

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

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

RICHARD V. SPENCER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

v.

RICHARD V. SPENCER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

**REDACTED VERSION OF EXHIBIT B TO PLAINTIFFS' SUPPLEMENTAL
OPPOSITION TO DEFENDANTS' RENEWED MOTION TO DISMISS**

UNDER SEAL

EXHIBIT B

Excerpts from July 2, 2019 Deposition of Anthony Blevins

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Transcript of **Anthony L. Blevins 30(b)(6)**

Tuesday, July 2, 2019

Harrison, et al. v. Shanahan

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1 STATES DEPARTMENT OF DEFENSE, :
2 Defendants. :

3 - - - - - X

4 Washington, DC

5 Tuesday, July 2, 2019

6 CONFIDENTIAL

7 30(b)(6) Deposition of OutServe, Inc., by
8 and through its representative ANTHONY L. BLEVINS, a
9 witness herein, called for examination by counsel for
10 Defendants in the above-entitled matter, pursuant to
11 notice, the witness being duly sworn by Rebecca L.
12 Stonerock, a Notary Public in and for the District of
13 Columbia, taken at the offices of the United States
14 Department of Justice, 1100 L Street NW, Washington,
15 DC, at 9:35 a.m., Tuesday, July 2, 2019, and the
16 proceedings being taken down by Stenotype by Rebecca
17 L. Stonerock, RPR, and transcribed under her
18 direction.

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20
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22

1 APPEARANCES:

2

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4 Department of Justice:

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13 On behalf of OutServe and the witness:

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22 Claudia Murray, DOJ

1 C O N T E N T S

2 WITNESS EXAMINATION BY COUNSEL FOR

3 ANTHONY L. BLEVINS DEFENDANTS OUTSERVE

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18 Interrogatories 21

19 Exhibit 3 Declaration of Blevins in Support

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21 Defendants' Revewed Motion to

22 Dismiss Plaintiff OutServe-SLDN 22

1 Q. So in this particular paragraph you talk
2 about service to transgender service members. Have
3 you delayed or deferred any service to a transgender
4 service member because of HIV support?

5 A. We have had to delay some services to
6 folks that identify as transgender, yes.

7 Q. Can you give me an example?

8 A. For example, we -- an individual needed a
9 letter because of some discriminatory actions based
10 on their transgender status, and we had to push back
11 writing that letter.

12 Q. Any other instances you've had to delay a
13 service to a transgender service member?

14 A. I can't recall any others right now.

15 Q. Why have you decided to prioritize
16 assistance to HIV over assistance to transgender
17 service members?

18 A. We're very lucky to have a lot of
19 community partners helping us with the transgender
20 service members right now. Like I mentioned earlier,
21 we are the subject matter experts for those that are
22 living with HIV and nobody's really prepared to help

1 us, so nobody else is helping that community either.

2 So when we were doing our strategic plan,
3 we decided that we needed to prioritize this
4 community because nobody else was.

5 Q. Okay. We can set this aside for now, but
6 like the interrogatories, keep this kind of on top.

7 I want to turn to talking about your
8 membership a little bit more. How many members do
9 you believe that OutServe currently has?

10 A. We -- we believe there's about 75,000
11 active members and supporters right now.

12 Q. 7,000 or 75,000?

13 A. 75,000 active members and supporters.

14 Q. At the time the lawsuit was filed, how
15 many members do you believe you had?

16 A. Oh, gosh. I believe we had 6,100 members.
17 There are so many numbers. Not including the
18 supporters, I believe we had 6,100 members at the
19 time the lawsuit was filed.

20 Q. And at present time, how many members
21 versus supporters do you believe you have?

22 A. I would -- I believe we have about 8,000

1 MS. BERMAN: I just want to mention before
2 your attorney writes anything else on that, we are
3 going to take his notes. So --

4 MR. PERKOWSKI: That's fine.

5 MS. BERMAN: -- we would take your notes,
6 too.

7 MS. CUTRI-KOHART: Thank you, Keri.

8 This is a large printout. We'll call this
9 Exhibit Number 4.

10 (Blevins Exhibit No. 4 was marked for
11 identification.)

12 BY MS. CUTRI-KOHART:

13 Q. Do you recognize this?

14 A. I do.

15 Q. What is this?

16 A. This is the 2014 survey, I believe.

17 Q. And just for the record, I have only
18 printed out the surveys and responses and there were
19 a bunch of redacted names and I just didn't to save
20 trees. Is that okay with you?

21 A. Yes, ma'am.

22 Q. This survey was conducted in 2014; is that

1 correct?

2 A. Yes.

3 Q. Is this the first time, to your knowledge,
4 that OutServe has ever conducted a survey like this?

5 A. Yes.

6 Q. Why did OutServe conduct this survey?

7 A. In order to get input from our members
8 into the direction of the organization and figure out
9 how we can better serve them. Additionally, who --
10 how are the members identified.

11 Q. Who was the survey sent to?

12 A. Our members. So through SurveyMonkey --
13 the SurveyMonkey was sent through Mailchimp and
14 through Facebook.

15 Q. So it was sent to everybody on our
16 mailing -- e-mail list?

17 A. Yes.

18 Q. And everybody on your Facebook pages.

19 A. Yes.

20 Q. And at that time, how many people was
21 that?

22 A. 2014. I would estimate that we had about

1 5,000 in the Facebook groups and we only had about
2 20,000 in the mailing list.

3 Q. And on the mailing list you had no way of
4 knowing which of those people would qualify as
5 members or not members; is that correct?

6 A. That's correct.

7 Q. Can you tell me which of these survey
8 questions were designed to elicit information on the
9 direction that OutServe should follow?

10 A. So question 9, what are our strengths, we
11 asked this question so we could see what the
12 membership liked about what we do so we can continue
13 doing that.

14 Question 11 where we asked them what they
15 thought future considerations for the organization
16 would be.

17 MR. PERKOWSKI: I'm just laughing at some
18 of the written responses. Kind of funny.

19 THE WITNESS: Question 12, we asked them
20 specifically to put in their words what would help us
21 continue to be a strong and viable organization.

22 Did you want me to go through and point

1 out all of them, by the way?

2 BY MS. CUTRI-KOHART:

3 Q. Yes.

4 A. Okay.

5 MR. PERKOWSKI: Whoever -- we don't need
6 that recorded.

7 THE WITNESS: Question 13, what are our
8 obstacles and challenges.

9 BY MS. CUTRI-KOHART:

10 Q. You can go ahead and look through the rest
11 of the questions, but I think the rest have to do
12 with donations. Go ahead and take a quick look to
13 make sure you're not missing anything.

14 A. Thank you. I would consider 18, what
15 compels you to give to an organization, especially
16 the comments that indicated that they liked a
17 specific program. And that is it.

18 Q. How were these survey questions chosen?

19 A. There was a team that came together and
20 figured out what they wanted to know from the
21 membership. And they drafted a bunch of questions,
22 they were reviewed, and then the questions that they

1 aspect of our community, for example. Stuff like
2 that.

3 Q. Besides what we've just talked about,
4 there are any other instances in which you have
5 changed OutServe's programs or priorities as a result
6 of feedback?

7 A. No.

8 Q. Okay. Let's talk about your board of
9 directors. If you want to go back to your
10 declaration, which is Exhibit 3, paragraph 20. It
11 starts on page 8 and goes to page 9.

12 A. Thank you.

13 Q. In this paragraph you talk about the --
14 that OutServe does not have resources to conduct an
15 annual board election through its membership ranks;
16 is that correct?

17 A. Correct.

18 Q. Why is that?

19 A. We have -- we have so many members and, as
20 you've pointed out, we use Mailchimp in order to
21 disseminate a lot of that information. And right now
22 we don't have that broad database to differentiate

1 between who is a member and who is not. And it would
2 be too cumbersome for to us try and distill that
3 information right now.

4 Q. So is the only reason that you don't hold
5 board elections because you don't have a member
6 database to see who can vote?

7 MR. PERKOWSKI: Objection. Form.

8 THE WITNESS: I have actually never
9 considered that question, so I don't know.

10 BY MS. CUTRI-KOHART:

11 Q. Are there any other reasons you can think
12 of why you have never held a board election?

13 A. So to be clear, we do elect the board
14 members, just not including -- okay.

15 Q. Let me reframe the question.

16 When you talk in this paragraph about the
17 lack of resources to conduct an election of the
18 general membership to elect board members, is the
19 only reason -- the only lack of resources your lack
20 of a member database?

21 A. The lack of a member database and the lack
22 of time and resources in order to distill the votes

1 Have any of your board members accessed
2 your legal services?

3 A. Yes.

4 Q. Who?

5 A. I just wanted to make sure I could answer
6 that. Yes, [REDACTED] has accessed our legal
7 services.

8 Q. For what purpose?

9 A. He was passed over for a promotion and he
10 believed it was discrimination.

11 Q. Any other board members access your legal
12 services?

13 A. Not to my knowledge.

14 Q. Did OutServe end up representing [REDACTED]
15 Mueller in any form of administrative hearing or
16 proceeding or write a letter on his behalf or
17 anything like that?

18 A. No.

19 Q. So it was advice only?

20 A. Yes, ma'am.

21 Q. Let's now talk about the Military Advisory
22 Committee. Can you tell me all the names by which

1 Q. Okay. How does Emma Shinn identify?

2 A. She/her. So she's a [REDACTED].

3 Q. Got it. [REDACTED]. And she/her?

4 A. She/her.

5 Q. Of the members of your -- of the members

6 of the MAC -- we'll just call it that for now -- how

7 many of these people have donated to OutServe?

8 A. Ooh. Do you want me to list their last

9 names again or just count?

10 Q. You can just count.

11 A. Including the ex officio members, 18.

12 Q. Are any of them donations over \$1,000?

13 A. Is that a onetime donation or the

14 aggregate over a year?

15 Q. Aggregate over a year.

16 A. Yes.

17 Q. How many?

18 A. One.

19 Q. Who is that?

20 A. [REDACTED].

21 Q. Any of the members of your board, are they

22 members of your Facebook chapters or forums -- of the

1 MAC, I'm sorry, are members of your Facebook chapters
2 or forums?

3 A. Yes, all of them.

4 Q. All of them. Do they all subscribe to
5 your newsletter?

6 A. Yes.

7 Q. Have any accessed your legal services?

8 A. Yes.

9 Q. Who?

10 A. [REDACTED] and [REDACTED].

11 Q. [REDACTED], what services did [REDACTED]
12 access?

13 A. Do you want, like, a broad overview?

14 Q. A broad overview is fine.

15 A. He got in trouble for [REDACTED]
16 [REDACTED].

17 Q. Did OutServe end up representing him in
18 any form of administrative or other style tribunal?

19 A. I don't believe so.

20 Q. So legal advice only?

21 A. Yes.

22 Q. Did [REDACTED] ever donate to OutServe?

1 A. Yes.

2 Q. And [REDACTED] is a member of your
3 Facebook chapters and forums?

4 A. Yes.

5 Q. You stated in the past that members of the
6 Military Advisory Council all qualify as members of
7 OutServe. That's correct?

8 A. Yes.

9 Q. Is that a requirement for joining the
10 Military Advisory Council?

11 A. Yes, it is.

12 MS. CUTRI-KOHART: This is Exhibit 7.

13 (Blevins Exhibit No. 7 was marked for
14 identification.)

15 BY MS. CUTRI-KOHART:

16 Q. We have several variations of this in our
17 production. Is this current or is this old?

18 A. Let me just double-check.

19 This is current insofar as pre-merger.

20 The amendments have just been for the name

21 OutServe-SLDN.

22 Q. Okay. So what I'm looking at is current

1 here, in the future that committee will be formed by
2 Advisory Council members?

3 A. Yes.

4 Q. But they're going to be voted on by the
5 board?

6 A. Yes.

7 Q. So that will change, because right now it
8 says they're voted on by the council.

9 A. Yes. They'll be voted on by the board.

10 Q. So they will -- will there ever have to be
11 a vote of the council before the nominations go to
12 the board?

13 A. No. The only time that the council would
14 vote on membership would be if they wanted to remove
15 a member for some reason.

16 Q. So the council could vote to remove a
17 member and that member would be removed?

18 A. Yes.

19 Q. Without board involvement?

20 A. Yes.

21 Q. Section 6, it talks about diversity. The
22 last sentence says it could be open to all qualified

1 How was your agreement with Mr. Perkowski
2 expended in 2017?

3 A. Because of the amount of legal work that
4 we were going to be doing after the expansion, we
5 needed Mr. Perkowski on for more hours. So we
6 increased his contract.

7 Q. How many hours was his contract
8 originally?

9 A. I believe he only worked 20 hours a week
10 and then it turned into, like, a step program. So he
11 earned based on how many hours -- what bucket he fell
12 into.

13 Q. So it became a variable expense depending
14 on how many hours were worked in a month?

15 A. Correct.

16 Q. And at this time in 2017, what cases was
17 Mr. Perkowski working on for OutServe?

18 A. Well, he was the only barred attorney, so
19 everything. He provided oversight on everything, and
20 then he was the -- really the sole person working on
21 any HIV-related cases.

22 Q. And then on page 2, the second-to-last

1 A. No.

2 Q. [REDACTED] ?

3 A. No.

4 Q. [REDACTED] ?

5 A. No.

6 Q. [REDACTED] ?

7 A. No.

8 Q. And [REDACTED] ?

9 A. No.

10 Q. Okay. So I want to talk about when

11 OutServe began HIV advocacy. Can you tell me what

12 year OutServe began incorporating HIV advocacy into

13 its mission?

14 A. It was first brought up in September of

15 2015. An individual had approached the board -- a

16 board member and then they also started discussing

17 PrEP.

18 Q. Okay. And so that board meeting, I think

19 you actually produced a tape of that meeting to us as

20 part of production.

21 A. Yes.

22 Q. Do you remember that?

1 A. Yes.

2 Q. And so during the tape, the executive
3 director said he was approached by a -- by somebody
4 who was HIV-positive?

5 A. Yes.

6 Q. And in what circumstance was that
7 executive director approached?

8 A. So the client had first approached a board
9 member and the board member had gone to the executive
10 director because it was a legal services issue and
11 the board doesn't do legal services.

12 Q. Okay. And to your knowledge, that's the
13 first time the board considered HIV advocacy?

14 A. To my knowledge, yes.

15 Q. And that person that approached, it was
16 specifically an accessions issue?

17 A. I believe so.

18 Q. And so when they -- the board talked about
19 HIV advocacy for the first time, they were aware that
20 there was an existing bar to accessing HIV-positive
21 service members?

22 A. Yes.

1 Q. And so in addition to PrEP, it's fair to
2 say the board knew when it took on HIV advocacy, that
3 was one of the military policies it was going to have
4 to challenge?

5 A. Yes.

6 Q. And that's what's being challenged in the
7 Harrison suit; is that correct?

8 A. Correct.

9 Q. Okay. When the board had this discussion
10 in 2015, besides that one person, had there been any
11 calls to OutServe's legal hotline requesting
12 assistance with DoD or any service's HIV policy?

13 A. Up to that point, not to my knowledge.

14 Q. And then had any chapter leaders contacted
15 OutServe's board regarding HIV policy?

16 A. Not to my knowledge, no.

17 Q. Had there been any input outside of that
18 one contact that the board considered when they were
19 trying to decide whether to take on HIV advocacy?

20 A. No.

21 Q. When the board decided to take on HIV
22 advocacy in September of 2015, in what way was the

1 military's policy on HIV impacting OutServe as an
2 organization?

3 A. We knew we had members that identified
4 with -- that were living with HIV, even though we
5 didn't know how many there were. And because this
6 one member came forward with issues, we knew he
7 wasn't the only one having an issue. So impacted our
8 membership in that capacity.

9 Q. The person who came forward with the
10 issue, how did he qualify as an OutServe member, or
11 she?

12 A. It was a hopeful recruit.

13 Q. He was an aspiring member of --

14 A. Aspiring member, yes.

15 Q. Was OutServe being financially injured in
16 any way when it decided to take on HIV advocacy?

17 A. Insofar as we had to allocate resources
18 away from what we were focusing -- other projects we
19 could focus on so we could do the HIV projects, yes.

20 Q. So at the time in September of 2015, was
21 OutServe already experiencing any form of financial
22 injury from the military's HIV policies?

1 as we can.

2 Q. And the previous contract had him at
3 [REDACTED] a month; is that correct?

4 A. Yes.

5 Q. Do you know when it changed from [REDACTED] to
6 [REDACTED]?

7 A. I do not.

8 Q. When it increased -- when the price of the
9 contract increased, did the number of hours increase?

10 A. Yes.

11 Q. But you don't know -- do you know how many
12 hours were on the previous contract?

13 A. I don't.

14 Q. Has there been any months where the full
15 25 hours were not used?

16 A. No.

17 Q. And has he gone over 25 hours all the
18 months?

19 A. If not all, the large majority of them,
20 yes.

21 Q. In terms of pro bono counsel, who are your
22 pro bono partners?

1 A. Winston & Strawn, Latham Watkins, Lambda
2 Legal, DLA Piper. I think that's all of them.

3 Q. And these were all partners in that
4 they're donating their services? You're not paying
5 them for services?

6 A. That's correct.

7 Q. Have you ever had any of your pro bono
8 counsel unable to complete other OutServe work
9 because of the resources they're devoting to HIV
10 litigation?

11 A. No.

12 Q. Have you ever had them be unable to
13 perform any OutServe work because of the resources
14 they're devoting to OutServe's HIV mission in
15 general?

16 A. No.

17 Q. In terms of your active litigation, both
18 in the federal courts or in the military justice
19 system, what percentage of the funding for those
20 cases comes from donated legal services versus
21 Mr. Perkowski?

22 MR. PERKOWSKI: Objection. Vague.

1 THE WITNESS: You said all of our -- can
2 you say the question one more time?

3 BY MS. CUTRI-KOHART:

4 Q. Okay. So of your court cases that are
5 either in federal court or in military justice,
6 what's the ratio between pro bono legal services and
7 your use of Mr. Perkowski in dollars?

8 A. I'm not sure. I'm also not sure that's a
9 fair assessment in that Mr. Perkowski is involved in
10 all of those matters as well and the pro bono
11 partners value their time much higher than what we
12 pay Mr. Perkowski.

13 Q. How about in terms of hours?

14 A. In terms of hours? Like -- such a good
15 question.

16 Q. Do you get billing statements from your
17 pro bono partners?

18 A. No. At the end -- at the end of the year
19 we ask for a valuation of their pro bono services.

20 Q. Do you have an answer to the question?
21 Can you estimate a ratio of hours from pro bono
22 partners versus Mr. Perkowski?

1 BY MS. CUTRI-KOHART:

2 Q. And Mr. Perkowski's expenses.

3 A. Yes.

4 Q. Has Mr. Perkowski worked on every case
5 we've just talked about?

6 A. He has been involved in every single case
7 we've talked about, yes.

8 Q. What do you mean by "involved"?

9 A. Well, again, he's the only barred attorney
10 for our organization, so he provides oversight for
11 everything. And he's the only one on the staff with
12 the competency for HIV-related care. So he is
13 involved in every single HIV matter that we have.

14 Q. In terms of the other members of your
15 staff that we've talked about that has helped with
16 legal services, how much time or resources have they
17 spent working on the cases we've just talked about?

18 MR. PERKOWSKI: Is the question just HIV
19 cases?

20 MS. CUTRI-KOHART: No, all the cases we've
21 just talked about. So litigation.

22 MR. PERKOWSKI: Federal litigation?

1 after it have the memos.

2 A. Gotcha. Can you repeat your question?

3 Q. In any of the reports you have in front of
4 you -- in any of the reports you have in front of you
5 do you talk anywhere about a plan to start legal
6 services for clemency petitions?

7 A. Other than the second bullet on future
8 considerations and goals, which --

9 Q. Sorry, can you point to which --

10 A. Sure. On -- sorry, Exhibit 16, page 6. I
11 would include that under this second bullet under
12 future considerations and goals of increased
13 engagement on the treatment of and regulations
14 affecting service members living with HIV.

15 Q. Okay. Do you know if you have in
16 OutServe's records documented anywhere the
17 preplanning or planning stages for HIV clemency
18 petitions?

19 A. I don't believe so.

20 Q. Would it be normal for something that
21 you've been planning since 2017 not to appear in any
22 of your legal reports?

1 A. Yes.

2 Q. Why is that?

3 A. We're a very barebones staff. And it's
4 much easier for me to communicate that verbally with
5 my board than to spend X number of hours writing a
6 report for them when I can allocate that to my
7 clients.

8 Q. Do you have any -- why specifically did
9 you choose HIV clemency petitions as a program to
10 de-prioritize?

11 A. I'm not sure.

12 Q. You're the executive director. Did the
13 board make the decision or --

14 A. No, that was a decision made in
15 conjunction with my legal team.

16 Q. Have you considered involving another
17 organization in this work to get it done?

18 A. We've chatted about it, but again, we're
19 the subject matter experts in this specific area, so
20 there is no other organization that could really
21 supplement.

22 Q. Have you considered involving a pro bono

1 A. Twelve. Okay. Can you repeat the
2 question, please?

3 Q. Can you describe what you mean by the
4 Marine Corps Defense Services Organization west
5 region training, which I believe you refer to as JAG
6 training?

7 A. Yes. So JAGs are the military lawyers,
8 and Mr. Perkowski was invited to train them on LGBT
9 and HIV-positive-specific cultural conflicts.

10 Q. Why was this project not included in your
11 end-of-year reports? Or was it included and I just
12 missed it?

13 A. So this isn't a project. This was an
14 invitation. I just wanted to point that out. And
15 I'm not sure why it was not included in the 2018
16 end-of-year report.

17 Q. Why did -- why was this de-prioritized
18 compared to other work?

19 A. Because there was not enough time for
20 Mr. Perkowski to build up the training for the JAG
21 corps or to travel to give it.

22 Q. And was that determination to

1 de-prioritize it made when the request came in in
2 October 2018 or was the decision made later?

3 A. It was made later.

4 Q. When was it made?

5 A. I don't recall when it was made.

6 Q. What is the plan for completing this
7 project -- or this invitation?

8 A. I'm not sure. It's been de-prioritized
9 because of the HIV matters.

10 Q. Just the HIV matters?

11 A. In this instance, yes.

12 Q. Are there any other people at OutServe who
13 could prepare some of this training?

14 A. No. They would need to be a barred
15 attorney.

16 Q. Could any of your pro bono partners
17 prepare some of this training?

18 A. Likely not. We are the subject matter
19 experts. So we would need to train them in order to
20 do the training and it's just too much time
21 intensive.

22 Q. You've mentioned multiple time now about

1 being the subject matter experts for HIV and the
2 military.

3 A. Sure.

4 Q. What's the basis for your belief that
5 you're the subject matter experts?

6 A. Well, Mr. Perkowski is a renowned HIV
7 attorney in the world and he's also a renowned
8 military attorney, military veteran law-specific
9 attorney. We are the only organization with an
10 individual that has that experience and we're the
11 only organization that focuses on that type of work.

12 Q. So the basis for your belief is basically
13 your knowledge of Mr. Perkowski as an attorney?

14 A. Yes.

15 Q. Is it based on any benchmarking of other
16 organizations that do HIV advocacy?

17 A. No.

18 Q. Besides what we have discussed, have you
19 had any other programs, projects, invitations, plans
20 that you believe were delayed, deferred or incomplete
21 as a result of the policies that you are challenging
22 in the Harrison and Roe lawsuits?

1 MR. PERKOWSKI: Give me three minutes off
2 the record.

3 MS. CUTRI-KOHART: Okay.

4 (Recess.)

5 MR. PERKOWSKI: Back on the record,
6 please.

7 EXAMINATION BY COUNSEL FOR OUTSERVE

8 BY MR. PERKOWSKI:

9 Q. Mr. Blevins, I'm going to ask you a couple
10 of questions. Did you look for donor information in
11 response to plaintiffs' document requests in this
12 matter?

13 A. Yes.

14 Q. What did you find?

15 A. We didn't have complete records because my
16 predecessors used different donation platforms and
17 not all of them were able to give me or were willing
18 to give me those records -- I'm not sure why --
19 despite my requests. And we found that we did not
20 request information related to their, like, gender
21 identity or sexual orientation or military
22 affiliation in those donation requests.