK M. SHANAHAN, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

**PLAINTIFF OUTSERVE-SLDN, INC.'S SUPPLEMENTAL RESPONSES TO
DEFENDANTS' FIRST SET OF INTERROGATORIES**

Plaintiff OutServe-SLDN, Inc., through undersigned counsel, provides the following supplemental responses to Defendant's First Set of Interrogatories, in accordance with Rules 26(e)(1)(A) and 33 of the Federal Rule of Civil Procedure. In presenting these objections, Plaintiff does not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on any appropriate ground.

SUPPLEMENTAL RESPONSES TO SPECIFIC INTERROGATORIES

Interrogatory No. 1. Explain in detail the basis of the allegations or assertions that each individual plaintiff in *Harrison v. Shanahan*, Case No. 1:18-cv-641 (E.D. Va.), and *Roe v. Shanahan*, 1:18-cv-1565 (E.D. Va.), and each declarant identified by OutServe in those cases, are members of OutServe.



Objection: Plaintiff OutServe objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product privilege.

Supplemental Response: OutServe-SLDN supplements its response to this interrogatory as follows:

Senior Airman K.R. is a member of OutServe-SLDN's Chapters and Forums, has donated to OutServe-SLDN, has volunteered for OutServe-SLDN, and has accessed OutServe-SLDN's services. Specifically, SrA K.R. joined OutServe-SLDN's [REDACTED] chapter shortly after arriving at [REDACTED] he participated in chapter activities, including social activities and fundraising activities, and volunteered at chapter functions on occasion. SrA K.R. continues to be a member of OutServe-SLDN's [REDACTED] chapter. In addition, SrA K.R. was added to OutServe-SLDN's Positive Forum on 3 January 2019. SrA K.R. first accessed OutServe-SLDN's legal services by contacting a member of the OutServe-SLDN legal team in late December 2018, after Plaintiffs filed the Complaint in *Roe v. Shanahan*, and requesting legal advice and assistance. In addition, SrA K.R. has donated to OutServe-SLDN.

Dated: April 1, 2019

/s/ Scott Schoettes

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above document was served on this 1st day of April, 2019, to the following counsel of record via electronic mail.

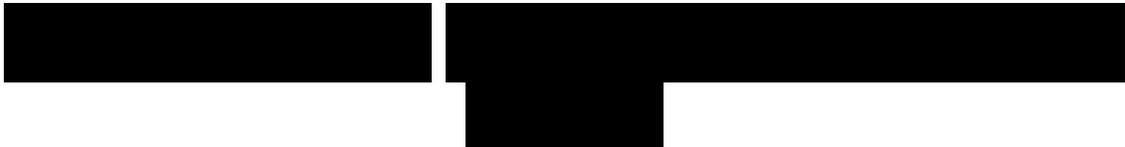
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/s/ Andrew R. Sommer

EXHIBIT K

S.H. Deposition



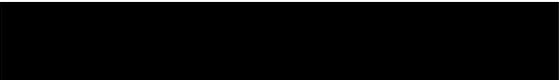
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Transcript of



Tuesday, March 5, 2019

Harrison, et al. v. Shanahan

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1 VIDEOTAPED ORAL DEPOSITION OF [REDACTED]
2 [REDACTED] produced at the instance of the
3 Defendant, in the above-styled and numbered cause on
4 the 5th day of March, 2019, at 9:23 a.m., before
5 Micheal A. Johnson, RDR, CRR, Notary Public in and
6 for the State of [REDACTED], reported by realtime
7 stenographic means, at the U.S. Federal Courthouse,
8 [REDACTED],
9 pursuant to Subpoena, and in accordance with the
10 Federal Rules of Civil Procedure.

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ON BEHALF OF THE DEFENDANTS
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THE DEPARTMENT OF THE AIR FORCE
AND THE DEPARTMENT OF THE ARMY:

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DEPOSITION EXHIBITS

[REDACTED]

March 5, 2019

NUMBER	DESCRIPTION	MARKED
Exhibit 1	AF FPEB Board Exhibits I through Q	60
Exhibit 2	Memorandum for SAF/MRBP, [REDACTED]	70

1 A. Do I expect to deploy?

2 BY MS. CUTRI-KOHART:

3 Q. If you stayed in your career field, would
4 you expect to deploy?

5 A. I would love to deploy, yes.

6 Q. Okay. So I think that covers kind of the
7 getting to know you stuff. Sounds like you've had a
8 great early career in the Air Force so far.

9 I'd like to talk a little bit about your
10 relationship with OutServe. When did you first
11 learn about this existence of OutServe?

12 A. I learned of this OutServe when my
13 supervisor, [REDACTED] when I first
14 told him about my diagnostics, basically, and so he
15 was like basically helping me with my process and he
16 was just like searching and he found OutServe and
17 pointed me in that direction.

18 Q. So about when was that?

19 A. That was around [REDACTED]

20 Q. Of [REDACTED]

21 A. Yes.

22 Q. How did you first contact OutServe?

23 A. I called them.

24 Q. You called them?

25 A. Actually, he called them first -- no, he

1 either e-mailed or called them first, then he
2 directed me to them.

3 Q. Your supervisor?

4 A. Yes. Then I called them.

5 Q. Okay. And when you called them, do you
6 remember who you spoke with?

7 A. I think her name was Karen.

8 Q. She can't help you.

9 A. Sorry.

10 Q. It's okay. Not a memory test. And when
11 you spoke to them, what did you speak about?

12 A. Just my situation --

13 MS. INGLEHART: Oh, objection.

14 BY MS. CUTRI-KOHART:

15 Q. I'm sorry. You can just say you asked
16 for legal advice, if that's what you did. I don't
17 want you to talk about the character of any legal
18 advice you got.

19 A. Okay.

20 Q. Is that what you did? Did you ask for
21 legal advice?

22 A. Legal advice.

23 Q. And then did you know about the existence
24 of these lawsuits before you contacted OutServe?

25 A. No.

1 Q. So how did you learn about the existence
2 of the lawsuits?

3 MS. INGLEHART: Objection.

4 You can answer.

5 A. I read about them. They told me about
6 them.

7 BY MS. CUTRI-KOHART:

8 Q. Did you know any of the other service
9 members that were involved with the lawsuits before
10 you heard about them?

11 MS. INGLEHART: Objection.

12 You can answer.

13 A. No.

14 BY MS. CUTRI-KOHART:

15 Q. When you talked to OutServe, did they
16 invite you to join an OutServe social media group?

17 A. Yes.

18 Q. Which social media groups did they invite
19 you to join?

20 A. You want the name of it?

21 Q. Yes.

22 A. I mean, I don't even know the name.

23 Q. What platform was it on? What social --

24 A. Facebook.

25 Q. And what was the purpose of the group?

1 A. It was basically like a group of people
2 with HIV problems also, going through the same
3 problem.

4 Q. Did you join right away?

5 A. Yes.

6 Q. So right after you talked to OutServe?

7 A. Yes.

8 Q. When would you say that was that you
9 joined?

10 A. I don't remember.

11 Q. Okay. Were you -- do you remember who
12 actually invited you to join the group? Was it the
13 same person you had talked to on the phone, or was
14 it somebody else?

15 A. It was somebody else.

16 Q. Do you remember who that was?

17 A. Peter.

18 Q. Okay. And did he call you or e-mail you?
19 How did he invite you to join?

20 A. E-mail. E-mail.

21 Q. Did you join any other OutServe Facebook
22 groups besides that one?

23 A. No.

24 Q. How about any other -- did you follow or
25 like or join any other not Facebook OutServe social

1 Q. Okay. How much do you participate in
2 that group?

3 A. Like rarely. Now and then, like when
4 they post something, I would just go in there and
5 like read it or like or like comment, say hi to
6 whoever the person is in there, probably give a
7 little advice or something now and then.

8 Q. How often, do you think?

9 A. Not often because I'm really -- most
10 busy. Can't really do much when I'm at work.

11 Q. Would you say once a week? Once a month?

12 A. Probably more than once a week. Three
13 times a week.

14 Q. And how much do you read versus how much
15 do you comment?

16 A. I'm always reading. I always read. I
17 don't really comment much.

18 Q. Do you ever start a new discussion?

19 A. No.

20 Q. Okay. Have you ever met anybody on the
21 group in real life?

22 A. No.

23 Q. Have you ever interacted with people in
24 the group outside of Facebook, like via e-mail or
25 text or anything like that?

1 A. No.

2 Q. Have you -- while you're on the group,
3 have you ever interacted with anybody from OutServe,
4 or just other group members -- from the OutServe
5 staff, excuse me?

6 A. Yes.

7 Q. Yes. Who would that be?

8 A. Peter.

9 Q. Peter. Anybody else?

10 A. No.

11 Q. Okay. What is your understanding of the
12 purpose of that Facebook group?

13 A. I would say basically to bring like all
14 of us together and having like the same problem, to
15 like help each other out basically, like to give any
16 type of advice, if you need advice from each other
17 that's like going through the same problem.

18 Q. So mainly a social and support sort of
19 group?

20 A. Yeah.

21 Q. Any other purposes that you can think of?

22 A. (No audible response.)

23 Q. Have you ever donated any money to
24 OutServe?

25 A. No.

1 Q. Okay. Have you ever received a
2 newsletter from OutServe?

3 A. No.

4 Q. Have you ever been given the -- asked to
5 subscribe to a newsletter by OutServe?

6 A. No.

7 Q. Have you ever been asked by OutServe to
8 donate money?

9 A. No.

10 Q. Have you ever read OutServe's blog?

11 A. I think so. There are a lot of reading
12 materials.

13 Q. When do you think you would have read it?

14 A. Probably when I first heard of them, I
15 looked them up.

16 Q. You said OutServe has a lot of reading
17 materials. What other reading materials of theirs
18 have you used or read?

19 A. I think I just went on their website.

20 Q. Okay. So other things on their website?

21 A. (Nods head.)

22 Q. Have they e-mailed you any reading
23 materials?

24 A. No.

25 Q. Or have they mailed you any reading

1 materials or given you any reading materials on
2 paper?

3 MS. INGLEHART: Objection.

4 But you can answer.

5 A. No.

6 BY MS. CUTRI-KOHART:

7 Q. Have you ever been involved in a local
8 chapter of OutServe?

9 A. No.

10 Q. So no involvement in the chapter here in
11 San Angelo?

12 A. No.

13 Q. And we already talked about this, but
14 just to be clear, you're not a member of any other
15 OutServe Facebook groups, besides the one for
16 service members with HIV, right?

17 A. Right.

18 Q. Have you ever been employed by OutServe?

19 A. No.

20 Q. Have you ever been paid by OutServe?

21 A. No.

22 Q. Have you ever had OutServe reimburse you
23 for expenses?

24 A. No.

25 Q. Have you ever done any volunteer work on

EXHIBIT L

D.N. Deposition

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Transcript of [REDACTED]

Tuesday, March 12, 2019

Harrison, et al. v. Shanahan

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Alderson Reference Number: 84642

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 ALEXANDRIA DIVISION

4
5 NICHOLAS HARRISON and
6 OUTSERVE-SLDN, INC.,
7 Plaintiffs, Case No.
8 vs. 1:18-cv-641-LMB-IDD
9 JAMES N. MATTIS, in his
10 official capacity as
11 Secretary of Defense;
12 MARK ESPER, in his
13 official capacity as the
14 Secretary of the Army; and
15 the UNITED STATES DEPARTMENT
16 OF DEFENSE,
17 Defendants.

18 _____/

19 ** [REDACTED] **

20 ORAL DEPOSITION OF [REDACTED]

21 [REDACTED]

22 TUESDAY, MARCH 12, 2019

23
24 Reported by: DEBORAH HABIAN, CSR, RMR, CRR, CLR

25 JOB NO. 84642

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 ALEXANDRIA DIVISION
4

5 RICHARD ROE, VICTOR VOE,
6 and OUTSERVE-SLDN, INC.,

7 Plaintiffs, Case No.

8 vs. 1:18-cv-01565-LMB-IDD

9 JAMES N. MATTIS, in his
10 official capacity as
11 Secretary of Defense;

12 MARK ESPER, in his
13 official capacity as the
14 Secretary of the Army; and
15 the UNITED STATES DEPARTMENT
16 OF DEFENSE,

17 Defendants.

18 _____/

19 ** [REDACTED] **

20 ORAL DEPOSITION OF [REDACTED]

21 [REDACTED]

22 TUESDAY, MARCH 12, 2019

23

24 Reported by: DEBORAH HABIAN, CSR, RMR, CRR, CLR

25 JOB NO. 84642

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I N D E X

WITNESS: PAGE

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Examination by Ms. Ingelhart 72

REQUESTS AND INSTRUCTIONS OF COUNSEL
By Ms. Ingelhart 54

DEFENDANT EXHIBITS TO [REDACTED] DEPOSITION

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Memorandum for SAF/MRBP

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March 12, 2019

9:02 A.M. CST

[REDACTED] oral deposition of
[REDACTED] taking place at the offices of
the United States Attorney, [REDACTED],
[REDACTED] [REDACTED] pursuant
to subpoena, before DEBORAH HABIAN, [REDACTED]
Certified Court Reporter, [REDACTED] Certified
Shorthand Reporter, Registered Merit Reporter,
Certified Realtime Reporter, Certified Livenote
Reporter.

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS

LAMBDA LEGAL

BY: KARA N. INGELHART, ESQ.

105 West Adams Street, Suite 2600

Chicago, Illinois 60603-6208

ON BEHALF OF THE DEFENDANTS

U.S. DEPARTMENT OF JUSTICE

BY: REBECCA CUTRI-KOHART, ESQ.

1100 L Street, NW

Washington, D.C. 20005

1 representation and my mom had found OutServe.

2 Q. So did she find it with a Google search
3 or an internet search?

4 A. Yes. She actually found a case that
5 involved Roe and Voe. I believe that's the
6 names.

7 Q. Um-hum. So that was about December.
8 Did you contact OutServe right away when you
9 learned about it?

10 A. Yes.

11 Q. How did you contact them?

12 A. So it was either -- it was through
13 phone, but I got their number through the
14 article that brought me either to Lambda Legal's
15 web page or OutServe's web page.

16 Q. Before your mom told about OutServe,
17 had you heard of any other Service members being
18 a part of OutServe or anything about what they
19 did?

20 A. No.

21 Q. Had you heard about Lambda Legal
22 before?

23 A. No.

24 Q. So you called OutServe. Do you
25 remember about when you called them the first

1 time?

2 A. It was sometime in December.

3 Q. When you first called them, do you
4 remember who you spoke to?

5 A. I do not remember, but I have her name
6 written down in a tablet somewhere.

7 Q. Okay. And so at that first contact,
8 what was the purpose of the call?

9 A. So the purpose of that call was to ask
10 about --

11 MS. INGELHART: Objection.

12 But you can answer.

13 THE WITNESS: I believe like in the
14 first document we had read -- so I believe when
15 I clicked the link either to OutServe or Lambda,
16 they had said they were representing members
17 that were positive or something along the lines
18 of that and so that's why I had called, to see
19 if I could jump onboard.

20 BY MS. CUTRI-KOHART:

21 Q. Okay. At that first contact did they
22 indicate somebody would contact you back?

23 A. Yes.

24 Q. Okay. So you knew about the Roe and
25 Voe lawsuit before your first contact with

1 OutServe, correct?

2 A. Yes.

3 Q. Did you know any of the Service members
4 involved in the lawsuits? Did you know who they
5 were? Had you ever met them before you
6 contacted OutServe?

7 MS. INGELHART: Objection.

8 You can answer.

9 THE WITNESS: No.

10 BY MS. CUTRI-KOHART:

11 Q. When did OutServe contact you back
12 after your initial call?

13 MS. INGELHART: Objection.

14 You can answer.

15 THE WITNESS: I believe in December.

16 BY MS. CUTRI-KOHART:

17 Q. And who contacted you back from
18 OutServe?

19 A. Mr. Peter.

20 Q. When you talked to OutServe, did they
21 invite you to join a social media group?

22 A. Yes.

23 Q. What did they tell you about joining a
24 social media group?

25

1 MS. INGELHART: Objection.

2 You can answer.

3 THE WITNESS: So he said I can join the
4 Facebook group so I can like be updated with the
5 case. And so a lot of the members, they tell
6 their stories and then Mr. Peter like keeps
7 everybody just updated.

8 BY MS. CUTRI-KOHART:

9 Q. And so you learned about the social
10 media when OutServe contacted you back or during
11 your first phone call with them?

12 MS. INGELHART: Objection.

13 You can answer.

14 THE WITNESS: I believe it was the
15 first call because...

16 So I learned about the social media
17 through the first call, but then I joined during
18 the second call.

19 BY MS. CUTRI-KOHART:

20 Q. So what social media group did you
21 join?

22 A. The OutServe positive Facebook group.

23 Q. And about when? Do you remember about
24 when did you join it?

25 A. Sometime in December.

1 A. Being a member of OutServe, did it say
2 anything about that?

3 Q. Um-hum.

4 A. Hum... I do not remember.

5 Q. Have you ever left the Facebook group?

6 A. No.

7 Q. How much do you participate in the
8 positive group?

9 A. I participate somewhat lightly. I've
10 asked two questions and I was able to answer
11 somebody's question.

12 Q. Do you read it regularly?

13 A. Yes.

14 Q. How often do you read it?

15 A. So usually when I get a notification
16 from Facebook, I'll read it. And so that could
17 be daily or every two days.

18 Q. Have you ever met another member of the
19 group in person?

20 A. No.

21 Q. Have you ever corresponded with other
22 members of the group outside of the group such
23 as in a Facebook private message --

24 A. No.

25 Q. -- or in an e-mail?

1 group.

2 Q. Have you ever donated any money to
3 OutServe?

4 A. No.

5 Q. Have you ever received a newsletter
6 from OutServe?

7 A. No.

8 Q. Have you ever received like an e-mail
9 newsletter from OutServe?

10 A. No.

11 Q. Have you ever read OutServe's blog?

12 A. I believe I viewed it, so yes.

13 Q. Are you involved in a local chapter of
14 OutServe?

15 A. So can you explain that? Like me --

16 Q. A chapter that's based on the region
17 that you live or work, are you involved in any
18 form of local chapter?

19 A. No.

20 Q. Besides the positive group on Facebook,
21 are you a member of any sort of group of
22 OutServe members?

23 A. No.

24 Q. And you already answered this, but I'm
25 just going to ask you again to be sure. Are you

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REPORTER CERTIFICATE

I, Deborah Habian, a Certified
Shorthand Reporter within and for the State of
[REDACTED] do hereby certify:

That previous to the commencement of
the examination of the witness, the witness was
duly sworn to testify the whole truth concerning
the matters herein;

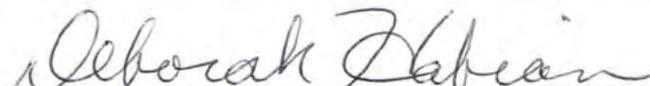
That the foregoing deposition was
reported stenographically by me, was thereafter
reduced to printed transcript by me, and
constitutes a true record of the testimony given
and the proceedings had;

That the said deposition was taken
before me at the time and place specified;

That the reading and signing by the
witness of the deposition transcript was agreed
upon as stated herein;

That I am not a relative or employee
of attorney or counsel, nor a relative or
employee of such attorney or counsel for any of
the parties hereto, nor interested directly or
indirectly in the outcome of this action.

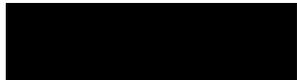
IN WITNESS WHEREOF, I do hereunto set
my hand this ____ day of _____, 20____.


DEBORAH HABIAN, RMR, CRR, CLR, CBC

[REDACTED]

EXHIBIT M

Q.S. Deposition



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Transcript of



Friday, March 1, 2019

Harrison, et al. v. Shanahan

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

NICHOLAS HARRISON, et al.,)
Plaintiff,) Case No.
v.) 1:18-cv-641-LMB-IDD
PATRICK M. SHANAHAN, et al.,)
Defendant.)
_____)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

RICHARD ROE, et al.,)
Plaintiff,) Case No.
v.) 1:18-cv-1565-LMB-IDD
PATRICK M. SHANAHAN, et al.,)
Defendant.)
_____)

DEPOSITION OF

Friday, March 1, 2019

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[REDACTED] DEPOSITION

DEPONENT: [REDACTED] [REDACTED] [REDACTED]

DATE: Friday, March 1, 2019

TIME: 9:28 a.m.

LOCATION: United States Attorney's Office

[REDACTED]

[REDACTED] [REDACTED]

REPORTER: Michele E. French, CRR/RMR/CSR-3091

1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4 LAMBDA LEGAL

5 BY: KARA N. INGELHART, ESQUIRE

6 105 West Adams Street, Suite 2600

7 Chicago, Illinois 60603-6208

8 (312) 663-4413

9 kingelhart@lambdalegal.org

10 -- and --

11 OUTSERVE SLDN

12 BY: PETER E. PERKOWSKI, ESQUIRE

13 1133 19th Street NW

14 Washington, D.C. 20036

15 (323) 707-3154

16 peterp@outserve.org

17

18 On behalf of the Defendant:

19 U.S. DEPARTMENT OF JUSTICE

20 CIVIL DIVISION, FEDERAL PROGRAM BRANCH

21 BY: ROBERT M. NORWAY, ESQUIRE

22 1100 L Street NW

23 Washington, D.C. 20044

24 (202) 353-0889

25 robert.m.norway@usdoj.gov

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[REDACTED]

Friday, March 1, 2019

9:28 a.m.

* * * * *

[REDACTED] [REDACTED] [REDACTED]

was thereupon called as a witness herein, and after having first been duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

CROSS EXAMINATION

BY MR. NORWAY:

Q. Good morning, Mr. [REDACTED] My name is Rob Norway. We met a few moments ago, and I'm going to introduce myself for the record. I represent the Department of Defense, and the Department of the Air Force, and the Department of the Army in a series of cases that are pending in the Eastern District of Virginia. Okay?

A. Okay.

Q. And those cases are Harrison versus Shanahan, et al., and Roe versus Shanahan. Okay?

A. Yes, sir.

Q. Okay. And do you understand why you're here today?

A. Yes, sir.

1 Q. And was your viral load undetectable in
2 that test?

3 A. Yes.

4 Q. When did you first learn about OutServe?

5 A. In spring of 2018.

6 Q. And how did you first learn of OutServe?

7 A. Through a social media post, which I then
8 followed OutServe.

9 Q. When you say "a social media post," what
10 do you mean by that?

11 A. Someone who I follow on a social media
12 platform, in this case Instagram, posted about
13 OutServe, and I identified with who they are, so I
14 decided to follow them.

15 Q. So you began following OutServe on
16 Instagram?

17 A. Yes.

18 Q. And that was about spring of 2018?

19 A. Yes.

20 Q. And when did you first reach out to
21 contact OutServe after following them on Instagram?

22 A. I contacted them on [REDACTED],
23 when I first received the nonselection for
24 reenlistment.

25 Q. And why did you contact them?

1 A. Because I saw they had a legal case
2 regarding military individuals with HIV.

3 Q. And were you reaching out to them for
4 legal advice?

5 A. Yes.

6 Q. Once again, I'm going to caution you that
7 when I ask you questions today, I'm not seeking an
8 answer that contains the substance of your
9 communications about the legal advice that you
10 sought. Do you understand?

11 A. I understand.

12 Before we continue, could I use the
13 restroom?

14 Q. Yes. Yeah, let's go ahead and take a
15 break.

16 MR. NORWAY: Is it okay?

17 MS. INGELHART: (Nodding head.)

18 (Recess - 10:20 a.m. to 10:24 a.m.)

19 BY MR. NORWAY:

20 Q. So when you called OutServe in January of
21 2019, who did you speak with?

22 A. I -- first I sent them a form on their
23 email [sic]. I did not call them.

24 Q. Okay.

25 A. Or not email form. A web form

1 submission.

2 Q. So on their website, they have a "contact
3 us" form?

4 A. Yes.

5 Q. And you filled it out and submitted it?

6 A. Correct.

7 Q. And then what happened?

8 A. About five days later, I had -- I got --
9 I received a call from someone at OutServe.

10 Q. Do you recall who that person was?

11 A. Her name was Corrine Cole, C-o-r-r-i-n-e,
12 C-o-l-e.

13 Q. Okay. Did OutServe refer you to Lambda
14 Legal?

15 A. No.

16 Q. Can you, without -- well, let's break.
17 Is it Miss Cole?

18 A. Yes, I believe.

19 Q. Did Miss Cole put you in touch with
20 attorneys?

21 A. Yes.

22 Q. And who were the attorneys that she put
23 you in touch with?

24 A. Peter Perkowski.

25 Q. And has Peter Perkowski been your contact

1 ever since?

2 A. Yes.

3 Q. Were you invited to join an OutServe
4 Facebook group?

5 A. Yes.

6 Q. Can you tell me what the name of that
7 group is?

8 A. It is -- it's in regards to military
9 members who are HIV positive.

10 Q. Do you recall the name of it?

11 A. Not off the top of my head.

12 Q. And when were you invited to join that
13 Facebook group?

14 A. Last month, in February.

15 Q. Who invited you to join the Facebook
16 group?

17 A. Peter Perkowski.

18 Q. Are you still a member of that Facebook
19 group?

20 A. Yes.

21 Q. In general terms, can you describe for me
22 what the group -- what the Facebook group is about?

23 A. Exactly what I said in the previous
24 question's answer.

25 Q. Okay. So it relates to -- does it

1 provide information to members of the military with
2 HIV?

3 A. I believe it's more social.

4 Q. Can you explain to me what you mean by
5 "more social"?

6 A. It's -- it's more of like a support
7 group, social interaction, like knowing you're not
8 the only one.

9 Q. Okay. Perfect. Thank you very much.

10 A. Yeah.

11 Q. When you joined the Facebook group, did
12 you read the Terms of Service?

13 A. I'm sorry?

14 Q. When you joined the Facebook group, did
15 you read the Terms of Service?

16 A. No.

17 Q. Have you donated to OutServe?

18 A. No.

19 Q. Do you receive a newsletter from
20 OutServe?

21 A. No.

22 Q. Is there a local chapter of OutServe in
23 Detroit that you know of?

24 A. Not that I know of -- wait. There might
25 be one. I think I saw something about OutServe in

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CERTIFICATE OF NOTARY

STATE OF [REDACTED])

) SS

COUNTY OF [REDACTED])

I, MICHELE E. FRENCH, a Notary Public in and for the above county and state, do hereby certify that the above deposition was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, and nothing but the truth; that the foregoing questions asked and answers made by the witness were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.

Dated:

Michele E French

Michele E. French, CSR-3091, RPR, RMR, CRR
Notary Public, [REDACTED]

My Commission expires: December 2, 2023

EXHIBIT P

Various OutServe Facebook Pages

Outserve-SLDN Pennsylvania

Peter Home Create



Liked Following Share

Send Message

Outserve-SLDN Pennsylvania @OutserveSLDNPA

- Home
- About
- Photos
- Community
- Reviews
- Posts
- Info and ads

Create a Page

About

Suggest Edits

Mission

OutServe-SLDN represents the U.S. LGBT military community worldwide. Our mission is to: educate the community, provide legal services, advocate for authentic transgender service, provide developmental opportunities, support members and local chapters, communicate effectively, and work towards equality for all.

CONTACT DETAILS

- m.me/OutserveSLDNPA
- pennsylvania@outserve.org
- http://www.outserve-sldn.org

MORE INFO

About

Fighting to achieve full LGBT military equality. Support OS-SLDN with \$10 donation by texting OUTSERVESLDN to 85944.

Company Overview

OS-SLDN is a nonpartisan, nonprofit, legal services, watchdog and policy organization focused on bringing full LGBT equality to the U.S. military and is the association of actively serving LGBT military personnel.

General Information

Check out the Facebook page for the national organization Outserve-SLDN at https://www.facebook.com/OutServe.SLDN

Non-profit organisation

About Create ad Create Page Developers Careers Privacy Cookies AdChoices Terms Account security Login help Help

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English (UK) English (US) Español Français (France) 中文(简体) العربية Português (Brasil) Italiano 한국어 Deutsch हिन्दी

OutServe-SLDN Positive Forum

Peter Home Create

OutServe-SLDN Positive Forum

Secret group

About

Discussion

Chats

Members

Events

Photos

Files

Group insights

Moderate group

Search this group



Joined Notifications Create a Group Chat More

About this group

Description

Add a Description

Recommended by the admins · 1

Manage



Recommend an existing group

Create a new recommended group

HISTORY

Group created on 22 February 2011

See more

INVITE MEMBERS

Enter name or email address...

SUGGESTED MEMBERS

Hide

Friends

Members · 92

Admins

See All Members

Group rules from the admins

1 Be Kind and Courteous

We're all in this together to create a welcoming environment. Let's treat everyone with respect. Healthy debates are natural, but kindness is required.

2 No Hate Speech or Bullying

Make sure everyone feels safe. Bullying of any kind isn't allowed, and degrading comments about things like race, religion, culture, sexual orientation, gender or identity will not be tolerated.

3 No Promotions or Spam

Give more than you take to this group. Self-promotion, spam and irrelevant links aren't allowed.

RECENT GROUP FILES

CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates.

Create Group

Suggested Groups

See All



Shit My LPO Says Group
8,920 members

Join

Shortcuts



See more

OutServe-SLDN Transgender

Peter Home Create

OutServe-SLDN Transgender Secret group

About

Discussion

Chats

Members

Events

Photos

Files

Moderate group

Search this group

Shortcuts



See more



Joined Notifications Create a Group Chat More

About this group

Description

Edit

Secret Group established for the OutServe Transgender Community.

Chapter Mission Statement: (pending)

Chapter Leader: (position vacant)

OutServe-SLDN (www.outserve-sldn.org) is the association of actively serving LGBT military personnel with more than fifty chapters and 6,500 members around the world. It works to support a professional network of LGBT military personnel and create an environment of respect in the military with regard to sexual orientation and gender identity. It is a non-partisan, non-profit, legal services and policy organization dedicated to bringing about full LGBT equality to America's military and ending all forms of discrimination and harassment of military personnel on the basis of sexual orientation and gender identity. OS-SLDN provides free and direct legal assistance to service members and veterans affected by the repealed "Don't Ask, Don't Tell" law and the prior regulatory ban on open service, as well as those currently serving who may experience harassment or discrimination.

New members may be added by any current chapter member, but must receive an additional facebook approval from one of the Chapter Leaders / Administrators before they will be allowed into the secret group.

Recommended by the admins · 1

Manage



OutServe-SLDN N... Secret group 28 friends · 6,039 m...

Joined

See all

Members · 11

HISTORY

Group created on 31 January 2014

See more

INVITE MEMBERS

Enter name or email address...

SUGGESTED MEMBERS

Hide

Friends



See More

CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates.

Create Group

Suggested Groups

See All



US ARMY GERMANY 8,324 members

Join



Oldsmobile Club of America (OCA) 35,368 members

Join

OutServe Afghanistan/Iraq

Aviely Home Create

SERVING WITH

INTEGRITY, MOTIVATION, PROFESSIONALISM, DUTY, HONOR, COURAGE, COMMITMENT, SERVICE

Joined Notifications More

OutServe Afghanistan/Iraq

Secret group

About

Discussion

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Photos

Files

Group Insights

Moderate Group

Search this group

Shortcuts



See more

About This Group

Description

Edit

The intent of this group is to setup and maintain connections among OutServe members in the Afghanistan and Iraq areas of operation. Deployments are long and it's always great to be able to bond with other members of the LGBT family. Hopefully, members will have the opportunity to meet others and strengthen the ties we have with each other. Your admins look forward to being able to provide guidance and support to anyone that may need it and are glad to be a part of this great organization.

We have three smaller groups here in Afghanistan that are for select areas. Admins of groups are posted below. You can always ask [redacted] or [redacted] also. They have access to all groups.

KAF: [redacted]
BAF: [redacted]
LNK: [redacted]
PHX: [redacted]

Recommended by the Admins • 0

Manage

Recommend an Existing Group

Create a New Recommended Group

Members • 147



Admins



See All Members

Top Recent Posts



YOUR PAGES



CONTACTS



GROUP CONVERSATIONS



HISTORY

Group created on October 3

See More

INVITE MEMBERS

Enter name or email address...

SUGGESTED MEMBERS

Friends



See More

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Groups make it easier than ever to share with friends, family and teammates.

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Search

Outserve Belgium

Andy Home Create

Outserve Belgium

Secret group

About

Discussion

Chats

Announcements

Members

Events

Photos

Files

Search this group

Shortcuts



See more



STRONGER. TOGETHER

Joined Notifications Add Members More

About This Group

Description

Welcome to the OutServe Belgium!

This group is for LGBT+ (holebi) Active Duty, Guard, Reserve, Veterans, and their spouses/partners that are living in Belgium. It is open to both American and Belgian military members.

This is a secret Facebook group to protect everyone's privacy. I ask that all members respect each other's privacy as well.

While living in Belgium, there are a lot of cultural learning opportunities from our fellow LGBT+ Belgian military members. Belgium has their own version of Outserve called Belgian Defense Rainbow Community (Beldefrac). It can be a valuable experience if we work together.

This is mainly a support and social group. Let's keep each other informed on current LGBT+ issues currently affecting our militaries. Let's learn from each other, build bonds, and create a network right here in Belgium. Have some great events or hangout ideas? Share it with the group 😊

Open dialogue is encouraged within the limits of the following rules: 1) Be respectful 2) No sexual content 3) Nothing racist, sexist, transphobic, or any other kind of discrimination 5) No harassment 4) Keep it clean and keep it professional

Your current chapter leader is [REDACTED]

Outserve Website <https://www.outserve-sldn.org>

Members • 23



Admins



See All Members

Top Recent Posts



YOUR PAGES



CONTACTS



GROUP CONVERSATIONS



HISTORY

Group created on October 2,

[See More](#)

INVITE MEMBERS

Enter name or email address...

CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates.

Suggested Groups



Amsterdam rent a room, apartment or studio
18,170 members



Ramstein/KMCC virtual yard sale
31,024 members



Brussels SELL/SWAP/BUY/WANT OR GIVE IT AWAY
76,499 members

Search

OS-SLDN Christian Service Members Forum

Secret group

About

Discussion

Chats

Members

Events

Photos

Moderate Group

Search this group

Shortcuts



See more

Personalize Your Group

Do you know that you can add a photo or illustration here? Pick one that shows off your group's personality.

Upload Photo

Choose Photo

Joined

Notifications

More

About This Group

Description

Edit

Welcome! This forum is for all OutServe-SLDN members who follow Christian (traditionally Protestant) faiths and/or those with an honest interest in the faith.

This is NOT a group for protestors, anti-religious statements, or hate of any kind. Anyone making this group a hostile environment will be promptly removed. Honest debate, discussion, and holding each other accountable is welcome as this is a church. We are a family of service members who have or are struggling to bring together the seemingly disparate relationship of the Christian faith and a sexuality not traditionally supported by it.

As Christians, we profess that Jesus Christ, Son of God, was born of the Virgin Mary. That He and His 12 disciples traveled and taught traditionally Jewish communities about God's grace, love, and how through Him they could gain everlasting life. That Jesus became the innocent sacrifice, taking on the sins of the world from that moment until the end of time. Crucified by the very people He came to save, the sins He took on dragged him to Hell where He battled with Lucifer. He returned triumphant three days later. Risen from the dead, He instructed His disciples to spread the faith and returned to Heaven with His Father where he prepares room for us all. It is through Jesus and His sacrifice alone that we are saved. He set us free of the rules of the old testament and sacrifices required therein. No human act can save us, but through faith alone we are worthy. Still, we strive to live by the holy example set by Jesus in His time amongst His creation. By His example we hope to inspire others to join in the faith and become saved themselves.

Despite this profession of faith, the Christian religion has long been a critic if the LGBT community. As members of the community, many of us have felt the sting of rejection and hate. Some from both the LGBT Community and the Church. To straddle both of these communities while maintaining the professional and stressful responsibilities of being a service member is an extreme challenge. For that reason, this forum exists to provide support, an open ear, and a sense of community to this small spectrum of individuals. Whether closeted or open, reconciling our faith with our sexuality is a challenge, but it's not insurmountable.

By separating the difference between faith and religion, we can better understand how religion had changed over time allowing gradually more tolerant opinions of religious communities. This covers the progressive inclusion of people of color and women into church leadership roles over time. Yes, that potentially opens the discussion up broader than the intention of the group, but the development of religious opinions over time is a root part of someone coming to terms with both their God given orientation and their chosen faith based beliefs.

Group Type

Support

Recommended by the Admins: 0

Managed

HISTORY

Group created on June 15, 2018

See More

INVITE MEMBERS

Enter name or email address...

SUGGESTED MEMBERS

Friends



See More

CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates.

Suggested Groups



Ramstein/KMCC virtual yard sale
31,024 members



USAG Humphreys Buy and Sell
7,033 members



YOUR PAGES



CONTACTS



GROUP CONVERSATIONS



OutServe Germany

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- Photos
- Files
- Group Insights
- Recommendations
- Moderate Group
- Search this group



Joined Notifications More

About This Group

Description

Edit

Welcome to the OutServe Germany Forum.

This group is for Active Duty, Guard, Reserve, DoD Civilians, DoD contractors and their spouses/partners of the LGBTQ community.

This is a place where you can connect, rant, rave, and share ideas with other members.

We encourage an open dialogue and you can pretty much say whatever comes to mind. We only have just a couple rules. 1) No personal attacks on anyone. 2) No Overtly Sexual Comments or content. 3) Nothing racist, sexist, heterophobic, or anything like that. 5) ABSOLUTELY NO DRAMA. Save that for the Soaps. 4) Keep it clean and keep it professional.

If you have friends you want to join the Forum, feel free to invite them. Once they're approved by an administrator, they'll automatically be added to the forum.

This is SECRET forum to allow us to have open and frank discussions with one another without the prying eyes of the Facebook world.

If you have questions contact any of the administrators and we'll be glad to assist.

Group Type

Support

Recommended by the Admins • 0

Manage

Recommend an Existing Group

Create a New Recommended Group

Members • 249



HISTORY

Group created on October 11, 2013

See More

CATEGORIZE POSTS

Add topics to posts to help group members find the information they're interested in.

INVITE MEMBERS

Enter name or email address...

SUGGESTED MEMBERS

Friends

CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates.

UPCOMING GROUP EVENTS

MAR 16

OSG Wine and P...
Saturday, March 16, 2019
PM UTC+01
Beatrice Gentry th...
Studio Landstuhl
Ashley Carothers
to an event for Ou...
Germany

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CONTACTS

GROUP CONVERSATIONS

OutServe-SLDN Hawaii

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- Events
- Videos
- Photos
- Files
- Group Insights
- Moderate Group
- Search this group



Joined Notifications More

Shortcuts



See more

About This Group

Description

Edit

Aloha,

We are here to organize, empower, and unify the LGBTQ+ military community of Hawaii!

We provide a safe space for our members to meet, gather, connect, and have fun! We host social events and speak as the military voice for the LGBTQ+ community in Hawaii. Please feel free to ask any questions you may have.

Warning:

Please remain respectful! Disrespectful, hurtful, or similar comments will be dealt with accordingly.

Mahalo and E komo mai.

Group Type

Support

Recommended by the Admins • 0

Manage

Recommend an Existing Group

Create a New Recommended Group

Members • 312



Admins



See All Members

HISTORY

Group created on November

See More

INVITE MEMBERS

Enter name or email address...

SUGGESTED MEMBERS

Friends



See More

CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates.

Suggested Groups



Dogspotting Society
2 friends • 551,422 members



Please show to Jim !! HA !! HA
228,772 members



YOUR PAGES



CONTACTS



GROUP CONVERSATIONS



OutServe SLDN Hawaii

https://www.facebook.com/groups/outservehawaii/about/

Search

OutServe National Capital Region

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Shortcuts



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Joined Notifications More

About This Group

Description

Edit

Chapter Lead: [Redacted]

Email: ncr@outserve.org

OutServe-SLDN National Capital Region provides a local structured forum for LGBT military service members. This forum unites and establishes a social "human network" for all military service members currently operating in the Washington, D.C. region (DC, Northern Virginia, Maryland, and Delaware)

The chapter raises awareness of issues LGBT military service members face, to help those having difficulties both personally and professionally and to establish a bond of camaraderie amongst members.

The chapter coordinates with other LGBT organizations to facilitate support for our members which they would not normally find within the confines of military service.

Recommended by the Admins • 3

Manage



AMPA Private Net...
Closed group
65 friends · 2,938 m...

Joined



OutServe-SLDN N...
Secret group
81 friends · 6,039 m...

Joined



OutServe - Nation...
Secret group
8 friends · 117 mem...

Joined

See All

Members • 623



Admins



YOUR PAGES



CONTACTS



HISTORY

Group created on October 11

Name last changed on June

See More

INVITE MEMBERS

Enter name or email address...

SUGGESTED MEMBERS

Friends



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GROUP CONVERSATIONS



OutServe-SLDN Network

Andy Home Create



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OutServe-SLDN Network

Secret group

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About This Group

Description

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To join a local chapter/forum visit www.outserve-sldn.org/chapters and contact the chapter leader. If you don't hear anything within a week, please e-mail kblevins@outserve.org stating that you contacted the chapter leader with no response, and which chapter/forum you would like to be added to.

Since 1993, OutServe-SLDN has been the heir to the legacy of providing legal services to service members and veterans. From representing over 12,000 military members during the era of DADT, leading the fight to repeal DADT, being integral in the Windsor suit to overturn DOMA, through winning the federal lawsuit, *McLaughlin v. Hagel* to provide benefits to same sex partners of military members, OutServe-SLDN has been on the frontlines for over 20 years. Today, OutServe-SLDN has over 75,000 followers worldwide and over 7,000 active members serving and leading over 80 chapters around the globe. OS-SLDN provides free and direct legal assistance to service members and veterans affected by the repealed "Don't Ask, Don't Tell" law and the prior regulatory ban on open service, as well as those currently serving who may experience harassment or discrimination.

For more information, visit www.outserve-sldn.org

RULES FOR POSTING TO THIS PAGE:

- 1) Posts are limited to topics that pertain to the entire LGBT population.
- 2) Posts that are deemed offensive may be deleted by moderators at any time.
- 3) Any posts that are deleted must have the moderator contact the member that posted it and explain why it was deleted.
- 4) No posts will be permitted with members constantly asking who is at which base, state, etc. Those posts should be left within the individual state or regional chapters. Posts with personnel just intent on finding other locals will be deleted automatically and Rule 3 above will not apply. Personnel trying to find a local chapter can do so at: www.outserve-sldn.org/chapters
- 5) NO posts will be permitted that show any photographs or links to sexually explicit materials. This is a professional organization and we will ensure that it remains professional.
- 6) At no time may a member degrade another member publicly. Lively and open discussion is always encouraged but bullying of any sort will never be tolerated.

Group Type

Support

Recommended by the Admins - 33

Manage

HISTORY

Group created on October 11, 2011

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GROUP BY



Outserve - SLDN

39,743 like this

Donate

INVITE MEMBERS

Enter name or email address...

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CONTACTS

GROUP CONVERSATIONS

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OutServe-SLDN Positive Forum

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OutServe-SLDN Positive Forum
Secret group

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Search this group

UNDETECTABLE

Members 92

Admins and moderators 5

Peter Perkowski
Admin
View 7 recent posts
Legal Director at Outserve - SLDN

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Gay Geeks
59,002 members

Gaymers
11,500 members

All members Default

Peter Perkowski
Admin
View 7 recent posts
Added by Wes Reynolds on 23 February 2018
Legal Director at Outserve - SLDN

Andy Blevins
Admin
Added by Peter Perkowski on 23 February 2018
Executive Director at Outserve - SLDN

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



