

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

NICK HARRISON and	.	Civil Action No. 1:18cv641
OUTSERVE-SLDN, INC.,	.	
	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	December 21, 2018
JAMES N. MATTIS, Secretary of	.	10:04 a.m.
the U.S. Department of	.	
Defense; MARK ESPER,	.	
Secretary of the Army; and	.	
U.S. DEPARTMENT OF DEFENSE,	.	
	.	
Defendants.	.	
	.	
.	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	ANDREW R. SOMMER, ESQ. Winston & Strawn LLP 1700 K Street, N.W. Washington, D.C. 20006 and SCOTT A. SCHOETTES, ESQ. Lambda Legal Defense and Education Fund, Inc. 105 West Adams, Suite 2600 Chicago, IL 60603
---------------------	---

FOR THE DEFENDANTS:	R. TRENT McCOTTER, AUSA U.S. Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314
---------------------	---

(APPEARANCES CONT'D. ON PAGE 2)

(Pages 1 - 6)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 FOR THE DEFENDANTS:

ROBERT M. NORWAY
Trial Attorney
U.S. Department of Justice
Civil Division
Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20001

6 ALSO PRESENT:

KERI L. BERMAN, ESQ.
W. CASEY BIGGERSTAFF, ESQ.
REBECCA CUTRI-KOHART, ESQ.
NICK HARRISON
STUART SPARKS

10 OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court, Third Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE CLERK: Civil Action 18-641, Nick Harrison, et al. v. James N. Mattis, et al. Would counsel please note their appearances for the record.

MR. SOMMER: Good morning, Your Honor. Andrew Sommer on behalf of plaintiffs, from Winston & Strawn. Arguing today will be Mr. Scott Schoettes from Lambda Legal, on behalf of plaintiffs. And we're here today with plaintiff, Nick Harrison.

THE COURT: Good morning.

MR. McCOTTER: Good morning, Your Honor. Trent McCotter, Assistant United States Attorney. With me and arguing today will be Robert Norway from Federal Programs Branch, Your Honor. Also with us in the gallery are Keri Berman and Rebecca Cutri-Kohart, also from Fed. Programs, and Casey Biggerstaff from the Army and Stuart Sparks from the Department of Defense, Your Honor.

THE COURT: As observers or participants?

MR. McCOTTER: Observers, Your Honor.

THE COURT: All right, that's fine.

Well, what's before the Court today is the appeal or objection to the magistrate judge's ruling on a discovery request of the plaintiffs to have access to information from services other than the Department of the Army in terms of this case.

1 You know, I've looked at the pleadings in this case,
2 and quite frankly, I'm not sure the defense truly understands
3 what's at issue in this case. The evidence that Judge Davis
4 found is relevant to the plaintiffs' case is in this Court's
5 view absolutely relevant. The issue is whether or not the
6 policies that the Army has concerning HIV-positive military
7 members is a rationally developed policy. The fact that sister
8 and brother services may treat HIV-positive service members
9 differently would in my view be highly relevant to determining
10 whether or not the Army's policy is rational, and that's the
11 essence of what Judge Davis found, that this information is
12 relevant to that evaluation.

13 Now, to the extent that defendant -- the government
14 is arguing, well, you know, the Air Force, for example, is not
15 a defendant in this case, so why would the Air Force policies
16 be relevant, I should tell you, if you don't already know, we
17 have a new case, it's been assigned to me because it's
18 considered a related case. I don't know if any of the
19 attorneys are here on that one, but it's currently -- are you
20 doing the -- same counsel?

21 MR. SOMMER: Yes.

22 MR. SCHOETTES: Yes, Your Honor.

23 THE COURT: Well, we can talk then about both cases,
24 all right, and I can save you perhaps a court appearance then
25 because there's a pending motion to proceed pseudonymously.

1 Does the government have any objection to that, that the two
2 plaintiffs in that case, apparently unlike our plaintiff,
3 Mr. Harrison, they don't want to reveal their names? I think
4 right now it's Roe and --

5 MR. SCHOETTES: Roe and Doe, Your Honor.

6 THE COURT: Yeah, Roe and Doe.

7 Any objection to proceeding without their names being
8 disclosed at this point?

9 MR. McCOTTER: Your Honor, I don't believe -- or I
10 don't know if the government has been served process in that
11 case yet. We were just made aware of it earlier this week, so
12 I can't represent here today whether or not we would oppose
13 that motion.

14 THE COURT: Well, I'm going to save you the trouble.
15 It's a perfectly reasonable request under the circumstances.
16 I'm going to grant the motion. The case can proceed in that
17 manner at this point. At some point, you know, the plaintiffs
18 may choose to go public; we'll see.

19 It's against the Air Force rather than the Army. I
20 think the government should be smart about figuring out about
21 limiting the amount of resources that have to be spent. I
22 should think the two cases probably should be somehow, I don't
23 mean merged, but consolidated. It may affect some of the -- it
24 may or may not. The timing problems may exist in the other
25 case that don't exist in this one. But in any case, I've

1 granted that motion, so the case will go forward with
2 pseudonyms at this point.

3 But in any case, I've looked at the paperwork in this
4 case, and as I said, I'm completely satisfied the magistrate
5 judge was correct in his ruling, so I'm overruling the
6 objection, and you need to comply with the discovery, and I
7 recommend strongly that you-all think about whether there are
8 ways of economizing on discovery and other issues so that we
9 now have the second case, it wouldn't surprise me if we don't
10 get a third case with another branch, in case that becomes an
11 issue, all right?

12 That's my ruling. Thank you.

13 (Which were all the proceedings
14 had at this time.)

15
16 CERTIFICATE OF THE REPORTER

17 I certify that the foregoing is a correct transcript of
18 the record of proceedings in the above-entitled matter.

19
20
21
22
23
24
25

_____/s/
Anneliese J. Thomson