UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS CITIZENS UNITED FOR REHABILITATION OF ERRANTS, INC., ET AL	)	Docket No. A 23-CA-1004 RP
vs.	)	Austin, Texas
BOBBY LUMPKIN	)	March 30, 2026

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE ROBERT L. PITMAN
Volume 1 of 8

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I N D E X

Witnesses:	Direct	Cross	Redirect	Recross
Dean Williams	24	66	89	92
Susi Vassallo	94	176	216	
Paul Uribe	219	239	267	
Jhilam Biswas	272	302	323	
Brian K. Carroll	238			

E X H I B I T S

Plaintiffs'	Offered	Admitted
#322	57	57
#324	97	97
#325	50	50
#327 through 329	105	105
#333	113	113
#334	115	115
#358A through 358D	31	32
#395	232	232
#360A	232	232
#400A through 400B	155	155
#403A through 403B	170	170
#412A through 412F	156	156
#417	274	274
#418	330	331
#424	220	221
#425	216	216
#426	25	25
#430A through 430B	236	236
#437	172	173
#447	57	57
#448	52	53

E X H I B I T S (Continued)

	Offered	Admitted
Plaintiffs'		
#460	282	282
#465	278	278
Defendant's		
#197	197	197
#206	307	307

08:31:35 THE COURT: Good morning.

08:31:37 Thank you for being prepared for beginning of our
08:31:41 bench trial. As a preliminary matter, I appreciate the
08:31:46 agreement you have come to with regard to the redactions.
08:31:50 That looks great to me. With regard to the remaining
08:31:53 objections to the 111 or so exhibits, I'm going to at this
08:32:01 time rule those objections both on relevance grounds as
08:32:06 well as the fact that those were not raised previously in
08:32:09 a motion in limine. But I'll give you a running objection
08:32:11 as to those so you don't have to object every time to
08:32:15 those exhibits.

08:32:17 With that, are there any housekeeping matters we
08:32:21 need to tend to before we have our opening statements?

08:32:24 MR. HOMIAK: Nothing from the plaintiffs, your
08:32:26 Honor. Would you like us to enter our appearances?

08:32:28 THE COURT: Yes. In just a second. Any
08:32:32 housekeeping matters?

08:32:32 MR. HOMIAK: No, your Honor.

08:32:32 THE COURT: Okay. If you could call the case,
08:32:34 please.

08:32:35 THE CLERK: Court calls A-23-CV-1004, Texas
08:32:39 Citizens United For Rehabilitation of Errants,
08:32:42 Incorporated, and Others vs. Bobby Lumpkin, for bench
08:32:46 trial.

08:32:47 THE COURT: For the plaintiffs.

08:32:48 MR. HOMIAK: Good morning, your Honor.
08:32:49 Kevin Homiak on behalf of plaintiffs. I'll let
08:32:53 my cocounsel introduce themselves from left to right so
08:32:55 everyone case speak.
08:32:56 MR. DUKE: Brandon Duke from O'Melveny & Myers on
08:32:58 behalf of plaintiffs.
08:33:00 MR. EDWARDS: Jeff Edwards on behalf of the
08:33:02 plaintiffs, your Honor.
08:33:03 THE COURT: Good morning.
08:33:04 MR. SINGLEY: Michael Singley on behalf of
08:33:05 plaintiffs.
08:33:07 MS. SNEAD: Lisa Snead for the plaintiffs.
08:33:09 MR. SAMUEL: Paul Samuel for the plaintiffs.
08:33:10 MR. OLSEN: Thomas Olsen for the plaintiffs.
08:33:12 MS. GROSSMAN: Erica Grossman for the plaintiffs.
08:33:17 MS. JOERS: Marissa Joers for plaintiffs.
08:33:18 MR. LEGAN: Joe Legan for plaintiffs.
08:33:19 THE COURT: Thank you. Good morning.
08:33:19 And for the defendants?
08:33:21 MR. JOHNSON: Yes, your Honor.
08:33:23 THE COURT: I'm sorry we have one more. Sorry
08:33:25 about that.
08:33:29 MR. JAMES: David James, also for plaintiffs.
08:33:30 THE COURT: Thank you very much.
08:33:32 MR. JOHNSON: Wade Johnson on behalf of the

defendant. And I'll let my co-counsel, as well, introduce themselves starting with Ms. Lauren.

MS. SAEGER: Lauren Saeger for defendant.

MR. TEBO: Kyle Tebo for the defendant.

MS. CARTER: Abigail Carter for defendant.

MS. MCGEE: Lauren McGee for the defendant.

MR. KERCHER: Ryan Kercher for the defendant.

MR. MILLER: Eric Miller with the TDCJ, general counsel.

MS. GREGER: Stephanie Greger, general counsel for TDCJ.

MR. LUMPKIN: Bobby Lumpkin, Executive Director.

THE COURT: Good morning.

MR. LUMPKIN: Good morning.

MR. MICKLE: Good morning, your Honor.

Brandon Mickle for defendant.

THE COURT: Good morning.

Thank you very much and I would be glad to entertain opening statements at this time. Mr. Homiak.

MR. HOMIAK: Thank you, your Honor. May I approach?

THE COURT: Please.

PLAINTIFFS' OPENING STATEMENTS

MR. HOMIAK: May it please the Court.

Your Honor, we're back in this courtroom because

08:34:48 the plainly unconstitutional conditions in TDCJ's prison
08:34:53 system persists, and because despite the Court's findings,
08:34:56 TDCJ still refuses to treat this as the emergency that it
08:35:00 is. A year ago, this court made three key findings.
08:35:04 First, it found that the extreme heat in Texas'
08:35:09 unair-conditioned prisons poses a substantial risk of
08:35:11 serious harm to inmates. Second, it found that air
08:35:15 conditioning is the only effective remedy. And third, it
08:35:17 found that the pace at which TDCJ's installing air
08:35:21 conditioning was constitutionally inadequate. Because
08:35:23 even on the most optimistic timeline, a fully
08:35:27 air-conditioned system was still 25 years away.
08:35:30 Your Honor, the evidence will show that the
08:35:32 agency is falling further behind. It's been about 21
08:35:37 months since the preliminary injunction hearing. In that
08:35:39 time, TDCJ added 6,749 cool beds. A rate of roughly 3,857
08:35:48 beds per year. Assuming the inmate population remains
08:35:52 flat, it would take the agency another 23 years to fully
08:35:58 air condition the system at that historic rate. That's
08:36:03 two decades longer than the 24-36 months that our experts
08:36:06 say it should take. It's two decades longer than what the
08:36:10 Constitution requires.
08:36:11 But, your Honor, TDCJ's inmate population is not
08:36:14 staying flat. It's growing. Since the preliminary
08:36:18 injunction hearing, TDCJ's inmate population has grown by

08:36:23 7,006. In other words, TDCJ added 257 more inmates than
08:36:30 cool beds. It's falling behind. And the Texas
08:36:34 legislative board projects that the inmate population will
08:36:38 increase by another 10,000 inmates in just the next two
08:36:41 years. To simply keep up with the rate of population
08:36:45 growth, TDCJ would need to install roughly 5,000 beds per
08:36:49 year. A rate that's never achieved.
08:36:53 Now, they may come up and tell you about the
08:36:56 design and construction of the beds in those phases, but
08:36:58 the only thing we know right now for sure is what they
08:37:00 have done already, what they have done since the
08:37:04 preliminary injunction hearing, and, your Honor, the best
08:37:07 they have done is 3,857 beds per year on average.
08:37:13 The agency's leadership recognizes both the
08:37:15 problem and the solution. Director Lumpkin testified in
08:37:20 his deposition that air conditioning is the only effective
08:37:22 protection from the heat. And TDCJ's Director of
08:37:25 Engineering Dale Cox says that in ideal circumstances and
08:37:28 with full funding, it would take only 36 to 51 months to
08:37:32 fully air condition the system.
08:37:35 So why is this taking so long? The agency will
08:37:38 tell you it's doing everything it can. That the
08:37:41 legislature controls the funding and the agency can't ask
08:37:45 the legislature for more. It can't obligate more.
08:37:49 They'll tell you that air conditioning prisons is

08:37:51 complicated takes time and they can't find enough vendors
08:37:54 to do the work. Your Honor, the evidence will show that
08:37:57 none of this is true.
08:37:59 Let's start with the funding. We now know that
08:38:01 the agency can obligate the full 1.3 or 1.5 billion it
08:38:05 takes to fully air condition the system in a single
08:38:09 biennial. We know that because the Texas Facilities
08:38:13 Commission obligated nearly double that, 2.5 billion for
08:38:16 border wall construction in the 2024-2025 biennial; and we
08:38:21 know it because Mr. Mr. Collier admitted in his deposition
08:38:23 that TDCJ doesn't even need to start, let alone complete,
08:38:27 the construction in a given biennium to obligate the
08:38:32 funds. It just needs to sign the contracts, put pen to
08:38:35 paper.
08:38:35 The state has shown it knows how to obligate
08:38:38 billions in a single biennium for what it sees as an
08:38:41 emergency. It just refuses to do that here. Instead,
08:38:45 TDCJ has focused on one phased plan after another that
08:38:49 contains no construction deadlines and that the agency has
08:38:52 never followed through with.
08:38:54 In the preliminary injunction hearing, your
08:38:56 Honor, the TDCJ focused heavily on what it called the
08:38:59 four-phase plan. They introduced that as Defendant's
08:39:02 Exhibit 21. That plan would have required TDCJ to request
08:39:07 319 million in funding for fiscal years 2026 and 2027

alone. What did the agency do? It went to the legislature and asked for just a fraction of that, 118 million, and they haven't explained why.

TDCJ is now in court touting a three-phase plan and then, a two-phase plan. Under the two-phase plan, they'd have to request more than $774 million in the next legislative session to accomplish the same goal of the four-phase plan. But just like the four-phase plan, your Honor, nobody at the agency has committed to actually requesting these amounts from the legislature.

And TDCJ's most recent capital expenditure plan, the real plan, the document that tells the legislature what the agency knows it will need for the next six years, doesn't include the two-phase plan or, for that matter, any of the plans the agency has submitted to the Court thus far.

Your Honor, these aren't plans as TDCJ has shown, no intention of following through with them. They are and always have been wholly hypothetical. We also know that TDCJ is using the least official procurement process to get this done, which means it takes far longer than necessary for the agency to deploy the limited funds it does get. We know every contract requires a procurement process, your Honor, and every procurement process takes several months.

08:40:35 The fastest way for TDCJ to do this would be to
08:40:37 have one procurement process with one contract to design
08:40:41 and install air conditioning in all the remaining
08:40:44 unair-conditioned units. They haven't even done that and
08:40:48 we don't know if it's possible because the agency refuses
08:40:51 to solicit systemwide bids.
08:40:53 So the next best option, the option in blue, your
08:40:57 Honor, would be to bundle several units, let's say, 10 or
08:41:00 20 into one contract with one procurement process. Those
08:41:05 could be divided up by unit type or by region. But they
08:41:08 haven't done that either and they haven't even solicited
08:41:11 bundled bids. So the next best option, No. 3 in yellow,
08:41:16 would be for them to do one contract per unit for both
08:41:19 design and installation. They haven't done that either.
08:41:23 So what are they doing? The red box. They're
08:41:28 insisting on negotiating two separate contracts for every
08:41:32 unit with two separate procurement processes. One for
08:41:35 design and one for construction and, your Honor, those
08:41:38 processes don't even happen simultaneously. They happen
08:41:42 sequentially. Procurement for design, design, procurement
08:41:45 for construction, construction. It has to happen in that
08:41:49 way under the process that they're using.
08:41:50 So rather than bundling, say, 10 units into one
08:41:54 contract with one procurement process, they're doing 10
08:41:59 units with 20 contracts and 20 procurement processes. So

08:42:02 you can see how this multiplies and unnecessarily delays
08:42:05 how long it takes to get this done. Your Honor, TDCJ's
08:42:08 procurement process doesn't need to be perfect or the
08:42:11 exact way the plaintiffs think is best. It just needs to
08:42:14 adequately respond to this emergency. It doesn't.
08:42:18 Their piecemeal approach guarantees that the
08:42:21 agency spends an inordinate amount of time on procurement,
08:42:25 bidding, selecting and negotiating contracts rather than
08:42:28 installing and designing air conditioning. And just as
08:42:32 important, it prevents the contracts themselves from being
08:42:36 sufficiently large to attract any of the large vendors in
08:42:39 Texas or nationwide who could install air conditioning
08:42:42 more efficiently. We're talking about 10, 15, $20 million
08:42:46 contracts apiece and some even smaller, not the hundred
08:42:49 million, 200 or $300 million contracts that it takes to
08:42:53 get these vendors' attention.
08:42:54 Why are they doing this? Why are they using
08:42:58 option four, the slowest option? No reason other than
08:43:02 that's how they've always done it. They don't want to
08:43:06 change and they don't want to be told what to do, how to
08:43:09 do it, or how fast to do it. But the Constitution
08:43:12 requires the Court to do just that.
08:43:15 Perhaps most telling, your Honor, the agency
08:43:18 hasn't exercised its emergency purchase power. Under
08:43:21 Texas law, the director is authorized to declare a health

08:43:24 and safety emergency. An authority that would allow him
08:43:27 by just writing a memo to dramatically streamline the
08:43:30 procurement process without any signoff from the governor
08:43:33 or the legislature. Director Collier didn't do it,
08:43:36 Director Lumpkin hasn't done it, and they've never
08:43:39 explained why.

08:43:39 In the meantime, your Honor, TDCJ inmates have
08:43:42 continued to die from extreme heat. Ryan Fairchild was 42
08:43:47 years old and he died in 2024. He was found with the core
08:43:51 body temperature of 108 degrees. Outside temperature logs
08:43:55 showed triple-digit heat indexes in the days leading up to
08:43:58 his death and a heat index as high as 122. Ryan Fairchild
08:44:04 was literally cooked to death.

08:44:08 Jason Wilson and Wayne Straway also died of
08:44:12 heat-related deaths: Wilson in 2024 and Straway in 2025.
08:44:16 Not one of these deaths, these three deaths were reported
08:44:18 to the legislature as heat-related. We also suspect that
08:44:22 Keith Pursifull on the right-hand side, that his death was
08:44:26 heat-related was his core body temperature was 105.4. The
08:44:30 heat index on TDCJ's automated logs the morning of his
08:44:32 death was between 87 and 89 and it got all the way up to
08:44:36 105 the day before.

08:44:38 But despite him dying nearly eight months ago,
08:44:40 his autopsy report still, inexplicably, has not been
08:44:44 completed. Well beyond what would ever be considered

normal in these circumstances, and again, the agency has not explained why. Dozens of inmates and staff have been diagnosed with heat-related illnesses in 2024 and nearly 10,000 heat-related grievances have been filed in the last two years.

TDCJ will likely tell you there haven't been any heat-related deaths since the preliminary injunction hearing, and they'll point to a decrease in heat-related illnesses among staff and inmates as evidence that extreme heat is no longer a risk, no longer something that we need to worry about. But this court has already found that it has no confidence in the data TDCJ generates or in the documents that it submits to this court. That TDCJ is undercounting heat-related injuries and deaths and keeping unreliable temperature logs. So the Court shout not take any of these new numbers, these new figures at face value.

The agency's pattern of underreporting deaths to the legislature, the delayed autopsies and death investigations and the falsified temperature logs are not isolated failures, your Honor. They are a consistent institutional approach: Minimize, delay and conceal.

Your Honor, at the conclusion of this trial, we'll ask the Court to order TDCJ to air condition the entire system by the end of 2029 on a court-enforced timeline with specific measurable milestones. We'll ask

for that because that is within the 36 to 51 months that Dale Cox says can be done under the best of circumstances with full funding. We'll ask for that because our experts say it could be done in 24 to 36 months. And we'll ask for that because after 25 years of litigation, nearly 90,000 inmates remain without a cool bed and subject to an unconscionable risk of harm.

The agency has had ample time and opportunity to address this constitutional violation themselves on their own terms and on their own timeline. They've lacked, and still lack, the will to treat this as the emergency that it is. Your Honor, this court found a year ago that inmates are getting sick and dying from extreme heat. That the risk of harm is obvious and that the only solution is air conditioning. Those findings were correct then and they remain correct today.

What's left to determine is how long we'll allow these deaths, the suffering, and the constitutional violation to continue. Thank you.

THE COURT: Thank you, Mr. Homiak.

DEFENDANT'S OPENING STATEMENTS

MR. JOHNSON: Thank you, your Honor. May it please the Court.

This case is extremely important to TDCJ and we're eager for the opportunity to present our full side

of the case and set forth a complete picture of TDCJ's policies and practices to protect its staff and inmate population from the dangers of extreme heat. Unlike the plaintiffs, from our side, you're going to hear from witnesses that have direct, firsthand knowledge of the experience and effectiveness of TDCJ's heat mitigation practices and progress as well as the progress they've made on the air-conditioning installation effort.

As the Court is fully aware, plaintiffs' case hinges on whether TDCJ is deliberately indifferent to the risk posed by heat in the Texas prison system. Deliberate indifference is an extremely high standard to meet and the testimony you will hear in this case will show how plaintiffs' claim that TDCJ is disregarding the risk of extreme heat is demonstrably false. TDCJ has a comprehensive and effective heat mitigation plan in place. You will hear from Mr. Ishee, who has 35-plus years of correctional experience, including most recently, prior to his requirement, as the head of the North Carolina prison system. He has firsthand knowledge of how TDCJ's heat mitigation practices serve as a model for other U.S. correctional systems, including those implemented by North Carolina.

When he became head of North Carolina's prison system, he set out to update its heat mitigation plan. In

reviewing other states' heat mitigation practices, including those of Texas, Florida, Georgia and California. TDCJ's plan distinguished itself as a leading framework among other plans that he reviewed as a pivotal resource and standard for the update to North Carolina's plan.

You will also hear from Dr. DeGroot, the Director of the Army Heat Center. He oversees a program that develops and assesses policies and procedures to mitigate heat stress of Army personnel. Dr. DeGroot independently reviewed TDCJ's heat mitigation policies and practices and concluded that TDCJ has comprehensive and operational reasonable practices in place to mitigate heat stress and to prevent heat-related illnesses in the Texas prison system.

TDCJ's policies and procedures are consistent with and generally like those used by the U.S. Army, and represent a practical multilayer approach to mitigating the effects of extreme heat. Dr. DeGroot found no evidence that TDCJ is ignoring or disregarding health risks associated with extreme heat.

Now, not only has TDCJ implemented a practical approach to mitigate heat, it has also created policies and procedures to make sure these practices are consistently administered. To do so, Mr. Collier, the former Executive Director of TDCJ, instructed that a

08:50:13 robust heat strike audit team be created to ensure that
08:50:17 its heat mitigation practices are consistently
08:50:19 implemented.
08:50:19 These heat strike teams show up to units
08:50:22 unannounced, touring the unit while going through an
08:50:25 extensive checklist to grade all heat mitigation
08:50:28 practices. The unit does not pass an audit is taken
08:50:32 seriously and that unit is properly brought into
08:50:36 compliance and is subsequently audited to ensure it
08:50:38 continues to meet policy.
08:50:40 During the summer of 2025, the heat strike team
08:50:44 audited every unit, more than double the total amount of
08:50:47 audits that it conducted the year before in 2024. These
08:50:51 increased heat strike team audits have proven instrumental
08:50:54 to ensure that TDCJ's heat mitigation policies are being
08:50:57 fully and appropriately utilized.
08:51:01 Mr. Echessa, Director of the ARRM division of the
08:51:04 TDCJ who oversees the heat strike team, will tell you that
08:51:06 the ongoing increased attention has resulted in heat
08:51:10 mitigation practices becoming automatic and part of the
08:51:13 culture both with the staff and the population. This
08:51:16 focus has resulted not only in reducing the amount of
08:51:20 heat-related illnesses but has also reduced the amount of
08:51:25 heat-related grievances that have been filed.
08:51:27 Indeed, due to TDCJ's continued focus and

08:51:29 improvement to heat mitigation practices last year in
08:51:31 2025, a time when TDCJ was employing more heat mitigation
08:51:35 efforts than ever before, there were zero heat-related
08:51:38 deaths reported to the legislature. These results cannot
08:51:41 be denied, TDCJ's actions to mitigate heat are effective,
08:51:45 evidence-driven efforts that make a real difference in the
08:51:48 safety of its prison population.
08:51:50 And we deny any claim that TDCJ is underreporting
08:51:54 heat-related deaths. TDCJ relies on the autopsies
08:51:58 prepared by medical professionals and reports those
08:52:00 results. And you will hear from Dr. Felicella of UTMB,
08:52:06 who performs many autopsies of individuals that have
08:52:08 passed away in a Texas prison, and she will determine how
08:52:11 these death determinations are made.
08:52:14 Now, in addition to the heat mitigation policy
08:52:15 and efforts and practices as well as the heat strike team
08:52:18 audits, TDCJ has also implemented a heat score system to
08:52:22 identify those individuals most vulnerable to heat so they
08:52:25 can be placed in air-conditioned housing. You will hear
08:52:28 testimony from Dr. Leonardson of UTMB who will discuss the
08:52:32 important changes to the heat score system since the
08:52:35 preliminary injunction hearing in this case.
08:52:37 For example, now anyone over the age of 65 is
08:52:40 assigned a heat score. Also, any individual that is
08:52:43 prescribed highly active anticholinergics, such as

Benadryl, for four days or longer is assigned a heat score. Now, this is an important fact that when a person is assigned a heat score, they are given the option to opt out of a cool bed assignment. Signing an official opt-out form and turning that in to TDCJ.

And importantly, since 2024, over 4,000 opt-out forms have been turned in from inmates who thereby opted out of moving to a cool bed and instead, chose to remain in non-air-conditioned housing at that time. And this begs the question if the conditions are as deplorable that plaintiffs claim, why would anyone opt out of receiving air-conditioned housing? Truth be told, TDCJ's heat mitigation practices, the heat strike team audits, and the heat score system, all of which TDCJ continues to improve upon, show that TDCJ is not ignoring the issue of heat.

Now, setting all the foregoing aside, Mr. Lumpkin will testify that TDCJ's goal remains to retrofit all of its prisons with air-conditioned housing and he has instructed TDCJ to move towards this goal on an expedited basis with the funding received. TDCJ does not deny that air conditioning is the most effective means, though not the only means, of cooling a person's body temperature during the warm months. This is precisely why TDCJ is expediting its goal to air conditioning housing. This is good for recruiting and retaining the staff, but it will

also allow TDCJ to do what it does better by reducing the necessity to commit the significant resources and time spent executing this heat mitigation practices.

And over the last two sessions, TDCJ has received unprecedented funding appropriations that were specifically earmarked for new air conditioning. Mr. Hudson, TDCJ's Chief Operating Officer, will testify about how TDCJ has made great progress installing air conditioning using these funds. And based on the experience they have gained, TDCJ is moving faster and becoming more efficient in executing its well-thought-out plan to install air conditioning throughout.

TDCJ has added 6,796 cool beds since the preliminary injunction hearing, bringing the total to 52,438 cool beds for a population of approximately 141,000. TDCJ currently has another 12,584 in construction, 18,922 in procurement, and 9,206 in design. Mr. Hudson will testify that he forecasts that TDCJ will add 61,000 beds by the end of 2026 and 70,000 by the end of the following summer.

TDCJ is building on its experience and its facilities department has set forth a revised projection of how TDCJ could accomplish AC installation over the next two biennium. Of course, this is subject to TDCJ receiving funding and they are still in the early stage

preparing the legislative appropriations request process and, of course, do not know what realistically may be appropriated at these early stages.

But the key fact is TDCJ's planning ahead. In sum, TDCJ will show through the testimony in this case that every realistic option is being pursued to ensure the safety of its population. And there can be no denial at the results TDCJ is achieving with its heat mitigation practices and air-conditioning installation. Thank you.

THE COURT: Thank you, Mr. Johnson.

Your first witness.

MS. GROSSMAN: Plaintiff's call Dean Williams.

THE COURT: Good morning. Before you take a seat, could you raise your right hand to be sworn?

THE CLERK: You do solemnly swear or affirm that the testimony which you may give in the case now before the Court shall be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: Please be seated.

DEAN WILLIAMS, called by the Plaintiff, duly sworn.

DIRECT EXAMINATION

BY MS. GROSSMAN:

Q. Good morning.

A. Good morning, Ms. Grossman.

08:56:54 Q. Could you please state your name for the record?
08:56:56 A. My name is Dean Williams.
08:56:57 Q. When you testified at the preliminary injunction
08:57:01 hearing in 2024, the Court qualified you an as expert in
08:57:05 corrections, right?
08:57:06 A. That's correct.
08:57:07 Q. Now, I'm showing you -- Paul, if you could pull up
08:57:11 Exhibit 426 -- what is marked as your current CV. Is this
08:57:17 a current version of your CV?
08:57:18 A. I believe it is, yes.
08:57:19 Q. Move to admit that, your Honor.
08:57:21 THE COURT: Any objection?
08:57:24 MR. MICKLE: Your Honor, just to be clear, Mr.
08:57:27 Williams is offered as an expert in corrections, no
08:57:27 objection.
08:57:30 THE COURT: Without objection, so admitted.
08:57:32 Q. (BY MS. GROSSMAN) Mr. Williams, I'm not going to
08:57:35 revisit all of your work history but just to orient, so
08:57:37 you have run the entire prison systems from Colorado and
08:57:41 Alaska; is that correct?
08:57:41 A. That's correct. I ran California as the Executive
08:57:45 Director for four years, the Department of Corrections
08:57:47 there. Before that, I was the Commissioner -- it's the
08:57:50 same job, different title -- for three years. I led the
08:57:54 Alaska Department of Corrections.

08:57:56 Q. And now what do you do?
08:57:57 A. Well, I do consulting work with folks like you. I
08:58:02 also work with nonprofits. I did some consulting work
08:58:07 with the state correctional system as well and I do a fair
08:58:11 amount of volunteering my time. I'm on the board of the
08:58:18 National Reentry Workforce Collaborative, which is a
08:58:22 national association that helps people getting out of
08:58:25 prison find gainful employment. I'm on a board of a local
08:58:31 homeless kitchen, shelter, transitioning people from the
08:58:36 streets and out of prison back to my home town in
08:58:40 Anchorage. So I do various volunteer time of things that
08:58:44 are passion projects of mine as well to the -- in addition
08:58:48 to the paid consulting work.
08:58:50 Q. Now, we didn't meet when you were doing consulting
08:58:55 work; is that right?
08:58:55 A. No, we did not meet then.
08:58:58 Q. When did you and I meet?
08:58:59 A. Well, I met you in the official capacity when you
08:59:02 were on the plaintiffs' side suing me when I was Executive
08:59:08 Director of the Colorado Department of Corrections. So
08:59:10 that's the first time I had heard of your name and it was
08:59:15 during the COVID pandemic and so, you had a lawsuit
08:59:21 against me and during that timeframe.
08:59:24 Q. At the preliminary injunction hearing, you testified
08:59:29 that the core primary function of the Executive Director

08:59:32 is safety and security and to ensure that inmates are
08:59:36 being housed in livable conditions, livable terms. Do you
08:59:39 recall that?
08:59:39 A. I do.
08:59:40 Q. And that defendant had failed in its duty. Do you
08:59:42 recall that?
08:59:42 A. I do.
08:59:43 Q. Is that still your opinion?
08:59:44 A. It still is.
08:59:45 Q. Why is that?
08:59:46 A. Well, I think I had mentioned this at the last
08:59:53 preliminary injunction as well, but living conditions that
08:59:59 I was responsible for in both the systems and I believe
09:00:03 still applies here to Texas, it's not optional to, for
09:00:09 example, provide adequate water, adequate food, adequate
09:00:12 shelter, adequate heat under cold conditions and adequate
09:00:16 cooling under hot conditions, right? These are primary
09:00:20 functions, primary responsibility a director is tasked
09:00:24 with. And my view of what's happened here, unfortunately,
09:00:30 is consistent and remains the same. That's not happening.
09:00:35 There's a -- we are making calculus based on percentages
09:00:39 of beds -- there's still over half the population here
09:00:42 that still lives in extreme heat conditions and unsafe
09:00:45 conditions. And so, my opinion hasn't changed on that in
09:00:49 the last almost two years.

09:00:57 Q. Did you review any death investigations since the
09:01:00 preliminary injunction hearing that cause you concern
09:01:05 about TDCJ's -- about people dying still in the prison
09:01:10 system?
09:01:10 A. I have.
09:01:12 Q. And as Director, was it your job to review death
09:01:15 investigations and the surrounding records and autopsy in
09:01:19 determining why someone died and looking at the
09:01:20 circumstances surrounding that death?
09:01:22 A. I mean, yes, of course. I mean, dependent upon what
09:01:26 system I was leading, the interesting or maybe not
09:01:29 interesting to some here is the system I led in Alaska had
09:01:34 horrible investigations, faulty investigations,
09:01:39 concealment of evidence, concealment of most important
09:01:41 aspects of deaths that were occurring in the Alaska
09:01:43 system. So when I took over that system, I was deeply
09:01:47 concerned about what I was inheriting because we were just
09:01:53 killing people, quite frankly, and not being forthright
09:01:57 about the circumstances of those deaths.
09:02:00 So I was very involved in that system and when I
09:02:03 took over because I knew what I'd inherited. I'd
09:02:06 inherited a system that left out critical information
09:02:10 around deaths, or critical information around restraints,
09:02:14 or other efforts that were happening so I became very
09:02:17 directly involved. We had a horrible internal interview

09:02:21 system. We basically had no internal affairs unit, no
09:02:24 inspector general's office, and I created that because as
09:02:27 Director, I felt directly responsible for what was
09:02:30 happening in the facilities and getting accurate reporting
09:02:33 of the deaths or the bad incidents, critical incidents
09:02:36 that were occurring in my system because we weren't doing
09:02:38 it.
09:02:39 And so, in that case, in that leadership, I
09:02:43 imposed myself directly in every death, every suicide,
09:02:49 everything, because I wanted to be assured, I want to
09:02:52 change course on the reporting of deaths and making sure
09:02:56 that what was coming out of our system was adequate, good,
09:03:00 bad or indifferent. So I was directly involved with that.
09:03:03 In Colorado, it was a different system. I could
09:03:07 overlook the processes more versus being directly involved
09:03:09 because they had a long history of accurate reporting. My
09:03:13 predecessor and predecessor before that had built a very
09:03:17 solid and robust inspector general's office so when I got
09:03:20 reports about deaths, I was assured of the accuracy and
09:03:25 that all the relevant information were in that
09:03:28 investigation so I didn't have to be as directly involved.
09:03:31 I oversaw the process. I had an inspector general who I
09:03:35 hired after I got there. The other one was good, too, but
09:03:37 they had a long history and tradition of accurate
09:03:42 reporting, which is critical when you're Director because

09:03:45 you can't fix what you don't know is broken, right?
09:03:49 And so, I demanded that in both systems at
09:03:52 different levels and different levels of involvement based
09:03:54 upon what I was facing.
09:03:57 Q. Did you review the annual reports that TDCJ submitted
09:04:01 to the Texas legislature regarding temperatures and
09:04:04 illnesses and deaths in 2024 and 2025?
09:04:06 A. I did.
09:04:07 Q. And from your review of those reports, how many
09:04:10 deaths did TDCJ report were heat-related from inside the
09:04:15 prisons?
09:04:16 A. I don't think they reported any.
09:04:17 Q. Do you have any reason to believe that TDCJ is
09:04:20 underreporting heat-related deaths?
09:04:24 A. Well, I do and I testified of some of this at the
09:04:29 preliminary injunction. But the subsequent cases that
09:04:31 you've asked me to review are, unfortunately, in similar
09:04:38 fashion or have a through line of similar circumstances.
09:04:44 So I believe there's a serious problem with accuracy and
09:04:51 obtaining relevant, important factual information around
09:04:55 deaths. Again, I'm familiar with this as I have led a
09:04:59 system like this and I know what builds up in these
09:05:03 systems.
09:05:04 So yes, I have serious doubts and concerns I've
09:05:08 expressed now and I'm expressing again today.

09:05:10 Q. Well, let's look at the death of Ryan Fairchild on
09:05:13 August 21st, 2024. What materials did you review in
09:05:18 connection with Mr. Fairchild's death?
09:05:20 A. I reviewed the investigation done by their OIG
09:05:28 office. I reviewed the medical records. I reviewed some
09:05:30 of the heat logs, hospital. I think there were hospital
09:05:35 records there, too. I guess that's medical records,
09:05:41 e-mails. There's a couple of e-mails, I think. Anything
09:05:43 you had sent me in that file that I may be forgetting
09:05:46 something but the general gist of it.
09:05:48 Q. At this point, I'd like to move to admit Exhibit 358,
09:05:53 parts A through D, which is Mr. Fairchild's death
09:05:56 investigation materials, including the temperature logs
09:05:57 and the autopsy and the OIG investigation.
09:05:59 THE COURT: Any objection?
09:06:12 MR. MICKLE: Apologies, your Honor. I'm trying
09:06:14 to come up with a response for you. We had discussion
09:06:16 before trial start today. I just wanted to make sure this
09:06:19 was included in that. Your Honor, at this time, only
09:07:03 objection we have is foundation. Mr. Williams is
09:07:05 submitted as a corrections expert, not one in the medical
09:07:08 field. And I'm happy to make an offer of proof under Rule
09:07:11 103 as to prior testimony on the scope of his expertise if
09:07:14 the Court wants.
09:07:15 THE COURT: No. I think I'm sufficiently aware.

09:07:18 What's your response to that?

09:07:20 MS. GROSSMAN: Mr. Williams just testified, and he has testified repeatedly, that he as the Director of two different systems, it was his job to routinely review investigations to understand the circumstances of someone -- when someone's dead and that includes both medical records; but then, also to determine whether it was a thorough investigation, whether the facts were collected, whether the staff reported and...

09:07:41 THE COURT: What is 358?

09:07:46 MS. GROSSMAN: 358 is what the Office of Inspector General had, what the death investigation included, which is the OIG investigation, the autopsy, the medical records. And we have TDCJ's temperature logs from the surrounding unit that on the days of Mr. Fairchild's death and the days leading up to his death.

09:08:07 THE COURT: Okay. Overruled and admitted.

09:08:14 Q. (BY MS. GROSSMAN) Mr. Williams, in reviewing Mr. Fairchild's records and death investigation, was there anything that stood out to you that would cause you to be concerned as the Director of a prison as to whether this death may have been heat-related?

09:08:26 A. There are several concerns. I guess I'll try to take them in somewhat chronological order.

09:08:35 First of all, Mr. Fairchild was found on the

09:08:41 floor in a day room area towards the evening hours.
09:08:47 Jumping ahead, the video, according to the investigator
09:08:51 who reviewed the video -- I haven't seen the video but
09:08:53 according to the investigator that reviewed the video, he
09:08:55 was found laying on the floor after convulsing and laying
09:08:58 on the floor for approximately two hours. Not quite two
09:09:01 hours but almost two hours before staff responded to him.
09:09:06 The investigator notes that no safety or welfare check, no
09:09:12 one noticed that he was laying on the floor by a fan on
09:09:15 the ground and they were there for approximately two
09:09:19 hours. That's striking. So that's the first thing.
09:09:24 When staff did notice him and staff responded to
09:09:27 him, somewhere along the line, someone called an
09:09:33 ambulance. Good for TDCJ there. They immediately called
09:09:36 for help. That was good. He was loaded onto an ambulance
09:09:41 and in the helicopter, the -- according to what I am
09:09:46 assuming are EMT or paramedics who were in the helicopter,
09:09:51 they noticed a body temperature of 108 degrees in the air
09:09:54 ambulance.
09:09:55 By the time Mr. Fairchild reached the hospital,
09:09:59 assuming that medical attention had been given to him, his
09:10:03 temperature taken at the hospital was 105.6 degrees. This
09:10:07 is approximately an hour, an hour and a half later when
09:10:10 his time and temperature was taken there.
09:10:12 On nurse's comments, I note in the record, as

09:10:16 well, notes that Mr. Fairchild was suffering from
09:10:19 hyperthermia, right? So here's -- to back up a minute in
09:10:23 regards to the investigation report. So here's the
09:10:25 second, perhaps the most troubling aspect of that case.
09:10:30 Nowhere in the inspector general's report, the
09:10:34 investigator's report is there any mention in their report
09:10:39 of the body temperature of Mr. Fairchild at the time he
09:10:43 was found or subsequent thereafter, or any ambient
09:10:47 temperature. Whether or not skin temperature or core body
09:10:50 temperatures, none of those were recorded.
09:10:53 And that has been a concerning note of mine at
09:10:58 the preliminary injunction and remains one here that
09:11:01 there's no process in place or requirement to take body
09:11:04 temperatures which are an important piece of treating
09:11:07 someone. I find it hard to believe that a nurse didn't
09:11:10 show up and say, gee, I wonder what happened to Mr.
09:11:14 Fairchild. Somebody didn't take the temperature there
09:11:15 just to provide first aid alone to determine what's wrong
09:11:18 with him. Somebody made a decision, a wise one to call
09:11:22 for paramedics and provide an air ambulance. That's all
09:11:26 good.
09:11:26 But somewhere along the line, it's inconceivable
09:11:31 to me that somebody wouldn't say, wow, that guy's
09:11:35 temperature is very high. He's suffering a heat stroke,
09:11:39 right? But none of that is reported in the investigation

09:11:42 file and that concerns me.

09:11:45 The second thing that is a bit surprising is what
09:11:54 happened to -- not to get ahead of you but Mr. Fairchild's
09:11:58 body after he died. So I noted that in the investigation
09:12:08 file that as part of the notification, the mortician was
09:12:14 called somewhere along the line and his body was taken to
09:12:22 the mortician post his death versus being taken to the
09:12:29 medical examiner. I found that strikingly unusual.
09:12:36 Q. As Director, should you send bodies that are embalmed
09:12:40 to autopsies?
09:12:41 A. I've never seen a circumstances that any of the
09:12:45 systems I led, I would have sort of lost my mind to think
09:12:49 that we had a critical incident, a death that had occurred
09:12:54 that we're trying to figure out what happened to the
09:12:56 person and we sent the body to the mortician versus the
09:13:01 medical examiner. So the medical -- the medical
09:13:05 examiner's basically doing an autopsy on a body that had
09:13:08 already been embalmed. That's just way outside of the
09:13:13 scope of what I would take -- just on that incident alone,
09:13:21 just on that aspect alone, I would have had a reckoning
09:13:29 with my inspector general's office around what the
09:13:32 protocol was, what the process was. So yeah.

09:13:37 The one other thing, not to get ahead of you, Ms.
09:13:41 Grossman, but the one other thing I'll note which is not a
09:13:45 -- well, you can decide how important you think it is.

09:13:48 But an officer who I don't know why failed to do the
09:13:53 rounds or checks, an individual is left on the floor for
09:13:55 two hours, right, that individual -- even an investigator
09:13:59 knows that well, that lapse of checking on that individual
09:14:03 that's --
09:14:04 MR. MICKLE: Objection, your Honor. At this
09:14:06 point, we're into narrative. Could we have a question?
09:14:08 THE COURT: You want to break it up into a
09:14:10 question? Sorry.
09:14:12 Q. (BY MS. GROSSMAN) I think you're noting about an
09:14:16 officer and the response of TDCJ to the officer that found
09:14:19 Mr. Fairchild or didn't check on him for almost two hours
09:14:23 and you're talking about TDCJ's response.
09:14:25 A. Correct.
09:14:25 Q. What was that?
09:14:26 A. No. He wasn't disciplined. He was given a
09:14:30 non-disciplinary letter of instruction. I find that
09:14:36 troubling. It sends the wrong message of somebody dying
09:14:44 on your watch as an officer, granted bad things happen in
09:14:50 these institutions. I know better than anybody. I know
09:14:52 better than anybody. I know just as well as Mr. Lumpkin,
09:14:54 I know bad things could happen at these institutions but
09:14:59 somebody died on that officer's watch. I'm not saying
09:15:02 they should have lost their job, or anything else, but
09:15:04 there should be disciplinary action for that kind of lapse

of supervision of someone who's laying on the floor for two hours and no one has noticed. It's a problem and that disturbed me.

Q. Just to go back briefly on the issue of the body being embalmed before autopsy, is the problem there that you need to preserve all the evidence that's their job and sending it embalmed doesn't do that?

MR. MICKLE: Objection, your Honor. Leading and, also, this is also a question regarding medical expertise.

THE COURT: You want to rephrase the question?

Q. (BY MS. GROSSMAN) As a Director, why is it important that your staff don't embalm bodies before sending them to autopsy?

A. Because there's a duty and responsibility in leadership of these systems to make sure you understand what has happened, what went wrong, how someone died. Sending a body off to the mortician so soon is a breakdown in the investigation process inside a correction system. It just is. You don't send a body to a mortician to get embalmed before the autopsy. Your job is to protect evidence and to protect anything that might be relevant. You don't know what's relevant when someone dies. So it takes some study, some thoroughness in protecting evidence as much as possible. That's not protecting evidence.

Q. As Director, are you aware that 108 degrees is a very

high temperature?

MR. MICKLE: Objection, your Honor. This is again medical information.

THE COURT: I'll allow the question. Go ahead.

A. Look, I don't think you have to be a doctor in a medical field to know that a temperature of 108 degrees is beyond life sustaining. It just is. There should be no debate about that. 108 degrees is bad under any circumstance, right? So it's a shocking acknowledgment Mr. Fairchild suffered 108-degree temperature. It's not life supporting.

Q. (BY MS. GROSSMAN) If you were the Executive Director, would you report this death to the Texas legislature as heat-related?

A. Of course.

Q. And did you read Mr. Collier's deposition as part of your review in forming your opinions here today?

A. I did.

Q. Did you see where he said and counsel for TDCJ just said that in opening that they relied exclusively on the autopsy on whether heat played a role in someone's death and their obligation to report these deaths to the legislature? Did you read that in the deposition?

A. I did.

Q. What is your opinion on only relying on autopsies in

looking at potential heat-related deaths as a director of prison?

A. I'll respectfully disagree with Mr. Collier and here's why. As a director, an autopsy's an important piece of information to tell you about how someone died. The problem is it's only a piece. The context -- if the context is ignored, the medical examiner could be missing very valuable information. I've seen this happen before. So I absolutely would value the information in autopsy, but it is only a slice of the pie and you have to see the entire pie to know how that autopsy report either fits in or doesn't fit in with the other circumstances and context of that person's demise. So that's why I disagree with that.

Q. When you were director of a prison, have you reviewed autopsies that they weren't wrong but they were only a piece of information and what you found later was the reason -- a clinical reason that person died?

A. Yeah, I have and it occurred -- I was special assistant. You can see in my CV, I was special assistant to the governor and, actually, the governor asked me to investigate deaths in Alaska before I took over that system. I never knew I was going to take over that system. I didn't want to take over that system, but I did after I saw what was happening with some of the deaths in

09:19:17 our system.

09:19:18 So one example was a gentleman by the name --
09:19:20 this is in the public record, by the way. I'm not saying
09:19:23 anything that's confidential here, but this name was Larry
09:19:27 Kobuk, he died at the Anchorage jail. The medical
09:19:32 examiner's report indicated that Mr. Kobuk had a cardiac
09:19:35 event, right? And that's all that was really relayed as
09:19:41 part of that medical examiner's analysis, right? That he
09:19:46 had a cardiac event. Mr. Kobuk had -- the word for it
09:19:51 myocardial -- he had a large heart, right? And the
09:19:55 medical examiner determined that he had a cardiac event
09:19:57 and that's what killed him. Well, that was wrong. The
09:20:01 context isn't the problem, though. The context was Mr.
09:20:03 Kobuk was restrained behind his back, arms restrained
09:20:08 behind his back on the ground in the Anchorage jail with
09:20:10 officers on his back. He was hollering "I can't breathe."
09:20:14 It was literally a George Floyd case before there was
09:20:17 George Floyd. It was a horrible death, right?

09:20:20 So the medical examiner wasn't wrong in saying
09:20:22 Mr. Kobuk had a cardiac event. He certainly had a cardiac
09:20:26 event, but officers were on his back, handcuffed behind
09:20:29 his back, and he was hollering "I can't breathe." He died
09:20:32 of positional asphyxiation, right? The medical examiner
09:20:36 wasn't wrong but he did not know nor were the context of
09:20:39 that information communicated to the medical examiner, and

that disconnect, by the way, is where the breakdown occurs in investigations. It's where it occurred in the system I led and it's where I would respectfully say it's occurring here. So yeah.

Q. Mr. Williams, did you also review the death of Jason Wilson who died on July 5th, 2024?

A. I did.

Q. What materials did you review?

A. Similar materials, the investigation report that was done by the inspector general's office, any of the associated documents that flowed from that, including, I think, the death certificate, medical examiner report.

Q. You reviewed temperature logs as well?

A. Temperature logs, yeah.

Q. At this point, I'd like to move to admit Exhibit 412A through F, which is the death investigation materials of Jason Wilson.

THE COURT: Same objection?

MR. MICKLE: Same objection, your Honor.

THE COURT: Overruled and admitted.

Q. (BY MS. GROSSMAN) Did you also review e-mails from Jason Wilson, which for defendant's ease of reference is Exhibit 137 that was previously admitted at the preliminary injunction hearing?

A. Right. I saw some of those as well.

09:22:01 Q. In reviewing Jason Wilson's records and death
09:22:04 investigation, was there anything that stood out to you
09:22:07 that would cause you to be concerned as the director of a
09:22:10 prison as to whether this death may have be heat-related?
09:22:14 A. I'm unaware. Well, first of all, just as a
09:22:22 precursor, pretext, Mr. Wilson was complaining of not
09:22:27 getting water and ice in part of his communications,
09:22:30 right? It's only a small piece but it's a piece of the
09:22:33 entire file. The other disturbing piece about Mr.
09:22:41 Wilson's case is that he was discovered the next morning
09:22:46 on the floor of his cell and in the course of that night,
09:22:53 there was no security or safety rounds for the entire
09:22:57 shift. This was admitted to by the officer who was
09:23:02 responsible for making those rounds.
09:23:05 So essentially, Mr. Wilson was in a pod with
09:23:08 other inmates that had not had any security rounds or
09:23:12 safety rounds for approximately 12 hours. According to
09:23:19 the actual officer who was asked in the investigation,
09:23:22 hey, why didn't you do rounds, he said, I was assigned
09:23:25 double duty and I was tired due to the heat. So that's a
09:23:32 clue.
09:23:34 The other inmates also report, by the way, they
09:23:39 confirm the officer's account that no one came that night.
09:23:41 The other inmates -- again, this is just a piece of it.
09:23:44 This isn't the linchpin of anything I'm suggesting, but

other inmates, in asking what happened that night, indicated to the investigator that Mr. Wilson was banging on his door that night and the previous night.

And so, he's found on the floor the next morning. This is a gentleman who's also, I think, 46 years old and he's picked up, taken. But here's the key part of what's missing out of that investigation. This is a theme. There's no accounting of ambient temperature taken at the cell at the time of his demise. There's no skin temperature or body temperature taken at the time or reported in the investigation. So those are very concerning aspects of that report.

Q. In your review of the temperature logs, was it pretty hot that day?

A. It had been very hot that sort of few days, I recall, in the mid-90s with heat indexes higher than that. So I think Mr. Wilson died on the Coffield what they call a unit but Coffield prison which all these cells are unair-conditioned and basically in segregation. So -- but the temperatures were very hot. Of course, it was the summer. Heat index is over a hundred, 110, 115, something like that as I recall.

Q. You said it was in segregation. Is that restrictive housing?

A. Correctly.

09:25:24 Q. Can you briefly explain what restrictive housing is?
09:25:27 A. Well, these are units where there's not a lot of
09:25:31 movement for the people who are inside restrictive
09:25:34 housing, segregation. It can vary. I don't know the
09:25:37 specifics of that unit, but it's designed for segregation.
09:25:40 They're spending 20 hours, 20-plus hours or so in their
09:25:44 cell. There's a lot less movement. They have less
09:25:48 opportunities. I don't know specifically about that pod,
09:25:50 I want to be very clear as a caveat. But restrictive
09:25:54 housing or segregation is meant to segregate people from
09:25:58 the rest of the population so they have less opportunities
09:26:01 than the general population.
09:26:06 Q. Paul, could you please put up Exhibit 412A, page 31?
09:26:27 Mr. Williams, see in the second paragraph, December 2nd,
09:26:37 2025, it says, at approximately 1600 hours, I spoke to
09:26:42 Anderson County Justice of the Peace Precinct No. 2, Tammy
09:26:46 Lightfoot. While on the phone with her, she generated the
09:26:49 amended death certificate request which will omit the
09:26:53 original immediate cause of death as acute ischemic change
09:26:57 in basal ganglia medullary neurons. The immediate cause
09:27:03 of death per Judge Lightfoot will be amended to synthetic
09:27:09 cannabinoid toxicity.
09:27:13 As the Director, do you find the change in the
09:27:16 death certificate over a year after someone has died to be
09:27:20 significant?

09:27:20 A. Well, this is something I've also never seen done.
09:27:30 Again, I'm not a medical expert, to be very clear, but
09:27:36 there were aspects of that diagnosis of that very long
09:27:40 description which you just gave that could be, could be
09:27:45 indicative of heat illness of a heat stroke, right? There
09:27:51 are other aspects I read in there that include cerebral
09:27:56 edema as well. Again, not as a medical expert but as a
09:27:58 director of a medical system, these are things that would
09:28:00 gather my attention, right?
09:28:02 So those elements of Mr. Wilson's death were
09:28:06 significant, would be significant. What was surprising is
09:28:11 that 14 months later, apparently -- the records's a little
09:28:17 unclear here, but apparently, at the request of TDCJ -- if
09:28:21 I'm going to be corrected on that -- maybe Ms. Lightfoot
09:28:23 called them. Doesn't seem likely. But at the request of
09:28:24 TDCJ, that diagnosis was removed from the death
09:28:28 certificate 14 months later. Why would you do that? Why
09:28:34 would you do that especially under the scrutiny under this
09:28:39 litigation alone. I would not want to have, quite
09:28:43 frankly, coming out what's coming out right now is the
09:28:45 fact that we asked that the death certificate was changed
09:28:49 some 14 months later.
09:28:51 This is hand-in-glove approach of amending death
09:28:56 certificates. It's highly unusual.
09:29:02 Q. Fair to say, have you ever had a death certificate

changed a year after someone died?
A. No and nor would I remotely allow our departments to request it.
Q. When you were Director, how long did death investigations typically take from start to report?
A. Well, I mean, it's very dependent upon the circumstances, of course, right? I mean, there may be some really technical or some complicated toxicology thing that may stretch it out, but I don't even know what that would be. I would expect death investigations to be wrapped up within a couple of months or something with maybe an outlier of some unusual circumstance. I can't even think of what that would be. But sometimes -- there can be complications so you want to get toxicology reports, you want to get the medical examiner report. It may be a few months in that timeframe. I'm generalizing here, of course.
Q. My understanding that TDCJ, it's a bigger system and taking that into account, is two years or a year, over a year, is that ever a reasonable amount of time for an investigation to take?
A. I know it's a much larger system, for heaven sakes, I get that, but these are deaths. These are deaths, right? Pretty important that you get them concluded and understand so a family can understand what the conclusion

was and for those people who agree or disagree with what the results were that you wrap up. So I would not find that timeframe anywhere acceptable.

Q. And as Director, based on your review of Jason Wilson's death, would you be concerned that this death was heat-related and should be reported to the legislature?

MR. MICKLE: Objection, your Honor. Again, this is asking for medical.

THE COURT: Overruled. You may answer.

A. Yes, I would be concerned if that one wasn't reported.

Q. (BY MS. GROSSMAN) Talking about we're mentioning not taking body temperatures, not taking ambient temperatures, whose responsibility is it to make sure staff are gathering and reporting facts necessary to conduct thorough investigations?

A. Ultimately, it's the Director.

Q. And should you be documenting ambient temperatures and body temperatures as a matter of course in any investigation in summer months?

A. Well, yes. Before this litigation, but especially post this litigation, I would be requiring body temperatures, skin or core temperatures to be taken as soon as possible, as soon as practical to document. And ambient temperature, as well, to get the full picture

09:31:53 right. I suggested in my declaration that documenting
09:31:57 that may, in fact, help TDCJ defend some of this case
09:32:02 because accurate reporting can go one way or another, but
09:32:04 at least you know what the context, all of the facts are.
09:32:07 So I think that's critically important understanding why
09:32:10 people are dying in not only this system in TDCJ but any
09:32:14 system. You want all relevant data, all relevant
09:32:20 evidence. So yes, that includes that, especially here in
09:32:25 the good state of Texas.
09:32:26 Q. And as Director, can you require all staff working in
09:32:31 the prisons to take these temperatures?
09:32:33 A. Yes.
09:32:34 Q. That includes all first responders, right? That
09:32:36 includes security staff and medical staff working in the
09:32:41 prison, you can require them to do it?
09:32:42 A. Well, yeah -- yes but there's different levels of it.
09:32:46 It doesn't have to be intrusive. We all either at our
09:32:48 houses have little old thing, you go to a doctor's office,
09:32:52 they take your skin temperature. It's not as accurate as
09:32:54 a body core temperature but we do this all the time with
09:33:00 each other. This is not a highly sophisticated medical
09:33:03 practice, so yes, it would be required. It wouldn't be
09:33:08 outside the scope of any of the staff that I oversee in
09:33:13 either system.
09:33:14 Q. And did you read Mr. Collier's deposition where he

said the decision to take a body temperature is a medical decision, not as to require --

A. I saw that.

Q. What is your view on that?

A. Again, I respectfully -- I know Mr. Collier, he's been a friend but I just respectfully, strongly disagree. This is not a medical decision. Not to take a skin temperature of somebody who's laying on the floor which has probably already been taken anyhow by a nurse or anybody who's responded who's trying to provide first aid to a person saying, Jesus, pardon my French, that he's in trouble. Wonder why he's in trouble. We should take some vitals.

So taking the temperature is a first aid -- would be a first aid response anyhow. Why not just record the temperature that's being taken. It's probably already been taken anyhow. But in this case, because there's all this questioning involved, right, just require it. Require it as soon as practical, as possible, right, and just work out the protocol of what that would look like. Love to help on it because it's not that complicated.

Q. We're talking about like the temperature guns that --

A. Correct. I don't know what they're called. Temperature device. I don't know what it's called, but no one's using that oral thermometer when I go into a

doctor's office anymore. It's skin temperatures.
Q. Have you reviewed TDCJ's 2025 A.D. 10.64 heat policy which outlines the mitigation measures as well as the procedures to be followed in inmate deaths?
A. I saw that.
Q. I'd like to move Exhibit 325.
MR. MICKLE: Same objection as the last.
THE COURT: Thank you. Overruled and admitted.
Q. (BY MS. GROSSMAN) Does this policy adequately require the collection of facts necessary to determine whether a death is heat-related?
A. No, I don't think it does.
Q. And why not?
A. Well, first of all, in the very last section of that report or that policy, it mentions that skin temperatures or body temperatures, it is recommended that medical partners take skin temperatures. That doesn't alleviate or ameliorate what I think the central problem with the investigations is, right? It's not adequate. Medical partners are -- by any definition does not include your own staff. It certainly wouldn't be interpreted by any of my staff in neither system. A medical partner is somebody outside us, not us, right? It's somebody over there, hospital, and we're just encouraging them to do it. They can do anything they want to. They don't work for us.

09:36:00 Certainly, I'm glad they encourage medical partners to
09:36:02 take it but it could be hours later.
09:36:06 So that policy, again, with all due respect to
09:36:08 the department should absolutely require that ambient
09:36:14 temperatures of where the body or where the person has
09:36:17 been found was taken and recorded. That skin temperatures
09:36:21 be taken and recorded. Core body temperatures which can
09:36:26 be an armpit or more invasively by a medical -- by your
09:36:30 own medical staff should be taken and recorded. This is
09:36:33 not -- should not be controversial. This would be
09:36:37 standard approach to show that we are collecting all the
09:36:42 relevant information so that's why I think that policy or
09:36:44 that directive just falls. Unfortunately, falls short.
09:36:49 Q. And if we could pull up, Paul, Exhibit 325, page 17?
09:36:53 I just want to show you something. This is the policy
09:37:26 you're talking about, right?
09:37:26 A. Correct.
09:37:27 Q. And this policy, it says encourages and not requires,
09:37:31 right?
09:37:32 A. That's correct.
09:37:33 Q. Is that significant to use "encourage" and not
09:37:37 "require" to you?
09:37:38 A. As I just previously said, it shouldn't just
09:37:42 encourage -- well, there's two aspects. One, I just
09:37:45 mentioned that all TDCJ staff should be required to take

09:37:50 ambient body temperatures, skin core temperatures as soon
09:37:54 as possible, as soon as practical. The same requirement
09:37:59 should, in fact, apply to medical partners which they are
09:38:02 probably doing anyhow, but it could be good to state it to
09:38:05 say yes, we expect you to do that. I mean, this is what
09:38:10 hospitals, the medical people do. But doesn't hurt to
09:38:14 require it as well, especially in the face of this
09:38:19 litigation.
09:38:20 Q. This policy doesn't require or encourage, for that
09:38:23 matter, TDCJ's security staff to do anything, right?
09:38:26 A. No, it doesn't.
09:38:27 Q. And it says nothing about ambient temperature, right?
09:38:29 A. Correct.
09:38:30 Q. I want to turn your attention to an investigation
09:38:35 done at the instruction of this court regarding TDCJ's
09:38:39 falsification of temperature logs. Did you review Mr.
09:38:43 Cerrito's investigation and report in the temperature log
09:38:47 submitted at the preliminary injunction hearing related to
09:38:49 the Stiles Unit?
09:38:50 A. I did.
09:38:51 Q. I'd like to move 448, which is the investigation of
09:38:55 Mr. Cirrito.
09:38:56 THE COURT: Objection?
09:38:57 MR. MICKLE: Your Honor, I think we objected at
09:38:59 the preliminary injunction hearing. I'll renew that

09:39:02 objection at this time.

09:39:03 THE COURT: What was the basis of the objection?

09:39:05 MR. MICKLE: I believe the Court admitted it,
09:39:07 anyway, so I'll just sit on the fact the Court admitted it
09:39:12 originally.

09:39:12 THE COURT: So without objection, I'll admit it.

09:39:18 Q. (BY MS. GROSSMAN) Did Mr. Cirrito conclude that the
09:39:21 temperature logs in the unit were, in fact, falsified?

09:39:23 A. He did.

09:39:24 Q. And did he also conclude that it was likely done with
09:39:26 the knowledge of high-up officials of the unit?

09:39:30 A. I read that.

09:39:31 Q. Given the fact the reports were falsified or
09:39:34 concluded they were, do you have an opinion about whether
09:39:35 Mr. Cirrito's investigation was insufficient?

09:39:38 A. There was several. There's several problems with the
09:39:42 investigation that the Court ordered with all due respect
09:39:44 to Mr. Cirrito.

09:39:46 First of all, Mr. Cirrito is, my understanding,
09:39:50 up the chain of command. Again, I would be happy to
09:39:53 corrected upon cross but I don't think I am. Mr. Cirrito
09:39:58 worked for the Texas board, the commission that oversees
09:40:00 the department, oversees the TDCJ. He was an auditor that
09:40:04 was essentially paid by the department, paid by TDCJ, so
09:40:09 he was closely affiliated just on the pretext. Again, I

09:40:14 don't know Mr. Cirrito. I'm sure he's a very honorable
09:40:16 person. I just found it a tiny bit unusual that under an
09:40:22 order from the Court that I would have somebody who was
09:40:25 getting paid by TDCJ to do the internal audit even though
09:40:28 he was a separate person and kind of a little ways away
09:40:31 from the Director's office, I acknowledge that. I get
09:40:33 that. That's just a small point but one that I would have
09:40:39 wanted to have full clarity on that I have no interest or
09:40:42 investment or anyone close to me since especially I got an
09:40:44 order from the Court about why there was falsified logs.
09:40:46 I'd want to make sure that there was a break of who was
09:40:49 investigating why that happened. But here's the more
09:40:53 salient points in terms of what was wrong with that
09:40:56 investigation.
09:40:57 First of all, from what I understand, the Court
09:41:02 wanted to know who did it and the investigation from what
09:41:06 I read is very conclusory and doesn't clearly answer that
09:41:12 question. Mr. Cirrito does say it's likely these two
09:41:16 people over here, these two staff, I don't remember who
09:41:19 they were but two female staff, they were the ones that do
09:41:23 it. But there's nothing in the investigation that
09:41:25 actually indicates that Mr. Cirrito actually interviewed
09:41:28 them. There's nothing in there that says yes, I
09:41:32 interviewed these two staff, here's what they said. So
09:41:34 that's the first question. So I think it fails on that

09:41:37 element first.

09:41:38 The second element is okay, you did recreate or
09:41:42 you entered these falsified logs, why did you do it? The
09:41:47 investigation doesn't really answer that either. And it
09:41:50 could be very innocent enough. The two staff who did it
09:41:53 said, I thought I was supposed to do it that way, or
09:41:57 somebody told me to do it that way. But Mr. Cirrito's
09:42:02 report doesn't indicate that he found out that question.
09:42:08 He didn't answer -- he didn't ask the question of those
09:42:11 two staff that were responsible for creating that false
09:42:15 record.

09:42:16 Q. Is this part of the same type of investigation
09:42:19 deficiencies that you have been testifying about?

09:42:22 A. Yeah. The other thing and I'll -- yes. I'll give
09:42:25 you one more additional point. Let me just go back one
09:42:30 quick second. The other part that was disturbing about
09:42:33 that Mr. Cirrito's investigation is that the
09:42:36 responsibility in conclusory terms is laid at the feet of
09:42:39 the warden who no longer works there. In the report --
09:42:41 I'm paraphrasing but Mr. Cirrito in the report says it is
09:42:45 possible that two staff did this on their own but it's
09:42:49 unlikely, right?

09:42:51 Well, we don't know why it's unlikely, right? It
09:42:56 is stated in the report that's probably done -- it was
09:43:00 probably done with the permission or the approval of the

09:43:03 warden who works there. But again, the warden was not
09:43:07 interviewed. Again, he doesn't work there, but his name
09:43:10 is kind of getting drug through the mud. If it was me,
09:43:12 I'd want to know. I'd want someone to call me to say,
09:43:17 hey, did you prove this? Yes or no. Did you approve them
09:43:19 recreating these records? Yes or no. He doesn't work at
09:43:23 the department anymore, it's kind of safe for him to tell
09:43:25 the truth but again -- and maybe if he refused to answer
09:43:28 it, I get that.
09:43:28 But that's not a thorough investigation on what
09:43:31 happened and the theme to go forward -- to answer your
09:43:33 question, the theme is -- I've thought long and hard about
09:43:39 how to say this because I know people in this department
09:43:42 and they're good people. But there is a consistency here
09:43:48 to not find the things that we don't want to know and
09:43:54 that's troubling. And unfortunately, Mr. Cirrito's report
09:43:59 is a little bit with all due respect to him, I just don't
09:44:04 think it's adequate and it doesn't explain what happened.
09:44:12 Q. I want to turn to TDCJ funding and the last Texas
09:44:19 legislative session. Did you review Mr. Collier's
09:44:22 testimony at the legislature last session?
09:44:24 A. I did.
09:44:25 Q. And how much money did he ask for?
09:44:27 A. I'm ballparking now but a little over a
09:44:34 hundred-million dollars, I think, somewhere in that

09:44:36 category. I think it came up in your slides, 112.
09:44:39 Q. 118 million, does that sound right?
09:44:41 A. Yes.
09:44:42 Q. And have you reviewed TDCJ's three-phase plan it
09:44:46 submitted to the legislature to fully air conditioning the
09:44:49 prison system?
09:44:50 A. I have.
09:44:51 Q. At this point, I'd like to move to admit Exhibit 322,
09:44:54 which is TDCJ's three-phase plan.
09:44:56 THE COURT: Objection?
09:44:58 MR. MICKLE: I'm sorry, I couldn't hear. She
09:45:00 said our three-point plan?
09:45:01 THE COURT: Yes.
09:45:01 MR. MICKLE: No objection, your Honor.
09:45:02 THE COURT: So admitted.
09:45:10 MS. GROSSMAN: I apologize. I'd also in the last
09:45:13 line of questioning, your Honor, I'd move to admit Exhibit
09:45:16 44 -- also move to admit Exhibit 447 because that's the
09:45:20 Cirrito report.
09:45:21 THE COURT: Any objection?
09:45:23 MR. MICKLE: No objection.
09:45:23 THE COURT: So admitted.
09:45:29 MS. GROSSMAN: If we could pull up Exhibit 322,
09:45:32 please.
09:45:40 Q. (BY MS. GROSSMAN) How much money did TDCJ say the

09:45:42 last session it would cost total to air condition the
09:45:48 system?
09:45:48 A. I thought Mr. Collier said -- it says 1.2, 1.3
09:45:54 billion according to this document.
09:45:56 Q. And if you were Director and these circumstances that
09:45:59 we've looked at, how much money would you have asked for
09:46:02 in the last legislative session?
09:46:05 A. Well, I would want and I would request 1.3 billion.
09:46:08 Q. And Mr. Collier says it's the legislature's
09:46:13 responsibility. He can't control the funding he gets.
09:46:15 What is your response to that?
09:46:16 A. First of all, I completely -- I get it. I've been in
09:46:20 the chair where sometimes I ask for things for the budget.
09:46:28 So we all play with the cards that were dealt. Here's the
09:46:30 caveat and important one, right? You don't get what you
09:46:34 don't ask for. That's the first thing, right? It's
09:46:37 important and if you think you have a crisis on your hands
09:46:42 to communicate at all levels that I have a crisis. People
09:46:46 are dying in our system, right? So that requires accurate
09:46:50 reporting, first of all, to show that there, in fact, is a
09:46:54 notable crisis occurring.
09:46:56 And again, you may get denied. You may get
09:47:01 restrained, I would say inappropriate restraint in this
09:47:07 case. I've been restrained, I get it, but where I got
09:47:10 restrained, it wasn't the case of life and death. So

09:47:14 there are certain things I would defer to other
09:47:17 departments, but my job was to ask for it or lobby for it
09:47:20 or to persuade. But when it comes to life-and-death
09:47:24 circumstances, it's even -- the issues are, of course,
09:47:27 more profound and so, you don't get what you don't ask
09:47:31 for.
09:47:31 Q. Is it clear to you that TDCJ's still not treating
09:47:35 this as, I think you said, the five-alarm fire at the
09:47:38 injunction hearing, that they're still not treating it
09:47:40 like an emergency?
09:47:43 A. I've thought about this. You know, it is a
09:47:50 five-alarm fire. People are dying. Staff are suffering.
09:47:54 Not just the incarcerated men and women but staff as well
09:47:58 and it's in everyone's interest. It's in their interest.
09:48:04 I'm not speaking for them, but isn't it in their interest,
09:48:06 as well? I would argue with them that they have air
09:48:11 conditioning, it come as fast and as soon as possible. I
09:48:14 don't understand the overly measured, the overly
09:48:20 handwringing approach to only asking for a little bit at a
09:48:24 time. It would be a good problem to have to say, yep, I
09:48:27 got $1.3 million, now, gee, what do we do about it. But
09:48:31 that hasn't been the request and that hasn't been the plan
09:48:36 in the face of all this.
09:48:41 Q. And you reviewed a most recent 2025 directive of
09:48:47 TDCJ's heat policy, right?

09:48:48 A. Right.
09:48:49 Q. Have you reviewed the past version that we looked at
09:48:51 the preliminary injunction hearing?
09:48:53 A. I think so.
09:48:54 Q. Are the heat mitigation measures for people inside
09:48:58 the prisons that are housed in unair-conditioned units,
09:49:02 are they basically the same?
09:49:03 MR. MICKLE: Objection, your Honor. She's asking
09:49:05 about heat mitigation again. This goes to advice from
09:49:09 medical partners and there's no evidence that this witness
09:49:11 has any prior experience with heat mitigation.
09:49:15 MS. GROSSMAN: We're talking about mitigation
09:49:18 measures in terms of fans and respite and cooling and --
09:49:26 your corrections expert wrote a whole report on that.
09:49:26 THE COURT: You want to ask a foundational
09:49:28 question?
09:49:28 Q. (BY MS. GROSSMAN) Oh, sure. Are you familiar with
09:49:33 the heat mitigation measures used when you can't have air
09:49:38 conditioning and best practices in the prison?
09:49:39 A. I saw those in there.
09:49:41 Q. Are you familiar with those in your work as a
09:49:43 director, are you familiar with those?
09:49:44 A. Yes.
09:49:45 THE COURT: Overruled.
09:49:46 Q. (BY MS. GROSSMAN) In looking at the policies of the

09:49:52 recent 2025 A.D. 10.64 and the last version of the A.D.
09:49:57 1064, are they -- are these the same heat mitigation
09:50:01 measures with respect to people that are being housed in
09:50:05 unair-conditioned facilities?
09:50:06 A. It's very similar. I mean, I'm going through page by
09:50:09 page but they seem similar.
09:50:11 Q. Did you see any heat mitigation measure that was
09:50:13 available and suddenly available now that was not
09:50:16 available before?
09:50:16 A. No.
09:50:18 Q. And is this policy and practice of TDCJ to rely on
09:50:21 heat mitigation measures, is it still insufficient?
09:50:24 A. Yes, it's insufficient.
09:50:25 Q. Why is that?
09:50:28 A. Doesn't address the root cause. These deaths that
09:50:33 are occurring are only the ones we sort of -- the evidence
09:50:37 has come out of, it just doesn't address the cause of why
09:50:42 people are suffering and/or dying, including the staff and
09:50:46 including retention problem of staff this must create for
09:50:49 them, right?
09:50:52 The fix is air conditioning. It just is. The
09:50:56 other efforts, I have -- I agreed with this in the
09:51:01 preliminary injunction are better than nothing. Yes.
09:51:03 Good. A smidge better than nothing. A little bit better
09:51:08 than nothing. So is it better than nothing, yes, it is

09:51:11 better than nothing, of course it is but it's not the fix.
09:51:13 Q. Is there any other thing other than air conditioning
09:51:15 that TDCJ could try any other heat mitigation measure in
09:51:19 the realm of possibility out there other than air
09:51:22 conditioning that would stop the deaths and illnesses in
09:51:26 the prison in the summer months?
09:51:27 A. No.
09:51:28 MR. MICKLE: Objection, your Honor. Lack of
09:51:31 foundation.
09:51:32 THE COURT: Overruled. You can answer.
09:51:33 A. No. I don't think so.
09:51:38 Q. (BY MS. GROSSMAN) Mr. Williams, was it an easy
09:51:40 decision for you to take this case?
09:51:44 MR. MICKLE: I'm sorry, your Honor. We're having
09:51:45 a hard time hearing counsel.
09:51:47 MS. GROSSMAN: I'll speak up. I'm sorry.
09:51:49 Q. (BY MS. GROSSMAN) Mr. Williams, was it an easy
09:51:53 decision to take this case?
09:51:54 A. No, it wasn't.
09:51:54 Q. Why not?
09:51:56 A. First of all, I think it became clear at the
09:52:00 preliminary injunction that Mr. Collier has -- I don't
09:52:03 know Mr. Lumpkin, but Mr. Collier has been a colleague of
09:52:07 mine, a friend of mine. He's been a friend to me in my
09:52:10 own leadership and yeah. It's a personal relationship

09:52:17 there and I know what it's like to be the subject of many
09:52:21 lawsuits. You brought one of them but there were many
09:52:23 others. It's never fun, right? So that stuck a little.
09:52:32 It was also difficult because I have seen
09:52:35 litigation on issues that don't go very well in terms of
09:52:41 finding the real remedy to things being litigated. And as
09:52:45 a Director, I've had decisions capped -- you know, thrust
09:52:50 upon me that I thought missed the boat. Missed the actual
09:52:56 way to fix issues so I was concerned about that a little
09:53:00 bit.
09:53:00 I guess the last thing is just on a professional
09:53:03 and a personal level, I didn't want to be known as a
09:53:14 consultant for the plaintiffs. An expert consultant for
09:53:17 just plaintiffs. This is the first big case. I've worked
09:53:20 on some other things but this is the first federal case
09:53:22 and I didn't want to be, pardon the characterization, but
09:53:26 typecast as a plaintiff's expert because of many issues
09:53:30 that I would disagree about in litigation.
09:53:33 And so, I was concerned about my -- it seems like
09:53:38 a small thing. It seems very petty now that I spoke it
09:53:41 out loud, but those were some of my concerns to saying
09:53:45 yes.
09:53:45 Q. Why did you do it? Why did you take this case?
09:53:48 A. Well, I took it because it really is a matter of life
09:53:51 and death and the gravity of what happens here is going to

matter to a whole bunch of people. It's bigger than me. It's bigger than any of my personal, professional reputation. It's bigger than all of us and what happens here is going to have long-lasting consequences not only for this state but for other states as well who have made purposeful decisions to build prisons without air conditioning.

Q. And what about now? Where have you landed now?

A. My hope in taking this case and being the expert for the plaintiffs in this case, maybe my naive hope was by saying yes to this case that there might be a pause that my words may not condemn people but maybe they would convict people that there's a real problem here. That this is not about condemning people for their stepping up to leadership.

I knew Mr. Collier. I'm glad Mr. Collier was the Director here, but there's a serious problem here. And here's the first serious problem. There's a through line about the resistance and the denial that people are dying and that bothers me. For 10 or 12 years, TDCJ, with all due respect to the past, has never admitted anybody in their system died of a heat-related illness. That is both unbelievable and incredible that for that period of time, nobody died in all their prisons of a heat stroke for the 10 or 12 years that they denied. They litigated one case,

09:55:43 in a state case where the --

09:55:45 MR. MICKLE: Objection, your Honor. This is

09:55:46 still a narrative.

09:55:47 THE COURT: I'll allow it. Go ahead.

09:55:48 A. A litigation in that case cost as much as it did to

09:55:51 install the air conditioning. So in the report, the

09:55:56 investigation reports we've seen, there's a purposeful

09:55:59 omission. This is what kills me. There's a purposeful

09:56:01 omission of the most important and relevant data about why

09:56:06 people are dying. So it's troubling. Very troubling.

09:56:11 My hesitation I had when I first said yes to this

09:56:15 two years ago have evaporated because I have seen this

09:56:21 resistance. I understand this resistance, by the way.

09:56:23 I've led a system that's resisted it. But the denial on

09:56:28 it is shocking and my hope is that through all this, we

09:56:34 can find another way forward. Maybe naive. I'm still

09:56:37 naive in thinking that, but I believe there's another way

09:56:40 forward, and so, any hesitation I've had has evaporated

09:56:45 because it hasn't gotten better. It's gotten worse.

09:56:50 That's why I'm here.

09:56:51 MS. GROSSMAN: Thank you.

09:56:56 THE COURT: Mr. Mickle.

09:57:01 MR. MICKLE: Thank you, your Honor.

09:57:01

09:57:06

09:57:06 CROSS-EXAMINATION

09:57:28 BY MR. MICKLE:

09:57:28 Q. Good morning, Mr. Williams.

09:57:30 A. Good morning.

09:57:30 Q. How are you, sir?

09:57:31 A. I am good. Thank you.

09:57:32 Q. It's nice to see you again.

09:57:34 A. Thank you very much.

09:57:34 Q. Mr. Williams, you were asked questions on direct about why you took this case. This is your third time as a paid expert witness for a plaintiff in a lawsuit, correct?

09:57:46 A. There might be one that occurred after you and I, discussed, but yes, the third or fourth time as a plaintiff expert, yes.

09:57:59 Q. And you have never testified as an expert witness for the defendant in a case like this, right?

09:58:04 A. I have not.

09:58:06 Q. And you are being paid to be here today, correct?

09:58:08 A. I absolutely am.

09:58:09 Q. Mr. Williams, you do not have a degree in prison facility management, correct?

09:58:22 A. I do not.

09:58:23 Q. So would it be fair to say the basis of your opinions is your experience having worked within the prison systems

09:58:29 for Alaska and Colorado, right?
09:58:31 A. That's correct.
09:58:31 Q. You're offering opinions today on a systemwide
09:58:37 installation of air conditioning, correct?
09:58:39 A. Say it again.
09:58:40 Q. You were offering opinions today on the systemwide
09:58:43 installation of air conditioning, correct?
09:58:46 A. Yes. I think I offered something along that line,
09:58:49 yeah. Uh-huh.
09:58:50 Q. Mr. Williams, isn't it true that when you were
09:58:52 leading Alaska's Department of Corrections, you did not
09:58:55 have any heat-related deaths, correct?
09:58:57 A. No, we didn't. Correct.
09:58:59 Q. Correct. You did not have any heat-related deaths?
09:59:01 A. Did not have any heat-related deaths. Correct.
09:59:04 Q. Is it also true when you were the head of Colorado's
09:59:07 Department of Corrections, you did not have any
09:59:09 heat-related deaths, correct?
09:59:10 A. I believe that's correct, too. Yes.
09:59:12 Q. In your experience as an executive within the
09:59:17 corrections systems does not include dealing with
09:59:21 heat-related deaths, correct?
09:59:25 A. I have not had heat-related deaths occur in either of
09:59:28 the facilities. I mean, there is heat in prisons, heat
09:59:32 environments in Colorado, so I want to be clear that those

09:59:35 conditions exist. But you're correct that I -- we did not
09:59:39 have anyone die in our prisons because of heat.
09:59:42 Q. I'm sorry, it's a little hard to hear.
09:59:44 A. I'm sorry. Try again. I'm sorry.
09:59:46 Q. You just testified you did not have anybody die in
09:59:48 your prisons because of heat, correct?
09:59:50 A. Correct.
09:59:50 Q. Thank you, sir. You did not try and install air
10:00:01 conditioning in either of the two correction systems that
10:00:04 you ran, correct?
10:00:04 A. That's correct.
10:00:05 Q. So it would be fair to say then that you're extending
10:00:16 your conclusions in this case beyond what your experience
10:00:18 is?
10:00:19 A. I wouldn't say it's fair to say that.
10:00:21 Q. I'm sorry?
10:00:22 A. I wouldn't say it's fair to say that.
10:00:24 Q. But you have just testified you have no experience
10:00:28 installing air conditioning in either of the systems you
10:00:31 ran, correct?
10:00:32 A. You're correct on that, yes.
10:00:37 Q. You would agree then that your opinions on installing
10:00:39 air conditioning on a systemwide basis throughout an
10:00:42 entire prison system are limited by your lack of firsthand
10:00:46 experience, correct?

10:00:47 A. That is correct.
10:00:50 Q. Installing air conditioning where it hasn't
10:00:53 previously existed in a prison system is a practical
10:00:56 consideration with which you have never had to navigate,
10:00:58 correct?
10:00:59 A. I have never had to navigate that. That's correct.
10:01:01 Q. You've never supervised anyone who is tasked with
10:01:05 installing air conditioning systemwide, correct?
10:01:08 A. That's correct.
10:01:09 Q. Is it also true that when you were the Commissioner
10:01:13 of Corrections in Colorado, you requested money from the
10:01:16 state legislature for a big project at the Sterling prison
10:01:19 and that money was not given to you?
10:01:20 A. Yes. When I was Executive Director of the Colorado,
10:01:24 yes, that's correct.
10:01:25 Q. Executive Director, excuse me. And I believe that
10:01:32 that project at Sterling was, according to prior
10:01:34 testimony, the failing heating system at that prison at
10:01:37 Sterling, correct?
10:01:38 A. It was a -- I'm not sure what I said in the
10:01:44 deposition, but to be completely accurate, it wasn't -- it
10:01:49 was partially had to do with a boiler system that provided
10:01:52 steam heat to the kitchen and other critical areas of the
10:01:56 operation. But really, it was -- yeah. So it's partially
10:01:59 correct because it was providing heat, but it was also

10:02:02 heat for the kitchen processing because all those kitchen
10:02:07 facilities are run by heat. It's probably more than you
10:02:09 need to know, but yes, it was heat-related. That's the
10:02:12 project I requested money for.
10:02:13 Q. Would it be fair to say that Colorado does experience
10:02:16 freezing temperatures?
10:02:17 A. Oh, sure.
10:02:18 Q. Isn't it also true that you previously described this
10:02:22 system at Sterling prison as, quote, a big damn deal to
10:02:26 you?
10:02:26 A. It was a big damn deal. Yes.
10:02:29 Q. And that prison had about 2,000 people?
10:02:31 A. It did.
10:02:31 Q. And the heating system at Sterling was again, in your
10:02:36 words, one you were very concerned about.
10:02:38 A. I was very concerned about it, yes.
10:02:40 Q. And in fact, you requested money in your budget for
10:02:43 that project, but you did not receive that money, correct?
10:02:46 A. That's correct.
10:02:46 Q. And after you did not get that money for Sterling,
10:02:51 you did not re-approach the governor's office to ask for
10:02:54 the money again, correct?
10:02:55 A. That's correct.
10:02:56 Q. And you didn't re-approach the Colorado legislature
10:02:59 to ask for the money again, correct?

10:03:01 A. That's correct.
10:03:03 Q. And you never got the money for that big project?
10:03:05 A. Never got it. Correct.
10:03:08 Q. And you said that the issue of receiving the money
10:03:11 after requesting the money was beyond your control,
10:03:14 correct?
10:03:15 A. I probably said that. Yes. Correct.
10:03:26 Q. Mr. Williams, based on all the testimony you've
10:03:29 offered in this case, would it be fair to say that you
10:03:31 have strong opinions about air conditioning in Texas
10:03:34 prisons, correct?
10:03:36 A. I do.
10:03:38 Q. So if that's the case, why have you only visited one
10:03:41 Texas prison?
10:03:43 A. Well, first of all, I haven't been invited, right? I
10:03:47 can't show up at a prison door. That's not the way it
10:03:49 works. I would love for Mr. Lumpkin to invite me to visit
10:03:55 a prison with him and problem solve and anything else.
10:03:59 Would love an invitation but haven't been invited.
10:04:02 Q. When were you retained on this matter, sir?
10:04:06 A. Shortly before the preliminary injunction so it's
10:04:10 been a few months before that.
10:04:14 Q. Since you were retained, would it be fair to say that
10:04:17 was sometime in 2024?
10:04:24 A. Yeah. End of '23, possibly -- end of '23-'24. I

10:04:32 think any first met with them in '24. I think that's
10:04:36 right.
10:04:36 Q. You'll agree with me two years?
10:04:38 A. Little over two years.
10:04:39 Q. In those two years, have you ever requested to go
10:04:41 inside a Texas prison?
10:04:43 A. No, I have not. I have not requested. Well, I've
10:04:46 requested through the plaintiffs, through the attorneys
10:04:47 that I would love to go through them, but I have not
10:04:50 requested directly with Mr. Lumpkin. That's true.
10:04:52 Q. Well, let me be specific. You have not requested
10:04:55 from TDCJ access to a Texas prison.
10:04:57 A. I have not directly with them.
10:05:00 Q. But in fact, you did visit one Texas prison.
10:05:03 A. I did.
10:05:04 Q. And that one Texas prison had air conditioning,
10:05:06 correct?
10:05:06 A. It did have air conditioning.
10:05:08 Q. Why did you not ask to visit a Texas prison without
10:05:11 air conditioning, sir?
10:05:14 A. Honestly, I didn't think it would be a welcomed
10:05:21 measure since I'm now the expert for the plaintiffs.
10:05:23 Q. But you testified earlier that you're friends with
10:05:25 Mr. Collier, correct?
10:05:27 A. Well, I have been friends with Mr. Collier, yes.

10:05:30 Q. And you agree that that relationship has been
10:05:32 friendly and professional?
10:05:33 A. It has been, yes.
10:05:34 Q. And of course, as an expert in this case, you can
10:05:39 consider a wide array of information to form your opinion,
10:05:43 correct?
10:05:43 A. Sure.
10:05:43 Q. Well, don't you think visiting just one TDCJ prison
10:05:48 without air conditioning might have been helpful in
10:05:51 forming your opinion?
10:05:51 A. Well, it would have been nice, yes. I would have
10:05:55 appreciated that. Sure.
10:05:56 Q. Well, respectfully, sir, my question was don't you
10:05:58 think it would have been helpful, not nice? Don't you
10:06:00 think it would have been helpful to visit one Texas prison
10:06:03 without air conditioning?
10:06:04 A. It certainly wouldn't -- it would be a little
10:06:08 helpful. It certainly would help to visit one. Yes.
10:06:11 Q. Well, you're offering opinions today based on your
10:06:15 experience, correct?
10:06:16 A. Yes, of course.
10:06:17 Q. And your experience does not include working in
10:06:20 prisons without air conditioning, correct?
10:06:23 A. Air conditioning existed in prisons in Colorado. So
10:06:26 yes, I have not led a system where air conditionings were

10:06:28 not in prisons. Yes.
10:06:30 Q. And you testified at the PI hearing in this case,
10:06:33 correct?
10:06:34 A. I did.
10:06:34 Q. And also at that time, on July 31st, 2024 when you
10:06:39 testified at the PI hearing, you testified at that point
10:06:41 that you had not been inside of a Texas prison, correct?
10:06:43 A. That's correct.
10:06:44 Q. And earlier on questioning from counsel, you said
10:06:52 that the heat mitigation efforts that TDCJ uses are,
10:06:55 quote, a smidge better than nothing. Do you remember
10:06:58 that?
10:06:58 A. Yes.
10:06:58 Q. So what is the basis of your opinion, sir, that the
10:07:02 heat mitigation efforts TDCJ undertakes are a, quote,
10:07:05 smidge better than nothing if you'd never been to a prison
10:07:08 without air conditioning that utilizes the heat mitigation
10:07:11 efforts?
10:07:12 A. Well, that would be nice, but that's not what I based
10:07:16 my opinion on. I based my opinion on the fact that people
10:07:18 are dying. I based my opinion that there's heat illness.
10:07:21 I based my opinion on body temperatures of the people who
10:07:24 are dying are way above how someone could survive, 107,
10:07:27 108 degrees. There's a problem.
10:07:29 Q. You have testified, sir, you are not a medical

10:07:31 expert, correct?
10:07:32 A. I'm certainly not a medical expert.
10:07:34 Q. So the basis for your opinion then that TDCJ's heat
10:07:38 mitigation efforts are a, quote, smidge better than
10:07:40 nothing are not based on medical opinion, correct?
10:07:43 A. They're not based upon medical opinions. That's
10:07:46 correct.
10:07:46 Q. You've never seen TDCJ's heat mitigation efforts in
10:07:49 action, have you?
10:07:50 A. Not in action, no.
10:07:52 Q. You've never seen respite rooms used by inmates in
10:07:58 TDCJ prisons?
10:07:58 A. That's true.
10:07:59 Q. And you've never seen the 10-pound blocks of ice that
10:08:01 TDCJ produces in its prisons without AC, correct?
10:08:04 A. No, I've not seen that.
10:08:06 Q. And you've never seen the 10-pound blocks of ice that
10:08:08 TDCJ makes in its prisons with AC, have you?
10:08:10 A. No, I haven't seen that.
10:08:12 Q. And you've never seen the water coolers full of ice
10:08:15 water in Texas prisons without AC, have you?
10:08:18 A. No.
10:08:19 Q. And you've never seen the water coolers full of ice
10:08:22 and water in the prisons with AC, have you?
10:08:24 A. No, I have not.

10:08:27 Q. And you've never seen the fans given out to inmates
10:08:31 in the TDCJ's prisons without air conditioning, have you?
10:08:33 A. That's true.
10:08:34 Q. You've never seen the individual fan program that
10:08:37 TDCJ implemented nor to give up to two fans per inmate
10:08:40 free of charge, correct?
10:08:41 A. That's true.
10:08:43 Q. And it is still your opinion you can have an expert
10:08:46 opinion on this matter without ever having visited a TDCJ
10:08:49 prison without air conditioning?
10:08:51 A. Yes.
10:09:03 Q. You were in the commission of Alaska's Department of
10:09:06 Corrections from January 16th to November 18th, there were
10:09:10 approximately 4,500 inmates under your control?
10:09:13 A. That's correct.
10:09:14 Q. You only had about 1,800 employees, correct?
10:09:16 A. That's correct.
10:09:18 Q. You testified earlier that you established the Office
10:09:22 of the Inspector General when you were the Commissioner of
10:09:25 Alaska's DOC, correct?
10:09:27 A. Yeah, by different name but yes.
10:09:29 Q. What name did you use, sir?
10:09:30 A. Professional Conduct Unit.
10:09:32 Q. So the Professional Conduct Unit is one that you
10:09:41 established, correct?

10:09:41 A. Correct.
10:09:42 Q. And that unit reported directly to you?
10:09:44 A. Correct.
10:09:45 Q. So how could you be sure of the impartiality if that
10:09:48 unit directly reports to you, sir?
10:09:52 A. Because I was reviewing the deaths in real time with
10:09:57 that unit as that unit was being formed. I had insisted
10:10:01 upon the highest integrity in terms of accurate reporting.
10:10:05 Could something have gotten by me or could there be an
10:10:08 exception somewhere, yeah of course.
10:10:11 Q. But you had the final say on all reports.
10:10:13 A. I had the final say on the process and what we were
10:10:15 going to investigate and how we were going to investigate.
10:10:18 So I didn't do the actual investigations of course, but I
10:10:22 insisted upon the protocols and the minimum standards of
10:10:28 what investigations would look like when they got to my
10:10:31 desk.
10:10:32 Q. But this unit, as you testified, reported directly to
10:10:37 you, correct?
10:10:37 A. It did.
10:10:37 Q. So you had the final say on what their report said,
10:10:40 correct?
10:10:40 A. Well, yeah, ultimately, as the Director -- as the
10:10:44 Commissioner then, yes, in that context because I'm
10:10:47 responsible for everything that happened in that

10:10:49 department so yes, in that context.
10:10:50 Q. And you would have had the power then to go back to
10:10:53 the investigator and say, this doesn't make sense, you
10:10:55 need to change this, correct?
10:10:56 A. Yes, I would have. Well, I would if something didn't
10:11:00 make sense or there was a hole or a gap. Not to change
10:11:03 something fact-based or conclusionary based on facts.
10:11:16 Q. You admitted during testimony previously submitted in
10:11:27 this case that no director of any prison system would ever
10:11:31 subject their staff to heat as a form of punishment,
10:11:34 correct?
10:11:37 A. I wouldn't see how that would benefit anybody.
10:11:41 Q. But you did testify and you admitted that nobody
10:11:44 would do that, correct?
10:11:44 A. Well, I don't think anybody would do that
10:11:47 intentionally. That's for sure intentionally.
10:11:50 Q. So is it your memory, sitting here today, when you
10:11:52 testified in deposition, you did not respond no to that
10:11:56 question. Is that your memory?
10:11:57 A. I think I responded -- I don't remember what I
10:12:00 responded.
10:12:01 Q. Could we pull up the transcript, please, Mr.
10:12:06 William's, page 277, line 7? Mr. Williams, I'm going to
10:12:17 read to you these four lines. It says can you imagine any
10:12:19 director of a DOC wanting to punish their staff? Answer,

10:12:22 wanting to purposely? No, a director, no. Probably not.
10:12:25 Well, no, not that I'm aware. Do you not recall that
10:12:29 testimony?
10:12:29 A. I do.
10:12:30 Q. Is that still your opinion, sir?
10:12:31 A. Well, yes, it is my opinion. I don't think anyone
10:12:34 purposely would do that.
10:12:38 Q. You also testified previously as to TDCJ's heat
10:12:42 mitigation efforts that they are better than nothing,
10:12:44 correct, sir?
10:12:45 A. Correct.
10:12:46 Q. You also previously testified that if you didn't get
10:13:11 the funding, if you were the Director of TDCJ to fund the
10:13:16 AC, you would, quote, do everything I could, unquote,
10:13:19 correct?
10:13:19 A. That's correct.
10:13:19 Q. So to be clear, though, you have been an Executive
10:13:27 Director of the Department of Corrections when you did not
10:13:28 get funding, correct?
10:13:29 A. That's correct.
10:13:38 Q. Previously, you were asked questions about the death
10:13:40 of somebody named Mr. Fairchild. Do you remember that?
10:13:42 A. I do.
10:13:43 Q. You have not seen that video that you testified
10:13:46 about, correct?

10:13:47 A. I have not seen the video, no.
10:13:49 Q. And as you've admitted many times, you are not a
10:13:53 medical expert, correct?
10:13:54 A. That's correct.
10:13:55 Q. So you cannot say that there wasn't a non-heat
10:13:58 medical emergency for Mr. Fairchild's death, correct?
10:14:04 A. One more time.
10:14:05 Q. You cannot say that there wasn't a non-heat medical
10:14:10 emergency for Mr. Fairchild's death, correct?
10:14:14 A. Well, yes, is there a one-in-a-million chance I don't
10:14:25 know that I would -- if it's possible one out of a hundred
10:14:28 that wasn't heat-related, is it one -- some aspect of this
10:14:31 case that I did not look at that might explain how he
10:14:34 died, yes, I suppose that's possible, however, I would
10:14:37 view it very unlikely.
10:14:39 Q. But these, as you just testified, one-in-a-million
10:14:42 reasons, you wouldn't base that on any medical knowledge
10:14:48 that you have.
10:14:49 A. Well no, not on medical knowledge. No. Yes.
10:14:53 Q. And you don't know whether he was having another
10:14:56 reaction that resulted in the temperatures in the report,
10:14:58 do you?
10:14:59 A. I didn't see anything that would indicate that, but
10:15:01 again, I'm not a medical expert on that. So I'm not
10:15:04 trying to go where outside of my field.

10:15:10 Q. Sure. I'm sorry?
10:15:12 A. I just trying to understand your question. Go ahead.
10:15:15 Q. Let me ask you this. Just speaking from personal
10:15:17 experience because it sounds like you're using a lot of
10:15:19 your personal experience today. You've had a fever in the
10:15:21 past, correct?
10:15:22 A. I have.
10:15:24 Q. And that elevates the core body temperature, doesn't
10:15:26 it?
10:15:26 A. Well, of course. Yes.
10:15:27 Q. And that is regardless of the ambient temperature in
10:15:31 the room in which you had a fever, correct?
10:15:33 A. It certainly can be for some other reason, yes.
10:15:38 Q. You also were asked questions to which you responded
10:15:51 with evidence about somebody named Mr. Kobuk?
10:15:57 A. K-O-B-U-K.
10:15:59 Q. That was not a heat-related death.
10:16:01 A. No. It was not heat-related.
10:16:04 Q. You also were asked questions about Jason Williams,
10:16:07 do you remember that.
10:16:07 A. Wilson?
10:16:09 Q. Is it Wilson? I think you testified the temperature
10:16:19 was 90 degrees. Do I have that correctly?
10:16:22 A. You've lost me there. Ninety degrees of what?
10:16:28 Q. You said the temperature was 90 degrees and the

10:16:31 ambient heat index was over a hundred. Did I miss that?
10:16:34 A. The outside -- I think the heat logs, what I think
10:16:38 we're referring to if we're on the same page is the heat
10:16:40 logs that indicated the temperature Mr. Wilson -- outside
10:16:45 temperatures, outside the prison temperature logs, I
10:16:48 think, is what we're discussing here was in the mid-90s
10:16:52 with the heat index as higher than that.
10:16:55 Q. I just want to be clear, sir. You were testifying
10:16:58 earlier that heat index over a hundred, that was outside.
10:17:00 A. Yes. Yeah. I think we're on the same page. Yes, I
10:17:04 think so. Yes.
10:17:06 Q. So when you were the head of Alaska's DOC, is it your
10:17:24 testimony that you never encountered a death certificate
10:17:27 that changed?
10:17:34 A. Certainly not in my request, certainly not at the
10:17:38 request of the department. Maybe one changed unbeknownst
10:17:42 to me.
10:17:46 Q. So it's not impossible that when you were the head of
10:17:50 Alaska's DOC, a death certificate changed under your
10:17:54 watch, correct?
10:17:54 A. It's not impossible. I just don't know.
10:17:56 Q. Well, you're offering opinions today on the
10:17:59 appropriate timeline on which a death certificate cause of
10:18:01 death should change, correct?
10:18:04 A. I was offering an opinion on a right to change a

10:18:09 death certificate 14 months later at what appeared to be
10:18:11 at the department's request. That's what I was commenting
10:18:14 on.
10:18:14 Q. Right, but that's a timeline issue, correct --
10:18:15 A. That's a timeline issue. It's also a who's
10:18:19 requesting issue.
10:18:19 Q. Don't you think it would have been important then to
10:18:22 know whether or not a death certificate was changed up to
10:18:25 14 months when you were the head of Alaska's DOC?
10:18:29 A. Well, this is many years ago so it could have
10:18:32 happened. I just don't know.
10:18:36 Q. What was the total budget that Alaska received for
10:18:40 its DOC when you were the commissioner?
10:18:42 A. For Alaska, it was approximately 330, 40, 50 million
10:18:50 dollars, in that ballpark.
10:18:52 Q. And what was the total budget for Colorado when you
10:18:56 were the Executive Director?
10:18:57 A. Close to a billion dollars. Just under a billion
10:19:01 dollars, 900-something million, yeah, in that ballpark.
10:19:07 Q. And earlier, you were asked questions about the
10:19:16 claims that temperature records were falsified at TDCJ
10:19:20 facility, correct?
10:19:21 A. I did.
10:19:21 Q. Did you also review the transcript where the Court
10:19:26 explicitly asked Mr. Collier to investigate the matter?

10:19:29 A. I didn't see those transcripts what the Court asked
10:19:33 TDCJ.
10:19:33 Q. So then, if the Court had asked TDCJ to investigate
10:19:36 it, it would not then be odd that TDCJ went and
10:19:39 investigated it itself, correct?
10:19:40 A. I didn't think -- no, I didn't think it was odd that
10:19:43 it was investigated at the Court's request. I hope I
10:19:45 didn't misstate that.
10:19:47 Q. Well, are you aware, sir, that TDCJ's OIG department
10:19:51 did not report to Mr. Lumpkin?
10:19:54 A. Right. It reports -- I'm not sure of the structure
10:19:58 of how that works but it -- yeah.
10:20:03 Q. Are you aware it reports to the board?
10:20:04 A. It's with the TDCJ -- right. It's the same way.
10:20:09 They have an internal auditing was my understanding. I
10:20:12 think that's what I -- that that was the structure.
10:20:14 Q. Well, if I were to tell you that they report to the
10:20:16 board, you would have no reason to disbelieve me?
10:20:18 A. Oh, no, I wouldn't disbelieve you.
10:20:20 Q. And furthermore, that same board to which the OIG
10:20:23 reports, are you also aware that that's the same board
10:20:26 that appoints the Executive Director of TDCJ?
10:20:28 A. I am aware of that.
10:20:29 Q. So you're aware that one board appoints both the
10:20:32 Director and then, separately is in charge of the OIG,

10:20:36 correct?
10:20:36 A. Correct.
10:20:37 Q. Mr. Williams, you're not saying that TDCJ's heat
10:20:54 mitigation policies and practices do not help with dealing
10:20:57 with the heat, correct?
10:20:58 A. I'm not saying they don't help at all. I'm not
10:21:00 saying that they're worth nothing. I'm not saying that.
10:21:02 Q. And it's not your opinion in your expert capacity
10:21:06 that having access to respite is not helpful, correct?
10:21:09 A. I think it could be helpful, yes.
10:21:11 Q. It's also not your opinion that having access to cool
10:21:15 water is not helpful, correct?
10:21:17 A. No. Certainly that would be helpful.
10:21:19 Q. It's also not your opinion that having access to fans
10:21:22 is not helpful, correct?
10:21:24 A. Well, within some limitations, yes, it's helpful
10:21:27 within some limitations.
10:21:29 Q. It's also not your opinion that having access to cold
10:21:32 showers is not helpful, correct?
10:21:35 A. Correct.
10:21:35 Q. You've never been inside a TDCJ prison to inspect the
10:21:41 showers, have you?
10:21:41 A. As I noted earlier, I have not been inside TDCJ's
10:21:44 facilities unair-conditioned or inspected their showers.
10:21:48 Q. So you wouldn't know that during the summer months,

10:21:51 TDCJ dedicates certain showers as strictly cold showers,
10:21:55 correct?
10:21:55 A. I think I saw somewhere in their mitigation policy
10:21:59 about cold showers, but I haven't seen them. I'm unsure
10:22:04 of how often they're used, but yes, I'm sure that that is
10:22:07 part of the policy or part of the protocol.
10:22:11 Q. It's also not your opinion that having access to cool
10:22:15 towels is not helpful.
10:22:16 A. Right. Correct.
10:22:17 Q. And earlier, I believe there was some testimony you
10:22:19 provided on taking body temperatures, correct?
10:22:23 A. Correct.
10:22:24 Q. And you are aware that it is TDCJ's practice to take
10:22:29 external skin temperatures, correct?
10:22:34 A. Well, if it is, I haven't seen it in the cases I've
10:22:37 reviewed.
10:22:39 Q. You're saying in none of the reports you reviewed
10:22:41 that anybody ever took an external body temperature?
10:22:44 A. I'm saying in the investigations I've reviewed, skin
10:22:47 temperatures were not recorded in the investigation
10:22:51 report. If it's recorded somewhere else that wasn't --
10:22:53 forms weren't given to me -- but the recent ones. Now,
10:22:58 going back to the three before that, I don't recall about
10:23:00 where temperatures -- if TDCJ recorded temperatures in any
10:23:05 of those prior investigations. I just don't recall.

10:23:08 Q. And you also gave an opinion earlier on taking what
10:23:10 you called core body temperatures, correct?
10:23:14 A. Core body temperatures and skin temperatures.
10:23:16 Q. Correct. But I'm asking you specifically, you've
10:23:19 testified that you would have all staff conduct core body
10:23:23 temperatures, correct?
10:23:24 A. No. I don't think that's the right -- I don't think
10:23:27 that's the right paraphrasing. I think I said something
10:23:30 to the effect of I would take skin temperatures and
10:23:34 ambient temperatures and core body temperatures when
10:23:36 appropriate or as soon as practical or possible. I
10:23:39 wouldn't expect security staff or correctional staff, for
10:23:43 example, to be tasked with -- core body temperatures could
10:23:47 be taken different measures. Again, not a medical expert.
10:23:51 Just a layperson, right? So I wouldn't be expecting them
10:23:53 to removing clothing or, for heaven sakes, doing rectal
10:23:58 thermometer temperature taking from correctional staff.
10:24:02 Certainly wouldn't expected that, right?
10:24:03 Q. Well, that is my question, sir.
10:24:04 A. I wouldn't expect TDCJ to have to take intrusive core
10:24:10 body temperatures beyond their scope.
10:24:14 Q. And taking core body temperatures as you just alluded
10:24:18 to is a rather invasive method, correct?
10:24:21 A. Some more so than others.
10:24:23 Q. Well, the traditional method of taking core body

10:24:25 temperatures as you just said is rectal, correct?
10:24:27 A. No. I mean, in the medical records of the ambulance
10:24:31 they took, they recorded taking axillary body temperatures
10:24:35 which was under the armpit. So that's certainly less
10:24:39 intrusive, but according to the EMTs, they took an
10:24:42 axillary, A-X-I-L-L-A-R-Y, axillary, which my
10:24:45 understanding means armpit temperatures.
10:24:49 Q. But you would agree that invasive body temperature
10:24:52 readings should only be conducted by medical --
10:24:54 A. I would move that to yes to a more practice being
10:24:59 done or by nurses and other medical people with TDCJ.
10:25:05 Q. And that's within their medical expertise, correct?
10:25:07 A. I would say that's more within their medical
10:25:10 expertise, that kind of temperature taking. Especially
10:25:13 rectal temperature taking, certainly that would be more
10:25:15 within their scope.
10:25:17 Q. And you would agree that as an expert in corrections,
10:25:20 you would never supplant your knowledge of medical issues
10:25:25 for those of medical experts, correct?
10:25:28 A. Well, yes, but with -- yes but with limitations.
10:25:33 Q. Just as if the contra-positive is the same.
10:25:33 A. Say it again.
10:25:38 Q. The contra-positive being the same that a medical
10:25:40 expert should never supplant their wisdom in a corrections
10:25:43 environment for your wisdom.

10:25:48 A. Well, I would not infer or suggest that my
10:25:56 corrections experience, my corrections expertise would
10:25:59 cross the lines between a medical doctor giving me a
10:26:03 diagnosis or telling me something about a patient so I
10:26:05 would respect the professional boundary that existed in
10:26:09 that relationship. I'm trying to answer your question but
10:26:12 I'm not sure I am.
10:26:14 Q. I think you have, sir.
10:26:15 A. Okay.
10:26:15 Q. Nothing further.
10:26:16 A. Thank you.
10:26:25 RE-DIRECT EXAMINATION
10:26:25 BY MS. GROSSMAN:
10:26:33 Q. Not too much. Mr. Mickle asked you whether your
10:26:37 opinions that TDCJ's mitigation measures are adequate was
10:26:41 based on medical expertise and you said no, right?
10:26:44 A. Right.
10:26:45 Q. Is your opinion based on your expertise as a prison
10:26:49 director?
10:26:49 A. Yes.
10:26:51 Q. Mr. Mickle also asked you questions about a time in
10:26:54 Colorado where you didn't get the money you needed. I
10:26:58 think it was at Sterling correctional facility?
10:27:01 A. Sterling correctional facility.
10:27:03 Q. At that time, did you ask the legislature for the

10:27:06 full funding that you needed to solve the problem?
10:27:07 A. Well, I asked the governor's office, office of budget
10:27:11 director, I asked the money to fix that -- looming may be
10:27:19 too strong of a term but an issue that was a chronic -- it
10:27:23 was going to be a chronic maintenance issue.
10:27:25 Q. All these people, you told them all the full funding
10:27:28 you needed to solve this problem.
10:27:29 A. I certainly communicated it to my bosses and the
10:27:32 governor's office. There's a distinction there, of
10:27:39 course.
10:27:39 Q. And were you honest about why you needed it and what
10:27:42 was going on?
10:27:42 A. Yes, of course.
10:27:43 Q. Has TDCJ ever asked for the full funding that it
10:27:46 needs to install permanent air conditioning throughout its
10:27:49 prisons?
10:27:50 A. Not that I'm aware of.
10:27:50 Q. Has TDCJ ever been honest about the level of the
10:27:53 crisis, how many people are dying to the legislature who
10:27:58 it's asking the funding for?
10:27:59 MR. MICKLE: Objection, your Honor. This is
10:28:01 asking for speculation. I don't know what honest means.
10:28:03 He could testify to what he knows.
10:28:04 THE COURT: You could rephrase.
10:28:05 Q. (BY MS. GROSSMAN) From what you've reviewed in the

10:28:07 documents and the annual reports to the legislature and
10:28:09 the testimony, history of the directors of the TDCJ
10:28:12 prisons, have you seen anything in which they've been
10:28:15 fully up front and reporting accurately regarding the
10:28:20 level of crisis and the number of deaths that people are
10:28:22 dying at its prisons?
10:28:23 A. I've seen the contrary which has been the troubling
10:28:26 aspect to this for me. I've seen the contrary.
10:28:31 Q. You were also asked by Mr. Mickle about not having
10:28:34 physically gone into all the Texas prisons in the summer
10:28:38 months in the unair-conditioned prisons. Remember that?
10:28:41 A. I do.
10:28:41 Q. Do you need to go into a prison and sit there with
10:28:46 120-degree heat index to know as a Director that these
10:28:50 conditions are intolerable and inhumane?
10:28:52 A. No.
10:28:52 MR. MICKLE: Objection, your Honor. Again, lack
10:28:56 of foundation.
10:28:57 THE COURT: Overruled. Go ahead.
10:28:58 A. No, I don't.
10:29:01 MS. GROSSMAN: Thank you. That's all I have.
10:29:02 THE COURT: Any followup, Mr. Mickle?
10:29:04 MR. MICKLE: Very briefly.
10:29:05 THE COURT: Yes.
10:29:06

10:29:06 RE-CROSS EXAMINATION

10:29:14 BY MR. MICKLE:

10:29:14 Q. Mr. Williams, you were just asked questions about
10:29:20 TDCJ's funding. You only know that number because TDCJ is
10:29:23 transparent about its needs for air conditioning and the
10:29:26 cost, correct?

10:29:27 A. I believe their estimate, yes. I believe that their
10:29:33 estimate is.

10:29:33 Q. So when they give a number and say this is what we
10:29:35 think it's going to cost, you believe them on the number?

10:29:38 A. The 1.3 billion we're talking about, yeah, I believe
10:29:41 that's probably pretty accurate, yes.

10:29:43 Q. You were also asked questions about TDCJ reporting
10:29:46 deaths, correct?

10:29:48 A. Yes.

10:29:50 Q. And it's true, isn't it, that TDCJ's required to
10:29:52 report deaths in what's known as either the Rider 55 or
10:29:56 Rider 56 to the legislature, correct?

10:29:58 A. I'm aware there's a statute, I believe, or a policy
10:30:01 that requires that.

10:30:02 Q. You're aware that's required, correct?

10:30:04 A. I do. I'm aware of that.

10:30:05 Q. You're also aware that reporting those deaths is no
10:30:10 indication of the funding TDCJ will receive, correct?

10:30:13 A. Say it again.

10:30:14 Q. You're also aware the recording of those deaths in
10:30:17 compliance with law has no indication or bearing on the
10:30:20 funding that TDCJ will receive, correct?
10:30:23 A. I don't know that. I wouldn't think it would. I
10:30:26 don't know that.
10:30:26 Q. Thank you, sir.
10:30:30 THE COURT: Anything further?
10:30:31 MS. GROSSMAN: Nothing further.
10:30:32 THE COURT: Okay. Thank you. Thank you, sir.
10:30:34 You may step down.
10:30:35 THE WITNESS: Thank you, your Honor.
10:30:36 THE COURT: And we've reached a good time for our
10:30:38 morning break. We'll take a 20-minute break until 10:50.
10:30:42 Just for planning purposes, as we discussed earlier, we'll
10:30:48 come back and resume testimony and that would put us on a
10:30:53 schedule of looking at our half-hour lunch break sometime
10:30:56 between 1:00 and 1:15 just for your expectation. So with
10:31:07 that, we'll be in recess until 10:50.
10:31:21 (Recess.)
10:51:44 THE COURT: And your next witness?
10:51:47 MR. HOMIAK: Yes, your Honor. Plaintiffs call
10:51:49 Dr. Susi Vassallo.
10:52:07 THE COURT: Good morning, Doctor. Before you
10:52:09 take a seat, could I get you to please raise your right
10:52:12 hand to be sworn?

10:52:13 THE CLERK: You do solemnly swear or affirm that
10:52:13 the testimony which you may give in the case now before
10:52:13 the Court shall be the truth, the whole truth, and nothing
10:52:19 but the truth?
10:52:19 THE WITNESS: I do.
10:52:19 THE COURT: Please be seated.
10:52:20 SUSI VASSALLO, called by the Plaintiff, duly sworn.
10:52:20 DIRECT EXAMINATION
10:52:24 BY MR. SINGLEY:
10:52:24 Q. Dr. Vassallo, good morning. Would you give us your
10:52:27 full name for the record, please?
10:52:28 A. Susi Vassallo.
10:52:30 Q. And, Doctor, you've testified at the preliminary
10:52:33 injunction hearing in this case, correct?
10:52:35 A. Yes, I did.
10:52:35 Q. Okay. That testimony stands in the record and we
10:52:41 won't be repeating that today. But just very briefly,
10:52:43 you're a medical doctor?
10:52:44 A. Yes.
10:52:45 Q. And what are you boarded in, Doctor?
10:52:48 A. Emergency medicine and medical toxicology.
10:52:51 Q. And you've had a clinical practice for many, many
10:52:55 years?
10:52:55 A. Yes. I'm practicing currently. I've been in
10:52:58 practice since -- I finished medical school in 1984.

10:53:02 Q. And do you have special expertise in the areas of
10:53:05 thermoregulation and heat-related medicine and illness?
10:53:09 A. Yes, I do.
10:53:11 Q. Doctor, what I want to focus you on are a few things
10:53:14 that are new since the preliminary injunction hearing.
10:53:18 And first of all, I'd like to talk about some heat-related
10:53:22 policies at TDCJ that have changed. And first, I'd like
10:53:26 to talk to you about the policy that is designated A.D.
10:53:31 10.64. Are you familiar with that policy?
10:53:34 A. I am.
10:53:34 Q. And at the preliminary injunction, you testified
10:53:38 about the version of that policy that was in effect at
10:53:42 that time, right?
10:53:43 A. That's correct.
10:53:43 Q. So are you aware whether there's been a change in
10:53:49 that policy since the preliminary injunction hearing?
10:53:51 A. There has been a change, yes.
10:53:53 Q. I want to ask you, in particular, whether -- at the
10:53:58 preliminary injunction hearing, we discussed one of TDCJ's
10:54:03 mitigation measures which is called respite or access to
10:54:07 respite areas. Are you familiar with that?
10:54:08 A. Yes, I am.
10:54:09 Q. And that refers to prisoners being able to go for
10:54:14 periods of time into air-conditioned areas.
10:54:16 A. Correct.

10:54:17 Q. In the change of A.D. 10.64 since the preliminary
10:54:23 injunction, did you see any changes to the respite area
10:54:28 policy?
10:54:29 A. Previously, a prisoner could ask to have respite. He
10:54:36 could even ask for respite during count and he did not
10:54:42 even have to feel sick to -- or ill to go into respite and
10:54:48 it was by policy, he could get to respite and he could
10:54:52 stay as long as necessary. The new policy is much more
10:54:56 limiting. It's up to the discretion of the corrections
10:55:02 officers whether or not he will be allowed into respite
10:55:06 and now he can stay as long as possible as opposed to as
10:55:12 long as is necessary.
10:55:12 Q. I'd like to look at the specific language that we're
10:55:15 talking about that your testimony is based on. Paul, if
10:55:19 you could pull up for me Exhibit 324.
10:55:26 Dr. Vassallo, if you could see there on your
10:55:28 screen, here we have as Plaintiff's Exhibit 324, the
10:55:31 version that went into effect in May 1 of 2024. Is that
10:55:36 the one that was at issue at the preliminary injunction
10:55:38 hearing?
10:55:38 A. Yes, it is.
10:55:40 Q. And, Paul, if you could please on the page numbers in
10:55:43 the upper right go to page 7 of 18. All right. Doctor,
10:55:54 I'm looking at on page 7 of 18 of this exhibit, Section E.
10:56:01 Is that the language from that version of the policy that

10:56:04 you're referring to about the respite policy at the time
10:56:07 of the preliminary injunction?
10:56:08 A. Yes.
10:56:09 Q. Okay. And what does it say there under No. 1? What
10:56:12 does it say?
10:56:13 A. This says 24 hours per day, seven days per week even
10:56:17 if they are not feeling ill at the time of the request or
10:56:20 if the request is made during count time.
10:56:23 Q. And what is in the first sentence of No. 3 there, as
10:56:29 well?
10:56:29 A. That the inmate shall be permitted to stay in the
10:56:33 respite area as long as necessary and things that they
10:56:38 might be able to bring, and those things that they could
10:56:41 bring has not changed.
10:56:42 Q. All right. And you reviewed this policy both as part
10:56:45 of your preparation and your testimony at the preliminary
10:56:49 injunction hearing and for forming your opinions here
10:56:52 today; is that right?
10:56:53 A. Yes.
10:56:53 Q. Your Honor, I'd move to admit Plaintiffs' 324.
10:56:56 THE COURT: Any objection?
10:56:59 MS. CARTER: No objection, your Honor.
10:57:00 THE COURT: So admitted.
10:57:03 Q. (BY MR. SINGLEY) All right, Doctor. I'd now like to
10:57:05 move to the 2025 version. Paul, if you could please put

10:57:08 up Plaintiffs' Exhibit 325. This has been previously
10:57:13 admitted. If you would go, please, to page 6 of 19.
10:57:26 And, Doctor, there again under Section E, first
10:57:29 of all, this is the 2025 version that's come out since the
10:57:32 preliminary injunction hearing?
10:57:34 A. Yes.
10:57:34 Q. And there under E, you testified about a change in
10:57:39 the respite language. Can you read to us the language
10:57:41 that you're talking about that exists in the 2025 policy
10:57:44 here?
10:57:45 A. The difference is it says the inmate shall be allowed
10:57:50 access to respite areas during periods of extreme heat.
10:57:53 The change is that the unit staff should use good
10:57:56 correctional judgment to accommodate as many requests for
10:58:01 respite as possible and to allow the inmates to stay in
10:58:06 respite as long as possible.
10:58:08 Q. All right. And so, a couple of the changes are that
10:58:10 the 24/7 language has been removed. That's one?
10:58:13 A. That's correct.
10:58:14 Q. And the prior version said that inmates may stay as
10:58:18 long as necessary and that's been changed to possible?
10:58:20 A. Correct.
10:58:20 Q. Do you have an opinion about whether or not from a
10:58:24 medical perspective that's a good or a bad change, Doctor?
10:58:26 A. This is a bad change.

10:58:27 Q. And tell us why, please.
10:58:28 A. Well, because correctional judgment is -- the
10:58:34 corrections officers are not medical personnel. The
10:58:37 correctional judgment is -- this decision to allow someone
10:58:42 respite if they need it is a medical decision. They
10:58:46 should have free access to respite whether they're feeling
10:58:50 ill or hot. Now you have a custody officer who can limit
10:58:54 that access to respite and who is not medically trained
10:58:59 and, therefore, it's a bad change and it's very much more
10:59:02 limiting.
10:59:03 Q. And as a physician and clinician, do you believe that
10:59:07 security personnel at TDCJ should be making decisions of
10:59:11 denying people respite at any time?
10:59:12 A. No.
10:59:13 Q. Was the language in the prior version of the policy,
10:59:16 the 2024 version about 24/7 access, do you view that's
10:59:22 important language that's been changed?
10:59:23 A. It's very important, that language, yes.
10:59:25 Q. And from a clinical perspective in helping people out
10:59:29 with the heat, why is that?
10:59:30 A. Well, remember these folks are -- this is a
10:59:34 cumulative heat risk. People are in these conditions all
10:59:40 day, 24/7, and anytime day or night, they may be affected
10:59:46 by the heat or feel that they need respite. So this is a
10:59:50 cumulative risk which is worsening of their underlying

10:59:53 conditions and so, this 24/7 is a very important part of
10:59:57 this.
10:59:58 Q. Okay. I'd like to turn now to the policy that's
11:00:02 referred to as the heat score, sometimes the at-hand heat
11:00:05 score. Are you familiar with that policy?
11:00:06 A. Yes, I am.
11:00:07 Q. And have you reviewed the various versions -- I
11:00:10 believe there's three of them -- of the heat score in
11:00:14 preparation of your testimony today?
11:00:15 A. Yes, I have.
11:00:18 Q. And, Paul, if you would put up, please, Plaintiffs'
11:00:22 Exhibit 327. Doctor, what I have put up is the original
11:00:32 2024 version of the heat score in effect at the time of
11:00:36 the preliminary injunction; is that right?
11:00:37 A. That's correct.
11:00:38 Q. Okay. I want to go through the two versions and the
11:00:42 changes they've made. First, let's just identify what the
11:00:44 changes are and then, when we get to the current one,
11:00:46 let's talk about your opinions about it, okay?
11:00:50 A. Yes.
11:00:50 Q. So first of all, I want to talk about the change from
11:00:54 this one to the next version. Paul, if you could bring up
11:00:57 Exhibit 328, please. And I think we see down at the
11:01:05 bottom that this is the 2025 revision, correct?
11:01:08 A. Yes.

11:01:09 Q. And what change has been made from the original heat
11:01:12 score to this one?
11:01:14 A. Well, from 2024, they did not have age as a
11:01:19 freestanding criterion, and now in 2025, a guide change, a
11:01:25 standalone change where the temperature was standalone if
11:01:30 you were 65 years old or older standalone, that was --
11:01:36 give you a point on the heat score.
11:01:39 Q. And it's your understanding that this heat score is
11:01:42 used in order to determine whether prisoners are able to
11:01:45 have air-conditioned housing; is that right?
11:01:46 A. Correct.
11:01:47 Q. Paul, if you'd put up Exhibit 328, please. And down
11:01:55 there at the bottom left, this is the revision that's in
11:01:59 effect today, February of 2026; is that right?
11:02:01 A. Yes.
11:02:02 Q. And what change has been made between the second one
11:02:05 and this one, Doctor, from 2025 to 2026?
11:02:10 A. Well, if you look, for example, you'll see that the
11:02:15 medication is now listed to medications highly active
11:02:22 anticholinergic medications and for four days. So this is
11:02:27 much more restrictive in terms of limiting the type of
11:02:32 medication and the four days is without any scientific
11:02:37 basis.
11:02:37 Q. Let me just make sure we're all with you. I think
11:02:40 you'd said the first change from the first to the second

11:02:42 version, which is the age category, are you talking about
11:02:46 the category below that that's called medication?
11:02:50 A. Correct. I am.
11:02:51 Q. And it says -- the words there are on any HAAC RX for
11:03:01 four days or more, is that what you were just talking
11:03:03 about?
11:03:03 A. Yes.
11:03:04 Q. And then, we have -- this document's divided into two
11:03:08 parts. Some that apply only if you're over the age of 65
11:03:12 on the bottom and then, the ones above that are without
11:03:15 age restriction. Is that how this works?
11:03:17 A. Yes.
11:03:17 Q. Okay. And help us understand the nature of this
11:03:22 change. HAAC stands for what?
11:03:25 A. Highly active anticholinergic medication.
11:03:30 Q. Okay. We've got that definition at the bottom. What
11:03:32 is an anticholinergic medication if you'd remind us?
11:03:35 A. So an anticholinergic medication is -- well, first of
11:03:40 all, we have to understand that the sweat glands are --
11:03:45 acetylcholine is the chemical that's in charge of making
11:03:49 the sweat glands work, and so, an anticholinergic is one
11:03:52 that interferes with the acetylcholine and interferes with
11:03:58 the sweat gland function. Now, there are at least 30
11:04:01 scores that score certain medications with regards to how
11:04:05 anticholinergic they are.

11:04:07 So, for example, there might be something that's
11:04:10 less affecting to the sweat gland and/or more affecting to
11:04:16 the sweat gland. The point is that any anticholinergic
11:04:21 medication will interfere with sweat gland function and it
11:04:26 will do that immediately. You don't need to be on a
11:04:29 medication for four days before sweat glands stop working
11:04:34 sufficiently. There's no science behind this four days
11:04:39 and there is no reasonable scientific theory to suggest
11:04:43 that four days is some kind of a day that should be a
11:04:48 limitation here at all.
11:04:49 Q. And is that opinion based on your clinical
11:04:53 experience, education and training of knowing and seeing
11:04:55 how these drugs work in patients?
11:04:57 A. Yes.
11:04:57 Q. And so, just to understand your criticism of the
11:05:02 medication, this HAAC category is that it does not include
11:05:07 all of those drugs, just a subset?
11:05:10 A. Correct. I mean -- yes. You don't have to be on a
11:05:15 highly active anticholinergic medication. There's
11:05:19 disagreement in the scientific literature as to which of
11:05:22 the anticholinergic medications are highly
11:05:26 anticholinergic. What I know clinically and as a
11:05:29 scientist who studies this and as a medical toxicologist
11:05:32 that anticholinergic is anticholinergic in the sweat
11:05:36 glands will not work as well.

11:05:38 Q. So any drug that's anticholinergic, the whole
11:05:42 category ought to be included?
11:05:43 A. That's right.
11:05:44 Q. And I believe you told us that it's your opinion that
11:05:46 it should start on day one of taking that prescription?
11:05:48 A. Yes, it should.
11:05:49 Q. Do you have clinical experience seeing that those
11:05:52 drugs begin working on day one?
11:05:54 A. I have clinical experience and there are also case
11:05:57 reports in the literature that show that one child for
11:05:59 example is on -- a walk in Big Bend, I remember that as a
11:06:03 Texan, and that one child took a Contact pill, which is an
11:06:06 anticholinergic, and that child collapsed in heat stroke
11:06:09 on that day with that medication. There are other
11:06:13 examples of this in the literature and in my own clinical
11:06:15 experience.
11:06:17 Q. All right. Now, Doctor, having discussed what the
11:06:20 changes were, I now want to ask you this current version,
11:06:23 the 2026 version. In your opinion, does this heat score
11:06:27 document do a good job covering the medications and
11:06:31 medical conditions that should be listed that make you
11:06:34 heat sensitive?
11:06:35 A. Well, let's just start with the medications. The
11:06:37 Texas Department of Correctional Justice has a whole list
11:06:41 of medications that are -- that make somebody heat

11:06:45 sensitive. I'll argue that that is a much smaller and
11:06:49 more limited list than other states that I've looked at
11:06:53 their lists and that is too limited. But before I talk
11:06:57 about that, that list is not even here on this at-hand
11:07:02 heat score so how can that be?
11:07:03 Q. Let me ask you a question, Doctor. On this chart, is
11:07:08 -- for someone who is under the age of 65, is the highly
11:07:13 acting anticholinergics the only medication listed where
11:07:16 just standing alone taking it without any other condition
11:07:19 or factor that gives you a heat score?
11:07:22 A. Well, it is on this chart. But if we look at the TD
11:07:29 -- Texas Department of Correctional Justice, they have an
11:07:32 entire list of medications. A list should be here.
11:07:35 Q. Let me put that up for you since you're mentioning
11:07:37 it, Doctor.
11:07:39 MR. SINGLEY: First of all, your Honor, I will
11:07:39 move to admit Plaintiffs' Exhibit 327, 328 and 329, the
11:07:44 heat scores.
11:07:45 THE COURT: Any objection?
11:07:47 MS. CARTER: No objection, your Honor.
11:07:47 THE COURT: So admitted.
11:07:49 Q. (BY MR. SINGLEY) I want to talk to you about this
11:07:52 heat score and let me back up. Let me ask you again. I
11:07:59 hear you saying that this list is under-inclusive as
11:08:05 regard to medications. Is the list, 2026 heat score list

11:08:08 in your opinion under-inclusive with regard to the medical
11:08:13 conditions that are listed on?
11:08:14 A. Yes.
11:08:14 Q. You began mentioning medications and the TDCJ heat
11:08:21 stress medications list. Paul, if you'd put up
11:08:24 Plaintiffs' Exhibit 333. Maybe 332. It's drugs.
11:09:08 Dr. Vassallo, do you recognize this document?
11:09:14 A. I do.
11:09:14 Q. What is it?
11:09:15 A. This is the drugs associated with heat stress that I
11:09:20 was referring to.
11:09:21 Q. And whose list is this? Is this a TDCJ system list
11:09:25 that gets used?
11:09:26 A. Yes.
11:09:27 Q. And so, do we see -- so it's titled -- TDCJ itself is
11:09:35 listing these as drugs associated with heat stress for the
11:09:39 Texas system; is that right?
11:09:40 A. That's right.
11:09:41 Q. Are any of these drugs that TDCJ says are associated
11:09:45 with heat stress actually on the current version of the
11:09:49 heat score document that determines whether you might get
11:09:53 air-conditioned housing?
11:09:53 A. No.
11:09:55 Q. And so, in your opinion, which of the drugs from
11:10:01 Exhibit 333, the heat stress drug list, should be on the

11:10:05 heat score documents?
11:10:06 A. Well, like if we started at all the anticonvulsants,
11:10:11 the anticholinergics are -- to some extent might be
11:10:17 included that if the Texas Department of Corrections
11:10:23 thinks that, for example, Benadryl is an anticholinergic
11:10:27 that's highly active, or Cogentin, well, you could say
11:10:30 that it's included, but it's actually not written out as
11:10:34 such. The antihistamines, you see the Benadryl there.
11:10:38 You see the antipsychotics all, that's good. All of them
11:10:42 should be on there. They're not here as all. The
11:10:46 antidepressants. So the beta blockers, all of these
11:10:52 things that decrease the function of the heart and lower
11:10:55 blood pressure, the calcium channel blockers and
11:10:58 diuretics, all of those should be on this heat scoring
11:11:01 at-hand list.
11:11:03 Q. And just to make clear, is it your opinion that all
11:11:06 of the drugs listed on this heat stress list, Exhibit 333,
11:11:10 should all of them be on the heat score list as a
11:11:13 standalone heat factor?
11:11:14 A. Yes.
11:11:14 Q. And once you add the drugs from this heat stress
11:11:19 list, does that fix the heat score? Have we now covered
11:11:21 all the drugs that you should think should be on there to
11:11:24 cover heat-sensitive drugs?
11:11:26 A. So let me just address this. In order to answer that

11:11:29 question, let me address this list of drugs associated
11:11:32 with heat stress. And first of all, the SSRIs, what are
11:11:37 those? Those are selective serotonin reuptake inhibitors
11:11:41 used to treat depression, they should be either -- they're
11:11:46 not on the list. They absolutely should be on the list.
11:11:50 They're on other lists of prisons, for example, in
11:11:54 California, they're on the list. And so forth.
11:11:56 So in my experience working in this field, I know
11:11:59 that this is -- SSRIs affect the brain and affect
11:12:04 thermoregulation. The ace inhibitors, another
11:12:07 anticholinergic -- excuse me, another antihypertensive
11:12:12 medication should be on it. Those drugs affect the
11:12:17 kidneys that should be on the list and are on other lists
11:12:19 in other states. All of the anti-Parkinson's drugs should
11:12:23 be on the list. Other antidepressants other than SSRIs
11:12:29 like the monoamine oxidase inhibitor should be on the list
11:12:33 and other lists, and muscle relaxers.
11:12:34 Q. Okay. You mentioned hypertension. Should all drugs
11:12:38 used to treat hypertension should be on the heat-sensitive
11:12:42 list?
11:12:42 A. Yes, they should.
11:12:44 Q. And, for example, are calcium channel blockers on
11:12:50 this list? Its lists one drug, amlodipine, right?
11:12:52 A. Right.
11:12:53 Q. Are there other calcium channel blockers than that

11:12:56 one?
11:12:56 A. There are many. There are other classes and there
11:12:58 are many. There's not only amlodipine. There are many
11:13:02 drugs that are calcium channel blockers that are not on
11:13:06 the list.
11:13:06 Q. So for the category of calcium channel blockers,
11:13:09 should every drug in that category be on the heat stress
11:13:12 list?
11:13:12 A. Yes.
11:13:13 Q. Is it the same for beta blockers?
11:13:16 A. Yes.
11:13:16 Q. Is it the same for diuretics?
11:13:18 A. Yes.
11:13:18 Q. Is it the same for antidepressants?
11:13:21 A. Yes, it is.
11:13:22 Q. Is it the same for all anticholinergics, I believe
11:13:26 you've testified?
11:13:26 A. Yes.
11:13:27 Q. What about antihistamines? Does it apply to all
11:13:31 antihistamines?
11:13:33 A. Yes, antihistamines and anticholinergics and
11:13:36 antihistamines are very similar in their effects. They're
11:13:39 dry. That's why we use them.
11:13:42 Q. Okay. We've talked a bit about the medications and,
11:13:45 again, those medications you've just been testifying,

11:13:49 should they be on the heat score list as standalone, you
11:13:52 get heat sensitivity points just for taking the drug
11:13:56 without anything else going on?
11:13:57 A. Yes.
11:13:57 Q. Let's turn now from drugs to medical conditions. And
11:14:02 so, when we look at the heat score list of medical
11:14:06 conditions, what is your opinion about whether the medical
11:14:12 conditions that are listed adequately cover heat-sensitive
11:14:16 conditions or not?
11:14:17 A. Well, it's under-inclusive and I would like to walk
11:14:22 through those, if I may.
11:14:23 Q. Yeah. If you could tell us what should be on here
11:14:26 that's not as far as medical conditions.
11:14:28 A. So look at cardiac, hypertension is not on there. So
11:14:32 somebody with hypertension who's now being treated with
11:14:36 drugs that treat hypertension, hypertension is a extremely
11:14:42 important contributor to heart disease. Hypertension
11:14:46 should be there. Valvula disease, one could think about
11:14:49 that from the inside of the heart where the valves are, if
11:14:51 you have a leaky valve and you can't pump the blood out
11:14:55 properly and those kinds of things, it could go on out to
11:14:57 the cells if there's a genetic change that makes -- under
11:15:01 stress, you have people that they have electrical
11:15:03 conduction problems because their genetic problems, that
11:15:08 would be another thing.

11:15:09 But you see under neurologic, there's no
11:15:14 Parkinson's, there's no Lou Gehrig disease, which is ALS.
11:15:20 Q. That should be included?
11:15:22 A. Yes.
11:15:22 Q. And under psychiatric, you see that every one of
11:15:26 those, psychosis as we know, everybody knows that
11:15:30 psychosis means that you're not in touch with reality, and
11:15:33 so, somebody cannot advocate for themselves when they are
11:15:36 not in touch with reality. So psychosis should not be
11:15:40 limited by only those people who are highly active
11:15:43 anticholinergic drugs for four days.
11:15:46 Schizophrenia is another limitation to an ability
11:15:51 to express your distress or to ask for help because of the
11:15:55 way that they present themselves. And somebody with mania
11:16:00 or depression, which is what -- bipolar disease, all of
11:16:04 these individuals and bipolar is there without a
11:16:07 limitation.
11:16:10 Cognition, clearly somebody with dementia or
11:16:13 intellectual, those are good. I think it's good that
11:16:16 those are there. But where's the diabetes? I mean, the
11:16:22 literature is replete and the science is replete that
11:16:25 diabetes is a disease of the microvasculature. It causes
11:16:29 kidney problems. It causes cardiovascular problems.
11:16:33 Diabetes absolutely should be on this list. This is a
11:16:36 glaring -- as well as lung disease. The majority of

11:16:39 deaths in hot weather or hot conditions is from pulmonary
11:16:45 and cardiovascular disease. There's no lung diseases
11:16:49 freestanding here. Asthma, COPD, emphysema,
11:16:53 bronchiectasis, pulmonary hypertension, that should all be
11:16:56 there.
11:16:57 Kidney diseases, kidney diseases render one
11:17:01 unable to do electrolyte -- render one unable to regulate
11:17:07 their volume status, dehydration, electrolytes, all those
11:17:11 different things. And even liver. I mean, the liver, if
11:17:14 you have a fibriotic liver or you're undergoing, so those
11:17:17 would be another thing. But liver less so in my opinion
11:17:20 than the others that -- and, of course, obesity. Where is
11:17:23 obesity? It's well understood by -- a layperson knows
11:17:27 that if you're obese, you have a bigger insulation. You
11:17:32 have a much bigger surface area compared to the skin.
11:17:37 Obesity is a freestand -- should be standing there by
11:17:41 itself.
11:17:41 Q. Okay. And in your opinion, all those things just to
11:17:44 make sure that you testify about in your opinion should be
11:17:47 on the heat score list as standalone categories.
11:17:49 A. Correct.
11:17:50 Q. Okay. Have we done a good job of covering what you
11:17:54 see as the omissions in the heat score, Doctor?
11:17:57 A. Well, I would just also -- I think I've said that
11:18:02 obesity. Down below, when you look at only if you're over

11:18:05 the age of 65 and you have a, obviously, obesity, BMI of
11:18:10 over 40, it should not just be for over the age of 65. So
11:18:14 if you're obese, it belongs on the list.
11:18:17 Q. That's the concept, I guess, of it being standalone.
11:18:19 Here, it's tied to age, but in your opinion, it should be
11:18:21 standalone?
11:18:22 A. Correct.
11:18:23 Q. For someone of any age. Okay. Thank you, Doctor.
11:18:30 And I don't know if I did it already. I'll move to admit
11:18:32 Plaintiffs' Exhibit 333.
11:18:34 THE COURT: Any objection?
11:18:36 MS. CARTER: Your Honor, I do object on
11:18:37 foundation. Plaintiffs' own exhibit has this -- it say
11:18:42 CMHC D-27.2. That's the Correctional Managed Healthcare
11:18:46 policy, not a TDCJ policy. Dr. Vassallo can certainly
11:18:49 state her opinion on this document, but it shouldn't be
11:18:52 admitted when she doesn't have foundation to authenticate
11:18:55 it.
11:18:55 MR. SINGLEY: It's from their own managed
11:18:58 healthcare policy, your Honor. This list. And TDCJ is
11:19:05 part of CMHC, the Correctional Managed Healthcare System.
11:19:09 MS. CARTER: Your Honor, you can take judicial
11:19:11 notice of the Government Code 501133. There's one person
11:19:16 appointed by TDCJ. The rest are medical providers.
11:19:18 THE COURT: Okay. Overruled and admitted.

11:19:22 Q. (BY MR. SINGLEY) Also, briefly, Paul, if you'd bring
11:19:25 up Plaintiffs' Exhibit 334. Doctor, just as we were
11:19:35 previously looking at this Correctional Managed Healthcare
11:19:40 heat stress drugs list used in the TDCJ system, here we
11:19:44 have one that lists common comorbidities that may affect
11:19:49 heat tolerance?
11:19:50 A. Yes.
11:19:50 Q. We've moved kind of from the medications to the
11:19:54 medical conditions side of this listing from this manual,
11:19:57 right?
11:19:57 A. Yes.
11:19:58 Q. And in your opinion, should all of the conditions
11:20:05 listed on Exhibit 334 be included on the heat score
11:20:09 document?
11:20:09 A. Yes. So it says common comorbidities that may affect
11:20:15 heat tolerance and there's a nice list there and those are
11:20:17 not -- some of those are not on the list.
11:20:20 Q. Okay. And some of them are ones missing you just
11:20:23 talked about. For example, I see diabetes, psychiatric
11:20:28 conditions, and just says cardiovascular disease, correct?
11:20:32 A. Yes.
11:20:32 Q. So those are conditions that are listed in the
11:20:36 healthcare policy but are not listed in the heat score?
11:20:39 A. That's correct.
11:20:39 Q. But should be?

11:20:40 A. Yes.
11:20:40 Q. And should all of these be listed as standalone items
11:20:44 for the heat score?
11:20:45 A. They should.
11:20:46 Q. All right. Your Honor, I'll move to admit
11:20:48 Plaintiffs' Exhibit 334.
11:20:50 MS. CARTER: Same objection, your Honor.
11:20:51 THE COURT: Overruled and admitted.
11:20:54 Q. (BY MR. SINGLEY) All right, Doctor. I'd like so
11:20:56 shift gears moving way from talking about policies and
11:21:00 talking about some specific death cases now.
11:21:03 First of all, at the preliminary injunction
11:21:05 hearing, you testified about a number of deaths that in
11:21:10 your opinion were heat-related; is that correct?
11:21:14 A. Yes.
11:21:14 Q. Doctor, we're not going to go back through all your
11:21:17 testimony on why you think that because you gave that
11:21:19 testimony at the hearing, but since that time, the
11:21:24 Defendant TDCJ has retained experts challenging your
11:21:27 opinion that there are heat-related deaths. Do you know
11:21:31 that?
11:21:31 A. Yes. I read those opinions.
11:21:33 Q. And among -- we have Dr. Everitt, who's an M.D., and
11:21:39 Dr. De La Cruz, who's a Doctor of Pharmacy?
11:21:42 A. Correct.

11:21:43 Q. You've had a chance to read their reports and depositions?
11:21:44
11:21:45 A. Yes.
11:21:45 Q. So what I want to do is ask you since this is new since the hearing, those reports and depositions happened after the hearing, I want to ask you, first of all, did reading any of their opinions or depositions change your mind about the list of deaths being heat-related that you testified about at the preliminary injunction?
11:21:47
11:21:50
11:21:53
11:21:56
11:22:00
11:22:02 A. No.
11:22:02 Q. I'd like to just briefly go through each one of them to understand what the defense experts are saying about the cause of death and your response to it, okay?
11:22:05
11:22:08
11:22:11 A. Yes.
11:22:11 Q. So let's begin, if we can, with Mr. John Castillo. This was one of the ones you testified about at the preliminary injunction hearing. In your opinion, is this a heat-related death?
11:22:19
11:22:21
11:22:25
11:22:26 A. Yes.
11:22:26 Q. And, Doctor, just to clarify, at the preliminary injunction hearing, whenever I ask you for an opinion, will you give it to me in a reasonable degree of medical certainty?
11:22:30
11:22:33
11:22:35
11:22:35 A. Yes.
11:22:36 Q. Okay. And all your testimony so far has been to that

11:22:40 standard?
11:22:40 A. Yes.
11:22:40 Q. What are the defense experts saying is the cause of
11:22:44 death for Mr. John Castillo?
11:22:46 A. That Mr. Castillo had a seizure and he had a low
11:22:51 sodium and he had a seizure and that that was the cause of
11:22:55 his death.
11:22:56 Q. And what is your response to that and opinions on
11:23:00 those opinions offered by the defense experts? What's
11:23:03 your -- what do you have to say about that?
11:23:05 A. Well, first of all, let me just explain that Mr.
11:23:08 Castillo had a temperature -- a body temperature of 107.5.
11:23:13 Q. And is that a particularly significant temperature?
11:23:17 A. Well, I mean, that's above anybody's definition of
11:23:20 heat stroke. This is a heat stroke temperature and he was
11:23:24 on two medications that would render him susceptible to
11:23:28 heat stroke.
11:23:29 Q. What are those?
11:23:29 A. Oxybutynin and sertraline, I just mentioned that
11:23:33 that's an SSRI type of antidepressant. He had a history
11:23:37 of epilepsy. Now, the experts, I think, were relying on
11:23:47 in part, as I do, on the autopsy. The autopsy was not
11:23:53 aware that there was no seizure. The autopsy describes
11:23:58 that there was a laceration on the patient's head and a
11:24:02 bite on the tongue and they said that the patient had a

11:24:06 history of epilepsy, maybe had a seizure. The entire
11:24:10 documentation of finding Mr. Castillo --
11:24:13 Q. And just to clarify something -- I'm sorry to
11:24:14 interrupt -- but that was the basis, what you just
11:24:17 described was the basis in the autopsy for saying that
11:24:20 there was a seizure, the laceration on the head and
11:24:23 tongue?
11:24:23 A. That's correct. There were no observed seizure.
11:24:26 Q. But tell us why you just said that there was, in
11:24:29 fact, no seizure. Why do you have that opinion?
11:24:31 A. Well, first of all, I read the entire death report,
11:24:37 OIG, all of its descriptions of what happened to Mr.
11:24:39 Castillo, and there was no seizure description. But what
11:24:45 was described is as they were removing Mr. Castillo, he
11:24:48 was sweaty and they dropped him on his head and every
11:24:54 report from every person present said that that caused a
11:24:58 laceration to the forehead. Now, this is very important
11:25:00 because I understand if a medical examiner concludes that
11:25:03 a bite to the tongue and a cut on the head would be a
11:25:06 seizure, but there was no seizure. It was not described
11:25:10 and it's clear that the patient was dropped on his head.
11:25:13 The medical examiner did not have that information so...
11:25:17 Q. Let me ask you kind of a followup to that, Doctor.
11:25:19 So I understand you disagree with it because the review of
11:25:23 all the materials indicates to you there was no seizure,

11:25:25 right?
11:25:25 A. Correct.
11:25:26 Q. There's an explicit reference from the security folks
11:25:30 that they dropped him and that's what caused the
11:25:32 laceration?
11:25:33 A. Multiple. Everybody described this letting him slide
11:25:37 and hit his head.
11:25:38 Q. And now, just sort of hypothetically, I understand
11:25:41 that opinion, but if we were going to consider whether if
11:25:45 there was a seizure, it could cause a high body
11:25:49 temperature, would you expect seizure activity to cause a
11:25:52 body temperature at this level of 107.5 if you were in air
11:25:57 conditioning?
11:25:57 A. Well, I would not. And the medical examiner
11:26:01 explicitly states in their report, it is unusual for a
11:26:05 seizure to cause a temperature of 107.5 and I agree a
11:26:11 hundred percent and there was no seizure. The seizure did
11:26:15 not -- that never happened. Did not cause this
11:26:17 temperature and there was a -- so that's what happened
11:26:22 here.
11:26:22 Q. And even if we were talking about a seizure, is it
11:26:26 your opinion that a seizure activity in Mr. Castillo would
11:26:30 not have gotten the body temperature that high?
11:26:33 A. That's correct.
11:26:34 Q. Okay. Doctor, in your opinion -- well, let me back

11:26:38 up. At the preliminary injunction hearing, we discussed
11:26:41 two categories of heat deaths. One is heat stroke where
11:26:46 it's just heat alone appears to be the only cause and a
11:26:49 heat stroke death. And then, you've also referred to
11:26:52 deaths where heat acts on underlying medical conditions.
11:26:55 Do I have that right, those categories?
11:26:57 A. I really cannot emphasize this enough. The answer is
11:27:01 you have it right that although there will be emphasis on
11:27:05 individuals with high temperatures in this -- as we go
11:27:08 through these cases, the massive number, the mass of
11:27:12 people who are injured from heat are injured because of
11:27:16 worsening of their underlying conditions, cardiovascular,
11:27:20 pulmonary disease, they present -- this is all over the
11:27:23 scientific literature, all over the world, and here in the
11:27:27 United States.
11:27:28 So this is the -- we may focus on heat stroke
11:27:32 with elevated body temperatures, but this is just a small
11:27:37 number of the absolute number of people affected by the
11:27:41 heat and the worsening of their condition.
11:27:42 Q. Okay. Doctor, in your opinion, did Mr. Castillo
11:27:47 suffer a heat stroke death, the first category?
11:27:49 A. He did.
11:27:50 Q. And in your opinion, if he had been housed in air
11:27:56 conditioning, would he have lived holding everything else
11:27:57 the same?

11:27:58 A. Yes, of course. I'd like to just add that the
11:28:02 medical examiner here said that heat is a contributing
11:28:05 factor to this death.
11:28:06 Q. That's mentioned on the autopsy?
11:28:07 A. It is.
11:28:08 Q. Let's move to the next death you testified about at
11:28:14 the preliminary injunction hearing on Armando Gonzales,
11:28:17 Doctor. Same kind of question pattern. What did the
11:28:21 defense experts say about cause of death and your response
11:28:24 to that? First what did they say?
11:28:25 A. Okay. First of all, the expert said that Ms. Armando
11:28:33 Gonzales, that opiates were the cause of her death. Ms.
11:28:41 Gonzales had a body temperature of 109.4.
11:28:45 Q. Do opiates raise body temperature, Doctor?
11:28:47 A. Opiates do not cause elevation. Opiates as everybody
11:28:52 knows, they cause death by lowering the respiratory rate
11:28:56 to zero. They lower the temperature. They lower the
11:28:59 mental status so that you're, you know, semi-conscious and
11:29:05 they absolutely do not, in any circumstances, cause heat
11:29:09 stroke, which is 109.4.
11:29:14 Q. And Ms. Gonzales was taken to the hospital and in the
11:29:19 hospital a couple of days?
11:29:21 A. She was. So the urine toxicology in the emergency
11:29:27 department was negative. The reason that the experts on
11:29:31 the defense are opining that this was some kind of an

11:29:35 opiate-causing heat stroke, which it does not, is that
11:29:40 they were not -- they disregarded or didn't know that the
11:29:48 urine toxicology was negative in the emergency department.
11:29:52 She spent two days in the intensive care unit on a
11:29:56 respirator. Every physician knows that when you're on a
11:29:59 respirator even if you're unconscious because of your
11:30:03 initial injury, you are sedated. And most commonly, we
11:30:06 used sentinel, which is an antipain thing, it's an opiate,
11:30:09 and then, we add a short-acting midazolam, which is
11:30:13 Versed. Both of those were found. The medical record was
11:30:16 not made available.
11:30:18 Q. And I'm sorry, let me clarify something. Both of
11:30:21 those were found. Was this toxicology report done with
11:30:24 the autopsy?
11:30:25 A. Correct. The autopsy found midazolam and fentanyl.
11:30:30 Q. But just to understand, you mentioned that would have
11:30:34 been done with blood from the autopsy, the tox report on
11:30:37 the autopsy; is that right?
11:30:38 A. That's correct. That was in Ms. Gonzales' blood.
11:30:41 Q. You mentioned a urine screen before she went to the
11:30:44 hospital or when she went to the hospital?
11:30:46 A. In the emergency room, they screened her and it was
11:30:50 negative.
11:30:50 Q. Okay. And so, in your opinion, your whole review of
11:30:56 this death investigation materials and file, does it

11:31:00 appear that she had taken opiates before she went to the
11:31:04 hospital?
11:31:05 A. She did not.
11:31:06 Q. Okay. Do you see in the file materials, do you see
11:31:12 any other reason other than ambient heat for the high body
11:31:16 temperature?
11:31:19 A. Well, let me just say that ambient heat here is
11:31:25 working on Ms. Gonzales, who is obese. She has psychosis,
11:31:31 manic depressive illness with psychosis. She's on
11:31:34 medications that render her heat sensitive that is
11:31:37 Buspirone, which is Wellbutrin. She's on citalopram,
11:31:41 that's the SSRI, and on spironolactone, which is a
11:31:46 dieretic.
11:31:49 Q. She has a number of heat-sensitizing factors?
11:31:53 A. That's right. She's very heat sensitive and she had
11:32:02 been asking for heat precaution, as well.
11:32:06 Q. And, Doctor, in your opinion, is Ms. Gonzales' death
11:32:09 a heat-related death?
11:32:11 A. Yes.
11:32:11 Q. In your opinion, this is kind of the first category
11:32:14 of heat stroke or the second category of heat acting on
11:32:16 conditions?
11:32:17 A. Well, the heat acting on conditions with her, but
11:32:20 this is straight out heat stroke because understand when
11:32:23 heat is acting on conditions to make you die of that

11:32:28 condition, you often will have a normal temperature.
11:32:31 You're dying of whatever is worsening condition, your
11:32:34 diabetes, you have a heart attack, whatever it is. So
11:32:38 both are at play here.
11:32:39 Q. Okay. And to make sure we all understood what you
11:32:45 just said, when you have heat deaths where the heat
11:32:47 worsens conditions, those can be below a temperature
11:32:52 that's considered heat stroke. Is that what you're
11:32:52 telling me?
11:32:52 A. A hundred percent.
11:32:53 Q. What is the temperature when you start considering it
11:32:55 heat stroke?
11:32:56 A. Definitions can be 104-and-a-half Farenheit and 105
11:33:01 and you always have alteration of your mental status.
11:33:04 Q. And Ms. Gonzales' temperature of 109.4, is that
11:33:09 temperature standing alone heat stroke temperature?
11:33:12 A. Yes.
11:33:12 Q. Doctor, your opinion, if Ms. Gonzalez had been housed
11:33:16 in air-conditioned housing, would she have lived holding
11:33:19 everything else the same?
11:33:19 A. She would have lived, yes.
11:33:21 Q. Let's move on to the next death is Mr. Patrick
11:33:25 Wommack and, again, if you could tell us what are the
11:33:30 defense experts saying about the cause of death and what
11:33:33 are your opinions about that?

11:33:34 A. So Mr. Wommack had a body temperature of 106.9. The
11:33:38 experts say here that it was serotonin caused the
11:33:44 temperature and caused his death.
11:33:47 Q. And tell us a little bit about that serotonin. The
11:33:50 defense experts say serotonin caused the death. You're
11:33:53 familiar with serotonin as a clinician and toxicologist?
11:33:56 A. Yes, very very, very very familiar.
11:33:59 Q. What does that mean to say serotonin caused the death
11:34:04 as opposed to heat?
11:34:05 A. My understanding from the expert reports is that
11:34:08 there was excess serotonin in the body and that the
11:34:15 patient raised the body temperature to 106.9 because of
11:34:20 the excess serotonin.
11:34:23 Q. All right. And what is your opinion about that --
11:34:26 those thoughts about the cause of death from the defense
11:34:29 experts?
11:34:29 A. Well, first of all, I do degree with the autopsy who
11:34:32 says here that heat is a contributing factor. The heat
11:34:36 index was 113 degrees in Mr. Wommack's -- and it was not
11:34:41 only that day that it was 113. It was that hot for days
11:34:45 on end. He had not been allowed -- he had requested a
11:34:50 shower in the overnight, he had not been granted that. He
11:34:52 had a heat restriction, but he was still being held in 113
11:34:59 degree heat for day after day. The time course is not
11:35:03 consistent with serotonin overdose.

11:35:06 Q. What do you mean by the time course?
11:35:07 A. Because at 9:00 p.m. -- excuse me, at 9:00 a.m., he
11:35:13 was interacting. At 2:00 p.m., he was dead. That's not
11:35:18 how serotonin overdoses behave. I have seen endless
11:35:23 serotonin and I'm still consulting on them as a consultant
11:35:27 for the New York City Poison Control where I do at least
11:35:29 five times -- I'm batting up the fellows. This is not
11:35:33 serotonin overdose.
11:35:34 Q. And you're saying that because it's the amount of
11:35:36 time, it usually takes longer? Or what are you telling
11:35:39 us?
11:35:39 A. You're not walking and interacting at 9:00 a.m. and
11:35:42 dead at 2:00 p.m.
11:35:44 Q. It usually takes longer typically?
11:35:46 A. It does take longer.
11:35:48 Q. Okay. And so, Doctor, do you think it's a reasonable
11:35:52 theory to say that the -- of serotonin or serotonin's
11:35:57 overdose here alone is what caused the death without
11:36:00 considering heat?
11:36:01 A. No. Mr. Wommack was on a number of heat-sensitivity
11:36:06 medications.
11:36:07 Q. What were those?
11:36:08 A. Well, benztropine, which we already determined from
11:36:12 the heat list is a highly active anticholinergic, the SSRI
11:36:16 sertraline and long-acting Haldol.

11:36:19 Q. All right. And in your clinical experience for
11:36:24 decades, have you seen a lot of use of serotonin and
11:36:29 serotonin overdose?
11:36:30 A. A lot of overdoses and a lot of interactions, yes.
11:36:32 Q. So you're familiar just from dealing with patients
11:36:34 and as a toxicologist about serotonin syndrome and what it
11:36:38 is and how it works?
11:36:39 A. A hundred percent.
11:36:40 Q. Okay. And you're telling us you find this
11:36:44 presentation inconsistent with death from serotonin
11:36:47 syndrome?
11:36:48 A. Correct.
11:36:48 Q. Doctor in your opinion is Mr. Wommack's a heat stroke
11:36:51 death?
11:36:51 A. Yes.
11:36:52 Q. And in your opinion, if Mr. Wommack had been housed
11:36:56 in air-conditioned housing, holding everything else equal,
11:37:00 would he have lived, again, in reasonable medical
11:37:03 certainty?
11:37:03 A. Yes.
11:37:03 Q. All right. Let's turn to we've got the last two
11:37:06 deaths that you talked about at the preliminary injunction
11:37:09 next is Elizabeth Hagerty. What did the defense experts
11:37:14 have to say in their opinion about the cause of her death?
11:37:17 A. The defense expert said that low sodium known as

11:37:21 hyponatremia caused the death.
11:37:24 Q. Hyponatremia?
11:37:25 A. Yes. Low sodium. Low salt or low sodium.
11:37:30 Q. And what do you think about that theory of the cause
11:37:33 of death from Ms. Hagerty?
11:37:36 A. I disagree. This is why. Let's start out with the
11:37:41 fact that Ms. Hagerty had no temperature taken, which is
11:37:45 completely inexcusable and not up to any medical standard.
11:37:48 Q. Well, let's stop there for a second since you've said
11:37:51 that and I want to follow up on that. Tell us in your
11:37:55 opinion, should a body core temperature or body
11:37:57 temperature of Ms. Hagerty have been taken?
11:37:59 A. Yeah. She was held in a high heat condition with 102
11:38:05 degrees in her cell and outside. The conditions were very
11:38:09 hot day after day and she's suddenly found and they don't
11:38:17 take a temperature. How can that be? Can you imagine
11:38:22 somebody was found in cold on an outdoor day like Dr.
11:38:27 Everitt, the defense expert said the Hs being hypothermia
11:38:33 and other causes you don't take a temperature, nobody
11:38:35 would ever be declared dead until they're recognized to be
11:38:39 warm and dead other than wake up in the morgue, which has
11:38:42 happened. So you always take a temperature.
11:38:44 And Dr. Everitt, himself, wrote a paper in 2023
11:38:48 emphasizing the importance of taking the temperature. He
11:38:52 describes the case in which he took a temperature on an

11:38:55 83-year-old here in Texas who was unconscious, he put the, you know, the infrared thermometer to the patient's temple, it read high it was at 107 degrees. They started warming the patient, which he's an EMS expert. On the way to the hospital, the patient woke up and arrived at the lower temperature and woke up.

So you can take a temperature with infrared. Does it correlate a hundred percent? No. But it doesn't have to. Can you put a little plastic thing in the mouth and say an oral -- temperatures are no longer those little red things that your mom when you were two years old -- the little glass thing with the mercury. That's not how temperatures are taken. You can infrared in the ear. All of those are going to tell you if it's 102, we know it might be 107. If it's 107 like in Dr. Everitt's case report, well, that means something.

Q. Let me ask you this, Doctor, as a long-time clinician. Let's go back to the heat. I hear what you're saying about the cold.

You're saying here's Ms. Hagerty down in the heat and her temperature should have been taken. What's the clinical purpose of taking someone's temperature at that point? Why as a doctor would you do that? How does it help you?

A. Because it's all about the treatment. As soon as you

11:40:12 see that someone is hot, you cool them. And cardiac
11:40:16 arrest, yes or no, you start to cool the patient. And,
11:40:22 you know, this expert, Dr. Everitt, said you can't cool
11:40:24 people and return them from cardiac arrest. I looked
11:40:28 specifically in the literature to get outside of my own
11:40:30 clinical practice where I know that you can cool people in
11:40:34 cardiac arrest and they regain their heart function or
11:40:36 their electrical activity and the literature is clear that
11:40:40 you can do that. I don't know that Dr. -- I don't know
11:40:43 why he would say that. It doesn't matter to me but it's
11:40:46 wrong.
11:40:47 Q. Let me ask you about the cooling. You've said,
11:40:48 right, if you take someone's temperature and you see that
11:40:51 their body temperature is very high, you cool them. What
11:40:54 do you actually do? What would you do to treat that
11:40:57 patient if that's what you found?
11:40:57 A. Well, first of all, you can dunk them in ice. The
11:41:02 Texas Department of Correctional Justice says they have a
11:41:05 lot of ice and I do believe they do. You can cover them
11:41:07 in ice right on the floor of the prison. Or you can have
11:41:10 a special bed with a little -- there are a lot of things
11:41:14 you can do. In the prehospital care that they have frozen
11:41:17 sheets in the medical infirmary where all of these
11:41:20 patients are transferred. You could put them on frozen
11:41:23 sheets and spread that out over them and put them in the

11:41:26 ambulance.
11:41:27 Q. And you mentioned cardiac arrest. Are you saying
11:41:30 that you should take someone's temperature even if they're
11:41:32 in cardiac arrest or unresponsive to see their
11:41:36 temperature?
11:41:37 A. A hundred percent. You might be able to cool them
11:41:40 and resuscitate them.
11:41:41 Q. It's not too late at that point?
11:41:43 A. It's in my clinical practice and it's in the
11:41:45 literature because when I read that he said that, I was so
11:41:49 shocked by him to say that with any experience, to go to
11:41:53 the literature I looked specifically for these cases and
11:41:55 they're present.
11:41:55 Q. Have you had that in your clinical practice where
11:41:58 you've seen someone who's in cardiac arrest and
11:42:01 unresponsive and you take their temperature and cool them
11:42:03 and bring them back?
11:42:04 A. Of course. And like I say, not only I. This is a
11:42:10 known fact. This is why we take temperatures: Too cold
11:42:14 or too hot.
11:42:16 Q. Let's get back to -- thank you, Doctor -- get back to
11:42:19 Ms. Hagerty for a second. I'd say that started that you
11:42:23 mentioned they haven't taken a body temperature when she
11:42:25 was in hot conditions, I think you said that she had some
11:42:27 conditions that made her heat sensitive. Did she and what

11:42:30 are they?
11:42:31 A. So Ms. Hagerty had obesity, diabetes and high fats,
11:42:36 triglycerides. She had also had a gastrointestinal
11:42:42 syndrome, nausea and vomiting.
11:42:44 Q. Why does that matter?
11:42:45 A. Well, first of all, why did she have that? Could it
11:42:49 be from heat illness? Yes, it could be, but it matters
11:42:53 because she -- because when you become dehydrated, you
11:42:58 could have two kinds, too high sodium called hypernatremic
11:43:02 dehydration, or you could have too low of sodium
11:43:06 hyponatremia, and she was low sodium. And the other thing
11:43:13 that she had on autopsy was -- and it's listed in here is
11:43:17 kidney injury. She was so dehydrated that the autopsy
11:43:21 found that her kidney was outrageously dehydrated and
11:43:27 injured.
11:43:28 So the autopsy itself says that heat and obesity
11:43:33 and diabetes were contributing to her death.
11:43:36 Q. Okay. And just run through for us lay folks when the
11:43:44 defense experts say it's low salt that killed her, not the
11:43:47 heat, help us understand why that, you believe, is wrong.
11:43:53 A. Because what the defense expert said that in a
11:43:58 patient with a heat stroke, too, with this patient didn't
11:44:00 have a temperature taken so I don't know what her
11:44:02 temperature was. The gastrointestinal illness causes the
11:44:08 low sodium and the dehydration, which, of course, your

11:44:12 kidneys are not -- are now damaged and all of those -- and
11:44:17 you're holding such a person with a gastrointestinal
11:44:20 illness with serious medical conditions and outrageous
11:44:25 temperatures and heat indices, that's why the high heat
11:44:30 with these underlying medical conditions caused her death.
11:44:34 Q. So in other words, your opinion, the clinical
11:44:38 presentation is the heat problems caused the low salt, not
11:44:41 the other way around.
11:44:42 A. Yes. And let me just expand. How many patients have
11:44:45 I seen with a sodium of 90 to a hundred? Hundreds. We
11:44:49 call them the tea and toast. Usually tend to be older
11:44:55 ladies or that's probably just pejorative for the time.
11:44:58 But tea and toast, she's hardly eating anything. You're
11:45:01 not getting any pretzels and you're not getting -- so your
11:45:03 sodiums are low. It depends on the period of time it
11:45:07 happens over and none of these patients are dying from low
11:45:10 sodium. They're dying of the thing that gave them the low
11:45:12 sodium so the rate at which you arrive at that sodium
11:45:16 affects your outcome. I have never seen anybody die of
11:45:22 low sodium.
11:45:22 Q. Doctor, in your opinion, is Ms. Hagerty's death --
11:45:26 was it a heat-related death?
11:45:27 A. Yes, it was.
11:45:28 Q. And in your opinion, was it the second category of
11:45:31 one where it was heat acting on health conditions?

11:45:34 A. Yes.
11:45:35 Q. And in your opinion, if Ms. Hagerty had been housed
11:45:39 in air-conditioning housing and everything else the same,
11:45:42 would she have lived?
11:45:43 A. Yes.
11:45:43 Q. Move to the last one that you testified about at the
11:45:46 preliminary injunction hearing, Mr. John Southards, and
11:45:51 same thing if you would, Doctor, what did the defense
11:45:53 experts say caused the death here?
11:45:54 A. So in Mr. Southards, they opined that Benadryl
11:46:01 overdose was cause of death.
11:46:02 Q. Okay. And will you tell us your thoughts about that?
11:46:06 Do you agree or disagree with that?
11:46:08 A. I disagree with that.
11:46:09 Q. Tell us why, please.
11:46:11 A. Let's start with the fact that Mr. Southards is a
11:46:15 36-year-old man. He was noted at the time of being found
11:46:19 that he was hot to the touch. These guys, heat stroke
11:46:23 patients, they are so hot, but there was no temperature
11:46:27 taken is inexplicable and un-excusable. Inexcusable. He
11:46:33 was still breathing, agonal breathing. That means he's
11:46:37 breathing, he's hot to the touch, and there's no cooling,
11:46:39 and there's no temperature. Inexcusable.
11:46:43 He also is morbidly obese. He's on
11:46:48 carbamazepine, another antiseizure medicine that could

11:46:51 cause his problem -- excuse me, I jumped up. His autopsy
11:46:56 showed that he wasn't a healthy guy even though he was
11:46:58 young. The autopsy showed he had prostate cancer and
11:47:02 thyroiditis. Another example that there are conditions
11:47:05 that people have that we don't know when they're in prison
11:47:07 and they shouldn't have to die to find the condition. He
11:47:10 had had psychosis. He was on Benadryl, Haldol, oxybutynin
11:47:15 and venlafaxine. All of those I've covered make you
11:47:19 highly heat sensitive.
11:47:20 And finally, you have a Benadryl or
11:47:24 diphenhydramine level and I'd like to speak to this --
11:47:30 Q. Diphenhydramine, Benadryl is just the trade name for
11:47:34 that drug --
11:47:34 A. That's right --
11:47:35 Q. -- so it's okay if we call it Benadryl?
11:47:37 A. Yes.
11:47:37 Q. So was there a level of doubt on his autopsy and what
11:47:41 does it mean to you in looking at his case?
11:47:44 A. One of the experts used a study by Pragst,
11:47:52 P-R-A-G-S-T, to support the idea that a 6.3 micrograms per
11:47:58 milliliter level has to be lethal. The Pragst study in
11:48:04 and of itself contradicts that. What the Pragst study
11:48:09 said was of the 66 individuals who they were asked -- who
11:48:14 were dead people who they were asked to get levels on, 55
11:48:18 of those had -- who died -- the minimum number was five,

11:48:25 okay? So here, we have a 6.3. You had to be at least 5
11:48:31 to die.
11:48:31 Q. I want to make sure I ask some clarifying questions.
11:48:35 Mr. Southards' level -- and I guess, let's for get the
11:48:38 units. I know they get complicated. The level was 6.3 in
11:48:41 the units you're using?
11:48:42 A. Correct.
11:48:43 Q. And would you tell us about this paper and what did
11:48:45 said? That's P-R-A-G-S-T, Pragst?
11:48:48 A. So what the paper says is very different from what
11:48:50 the expert says, right?
11:48:52 Q. And tell us about that?
11:48:52 A. So the paper has a number of living, people who lived
11:48:57 who, you know, with levels up to 8, into the 8 range. And
11:49:06 more importantly, so saying that you had -- the lowest
11:49:12 level was 5, then you -- is not the same as saying you
11:49:16 couldn't live with a low above 5.
11:49:19 Q. To make sure we understand, there had been a death
11:49:22 observed at the level 5, but there were deaths not until
11:49:26 much higher levels?
11:49:27 A. There were people much higher and there were people
11:49:31 living above 5. And even more important to me is every
11:49:40 toxicologist in the autopsy, they refer to the Baselt book
11:49:45 on toxic distribution of drugs. Baselt had 11 cases where
11:49:50 the range was from 8 to 31. There was nobody who died at

11:49:54 the Baselt 11 cases with the 6.3. They were all much
11:50:00 higher. So those were averages. The average was 16.
11:50:07 So having a level that's elevated does not equal
11:50:12 death. And this level was elevated, but it does not mean
11:50:18 he died of Benadryl and I say he did not. He was also --
11:50:22 he had a bunch of pills stuck in his -- you know, if
11:50:25 you're on an overdose to kill yourself, you don't leave
11:50:29 all the pills stuck in the bars. That's just not what
11:50:32 happens when you're overdosing. You take the pills that
11:50:35 you have access to.
11:50:35 Q. And when they went in, they found Benadryl pills
11:50:37 lined up --
11:50:37 A. All over the place, right.
11:50:38 Q. Okay. Doctor, I think you just told us about the
11:50:41 levels. Reeling that back, in your opinion in this
11:50:47 presentation, was the Benadryl level fatal in what caused
11:50:52 the death of Mr. Southards?
11:50:53 A. No.
11:50:54 Q. And tell us why in your opinion is it a heat-related
11:50:57 death instead of that?
11:50:59 A. Well, he had every condition and every medication
11:51:02 that renders you heat sensitive. He was clearly taking
11:51:07 Benadryl is what makes you heat sensitive.
11:51:09 Q. That's an antihistamine that's on that list?
11:51:12 A. That's correct. That's an anticholinergic

11:51:14 medication.
11:51:15 Q. So he has a number of heat-sensitive factors and
11:51:20 medications?
11:51:20 A. Yes.
11:51:21 Q. Okay. All right. So, Doctor, in your opinion, was
11:51:28 Mr. Southards a heat-related death?
11:51:30 A. Yes.
11:51:31 Q. And in your opinion, was this another one in kind of
11:51:33 category two where the heat acts upon underlying
11:51:37 conditions?
11:51:38 A. Well, it did. But I can tell you from experience and
11:51:40 from looking at the other, we have in Gonzales we talked
11:51:44 about, we have the LVN said this patient's hot. They feel
11:51:49 hot and that -- Gonzales was 109. Here, it was hot to the
11:51:54 touch and agonal breathing, no temperature was taken, so
11:51:58 this might have been a straight-up heat stroke because the
11:52:00 patient was so hot and they didn't take the temperature,
11:52:02 but certainly, also, it was acting on underlying
11:52:05 conditions.
11:52:05 Q. Okay. One thing I wanted to ask you about. When Mr.
11:52:10 Southards was found, you mentioned that he was hot to the
11:52:14 touch. Was he sweating or not?
11:52:17 A. No. One thing about Southards is he was very sweaty.
11:52:22 You absolutely cannot sweat and be dead from Benadryl or
11:52:27 dying from Benadryl.

11:52:28 So the expert on the other side pointed to a single case report in the Japanese literature, about 13 years ago, where somebody measured a Benadryl level on someone who was confused and the Benadryl level was 2.3 and she lived. She did all right. She woke up and said, yeah, I took Benadryl. What they repeatedly said in that article -- it was hardly an article. It was a case report, one page -- is that this looks like serotonin. They did not measure serotonin. They did one measurement and they said there was Benadryl present. So it looks like serotonin. Guess what. It might have been serotonin. If you think it's a Benadryl report, why didn't she do a serotonin level?

11:53:17 And they even said that sweating is not part of anticholinergic syndrome and they don't know why she sweat. And I could tell you from thousands and thousands of people have Benadryl in their bathroom and they take a Benadryl, they take the bottle of Benadryl. That's one of the most common overdoses other than Tylenol. They do not sweat.

11:53:40 Q. I just want to make sure I understand that opinion. That opinion that they don't sweat is based upon having a level of Benadryl high enough to kill you?

11:53:48 A. That's right.

11:53:49 Q. Now, let's say you're taking just a regular

11:53:52 therapeutic dose of Benadryl at that level, is it still
11:53:55 possible to sweat?
11:53:56 A. Yeah. If you take one dose of Benadryl, maybe you
11:53:58 sweat, you know, one dose, you're a little sleepy and you
11:54:01 still go out. It's possible.
11:54:03 Q. So here, the dose really matters when you consider
11:54:05 the sweating situation.
11:54:06 A. Yeah. When you're altered from Benadryl, much less
11:54:09 dead, I mean, you're not -- I mean, she's not dead from
11:54:12 Benadryl in my opinion. You are not sweating, period.
11:54:16 Q. And have you seen many Benadryl overdoses in your
11:54:18 clinical experience?
11:54:19 A. Yes. And I've discussed this case with colleagues at
11:54:22 the New York City Poison Control around the country.
11:54:25 Nobody has ever seen a patient sweating with a -- who's
11:54:30 dead from Benadryl. That's how you know it's Benadryl
11:54:32 because they're not sweating. You, right away, say this
11:54:35 is an anticholinergic toxidrome, a constellation of
11:54:40 symptoms that say this is maybe this class of drugs.
11:54:44 Q. You also had mentioned a warm-to-the-touch finding.
11:54:47 Is that also clinically important in considering Mr.
11:54:49 Southards' case?
11:54:50 A. Yes. He was hot, not warm. He was hot. Hot to the
11:54:56 touch.
11:54:56 Q. Doctor, in your opinion, was Mr. Southards' death a

11:55:00 heat-related death?
11:55:01 A. Yes.
11:55:01 Q. In your opinion, if he had been housed in air
11:55:04 conditioning with everything else the same, would he have
11:55:06 lived?
11:55:06 A. Yes.
11:55:06 Q. In reasonable medical certainty?
11:55:07 A. Yes.
11:55:09 Q. Okay. Now, I'd like to shift gears and talk about
11:55:13 some deaths that have happened since the preliminary
11:55:16 injunction hearing that you didn't talk about back then.
11:55:21 And the first one that I'd like to talk to you about is
11:55:24 Ryan Fairchild. You've been in court this morning,
11:55:28 Doctor?
11:55:28 A. Yes.
11:55:28 Q. And did you hear Mr. Williams discuss that case a
11:55:31 little bit?
11:55:31 A. I did.
11:55:31 Q. Okay. Well, we'd like to get your take and opinions
11:55:35 on it. He's not a doctor. And so, as a medical expert,
11:55:40 in your opinion, did Mr. Fairchild suffer a heat-related
11:55:44 death?
11:55:44 A. Yes.
11:55:44 Q. And in your opinion, did he suffer a heat stroke
11:55:47 death?

11:55:47 A. Absolutely, straight-up heat stroke.
11:55:49 Q. Tell us why. You've reviewed the file -- the autopsy
11:55:56 and OIG and death investigation file's already been
11:55:58 admitted. You reviewed that?
11:56:00 A. Yes.
11:56:00 Q. And tell us what you found that tells you that this
11:56:03 is a clear heat stroke death.
11:56:05 A. Well, first of all, his temperature was 108. That's
11:56:08 clearly heat stroke and what's interesting here is that
11:56:14 the autopsy didn't give the temperature of 108. They were
11:56:20 unaware that the temperature was 108. Maybe it's because
11:56:24 the EMTs took the temperature and they didn't have the
11:56:28 prehospital or the EMT report. The experts knew that the
11:56:33 temperature of 108; nevertheless, they say a heart attack
11:56:37 caused his death.
11:56:38 Well, you know, heart attacks don't cause a
11:56:41 temperature of 108. But temperatures of 108 sure do cause
11:56:46 heart attacks. Why? Because the heat cooks the cells of
11:56:50 the heart and they release their insides called troponin,
11:56:53 the enzymes, and you have a positive troponin in the
11:56:56 blood. So the idea that -- heart attacks don't cause heat
11:57:03 stroke, period, but heat stroke sure cause damage to the
11:57:08 heart muscles.
11:57:08 Q. And I think did you just tell us that the autopsy
11:57:12 cause of death was a sudden heart attack?

11:57:17 A. Yes. But they didn't know that the temperature was
11:57:20 108.
11:57:21 Q. Well, that was my next question. That temperature
11:57:24 didn't appear anywhere in the autopsy report.
11:57:25 A. That's correct.
11:57:27 Q. Should it have? Should someone have given the
11:57:30 pathologist that?
11:57:32 A. Yes. So the autopsies, this autopsy, in particular,
11:57:39 did not know that the patient's temperature -- body
11:57:43 temperature's 108. They did not consider heat as a
11:57:47 contributing factor even though the environment that this
11:57:50 individual was in was around 109-degree heat index.
11:57:56 Actually, that was the temperature was 109 and the heat
11:57:59 index in his environment was 117 degrees. So how can you
11:58:04 have a medical examiner who rendered the right opinion as
11:58:10 to the cause of death when that medical examiner cannot --
11:58:15 doesn't know the body temperature of the individual?
11:58:18 Q. Let me ask you about Mr. Fairchild. Did he have any
11:58:23 heat-sensitive medical conditions or taking any
11:58:26 medications that made him heat sensitive?
11:58:28 A. Yes. And he had high blood pressure, diabetes,
11:58:31 obesity, major depression. He was on a beta blocker,
11:58:35 which impairs with heat loss through the heart. Thyroid.
11:58:39 Lasix is a dieretic. We've talked about Cogentin being an
11:58:43 anti-sweat gland worker. Wellbutrin. Just to show when

11:58:46 they -- the autopsy said that he had 18-centimeter-thick
11:58:51 layer of fat called the pannus.
11:58:53 Q. Why is that relevant?
11:58:54 A. Well, because that is a lot of insulation. Everybody
11:58:59 knows that when you're very big and you have a big surface
11:59:02 area and you have 18 centimeters and nine inches of fat,
11:59:06 you're going to be hotter than your skinny friend.
11:59:10 Q. And one thing on the temperature, I understand that
11:59:13 the temperature taken, the 108, it was an axillary
11:59:18 temperature?
11:59:19 A. Right.
11:59:19 Q. What's that?
11:59:20 A. That is taken under the armpit. They took it over
11:59:23 and over, in general because it's not inside the body in
11:59:28 the rectum or in the esophagus. It's lower, but it's
11:59:33 important, okay? He was 108 so maybe he was really 111.
11:59:37 I don't know. But the point is they took it over and
11:59:39 over. It was 108 and he was found unresponsive in front
11:59:43 of a fan. It was 108 by EMS.
11:59:46 Q. Found unresponsive where?
11:59:47 A. In front of a fan.
11:59:49 Q. And under the armpit axillary temperature, is that a
11:59:56 -- correlate reasonably with the core body temperature
11:59:59 like if you do a rectal temperature?
12:00:00 A. No, because, basically, if you had no elevation of

12:00:06 the temperature under the armpit, you would not know the
12:00:09 information you have to, but when you're 108, it's heat
12:00:15 stroke.
12:00:16 Q. Okay.
12:00:17 A. So could you be normal temperature in the axilla,
12:00:22 which is under the armpit, and still have 102 or 103,
12:00:26 absolutely.
12:00:26 Q. So you're telling us that the body, the under the
12:00:30 armpit temperature will tend to be lower than the core
12:00:33 temperature.
12:00:33 A. Absolutely.
12:00:34 Q. Okay. So we don't know exactly what the core
12:00:37 temperature was, but we could feel confident that the 108
12:00:39 is at least his core temperature; is that right?
12:00:42 A. No. What we know is 108, he had a heat stroke.
12:00:48 Q. All right, Doctor. So in your opinion, was this a
12:00:51 heat stroke death?
12:00:52 A. Yes.
12:00:53 Q. And in your opinion, had Mr. Fairchild been housed in
12:01:00 air conditioning, holding everything else the same, would
12:01:03 he have lived in reasonable medical certainty?
12:01:05 A. Absolutely.
12:01:08 Q. As I hear you testify, it sounds like your opinion is
12:01:11 this is a very clear case of heat stroke. Am I right
12:01:14 about that?

12:01:14 A. Well, yes, because there's no other reason for it and
12:01:20 you have a temperature.
12:01:23 Q. Let's move next to Jason Wilson. And Mr. Fairchild's
12:01:28 death was in summer of 2024, correct?
12:01:30 A. Yes.
12:01:31 Q. And Mr. Wilson also is July of 2024, that same
12:01:35 summer, correct?
12:01:36 A. That's correct.
12:01:36 Q. Okay. Tell us about Mr. Wilson's death. And I
12:01:41 believe we have opinions on this from the defense experts
12:01:44 as well?
12:01:44 A. Yes. So with Mr. Wilson, the autopsy demonstrated
12:01:49 the presence of synthetic cannabinoids in the body and so,
12:01:55 therefore, the experts concluded that synthetic
12:01:59 cannabinoids caused the death.
12:02:01 Q. Do you agree or disagree with that?
12:02:02 A. I disagree.
12:02:03 Q. Why?
12:02:03 A. Well, first of all, there are some surrounding issues
12:02:13 certainly about the temperature he was held in, the
12:02:17 conditions he was held in. He had almost no heart -- he
12:02:28 had mild atherosclerosis, which is probably many of us.
12:02:37 The autopsy, the medical examiner was not given any
12:02:40 information about the environmental temperatures, which is
12:02:43 critical. The environment is critical to a medical

examiner being able to ascertain the cause of death and what's the contributing factor.

Now, initially, because of the presence of synthetic cannabinoids, the medical examiner wrote that -- just noticed that it was synthetic cannabinoids, but initially, until she was requested to change it a year later, it was a stroke. Now, basal ganglia stroke. There was ischemia, meaning lack of sufficient blood flow to the basal ganglia.

Q. That was the original provisional cause of death?

A. Yes. And as we know, cardiovascular disease is one of the number-one causes of death, which is that second kind of that you're in the heat, cumulatively, day after day of day, and you're more likely to have a stroke. Very well reported, very well understood in the scientific literature.

So here, for some reason now, because of the patient, they are requesting a change. Now, I don't know why they're requesting a change in the autopsy cause of death. And finally, let me just say, the New England Journal of October of last year was dead clear on this. The presence of a substance doesn't mean that's the cause of death. If somebody right here -- there's some people in this room right now with caffeine in their blood. If they drop dead, caffeine is positive, that didn't kill

12:04:25 them. What killed them was whatever else.

12:04:27 So the presence of synthetic cannabinoids is not
12:04:30 the cause of death. Now, having treated and seen
12:04:33 thousands of people with synthetic cannabinoids and
12:04:37 looking at the scientific literature, synthetic means it's
12:04:43 man made, right, and they bind to the marihuana receptor
12:04:46 called the cannabinoid receptor. If anybody has ever seen
12:04:51 someone who's using marihuana, they're quiet. They are
12:04:54 quiet. They're hypotonic. They don't move around. And
12:04:58 it's clear from the literature that the synthetic
12:05:01 cannabinoids, specifically this one that was spoken to,
12:05:03 these have been researched in mice and the research is
12:05:08 clear that it does not cause heat stroke.

12:05:13 Q. Let me just follow up on that. And these synthetic
12:05:19 cannabinoids are called K2 and other things?

12:05:22 A. There are some street names from Spice and K2.

12:05:25 Q. Do those drugs, just taking them and nothing else,
12:05:28 elevate your body temperature?

12:05:31 A. Again, would it be possible to elevate your body, it
12:05:40 might be possible, but I have never seen it. My
12:05:44 colleagues have never seen it. And I could not find a
12:05:48 single case report of synthetic cannabinoids giving you a
12:05:54 heat stroke. Not one in the entire literature -- English
12:05:58 literature.

12:06:01 Q. And do we have a body temperature for Mr. Wilson?

12:06:05 A. No. Actually, what he had is ants were already
12:06:09 crawling on him. He was found cold and stiff. Nobody --
12:06:13 temperature wasn't -- and ants were already crawling on
12:06:15 him.
12:06:16 Q. Okay. And let's see, he was -- Doctor, you reviewed
12:06:25 the death investigation file for Mr. Wilson, the OIG
12:06:29 report, the autopsy report, the temperature logs?
12:06:31 A. Yes.
12:06:32 Q. And, Paul, if you don't mind, if you could bring up
12:06:35 Exhibit 412B, page 11. Mr. Wilson's death was on July 5th
12:06:46 of '24 where he was found on the 5th. He was found on the
12:06:55 5th and rigor, I think just told us?
12:07:00 A. That's right.
12:07:00 Q. If we look at, for example, he was in the Coffield
12:07:04 Unit. This was part of the logs from the file. If we say
12:07:08 look at 9:30 -- 8:30 p.m., what kind of temperatures and
12:07:14 heat index are we seeing at 8:30 and 9:30 even that late?
12:07:18 A. Well, this is, well, 103 heat index. This is --
12:07:23 remember that this heat thing is -- this is absolutely
12:07:26 cumulative. This is not one day. Every epidemiological
12:07:31 study in my own clinical experience shows that as day one
12:07:35 is not the day that they come in dead. It's day two and
12:07:38 three where the heat stress is acting on, in this case,
12:07:42 his underlying obesity or his whatever.
12:07:48 Q. Here we are in Texas on July 4th and it's hot. Paul,

12:07:52 if you don't mind scrolling back to the next day. So
12:08:01 we've got heat indexes at 8:30, it's 99 degrees. So now
12:08:12 we're on July 2nd, 8:30, we've got a heat index of 106, it
12:08:17 looks like. Is this the kind of cumulative heat exposure
12:08:20 you're referring to?
12:08:21 A. Yes.
12:08:21 Q. Tell us how you can offer the opinion that it's not
12:08:27 right that the K2 or synthetic cannabinoids is the cause
12:08:35 of death and instead, it's the heat. Tell us how you know
12:08:38 that or why in reasonable medical probability, that's the
12:08:40 case.
12:08:40 A. Because synthetic cannabinoids bind to the
12:08:49 cannabinoid receptor and they don't cause somebody to be
12:08:52 wild and crazy like amphetamines and cocaine. And you can
12:08:56 look in the emergency department at everybody's saying I
12:09:00 took synthetic, they're lying there -- they never hop out
12:09:03 of the bed. I never have to sedate them. They're just
12:09:06 lying there high. And they're not running around the
12:09:09 streets of Texas or running around the streets like the
12:09:12 cocaine and amphetamine people. Those are stimulants.
12:09:16 This is not a stimulant of any consequence and they --
12:09:21 that's it. My clinical experience, the literature and
12:09:26 what receptor it's acting on, those are working, and of
12:09:30 course, the environmental conditions are play in my
12:09:34 opinion as well.

12:09:36 Q. Okay. And so, Doctor, in your opinion, is this a
12:09:42 heat-related death for Mr. Wilson?
12:09:43 A. Yes.
12:09:44 Q. And in your opinion, had he been held in air
12:09:49 conditioning and hold everything else the same, would he
12:09:51 have lived in reasonable medical certainty?
12:09:52 A. Yes.
12:09:55 Q. Also, one thing on Mr. Wilson, did you have a chance
12:09:58 to review the e-mails that were part of the file talking
12:10:01 about problems of water?
12:10:02 A. I did. And the e-mails spoke to that other people
12:10:05 were passing out and that there was no -- they couldn't
12:10:08 get help from the guards and there was no water, and so
12:10:11 forth. Not sufficient care by the guards. By corrections
12:10:17 officers.
12:10:18 Q. Before we move on, I want to go back to what you said
12:10:20 about the change of the death certificate sometime down
12:10:24 the line, a year or plus down the line. The first
12:10:28 condition you told us about what it was originally, I
12:10:30 think the words I have written down are acute ischemic
12:10:33 change in basil ganglia medullary neurons. First of all,
12:10:38 is that consistent with a heat death?
12:10:40 A. Well, that's a stroke.
12:10:41 Q. Okay. Is that consistent with a heat death?
12:10:45 A. Yeah. So heat like cumulative heat over and over can

12:10:51 cause -- lead to stroke. More people have strokes in
12:10:55 these conditions than when they're housed in air
12:10:59 conditioning and they're not held to these conditions.
12:11:01 Q. And then, the cause of death it got changed to which
12:11:04 was synthetic cannabinoid toxicity, is that consistent
12:11:09 with a heat death or not?
12:11:11 A. No.
12:11:12 Q. So just to understand that the cause of death got
12:11:17 changed from stroke, which is consistent with the heat
12:11:21 death, to synthetic cannabinoid toxicity condition that's
12:11:26 not consistent with heat.
12:11:27 A. That's right.
12:11:30 Q. Let's move on to Mr. Bradley Sheets, who also passed
12:11:36 away in the summer of 2024. Will you tell us about your
12:11:40 -- you reviewed the file on him, the autopsy report and
12:11:42 the OIG investigation, I believe, or what we had
12:11:45 available?
12:11:45 A. Yes.
12:11:45 Q. And can you tell us about what you see with Mr.
12:11:48 Sheets? In your opinion, is this a heat-related death?
12:11:50 A. Yes.
12:11:51 Q. Tell us about Mr. Sheets.
12:11:53 A. So Mr. Sheets is 66 years old. He has high blood
12:11:58 pressure, diabetes and obesity and he's on a drug
12:12:02 atenolol, which is used to treat high blood pressure.

12:12:07 Inexplicably, he does not have a heat designation, heat
12:12:14 stress designation, even though he's above the age of 65
12:12:18 and he's got comorbidities. The temperature here was not
12:12:25 taken which is --
12:12:27 Q. Should it have been?
12:12:27 A. It should have been. The heat index was in the 90s
12:12:32 for three days. The epidemiology when somebody like this
12:12:39 is clear that this is -- that individuals such as this
12:12:45 with this age are at great risk of dying, I mean, both
12:12:53 morbidity and mortality from their underlying conditions.
12:12:57 So therefore, I cannot rule heat out as contributing to
12:13:00 this death because he falls perfectly into that group of
12:13:06 people that get into trouble with heat.
12:13:08 Q. Does this appear to be the kind of death that might
12:13:10 be consistent with the second category of heat acting on
12:13:13 medical conditions?
12:13:14 A. That's right.
12:13:16 Q. And you told you can't rule out heat as a factor in
12:13:20 this death. In your opinion, to a reasonable degree of
12:13:24 medical certainty, was heat the contributing factor in the
12:13:29 death?
12:13:29 A. Yes. And importantly here, Mr. Sheets, also, the
12:13:33 autopsy did not speak to the environmental conditions in
12:13:35 which he was held and you need to be -- the medical
12:13:40 examiner needs to know the environmental conditions. The

12:13:44 CDC, the MMWR, everybody says that if heat is a
12:13:48 contributing factor, if the environmental conditions are
12:13:52 known and that the number of deaths where heat is a
12:13:55 contributing factor will increase by 53 percent. So if
12:14:00 you have two, now you have three deaths or three cases.
12:14:04 So the fact that the medical examiners don't know
12:14:07 the body temperatures, that they don't know the
12:14:10 environmental conditions they're asked to change is
12:14:19 inexplicable to me.
12:14:20 Q. What was the autopsy cause of death for Mr. Sheets?
12:14:23 A. I have cardiovascular disease and -- is what I have.
12:14:30 Q. And is that a common problem that you might suffer if
12:14:34 you were having heat-related problems?
12:14:36 A. Yes, it's that and pulmonary disease are the two
12:14:40 major categories of reason that people die from being held
12:14:42 in these conditions or being at these conditions.
12:14:45 Q. And I'm sorry, what were heat sensitive medical
12:14:51 conditions again?
12:14:52 A. Hypertension, diabetes and obesity and, of course,
12:14:55 his age, 66.
12:14:57 Q. In your opinion, is everyone with hypertension heat
12:15:01 sensitive?
12:15:01 A. Yes.
12:15:02 Q. And you mentioned some heat indices. Paul, if you'd
12:15:09 bring up Exhibit 400B and go to page 12. That should be

12:15:15 the OIG page on Mr. Sheets. Do you see down there towards
12:15:26 the bottom, Doctor, there's another temperature check. It
12:15:31 says at approximately 1530 hours, Major Hall conducted a
12:15:34 routine temperature check of the hottest known location in
12:15:37 the Coffield Unit and the temperature he recorded was 88.8
12:15:41 degrees Farenheit, right?
12:15:43 A. Yes.
12:15:43 Q. And that's Farenheit temperature, not heat index,
12:15:47 which you would expect to be higher?
12:15:48 A. Right.
12:15:49 Q. Thank you. And, your Honor -- and you reviewed these
12:15:55 materials, the autopsy report and OIG investigation report
12:15:59 in evaluating the situation with Mr. Sheets' case?
12:16:01 A. Yes.
12:16:01 Q. Your Honor, I will move into evidence Plaintiff's
12:16:06 Exhibits 400A and 400B the Mr. Sheets material.
12:16:10 THE COURT: Ms. Carter.
12:16:11 MS. CARTER: Assuming these have been redacted
12:16:14 per our...
12:16:14 THE COURT: Have they been redacted?
12:16:17 MR. SINGLEY: Yes, we'll offer -- I think we have
12:16:20 them in redacted form. They'll be submitted in redacted
12:16:25 form, yes, your Honor.
12:16:25 THE COURT: Very good. They're so admitted.
12:16:27 MR. SINGLEY: Also, I think I should go back. I

12:16:29 don't believe I remembered to move if Mr. Jason Wilson.
12:16:33 Q. (BY MR. SINGLEY) You reviewed his death file as well
12:16:35 in forming your opinions about his case, Doctor?
12:16:36 A. I did.
12:16:37 Q. Okay. If I haven't already, I'll move into evidence
12:16:41 Plaintiffs' Exhibit 412A, 412B, 412C and 412D subject to
12:16:47 the same provision they'll be redacted appropriately.
12:16:48 THE COURT: Any objection, Ms. Carter?
12:16:50 MS. CARTER: No, your Honor.
12:16:53 THE COURT: So admitted.
12:16:54 Q. (BY MR. SINGLEY) All right. Doctor, the next death
12:16:57 is a 2025 one, but before that, I want to ask you
12:16:59 something. So we've talked about three 2024 deaths. Mr.
12:17:04 Fairchild was August 21st of 24. Mr. Wilson was July 5th
12:17:10 of '24. Bradley Sheets was June 22nd of '24. Those are
12:17:18 three deaths all quite close together, aren't they?
12:17:21 A. Yes.
12:17:21 Q. Does that concern you?
12:17:23 A. Well, yes. It's hot. It's getting hotter. We just
12:17:28 -- so every year, it's hotter and hotter than the previous
12:17:30 year. We have that in the news. That's going by the news
12:17:33 reports getting hotter and hotter and hotter. These
12:17:36 individuals have conditions and medications and are held
12:17:40 in environmental conditions that render them at risk of --
12:17:48 Q. And in addition, Mr. Sheets and Mr. Wilson were both

12:17:52 of the Coffield Unit, correct?
12:17:54 A. Yes.
12:17:54 Q. And their deaths, Mr. Wilson was July 5th and Mr.
12:18:00 Sheets, June 22nd of '24, so we have two deaths at
12:18:04 Coffield about within three weeks?
12:18:06 A. That's right.
12:18:07 Q. Does this in any way inform your opinions about
12:18:10 whether TDCJ's heat mitigation measures are adequate or
12:18:14 not?
12:18:14 A. Yes.
12:18:15 Q. And how so?
12:18:16 A. Well, I mean, the entire picture is that the heat
12:18:22 mitigation measures are insufficient to protect
12:18:25 individuals from harm from the environment in which
12:18:29 they're held and the heat there.
12:18:32 Q. Let's shift gears to the last new death we're going
12:18:35 to talk about and this one is from 2025 of Mr. Wayne
12:18:41 Straway, Doctor.
12:18:41 A. Yes.
12:18:42 Q. I guess he was found unresponsive July 29th at the
12:18:47 Ellis Unit. Can you tell us about your review of Mr.
12:18:51 Straway's investigation file?
12:18:52 A. Yes. So Mr. Straway's body temperature was 106.
12:18:58 Again, for some reason, the medical examiner was not
12:19:04 informed or did not know that -- did not note to the

12:19:09 report that the body temperature was 106. And the medical
12:19:14 examiner found synthetic cannabinoid and amphetamine in
12:19:23 the patient's body and attributed to death -- the death to
12:19:27 that and there was no atherosclerosis.
12:19:32 Q. Tell us why you are opining that this is a
12:19:37 heat-related death as opposed to what the autopsy said
12:19:39 that the drugs, the synthetic cannabinoids and meth in the
12:19:42 system, Doctor?
12:19:43 A. So let me be totally clear about this. The
12:19:48 amphetamines are not always illicit. I'm not saying that
12:19:52 Mr. Straway was prescribed amphetamine for attention
12:19:56 deficit disorder. He was not taking amphetamine so he
12:20:01 could stay up and work all night. But OSHA and the CDC,
12:20:05 the Occupational Safety Organization at the national level
12:20:09 has addressed, specifically, amphetamines and I know as a
12:20:14 toxicologist that amphetamine, similar to cocaine, does
12:20:17 something that synthetic cannabinoids do not do. They
12:20:22 cause vassal constriction, which is a tightening of the
12:20:27 blood vessels and you can't dilate and release heat to the
12:20:30 outside. They also make you very motor -- movement a lot
12:20:34 of. There is the guy we're talking about running around
12:20:36 the streets, rolling around in the park. This is
12:20:39 amphetamine and this is cocaine. It is not synthetic
12:20:43 cannabinoid. But the CDC is very clear and I know that if
12:20:47 you are suffering from an amphetamine-related intoxication

12:20:52 and you're in a cold setting, that you're less likely to
12:20:56 die from that amphetamine because remember that this is
12:21:00 all about how much heat is your body generating and if
12:21:05 you're on amphetamine, it's generating a lot of heat if
12:21:08 you're moving around, which you always are when you're
12:21:10 high on amphetamine versus how much is being taken in from
12:21:16 the environment.
12:21:17 So if I'm dancing around, high on amphetamines in
12:21:21 an air-conditioned room, my chances of becoming 106
12:21:26 degrees are much less than if I'm dancing around in the
12:21:31 heat. This is clearly shown with cocaine and amphetamine
12:21:36 and there's articles addressing this.
12:21:39 Q. Just to make clear, so you wouldn't expect this
12:21:42 clinical presentation of that body temperature with
12:21:44 everything else you see if it was in air conditioning?
12:21:47 A. Right. So heat is a contributor here. I'm sure
12:21:53 amphetamine was a contributor, too. I would say that if
12:21:56 this man had been in an air-conditioned prison, he may not
12:21:59 have died with a temperature of 106.
12:22:01 Q. Okay. Did he have heat-sensitizing factors,
12:22:04 conditions or medications?
12:22:05 A. He was obese.
12:22:06 Q. Okay. And also, let me just briefly -- Paul, if
12:22:12 you'd pull up that summary of 306 for Ellis? Doctor, for
12:22:18 2025, TDCJ produced to us a spreadsheet of temperatures

12:22:22 that we have as Plaintiffs' Exhibit 306A. We've done a
12:22:27 little demonstrative, the excerpts for the Ellis Unit. If
12:22:33 you could go down to July 29th for me, please.
12:22:36 They found Mr. Straway July 29th of '25; is that
12:22:41 right, Doctor?
12:22:42 A. Yes.
12:22:43 Q. We see sort of towards the top of the page, you see
12:22:46 how there's Ellis Unit, a temperature, heat index, and
12:22:51 then, over on the right, it gives you the timestamp for
12:22:54 the weather data?
12:22:54 A. Yes.
12:22:55 Q. So if we're looking at, you know, early morning, the
12:22:59 first temperatures where it's just after midnight, we see
12:23:03 temperatures of 85, heat index of 91, and then, the heat
12:23:09 index rises over the day, goes into the 70s and then, up
12:23:15 into the 90s and hundreds in the Ellis Unit?
12:23:18 A. Right.
12:23:19 Q. So again, is that the type of heat you're seeing here
12:23:23 with cumulative exposure as you've described, the type
12:23:26 that concerns you as a physician and clinician for heat
12:23:30 stress that can contribute to a death?
12:23:32 A. Yes.
12:23:32 Q. So, Doctor, in your opinion, was heat a contributing
12:23:37 factor in Mr. Straway's death?
12:23:40 A. Yes.

12:23:40 Q. Doctor, I'm going to shift gears now. We had
12:24:00 produced to us a defense exhibit that was a study about
12:24:03 fans done by one of their designated experts named Dr.
12:24:07 Ravanelli. Have you had a chance to review that?
12:24:08 A. Yes.
12:24:09 Q. I'm going to talk with you about that just a little
12:24:11 bit. Paul, if you'd put Defendant's Exhibit 258 up. Is
12:24:19 this the paper that we're talking about, paper about fans
12:24:23 by Dr. Ravanelli?
12:24:23 A. Yes.
12:24:24 Q. And there's a lot of technical stuff in here and
12:24:27 let's see if you could maybe help us out in lay terms.
12:24:30 What is Dr. Ravanelli -- what does he purport to find in
12:24:35 this study about fans?
12:24:43 A. I'm going to answer your question, but he set out to
12:24:48 do this study by simulating, meaning trying to set extreme
12:24:55 heat waves in order to identify from another study why he
12:25:01 identified that fan use previously that is a study of 2015
12:25:08 resulted in a lower heart rate. So what he did is he got
12:25:12 eight healthy 24-year-old men with no medical problems.
12:25:16 He measured their rectal temperatures, their esophogeal
12:25:20 temperatures, their skin temperature, their heart rate and
12:25:23 their blood pressure. Now, if you look at this, everybody
12:25:27 should -- then he uses a series of old papers where he
12:25:33 uses calculations. He uses assumptions based on no

12:25:39 measurements and conceptual equations and theoretical
12:25:46 maximums -- those are his words from reading the methods
12:25:49 -- in order to conclude that these eight healthy,
12:25:54 nonintensive individuals that fans somehow helped them. I
12:25:59 have -- the weaknesses in this article --
12:26:01 Q. Let me stop you. Sorry to interrupt. Just to make
12:26:05 sure we understand, first of all, what is your opinion
12:26:07 about whether it's a good idea to use fans in very, very
12:26:10 hot heat in the 90s and above?
12:26:13 A. My opinion agrees with the World Health Organization.
12:26:16 My opinion agrees with the CDC. It's not helpful at
12:26:20 certain temperatures and with humidities because the whole
12:26:24 thing that fans do if they can do it is enhance
12:26:28 evaporation. So in a high humidity setting, you cannot
12:26:34 evaporate -- the air is already saturated with liquid.
12:26:39 Q. I'm sorry. You said the CDC agrees with you?
12:26:42 A. The Meteorological Society of America, everybody says
12:26:47 that. And the problem is that when you get higher than 90
12:26:51 degrees or so, you're using this fan and which is what the
12:26:55 CDC uses the temperature of 99.9 degrees. The temperature
12:27:01 differs according to the CDC, depending on the humidity.
12:27:04 I understand that. It's like the convection oven, you got
12:27:07 a chicken in there, you start blowing hot air across it,
12:27:11 it heats up the chicken. And that same thing here, you're
12:27:15 blowing very hot air onto a human being and it's

12:27:20 increasing their temperature by convection.
12:27:21 Q. Now, Dr. Ravanelli -- you mentioned heart rate and if
12:27:25 I understand what you're telling us, Dr. Ravanelli's paper
12:27:28 purports to find that the use of fans helps even in very
12:27:32 high heat conditions because of something to do with heart
12:27:35 rate?
12:27:36 A. Correct.
12:27:36 Q. Now, first of all, you said that he only studied
12:27:39 young healthy males.
12:27:41 A. That's right. Eight.
12:27:43 Q. Do older people or people with medical conditions
12:27:47 sweat in a different way than young healthy people?
12:27:49 A. They sweat less than young healthy people.
12:27:51 Q. Is that a significant difference when you look at
12:27:53 when you're studying fans?
12:27:55 A. Well, certainly eight 24-year-olds don't equal the
12:27:59 prison population as a whole in the state of Texas or the
12:28:02 people that we're talking about in this case.
12:28:06 Q. And I want to ask you about so I think it's the heart
12:28:09 rate changes that are apparently the key, he believes, to
12:28:12 his conclusions. If you'd go to the table 2 and 3.
12:28:35 Doctor, is he reporting his data here in table form?
12:28:38 A. Yes.
12:28:39 Q. First of all, did he measure body temperature?
12:28:41 A. Well, he did and that's in table 3, actually. He

12:28:45 measured rectal temperatures and they did not change.
12:28:48 Q. The body temperatures did not change?
12:28:51 A. That's correct. The core temperature. Remember he
12:28:54 instrumented the rectum and esophagus, they didn't change.
12:28:57 Q. And so, a fan didn't help the body temperature.
12:29:01 A. Correct.
12:29:02 Q. The heart rate changed. What changes in heart rate
12:29:07 are we seeing here from this paper, Doctor?
12:29:09 A. So in table 2, you see that the first column is fan
12:29:15 or no fan. It was this set of experiments were done at
12:29:20 two different temperatures, fan or no fan, and you see the
12:29:23 heart rate there went from 68 plus or minus eight beats
12:29:28 per minute to 75 plus or minus eight. Now, that is as you
12:29:33 see, it's got a little asterisk that is significant,
12:29:36 meaning there is a numerical P less than .05. That has no
12:29:46 clinical meaning.
12:29:48 Q. Okay. Let me up pack. And first of all, when we
12:29:52 look at this table, he's changing the humidity, if I
12:29:54 understand correctly. The people go through different
12:29:57 humidity zones with fans?
12:29:58 A. Right.
12:29:59 Q. And what you just told us is on the heart rate
12:30:02 finding, there's a report about statistical significance
12:30:04 but that just has to do with the number.
12:30:08 My question for you is these differences in heart

12:30:11 rates that he's talking about as a clinician, are any of
12:30:15 these changes in heart rates clinically significant at all
12:30:19 for dealing with heat or anything else?
12:30:20 A. No.
12:30:22 Q. You have a lot of familiarity in your clinical
12:30:25 practice of heart rate and how it affects people's
12:30:27 health --
12:30:28 A. I do --
12:30:29 Q. And heat responses --
12:30:31 A. -- the vital sign. Heart rate is a vital sign like
12:30:34 temperature. This means nothing clinically. So it means
12:30:38 something in statistics, but it means nothing clinically
12:30:42 if your heart rate is 78 or 89.
12:30:47 Q. And the title of the paper, The Biophysical and
12:30:52 Physiological Basis For Mitigated Elevations in Heart Rate
12:30:56 With Electric Fan Use in Extreme Heat and Humidity, so
12:31:01 it's the heart rate he's pitching as the benefit from the
12:31:04 fans, right?
12:31:04 A. Right.
12:31:04 Q. If you look at all the heart rates in this paper,
12:31:07 your response as a clinician is what?
12:31:08 A. That that is not a clinically important issue.
12:31:20 Basically, this is meaningless. This paper is
12:31:23 meaningless. It does not contradict any of the
12:31:28 epidemiology. I didn't even mention, I said CDC and World

12:31:32 Health Organization, we have Bouchama that shows that fans
12:31:34 don't help. We must have done it in this courtroom
12:31:37 before. There are a number of articles and epidemiology
12:31:41 that show that fans were not protective in the hot
12:31:45 conditions.
12:31:45 Q. And you just mentioned a metaanalysis by an author
12:31:49 named Bouchama. I believe you testified about that at the
12:31:52 preliminary injunction. There was metaanalysis where you
12:31:54 do a study of many studies to make it more powerful?
12:31:57 A. That's right.
12:31:57 Q. And the Bouchama paper we looked at during -- you
12:32:02 testified about during the preliminary injunction hearing,
12:32:04 there was a finding that fans -- there was no
12:32:05 statistically significant finding that fans help.
12:32:08 A. That's correct.
12:32:10 Q. And here on the heart rate data, specifically, do you
12:32:13 see anything as a clinician or clinically that would help
12:32:16 people deal with heat for the changes in heartbeat?
12:32:20 A. No.
12:32:22 Q. Doctor, I want to go back briefly and I want to talk
12:32:27 to you again about 10.64. Paul, if you would put up
12:32:38 Exhibit 325, please. This is the current version of
12:32:42 10.63, Doctor. We've previously discussed one change and
12:32:45 that was the respite changes. I want to now ask you about
12:32:50 something else. Paul. If you'd go down, it's the page 16

of 19 with the signature page on it. There under inmate deaths. All right.

Doctor, so this is the current version of the 10.64 position and we see under inmate deaths language couple of sentences in when an autopsy is conducted, the listed cause of death and any contributory factors will be the final determination as to whether the death was heat-related. You saw that?

A. Yes.

Q. Is that a change from the prior 2024 policy?

A. It is.

Q. And first of all, what does that mean to you the language I just read?

A. Well, at the cases we just looked at, we can see that the medical examiner is not provided or does not know, for whatever reason, the environmental temperatures. The information from the OIG, the information from the scene, this is not provided or is not obtained by the medical examiner. So you cannot rely on the cause of death when you don't tell a medical examiner that the temperature was 108. You cannot rely on contributory factors when you don't tell the medical examiner that this person has go to all these -- is held in the conditions in which these individuals in the Texas prison system are held.

So this is -- because of the shortcomings in the

12:34:46 autopsy and the information that the medical examiner is
12:34:49 provided or has available, this is a very bad idea right
12:35:00 here.
12:35:00 Q. Doctor, in your opinion, is this change in policy to
12:35:04 limit the cause and contributors to death to the autopsy
12:35:07 report, is there any danger in your opinion that will
12:35:10 cause an undercounting of heat deaths?
12:35:13 A. Yes. So the autopsy is a part of it. It's an
12:35:17 important piece of it, but when they don't have these key
12:35:20 facts, the OIG report is important. The medical record,
12:35:24 for example, in one case, the medical examiner wasn't
12:35:28 aware that the patient was intubated in the intensive care
12:35:32 unit, did not have access to the medical records which
12:35:35 would have demonstrated that the patient was sedated with
12:35:38 fentanyl and Versed for two days.
12:35:40 So all this matters. You can't just -- all of
12:35:47 this matters a lot in order to arrive at the right
12:35:49 conclusion as to what was the cause of death.
12:35:50 Q. Let me go back to Mr. Fairchild's case, Doctor. If
12:35:54 you had just looked at the autopsy and couldn't use
12:35:56 anything else, would you have known about his 108 body
12:36:00 temperature?
12:36:00 A. They did not know that.
12:36:01 Q. So in your view in doing this kind of review, if you
12:36:05 really want to make sure you get to the bottom accurately

12:36:07 of the cause of death, does it matter to look at all the
12:36:10 information available to you?
12:36:11 A. It does and, you know, I'd have to look at the
12:36:15 information that's not made available to you.
12:36:18 Q. Do you have concerns that you've seen repeated
12:36:23 discussions we've discussed where, in your opinion, a body
12:36:25 temperature should have been taken but wasn't, right, just
12:36:27 in the cases we've talked about?
12:36:28 A. Right.
12:36:29 Q. Do you have an opinion about how the interaction
12:36:31 between not taking temperatures that should be taken and
12:36:34 then, limiting the cause of death analysis to the autopsy,
12:36:37 do those play together in any way in your view?
12:36:39 A. Well, they do.
12:36:40 Q. How so?
12:36:41 A. Well, you're not taking temperatures. You're not
12:36:45 telling the medical examiner about the conditions of the
12:36:47 body temperatures. Now why? We're in the middle of a
12:36:51 major lawsuit here about the number of deaths, the number
12:36:55 of people being affected, adversely affected and suffering
12:37:00 serious harm in the Texas prison system, it's
12:37:04 inconceivable that this is happening like this.
12:37:09 Q. And in your opinion, Doctor, what affect would those
12:37:11 combinations of factors, not taking temperatures and
12:37:14 limiting cause of death to autopsy, what effect in your

12:37:17 opinion would that have on whether you accurately report
12:37:19 heat deaths or not?
12:37:20 A. Well, you're not going to have any heat deaths if you
12:37:25 never take the temperature and don't tell anybody
12:37:27 anything, nobody will ever die from heat.
12:37:31 Q. I'm going to shift gears. Before I do, I've been
12:37:33 reminded that in Mr. Straway's death, you reviewed the
12:37:38 death investigation file for him. The autopsy report and
12:37:42 the medical records are what we had available, I believe,
12:37:46 in addition to the temperatures we looked at?
12:37:47 A. Yes.
12:37:47 Q. Your Honor, I'll move into evidence and, again, we'll
12:37:51 make sure there's appropriate redactions for Plaintiffs'
12:37:54 Exhibit 403A and 403B.
12:37:57 THE COURT: Any objection?
12:37:58 MS. CARTER: No objection with the redactions,
12:38:01 your Honor.
12:38:01 THE COURT: So admitted.
12:38:03 Q. (BY MR. SINGLEY) Just a couple more things here,
12:38:05 Doctor. First of all, I would like to show you one of
12:38:09 TDCJ's answers to interrogatories. Paul, if you could
12:38:12 please put up Plaintiffs' Exhibit 437. If you'd scroll
12:38:21 down to Interrogatory No. 21.
12:38:24 Let's look at this, but I'll tell you what I want
12:38:27 to ask you, ultimately, is whether all of the conditions

12:38:29 that are listed here are ones that are heat sensitive, but
12:38:32 first, let's look at what's being asked. For each current
12:38:36 TDCJ inmate meeting any of the following criteria who's
12:38:40 not housed in air conditioning, please identify them, the
12:38:43 criteria they met, housing location, current heat score,
12:38:47 and then, there's a list of various things. And first, I
12:38:50 just want to point you to the response.
12:38:57 After the objections, the response is subject to
12:39:01 the objections, UTMB, University of Texas Medical Branch,
12:39:05 right? Medical provider that works with TDCJ?
12:39:05 A. Yes. Yes.
12:39:09 Q. Identified 100,853 inmates in TDCJ custody as of May
12:39:15 16th, 2025 whom met one or more of the medical criteria
12:39:19 identified in the interrogatory. Did you see where I read
12:39:21 that from?
12:39:21 A. Yes.
12:39:21 Q. Did I read that accurately?
12:39:23 A. Yes.
12:39:24 Q. All right. So now since there have been identified
12:39:26 over a hundred thousand people who meet these conditions,
12:39:28 my question for you as the medical expert is will you take
12:39:32 a look -- first, let's start on this page and then, we'll
12:39:34 go back up. The Q through W there, prescribed these
12:39:38 medications, if you'd take a second to look at it and
12:39:40 would you tell us, Doctor, in your opinion, does taking

12:39:43 each of these medications make you heat sensitive?
12:39:46 A. It does.
12:39:46 Q. If you'd take a moment just to look at all these,
12:39:55 Doctor, over 65 years of age, BMI, if you could just read
12:39:59 that and let us know, in your opinion, does every one of
12:40:01 those conditions or diagnoses make you heat sensitive?
12:40:04 A. A hundred percent.
12:40:05 Q. Thank you, Doctor. I'll move to admit Plaintiffs'
12:40:09 Exhibit 437.
12:40:12 THE COURT: Objection?
12:40:13 MS. CARTER: Moving to admit our answers to an
12:40:15 interrogatory or their questions?
12:40:18 MR. SINGLEY: Just Interrogatory No. 21, really,
12:40:22 is all we --
12:40:22 MS. CARTER: You're moving to admit your
12:40:25 interrogatory to defendant?
12:40:27 MR. SINGLEY: It's your answer.
12:40:28 MS. CARTER: What are you entering?
12:40:30 MR. SINGLEY: The question and the answer to
12:40:32 Interrogatory 21. It's your answers which we can use
12:40:35 against you.
12:40:36 MS. CARTER: You can use it against the defendant
12:40:38 but not Susi Vassallo.
12:40:43 MR. SINGLEY: I'm using it against you as part of
12:40:45 the record. I'm not using it against Dr. Vassallo. I

12:40:48 would like to use this interrogatory response against the
12:40:50 defendant based on their own interrogatory answer, Judge.
12:40:54 THE COURT: So admitted.
12:40:57 Q. (BY MR. SINGLEY) And one last thing on this if you
12:40:59 could go to the end at the signature page, the
12:41:07 verification for the interrogatories, and we see that
12:41:10 Exhibit 437 that's been admitted was signed by Brian
12:41:15 Collier, correct, Doctor?
12:41:16 A. Yes, it's signed by him.
12:41:17 Q. Are you aware that he was the former Director of
12:41:19 TDCJ?
12:41:19 A. I am.
12:41:21 Q. Thank you. One last thing. I want to go back to
12:41:27 10.64. That's Exhibit 325. And if you would go to the
12:41:45 very end, the refusal of cool bed page.
12:41:54 Doctor, did you see this form that's the page at
12:41:58 the very end of the A.D. 10.64 policy?
12:42:03 A. I did.
12:42:03 Q. What is this we're looking at?
12:42:05 A. This is what I would refer to as a physician informed
12:42:10 consent where the inmate signs and that he's refusing a
12:42:16 cool bed or an air-conditioned housing assignment.
12:42:20 Q. All right. So in other words, this would be signed
12:42:22 by someone who's eligible for air conditioning but signs
12:42:25 to basically opt out or say I'm not going to take it?

12:42:28 A. That's right.
12:42:29 Q. Okay. Now, as part of this opt-out form, do we have
12:42:34 TDCJ acknowledging any risks of heat here in your opinion,
12:42:39 Doctor?
12:42:39 A. Yes.
12:42:39 Q. And where?
12:42:40 A. Well, by signing below, it says heat cramps, heat
12:42:43 exhaustion, heat stroke, so there's heat. And then, it
12:42:47 says worsening of my diagnosed medical conditions up to
12:42:49 and including death.
12:42:51 Q. And the part of that before what you just read is,
12:42:53 see if I read this correctly, by signing below, I
12:42:57 understand and acknowledge that potential or possible
12:43:00 outcomes for refusing the cool bed or AC housing
12:43:04 assignment include, but are not limited to, the following
12:43:06 and then, we have the two things you just read, right?
12:43:08 A. Correct.
12:43:09 Q. And it says up to and including death, right?
12:43:13 A. Yes, it does.
12:43:14 Q. So here on this form, they're having inmates sign and
12:43:18 TDCJ acknowledging those risks of the heat, right?
12:43:21 A. Yes.
12:43:21 Q. And these are the ones you've always talked about?
12:43:23 A. Yes.
12:43:25 Q. Does it appear that there's any medical provider or

12:43:29 medical personnel involvement in signing this form at all?
12:43:31 A. No. At the bottom of the form, this is the signature
12:43:34 of the inmate, the warden and the witnesses, and there's
12:43:38 no suggestion here that a medical provider is involved in
12:43:46 this informed consent.
12:43:47 Q. And you just used the phrase "informed consent,"
12:43:52 Doctor. Do you see any -- is there any problem in your
12:43:55 opinion with having a prisoner sign a form to opt out of
12:43:59 an air-conditioned bed without the involvement of a
12:44:01 medical provider?
12:44:02 A. Yes. So --
12:44:03 Q. Why is that?
12:44:04 A. Well, because when a uniformed correctional staff
12:44:09 member asks -- says, okay, you want to opt out, you could
12:44:15 die, it's very different than when a physician says, sir,
12:44:18 you have diabetes, you are on these medications, you're
12:44:21 obese and I'm worried that you're going to die if you
12:44:27 remain in these. And this is why I'm worried. I'm
12:44:30 worried because people do die all over the world in these
12:44:32 conditions and that you're one of those people who might
12:44:36 die, and if you don't die, you might be permanently
12:44:39 disabled from it.
12:44:41 Q. In your experience as a clinician and physician
12:44:45 getting informed consents, do you think just your average
12:44:48 regular person is more likely to take those kinds of

warnings about dangers more seriously if it comes from a doctor or other medical provider?

A. Absolutely.

Q. Thank you, Doctor. Your Honor, I'll pass the witness.

MS. CARTER: Your Honor, before I begin, I just want to clarify that only Interrogatory 21 was admitted into evidence, not the entire discovery response?

THE COURT: I believe that's correct. Is that true, Mr. Singley?

MR. SINGLEY: It will be just 21, your Honor.

THE COURT: Okay. Yes.

CROSS-EXAMINATION

BY MS. CARTER:

Q. Hello, Dr. Vassallo. Can you hear me?

A. I can.

Q. Okay. Dr. Vassallo, you've already clarified that you testified at the preliminary injunction hearing during the summer of 2024, correct?

A. Yes.

Q. And that you were deposed in this case just a few months ago, right?

A. Yes.

Q. How long have you practiced emergency medicine and medical toxicology?

12:46:05 A. Emergency medicine since I finished medical school in
12:46:09 1984 and started my residency. The residency was '84 to
12:46:16 '87. The medical toxicology fellowship was '87 to '89.
12:46:21 Since that time.
12:46:22 Q. And since that time, have you ever practiced or
12:46:26 provided treatment to inmates inside of a correctional
12:46:29 facility?
12:46:29 A. No.
12:46:32 Q. I understand you've treated patients that may have
12:46:34 come in from Rikers in New York; is that correct?
12:46:38 A. Yes.
12:46:38 Q. But when you saw those patients, you saw them when
12:46:43 they were sent out for free-world care; is that correct?
12:46:47 A. Yes and I -- counselor, I can tell you that your
12:46:52 voice is low so nobody can hear in back because I was just
12:46:58 in the back. So if you could speak up a little, that
12:47:00 would be great.
12:47:01 Q. Of course. Dr. Vassallo, the patients that you may
12:47:04 have seen from Rikers, those were patients that were seen
12:47:13 and sent out of custody and seen in the free world for
12:47:17 care; is that correct?
12:47:18 A. They were seen in Bellevue, yes, in the hospital.
12:47:22 Q. Bellevue, that's a public hospital in New York,
12:47:25 correct?
12:47:25 A. Yes.

12:47:29 Q. Dr. Vassallo, if a correctional officer is responding
12:47:32 to an unresponsive inmate, should the first course of
12:47:36 action be taking a temperature or resuscitating efforts
12:47:41 like CPR?
12:47:42 A. That question is nonsensical and this is why. If you
12:47:46 were in those conditions that these folks are held in,
12:47:50 those are happening simultaneously. First of all, the
12:47:53 corrections officer is calling for medical and calling for
12:47:57 assistance for other people to safely open the cell, so
12:48:01 then, you have the normal response in a prison or jail,
12:48:06 just have a lot of people. There's not one, there's not
12:48:10 two, there's many people, and each one of these responses
12:48:15 demonstrates that by the number of people who were
12:48:17 interviewed and made statements.
12:48:19 So it's not one or the other, it's coexistent.
12:48:23 One person starts pushing on the test. One person's on
12:48:27 the telephone calling for medical. Then all these people
12:48:30 come. Because the temperature is important, EMS is being
12:48:36 called, all the actions are happening. And somebody can
12:48:41 get that infrared and shoot it at the patient's forehead
12:48:46 and if it's very hot, they can start to be, oh, my gosh,
12:48:50 this guy might have a heat stroke. Let's continue what
12:48:53 we're doing. EMS is on the way and let's take him to the
12:48:56 infirmary or whatever we're going to do and let's get him
12:48:59 under ice while we continue. It's not a one-or-the-other

12:49:02 situations.
12:49:03 Q. Dr. Vassallo, how do you know that that is how it
12:49:06 happens if you've never worked at a correctional setting?
12:49:09 A. Because I have been for 20 years, I've been -- I've
12:49:13 watched innumerable videos from the Sacramento jail. I've
12:49:17 watched innumerable videos and been present at
12:49:21 resuscitations in the New Orleans jail where I'm one of
12:49:24 the federal monitors. I have read all of these reports
12:49:28 for 20 years about what's going on in Texas. I've seen
12:49:31 the number of people and I am absolutely -- and I talked
12:49:38 to those people. So I am absolutely clear on who responds
12:49:41 and it's absolutely documented in this case very well.
12:49:45 Q. Okay. And, Dr. Vassallo, are other people supposed
12:49:49 to be touching a body whenever it's having resuscitation
12:49:53 efforts being done on it?
12:49:54 A. Sure. First of all, resuscitation efforts, I think
12:49:56 you're referring at least in part to CPR, right? CPR is
12:50:01 touching and that, right away, you put your hand on the
12:50:04 patient, they feel hot, you say, ah, it feels hot, boom,
12:50:09 boom, boom, boom, that's called CPR. They feel -- there's
12:50:12 no question about it and everybody knows it's hot in the
12:50:16 room that they work in. They're all working up a sweat
12:50:21 pouring, you know, on this person. So the answer is yes,
12:50:23 they have to.
12:50:24 And there's another person touching the patient

12:50:27 who is probably applying maybe a bag, valve, mask, which
12:50:32 is applying -- another person is applying an AED, the
12:50:38 automatic external defibrillator. All of these things are
12:50:42 happening and they're all touching the patient.
12:50:51 Q. Dr. Vassallo, since you've testified you're familiar
12:50:54 with the procedures that happen in a correctional setting,
12:50:56 plaintiffs' counsel asked you about the changes to respite
12:51:00 from 2024 to now, correct?
12:51:02 A. Yes. 2024 to 2025, yes. To now, 2026, yes.
12:51:08 Q. And you specifically opined on good correctional
12:51:10 judgment, correct?
12:51:11 A. Yes.
12:51:12 Q. Dr. Vassallo, would it be in the best interest of the
12:51:15 health and safety of an inmate to allow an inmate to go to
12:51:19 respite during an act of riot?
12:51:26 MR. SINGLEY: Objection. That calls for
12:51:27 speculation.
12:51:29 MS. CARTER: She's testified she's aware of the
12:51:30 correctional workings from multiple witnesses, multiple
12:51:33 videos, multiple interviews, so I think she can answer.
12:51:35 A. Okay.
12:51:36 THE COURT: Go ahead.
12:51:39 A. So the individual is part of a riot and they want to
12:51:44 go to the air-conditioned area, that would be
12:51:48 unreasonable. If the riot is over there on the other end

12:51:50 of the thing, other end of the prison and this guy is just
12:51:53 burning up about to die and he asked for respite from a
12:51:57 police officer or correctional officer who's not involved
12:51:59 in the riot, I don't even know who your -- are you talking
12:52:02 about Attica where the entire thing and they're shoot -- I
12:52:04 don't know what kind of riot you're talking about.
12:52:06 Are we talking about some kind of one pod? This
12:52:11 happens all the time in New Orleans. One pod is going
12:52:14 nuts. The rest of the pods are fine. So it may be okay
12:52:19 for -- it depends what kind of a riot you have in your
12:52:24 picture. But if you're painting a picture like Attica in
12:52:27 the '70s, no. But if you're painting the picture that
12:52:30 doesn't -- not from the '70s in Attica in New York, a riot
12:52:35 is -- we have riots all the time in New Orleans. They're
12:52:38 rioting and there are a lot of people who still need care
12:52:42 and that you should have enough staff members to make sure
12:52:46 that the security and safety of all the patients or
12:52:51 inmates is ongoing during any kind of disruption that the
12:52:58 prisoners are creating.
12:53:01 Q. (BY MS. CARTER) Does it suffice to say correctional
12:53:02 officers need to use good judgment of the circumstance at
12:53:05 hand?
12:53:05 A. Okay. Correctional officers should always use good
12:53:08 judgment but not when it comes to allowing a prisoner into
12:53:14 the air conditioning. You're now putting a riot like

12:53:17 Attica into the picture. That is not what happens here.
12:53:20 The correctional officer says, hey, I'm really hot too,
12:53:24 I'm doing a double. I just had to do that tier like this
12:53:27 guy said, I was too hot to go and check that tier when
12:53:33 that guy was dead. Like in these examples, we had exactly
12:53:36 that. So that is what I'm talking about. I'm not talking
12:53:40 about riots. Let's get to what we're talking about here.
12:53:45 Q. Dr. Vassallo, the policy includes for good
12:53:49 correctional judgment and you've testified that that's not
12:53:51 what you're talking about. So is it suffice to say that
12:53:54 there are circumstances outside of your knowledge and your
12:53:58 experience where an officer would need to use good
12:54:00 correctional judgment?
12:54:01 A. Okay. I would say this. If there's a riot and the
12:54:08 officer himself will need to be locked down and he says,
12:54:13 right now, I can't let you go to the air conditioning
12:54:14 because we're locked down because there's a dangerous
12:54:18 situation, that is good correctional judgment.
12:54:20 Q. Okay. And, Dr. Vassallo, what about if there's been
12:54:24 an inmate that's been in respite for about three hours,
12:54:28 there's no other spots in the room and an inmate shows up
12:54:31 new, sweating. Would it be good correctional judgment to
12:54:34 allow that inmate that's been in there for three hours to
12:54:37 stay, to not interfere with how long they stay and tell
12:54:42 the new inmate to wait?

12:54:43 A. Well, it depends what's going on with the guy who's
12:54:46 been there, right? As long as necessary is the previous
12:54:51 -- as long as necessary. The policy in 2024 was as long
12:54:56 as necessary. Now it's as long as possible. So those are
12:55:02 working against each other. That man who's been there
12:55:05 three hours, it may be necessary that it's there. Maybe
12:55:09 he's actually feeling ill unlike the old position that
12:55:13 says he doesn't have to be feeling ill. Maybe he is
12:55:16 feeling ill and maybe if you send him back which he will
12:55:19 suffer heat stroke or suffer a heart attack.
12:55:22 So the idea that you don't have enough room to
12:55:28 accommodate two people who need respite is a problem for
12:55:33 the Texas Department of Corrections. But just because you
12:55:36 don't have enough room doesn't excuse the fact that if
12:55:39 somebody has to be in there, they have to be in there.
12:55:42 It's necessary. There's not room for two people.
12:55:46 Q. If it's possible, correct? So it wouldn't be
12:55:49 possible for the new inmate if there was no room in
12:55:51 respite, would there?
12:55:53 A. I'm saying that if somebody needs respite and need to
12:55:57 be there more than three hours, there is a -- safety and
12:56:01 security of the inmate says he needs to be there, the guy
12:56:07 who's sweating needs to be there, too, and it's your
12:56:09 responsibility to make sure that two people can be served
12:56:12 by respite at one time.

12:56:16 Q. Are you an expert in heat exposure or
12:56:19 thermoregulation, Dr. Vassallo?
12:56:20 A. Yes.
12:56:21 Q. Have you undergone any training in heat exposure or
12:56:25 thermoregulation?
12:56:26 A. Yes, two years of fellowship.
12:56:28 Q. And what was that fellowship in?
12:56:29 A. Medical toxicology but I was -- specifically arrived
12:56:33 there under a grant from the Aaron Diamond Foundation to
12:56:37 study thermoregulation.
12:56:40 Q. So part of toxicology, your fellowship was to study
12:56:45 thermoregulation?
12:56:46 A. Correct. It's part of the fundamental part of
12:56:50 medical toxicology is thermoregulation.
12:56:54 Q. Is that the special expertise you were referring to
12:56:57 when plaintiffs' counsel asked you questions about it?
12:56:59 A. Well, it's one part of it, yes.
12:57:01 Q. What is the other part of the special expertise you
12:57:04 have?
12:57:04 A. Well, my special expertise is my fellowship was
12:57:09 focused on thermoregulation and medical toxicology.
12:57:12 Medical toxicology -- for example, within medical
12:57:17 toxicology, I could have focused on biological radiation
12:57:24 bombs. I didn't. I focused on thermoregulation. There
12:57:28 are many parts to medical toxicology. It could be that I

12:57:32 focused only on lead poisoning. I didn't. That's part of
12:57:36 a general. But I did focus on thermoregulation, which
12:57:40 similar to those other subgroups under toxicology is an
12:57:46 area of expertise that I developed.
12:57:49 Q. And you developed that through serving as an expert?
12:57:56 A. I won't take offense to that. That is absurd. I
12:57:59 just explained that I spent two years studying under a
12:58:04 grant that brought me to New York City, the largest poison
12:58:09 center in this country with the most cases at one of the
12:58:13 biggest public hospitals in the country to study
12:58:17 thermoregulation. Thank you to the Aaron Diamond
12:58:20 Foundation, which was one small part of the overall field
12:58:26 of medical toxicology.
12:58:28 Q. So were you studying the overall field of medical
12:58:31 toxicology or just thermoregulation?
12:58:33 A. I am board certified in medical toxicology.
12:58:37 Q. And were there other fellows in this program with
12:58:41 you?
12:58:41 A. Yes, of course. There were about six of us per year.
12:58:44 At that time, there's at least Bob, Cynthia, Susi, maybe
12:58:49 three. Now we have six a year and I'm in charge of their
12:58:52 training in part, as well.
12:58:55 Q. Dr. Vassallo, do you know at what temperature range
12:59:00 the risk of heat-related illness materially increases?
12:59:04 A. For whom?

12:59:06 Q. For anyone.
12:59:09 A. Well, in the prison system, as you might know, I have
12:59:13 opined multiple times that a heat index of 88 degrees
12:59:18 shows a sudden abrupt increase in the mortality and
12:59:24 morbidity associated -- across the world, we see this
12:59:29 sudden J-shaped or hockey stick-shaped curve when you get
12:59:35 above 88 degree heat index.
12:59:42 Q. Dr. Vassallo, you said for the prison system, you've
12:59:45 said 88 degrees. Does that change for other systems or in
12:59:49 the free world?
12:59:50 A. Well, so far, the studies are done in the free world
12:59:56 because that's where you go to the city of London,
13:00:00 Houston, Tokyo, Japan, around the world, these numbers
13:00:04 have been established without doubt about what it is, and
13:00:08 so, that's where these numbers are established. There is
13:00:13 no research so far in the prison to say that all 88-degree
13:00:19 index that this -- the risk increases in a hockey stick or
13:00:26 J-shaped curve similar to the rest of the world's
13:00:30 literature.
13:00:32 Q. And when I asked you do you know at what temperature,
13:00:35 you said "for who." Why did you say "for who"?
13:00:40 A. Well, let me ask the question. I probably didn't
13:00:42 really understand your question.
13:00:44 Q. You didn't understand the question do you know what
13:00:47 temperature range the risk of heat-related illness

13:00:50 materially increases?
13:00:51 A. Yeah. I don't know that. That's such a broad
13:00:57 question. I just explained that in the epidemiology of
13:01:00 the world that the heat index at 88, that doesn't mean
13:01:05 there's no risk at 82. I just chose 88 and the literature
13:01:10 chooses that, but that doesn't mean that at 80, some
13:01:12 people aren't going to be at risk because it's a
13:01:15 continuous curve. So if you're fat and you have heart
13:01:20 disease and you go walk outside to your -- sometimes
13:01:24 you're panting and short of breath and have your asthma
13:01:26 attack hit you by the time you get over there to the
13:01:29 parking garage.
13:01:31 Q. So it could be different for anyone.
13:01:43 A. Some people, yeah -- yes. Some people, yes. That's
13:01:47 right.
13:01:48 Q. Okay. Do you know why plaintiffs are asking for
13:01:51 temperatures to be kept from 65 to 85 degrees?
13:01:55 A. No.
13:01:58 Q. Do you know where 65 comes from?
13:02:03 A. No.
13:02:04 Q. Is there any literature to support 65 being the
13:02:07 coolest environment in which an individual should be
13:02:12 housed in?
13:02:13 A. Is this the heat index you're talking about or the
13:02:15 temperature?

13:02:17 Q. The temperature.
13:02:19 A. Do I know if there's any literature that suggests
13:02:22 that 65 is a good temperature to be housed at? There's
13:02:28 two issues. One is ACGIH, which is the American Society
13:02:32 of Engineers and Industrial Hygienists, they focus on
13:02:38 comfort. I am not focused on the comfort. Plaintiffs'
13:02:42 lawyers are not focused on comfort. There's NIOSH which
13:02:48 looks at safety, which is what we're talking about here,
13:02:50 and I have not seen NIOSH give the number of 65. So to
13:02:59 answer your question, I don't know.
13:03:00 Q. Okay. So since you're a toxicologist that focused on
13:03:04 thermoregulation, you would know that 65 has nothing to do
13:03:08 with the threshold for hypothermia, correct?
13:03:13 A. Hyperthermia?
13:03:15 Q. Hypo. You're not going to get hypothermia from
13:03:18 getting housed in sub-65 temperatures, will you?
13:03:23 A. First of all, I studied hypothermia. I wrote and
13:03:26 published and went to the bedside of every hypothermia
13:03:29 patient in the winter time. So now your question is 65
13:03:33 degrees, can you get hypothermia?
13:03:35 Q. Yes.
13:03:35 A. Absolutely. You're wet and you're cold, you're wet
13:03:40 outside on 65 degrees, I bet you a lot of us would be
13:03:45 shaking in cold here. The answer is yes.
13:03:47 Q. So it can vary just like the opposite end of the

13:03:50 spectrum in terms of your exposure to heat, correct?
13:03:53 A. No. I disagree with that. Please restate the
13:03:59 question.
13:04:01 Q. Does whether or not someone is at risk of hypothermia
13:04:07 vary on the individuals if they're housed in 65-degree
13:04:10 temperatures?
13:04:14 A. So an individual who is -- I think I understand the
13:04:18 question is is somebody -- could one person become
13:04:27 hypothermic at 65 degrees, the answer's yes. On the other
13:04:31 hand, and somebody might not. Like somebody who's fat
13:04:37 might not. You might actually have a big sweater on and
13:04:41 he's not. He might even be wet, but if he's wet at 65 and
13:04:44 he's skinny and he's not used to temperatures, maybe he'll
13:04:47 get hypothermia. His a temperature will go below 95
13:04:51 degrees Farenheit, which is the definition of hypothermia
13:04:55 in human beings.
13:04:56 On the other hand, if you're asking about heat,
13:05:00 there's a much more literature about what kind of
13:05:03 temperatures and heat indices leave people at risk of
13:05:08 heat-related problems. It's all over the news. It's in
13:05:11 the entire world scientific literature.
13:05:14 Q. Okay. So based on what you've told me, it's accurate
13:05:18 to say that everyone's risk whether they're a healthy thin
13:05:22 person or someone that may be fat, their risk of
13:05:27 heat-related illness and the effect on thermoregulation

13:05:31 varies, correct?
13:05:32 A. I completely disagree with that. I've talked about
13:05:34 that in this courtroom many times that there's a
13:05:38 population risk. We tell everybody don't smoke because
13:05:43 they have a risk of getting cancer. We all know that. We
13:05:50 advise them not to smoke because smoking could be bad for
13:05:53 their health. Not everybody will get cancer. That
13:05:57 doesn't mean smoking's good for you. The advice is don't
13:06:02 arrive, don't hold yourself cumulatively every day in
13:06:06 those temperatures because your diabetes, your heart
13:06:10 disease, your likelihood of stroke, everything else is
13:06:12 going to increase. The science shows that. Just like the
13:06:17 science show that if you smoke, your risk for lung cancer,
13:06:21 emphysema, COPD, and cardiovascular disease, and heart
13:06:27 disease is greater.
13:06:27 Q. That's what I'm just asking you. You just said the
13:06:31 literature shows that their risk can be greater. I didn't
13:06:33 ask you if the heat -- if the harm from heat varies. I
13:06:37 asked you if the individual risk can vary.
13:06:41 A. No. What varies is the temperature. So the
13:06:45 individuals are at risk, period. All individuals are at
13:06:48 risk.
13:06:50 Q. I'm asking you does the risk vary? The amount of
13:06:52 risk, does it vary?
13:06:54 A. I say no.

13:06:55 Q. So an individual who's 65 with COPD would be at the
13:07:02 exact same amount of risk as a healthy 24-year-old? Is
13:07:05 that your testimony?
13:07:05 A. No, it is not. I've always said that there's some
13:07:08 people at more risk -- I don't understand the way you're
13:07:12 asking the question. It's quite clear from this courtroom
13:07:15 and every other courtroom that I've testified on this for
13:07:18 the last 20 years that some people are at more risk than
13:07:22 others.
13:07:22 Q. That was the question I asked you, Dr. Vassallo, so
13:07:25 thank you for the answer.
13:07:29 Do you recall giving an interview in 2014 to a
13:07:31 radio show on New York Public Radio, the Brian Lehrer
13:07:35 Show?
13:07:35 A. Yes, I reviewed it. Actually, I was provided a
13:07:38 transcript and I do remember that.
13:07:40 Q. Have you given more than one interview on the topic
13:07:43 of heat exposure and heat illness?
13:07:46 A. Every once in a while -- I think you have more than
13:07:49 one there. I know it showed up on TV the other day.
13:07:52 Somebody showed me in the Florida deposition I was on some
13:07:56 dress that I got for the occasion at the Goodwill and
13:07:59 there I was 25 years ago on TV.
13:08:02 Q. Okay. Well, I'm going to ask you just about this
13:08:05 2014 interview with Brian Lehrer, it's titled It's Getting

13:08:09 Hot in Here. What Does Heat Do to You? Brian, can you
13:08:13 put up Defendant's Exhibit 197?
13:08:16 A. What year was this? I'm sorry.
13:08:18 Q. I'm sorry?
13:08:19 A. Excuse me for interrupting you. 2014.
13:08:27 Q. So July 22nd, 2014. Does that sound familiar?
13:08:32 A. No. But if that's the day it was 12 years ago, I
13:08:35 accept that.
13:08:38 Q. And, your Honor, this is published on the New York
13:08:40 Public Radio on July 22nd, 2014. It's publicly available.
13:08:44 Brian, can you go to line 17 through 21?
13:08:49 Dr. Vassallo, I'm going to read to you what you
13:08:51 said. That's right. And of course, it depends on the
13:08:53 person's health and their ability to have some degree of
13:08:56 time every day in air conditioning. That relieves some of
13:08:59 the heat stress so there are a lot of things that are
13:09:02 happening.
13:09:02 Did I read that correctly?
13:09:04 A. Could you let me see the paragraphs ahead of it,
13:09:07 please? I don't even know what questioning I'm answering
13:09:11 here. In other words, that's right. What was the
13:09:13 question?
13:09:14 Q. I think the question was asking you whether or not it
13:09:17 depends on the person's health and their ability --
13:09:19 A. May I please see the question? I'd like to see the

13:09:22 question. I need to see what this conversation was about.
13:09:40 Q. At what temperatures do you start to see the cases of
13:09:43 heat exhaustion or heat stroke or other actual
13:09:47 heat-related emergencies in the emergency room?
13:09:49 A. Okay. Good. Keep going. Don't skip down. Let's
13:09:55 see what I said. How did I answer that? So I corrected
13:10:04 him and said -- I corrected the questioner and I said it's
13:10:08 the heat index, humidity, temperature and we spoke to the
13:10:14 National Weather Service and talked about the 80s, 86, 88
13:10:21 and just -- this is 12 years ago. And then, we agreed
13:10:26 that the temperature or the heat index on that particular
13:10:30 day was about 88 and then, tomorrow, it's 90. Now what
13:10:34 did I say? That's right. And of course, it depends on
13:10:37 the person's health and their ability to have some degree
13:10:39 of time every day in air conditioning.
13:10:41 What is your question?
13:10:42 Q. So that's accurate, correct? You've clarified that
13:10:45 the person's exposure of risk to what Mr. Lehrer was
13:10:49 asking you about depends on the person's health and their
13:10:52 ability to have some degree of time every day in air
13:10:55 conditioning, right?
13:10:56 A. That's what I said.
13:10:57 Q. What did you mean --
13:10:58 MR. SINGLEY: Your Honor, if we're using this, if
13:11:01 Dr. Vassallo could see the entire answer, I think she

13:11:03 wasn't finished. If she could be allowed to read her
13:11:07 entire answer.
13:11:08 MS. CARTER: There's a period on line 21.
13:11:11 THE COURT: Do you have a hardcopy of the
13:11:13 witness' --
13:11:14 MS. CARTER: If we do have a hardcopy of our
13:11:15 exhibits.
13:11:16 THE COURT: And probably good if you could just
13:11:17 give her the -- so she knows the whole context of what the
13:11:20 interview was.
13:11:21 MR. SINGLEY: My concern is the answer continues
13:11:23 on line 22.
13:11:38 MS. CARTER: It's Exhibit 197, James. May I
13:11:48 approach, your Honor?
13:11:49 THE COURT: Yes, please. Doctor, take your time
13:11:54 and look at the context better.
13:11:56 THE WITNESS: Thank you.
13:12:18 A. What page are we on?
13:12:21 Q. (BY MS. CARTER) We are on page 5.
13:13:06 A. So the question is at what temperature do you start
13:13:08 to see the cases of heat exhaustion and heat stroke and
13:13:13 other heat-related emergencies. So this is focused not
13:13:16 only worsening of underlying conditions such as asthma and
13:13:19 cardiovascular disease and stroke that was focused on here
13:13:23 on page 3 where I talked about asthma, lung diseases and

13:13:29 staying indoors, doing something, all those different
13:13:33 things and the word "ozone."
13:13:36 So that was all discussed here and now he wants
13:13:38 to go specifically with regard to heat exhaustion and heat
13:13:44 stroke and, of course, as I've opined many times here,
13:13:47 those are vast minority of the injuries and heat
13:13:55 illnesses, illnesses caused by the heat that we see in hot
13:14:00 weather or in, for example, the prison here in Texas.
13:14:06 And then, I talk about the person's health.
13:14:12 Obviously, if they have asthma or cardiovascular disease,
13:14:16 I've already said many times, if they're elderly, those
13:14:18 people are at greater risk. And I also talked about if
13:14:24 you're in air conditioning, this is not -- this is the
13:14:28 SAMHSA story. Not story, I didn't mean. This as a paper
13:14:34 in the New England Journal of Medicine, which was not too
13:14:38 long before this that showed that individuals who died,
13:14:47 those who had some time in air conditioning were at about
13:14:51 a 10 percent less risk of death than those so that did
13:14:57 not.
13:14:59 So some time in air conditioning according to the
13:15:03 SAMHSA article was protective in Chicago over the three
13:15:08 days of the heat emergency that occurred where 700 extra
13:15:17 people died and air conditioning itself in that article
13:15:22 was 80 percent protective. That was just protective, but
13:15:30 if you spent a little bit of time in the air conditioning,

13:15:33 you have a slight decrease percentage-wise in your risk of
13:15:38 dying. That's what that article is at and that's what I'm
13:15:41 referring to here.
13:15:43 Q. So where you say the ability to have some degree of
13:15:46 time every day in air conditioning, you're referring to
13:15:49 some part of the day spent in air conditioning, correct?
13:15:51 A. Yes.
13:15:52 Q. But you didn't define the length of time, did you?
13:15:55 A. No.
13:16:01 Q. Dr. Vassallo, do you recall issuing your report in
13:16:07 this case?
13:16:07 A. Yes.
13:16:09 Q. You issued a declaration in 2024 for the amended
13:16:12 complaint, correct?
13:16:13 A. Yes.
13:16:13 Q. And then, you subsequently issued a report and
13:16:16 opinion, right?
13:16:19 A. I have an original declaration in April of '24. I
13:16:27 have a second declaration in October of '25. I have a
13:16:32 rebuttal report in December of '25 and a supplemental
13:16:36 report in March of this year.
13:16:38 Q. Okay.
13:16:39 A. I recall now.
13:16:50 Q. And at any time in that report, did you say it
13:16:54 depends on the person's health and their ability to have

some degree of time every day in air conditioning?
A. I don't know. I'd have to reread them.
MS. CARTER: Your Honor, at this time, I'd like to move to admit Defendant's 197.
THE COURT: And what is 197?
MR. SINGLEY: Expert report is hearsay.
MS. CARTER: No. The testimony from her words. The transcription of the radio show interview.
MR. SINGLEY: That's hearsay, too, I believe, your Honor, and I'll object. She's here to be examined about that.
MS. CARTER: And she's shown foundation enough that's reliable, your Honor. She just opined on exactly what she meant.
THE COURT: Overruled and admitted.
MS. CARTER: Thank you.
A. Excuse me. I thought when you were asking me, I thought you were asking me if those were in the declarations. First you asked me if I did four reports and I said yes, and then, suddenly, we're talking again about the Brian Lehrer talk show?
Q. (BY MS. CARTER) Yes. Dr. Vassallo --
A. When I gave my answer, I thought you were asking me if I had ever said that in one of my four declarations.
Q. That is what I asked. You said in the interview, it

13:18:03 depends on a person's health and their ability to have
13:18:05 some degree of time every day in air conditioning and you
13:18:08 did not say that in any of your reports, correct?
13:18:11 A. Well, what I'm -- what I just answered, my answer to
13:18:15 your question was I don't remember if I put in one of my
13:18:18 four declarations or three. So did I?
13:18:23 Q. We're going to get to your reports, Dr. Vassallo.
13:18:25 A. Okay. But you're asking me right now if I said
13:18:28 something in -- 12 years ago in a radio interview where I
13:18:32 was sitting at my office in New York City to a radio --
13:18:37 famous radio guy who's, you know, making his show, if that
13:18:41 is exactly the same if I put it in a declaration, right?
13:18:45 That's what you're asking me?
13:18:47 Q. If you've testified that the risk depends on a
13:18:51 person's health and their ability to have some degree in
13:18:53 air conditioning. That's what I asked you.
13:18:57 A. Your Honor, I don't -- I need the questions to be
13:19:01 asked again. I have always testified that there's a --
13:19:05 that some people are at more risk than others. I have
13:19:10 always testified. I have said it here in the radio --
13:19:13 off-the-cuff radio that the SAMHSA article showed that
13:19:18 some people who were in air conditioning some part of the
13:19:21 time had about a small percentage decrease in their risk
13:19:25 of death. Outside of that, I don't understand your
13:19:27 question.

13:19:28 Q. You answered my question, Dr. Vassallo.

13:19:32 THE COURT: I think I'm clear on the questions. I think the confusion was at the end, she was simply asking that that be admitted into evidence.

13:19:38 THE WITNESS: Yes, sir.

13:19:39 THE COURT: The interview. The transcript of the interview and so she kind of switched gears.

13:19:43 THE WITNESS: Yes. Thank you, your Honor.

13:19:44 THE COURT: After she asked. So I think I'm clear.

13:19:47 THE WITNESS: Okay. Thank you, your Honor.

13:19:48 THE COURT: Thank you.

13:19:49 Q. (BY MS. CARTER) And, Dr. Vassallo, in creating your opinions in this case, did you ever review a JAMA article from 2015 entitled Heat Rate And Body Temperature Response to Extreme Heat And Humidity With and Without Electric Fans?

13:20:05 A. Who wrote it?

13:20:06 Q. Can we put up Defendant's Exhibit 129, Brian, and it will show you the author, Dr. Vassallo.

13:20:19 A. Show me the author. Yes. I read Nicholas Ravanelli's report here.

13:20:36 Q. Okay.

13:20:38 A. This is the 2015 article.

13:20:40 Q. This is the 2015, yes?

13:20:44 A. I was referring to that he wrote the newer article
13:20:47 and he was trying to show through his assumptions and his
13:20:51 theories that what result -- what was the reason for this
13:20:57 result. I read it.
13:20:59 Q. Okay. And you understand the opinion is that
13:21:05 inflection of core temperature only occurred in two
13:21:09 participants that have fans and seven without fans,
13:21:11 correct?
13:21:11 A. Could you show me the article? I'm not going to be
13:21:15 able to answer your questions when you just show me a
13:21:18 snippet from an article. I did not bring this article.
13:21:21 Show me the article --
13:21:22 Q. Okay.
13:21:23 A. -- please.
13:21:23 Q. 197 and -- or 129 in your book. May I approach, your
13:21:28 Honor?
13:21:28 THE COURT: You may. Counsel, this might be a
13:21:47 good time for us to take our extended break if that's
13:21:49 okay.
13:21:49 MS. CARTER: That's fine.
13:21:50 THE COURT: I don't want you to miss your lunch,
13:21:52 but if you want to look during lunch, you can look at it,
13:21:54 as well.
13:21:55 THE WITNESS: Thank you. I will.
13:21:56 THE COURT: So we're going to take our slightly

13:21:58 extended break now. It's 1:20. Let's -- give you a few
13:22:03 minutes extra. So let's go ahead and call it -- let's
13:22:16 reassemble at 2:00 and pick up testimony at that time.
13:22:39 (Lunch recess.)
14:00:41 THE COURT: Ms. Carter, you may continue with
14:00:43 your cross-examination.
14:00:53 Q. (BY MS. CARTER) Dr. Vassallo, you reviewed 122
14:01:01 medical records in this case, didn't you?
14:01:06 A. I actually am not aware of that number.
14:01:11 Q. You don't know how many records you reviewed?
14:01:14 A. That's true.
14:01:16 Q. Did you review a hundred?
14:01:18 A. I don't think so.
14:01:20 Q. Did you review 50?
14:01:24 A. I don't think so.
14:01:24 Q. Did you review 20?
14:01:27 A. Yes.
14:01:29 Q. Twenty or around 20?
14:01:30 A. I'm not sure.
14:01:31 Q. Are you aware that there are 122 death records on
14:01:36 Plaintiffs' Exhibit list?
14:01:38 A. I'm not.
14:01:40 Q. But you testified you did not review 122 death
14:01:44 records, correct?
14:01:45 A. That's correct.

14:01:46 Q. You didn't choose the autopsies you reviewed, did you?
14:01:49 A. No.
14:01:49 Q. You were just given a list of autopsies by plaintiffs' counsel, correct?
14:01:50 A. Yes.
14:01:58 Q. And you made a few assumptions in forming your opinions on those records, didn't you?
14:01:59 A. Sorry. Couldn't quite hear you.
14:02:00 Q. You made a few assumptions when forming your opinion in reviewing those records, didn't you?
14:02:07 A. It's possible.
14:02:09 Q. You assumed all of the records that plaintiffs' counsel gave you were inmates were not housed in air conditioning, correct?
14:02:12 A. Right.
14:02:14 Q. You actually withdrew one of your opinions, right?
14:02:15 A. Correct.
14:02:20 Q. You withdrew your opinion on Samuel Rucker, right?
14:02:27 A. Yes, I withdrew that. Yes.
14:02:28 Q. You've previously said in quotes, heat was surely a contributing factor in Mr. Rucker's death.
14:02:28 A. Yes.
14:02:31 Q. You assumed he was not housed in air conditioning, right?
14:02:32
14:02:36
14:02:39
14:02:49
14:02:54
14:02:54
14:02:58

14:02:58 A. Right.
14:02:59 Q. And you've since withdrawn that opinion because you
14:03:01 found that your assumption was incorrect.
14:03:02 A. That's correct.
14:03:04 Q. You said he died in August and was housed at the
14:03:08 unair-conditioned Michael Unit, right?
14:03:10 A. Yes.
14:03:11 Q. And you noted the unit's temperature log and the heat
14:03:15 index, correct?
14:03:16 A. Yes.
14:03:17 Q. You also noted in your opinion he has a medical
14:03:20 history of hypertension, heart failure, type II diabetes,
14:03:25 sleep apnea and clinical obesity, right?
14:03:28 A. Yes.
14:03:29 Q. And you noted that the preliminary cause of death was
14:03:33 listed as cardiac arrest, right?
14:03:38 A. I don't remember exactly, but if that's what I said,
14:03:41 yes, I agree with you.
14:03:43 Q. And you didn't perform the autopsy on Mr. Rucker, did
14:03:45 you?
14:03:46 A. No, ma'am.
14:03:46 Q. But you still disagreed with the preliminary cause of
14:03:49 death, right?
14:03:52 A. I don't really remember anymore, but if you say I
14:03:57 did, then I did, yes.

14:03:58 Q. Okay. If you don't remember, we can show you. It's
14:04:01 her October 2025 report at page 8. There you said heat
14:04:06 was surely a contributing factor in his death. And you
14:04:10 can read here where you talk about his age, medical
14:04:15 history, and you wrote, did not take a core body
14:04:19 temperature at the cell at the time Mr. Rucker was found.
14:04:23 You noted that because you believed he was not in
14:04:27 air-conditioned housing, right?
14:04:28 A. Yes.
14:04:34 Q. When you were reviewing the other under 20 autopsies,
14:04:39 you also based your opinion on unit temperature logs,
14:04:43 right?
14:04:43 A. Yes.
14:04:44 Q. And you considered other comorbidities like heart
14:04:47 problems, diabetes and obesity, right?
14:04:49 A. Yes.
14:04:50 Q. I believe you spoke with plaintiffs' counsel, Mr.
14:04:54 Fairchild had diabetes, right?
14:04:56 A. Yes.
14:05:00 Q. He also had heart problems. You recall that?
14:05:06 A. Yes.
14:05:11 Q. Did you note that his heart was twice the normal size
14:05:14 and he had a significant cardiovascular history?
14:05:17 A. Yes.
14:05:18 Q. You noted that in your report?

14:05:19 A. No, I don't know if I note it in my report, but I
14:05:22 agree with you.
14:05:23 Q. So despite knowing that he shared two of the same
14:05:26 comorbidities of Samuel Rucker, you still say heat was a
14:05:32 significant contributing factor in his death, if not
14:05:36 outright cause of death, right?
14:05:38 A. Yes.
14:05:39 Q. You spoke about Jason Wilson with plaintiffs'
14:05:48 counsel, right?
14:05:48 A. Yes.
14:05:48 Q. And Jason Wilson also had a medical history of
14:05:52 obesity; is that correct?
14:05:53 A. Yes.
14:05:53 Q. And for that case, you said heat may have been a
14:05:56 contributing factor in his death. Do you recall that?
14:05:59 A. Yes.
14:06:01 Q. Despite the fact that he had K2 or synthetic
14:06:06 cannabinoid in his toxicology report?
14:06:08 A. Correct.
14:06:11 Q. Do you know the fatal rate of that drug?
14:06:14 A. Yes.
14:06:16 Q. Do you know the fatal rate of a synthetic
14:06:20 cannabinoid?
14:06:21 A. Well, there's no -- I know that there is no such
14:06:22 thing as a fatal rate so yes, I know.

14:06:25 Q. There's no such thing as a fatal rate because any
14:06:28 amount can kill you, correct?
14:06:30 A. No. It's just when you say rate, do you mean level?
14:06:33 Q. Sure. Level.
14:06:34 A. Okay. So there's no established synthetic
14:06:47 cannabinoid level that is associated with death, so it's
14:06:50 not in the literature. There's no science on that at this
14:06:53 time.
14:06:53 Q. Because it's really unregulated, isn't it?
14:06:57 A. Unregulated legally?
14:07:01 Q. Yes.
14:07:02 A. It's unregulated.
14:07:05 Q. You spoke about Bradley Sheets with plaintiffs'
14:07:09 counsel, right?
14:07:09 A. Yes, I did.
14:07:10 Q. And you also noted obesity in Mr. Sheets as well as a
14:07:13 history of hypertensive cardiovascular disease. Those are
14:07:17 two of the same comorbidities as Mr. Rucker, correct?
14:07:21 A. Yes.
14:07:22 Q. So despite knowing that these inmates shared
14:07:35 comorbidities with Mr. Rucker, it's still your opinion
14:07:38 that these inmates would not have died if they were in air
14:07:44 conditioning?
14:07:44 A. Yes.
14:07:46 Q. Despite knowing that Mr. Rucker did die in air

14:07:49 conditioning, right?
14:07:50 A. Correct.
14:07:54 Q. Did air conditioning eliminate Mr. Rucker's risk of
14:08:01 death from those comorbidities, Dr. Vassallo?
14:08:05 A. It eliminated his risk of heat causing his death.
14:08:10 Q. But those comorbidities have their own independent
14:08:13 rates of fatality, right?
14:08:15 A. Yes.
14:08:16 Q. Dr. Vassallo, are you a medical examiner?
14:08:26 A. No.
14:08:27 Q. Are you a pathologist?
14:08:28 A. No.
14:08:30 Q. But you've opined on at least 10 to 20 causes of
14:08:35 death in this case provided to you by plaintiffs' counsel,
14:08:37 right?
14:08:37 A. Yes.
14:08:38 Q. And you're disagreeing with findings of the
14:08:45 pathologists and medical examiners that actually conducted
14:08:48 these examinations, correct?
14:08:51 A. In some cases, I agree. In some cases, I disagree.
14:08:55 In some cases, I partially agree. In some cases, I
14:08:58 partially disagree. Yes.
14:08:59 Q. Okay. And in Mr. Rucker's case, you formerly
14:09:11 disagreed, but you withdrew that opinion, correct?
14:09:15 A. I definitely withdrew the opinion because he was in

14:09:18 air conditioning; and then, I don't remember the rest of
14:09:20 my opinion because I withdrew it.
14:09:23 Q. So you don't recall saying that heat was surely a
14:09:27 factor, what we just showed you on the screen?
14:09:29 A. Oh, yes, I definitely said that.
14:09:31 Q. Okay. Dr. Vassallo, plaintiffs' counsel asked you
14:09:47 about a decedent named Armando Gonzales. Do you recall
14:09:53 that?
14:09:53 A. Yes.
14:09:53 Q. And you did not address the patient's history of
14:09:56 substance abuse disorder, correct?
14:09:57 A. That's correct.
14:09:59 Q. And you ignored the fact that he was observed
14:10:02 snorting Effexor and Benadryl, right?
14:10:05 A. I think the decedent goes by she and at least I was
14:10:11 corrected in the last hearing that it's she, and actually,
14:10:16 I did read all of -- I did not read that. I did not read
14:10:20 the words that observed snorting. I did not read that.
14:10:24 Q. Okay. So do you know the toxic rates associated with
14:10:28 Effexor and Benadryl?
14:10:30 A. Do you mean the level?
14:10:33 Q. The toxic level associated with Effexor and Benadryl.
14:10:36 A. Benadryl, yes. Venlafaxine, I don't know that
14:10:41 there's a -- I don't know the concentrations of
14:10:50 venlafaxine but just diphenhydramine, yes.

14:10:52 Q. Okay. So you don't know the toxic levels associated
14:10:55 with the substances that inmate Gonzales was observed
14:10:58 consuming, correct?
14:10:58 A. Well, Benadryl, I do and venlafaxine, I don't.
14:11:04 Q. You don't know the toxicology of those in
14:11:07 combination?
14:11:08 A. Nobody does. That's an unknown.
14:11:31 Q. And, Dr. Vassallo, you also spoke about the death of
14:11:34 John Southards. Do you recall that?
14:11:39 A. Yes.
14:11:39 Q. Did you note in your report that the temperature
14:11:41 inside that day was 85.7 degrees?
14:11:49 A. No, I did not note that in my report.
14:11:52 Q. Okay. Dr. Vassallo, you also spoke about inmate
14:11:57 Fairchild, correct?
14:11:58 A. Yes.
14:12:02 Q. And you know about his significant cardiovascular
14:12:06 history, right?
14:12:11 A. I know that he has a cardiovascular history, yes.
14:12:14 Q. Did you know that his heart was over double the
14:12:17 normal size?
14:12:18 A. The autopsy said that and I read it, yes.
14:12:24 Q. You also didn't reconcile that his white blood cell
14:12:29 count was high, did you?
14:12:30 A. No.

14:12:32 Q. I want to ask you about his temperature,
14:12:41 specifically. You did note that Mr. Fairchild's
14:12:44 temperature was high, correct?
14:12:45 A. Yes.
14:12:46 Q. Did you note that his temperature was 102 at
14:12:50 admittance to the ER and continued to rise over eight
14:12:54 hours in air conditioning at the hospital?
14:12:56 A. I remember seeing that now that you mention it, yes.
14:12:59 Q. Okay. So Mr. Fairchild had 102 temperature at the
14:13:05 ER, was in air conditioning for eight hours and his
14:13:08 temperature still continued to rise, correct?
14:13:11 A. It's very common with heat stroke, they have
14:13:14 autonomic instability and that happens all the time.
14:13:17 Q. Did you consider that Mr. Fairchild was on sepsis
14:13:21 protocol?
14:13:21 A. Anybody with high temperature will be on sepsis
14:13:26 protocol. That's every --
14:13:27 Q. And does sepsis protocol -- is that known to cause
14:13:31 fever?
14:13:31 A. Sepsis may or may not cause fever.
14:13:35 Q. Okay. You also spoke about Bradley Sheets with
14:13:57 plaintiffs' counsel, right?
14:13:58 A. Yes.
14:14:02 Q. You said you can't rule it out. Is that accurate?
14:14:09 A. I said that heat cannot be ruled out. That is

14:14:13 accurate.
14:14:15 Q. But then, you told plaintiffs' counsel that it was
14:14:18 surely a contributing factor, right?
14:14:19 A. Yes.
14:14:20 Q. So how can you rule something -- not rule something
14:14:23 out but then, also consider it a contributing factor?
14:14:32 A. I probably should be able to understand that
14:14:35 question. Could you ask me again?
14:14:36 Q. Okay. It's okay. I can move on.
14:14:41 Dr. Vassallo, did you note that the temperature
14:14:44 logs plaintiffs' counsel showed you were outdoor
14:14:47 temperature logs?
14:14:48 A. Yes.
14:14:48 Q. Did you review the indoor temperature logs?
14:14:50 A. No.
14:14:51 Q. So you're not aware there was 88 degrees inside Mr.
14:14:54 Fairchild's cell?
14:14:57 A. At this moment, sitting here today, I am not aware of
14:15:03 the 88-degree reading. That's correct.
14:15:10 Q. And then, I want to talk about one of the other
14:15:13 deaths you reviewed, Mr. Wayne Straway. Do you recall
14:15:18 discussing that with plaintiffs' counsel?
14:15:19 A. Yes.
14:15:19 Q. You note that his cause of death was synthetic
14:15:25 cannabinoid toxicity and methamphetamines, correct?

14:15:28 A. I note that -- yes, I did notice that.
14:15:33 Q. But you didn't actually note the elevated
14:15:36 methamphetamine concentration, did you?
14:15:38 A. Oh, I really felt like I focused highly on
14:15:41 amphetamines as a cause of heat stroke. I thought I did
14:15:47 recognize that. I spoke at great length about amphetamine
14:15:51 toxicity so the answer's I did focus on that.
14:15:54 Q. So is his methamphetamine concentration of 6.9, is
14:15:59 that substantially higher than commonly cited-to toxin
14:16:03 thresholds?
14:16:03 A. You know, we commonly cite to toxic amphetamine
14:16:09 concentrations. I have no doubt that it was elevated.
14:16:12 Q. Okay. You also didn't note that Mr. Straway had
14:16:18 obesity and heart problems similar to Mr. Rucker, did you?
14:16:23 A. In my report? Because in my discussion with Mr.
14:16:27 Singley, I did talk about his obesity.
14:16:29 Q. In your opinion in disagreeing with the pathologist,
14:16:33 you did not note obesity and heart problems, did you?
14:16:37 A. In the written declaration?
14:16:38 Q. Your March 2026 supplemental report, Dr. Vassallo.
14:16:42 A. I don't really remember what I said about him at that
14:16:46 time in my written report.
14:16:47 Q. Okay. But despite him having obesity and heart
14:16:51 problems which you agree with, right, he did have obesity
14:16:54 and heart problems?

14:16:55 A. Yes, ma'am.
14:16:56 Q. Despite that, you disagreed with the pathologist's
14:16:58 finding, right?
14:17:03 A. In part and -- in part, yes.
14:17:09 Q. Okay. You actually wrote he would not have died as
14:17:13 he did -- he would not have died as he did had he been
14:17:16 housed in air condition, right?
14:17:20 A. If you are reading from my report, I agree with you.
14:17:23 Q. And then, today in court, you said he may not have
14:17:25 died. Why did you walk that back?
14:17:32 A. I didn't feel like I was walking it back. Basically,
14:17:39 amphetamine can cause heat stroke. When you're in a cold
14:17:43 environment, it causes heat stroke less often.
14:17:46 Q. What about obesity and having heart problems, as
14:17:51 well? You ignored that and disagreed with the
14:17:55 pathologist's findings, right?
14:17:59 A. In my written report, I ignored -- I failed to say
14:18:02 that Mr. Straway has obesity. Is that what you're saying?
14:18:06 Q. Yes.
14:18:07 A. Okay. If I failed to say that he had obesity, then
14:18:10 that's just a fact I failed to say obesity.
14:18:13 Q. Okay. So we've established that the inmates you've
14:18:17 testified about had some of the same comorbidities as Mr.
14:18:21 Samuel Rucker, right?
14:18:22 A. Yes.

14:18:22 Q. And their deaths both occurred or all of them
14:18:25 occurred in the summer months, right?
14:18:27 A. Yes.
14:18:29 Q. Dr. Vassallo, it's your opinion that TDCJ, a state
14:18:46 correctional agency, should overrule the findings of an
14:18:49 independent pathologist when reporting death to the
14:18:51 legislature?
14:18:55 A. No.
14:18:58 Q. But you disagree with those findings of the
14:19:02 pathologists, right?
14:19:04 A. My opinion is that the pathologists did not have the
14:19:09 information. For example, with Straway, did not know the
14:19:12 body temperature was 106. So we went through these cases
14:19:15 and I think I demonstrated that in many cases, the
14:19:22 pathologists did not have the entire picture, and
14:19:26 therefore, their conclusions were incomplete.
14:19:30 Q. But, Dr. Vassallo, you've also admitted today that
14:19:33 you also ignored crucial information in some of these
14:19:36 deaths, didn't you?
14:19:38 MR. SINGLEY: Objection.
14:19:43 THE COURT: I'll allow the question.
14:19:45 A. I'm not diagnosing the patients. And the autopsy
14:19:52 must have the facts of the temperature of the body,
14:19:58 temperature of the environment in order to come to a
14:20:00 correct inclusion. I had those and some of those facts

14:20:08 that the medical examiner did not have, and I weighed the
14:20:12 OIG report, everything I could. It was provided to me to
14:20:17 come to a conclusion where I did agree with part or
14:20:23 disagreed with some part of the -- and I think I gave for
14:20:29 each one the reason that I was concerned about the
14:20:33 conclusion such as the lack of knowledge about a body
14:20:37 temperature of 106 or no seizure. There were many
14:20:41 examples of that.
14:20:42 Q. (BY MS. CARTER) Okay. But you have no concerns about
14:20:45 your own lack of inclusion in some of these factors in the
14:20:49 conclusions in your report, right?
14:20:52 A. That's correct.
14:20:55 Q. Dr. Vassallo, was it your job to determine cause of
14:20:58 death in these cases?
14:20:59 A. No.
14:21:00 Q. You were given the autopsies by plaintiffs' counsel
14:21:03 to comb through and look for what you believed could have
14:21:06 been heat death, right?
14:21:07 A. No.
14:21:09 Q. You weren't given the autopsies by plaintiffs'
14:21:11 counsel?
14:21:12 A. I was given the autopsies by plaintiffs' counsel,
14:21:14 yes.
14:21:14 Q. And you didn't assume that all of these deaths
14:21:17 occurred in unair-conditioned housing?

14:21:19 A. I did assume that, yes.
14:21:23 Q. You didn't do a full medical history evaluation, did
14:21:26 you?
14:21:26 A. No.
14:21:27 Q. And you, yourself, are not a pathologist or a medical
14:21:29 examiner, right?
14:21:30 A. Correct.
14:21:31 Q. So you actually can't possibly rule out all other
14:21:35 causes of death, can you? It's a yes or no question, Dr.
14:21:43 Vassallo.
14:21:45 A. No.
14:21:47 Q. Thank you. I pass the witness.
14:21:56 RE-DIRECT EXAMINATION
14:21:58 BY MR. SINGLEY:
14:21:58 Q. Just a couple of things, Doctor. First of all, Ms.
14:22:03 Carter discussing some of your qualifications reminded me
14:22:06 from one of my comrades that I should move to admit Dr.
14:22:08 Vassallo's CV, which is Plaintiffs' Exhibit 425.
14:22:13 THE COURT: Any objection?
14:22:15 MS. CARTER: No objection, your Honor.
14:22:16 THE COURT: So admitted.
14:22:20 Q. (BY MR. SINGLEY) Dr. Vassallo, Ms. Carter was just
14:22:23 asking you questions and using the word "ignored" and what
14:22:27 I heard her just say is that there were some things that
14:22:30 weren't in your report but that you considered. Is that

14:22:34 the case?
14:22:34 A. There were things in my report that I considered,
14:22:37 yes, that's true.
14:22:38 Q. And in reviewing the file, did you review all the
14:22:43 information in the file to come to your opinions?
14:22:46 A. Yes, I did.
14:22:47 Q. And there are some facts, however, contained in the
14:22:50 files that you did not write down in your report.
14:22:52 A. That's true.
14:22:55 Q. Paul, if you'd put up Defendant's Exhibit 197.
14:23:08 Doctor, if I have this right, this should be the radio
14:23:11 show transcript. And if you'd go down to between page 5
14:23:30 and 6. Is that on your screen, Dr. Vassallo?
14:23:38 A. Yes.
14:23:41 Q. So in lower right, Ms. Carter was asking you some
14:23:45 questions about some of your answers here. Ms. Carter was
14:24:20 asking you questions about this portion and in the lower
14:24:23 sort of the -- right there, it says, Dr. Vassallo, that's
14:24:27 right. And of course, it depends on the person's health
14:24:30 and ability to have some degree of time every day in air
14:24:35 conditioning. That relieves some of the heat stress so
14:24:37 there are a lot of things that are happening.
14:24:39 Was there more to that answer, Dr. Vassallo?
14:24:41 A. Yes. It continues on.
14:24:42 Q. Would you read the rest of the answer, please?

14:24:44 A. Somebody who is on certain drugs that put them at
14:24:47 risk, are using drugs or who is actually taking some
14:24:52 pharmaceutical treatments, those people are also at risk.
14:24:56 But anybody exercising hard, even young, and then I can't
14:25:04 see anymore.
14:25:06 Q. It continues over on --
14:25:07 A. Then even young and healthy like military can succumb
14:25:11 to heat stroke given the right set of circumstances.
14:25:14 Q. Okay. And, Doctor, if I understood your previous
14:25:18 testimony here today, in your opinion, everyone, including
14:25:22 young healthy people, is at substantial risk from the
14:25:26 heat. First of all; is that correct?
14:25:27 A. Yes.
14:25:28 Q. But second of all, some people, although everyone's
14:25:33 at risk some, people are more at risk than other people;
14:25:37 is that right?
14:25:37 A. That's correct.
14:25:38 Q. And some of the point of the heat stress
14:25:41 vulnerability categories we discussed is to identify those
14:25:44 people, age 65 and up and certain diseases and
14:25:47 medications. Is that the case?
14:25:48 A. That's correct.
14:25:49 Q. And, Doctor, in your opinion, is it -- to adequately
14:25:57 address the risk and to solve the risk of the heat here,
14:26:02 is it enough just to have people go into air conditioning

for a couple few hours a day or, in your opinion, do they need to be housed in air conditioning?

A. It's absolutely clear they need to be housed in air conditioning.

Q. Thank you, doctor. I'll pass the witness.

THE COURT: Ms. Carter?

MS. CARTER: Nothing further, your Honor.

THE COURT: Thank you, Doctor. You may step down and you're discussed.

Next witness?

MR. JAMES: Plaintiffs would call Dr. Paul Uribe.

THE COURT: Before you take a seat, could I get you to raise your right hand to be sworn, please?

THE CLERK: You do solemnly swear or affirm that the testimony which you may give in the case now before the Court shall be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

THE COURT: Please be seated.

THE WITNESS: Thank you, your Honor.

PAUL URIBE, called by the Plaintiff, duly sworn.

DIRECT EXAMINATION

BY MR. JAMES:

Q. Dr. Uribe, can you please state your full name for the record?

14:27:17 A. Sure. First name Paul, P-A-U-L. Last name Uribe, U-R-I-B-E.
14:27:23 Q. You previously testified on July 31st, 2024 in this case. Are your opinions on the subjects of your previous testimony still accurate today?
14:27:35 A. Yes. Except for one case, I believe it was Mr. Rucker, which I withdrew my opinion.
14:27:41 Q. And that was in your deposition, right?
14:27:43 A. Yes.
14:27:44 Q. And I wanted -- specifically, you remember the preliminary injunction hearing -- okay. And specifically, in the preliminary injunction hearing, you testified about four deaths before Judge Pitman. Is all that testimony still accurate?
14:28:07 A. Yes.
14:28:08 Q. And you discussed your qualifications back then. Do you still have the qualifications that you had at that time?
14:28:16 A. Yes.
14:28:17 Q. And I understand that you updated your resume?
14:28:21 A. Yes.
14:28:22 Q. In February, correct?
14:28:24 A. Yes.
14:28:24 Q. And that's been offered as Plaintiffs' Exhibit 424 so I'd move that into evidence.

14:28:30 THE COURT: Any objection?
14:28:31 MS. MCGEE: No objection.
14:28:32 THE COURT: So admitted.
14:28:36 Q. (BY MR. JAMES) And I understand that since the first
14:28:37 hearing, you've done additional work on this case; is that
14:28:40 right?
14:28:40 A. Yes.
14:28:40 Q. And what did you do to evaluate facts in this case
14:28:45 after the preliminary injunction hearing?
14:28:46 A. There were several additional case reviews that I
14:28:53 conducted including an OIG report, autopsies, other
14:28:58 documents regarding several other cases.
14:29:03 Q. Okay. And one of those cases was Mr. Ryan Fairchild,
14:29:06 correct?
14:29:06 A. Yes.
14:29:06 Q. I'd ask Mr. Samuel to -- if we have the redacted
14:29:13 version to publish Plaintiffs' 358C. And let's focus on
14:29:35 the narrative.
14:29:36 Dr. Uribe, could you please read for the Court
14:29:39 the first sentence of that narrative?
14:29:41 A. Sure. According to the initial information provided
14:29:44 by TDCJ staff on 8-20-24, at approximately 1854 hours,
14:29:54 inmate Fairchild, Ryan David was discovered by staff
14:29:57 during count time in day room unresponsive, laying in his
14:30:00 own vomit and in RIS pier tore distrust.

14:30:06 Q. And can we go to the next page, Mr. Samuel. Let's
14:30:13 focus in on the initial video surveillance review
14:30:17 sentence. Can you see that? Mr. Uribe, could you just
14:30:21 read that briefly?
14:30:21 A. Yes. An initial video surveillance review from
14:30:25 security staff reported at approximately 1901 hours,
14:30:28 inmate Fairchild can be seen sitting on the front bench of
14:30:31 3 Building, A pod, 1 section watching TV when he appears
14:30:34 to convulse and move side to side before falling to the
14:30:37 floor.
14:30:40 Q. And this was information that was part of your
14:30:43 review, correct?
14:30:43 A. Yes.
14:30:44 Q. Mr. Samuel, can we turn to page 8 of that same
14:30:51 exhibit? Dr. Uribe, according to the investigator, what
14:31:00 was Mr. Fair child doing at 6:34?
14:31:07 A. At 6:34.
14:31:09 Q. The first bullet.
14:31:13 A. At the top of the page, he sits down in the front row
14:31:16 of the benches near a fan.
14:31:18 Q. And if we can go to the very bottom of the page and
14:31:23 according to the investigator, what was Mr. Fairchild
14:31:26 doing before 6:34?
14:31:28 A. Prior to 6:34, he was observed walking around
14:31:32 visiting the pill window, chow hall and the water cooler.

14:31:38 Q. Did Mr. Fairchild's efforts to visit the cold water
14:31:43 cooler, be inside, and sit in front of a fan prevent his
14:31:47 death?
14:31:48 A. Apparently not.
14:31:52 Q. And, Mr. Samuel, can we turn to Plaintiffs' 358B,
14:31:57 which is already in evidence and let's go to page 10. Dr.
14:32:19 Uribe can you see that?
14:32:19 A. Yes.
14:32:20 Q. And did you note anything from the emergency
14:32:25 department record that was relevant to your opinions here?
14:32:27 A. Yeah, aside from general resuscitative notes towards
14:32:33 the end of this paragraph, it reports that he was
14:32:39 hyperthermic with axillary temperature reading 108 degrees
14:32:43 and it was rechecked several times.
14:32:46 Q. And, Mr. Samuel, could we go two pages down to page
14:32:50 12? Dr. Uribe, are you able to read the ED course?
14:33:01 A. Yes.
14:33:01 Q. And what did you note that was of significance, if
14:33:04 anything, about the ED course summary by the emergency
14:33:09 department at the Palestine Regional Medical Center?
14:33:12 A. In the first line, it mentions that patient was found
14:33:15 down and unresponsive with unexplained hyperthermia.
14:33:24 Q. Mr. Samuel, can we turn to Plaintiffs' 358D and let's
14:33:35 turn to the day that Mr. Fairchild was found, which is on
14:33:43 page 5. Again, Dr. Uribe do you recall we were just

14:33:53 looking at they found him at 6:54 p.m.?
14:33:56 A. Yes.
14:34:00 Q. What was the reported heat index outside of the
14:34:03 facility at that time?
14:34:03 A. The outdoor heat index at 6:30, it's not registered
14:34:08 but, you know, between 5:30 and 7:30, it's 122 degrees and
14:34:13 then, 117 degrees, respectively.
14:34:15 Q. In this case, did you review Mr. Fairchild's autopsy
14:34:23 report?
14:34:23 A. Yes.
14:34:26 Q. Is there any discussion or mention of any of the
14:34:30 temperatures that we just talked about with Mr.
14:34:32 Fairchild's autopsy report?
14:34:33 A. No.
14:34:38 Q. Should there be discussion of that information if it
14:34:41 was provided to the pathologist?
14:34:43 A. Yes.
14:34:44 Q. Can you explain why?
14:34:47 A. Environmental temperatures whether elevated
14:34:50 environmental temperatures or decreased environmental
14:34:53 temperatures are very important to any death
14:34:57 investigation.
14:34:58 Q. If a pathologist didn't even have that information,
14:35:04 would they have the ability from anatomic findings to
14:35:09 determine whether or not heat played a role in Mr.

14:35:13 Fairchild's death?
14:35:13 A. No.
14:35:14 Q. Why not?
14:35:14 A. There's no anatomic or clinical finding in autopsy
14:35:21 that would point to a diagnosis of a heat-related death or
14:35:26 heat-related casualty.
14:35:28 Q. If there were a systemwide practice of temperature
14:35:35 information either not being reported to or not being
14:35:39 considered by the pathology department, what effect would
14:35:43 that have on the reporting of heat-related deaths by that
14:35:48 pathology department?
14:35:49 A. It would likely underreport the number of
14:35:53 heat-related deaths.
14:35:54 Q. Do you have an opinion after having considered all
14:35:57 this information about Mr. Fairchild whether his death
14:36:01 should fairly be considered to be heat-related?
14:36:03 A. Yes, I believe it would.
14:36:07 Q. And did you reach an opinion about whether the
14:36:11 environmental heat that Mr. Fairchild was exposed to most
14:36:15 likely contributed to his death?
14:36:18 A. Yes.
14:36:19 Q. And what is that opinion?
14:36:20 A. That the heat did contribute to his death.
14:36:24 Q. To a reasonable degree of medical probability, do you
14:36:27 have an opinion whether Mr. Fairchild more likely than not

14:36:30 would have survived if he had not been housed in a hot
14:36:33 environment as it appears he was?
14:36:35 A. Yes.
14:36:36 Q. And what is that opinion?
14:36:38 A. I believe he would have.
14:36:40 Q. Can you explain how you reach that opinion?
14:36:43 A. Sure. I believe that the prolonged exposure to high
14:36:48 environmental temperatures made his existing comorbidities
14:36:55 worse. Heat typically does that. Heat worsens
14:37:00 comorbidities. It worsens drug effects. So if you remove
14:37:05 that primary, you know, driver, if you will, I believe his
14:37:10 chances of survival would have greatly increased.
14:37:16 Q. Did you see from the autopsy report whether Mr.
14:37:18 Fairchild's remains were embalmed before the autopsy?
14:37:21 A. Yes.
14:37:23 Q. What's the significance, if any, of embalming from
14:37:26 your perspective?
14:37:27 A. So embalming does limit some of the type of testing
14:37:33 you can perform. In terms of anatomic features like
14:37:37 looking for heart disease and things like that, embalming
14:37:41 doesn't really affect that much because you can still find
14:37:44 heart disease and things like that. It can affect
14:37:46 toxicology. It can also affect other testing like the
14:37:53 vitreous fluid in the eyes which you can use to test for
14:37:59 hyponatremia or hypernatremia, which is decreased sodium

14:38:04 or elevated sodium. When someone is embalmed, a lot of
14:38:08 those measurements become very inaccurate.
14:38:11 Q. Do you have any experience using vitreous fluid
14:38:17 measurements in investigating a expected heat-related
14:38:20 death?
14:38:20 A. Yes.
14:38:20 Q. Can you explain briefly what is important about
14:38:24 vitreous fluid in those investigations?
14:38:27 A. Sure. When you have a heat-related death, you can
14:38:29 often have other things going along with it, like you can
14:38:33 have elements of dehydration from prolonged sweating, not
14:38:38 having enough water consumption, or you can have
14:38:41 hyponatremia, which is pretty much the opposite of that
14:38:45 where you drink too much water and you dilute your salts.
14:38:50 So this is something that we saw in military
14:38:54 situations when I was stationed in Fort Benning, Georgia
14:38:59 where you could have elevated temperatures so you can have
14:39:02 hyperthermia, but you also had to rule out secondary and
14:39:06 sometimes even tertiary processes going on at the same
14:39:10 time. So you can have more than one thing going on at the
14:39:14 same time.
14:39:14 Q. The vitreous fluid as I guess you're saying is
14:39:19 helpful in that investigation to determine the importance,
14:39:22 if any, of heat in a death?
14:39:24 A. It's not specific for heat but it will let you know

14:39:27 other things that are going on.
14:39:30 Q. And, Mr. Samuel, if we publish Mr. Fairchild's
14:39:39 autopsy on page 1, Plaintiffs 358A, and zoom in under
14:39:48 demographics.
14:39:50 Dr. Uribe, are you able to see when the autopsy
14:39:53 was performed compared to when Mr. Fairchild passed away?
14:39:56 A. Yes. He passed away on August 21st and the autopsy
14:39:59 was performed nine days later.
14:40:04 Q. And I think you touched on this in the preliminary
14:40:08 injunction hearing but can you -- do you have an opinion
14:40:10 about the significance of that nine-day delay?
14:40:16 A. The nine-day delay, it would essentially preclude or
14:40:21 not allow you to use vitreous chemistry. It could affect
14:40:28 toxicology levels, in this case, further affected by the
14:40:33 fact that he was embalmed. But other than that, the
14:40:39 anatomic findings of just doing a routine autopsy, those
14:40:44 are relatively -- they're not affected that much by that
14:40:50 delay in autopsy.
14:40:57 Q. Okay. Let's turn to Mr. Jason Wilson and, Mr.
14:41:04 Samuel, if we could go to -- well, Dr. Uribe, do you
14:41:11 recall reviewing records regarding Mr. Jason Wilson's
14:41:13 death in this case?
14:41:14 A. Yes.
14:41:14 Q. And then, if, Mr. Samuel, we could go to 412,
14:41:21 Plaintiffs' 412A and let's start on page 10. Dr. Uribe,

14:42:10 are you able to see that?
14:42:11 A. Yes.
14:42:12 Q. Could you just read the last two sentences and skip
14:42:18 the officer's name.
14:42:19 A. Sure. On 7-4-2024 at 22:59, inmate Wilson turns on
14:42:30 -- his cell light on and off. It should be noted that the
14:42:33 last security check performed at inmate Wilson's cell was
14:42:39 at 2100 hours. The officer who was assigned to C wing the
14:42:42 night of July 4th did walk to C-115 at around 0105 and 523
14:42:50 hours but never went all the way to the end of the room to
14:42:54 complete a full security check.
14:42:57 Q. And then, Mr. Samuel, if we could go to page 68. I
14:43:09 know it's redacted on the screen. Dr. Uribe, do you know
14:43:13 if this is the statement by that same officer who was
14:43:15 referred to earlier?
14:43:16 A. Yes.
14:43:16 Q. And what is the first thing that he says? His
14:43:19 statement?
14:43:20 A. He was tired due to the heat.
14:43:29 Q. And then, you do you recall in your testimony earlier
14:43:32 today about the change in the cause of death for Mr.
14:43:37 Wilson on the death certificate?
14:43:39 A. Yes.
14:43:40 Q. And I think the testimony was that was 17 months
14:43:43 after he passed away. Do you recall that?

14:43:46 A. Yes.
14:43:48 Q. Is that unusual in your experience dealing with death
14:43:53 certificates in the state of Texas?
14:43:55 A. It is because I don't know what new information was
14:44:00 provided. Now, we can as pathologists amend death
14:44:07 certificates as needed usually upon receipt of new
14:44:10 information. If I get new information on a case, I can
14:44:12 always amend the death certificate. I'm not sure what new
14:44:17 information was received in this case from when it was
14:44:21 originally certified until it was amended.
14:44:25 Q. Mr. Samuel, could we turn to Plaintiffs' 412B and
14:44:33 page 11? And we remember Mr. Wilson turned his light off
14:44:44 at around 9:00 at night, right?
14:44:47 A. Yes, approximately.
14:44:48 Q. And what was the temperature around that time, Dr.
14:44:56 Uribe?
14:44:57 A. Heat category around 102 degrees.
14:45:03 Q. Excuse me, the heat index?
14:45:04 A. The heat index, yes. My apologies.
14:45:08 Q. And then, did you review Mr. Wilson's autopsy in this
14:45:12 case?
14:45:12 A. Yes.
14:45:12 Q. Did the autopsy report discuss the environmental
14:45:17 conditions or the heat for Mr. Wilson?
14:45:19 A. No.

14:45:24 Q. Dr. Uribe, are you able to read the -- how long it
14:45:46 was before the autopsy was conduct after Mr. Wilson's
14:45:50 death?
14:45:50 A. Yes.
14:45:52 Q. How long was that?
14:45:53 A. Approximately, 11 days.
14:46:00 Q. Do you have an opinion after reviewing the
14:46:02 information available on Mr. Wilson whether his death
14:46:06 should be considered heat-related?
14:46:09 A. I believe it should be.
14:46:12 Q. Do you have an opinion whether environmental heat
14:46:15 most likely contributed to Mr. Wilson's death?
14:46:18 A. Yes, I believe it did.
14:46:19 Q. You also reviewed some records on Mr. Keith Pursifull
14:46:24 for this case; is that right?
14:46:25 A. Yes.
14:46:33 Q. One of those is in your binder as tab 34, Plaintiffs'
14:46:37 Exhibit 395. You did review the medical records available
14:46:43 on Keith Pursifull, right?
14:46:45 A. Yes.
14:46:46 Q. And then, another is the prison where he was housed
14:46:52 was the Wainwright Unit. Do you remember that?
14:46:54 A. Yes.
14:46:54 Q. Do you recall receiving Wainwright Unit temperature
14:46:58 records?

14:46:58 A. Yes.
14:46:59 Q. So at this time, plaintiffs would offer, if we didn't
14:47:03 already, Plaintiffs 395 and 306A.
14:47:09 THE COURT: Any objection?
14:47:11 MS. MCGEE: Which one is that?
14:47:15 MR. JAMES: That's the temperature logs.
14:47:33 MS. MCGEE: I have no objection.
14:47:35 THE COURT: Okay. Thank you. So admitted.
14:47:39 MR. JAMES: If we didn't already get it in,
14:47:41 plaintiffs would offer Plaintiffs' Exhibits 412 and the
14:47:45 sub ones that we were just discussing about Mr. Wilson. I
14:47:50 thought those were in already. Everything about Mr.
14:48:10 Wilson is 412.
14:48:11 MS. MCGEE: Okay. I just want to make sure as
14:48:12 long as it's redacted, because we agreed, that's fine.
14:48:14 THE COURT: Okay. Thank you. So admitted.
14:48:22 Q. (BY MR. JAMES) So, Mr. Samuel, if you could pull to
14:48:28 Plaintiffs' 395 on page 16.
14:48:47 Dr. Uribe, when do we see Mr. Pursifull was
14:48:51 found?
14:48:53 A. Found at 8:05.
14:48:57 Q. Later on that page, we see the words "no shock
14:49:02 advised." What does that mean?
14:49:03 A. That means he's demonstrating a non-shockable rhythm
14:49:09 in the setting of CPR. Most commonly that relates to

14:49:14 asystole, which is a flatline, because you don't shock a
14:49:18 flatline.
14:49:22 Q. Okay. And then, Mr. Samuel, could we go now to page
14:49:26 18 of the same exhibit? Dr. Uribe, do you see when Mr.
14:49:40 Pursifull was pronounced?
14:49:41 A. Yes.
14:49:42 Q. What time was that?
14:49:43 A. He was pronounced at 8:55.
14:49:47 Q. And then, is there anything else of significance on
14:49:49 this page to your review?
14:49:51 A. Yes.
14:49:52 Q. What is that?
14:49:52 A. At 9:10, this demonstrate as core temperature reading
14:49:56 of 105.4.
14:50:02 Q. And is there any clinical significance to the timing
14:50:04 of the temperature reading here?
14:50:07 A. They got the core temperature reading after death.
14:50:10 Q. And what does that mean, if anything, for your
14:50:13 clinical review?
14:50:14 A. It's -- anytime we get a core temperature, it's
14:50:21 helpful. It's another piece of data that we can use to
14:50:24 correlate with the autopsy finding and scene
14:50:30 investigation.
14:50:31 Q. Okay. Does the timing of the temperature, how do you
14:50:35 interpret it in that context?

14:50:37 A. It's approximately 15 minutes after death. There's
14:50:42 not going to be a significant amount of postmortem
14:50:45 cooling.
14:50:46 Q. If there is a longer delay, you would expect core
14:50:53 temperature to drop over time?
14:50:54 A. Generally, but a lot of that depends on the
14:50:57 environmental temperature as well.
14:51:00 Q. Next, if we could turn to an excerpt from 306A for
14:51:06 the Wainwright Unit. Dr. Uribe, do you see what the heat
14:51:29 index was reported by TDCJ at on the afternoon of the
14:51:33 9th -- I'm sorry. The afternoon of the 8th because that's
14:51:43 the day before.
14:51:46 A. Yes.
14:51:52 Q. And what do we see it was at 6:40?
14:51:57 A. At 6:40, are we talking on the 8th.
14:52:03 Q. Weather data timestamp is on the far --
14:52:06 A. Okay. Yeah, at 6:40, the heat index was over a
14:52:13 hundred degrees.
14:52:14 Q. And then, Mr. Pursifull was found, I think we
14:52:18 remember, at around 8:00 in the morning, right?
14:52:21 A. Yes.
14:52:22 Q. Okay. It had cooled off to some extent, right?
14:52:27 A. Yes.
14:52:28 Q. So we've been told that there's not an autopsy report
14:52:33 yet for Mr. Pursifull. Assuming that that's true since

14:52:37 this happened in August, is there an industry standard
14:52:43 about how quickly most autopsy reports should be
14:52:47 completed?
14:52:48 A. Per the standard from the National Association of
14:52:52 Medical Examiners, they require that 90 percent of cases
14:52:55 be completed within 90 days. Now, there is the
14:52:59 recognition that some cases are more difficult than others
14:53:04 and require additional workup such as neuropathology,
14:53:08 additional testing and things like that. But generally,
14:53:13 accredited offices get most of their cases, over 90
14:53:16 percent of their case done within 90 days.
14:53:19 Q. Do you know if the UTMB in Galveston has an
14:53:24 accredited pathology department?
14:53:26 A. To my knowledge, they are accredited by the National
14:53:29 Association of Medical Examiners.
14:53:30 Q. Do you have an opinion about whether Mr. Pursifull's
14:53:33 death should be investigated for heat?
14:53:36 A. Yes, I believe it should.
14:53:37 Q. Can you explain why?
14:53:39 A. Sure. Anytime you have an elevated core body
14:53:42 temperature in the setting of elevated environmental
14:53:44 temperatures, heat should be considered.
14:53:50 Q. Another new death that you have reviewed since the
14:53:57 production was Wayne Straway, right?
14:54:00 A. Yes.

14:54:01 Q. Do you recall receiving his autopsy report?
14:54:06 A. Yes.
14:54:07 Q. Do you recall reviewing some of his medical records?
14:54:10 A. Yes.
14:54:11 Q. And the medical records are tab 38 in your binder. And are autopsy reports and medical records, the categories of records that are generally relied upon in your field of forensic pathology?
14:54:24 A. Yes.
14:54:27 Q. At the risk of admitting these again, plaintiffs would move to admit Plaintiffs' 403A and 403B.
14:54:27 THE COURT: Any objection?
14:54:35 MS. MCGEE: No objection.
14:54:36 THE COURT: So admitted.
14:54:37 Q. (BY MR. JAMES) So if we could publish 403B, page 59, Mr. Samuel. Could we turn to page 59? Again, when did -- can you look at the top of the page first? Do you recall that Mr. Straway was at the Ellis Unit on July 29, 2025 when this happened?
14:54:41 A. Yes.
14:54:48 Q. When did medical first start documenting the incident?
14:55:28 A. At 14:21; so 2:21 in the afternoon.
14:55:33 Q. And again, we see no shock advised. Does that have the same significance as for the other death we were
14:55:39
14:55:40
14:55:40
14:55:42
14:55:42
14:55:48
14:55:51

14:55:53 talking about?
14:55:54 A. Yes.
14:55:56 Q. Can we go two pages later to page 61 and what was the
14:56:05 time of death for Mr. Straway?
14:56:09 A. Time of death was 13:42.
14:56:14 Q. And can we go to page 105 and what was the body
14:56:22 temperature recorded for Mr. Straway?
14:56:24 A. The rectal temperature was recorded at 106. I don't
14:56:30 know what time this was taken.
14:56:32 Q. And then, could we go to Plaintiffs' 306A for the
14:56:37 Ellis Unit, Mr. Samuel? And let's turn to page 6.
14:56:59 Dr. Uribe, what's the temperature outside or the
14:57:02 heat index outside around the time 2:42 when Mr. Straway
14:57:09 was declared?
14:57:11 A. It's over 100 degrees heat index, 100 to 101 degrees.
14:57:15 Q. Did you review the autopsy report for Mr. Straway?
14:57:19 A. Yes.
14:57:21 Q. Was there any documentation that the pathologist
14:57:24 considered the environmental temperature or the body
14:57:26 temperature for Mr. Straway?
14:57:27 A. No.
14:57:30 Q. Do you have an opinion whether to a reasonable degree
14:57:34 of medical probability and given the information that you
14:57:38 have for Mr. Straway, more likely than not, Mr. Straway
14:57:43 still would have died when he did if he had been housed in

14:57:46 air conditioning?
14:57:48 A. I think he exacerbated it so I believe that heat was
14:57:52 a contributing factor.
14:57:55 Q. And do you think that Mr. Straway's death should be
14:57:58 further considered to be heat-related?
14:57:59 A. Yes.
14:58:02 Q. Why is that?
14:58:03 A. Any time you have an elevated core body temperature
14:58:07 with elevated environmental temperatures, even if you have
14:58:15 a factor such as methamphetamine intoxication,
14:58:21 methamphetamine can cause heat stroke by itself. But when
14:58:25 you have methamphetamine intoxication in a hot
14:58:28 environment, heat more likely contributed to that.
14:58:34 Q. And is there any clinical information that would be
14:58:38 different for a patient who presents with hyperthermia for
14:58:45 methamphetamine versus from environmental temperatures?
14:58:51 A. Can you repeat that one more time?
14:58:53 Q. Yeah. Like would you see any signs and symptoms,
14:58:56 clinical information from when the patient is alive that
14:58:58 you would expect for a patient experiencing hyperthermia
14:59:03 specifically due to methamphetamine that would not present
14:59:07 for a patient who has hyperthermia from core environmental
14:59:11 temperatures?
14:59:11 A. No, there would not be -- no.
14:59:14 Q. Do you know if methamphetamine contributes to body

14:59:18 temperature due to activity of the person who has the
14:59:25 methamphetamine on board?
14:59:26 A. It can. And there are some situations where some
14:59:33 individuals who are on methamphetamine can get very
14:59:40 hyperthermic usually because they're agitated, agitated,
14:59:45 you know, fighting off police officers and things like
14:59:47 that. So yes, methamphetamine can cause heat stroke or
14:59:53 hyperthermia by itself.
14:59:55 Q. Okay. So you would say that you would expect the --
15:00:02 is it fair to say you would expect that agitation in order
15:00:06 to see hyperthermia for methamphetamine, specifically?
15:00:09 A. Generally, yes.
15:00:11 Q. And obviously, do we have any information like that
15:00:13 about what happened to Mr. Straway?
15:00:15 A. Not that I've seen.
15:00:20 Q. And, Dr. Uribe, has all your testimony in this case
15:00:23 been to a reasonable degree of certainty based on medical
15:00:26 probability in your field of forensic pathology?
15:00:32 A. Yes.
15:00:32 Q. Pass the witness.
15:00:33 THE COURT: Ms. McGee.
15:00:38 CROSS-EXAMINATION
15:00:41 BY MS. MCGEE:
15:00:41 Q. Good afternoon. Good afternoon, Dr. Uribe. It's
15:00:45 nice to see you again and in person.

15:00:46 A. Good afternoon, ma'am.
15:00:47 Q. Is it fair to believe that as a medical examiner, you
15:00:51 practice your specialty primarily on living patients?
15:00:54 A. No.
15:00:54 Q. I'm sorry. Primarily on dead patients.
15:00:57 A. Yes. I hope so. I'm sorry for the joke, your Honor.
15:01:02 I couldn't resist.
15:01:03 Q. Occasionally, you consult on living patients for
15:01:08 things like injury pattern recognition.
15:01:10 A. Yes.
15:01:10 Q. Okay. That's where I was going with that. And the
15:01:14 purpose of an autopsy is you're looking for evidence of a
15:01:18 natural disease or injury, any kind of finding that will
15:01:21 help you determine the cause and manner of death; is that
15:01:24 correct?
15:01:24 A. Yes.
15:01:25 Q. It frequently happens that in an autopsy, you might
15:01:31 find a disease that the patient had not previously been
15:01:34 diagnosed with, correct?
15:01:35 A. Yes.
15:01:36 Q. And aside from anatomic findings, it's common to run
15:01:40 toxicology tests on the blood of these decedents?
15:01:43 A. Yes.
15:01:45 Q. You are the Deputy Medical Examiner for Fort Bend
15:01:50 County, right?

15:01:50 A. The Deputy Chief Medical Examiner, yes.
15:01:54 Q. Is NMS the laboratory that Fort Bend County uses?
15:02:01 A. Yes.
15:02:01 Q. Is it considered a reputable lab in the field of
15:02:04 forensics?
15:02:05 A. Yes.
15:02:05 Q. Do you feel confident in relying on the results from
15:02:09 NMS?
15:02:10 A. Yes.
15:02:10 Q. And in fact, you do rely on them, correct?
15:02:12 A. Yes, it's the lab that our office uses.
15:02:16 Q. And now, aside from information collected through the
15:02:22 process of the autopsy physical examination and
15:02:26 toxicology, you'll sometimes review medical records as
15:02:29 well; is that correct?
15:02:29 A. Absolutely.
15:02:31 Q. And the purpose when you conclude the autopsy is to
15:02:37 determine a cause of death as well as a manner of death;
15:02:40 is that correct?
15:02:40 A. Yes.
15:02:41 Q. And the cause of death is the derangement, disease or
15:02:46 injury that resulted in the person's death?
15:02:48 A. Yes.
15:02:48 Q. And the manner of death is the circumstantial
15:02:51 determination how the death occurred?

15:02:52 A. Yes.
15:02:53 Q. And that could be -- the manner of death could be
15:02:55 natural, homicide, suicide, accident or undetermined?
15:02:58 A. Yes.
15:02:59 Q. And undetermined can mean sometimes either you
15:03:05 conducted the autopsy and just have no explanation as to
15:03:08 how they passed or maybe you have two competing methods of
15:03:12 how they could have passed and you can't determine which
15:03:14 one is correct, say, for example, if you have a high drug
15:03:17 level and you don't know if it's an accident or if it was
15:03:19 a suicide?
15:03:19 A. Yes. And there's also the cases where we don't have
15:03:24 enough information to make the determination. So yes.
15:03:27 Q. And so, if you don't have enough information to make
15:03:29 the determination, then in order to make sure you're
15:03:33 giving as accurate results as possible, you would say
15:03:36 undetermined; is that correct?
15:03:37 A. Yes. And usually with undetermined cases, we usually
15:03:39 put in some sort of comment or reasoning as to why we made
15:03:42 an undetermined.
15:03:43 Q. Okay. Cause and manner of death are opinions,
15:03:49 correct?
15:03:49 A. Yes.
15:03:50 Q. And they're based on the facts that are available to
15:03:53 the medical examiner at the time the examination is being

15:03:58 done.
15:03:59 A. At the time -- it's at the time the examination is
15:04:02 being done. It's the information received before the
15:04:05 examination is done and, also, the information received
15:04:08 after the examination is done like the toxicology results
15:04:12 and additional history, and interviews, and things like
15:04:15 that. So it's from when, you know, the death is first
15:04:19 reported and the investigation starts until, you know, the
15:04:23 medical examiner signs off the case.
15:04:25 Now, there are also times where after a case is
15:04:29 signed out, additional information is received and
15:04:33 someone's opinion, you know, the doctor's opinion can
15:04:35 change based on new information and I've discussed that
15:04:39 before on direct.
15:04:40 Q. Okay. And that could happen sometimes?
15:04:42 A. Absolutely.
15:04:43 Q. Okay. And that's the kind of situation where it
15:04:47 might lead you to potentially amending your final autopsy
15:04:50 results, and perhaps if you completed the death
15:04:55 certificate, potentially amending the death certificate if
15:04:58 you felt that was appropriate?
15:04:59 A. Absolutely.
15:04:59 Q. Now, there is no objective finding on autopsy that
15:05:05 specifically is diagnostic for hyperthermia; is that
15:05:09 correct?

15:05:09 A. Correct.
15:05:13 Q. And how do you diagnose hyperthermia if someone is
15:05:18 alive? Do you know that?
15:05:20 A. Hyperthermia is a -- the clinical diagnosis of
15:05:25 hyperthermia is an elevated core body temperature.
15:05:28 Q. Okay.
15:05:30 A. Of, I believe, you know, the categories for heat
15:05:34 stroke are somewhere between 102 to 104 degrees, depends
15:05:40 on which classification system you're using. But
15:05:42 generally, someone is hyperthermic when their temperature
15:05:46 is over 102 degrees.
15:05:47 Q. Okay. So if you don't have a core body temperature,
15:05:51 can you affirmatively be certain that they, in fact, had
15:06:00 hyperthermia, had heat stroke?
15:06:02 A. A core body temperature is the best data point. It's
15:06:09 the best vital statistic. Are there certain proxies that
15:06:13 work in place of that like axillary temperature or the
15:06:18 little infrared, you know, thermometers that they use
15:06:22 because I realize sometimes during resuscitation, it's
15:06:25 impractical to get a rectal temperature, which makes
15:06:30 sense. But there are some proxies that work for -- in
15:06:34 place of a genuine core body temperature.
15:06:37 Q. And I'm glad you brought that up because that is
15:06:41 actually one of my questions. My question was going to be
15:06:44 are there any situations where you might prioritize CPR

15:06:47 over taking a core body temperature?
15:06:48 A. Sure.
15:06:49 Q. And so, in that particular case, you may either not
15:06:53 get the core body temperature right away or get an
15:06:55 alternative temperature, say, the scan or the -- under the
15:06:59 arm something like that?
15:07:00 A. Sure. I wouldn't expect a -- I don't want to say
15:07:08 first responder because that makes it sound like EMS
15:07:11 personnel, but first person at the scene who initiates CPR
15:07:14 to take a break from CPR and, you know, get a rectal core
15:07:18 body temperature. That doesn't make sense. So there are
15:07:21 times I would imagine clinically where, yeah, CPR does
15:07:26 have a priority.
15:07:29 Q. And I believe you mentioned that you spent time
15:07:32 working at Fort Benning in Columbus, Georgia; is that
15:07:36 correct?
15:07:36 A. Yes.
15:07:36 Q. I added the Columbus, Georgia. I knew you didn't say
15:07:40 that. And Fort Benning, that's the heat casualty capital
15:07:44 of the Army; is that correct?
15:07:44 A. That's one of our, you know, less popular names of
15:07:49 Fort Benning, but we were the heat casualty capital of the
15:07:53 Army when we were there because we did a ton of basic
15:07:56 training and more advanced training such as air assault
15:08:00 and ranger training, and things like that, so we had a

15:08:03 number of heat casualties almost year-round.
15:08:08 Q. And you said that there was a lot of different kind
15:08:12 of training there. Was it also hot and humid?
15:08:15 A. Generally, yes, especially in the summer months.
15:08:17 Q. And was part of the heat casualty because people were
15:08:20 coming in from all over the country that may or may not be
15:08:23 acclimated to exercising in the heat?
15:08:26 A. Absolutely. Acclimation is a big part of it.
15:08:28 Q. And so, let's talk about acclimatization that is when
15:08:35 your body -- just paraphrasing, when your body is exposed
15:08:38 to the a climate for a particular period of time and,
15:08:41 therefore, your body adapts and adjusts being able to deal
15:08:44 with that environment?
15:08:44 A. Yes.
15:08:45 Q. That's a fair interpretation?
15:08:46 A. Yes.
15:08:47 Q. And so, someone who's acclimated would be better able
15:08:52 to survive in that environment than someone who's not
15:08:57 acclimated?
15:08:59 A. Generally, yes, I would agree with that.
15:09:02 Q. Okay. Now, understanding the risk from heat is never
15:09:06 zero, someone who's a acclimatized, sitting in a hot
15:09:12 environment, are they less likely to suffer from heat
15:09:14 illness than someone who's not acclimatized?
15:09:17 A. Generally, yes. There are a lot of other individual

15:09:21 factors such as other comorbidities such as obesity, heart
15:09:26 disease, things like that. But yeah, I believe generally,
15:09:33 acclimatization helps. It helps to a lesser degree when
15:09:36 you start talking about the extremes of temperature.
15:09:42 Like, say, I also work part-time in Vegas and, you know,
15:09:46 whether or not you're acclimatized to the heat in Vegas or
15:09:49 not when it's 120 degrees outside, it's rough. So it
15:09:52 doesn't matter how acclimatized you are to it.
15:09:55 Q. But for -- generally for just pretty hot, not Vegas
15:09:59 hot but for maybe Texas hot, there are points at which you
15:10:03 can acclimatize yourself to kind of be better suited to
15:10:07 the environment?
15:10:07 A. Yes. I believe that's generally true. There's no
15:10:12 good way to measure that. There's no like biomarker like
15:10:15 a laboratory test or you can give someone a laboratory
15:10:19 test and they, you know, come back, oh, you're
15:10:24 acclimatized now. No, there's no laboratory test or
15:10:26 anything like that.
15:10:27 Q. Understood. Am I correct in understanding it's
15:10:31 similar to say if you move to a higher elevation, you may
15:10:34 kind of struggle to breathe for a couple weeks and then
15:10:37 your body adapts and you start becoming -- be able to
15:10:39 survive better?
15:10:40 A. Yes. The physiology with altitude is different
15:10:45 because you're talking about temperature versus actually

15:10:49 increased oxygen. So the physiology there is different
15:10:52 because when you move to a higher elevation, your body
15:10:56 over time produces more red blood cells to carry oxygen,
15:11:00 so the physiology is different but the concept is the
15:11:03 same.
15:11:03 Q. Okay. So would you say acclimatization is important
15:11:08 for someone to have when they are going to a new
15:11:11 environment?
15:11:11 A. It can be. It is a factor but it's very difficult to
15:11:15 measure.
15:11:16 Q. Understood. And now, I believe we previously
15:11:23 discussed that with these recruits, it's not always just
15:11:26 heat that impacts them; is that correct?
15:11:28 A. Correct.
15:11:28 Q. It could be other things like dehydration?
15:11:31 A. Yes.
15:11:32 Q. Perhaps overhydration?
15:11:34 A. Absolutely.
15:11:35 Q. Maybe they don't know that they have diabetes and
15:11:38 that starts impacting them?
15:11:40 A. Sure. There could be preexisting, undiagnosed
15:11:43 natural disease, as well. Absolutely.
15:11:45 Q. Maybe even stroke?
15:11:47 A. Sure.
15:11:51 Q. And was overhydration something you commonly saw at

15:11:54 Fort Benning?
15:11:55 A. It was something that we -- we didn't commonly see it
15:12:00 but it was something that we had to strongly consider and
15:12:06 recognize rapidly because when you have a soldier who
15:12:10 falls out, you have to figure out, okay, what's going on,
15:12:14 and the knee-jerk reaction is, well, let's give them
15:12:17 water. Well, the problem with that is if it's
15:12:20 dehydration, you know, they'll get better. If it's heat
15:12:22 stroke, you know, they'll probably get better.
15:12:25 If they're overhydrated and you give them water
15:12:28 or you start an IV and start running fluids in them, you
15:12:30 can kill them. So that's something that you have to
15:12:33 diagnose very, very quickly before you started fluid
15:12:37 resuscitation treatment.
15:12:38 Q. And if someone is overhydrated, that dilutes their
15:12:42 salts and they can become hyponatremic?
15:12:46 A. Yes. That's generally the sign of clinical
15:12:51 overhydration.
15:12:51 Q. And that could happen just from drinking too much
15:12:53 water, not necessarily from someone being sick.
15:12:56 A. Yes.
15:12:59 Q. Is it possible for someone to overheat when say it's
15:13:15 80 degrees out, low humidity in certain situations?
15:13:18 A. Yes.
15:13:19 Q. Maybe if they're doing a really high strenuous

15:13:22 activity?
15:13:23 A. Yeah. High strenuous activity, we would see that a
15:13:28 lot in morning trainings at Fort Benning where you had
15:13:31 very long ruck marches, which are weighted marches, during
15:13:36 even 70 to 80-degree temperatures with their sleeves
15:13:40 rolled up, rolled down, so they are sweating, but the
15:13:43 sweat can't evaporate from their body and they're just
15:13:46 working out very, very strenuously. So yes, there are
15:13:49 situations where that can happen.
15:13:51 Q. And is another potential example maybe if someone is
15:13:55 taking certain illicit substances?
15:13:56 A. Sure.
15:13:59 Q. Are you aware of the relief that plaintiffs have
15:14:02 sought in this case?
15:14:04 A. Yes, generally. Not specifically.
15:14:07 Q. They're asking for the temperature to be kept at 85
15:14:10 degrees or lower?
15:14:11 A. Okay.
15:14:12 Q. But if you could still overheat at 80 on certain
15:14:15 illicit substances, then that's not a hundred percent
15:14:18 complete protection, right?
15:14:20 A. Correct.
15:14:23 Q. Have you ever conducted an autopsy on someone who
15:14:25 lived in air conditioning and the cause of death was
15:14:28 diabetes?

15:14:29 A. Yes, frequently.
15:14:31 Q. Have you ever conducted an autopsy on someone who
15:14:34 lived in air conditioning and the cause of death was
15:14:37 epilepsy?
15:14:37 A. Yes.
15:14:38 Q. What about dehydration?
15:14:40 A. Yes.
15:14:42 Q. Can a drug overdose cause death regardless of
15:14:45 temperature?
15:14:45 A. Absolutely.
15:14:48 Q. Can fentanyl cause death even in small amounts?
15:14:50 A. Yes.
15:14:52 Q. Regardless of temperature?
15:14:53 A. Yes.
15:14:54 Q. What about synthetic cannabinoid?
15:15:01 A. Yes.
15:15:03 Q. And just to be clear, synthetic cannabinoids are
15:15:07 synthetic psychoactive compounds and they have active
15:15:11 effects in the brain that can be very variable; is that
15:15:13 correct?
15:15:13 A. Yes.
15:15:13 Q. And some of them can be sedating, stimulating,
15:15:18 hallucinogenic, any number of effects.
15:15:20 A. Yes.
15:15:20 Q. In fact, they are evolving so rapidly that we,

15:15:25 meaning the medical community, don't know all of their
15:15:28 efforts and don't exactly know how they can be toxic and
15:15:32 cause death.
15:15:33 A. Good God, yes. It's very, very difficult because
15:15:38 there are literally hundreds, if not thousands, of them.
15:15:42 Q. And so, you've conducted autopsies on decedents where
15:15:46 the cause of death was synthetic cannabinoid?
15:15:49 A. Yes.
15:15:51 Q. Would it be fair to say that someone's potential
15:15:53 response to synthetic cannabinoids is unpredictable?
15:15:57 A. Yes.
15:16:00 Q. Is it possible for someone to die of synthetic
15:16:03 cannabinoids regardless of temperature?
15:16:04 A. Yes.
15:16:06 Q. Have you ever conducted an autopsy with someone who
15:16:09 died from diphenhydramine toxicity?
15:16:16 A. Yes.
15:16:16 Q. I want to go ahead and talk about some of the deaths
15:16:19 that you went over with opposing counsel just a moment
15:16:22 ago. The first one I want to discuss is Mr. Southards.
15:16:32 Do you recall discussing Mr. Southards just a moment ago?
15:16:36 He was an individual who was found to have an elevated
15:16:39 level diphenhydramine in his system. We can pull the
15:16:46 report.
15:16:46 MR. JAMES: Sorry, your Honor, I just want to be

15:16:48 clear, I'd object that he didn't just talk about Mr.
15:16:51 Southards. I think he talked about Mr. Southards 14
15:16:56 months ago.
15:16:57 THE COURT: Okay.
15:17:00 Q. (BY MS. MCGEE) Sorry. Seems just like the other day.
15:17:01 Well, I would like to talk about Mr. Southards and we can
15:17:04 definitely pull that up to refresh your memory.
15:17:05 A. Please do. My memory is decent but not perfect.
15:17:11 Q. (BY MS. MCGEE) So this is from your report that you
15:17:16 wrote on October 31st, 2025. And this is the opinion you
15:17:21 gave for Mr. Southards so I'll give you a moment to read
15:17:24 that.
15:17:24 A. Yes. Yeah. I'm familiar with it.
15:17:26 Q. So he was found with an elevated level of
15:17:33 diphenhydramine, 6,300 I believe that's nanograms per
15:17:40 milliliter, and the cause of death was diphenhydramine
15:17:43 toxicity. No core temperature was taken and you said
15:17:46 there's a disconnect between the toxicology results and
15:17:48 the clinical presentation.
15:17:50 A. Yes.
15:17:51 Q. And so, I believe what you're saying here -- and
15:17:54 please correct me if I'm wrong -- is that diphenhydramine,
15:17:59 typically they will not present sweating if they are
15:18:01 overdosing on diphenhydramine?
15:18:06 A. Typically no. It's not one of the associated

15:18:09 clinical features of it so that's what I was referring to
15:18:13 with by mentioning that disconnect.
15:18:18 Q. Okay. So you said typically, no, but is it possible?
15:18:22 A. Sure, lots of things are possible.
15:18:25 Q. And now the level of diphenhydramine, 6,300 nanograms
15:18:32 for milliliter, that result came from NMS, which you said
15:18:36 that you trusted, correct?
15:18:37 A. Yes.
15:18:37 Q. And NMS also gave a reference range for lethal doses
15:18:42 of diphenhydramine. Do you recall that?
15:18:45 A. Yes.
15:18:45 Q. And that reference range was between 5,000 and 15,000
15:18:49 nanograms per milliliter as the average for deadly
15:18:55 concentrations in adults.
15:18:58 A. I'm not sure if they phrased it as the average but
15:19:01 that was the -- that was a lethal range that they cited in
15:19:06 their report.
15:19:07 Q. Okay. So the numbers sound familiar?
15:19:09 A. Yes.
15:19:09 Q. Okay. And is 6,300 nanograms per milliliter within
15:19:15 that lethal range?
15:19:16 A. Yes.
15:19:18 Q. So it is possible that someone could die of 6,300
15:19:22 nanograms per milliliter, correct?
15:19:26 A. Yes.

15:19:27 Q. Whether or not they're in air conditioning.
15:19:28 A. Yes.
15:19:34 Q. And this one, I believe, we actually just talked
15:19:36 about this year, meaning today, Mr. Wilson.
15:19:40 A. Okay.
15:19:41 Q. And Mr. Wilson he was an individual, he had no air
15:19:45 conditioning, he was living at Coffield, and the cause of
15:19:51 death determined by the autopsy was -- I'm not even going
15:19:55 to try and pronounce the specific name. I'm going to say
15:19:58 synthetic cannabinoids?
15:20:00 A. Yes.
15:20:01 Q. And you said the ambient temperature was not taken,
15:20:05 but unit temperature logs indicate recent triple-digit
15:20:09 heat indices and further e-mails sent by Mr. Wilson
15:20:12 indicated he had not been receiving drinking water during
15:20:14 the hottest parts of the day. Does that sound correct?
15:20:17 A. Yes.
15:20:17 Q. Are you aware that all cells, even if they're in
15:20:22 administrative segregation, have running potable water in
15:20:24 the cell?
15:20:25 A. I was not aware of that.
15:20:27 Q. Would that change your opinion knowing that all
15:20:29 inmates have access to drinkable water in their cell?
15:20:34 A. No.
15:20:37 Q. Was the fact that he did not have access to drinking

15:20:39 water during the hottest part of the day part of your --
15:20:43 that weigh into your conclusion?
15:20:49 A. I don't believe it did. I don't believe it did
15:20:54 because I don't believe the death was associated with
15:20:58 hyper or hyponatremia. I don't recall that being a
15:21:02 factor.
15:21:03 Q. So the fact that he sends an e-mail indicating that
15:21:06 he had not been receiving drinking water had no bearing on
15:21:10 your determination?
15:21:12 A. I don't believe it did.
15:21:18 Q. So the autopsy was performed and found that he had
15:21:21 passed from synthetic cannabinoids and you issued a
15:21:25 supplemental opinion on March 11, 2026. Do you remember
15:21:28 that?
15:21:29 A. Yes.
15:21:29 Q. And one of the sentences in there says according to
15:21:33 the OIG investigation, the death certificate originally
15:21:36 listed acute ischemic change and basal ganglia medullary
15:21:40 neurons as the immediate cause of death, but this was
15:21:42 changed over a year later at the request of TDCJ to
15:21:45 synthetic cannabinoid toxicity. Do you recall that?
15:21:48 A. Yes.
15:21:49 Q. And, your Honor, at this time, I would ask that the
15:21:51 Court go ahead and take judicial notice of Texas
15:21:54 Government Code 492.13, 493.19, as well as the General

15:22:03 Appropriations Act, Rider 57, and all three of these
15:22:07 indicate that OIG is actually an independent reporting
15:22:11 agency that is under the Texas Board of Criminal Justice
15:22:14 and that TDCJ does not have governing control over.
15:22:18 THE COURT: Any objection to my taking judicial
15:22:21 notice?
15:22:22 MR. JAMES: Yes, because I don't know what rider
15:22:25 she's talking about.
15:22:28 MS. MCGEE: Well, I'm happy to provide just on
15:22:31 the Texas Government Code which is state law.
15:22:33 THE COURT: That's fine. I'll take judicial
15:22:34 notice and then, you can make an argument about its
15:22:39 applicability later.
15:22:44 Q. (BY MS. MCGEE) And I believe we've already discussed
15:22:46 that it's possible to die from synthetic cannabinoid
15:22:49 toxicity in any temperature?
15:22:50 A. Yes.
15:22:51 Q. We also discussed just a moment ago today, Mr.
15:23:02 Fairchild?
15:23:02 A. Yes.
15:23:02 Q. If at any point you need me to bring up your opinions
15:23:05 to help you remember, that's absolutely fine.
15:23:07 A. Oh, thank you.
15:23:08 Q. So he was in the non-air-conditioned Michael Unit and
15:23:14 he had -- and I wanted to clear for the Court, he had an

15:23:18 axillary body temperature of 108 during resuscitation, not
15:23:23 a core body temperature as was stated during opening. And
15:23:26 this individual was embalmed prior to autopsy. And you
15:23:29 said that it is your opinion that this death was likely
15:23:32 heat-related and his survivability would be increased
15:23:35 would he not have been housed in a hot environment.
15:23:37 Do you recall that?
15:23:38 A. Yes.
15:23:38 Q. Now, EMS did report 108 temperature, but I'd like to
15:23:52 go ahead and take a look at the OIG report if we could,
15:23:56 please, Brian. It's Bates No. 363306. So what I'd like
15:24:20 to look at here is under provisional diagnosis part A
15:24:23 where it talks cardiomegaly, the heart weighs 570 grams,
15:24:28 normal is 270 to 360 grams, with biventricular
15:24:32 hypertrophy. What is hypertrophy?
15:24:36 A. Just means the walls of the heart are very thick.
15:24:38 The most common cause of that is high blood pressure or
15:24:40 hypertension.
15:24:41 Q. Does the heart work as well when you have
15:24:45 hypertrophy?
15:24:45 A. No.
15:24:46 Q. And his heart is also significantly larger or weighs
15:24:49 significantly more than the average, correct?
15:24:51 A. Yes.
15:24:51 Q. Does the heart function properly when it's enlarged

like that and has hypertrophy?
A. No. And it also predisposes you to an abnormal heartbeat or an arrythmia. The analogy I commonly use is big, thick heart muscle loses the ability to conduct electricity efficiently. So the thicker the heart muscle is, the more inefficient the heart is in conducting electricity; therefore, more likely predisposes you to a arrythmia or an abnormal heartbeat which sometimes can be fatal.
Q. Now, while Mr. Fairchild's death -- or, I'm sorry, axillary temperature was so 108, I'd like to go ahead and look at his OIG report, page 363290.
Are you aware that Mr. Fairchild had to be defibrillated in EMS on way to the hospital?
A. Yes, I do believe that was in the medical records I reviewed.
Q. And are you familiar with postdefibrillation fever?
A. I've heard the term before but it's not something that I commonly see.
Q. So at 2224, which, I believe, is 10:24, his blood pressure was 46 over 18 and am I correct that that is quite low?
A. Yes, that's really low.
Q. And his temperature was 102.3; is that correct?
A. Yes.

15:26:42 Q. Now, at this point, he's in a medical setting which
15:26:45 is cooled, air-conditioned, being taken care of, however,
15:26:51 we go down two hours later on the 21st at just after
15:26:54 midnight, his temperature is all the way up to 105.6.
15:26:59 A. Yes.
15:26:59 Q. So his temperature is climbing even though he's in
15:27:01 the hospital. He's in air conditioning and he's receiving
15:27:04 medical care?
15:27:05 A. Yes.
15:27:06 Q. Now, if we go to next page, if we go to 363286, we
15:27:22 see that he has a high white blood cell count. Here, it's
15:27:25 15.6 when the upper limit of the normal range is at 11.
15:27:28 And if you can scroll down just a tiny bit, you see that
15:27:32 his neutrophil count is at 9.8 and lymphocytes are at 4.7.
15:27:37 Both of those are above the normal limit.
15:27:38 A. Yes.
15:27:38 Q. And that is normally indicative of an infection; is
15:27:42 that correct?
15:27:42 A. It can -- an infection can be a cause, yes.
15:27:45 Q. That along with increased temperature would indicate
15:27:47 an infection typically, correct?
15:27:48 A. It can, yes.
15:27:50 Q. I would like to talk about Ms. Armando Gonzales.
15:27:59 Again, this individual identified as female so I'll call
15:28:03 Ms. Gonzales "Ms." Now, she had a core body temperature

of 109 and toxicology report showed two drugs in her system. This is reading from your report, fentanyl and opiate narcotic and midazolam, a benzodiazepine, and there's no evidence that either drug was given as part of the medical resuscitation.

And I note earlier, were you in the courtroom when Dr. Vassallo was on the stand?

A. Yes.

Q. You may have heard her testify that fentanyl typically does not increase the body temperature?

A. Correct.

Q. Would you agree with that?

A. Yes.

Q. Are you familiar with what Effexor is?

A. Yes.

Q. That is an antidepressive medication, correct?

A. Yes.

Q. And what's missing in this description here is the fact that Ms. Gonzales was snorting lines of Effexor prior to her death. If we go to her OIG report, Gonzales OIG report 70577.

Are you familiar with the side effects of Effexor being seizures, severe heart issues, and ECG changes, and serotonin syndrome?

A. Yes.

15:29:18 Q. And inmate Gonzales was crushing and snorting large
15:29:24 lines of Effexor and Benadryl. Would snorting large lines
15:29:30 of Effexor and Benadryl or could it induce serotonin
15:29:35 syndrome?
15:29:35 A. It could.
15:29:36 Q. And serotonin syndrome would result in a very high
15:29:40 temperature, correct?
15:29:40 A. It can, yes.
15:29:41 Q. I'd like to go ahead and look at Mr. Wayne Straway
15:29:57 and you said in this particular case, resuscitation
15:30:00 measures were not successful. An autopsy was performed
15:30:03 and the findings summarized. This is me summarizing
15:30:06 because I can't say the words, two types of synthetic
15:30:10 cannabinoids and methamphetamine were found in this
15:30:12 individual's system.
15:30:13 A. Yes.
15:30:14 Q. And so, this is not just one type of synthetic
15:30:17 cannabinoid. You have two types of synthetic cannabinoid
15:30:20 and methamphetamine.
15:30:21 A. I can't remember if one of these synthetic
15:30:25 cannabinoid was a metabolite of the parent one.
15:30:30 Q. Oh, we can pull that up so you can see --
15:30:33 A. Yeah, if we can, I would refresh my memory.
15:30:35 Q. Let's go ahead and take a look at this so you have
15:30:37 the 5-fluoro-PINACA 3,3-dimethylbutanoic acid and then,

15:30:44 MDMB-4en-PINACA butanoic acid, and I don't believe those
15:30:44 are metabolites of one another.
15:30:46 A. No. They're both metabolites, though, so I'm not
15:30:50 sure if they're metabolites of the same compound or of
15:30:54 different compounds. That I'm not entirely sure about
15:30:58 that.
15:30:59 Q. Well, you know what, that's okay. We'll let that
15:31:02 stay because I know we're going to clear that up with our
15:31:04 pharmacist when he comes up here.
15:31:06 So you have an individual that has not only
15:31:08 synthetic cannabinoids, which we already say can cause
15:31:10 hyperthermia, but also has methamphetamine onboard which
15:31:13 is also a stimulant, correct?
15:31:14 A. Yes.
15:31:15 Q. So both of those drugs can cause hyperthermia?
15:31:18 A. Generally, synthetic cannabinoids are more associated
15:31:27 with hypothermia, but since their effects are largely
15:31:32 unpredictable, you know, they can cause hyperthermia,
15:31:38 usually due to agitation. But methamphetamine definitely
15:31:43 can lead to hyperthermia and elevated body temperatures
15:31:46 because it is a very powerful stimulant.
15:31:49 Q. And I'm glad you thought that up. But synthetic
15:31:53 cannabinoids actually do cause agitation so it's really
15:31:56 like almost exercise-induced hyperthermia that you're --
15:31:58 because of the movement.

15:32:00 A. They can, yes.
15:32:01 Q. So that's kind of contradictory to what Dr. Vassallo
15:32:03 was saying where people are very sedate, they can be,
15:32:06 actually, quite agitated on these synthetic cannabinoids.
15:32:09 A. They do bind to the cannabinoid receptors, yes, I do
15:32:13 agree with that part, which usually has a sedating effect
15:32:17 on people, but the presentation can be, you know, somewhat
15:32:23 variable with varying degrees of hyperactive delirium or
15:32:28 things like that.
15:32:29 Q. Okay. And so, it's entirely possible that someone
15:32:34 who has taken two different types of synthetic
15:32:37 cannabinoids and methamphetamine could have hyperthermia
15:32:41 because of those medications.
15:32:42 A. Yes.
15:32:49 Q. So Mr. Pursifull. Mr. Pursifull -- and I can
15:32:54 appreciate your opinion here in and that is you don't
15:32:58 necessarily want to make an opinion because we don't have
15:33:00 an autopsy report and we don't have an OIG report so
15:33:03 there's simply not really information to base an opinion
15:33:06 on. Is that a correct statement?
15:33:08 A. Generally, yes. So we do have, you know, some
15:33:13 medical records and temperature logs so I think it's
15:33:16 reasonable to consider heat. Whether or not he heat
15:33:21 played an ultimate role in his death, I don't know yet.
15:33:24 Q. So we can consider that limited information we have,

15:33:26 but it's too soon to make an actual determination. Am I
15:33:29 understanding correctly?
15:33:30 A. Yes.
15:33:30 Q. Do you have any information showing that whether or
15:33:35 not Mr. Pursifull was ill?
15:33:37 A. I have no information on that.
15:33:40 Q. What about if he had been exercising?
15:33:42 A. Don't know.
15:33:44 Q. If he had ingested any illicit substances?
15:33:46 A. Don't know.
15:33:47 Q. If he had taken any large amounts of prescription
15:33:50 medications?
15:33:50 A. Don't know.
15:33:52 Q. Do you know if his death is being investigated for
15:33:55 heat?
15:33:59 A. I don't know.
15:34:02 Q. And then, the last one I want to talk about is Samuel
15:34:04 Rucker. And Samuel Rucker, you've given your opinion and
15:34:08 this is in the October 31st, 2025 report, and then, you
15:34:12 did withdraw that opinion later on. But the last
15:34:14 statement there was the unit temperature logs reported
15:34:17 triple-digit heat indexes. It's my opinion that this
15:34:19 death was likely heat-related and prolonged exposure to
15:34:22 elevated environmental temperatures contributed to his
15:34:25 death.

15:34:25 Does that sound correct?
15:34:26 A. That sounds like what I stated, but I withdrew that
15:34:31 opinion.
15:34:31 Q. Yes. That's correct. And that was on the 11th of
15:34:33 this month where you did the addendum. That is correct.
15:34:36 However, at the time you made that statement, you signed
15:34:39 saying that all your opinions were within a reasonable
15:34:41 degree of medical certainty, correct?
15:34:42 A. Yes.
15:34:43 Q. And then, later on, you found out that Mr. Rucker was
15:34:47 actually in air conditioning?
15:34:48 A. Yes.
15:34:49 Q. And if you're in air conditioning then the death is
15:34:53 probably not going to be heat-related.
15:34:55 A. It's probably not with are there some possible
15:35:00 exceptions to it, like when you have a hyperactivity
15:35:03 delirium state, or something like that, where hyperthermia
15:35:06 can be a factor, yes. But when you're in air-conditioned
15:35:11 environment, you know, environmental heat is much less of
15:35:15 a concern. Are there times where -- even where people can
15:35:20 get hyperthermic in air-conditioned temperatures, yes,
15:35:24 those are the conditions that I'm referring to and there
15:35:26 is no indication of that in that case.
15:35:28 Q. All right. No further questions, your Honor. Thank
15:35:31 you.

15:35:33 THE COURT: Followup?

15:35:36 MR. JAMES: Very briefly.

15:35:38 RE-DIRECT EXAMINATION

15:35:39 BY MR. JAMES:

15:35:39 Q. Dr. Uribe, you were asked some questions about when
15:35:45 to take a body temperature in an emergency situation. The
15:35:47 Court may recall, but can you briefly explain your
15:35:53 involvement with protocols for Fort Benning relating to
15:35:59 heat casualties?

15:36:00 A. So we were -- since I was at Fort Benning, I was the
15:36:04 Chief of the Department of Pathology, which meant we dealt
15:36:09 with a laboratory component of -- laboratory diagnostic
15:36:14 component so I worked with a lot of clinical teams in
15:36:17 terms of trying to figure out the best ways to mitigate
15:36:21 heat casualties and a lot of our efforts focused on
15:36:25 initial assessment rapid diagnosis.

15:36:28 So a soldier falls out of training for some
15:36:32 reason, usually they have mental status changes, we don't
15:36:34 know what's going on, we don't know if they're tired, we
15:36:36 don't know if they're dehydrated, we don't know what's
15:36:39 going on. So we instituted a threefold approach. First
15:36:46 is mental status to check their mental status. If their
15:36:50 mental status was altered, then we would get a core body
15:36:55 temperature and rapid laboratory diagnostics, meaning from
15:37:01 an -- usually an i-STAT analyzer, which is a handheld

15:37:05 analyzer, you prick their finger, take a little bit of
15:37:07 blood, and it would run on labs and give you a basic
15:37:13 glucose, basic sodium level, things like that.
15:37:15 And it was for that reason because we had a
15:37:18 couple of cases in Fort Benning of hyponatremia where the
15:37:24 soldier was treated vigorously with fluids after falling
15:37:28 out of training and they ended up getting cerebral edema
15:37:32 and dying so we wanted to prevent that. And implementing
15:37:39 this, you can rapidly diagnose things like dehydration,
15:37:44 overhydration, hyperthermia and, you know, one of the
15:37:47 treatments that they instituted for hyperthermia was rapid
15:37:52 cold water immersion like there was no playing around.
15:37:57 They had a tub of ice there, they would literally throw
15:38:00 the whole soldier in there to cool him down immediately.
15:38:04 So those are some of the protocols that we
15:38:06 instituted and a lot of it was rapid laboratory
15:38:08 diagnostics which involved putting -- pushing i-STATs out
15:38:13 in the field, which is a chore in and of itself, and, you
15:38:16 know, rapid temperature assessment so we can figure out
15:38:19 what's going on.
15:38:22 Q. Was it feasible to perform those rapid temperature
15:38:26 assessments at Fort Benning?
15:38:28 A. Yes.
15:38:29 Q. We talked briefly about your opinions about Mr. Jason
15:38:40 Wilson. Dr. Uribe, do you recall in preparing your report

15:39:01 that this is one of the e-mails that you reviewed?
15:39:04 A. Yes.
15:39:06 Q. And do you see in the second line there what she's
15:39:15 saying about water?
15:39:18 A. That they haven't passed out any cold water today at
15:39:21 all.
15:39:24 Q. I think you heard some of the testimony or at least
15:39:33 some of the questions from opposing counsel to Mr.
15:39:36 Williams about ice water being made available in the
15:39:39 prison system. Did you hear that testimony?
15:39:41 A. Yes.
15:39:41 Q. So when you were viewing this and writing the report,
15:39:48 was it your understanding that the complaint was about ice
15:39:52 water? Was it about getting water out of the sink?
15:39:59 A. I don't -- I remember being asked about water being
15:40:06 -- you know, that water was available in each cell on
15:40:12 cross, but I don't remember the -- and I remember -- yeah.
15:40:17 I don't remember, specifically.
15:40:19 Q. If an inmate is complaining about not getting cold
15:40:26 water -- or, I guess, a person, a patient is complaining
15:40:28 they're not getting cold water, what is one reason why
15:40:30 someone would want cold water as opposed to water out of a
15:40:33 sink?
15:40:33 A. It's possible if they're thirsty. It's possible they
15:40:37 could be overheated. But there could be a number of

15:40:39 reasons.
15:40:40 Q. There's three more pages of these e-mails, but you
15:40:48 considered this other e-mail about complaining about the
15:40:50 not passing out cold water, correct?
15:40:52 A. Yes.
15:40:52 Q. And this was part of the information that you
15:40:57 considered reaching your opinions for Mr. Wilson's death,
15:41:00 correct?
15:41:01 A. Yes.
15:41:05 Q. My friend on the other side asked some questions
15:41:07 about Mr. Keith Pursifull. Why don't we have more
15:41:15 information to reach an opinion about what caused Mr.
15:41:18 Pursifull's death?
15:41:20 A. And Mr. Pursifull's was -- just a quick refresher.
15:41:24 Q. Yes. The one we were looking at only the medical
15:41:26 record and the outdoor temperature log.
15:41:29 A. Oh, yeah, that was because the autopsy has not been
15:41:32 completed yet so I don't know how the investigation is
15:41:36 going. I don't know what the preliminary autopsy findings
15:41:38 were. I don't know what the toxicology shows. Sort of in
15:41:44 the dark on that one but just waiting to see what they
15:41:47 find.
15:41:48 Q. And you know if we have any of the prison system's
15:41:52 records on Mr. Pursifull that you were able to review?
15:41:55 A. I think we have some of the medical records,

including the core body temperature and some of the environmental temperature logs.

Q. Thank you, Dr. Uribe. And I'll pass the witness.

THE COURT: Anything further?

MS. MCGEE: No further questions, your Honor.

THE COURT: Thank you.

THE WITNESS: Okay. Thank you, your Honor.

THE COURT: And this is a good time for our afternoon break, I think. Let's take a bit of a break. Let's reconvene at 4:00 and we'll pick up testimony there till the rest of the afternoon.

MR. HOMIAK: So we are thankfully running ahead of schedule. My estimate, obviously, depending on how long opposing counsel says to go on the cross-examination, is that it will be done with both Dr. Biswas' examinations right around 5:00. We have a backup witness that's ready to go. We have plenty to call tomorrow. I just wanted to get a sense of if Dr. Biswas finishes right around 5:00, the Court would like us to go --

THE COURT: I think let's just press on.

MR. HOMIAK: We'll do that.

THE COURT: Thank you so much.

(Recess.)

THE COURT: Your next witness?

MR. DUKE: Plaintiffs' call Dr. Biswas.

16:01:04 THE COURT: Before you take a seat, could you
16:01:06 raise your right hand to be sworn, please?
16:01:08 THE CLERK: You do solemnly swear or affirm that
16:01:08 the testimony which you may give in the case now before
16:01:08 the Court shall be the truth, the whole truth, and nothing
16:01:13 but the truth?
16:01:13 THE WITNESS: I do. Yes.
16:01:17 JHILAM BISWAS, called by the Plaintiff, duly sworn.
16:01:17 DIRECT EXAMINATION
16:01:18 BY MR. DUKE:
16:01:18 Q. Dr. Biswas, you testified previously at the
16:01:23 preliminary hearing; is that correct?
16:01:23 A. That is correct.
16:01:24 Q. And do you recall that you testified as an expert in
16:01:27 forensic psychology -- sorry. Do you recall that you
16:01:32 testified as an expert in forensic psychiatry?
16:01:36 A. I did testify as an expert in forensic psychiatry.
16:01:41 Q. We don't need to go into a ton of details again, but
16:01:44 can you briefly reintroduce yourself to the Court and
16:01:50 describe your professional experience?
16:01:51 A. Yes. My name is Jhilam Biswas, last name spelled
16:01:55 B-I-S-W-A-S, and I am a forensic psychiatrist. I trained
16:02:03 in Boston. I went to medical school at UMass, then I went
16:02:07 to residency in psychiatry at Harvard Longwood. And then,
16:02:10 I did a forensic psychiatry fellowship through UMass where

16:02:14 I worked at a state -- it was a medium security prison and
16:02:19 state hospital for forensic patients. I then spent six
16:02:23 years working with patients who had criminal charges and
16:02:28 serious mental illness.
16:02:30 After that, I went back to where I trained at the
16:02:35 hospital system is now called Mass General Brigham
16:02:39 Academic Medical Center and I am currently training
16:02:43 forensic psychiatrists-to-be. I am the Codirector of that
16:02:47 forensic psychiatry fellowship and I have a private
16:02:51 practice in which I am working as a consulting forensic
16:02:55 psychiatrist in this case and I -- not in this case but
16:02:59 often have doctors shadow me in my work so I can train
16:03:03 them about forensic psychiatry.
16:03:05 The other piece about forensic psychiatry is we
16:03:08 are experts in correctional psychiatry and correctional
16:03:11 medicine and we train doctors in correctional medicine.
16:03:15 Q. And there's both a academic and clinical side to your
16:03:20 practice; is that right?
16:03:21 A. That is correct.
16:03:22 Q. Can you bring up Exhibit 417, please. Is this your
16:03:29 updated CV?
16:03:30 A. Yes.
16:03:32 Q. And it's consistent with your --
16:03:33 A. Since October, yes.
16:03:35 Q. And this is consistent with your testimony both today

16:03:38 and previously?
16:03:38 A. That is correct.
16:03:39 Q. We would like to admit Exhibit 417 as evidence.
16:03:45 THE COURT: Any objection?
16:03:46 MS. CARTER: No objection.
16:03:46 THE COURT: So admitted.
16:03:48 Q. (BY MR. DUKE) Did you have an opportunity to review
16:03:51 your testimony at the preliminary injunction hearing?
16:03:54 A. I did review my testimony from July 2024.
16:03:58 Q. And for the opinions you expressed at the hearing, do
16:04:03 they remain your opinions today?
16:04:04 A. They remain my opinions today.
16:04:06 Q. And what additional work have you done since the --
16:04:10 in this case since the preliminary injunction hearing?
16:04:15 A. So I produced a report in November of 2025 sort of
16:04:19 codifying all of those opinions into a report. After
16:04:22 that, I read opposing expert reports, probably
16:04:30 December-January, and wrote a rebuttal to those reports.
16:04:34 And then, I was deposed in February of 2026 and now we're
16:04:39 here in March.
16:04:40 Q. Okay. I assumed or have you formed -- you mentioned
16:04:45 previously, opinions that you formed and did you form
16:04:47 additional opinions since then? It's going to be a yes or
16:04:52 no.
16:04:52 A. I think they're the same generally.

16:04:53 Q. Okay. And in forming the opinions in this case, what
16:04:59 categories of materials did you rely on?
16:05:01 A. I relied on documentation that I was given around
16:05:06 expert reports, all of the literature review. And I also
16:05:10 relied on my own clinical and educational experience and
16:05:13 training of doctors.
16:05:15 Q. You mentioned you reviewed expert reports of
16:05:18 defendant's; is that right?
16:05:19 A. Yes.
16:05:19 Q. Do you recall which experts or their reports that you
16:05:26 reviewed?
16:05:27 A. I do.
16:05:28 Q. Which experts did you review?
16:05:30 A. I do. I reviewed Dr. De La Cruz, Dr. Everitt and Dr.
16:05:39 DeGroot.
16:05:39 Q. Okay. We won't get into the specifics of it, but I
16:05:48 would first like to talk about your opinions that you said
16:05:51 you codified in your report that were consistent with your
16:05:53 prior opinions if I'm summarizing your previous testimony
16:05:57 correctly?
16:05:57 A. Absolutely. So my --
16:05:58 Q. Sorry. That was just a framing device to get you --
16:06:02 you testified at your preliminary injunction hearing that
16:06:05 extreme heat exacerbates mental illness?
16:06:09 A. That is correct. Yes. I did -- my opinion is that

16:06:12 extreme heat does exacerbate mental illness. It causes
16:06:16 physiological and psychiatric and psychological distress
16:06:21 to the body. Actual stress that, you know, dis-regulates
16:06:26 the body, which then results in all kinds of mental health
16:06:32 symptoms. It's truly a consensus across the medical
16:06:36 literature that mental illness is way worse in extreme
16:06:40 heat conditions.
16:06:41 Q. Okay. Can you explain what additional work
16:06:45 subsequent to the preliminary injunction -- subsequent to
16:06:48 the preliminary injunction hearing, can you explain what
16:06:51 your additional work has confirmed?
16:06:53 A. Yes. I mean, I think what I said in the preliminary
16:06:58 injunction hearing is very similar to today which is that
16:07:04 high temperatures increase the risk of mental health
16:07:07 symptoms which are parts of all kinds of mental illness.
16:07:11 So symptoms like anxiety, depression, suicidality,
16:07:16 insomnia, or sort of this restlessness, and then,
16:07:20 inability to sleep, both of those things. Paranoia,
16:07:25 hallucinations, these are all symptoms of mental illnesses
16:07:30 that go across all kinds of mental illness like
16:07:34 schizophrenia, bipolar disorder, PTSD, substance use
16:07:38 disorder, depression and anxiety, all of those disorders
16:07:41 have various symptoms like these that are exacerbated in
16:07:45 high heat.
16:07:45 Q. And so, those symptoms span a wide range of

16:07:51 diagnoses?
16:07:51 A. That's correct.
16:07:53 Q. Okay. So for the specific symptoms that you
16:07:56 discussed, can you explain the connection or like the
16:08:02 mechanical -- or the connection was a good word.
16:08:08 Connection between the exacerbation of the heat and the
16:08:15 either disease or symptoms that are being expressed?
16:08:19 A. Yes. So what we know from high heat is that it
16:08:22 causes physiological stress on the body and it actually
16:08:26 disrupts so many different types of neurotransmitter
16:08:29 pathways in our brain. It also causes a lot of
16:08:33 irritation, agitation and anxiety in and of itself, which
16:08:37 then lowers mood. But so many different neurotransmitter
16:08:41 pathways are affected by heat like the serotonergic
16:08:46 pathway, the dopaminergic pathway, and then, it also
16:08:50 increases our stress hormones like cortisol, which also
16:08:54 dis-regulate mood; and so, because of that, we see mental
16:09:01 health issues. There's actually a study, I cited the
16:09:04 Meadows study from 2024 which was a metaanalyses of 22
16:09:10 different studies. It looked at 22 really large studies
16:09:15 that indicated that there were in the general population a
16:09:22 much -- a dose-dependent psychiatric emergency risk. What
16:09:28 I mean by dose-dependent is as the heat increases, there
16:09:31 are more psychiatric emergencies, emergency room visits
16:09:35 and mortality in the general population. And so, that is

16:09:40 -- it's a metaanalyses.
16:09:41 Q. Can you bring up Exhibit 465? Is this the study that
16:09:49 you're mentioning by Dr. Meadows?
16:09:52 A. Yes.
16:09:52 Q. Okay. Plaintiffs would like to admit Exhibit 465
16:09:57 into evidence.
16:09:58 THE COURT: Objection?
16:09:59 MS. CARTER: No objection, your Honor.
16:10:00 THE COURT: So admitted.
16:10:03 Q. (BY MR. DUKE) Just to kind of go from the general to
16:10:05 the more specific and I think at the preliminary
16:10:08 injunction hearing, you mentioned one of the things is
16:10:10 disruptive or disrupted is sleep. Can you explain a
16:10:16 connection -- how that connection works in the context of
16:10:18 sleep?
16:10:18 A. So in the con -- I mean, there are a lot of pathways
16:10:22 that can improve sleep and dis-regulate sleep. However,
16:10:27 one of the simplest ways to understand this is you need a
16:10:32 lower core body temperature in order to produce melatonin
16:10:35 to sleep. And so, that's just one way in which it can be
16:10:39 really hard to go to sleep and then, also, maintain sleep
16:10:42 in higher temperatures.
16:10:43 Q. Okay. And so, I'm not presenting myself as the --
16:10:49 perfect of mental health but how does that compare -- how
16:10:53 does a normal person who just doesn't get a lot of sleep

16:10:56 versus -- how does that exacerbate mental health issues as
16:11:00 opposed to a normal -- a non individual with mental health
16:11:04 issues getting a bad night's sleep?
16:11:07 A. Sure. Sleep is restorative in every single way for
16:11:11 all mental illnesses unless you sleep way too much, which
16:11:15 we sometimes see in depression. But outside that, sleep
16:11:18 can be very restorative and so, it absolutely reduces --
16:11:25 when you have good sleep, it impacts people with
16:11:28 schizophrenia, with bipolar disorder, with PTSD, with
16:11:33 anxiety and depression, people do better. When they don't
16:11:36 sleep, we actually see exacerbation of symptoms and so, we
16:11:39 always as psychiatrists ask about sleep in order to
16:11:42 determine how somebody is doing.
16:11:44 Q. And so, the connection would be high heat causes
16:11:47 difficulty sleeping for a range of reasons which you
16:11:50 discussed that then exacerbates symptoms. Is that a
16:11:55 summary of your testimony?
16:11:57 A. Yes.
16:11:57 Q. What symptoms are exacerbated and how so?
16:12:07 A. So a lot of people when they're not sleeping, you
16:12:10 know, they will experience, you know, higher levels of low
16:12:16 mood. It can exacerbate suicidal feelings, but we
16:12:20 certainly see it in bipolar disorder where people are not
16:12:23 sleeping and they become more manic. We can see it in
16:12:28 people with schizophrenia if they're not sleeping, they

16:12:31 can be pacing, they can become more agitated. They can
16:12:35 become more irritable. And so, sleep just overarchingly
16:12:40 is our brain's way of healing itself and when you're not
16:12:43 sleeping, it's not really healing itself.
16:12:45 Q. And to use your healing yourself, if you brain has
16:12:49 impairments, it can exacerbate those impairments in a
16:12:53 range of ways?
16:12:54 A. That's correct.
16:12:54 Q. And some of the results can be from low mood to
16:12:58 irritation to increased mania and schizophrenic episodes?
16:13:03 A. That's correct.
16:13:03 Q. And you mentioned, also, a risk of suicidality?
16:13:07 A. It can increase suicidality.
16:13:09 Q. And is that heat in general or is that just one thing
16:13:12 associated with sleep?
16:13:13 A. Well, heat in general increases suicidality. There's
16:13:18 a study that I cited in my report Cloud, Et Al 2023. I
16:13:25 think it was JAMA Open Network and that study looked at
16:13:29 Louisiana prisons and it found that from 80 to 89 degrees
16:13:35 Farenheit in those prison systems, the suicide watch
16:13:40 incidents, which is when correctional officers are
16:13:43 actually watching individuals because they're saying
16:13:46 they're suicidal but they haven't done anything yet,
16:13:50 they're watching them, that increased by 29 percent. From
16:13:54 90 degrees to 103 degrees, suicidal incidents increased by

16:14:00 37 percent in those systems.

16:14:02 And so, suicidality is actually, really in my
16:14:07 lane and wheelhouse versus looking at deaths because
16:14:10 suicidality indicates there's a psychiatric crisis going
16:14:13 on because -- and it's a dose-dependent crises due to the
16:14:17 heat increases.

16:14:18 Q. And just to repeat that last point on
16:14:23 dose-dependency, the hotter it gets, the greater incidents
16:14:28 of -- risk of suicide watch but, also, suicidality?

16:14:35 MS. CARTER: Could you just repeat that and speak
16:14:37 a little bit louder into the mic?

16:14:40 Q. (BY MR. DUKE) By dose-dependence, you're saying each
16:14:48 -- can you explain to me what you mean by dose-dependence
16:14:51 in that context?

16:14:52 A. Yes. The higher the dose of heat, the more
16:14:54 exacerbation of mental illness.

16:14:56 Q. And so, each degree or each category?

16:14:59 A. A lot of studies go degree by degree and say that
16:15:02 they see increases of mental illness. Some studies do say
16:15:07 for every 10 degrees of heat, we see this level of mental
16:15:11 illness.

16:15:11 Q. Okay. Kellie, can you please bring up Exhibit 460?
16:15:19 You mentioned the Cloud study out of Louisiana. Is that
16:15:24 Exhibit 460?

16:15:29 A. Yes. It is on my screen.

16:15:39 Q. Plaintiffs would like to admit Exhibit 460.
16:15:41 THE COURT: Objection?
16:15:43 MS. CARTER: No objection, your Honor.
16:15:44 THE COURT: So admitted.
16:15:45 Q. (BY MR. DUKE) Thank you. Your testimony, I
16:15:55 believe -- save the Cloud study, which, I think, was
16:15:59 specific inmates -- has been with respect to individuals
16:16:02 in general; is that right? Like every human being
16:16:07 responds to heat and then, also, individuals, no matter
16:16:10 who they are with mental illness, will also have risk of
16:16:15 heat-related exacerbation; is that right?
16:16:17 A. Yes. That's why I bring up the metaanalyses because
16:16:20 it's looking at studies everywhere that truly, this is a
16:16:23 biological issue of being human in high-heat situations,
16:16:27 all human beings at first may be variable, depending on
16:16:32 where they're from. But truly, as heat increases at some
16:16:37 level, all individuals cannot tolerate it. No one can
16:16:40 tolerate being in an oven.
16:16:42 Q. But then, with respect to individuals in prison, is
16:16:46 there a particular risk associated with that population?
16:16:53 A. There is. There is an association with that
16:16:56 population because the population within the prison system
16:17:01 is -- has a much higher incidents rate of mental illness
16:17:06 so there's another -- there's a SAMHSA website that I
16:17:10 cited in my report that says 37 percent of people in U.S.

16:17:17 prisons have mental illness as opposed to 18 percent in
16:17:21 the general population. For substance use disorder, that
16:17:24 increases to 58 percent of individuals in prison have
16:17:30 substance use disorder who we also know and, again, I as a
16:17:33 psychiatrist see substance use really in the spectrum of
16:17:37 mental illness, as well, and so, that's why I really pull
16:17:39 those two together.
16:17:40 But both of those groups have a much higher
16:17:46 incidents of being in the incarcerated population than
16:17:51 others, and so, they're particularly vulnerable to heat
16:17:56 because there's a higher incidents of mental illness and
16:17:59 substance use in incarcerated populations; but also, they
16:18:02 don't have the autonomy or the ability to make decisions
16:18:05 for themselves in those settings where they can cool down.
16:18:11 The reason why this population is particularly so
16:18:14 vulnerable is because these illnesses impact the brain,
16:18:19 which means that it impacts the ability to make good
16:18:23 decisions for yourself, or self-awareness, or insight and
16:18:26 judgment. All of those things tend to be more impaired in
16:18:31 this population than somebody who doesn't have mental
16:18:33 illness. And so, to be in a setting where you can't make
16:18:36 decisions for yourself and then need to directly ask for
16:18:40 help is particularly hard for this vulnerable population.
16:18:43 Q. And so, you mentioned impaired judgment. In the
16:18:46 context of an inmate who might have impaired judgment and

16:18:53 the potential mitigation on offer is to take a cold shower
16:18:59 it would be incumbent upon that individual to request one;
16:19:02 is that right?
16:19:02 A. That is true. And many of the studies I cited in my
16:19:05 report really talk about the general population where
16:19:08 people with mental illness have a much higher incidents
16:19:11 rates of getting very sick during heat waves and that's
16:19:15 partially because these individuals tend to isolate. They
16:19:18 might be on the streets. They are people who might be
16:19:22 wearing a thick jacket walking around in a hundred-degree
16:19:25 weather because many people with schizophrenia who are
16:19:30 particularly sick who have refractory illness are
16:19:35 refractory because they have a lack of insight and
16:19:38 judgment into their own self-awareness. So they're not
16:19:42 able to ask for help. They are not able to take care of
16:19:44 themselves because of that, and so, you put them in higher
16:19:48 concentrations in incarcerated settings where they really
16:19:51 can't make decisions for themselves, that vulnerability
16:19:55 increases.
16:19:55 Q. And you've mentioned schizophrenia. Is that a
16:19:58 specific feature of schizophrenia or is it -- does it have
16:20:05 applicability to other mental illness?
16:20:06 A. It does. There's a lot of different mental illness
16:20:09 with psychotic components. And when I say the word
16:20:12 "psychosis," it can mean paranoia and hallucinations, but

16:20:17 what it really means is sort of not -- having a break with
16:20:21 reality. Not being able to have judgment about what's
16:20:25 going on around you in the world because your perceptual
16:20:29 senses are totally disturbed and dis-regulated from the
16:20:33 disease and so, you lack insight and judgment. Or at
16:20:37 least it's impaired and so, it's harder for you to take
16:20:40 care of yourself than somebody who doesn't have the
16:20:42 illness.
16:20:44 Q. And I believe I'm somewhat quoting from your
16:20:51 preliminary injunction testimony. You talked about mental
16:20:55 health issues are physical health issues. Can you explain
16:21:01 that a little bit further and the connection maybe in this
16:21:03 context?
16:21:04 A. Sure. Our physical health is our mental health and
16:21:09 vice versa. The brain, the mind is within the body. It
16:21:12 is part of the body. We think of the body as a whole.
16:21:17 Mental illness is not separate from physical illness. Of
16:21:21 course, we've had other doctors testify on the physical
16:21:24 impairments people experience with heat but that, of
16:21:27 course, also translates to mental illness. And mental
16:21:32 illness first, really, because if you are developing the
16:21:35 inability to not be able to think clearly because it's so
16:21:38 hot, you're not going to be able to take care of all the
16:21:41 other parts of yourself either so they're intricately
16:21:45 linked. They are not separate.

16:21:46 Q. In your opinion, the substantial risk is both to
16:21:50 mental health but then, also, to physical health?
16:21:52 A. The impairment to mental health then causes even more
16:21:55 impairment to physical health.
16:21:58 Q. You've briefly mentioned at the preliminary
16:22:00 injunction hearing that risk of violence, I think the term
16:22:04 you used was violence risk increases? Can you just expand
16:22:07 on that because it was pretty minimal previous.
16:22:12 A. Yes. So all of the literature shows that there's
16:22:14 increased violence in the community during and after heat
16:22:19 waves and that is because agitation increases,
16:22:22 irritability increases. And we are seeing that there is
16:22:25 this impact on low mood that happens in heat waves due to
16:22:31 there dis-regulation that the heat puts on the body
16:22:34 physiologically that then disturbs dopaminergic or
16:22:40 serotonergic pathways in the brain, and so, we see low
16:22:42 mood, we see suicidality, but we also see agitation,
16:22:46 irritation and the reaction to all of that.
16:22:48 Q. So then, just to frame this up. I'm sorry for coming
16:22:54 up with this on the spot. You have talked about in this
16:22:56 context both self-harm, individual harm that results or
16:23:04 potential to do harm, and then, also, in the violence
16:23:06 risk, would that be harm to third parties?
16:23:10 A. That can be.
16:23:13 Q. What is a violent --

16:23:15 A. Destroying things, violence, I think can really equal
16:23:18 hurting others, being dangerous to others or dangerous to
16:23:22 the environment.
16:23:24 Q. So let's move on to your second opinion, and
16:23:29 previously, you testified that with respect to medications
16:23:33 that you testified that psychotropic medications pose risk
16:23:39 in high-heat situations. Do I have that right?
16:23:41 A. I'm sorry.
16:23:43 Q. I think your opinion was that psychotropic
16:23:45 medications pose an increased risk at high-heat
16:23:50 situations. Do I have that right?
16:23:52 A. That's right.
16:23:52 Q. Can you expand on that?
16:23:54 A. Sure. And so, we also know that some medications
16:23:57 that we use to treat certain symptoms of mental illness
16:24:02 and are quite necessary in treating mental illness can
16:24:07 dis-regulate the body's thermostat, which is the
16:24:11 hypothalamus. It's a small part of brain near the
16:24:14 brainstem that actually regulates all different systems in
16:24:17 our body that cool our body down. It can dis-regulate the
16:24:21 hypothalamus as well through stimulating the antimus --
16:24:27 the muscarinic receptors and the cholinergic receptors.
16:24:33 Some of these medications are anticholinergic so it will
16:24:36 stop the cholinergic receptor. Some of them are
16:24:39 antimuscarinic and anticholinergic and they'll stop the

16:24:43 muscarinic receptors. These receptors are also present
16:24:46 peripherally through our bodies in our sweat glands and
16:24:49 can basically impair our ability to sweat accurately
16:24:55 because the thermostat's off and the sweat glands are off.
16:24:59 Q. And so, I believe you've now mentioned two categories
16:25:03 of medications the anticholinergics and the antimusc -- I
16:25:13 have the inability to say this word but you know what I'm
16:25:15 talking about.
16:25:15 A. It's a tongue twister.
16:25:17 Q. So in addition to those, are there -- I guess I
16:25:20 should ask are there additional medications or categories
16:25:22 of medications in addition to those two?
16:25:25 A. There are. You know, we do have concerns over some
16:25:29 antidepressants that do have these properties that I just
16:25:33 talked about. But also, serotoninergic pathways, we are
16:25:37 concerned about them in high-heat situations because they
16:25:39 can cause serotonin syndrome, which is basically your body
16:25:45 goes into a feverish state and you are unable to really
16:25:51 manage your autonomic system. It impairs your autonomic
16:25:55 system and causes a fever. So you can imagine in higher
16:25:58 heat situations, these kinds of syndromes are exacerbated
16:26:02 using these medications.
16:26:04 Q. And with respect to anticholinergics and
16:26:09 antimuscarinics, I think you described the physiological
16:26:16 process as being somewhat similar but working on different

16:26:19 receptors; is that right?
16:26:20 A. That's right. It's all acetylcholine just going on
16:26:25 different receptors.
16:26:26 Q. Is the process the same with respect to SSRIs, one
16:26:29 category of antidepressants?
16:26:32 A. So the literature's a little bit different on SSRIs,
16:26:36 but remember there's some antidepressants that we use that
16:26:39 are antimuscarinic and anticholinergic. But that, also,
16:26:43 the SSRIs can the impact the hypothalamus. The mechanism
16:26:47 is less known in that situation, but I do think the
16:26:51 serotonin syndrome piece is really important there. It
16:26:54 tends to be underdiagnosed syndrome that we see with
16:26:58 people who are overtaking -- taking too many SSRIs or
16:27:03 taking SNRIs like Effexor and Lyrica and Cymbalta, those
16:27:11 are SNRIs that also affect norepinephrine. All of these
16:27:17 neurotransmitter pathways can get dis-regulated in heat
16:27:20 and then, the medications might be less effective or
16:27:22 impact the hypothalamus.
16:27:25 THE COURT: May I interrupt very briefly? I'm
16:27:27 sorry, but, Doctor, do you mind if I lower these blinds?
16:27:30 I'm getting a glare from it. It's that hour, I'm afraid.
16:27:35 THE WITNESS: Absolutely.
16:27:36 THE COURT: Thank you. Sorry, counsel.
16:27:52 Q. (BY MR. DUKE) So you mentioned serotonin syndrome and
16:27:56 I think you also previously testified about NMS and I'll

16:27:59 let you explain what NMS is but can you --
16:28:02 A. Yes.
16:28:03 Q. -- explain both of those and tell the Court what NMS
16:28:06 stands for.
16:28:06 A. Yes. NMS is Neuroleptic Malignant Syndrome and that
16:28:12 we see with -- it's an unpredictable fatal side effect of
16:28:19 using antipsychotic medications where it causes this high
16:28:24 level of muscle rigidity due to the blockade of delivery
16:28:28 receptors. It impacts the muscles and it causes the
16:28:32 muscles to become very rigid and really increase body
16:28:37 temperature and it's a death from hyperthermia and muscle
16:28:41 rigidity.
16:28:42 Q. So to perhaps explain it in more simple terms, does
16:28:47 that mean like the brain's temperature control systems are
16:28:51 short-circuiting?
16:28:52 A. It completely short-circuits. Muscles short-circuit
16:28:56 so there's like this combination of multiple -- the
16:29:00 hypothalamus short-circuiting, the muscles becoming rigid
16:29:04 and shaking and then, causing a fever and then,
16:29:07 eventually, death.
16:29:08 Q. But that can happen in air-conditioned environments,
16:29:11 right?
16:29:11 A. It can. But obviously, in extreme heat waves if you
16:29:15 don't have air conditioning, you are at a higher
16:29:20 likelihood of having that happen.

16:29:20 Q. So the extreme heat makes those conditions worse?
16:29:24 A. Right, because your body is already under a lot of
16:29:27 stress in trying to cool your body down already and then
16:29:32 -- so it's just areas easier for it to go out of whack.
16:29:36 Q. Can we please bring up Exhibit 333? Do you know what
16:29:47 this document is?
16:29:49 A. Yes.
16:29:50 Q. Can you explain?
16:29:52 A. Yes, it's like a heat score that inmates get.
16:29:59 Q. Oh, sorry. You can tell me this is a document
16:30:05 showing the drugs associated with heat stress that TDCJ
16:30:10 has as part of its policy; is that correct?
16:30:12 A. That is correct.
16:30:12 Q. And so, you had mentioned several categories of
16:30:17 medications and I just had a question. Some of the
16:30:20 categories of medications that you listed are on this
16:30:23 chart; is that right?
16:30:24 A. That is right.
16:30:25 Q. Are any not?
16:30:28 A. The SSRIs are not on there.
16:30:30 Q. Okay. So SSRIs, which is one category that you've
16:30:33 spent a lot of time talking, aren't included on?
16:30:35 A. Right. Stimulants aren't on there.
16:30:38 Q. Okay. So to the extent it's not already admitted,
16:30:42 we'd like to admit Plaintiffs' Exhibit 333.

16:30:48 THE COURT: Objection?
16:30:50 MS. CARTER: No, your Honor.
16:30:51 THE COURT: So admitted.
16:30:53 Q. (BY MR. DUKE) So you talked about --
16:31:00 A. I'll just add SSRIs and SNRIs, those are also
16:31:04 antidepressants. There are some antidepressants like
16:31:09 Wellbutrin that are often prescribed in prison settings
16:31:12 that have like a norepinephrine profile that could be an
16:31:16 issue, it has a slight stimulant property as well and
16:31:20 stimulants.
16:31:20 Q. Maybe that clarification is there is a category for
16:31:23 antidepressants but it does not include SSRIs.
16:31:28 A. And SNRIs.
16:31:29 Q. And with respect to these medications that are listed
16:31:33 and the SSRIs and SNRIs and the others that you discussed,
16:31:37 you're a treating physician, right?
16:31:38 A. Yes.
16:31:38 Q. Would you refuse to prescribe any of these
16:31:42 medications to someone in a hot environment?
16:31:45 A. I would not be able to with my license not prescribe
16:31:50 medications for someone with mental illness who's coming
16:31:52 to me for treatment and I would write in their
16:31:56 prescription they need air conditioning.
16:31:58 Q. So not prescribing these medications isn't a
16:32:01 solution?

16:32:01 A. Correct.
16:32:08 Q. You had mentioned that you had reviewed the expert
16:32:14 report of Dr. De La Cruz?
16:32:16 A. Yes.
16:32:16 Q. Did you form any opinions with respect to Dr. De La
16:32:22 Cruz's expert report?
16:32:23 A. Well, first, I agree with Dr. De La Cruz that these
16:32:27 medications absolutely impact an individual's ability to
16:32:33 tolerate heat due to the mechanisms I just described. He
16:32:37 writes the same thing in his report and in my rebuttal, I
16:32:40 say we agree on that and -- but I don't think those risks
16:32:45 are theoretical. I see patients clinically. I take care
16:32:49 of patients. I have for many years in correctional
16:32:52 settings where they were on medications and absolutely
16:32:56 being on those medications and also having mental illness,
16:33:00 heat can really impact their well-being.
16:33:02 Q. And so, just for classification, Dr. De La Cruz as
16:33:05 part of his opinions said that the risks related to
16:33:10 thermoregulatory issues was just theoretical?
16:33:13 A. That was my reading of his report.
16:33:15 Q. Okay. In your clinical experience and also your
16:33:20 reading of the literature, that is inconsistent with your
16:33:22 understanding of those risks?
16:33:23 A. That is correct.
16:33:24 Q. Did Dr. De La Cruz address heat-related risks of

16:33:31 SSRIs, specifically, do you recall?
16:33:36 A. I don't recall that. Oh, but he talked about
16:33:48 contraindications.
16:33:49 Q. He did and I'm happy to show you what he -- if you
16:33:54 now recall, what did Dr. De La Cruz say with respect to
16:33:58 contraindications?
16:34:02 A. That what he said from my reading of it was that
16:34:06 because heat is not listed as a contraindications that it
16:34:10 is not a contraindication to all of these medications and
16:34:14 I disagreed with that opinion because we don't --
16:34:19 contraindications don't talk about an environmental
16:34:22 concern that impact everybody that's living in that one
16:34:26 locale. Contraindications are more specific about a
16:34:30 person and what they are -- they are personally engaging
16:34:34 in like, you know, do not take with pregnancy, do not
16:34:37 operate heavy machinery, but they're not going to talk
16:34:40 about a global phenomenon in a contraindication like do
16:34:44 not take in a heat wave. That is not really a
16:34:49 contraindication I've ever seen and it's not like, you
16:34:53 know, there are contraindications to medications that
16:34:55 irritate the lungs that say don't -- do not take in air
16:35:00 pollution, you know. And that's also another global
16:35:02 phenomenon, right, that is bad with certain -- that
16:35:07 interacts with certain medications so it's the same thing
16:35:09 with heat. It's not something that you would normally see

16:35:13 in a contraindication to a medication.
16:35:15 Q. And so just to clarify, the fact that there's not
16:35:18 like a box warning that says don't prescribe SSRIs or
16:35:24 don't take SSRIs if you're incarcerated and don't have air
16:35:28 conditioning, that would not be a reason not to prescribe
16:35:31 it?
16:35:32 A. That's correct. It's kind of one of those things you
16:35:35 consider as a physician when you're prescribing the
16:35:37 medication, I mean, the general hope that that's a
16:35:41 controllable issue, right, like if you're in a heat wave,
16:35:44 you can cool down in air-conditioned setting. But of
16:35:47 course, incarcerated populations don't have that choice.
16:35:49 They don't have that choice to make that decision when
16:35:52 they're taking the medication.
16:35:54 Q. I gerrymandered my box warning but it would be
16:35:58 unlikely to have a warning that says don't take when it's
16:36:03 hot?
16:36:03 A. That's right.
16:36:04 Q. And so, because that's not a contraindication that
16:36:09 you've ever seen to apply to any category, psychotropic
16:36:15 medications, that would not be a reason to discount the
16:36:17 risk associated with high heat?
16:36:20 A. That's right. The risk still exists where it says it
16:36:22 in a contraindication or not. It's riskier.
16:36:27 Q. And then, do you recall Dr. De La Cruz's estimate on

16:36:30 the percentage of patients that have side effects
16:36:35 associated with heat? In his report that he says that
16:36:42 approximately seven percent of patients -- or I think it
16:36:45 was only seven percent of patients have excessive sweating
16:36:51 or other related issues related to SSRIs?
16:36:56 A. So he, Dr. De La Cruz, wrote in his report that about
16:37:00 seven percent have adverse events when they're on SSRIs
16:37:03 and I think in the medical community, that is a common
16:37:07 side effect. Between one and 10 percent is considered
16:37:11 pretty common in the medical world and so, seven -- my
16:37:16 understanding is there's 135,000 people incarcerated in
16:37:19 Texas and so, seven percent of that is -- are multiple
16:37:24 thousands of people who would be impacted. And so, I do
16:37:27 consider that to be a significant percentage of people
16:37:32 impacted by heat and being on SSRIs.
16:37:36 Q. So by common, you mean it's a risk to be concerned
16:37:42 about it?
16:37:43 A. It's certainly a risk that we would be concerned
16:37:45 about.
16:37:47 Q. Dr. De La Cruz, I believe, suggests hydration and
16:37:51 caution to mitigate the risk associated with taking SSRIs.
16:37:56 Do you agree?
16:37:56 A. I think that being hydrated is helpful, but that
16:38:00 doesn't lower your core body temperature. I think to
16:38:03 lower your core body temperature, you need air

16:38:05 conditioning and that is the most comprehensive thing you
16:38:07 can do to reduce this serious exacerbation of mental
16:38:13 illness we see in these populations in heat.
16:38:18 Q. Can you please publish Exhibit 328? Have you seen
16:38:31 Exhibit 328?
16:38:34 A. Yes, I have.
16:38:36 Q. And it's dated April 10th, 2025 down at the bottom
16:38:41 left-hand corner; is that right?
16:38:43 A. Yes.
16:38:43 Q. And is this the -- did you review this document in
16:38:49 forming your opinions?
16:38:50 A. I did review this document.
16:38:51 Q. Can you please publish Exhibit 329? This document is
16:39:02 dated February 2nd, 2026; is that right?
16:39:06 A. That is correct.
16:39:06 Q. Is it your understanding that this is an updated
16:39:11 version of the heat mitigation -- sorry, the heat scoring
16:39:19 form?
16:39:20 A. Yes.
16:39:20 Q. That TDCJ has prepared?
16:39:22 A. Yes. It looks like it's an updated version.
16:39:24 Q. Okay. Do you know what the differences are?
16:39:27 A. I think in the psychiatric illnesses, it says
16:39:30 receiving HAAC for 4 days, which is highly active
16:39:36 anticholinergic prescription.

16:39:40 Q. In the middle where it says psychiatric. So you're
16:39:42 saying that under psychiatric with respect to psychosis,
16:39:46 schizophrenia and schizoaffective disorder, those have a
16:39:55 reference to medications?
16:39:57 A. Right.
16:39:58 Q. And the number of days that one is on medication?
16:40:01 A. That is what I notice is the difference.
16:40:03 Q. Okay. If you look at Exhibit 328 in that same spot.
16:40:12 There it's just mentioning anticholinergic meds; is that
16:40:15 right?
16:40:15 A. Right. And then, now it sounds like it's specified
16:40:17 that they have to be on it for more than four days to
16:40:21 qualify.
16:40:21 Q. What's an HAAC?
16:40:27 A. It sounds like it's a highly active anticholinergic.
16:40:35 It's not a medical term.
16:40:36 Q. If you scroll down to 329 on the bottom.
16:40:44 A. Yes, highly active anticholinergic prescription. So
16:40:49 I don't know what this -- oh, the C is so it's
16:40:52 anticholinergic is the AC.
16:40:55 Q. And then, is that the same category that you would
16:40:57 consider anticholinergic meds?
16:41:02 A. I don't know what that means.
16:41:04 Q. Okay. That's fine. You've reviewed the -- I would
16:41:10 like to admit as exhibits -- I would like to move to admit

Exhibit 328, 329.

THE COURT: Any objection?

MS. CARTER: No objection, your Honor.

THE COURT: So admitted.

Q. (BY MR. DUKE) So you reviewed TDCJ's heat score system through these score sheets; is that right?

A. That is correct.

Q. Did you have opinions with respect to them?

A. I think it's under-inclusive. It doesn't really encompass all of the mental illnesses that I was talking about. What I said was exacerbated by heat and what the literature shows across the board is that various symptoms of mental illness that are across the spectrum of all mental illnesses are exacerbated in high heat like anxiety, depression, insomnia, suicidality, hallucination, agitation, irritability. All of those things, they come, they happen in all kinds of mental illnesses and I only see different versions of schizophrenia and bipolar disorder represented in this.

Q. So it's under-inclusive with respect to the conditions that are not included?

A. That is correct.

Q. Is this under-inclusive with respect to medications?

A. Yes.

Q. In what way?

16:42:28 A. As we were saying, I think it doesn't have the SSRIs
16:42:31 and the SNRIs and the Wellbutrins profile and stimulants.
16:42:37 Wellbutrin's sort of a cross between sort of a stimulant
16:42:41 medication but it works more with mood.
16:42:44 Q. So at least on its face, it seems to be limited to
16:42:47 anticholinergic prescriptions?
16:42:48 A. That's right. And some antimuscarinics as well.
16:42:52 Q. Previously, you discussed there's different
16:42:54 categories of inmates with mental health issues.
16:42:58 Structurally, is this also under-inclusive in the category
16:43:01 of inmates that it applies to?
16:43:06 A. Yes. I might not understand what you mean
16:43:08 structurally, but it's under-inclusive of all of the
16:43:12 diagnoses that I mentioned. It only has schizophrenia.
16:43:16 Q. It only applies to people with prescriptions for
16:43:24 diagnosed mental health issues?
16:43:26 A. The other key thing is so much of this population is
16:43:30 underdiagnosed or never diagnosed at all and if you're not
16:43:33 diagnosed, you're not on medications, but you still have
16:43:36 mental illness that will be exacerbated by heat. And so,
16:43:40 you know, this is already a population that's stigmatized
16:43:45 in the carceral setting. We all know there's stigma
16:43:49 associated with getting diagnosed with mental illness in
16:43:52 the general population but even more so in the carceral
16:43:55 setting and so, there's a huge population. One in three.

16:43:58 I mean, 37 percent as SAMHSA said of the prison population
16:44:02 has mental illness, 58 has a substance use disorder. I
16:44:07 mean, these two groups together make up more than one in
16:44:09 three, and so, you're never going to capture everybody.
16:44:13 There's just no way. It's too many people and so it's
16:44:17 under-inclusive.
16:44:19 Q. Okay. Would improving the heat score system through
16:44:23 the -- addressing the criticisms that you raised, for
16:44:27 instance, by adding the medications and conditions you
16:44:30 identified, would that solve the problem?
16:44:34 A. If you included all of the things I just said. You
16:44:38 could just never get everybody to fall under a score like
16:44:44 this because this population is so particularly vulnerable
16:44:48 to mental illness.
16:44:50 Q. The vast heat score system would be insufficient to
16:44:55 provide -- would still be insufficient, is that what your
16:45:00 opinion is?
16:45:00 A. It would be insufficient because so much of this
16:45:02 population is undiagnosed.
16:45:04 Q. Okay. You have a range of opinions all related to
16:45:16 mental and medical health. Has all your testimony in this
16:45:20 case been to a reasonable degree of medical certainty?
16:45:24 A. All of my opinions are to a reasonable degree of
16:45:27 medical certainty.
16:45:28 Q. I pass the witness.

16:45:45 CROSS-EXAMINATION

16:45:45 BY MS. CARTER:

16:45:50 Q. Good afternoon, Dr. Biswas.

16:45:52 A. Good afternoon.

16:45:57 Q. Dr. Biswas, as stated, you testified at the
16:46:00 preliminary injunction hearing in this case in 2024,
16:46:02 right?

16:46:03 A. That is correct.

16:46:04 Q. And you were deposed in this case just a few months
16:46:07 ago, right?

16:46:07 A. That's correct.

16:46:09 Q. And how long have you been practicing forensic
16:46:12 psychiatry?

16:46:16 A. For 11 years.

16:46:18 Q. And you no longer work at Bridgewater State Hospital,
16:46:22 do you?

16:46:22 A. I don't.

16:46:27 Q. Dr. Biswas, on your CV, the only position you have
16:46:31 listed as forensic psychiatry is at Bridgewater Hospital;
16:46:35 is that correct?

16:46:36 A. My private practice is all forensics.

16:46:41 Q. But the only position you held at Bridgewater
16:46:44 Hospital was forensic psychiatry, right?

16:46:48 A. Yes. The only position at Bridgewater State Hospital
16:46:52 -- well, if you mean as a forensic psychiatrist, I

16:46:56 practice clinical medicine. I took care of patients
16:46:59 full-time clinically as well as doing forensic
16:47:02 evaluations.
16:47:03 Q. Okay. And when you say clinically, you're providing
16:47:05 care?
16:47:06 A. That's correct.
16:47:10 Q. Now, at Brigham Women's, how many incarcerated
16:47:13 individuals do you see a year?
16:47:16 A. I would say I would see -- I can see between two and
16:47:22 five. I'm one of the few forensic psychiatrists in the
16:47:25 entire system so when that happens, people tend to call
16:47:29 me. So I'll see more than the average psychiatrist.
16:47:32 Q. Okay. So is it fair to say the majority of people
16:47:35 you treat at Brigham Women's are not incarcerated, right?
16:47:40 A. That's correct.
16:47:44 Q. And what state are you currently licensed in, Dr.
16:47:47 Biswas?
16:47:47 A. In Massachusetts.
16:47:49 Q. Have you ever been licensed in Texas?
16:47:51 A. I have not.
16:47:54 Q. And you don't have any experience responding to a
16:47:57 patient with heat stroke or other heat illness to treat
16:48:00 those illnesses, do you?
16:48:02 A. Well, I'm not an emergency room physician so no, I
16:48:05 don't treat heat stroke.

16:48:06 Q. And you don't have any training on how to determine
16:48:09 what individuals are most at risk for heat illness, do
16:48:13 you?
16:48:13 A. Well, like I said, mental illness is a really big
16:48:16 factor to physical illness and so, I oftentimes in the
16:48:22 emergency room may get consulted from the emergency
16:48:24 department to help treat the mental illness portion. So
16:48:29 yes, psychiatrists are always involved when mental illness
16:48:33 is exacerbated by heat.
16:48:34 Q. Okay. But my question was do you have any specific
16:48:36 training on how to identify what people are most at risk
16:48:40 for heat illness?
16:48:46 A. Well, people with serious mental illness are most at
16:48:48 risk for heat illness and that's what all the literature
16:48:52 says. So absolutely, that's my expertise. Am I doing the
16:48:55 entire gamut of physiological illness and putting people
16:48:58 in ice buckets, no. I am doing the mental illness
16:49:02 portion.
16:49:02 Q. Okay. That was my question. Dr. Biswas, you
16:49:07 authored a report in this case in November of 2025,
16:49:09 correct?
16:49:10 A. I did, yes.
16:49:11 Q. And you opined on the heat score system in your
16:49:14 report, right?
16:49:16 A. I did.

16:49:19 Q. You were at the preliminary injunction hearing,
16:49:21 correct?
16:49:22 A. That's correct.
16:49:22 Q. So you heard testimony that the heat score that Mr.
16:49:26 Duke showed you is not actually the algorithm that is
16:49:29 assigning inmates heat scores, right?
16:49:33 A. I don't really understand that question.
16:49:36 Q. Do you believe that the chart Mr. Duke showed you is
16:49:39 how inmates are assigned heat scores?
16:49:44 A. I believe that that puts them at higher propensity to
16:49:50 get cooling measures is -- was my understanding of that
16:49:54 heat score.
16:49:55 Q. Okay. I can ask my question again. Do you believe
16:49:58 that a provider is looking at this chart, tallying points
16:50:02 and assigning an inmate to a cool bed?
16:50:05 A. I don't know.
16:50:06 Q. So do you not know?
16:50:08 A. No, I don't.
16:50:08 Q. You don't understand how the heat score works?
16:50:10 A. No.
16:50:11 Q. Okay. So you made an opinion on this case on the
16:50:15 efficacy of a policy that you don't understand?
16:50:17 A. No, that was not my opinion.
16:50:19 Q. Okay. So what is your understanding of how that
16:50:22 chart functions in the real world?

16:50:24 A. My understanding of that chart is that is criteria
16:50:29 that in some way allows individuals to get air
16:50:33 conditioning. That was sort of my belief in looking at
16:50:36 that and I felt that many criteria were missing that would
16:50:42 really qualify for somebody for cooling.
16:50:46 Q. You didn't review any medication list or criteria
16:50:49 list utilized by UTMB to create that chart, though, did
16:50:53 you?
16:50:55 A. I did not.
16:50:55 Q. Okay. So you only reviewed the chart in terms of
16:51:00 your understanding of the heat score.
16:51:02 A. Yes. That's correct.
16:51:03 Q. Okay. Brian, do you mind putting up Defendant's
16:51:16 Exhibit 56? And, your Honor, this has already been
16:51:22 admitted as a Plaintiffs' Exhibit, but I'll move to admit
16:51:24 it as Defendant's Exhibit.
16:51:26 Dr. Biswas, this is the heat score from 2024.
16:51:29 Have you reviewed this?
16:51:34 A. I reviewed the April 10th, 2025 and the February
16:51:39 2026.
16:51:40 Q. So did you not review the heat score prior to
16:51:43 testimony at the preliminary injunction hearing?
16:51:46 A. I reviewed it after reading Dr. De La Cruz's report
16:51:53 and then, looking at the ones that I was given which were
16:51:55 the April 10th and the February 2026.

16:51:57 Q. Okay. Then we can look at the updated chart, Brian,
16:52:03 that's Exhibit 206. All right.
16:52:07 Dr. Biswas, is this the chart that you reviewed?
16:52:09 A. Yes.
16:52:11 Q. And I'm going to move to admit this into evidence,
16:52:13 your Honor.
16:52:13 THE COURT: Any objection?
16:52:15 MR. DUKE: No objection.
16:52:16 THE COURT: So admitted.
16:52:17 Q. (BY MS. CARTER) Dr. Biswas, I'll give you a minute to
16:52:20 review this, but you don't actually see any names of
16:52:23 medications on this list, do you?
16:52:25 A. No, I don't. No brand names, no.
16:52:31 Q. No generic names either, though, right?
16:52:33 A. Right.
16:52:34 Q. Do you see classes of medications?
16:52:37 A. No.
16:52:38 Q. Do you see descriptions of medications?
16:52:43 A. No. But they did spell out the antibiotics.
16:52:48 Q. So you don't actually know what medications may
16:52:51 trigger a score on this chart, do you?
16:52:55 A. There is one reference to highly active
16:52:58 anticholinergic prescriptions and so, I could make a guess
16:53:02 there, but no, I have no specific understanding of what
16:53:05 that means.

16:53:06 Q. Okay. And Mr. Duke asked you about the section
16:53:10 psychiatric where it talks about the highly active
16:53:12 anticholinergics for four days or more, correct?
16:53:15 A. Correct.
16:53:16 Q. But from your understanding, do anticholinergics
16:53:20 treat a range of diagnoses?
16:53:23 A. They do.
16:53:24 Q. So they can treat comorbidities outside of the
16:53:28 psychiatric realm, correct?
16:53:29 A. Absolutely. Yes.
16:53:31 Q. Dr. Biswas, you never reviewed the medical records
16:53:38 for the inmates in this case, did you?
16:53:40 A. I did not.
16:53:42 Q. At your deposition, you testified that you may have
16:53:48 seen logs. Do you remember that?
16:53:50 A. I remember saying that but I don't really know what I
16:53:53 was referring to.
16:53:54 Q. Okay. Did you see a list of people's names on them
16:53:58 with their date of death?
16:54:03 A. I honestly saw -- I never reviewed it. I skimmed an
16:54:08 Excel sheet that was like decades of people and I don't
16:54:12 remember a date of death being on there.
16:54:13 Q. Did plaintiffs provide you that list?
16:54:16 A. It was part of like a packet but I didn't know what
16:54:19 it was referring to.

16:54:21 Q. But you never actually reviewed the medical records
16:54:23 for the people on that list, right?
16:54:25 A. No.
16:54:26 Q. Did you assume that the log of inmates were deaths
16:54:31 due to heat?
16:54:32 A. No. I didn't assume anything because I didn't
16:54:34 understand it.
16:54:35 Q. Did you ask plaintiffs' counsel to clarify what it
16:54:37 meant if you didn't understand it?
16:54:38 A. No, because it wasn't part of my opinion at all.
16:54:41 Q. Why was it I'm not part of your review?
16:54:44 A. Because my opinion is about how does heat impact
16:54:47 mental illness and that whatever I saw wasn't giving me
16:54:51 any information on that opinion and my opinion still
16:54:56 stands.
16:54:56 Q. Okay. Did you know that Dr. Vassallo and Dr. Uribe
16:55:05 had to withdraw their opinions regarding one inmate they
16:55:08 believed to be housed in unair-conditioned housing?
16:55:11 A. I did not know that until I was sitting here today.
16:55:13 Q. Dr. Biswas, did you request to see medication
16:55:20 compliance records for any inmates?
16:55:23 A. No.
16:55:26 Q. Doesn't medication compliance affect how those
16:55:28 medications would affect the thermoregulation system?
16:55:33 A. Not -- it's not pertinent to my opinion looking at

16:55:37 the population health.
16:55:44 Q. Dr. Biswas, in your November 2025 report -- Brian,
16:55:48 can you put that on the screen, please -- do you see where
16:56:07 it lists certain inmates' and it's called death packets of
16:56:13 Castillo, Gonzales, Hagerty, Skinner, Southards and
16:56:18 Wommack. Do you see that?
16:56:23 A. Not on this page.
16:56:25 Q. Can you go to the next page, Ryan? It's 36 through
16:56:31 43.
16:56:36 A. They were sources that were considered.
16:56:39 Q. But you didn't review them?
16:56:40 A. I didn't review them.
16:56:43 Q. So you don't actually know whether any of those
16:56:45 inmates listed suffered from any of the comorbidities that
16:56:48 you described today?
16:56:49 A. That's correct.
16:56:49 Q. You don't know whether any of those inmates actually
16:56:52 had schizophrenia?
16:56:53 A. I haven't looked so I wouldn't want to opine there.
16:56:56 Q. So do you actually know any of the numbers in TDCJ
16:56:58 that are prescribed those medications?
16:57:01 A. Well, I could tell you from SAMHSA's report that
16:57:05 generally in the United States, about 37 percent of people
16:57:09 have mental illness so I'm guessing it's going to be
16:57:13 somewhere in that range, and for substance use disorder,

16:57:16 about 58 percent.
16:57:18 Q. But you haven't requested any data to reflect TDCJ's
16:57:21 population of those inmates, have you?
16:57:23 A. Not from TDCJ.
16:57:25 Q. Okay. Dr. Biswas, another thing you've discussed in
16:57:32 your report is about heat causing anxiety, irritability
16:57:35 and lack of sleep, right?
16:57:37 A. That's correct.
16:57:39 Q. But in your deposition, we discussed how inmates can
16:57:42 experience multiple stressors unrelated to temperature,
16:57:45 right?
16:57:46 A. Yes.
16:57:47 Q. So incarceration itself can affect anxiety,
16:57:52 irritability and sleep disturbance, right?
16:57:57 A. I mean, it can, yes.
16:58:00 Q. Can separation from family?
16:58:02 A. Sure.
16:58:03 Q. Underlying mental illness?
16:58:04 A. Sure.
16:58:05 Q. Substance withdrawal?
16:58:07 A. All of those things, yes.
16:58:08 Q. And all of those things can occur even in a
16:58:13 climate-controlled setting, right?
16:58:14 A. But not at the rate that it happens with higher
16:58:17 levels.

16:58:17 Q. You don't know those rates for TDCJ, do you?
16:58:20 A. I know them just across the board, across many, many
16:58:23 studies around the world, including in the United States.
16:58:29 Q. Brian, if you don't mind putting back up Exhibit 206.
16:58:35 Dr. Biswas, you also discussed bipolar disorder
16:58:38 and your opinion in the deposition. Do you recall that?
16:58:41 A. I do.
16:58:42 Q. And do you see the bipolar disorder is already
16:58:45 accounted for in the TDCJ heat score?
16:58:47 A. I see that.
16:58:50 Q. You also noted schizophrenia and Mr. Duke pointed out
16:58:55 but it's only if it's prescribed at the highly active
16:58:59 anticholinergic for four days or more. Do you see that?
16:59:01 A. I do see that.
16:59:02 Q. Do you typically see parents prescribed with the
16:59:05 schizophrenia medication for less than four days?
16:59:12 A. So when we're talking about highly active
16:59:14 anticholinergic medications, they may be indicating
16:59:18 Benadryl. They may be talking about a lot of different
16:59:21 things. And so, that is so generic, I don't even know
16:59:26 what that means. So I don't know what you're referring to
16:59:28 when you ask me that because you might be referring to
16:59:31 Haldol or you might be referring to Benadryl.
16:59:33 Q. So you don't actually know what medications that
16:59:37 indicates, do you?

16:59:37 A. Not from that prescription.
16:59:39 Q. So how are you able to determine whether it's
16:59:42 under-inclusive, Dr. Biswas, if you don't know what
16:59:44 medications are included in that?
16:59:46 A. Because that category doesn't even include what I
16:59:49 just described is not listed.
16:59:53 Q. Dr. Biswas, are patients that are schizophrenic, is
16:59:57 that a chronic diagnosis?
17:00:00 A. Schizophrenia is a chronic diagnosis.
17:00:05 Q. I want to bring up something you said at your
17:00:07 deposition. You testified that almost a hundred percent
17:00:11 of people diagnosed with schizophrenia would be on this
17:00:14 class of medications, antipsychotic medications which have
17:00:17 antimuscarinic effects to the hypothalamus. Do you recall
17:00:21 that?
17:00:22 A. Yes. But it takes six months to diagnose
17:00:31 schizophrenia so there's a long period of time where
17:00:33 you're watching the individual and making sure you're not
17:00:36 misdiagnosing that diagnosis, right? And so, there's a
17:00:39 long gap before you get to the point where you make the
17:00:42 diagnosis of schizophrenia.
17:00:43 Q. So it could be a while the medical providers are --
17:00:46 before TDCJ knows what an inmate is diagnosed with,
17:00:49 correct?
17:00:50 A. That is correct. And during that time, they're going

17:00:52 to be very vulnerable to heat.
17:00:54 Q. Okay. Dr. Biswas, you don't actually know if an
17:01:00 inmate with schizophrenia is already housed in air
17:01:03 conditioning, do you?
17:01:06 A. Could you ask that again? I missed part of it.
17:01:08 Q. Do you actually know whether inmates at TDCJ
17:01:11 diagnosed with schizophrenia aren't already housed in air
17:01:16 conditioning?
17:01:16 A. Given it's on that at-risk form, I would guess that
17:01:20 they get some type of cooling opportunity.
17:01:24 Q. Okay. You mentioned antimuscarinics at your
17:01:35 deposition. Do you remember that?
17:01:36 A. I do.
17:01:36 Q. Don't anticholinergics encompass all antimuscarinic
17:01:43 drugs?
17:01:43 A. My understanding is some antidepressants have
17:01:47 antimuscarinic effects that don't have anticholinergic
17:01:52 effects. But basically, what we're saying when we're
17:01:55 saying something is anticholinergic or antimuscarinic is
17:02:01 there's a blockade of the acetylcholine. So maybe what
17:02:04 I'm understanding from your question is it is all
17:02:07 acetylcholine, but some of these medications block
17:02:12 anticholinergic and antimuscarinic and then, some of this
17:02:15 block anticholinergic. And then, I think that there's
17:02:20 some antidepressants that block antimuscarinic receptors.

17:02:25 Q. Dr. Biswas, are you aware that most of the literature
17:02:28 says that all muscarinic are anticholinergic, but not all
17:02:32 anticholinergics are antimuscarinic?
17:02:34 A. That makes sense because it's all acetylcholine.
17:02:38 Q. So antimuscarinic would already be encompassed by the
17:02:42 TDCJ heat score considering anticholinergics are on the
17:02:45 heat score?
17:02:47 A. Yep. That's correct.
17:02:49 Q. Okay. Dr. Biswas, you've testified about -- and I've
17:03:01 worked on my pronunciation since the depo -- stimulants,
17:03:05 dopaminergics and serotonergics, or SSRIs. Do you recall
17:03:11 that?
17:03:12 A. I do recall that.
17:03:14 Q. And do you know whether these inmates are already
17:03:16 housed in air conditioning because of another health
17:03:19 issue?
17:03:21 A. I didn't understand the question.
17:03:23 Q. Do you know whether the inmates that you're opining
17:03:26 about here that would be on a stimulant, a dopaminergic or
17:03:30 a serotonergic medication are already on the heat score
17:03:34 based on another health issue?
17:03:39 A. I can't even -- I don't understand how that would
17:03:43 work. I don't understand how -- do you mean
17:03:46 antidopaminergic like an antipsychotic medication?
17:03:49 Q. Yes.

17:03:50 A. And a serotonergic medication like an SSRI.
17:03:54 Q. Not "and." I understand those were some of the
17:03:57 medications you were saying were not on the heat score,
17:04:02 correct? Stimulants, antidopaminergics and serotonergic
17:04:07 medications, correct?
17:04:09 A. Correct. Antidopaminergics are antipsychotic
17:04:13 medications that would be covered in anticholinergic meds,
17:04:20 as well, but there might be a few that aren't
17:04:23 anticholinergic that are antipsychotics that are
17:04:27 antidopaminergic.
17:04:28 Q. But you don't know whether those inmates that have
17:04:30 these medications are already in air-conditioned housing
17:04:34 based on another health issue on the heat score, do you?
17:04:38 A. I don't know.
17:04:39 Q. So you don't actually know how large these
17:04:42 populations are?
17:04:43 A. No. But there's a huge undiagnosed population that's
17:04:47 not on the medication that isn't going to score on that
17:04:50 heat score.
17:04:50 Q. And I'm glad you brought up undiagnosed, Dr. Biswas,
17:04:54 because if these patients are undiagnosed, then how does
17:04:57 TDCJ know that they are at risk for heat illness?
17:04:59 A. That is exactly the problem. They don't. They don't
17:05:02 know and so, because they don't know, these patients are
17:05:06 just walking around in general population and having all

17:05:09 of their mental illness symptoms exacerbated due to the
17:05:12 heat. So it's not the med-- the medication is just like
17:05:15 a little extra thing. It's really the fact that there's
17:05:18 all these people with mental illness who are undiagnosed
17:05:22 making up half of the population of the incarcerated
17:05:25 population that are not getting air conditioning, and that
17:05:28 is really the crux of the issue and that is my opinion.
17:05:32 Q. So is it your opinion that TDCJ should do nothing in
17:05:35 terms of heat mitigation before they can air condition the
17:05:39 system?
17:05:39 A. There's just no way TDCJ could capture the whole
17:05:42 problem. I love the idea of picking up people who are on
17:05:46 medications because yes, you are getting a subset of the
17:05:49 population that has mental illness when you're picking up
17:05:53 the anticholinergic people and the anti, you know, I don't
17:05:58 know, the SSRI people -- even if you add that, that's
17:06:02 great you're going to get some. You are no way going to
17:06:05 get everybody because it's like one in two.
17:06:08 Q. Okay. Dr. Biswas, some of the studies you've cited,
17:06:12 they're largely epidemiological, aren't they?
17:06:18 A. What do you mean by epidemiological?
17:06:21 Q. Are they population studies or did you look at
17:06:23 individual case studies to determine causation?
17:06:25 A. Yes. They are population studies.
17:06:28 Q. Okay. And you also talked about increases in

17:06:33 self-harm and suicide among inmates during increased
17:06:38 ambient temperatures. Do you recall that?
17:06:39 A. I do.
17:06:40 Q. Do you know what temperature that is?
17:06:42 A. So I think you might be referring to the Cloud study
17:06:46 where suicidal watch incidents increased by 29 percent
17:06:51 between 80 and 89 degrees Farenheit, and then, it
17:06:56 increased to 37 percent from the general baseline at 90
17:06:59 degrees to 103 degrees Farenheit. That was the Louisiana
17:07:04 prisons.
17:07:04 Q. Okay. You didn't review any information for TDCJ
17:07:11 suicidality in the summer months, did you?
17:07:14 A. I did not.
17:07:14 Q. The Cloud study is what I'm referencing. This study
17:07:18 relies on the heat index and ambient exposure rather than
17:07:22 individual exposure or taking any core temperatures,
17:07:25 right?
17:07:25 A. Right.
17:07:26 Q. It doesn't associate core temperature with
17:07:29 suicidality?
17:07:31 A. You mean someone's body temperature? No. It's just
17:07:33 looking at how many people are suicidal during high heat,
17:07:40 extreme heat situations. So instead of checking someone's
17:07:43 core body temperature, it's saying, wow, there's a whole
17:07:46 increase in the population in suicidality when we have a

17:07:52 heat wave. It's not just one person, it's lots of people.
17:07:55 Q. But when we talk about lots of people, it reviewed
17:07:58 only six prisons and all of them were Louisiana, correct?
17:08:01 A. That study did, but like I said, all of the studies,
17:08:05 there's a consensus that mental illness is exacerbated by
17:08:08 heat.
17:08:09 Q. I'm asking about suicidality. Did you review more
17:08:14 than one study that went across suicidality across the
17:08:18 country?
17:08:18 A. So the Meadows study that I was talking about, it
17:08:21 looked at 22 different studies. It looked at psychiatric
17:08:24 hospitalizations. Now, that could be for psychosis but
17:08:28 that is also likely going to encompass all of the suicidal
17:08:31 people, too.
17:08:33 Q. And in the Cloud study, none of those prisons were in
17:08:36 Texas, were they?
17:08:37 A. Not in that study.
17:08:38 Q. And do you know whether any of the prisons in
17:08:41 Louisiana have implemented TDCJ's heat mitigation
17:08:45 measures?
17:08:45 A. I don't know that.
17:08:49 Q. And none of the medical records listed on your
17:08:52 document are from suicide, are they?
17:08:57 A. I'm sorry. Which documents are you referring to?
17:08:59 Q. Did you review any medical records that were due to

17:09:02 suicide?
17:09:03 A. I did not review any medical records at all.
17:09:05 Q. Are you aware that some of them were suicide and
17:09:08 plaintiffs' experts disagree and believe it's due to heat?
17:09:11 A. I am not aware.
17:09:17 Q. Dr. Biswas, psychotropic medications are prescribed
17:09:20 nationwide, right, including air-conditioned settings?
17:09:23 A. That is correct.
17:09:24 Q. And hyperthermia from medication alone is described
17:09:28 in the literature you cited to as rare, isn't it?
17:09:33 A. Hyperthermia due to medications, yes. So like
17:09:39 serotonergic syndrome and NMS can be fatal so thank God
17:09:44 they're not happening every day.
17:09:45 Q. NMS is actually described as an uncommon medical
17:09:49 emergency in your literature, right?
17:09:50 A. Yes.
17:09:50 Q. So clinicians manage medication-related heat risk
17:09:54 through things other than air conditioning, don't they?
17:10:01 A. When somebody is impacted by NMS or serotonergic
17:10:06 syndrome, they're already in the hospital. Of course,
17:10:09 it's going to be air-conditioned, but then, they have to
17:10:11 apply all other types of medical measures to treat that
17:10:16 individual.
17:10:16 Q. Okay. But I'm asking about -- we've established that
17:10:20 hyperthermia for medication and NMS are rare. What about

17:10:24 all of the other negative health impacts we've discussed?
17:10:28 Clinicians regularly recommend hydration, monitoring and
17:10:32 treatment, correct?
17:10:35 A. Monitoring, what do you mean by monitoring and
17:10:38 treatment?
17:10:38 Q. You monitor your patients while they're on their
17:10:40 medication, correct?
17:10:41 A. Right. Yes.
17:10:43 Q. To look for any issues with medications they're on,
17:10:47 right?
17:10:47 A. Yes.
17:10:47 Q. And you testified to Mr. Duke that you would not take
17:10:52 a patient off a potentially life-saving medication just if
17:10:55 they didn't have AC in their apartment in Boston, right?
17:11:00 A. Yes, but I would make sure that they knew they needed
17:11:02 to be in air conditioning.
17:11:03 Q. Dr. Biswas, at your deposition, you agreed that
17:11:06 access to water reduced heat risk, right?
17:11:10 A. It doesn't lower core body temperature but it can
17:11:15 hydrate somebody.
17:11:16 Q. And my question was about heat risk, not core body
17:11:20 temperature. So is the only way to alleviate risk from
17:11:23 heat to lower the core body temperature?
17:11:25 A. Yes. I mean, hydration doesn't lower core body
17:11:29 temperature. There's multiple things you can do but you

need, at the end of the day, to lower the body temperature if it's overheating, like you have to do that and water's not going to do that.

Q. Dr. Biswas, have you changed your testimony from your deposition where you agreed that access to water reduces heat risk?

A. I think I'm just clarifying what I mean by that. Access to water will allow you to sweat easier and that can dissipate heat. But does it -- I guess if it's in that indirect manner, then that's what I mean by that.

Q. And that can assist with evaporative cooling, right, the sweating in your body, and that can lower your core body temperature, right?

A. The sweating and the dissipating of the sweat could lower body temperature.

Q. And showers can help cool the body, can't they? You testified at your deposition that cold showers --

A. Can temporarily reduce the heat to the body.

Q. And you noted that the CDC recommends them, right?

A. Yes.

Q. And you don't know whether TDCJ is under-enforcing these medication strategies, do you?

A. I don't know if they're under-enforcing.

Q. And you're not opining that air conditioning is the only way to reduce psychiatric risk, are you?

17:12:47 A. Yes.
17:12:48 Q. That's the only way to reduce psychiatric risk due to
17:12:52 heat?
17:12:52 A. From heat, yes. Not from lots of other things. But
17:12:56 from what I'm saying is air conditioning is the absolute
17:13:00 comprehensive way to reduce mental illness symptoms in the
17:13:05 carceral setting due to heat.
17:13:07 Q. And you said comprehensive not only, why?
17:13:10 A. Because you're never going to capture everybody
17:13:13 because it's going to be around one in three to one in
17:13:15 two.
17:13:16 Q. Okay. Thank you, Dr. Biswas.
17:13:22 RE-DIRECT EXAMINATION
17:13:22 BY MR. DUKE:
17:13:27 Q. I don't think you heard in opening, but if you can
17:13:33 rely on me for a moment, counsel for TDCJ or for Mr.
17:13:40 Lumpkin explained that there was approximately 141,000
17:13:44 inmates in the TDCJ system. And I believe you said that
17:13:52 approximately, based off of your understanding of the
17:13:54 populations in prison, approximately one-third of inmates
17:13:58 are likely to have either diagnosed or undiagnosed mental
17:14:02 health issues; is that right?
17:14:04 A. That's correct.
17:14:06 Q. If the evidence in this case ultimately shows that
17:14:09 there's less than 20,000 inmates that have a heat score,

17:14:14 is the heat score identifying all inmates with mental
17:14:20 health conditions who are at risk because of extreme heat?
17:14:23 A. No.
17:14:23 Q. And is that because math tells us that --
17:14:27 A. Right. I mean, 20,000 is not going to capture it
17:14:30 because we already know there's a higher concentration of
17:14:33 this vulnerable population in incarcerated settings.
17:14:38 Also, they don't have the ability to make choices and
17:14:41 they're not necessarily able to make choices. They're
17:14:45 impaired. Mental illness causes brain impairment in terms
17:14:48 of cognition and the ability to cool yourself.
17:14:51 And also, people will generate mental illness
17:14:54 over time while they are in those settings so there's, you
17:14:58 know, how often are you doing those heat scores to capture
17:15:00 everybody, and so, it doesn't follow the statistical math
17:15:04 and it doesn't follow the practical math dealing with this
17:15:07 population.
17:15:08 Q. Okay. And just we covered sufficiently almost
17:15:12 everything I was going to ask except one slight followup
17:15:15 on what you just said. Counsel in questioning you asked
17:15:21 you about the heat mitigation measures that TDCJ has as
17:15:26 part of its policy. You testified before that during
17:15:32 manic episodes or other occurrences that might result from
17:15:40 lack of sleep or heat itself, would those symptoms affect
17:15:48 an inmate's ability to recognize when they need to drink

17:15:50 water, or take a shower, or get help?
17:15:53 A. Yes, and that's why we see even in the general
17:15:56 population, there's a much higher risk for people with
17:15:59 mental illness to suffer from physical impairments from
17:16:02 heat because they're often isolating. They're not -- they
17:16:07 don't -- the illnesses themselves impair self-awareness
17:16:10 and the ability to pick up on what you might need to take
17:16:14 care of yourself and that absolutely applies to heat. And
17:16:19 that's why this population tends to be homeless much more
17:16:23 often because they aren't able to make those decisions for
17:16:26 themselves and take care of themselves. So that cognition
17:16:30 piece is a really big part of why these individuals are so
17:16:35 vulnerable to heat.
17:16:38 Q. If you had just said yes, I probably wouldn't come up
17:16:41 with this new last question. But Texas, is it your
17:16:45 understanding Texas has a large -- significantly large
17:16:49 inmate population?
17:16:51 A. I don't know in comparison to other states, but
17:16:55 generally, carceral populations have a higher rate of
17:16:59 mental illness.
17:16:59 Q. So you relied on SAMHSA's numbers about innate
17:17:05 populations across the country?
17:17:07 A. Yes.
17:17:07 Q. Is there any reason to suspect that Texas has
17:17:10 particularly unique inmate populations that are

17:17:13 significantly different than SAMHSA's numbers?
17:17:18 A. I wouldn't guess so. I think it would be the same.
17:17:20 You know, I mean, there are going to be fluctuations like
17:17:24 Louisiana, Alabama, Texas, New Mexico. I mean, you go
17:17:28 across the country, I'm sure the numbers are somewhere in
17:17:32 that space because this population is vulnerable because
17:17:35 they often don't get psychiatric treatment in the
17:17:38 community because they have impaired insight, judgment.
17:17:41 They're not getting the care they need. They end up ill.
17:17:44 They end up incarcerated because we're getting rid of all
17:17:47 of our state hospitals across the country and
17:17:49 de-institutionalizing.
17:17:51 So there's this -- there's this cycle of
17:17:54 homelessness and incarceration already across the country;
17:17:57 and so, for that reason, there's also a higher level of
17:18:01 this vulnerable population in prison settings.
17:18:04 Q. SAMHSA says one-third of inmate populations are
17:18:08 likely to have mental health issues. You would suspect
17:18:11 Texas to be roughly one-third -- or might be marginally
17:18:14 different?
17:18:14 A. It might be.
17:18:15 Q. Thank you.
17:18:17 MS. CARTER: Nothing further, your Honor.
17:18:18 THE COURT: Thank you, Doctor. You may step
17:18:20 down.

17:18:22 All right. It's about 5:20. Mr. Homiak, where
17:18:26 do we stand? Is your next witness -- do you have an idea
17:18:30 of duration of the next witness' direct?
17:18:32 MR. HOMIAK: Yes, your Honor. So he's here, Mr.
17:18:35 Carroll, and I suspect his direct examination will be
17:18:38 about 40 minutes. So I certainly think we could get
17:18:42 through it before 6:00 and I may even be able to get a
17:18:48 little bit shorter. But he's here.
17:18:50 THE COURT: That's fine. Does anybody need like
17:18:51 a three-minute break? Would that be helpful? I say that
17:18:56 because I need a three-minute break, also. Thank you very
17:18:58 much. You're reading me. All right. Let's take a
17:19:03 three-minute break.
17:19:22 (Recess.)
17:23:37 MR. HOMIAK: At this time, plaintiffs call Brian
17:23:40 Carroll to the stand.
17:23:57 THE COURT: Before you take a seat, could you
17:23:59 raise your right hand to be sworn?
17:24:01 THE CLERK: You do solemnly swear or affirm that
17:24:01 the testimony which you may give in the case now before
17:24:01 the Court shall be the truth, the whole truth, and nothing
17:24:06 but the truth?
17:24:06 THE WITNESS: I do so swear.
17:24:07 THE COURT: Thank you. Be please be seated.
17:24:09 BRIAN K. CARROLL, called by the Plaintiff, duly sworn.

DIRECT EXAMINATION

BY MR. HOMIAK:

Q. Please state your name for the record.

A. Brian Keith Carroll.

Q. Mr. Carroll, what do you do for a living?

A. I am a construction lawyer and on faculty at Baylor University where I teach construction law.

Q. And, Mr. Carroll, how long have you been a lawyer?

A. Since 2002, approximately 25 years.

Q. And what areas of law do you specialize in?

A. I am a board certified construction lawyer by the State Board of Legal Specialization and that's where I've practiced my 25 years.

Q. Do you advise clients on Texas procurement law and the procurement process?

A. I regularly do and I teach that as part of my construction course at Baylor.

Q. How long have you held the title of adjunct professor at Baylor law?

A. Approximately, seven years.

Q. You said you teach construction law. Do you teach anything else?

A. No, sir. That's my sole subject I teach.

Q. Are you a member of any industry organizations?

A. I'm a member of the state bar. I'm a member of the

17:25:11 construction law section of the state bar. I'm a member
17:25:14 of the American Subcontractors Association, American
17:25:17 Society of Civil Engineers, and a number of other
17:25:20 organizations that are detailed on my CV.
17:25:22 Q. Have you written for any industry publications?
17:25:24 A. Yes, sir. I've written for the State Bar Journal,
17:25:26 the Construction Law Journal of the State of Texas, Texas
17:25:29 Tech Law Review, the American Subcontractor Association
17:25:32 national journal.
17:25:33 Q. What did you do in your past life before you became a
17:25:36 lawyer?
17:25:36 A. I was a civil engineer here in Austin.
17:25:38 Q. Do you have an engineering degree?
17:25:41 A. I do. I hold a degree in architectural engineering
17:25:45 degree from University of Texas at Austin.
17:25:46 Q. Are you a licensed engineer?
17:25:48 A. I am not. I passed my EIT examination, but I left
17:25:52 the practice of engineering before I completed my four
17:25:54 years needed to sit for the professional engineering exam.
17:25:57 THE COURT: Any regret?
17:25:58 THE WITNESS: No, sir. Not in the least.
17:26:02 Q. (BY MR. HOMIAK) And, Mr. Carroll, it's my
17:26:04 understanding you recently won an award. Can you tell us
17:26:07 about that?
17:26:08 A. Yes, sir. I was recognized last Thursday evening in

17:26:10 New York City. It's one of the Engineering News-Record's
17:26:13 top 25 in the construction industry for my work in the
17:26:16 construction industry.
17:26:17 Q. What was the title of that award?
17:26:19 A. Top 25 Newsmakers.
17:26:21 Q. And what does it mean to be a Top 25 Newsmaker?
17:26:25 A. It was actually, deeply humbling. Engineering
17:26:28 News-Record is the oldest publication in the construction
17:26:32 industry. It's a little over a hundred years old. The
17:26:35 editors, you can't be nominated. They select internally
17:26:38 for people they see nationally have major impacts in
17:26:41 construction industry. And based off of my work over the
17:26:43 last 25 years, I was so selected.
17:26:44 Q. Did any of the lawyers receive that award this year?
17:26:48 A. No one received it this year to my knowledge. I'm
17:26:50 the only construction lawyer ever to receive that award.
17:26:53 Q. If we can pull up what's been marked as Plaintiffs'
17:26:56 Exhibit 418, which has not been admitted. Mr. Carroll,
17:27:24 can you tell us what we're looking at here?
17:27:26 A. Yes, sir. Exhibit 418 is my current CV minus the
17:27:30 award I just recently received because I have not had a
17:27:33 chance to update. So it's my current CV as of today.
17:27:36 Q. Your Honor, plaintiffs move to admit Plaintiffs'
17:27:38 Exhibit 418.
17:27:42 MR. KERCHER: No objection.

17:27:43 THE COURT: So admitted.
17:27:45 Q. (BY MR. HOMIAK) Before we discuss the opinions you
17:27:47 reached in this case, can you tell us generally what
17:27:49 materials you reviewed to reach those opinions?
17:27:50 A. Sure. I was provided various documents in this case,
17:27:53 including deposition transcripts, the Court's order and
17:27:56 some of the filings in this case, various industry
17:28:00 documents I've looked at, in addition to my just
17:28:03 experience that I have.
17:28:04 Q. Is the information you reviewed and relied on to form
17:28:08 your opinions in this case the same type of information
17:28:10 you use and rely on when advising clients on Texas
17:28:13 procurement processes and project delivery methods and the
17:28:16 like?
17:28:16 A. Yes, it is.
17:28:17 Q. Your, Honor, plaintiffs move to qualify Mr. Carroll
17:28:20 as an expert in Texas procurement and construction law.
17:28:23 THE COURT: Any objection?
17:28:25 MR. KERCHER: Trailed off the end there. Texas
17:28:27 procurement and construction law?
17:28:29 MR. HOMIAK: Yes.
17:28:30 MR. KERCHER: No objection.
17:28:30 THE COURT: So received. Thank you.
17:28:34 Q. (BY MR. HOMIAK) Mr. Carroll, in reaching your
17:28:35 opinions in this case, did you read Judge Pitman's March

17:28:38 26, 2025 order denying plaintiffs' motion for preliminary
17:28:42 injunction?
17:28:42 A. Yes, sir, I did.
17:28:43 Q. And what was your main takeaway from that?
17:28:46 A. That the Court had found there was an emergency that
17:28:49 was not being adequately addressed.
17:28:50 Q. From a procurement and construction law perspective,
17:28:53 are there things that a state agency can do to respond to
17:28:56 an emergency like this?
17:28:57 A. Absolutely.
17:28:58 Q. Can you give us some examples?
17:29:00 A. Sure. The first thing is they simply could go to the
17:29:02 legislature and ask for the money which they haven't done.
17:29:06 The second is they could use what the statute allowed them
17:29:08 to do by bundling and packaging these things together.
17:29:11 And the third is they could declare emergency under
17:29:14 procurement laws and therefore, bypass the procurement
17:29:18 rules and do this in a highly expedited manner.
17:29:20 Q. Can they also make the contracts themselves more
17:29:23 attractive to vendors?
17:29:24 A. By bundling, yes, that would make it far more
17:29:28 attractive and would open the national pool to national
17:29:31 companies that would be willing to come to Texas.
17:29:34 Q. Can you tell us whether you've seen any evidence that
17:29:38 the agency has done any of those things either before or

since the Court's March 2025 order?
A. I have seen no such evidence.
Q. So you told us that the agency could go to the legislature and request full funding to solve the problem. How does an agency do that?
A. The agency would prepare a budget request, they would send it to the legislature with explanation and ask for that from the state legislature.
Q. I'm sure you've heard and seen in your review and today that now, TDCJ admits it will cost about 1.5 billion to install full air conditioning throughout the prisons, right?
A. Yes, sir.
Q. Based on what you've seen, has the agency ever requested anything close to that amount from the legislature?
A. No, sir.
Q. Do you know what the most it is that they have requested?
A. Based on what I reviewed, it was $118 million, less than 10 percent of what they're projecting the cost to be today.
Q. Did you review in your review of Mr. Collier's deposition transcript, the only reason TDCJ didn't ask for more than that, the 118 million in the last legislative

17:30:38 session, was because the agency didn't feel like it could
17:30:41 be obligated?
17:30:42 A. Yes, sir, I did.
17:30:43 Q. What does obligate mean in this context?
17:30:46 A. In a procurement context, it means simply to put
17:30:49 under contract. Doesn't have to be fully spent. The
17:30:52 contract just has to be signed.
17:30:53 Q. So the construction itself doesn't have to be
17:30:56 completed in a single biennium for it to be obligated?
17:31:00 A. That's correct, otherwise, we couldn't build anything
17:31:03 in Texas that took more than two years to construct.
17:31:05 Q. So doesn't need to be completed. Does it even need
17:31:08 to be started?
17:31:08 A. No, sir. Just the contract signed.
17:31:09 Q. They just need to put pen to paper during that
17:31:13 biennium?
17:31:13 A. That's absolutely correct.
17:31:14 Q. And what happens if an agency receives funding from
17:31:17 the legislature but they can't obligate it in a single
17:31:21 biennium?
17:31:22 A. Those funds would go back to the state of Texas by
17:31:24 the end of the biennium.
17:31:25 Q. Are there any negative consequences to the agency if
17:31:28 that funding is returned?
17:31:29 A. No, sir.

17:31:30 Q. While you were preparing your opinions in this case,
17:31:32 did you see any examples of a state agency receiving more
17:31:35 than 1.5 billion or, really, anything close to that from
17:31:38 the legislature for a specific purpose in a single
17:31:42 biennium?
17:31:42 A. Yes, sir, I did.
17:31:44 Q. Can you tell us about that?
17:31:45 A. Sure. The border wall project is an example. There
17:31:48 was $2.5 billion issued in a single biennium just for the
17:31:52 border wall.
17:31:54 Q. To your knowledge, did the Texas Facilities
17:31:56 Commission obligate that 2.5 billion in funding within
17:31:58 that biennium?
17:31:59 A. Yes, sir, they did to my knowledge.
17:32:01 Q. Are you aware of any legitimate reason why from a
17:32:04 procurement perspective the agency could not request the
17:32:07 full 1.5 billion in a single biennium?
17:32:10 A. I am not aware of any reason from a procurement
17:32:13 perspective why TDCJ couldn't make that request.
17:32:15 Q. You mentioned that an agency facing an emergency
17:32:19 could consider other project delivery methods. Did I hear
17:32:22 that correctly?
17:32:23 A. You did, sir.
17:32:23 Q. Before we discuss the project delivery methods
17:32:26 themselves, can you just tell us in layman's terms what a

project delivery method is?
A. Sure. In the construction industry, we develop different ways to basically go from I want something built to coming over with the finished project. And so, that's what the procurement process is. The state of Texas has told us by statute certain of those are available. We're not limited to just one.
Q. Over the course of your career, have you advised your own clients, the clients that are actually hiring somebody to design or build something as to what delivery method or methods may be best for their projects?
A. Many times.
Q. And what are the main delivery methods authorized under Texas procurement law?
A. The first method is design bid-build. The second method will be construction manager at risk, also known as C-M-A-R, construction manager as agent, and then, design build will be the ones that would potentially be applicable at the fact pattern we're looking at here.
Q. Let's just talk a little bit more about each of those. So starting with design bid-build, what's that?
A. That's a methodology where you start off and say, okay, I want to build something so I'm going to go hire a designer. I'm going to procure the designer. They're going the draw a set of construction documents, finish

17:33:35 that. We're going to stop. We're going to do a second
17:33:37 procurement process, select a contractor who will then go
17:33:40 build the project.
17:33:42 Q. So design bid-build involves two procurement
17:33:46 processes with two contracts. One to select the designer
17:33:49 and then, another to select the builder once the design is
17:33:52 completed; is that right?
17:33:53 A. That is absolutely correct.
17:33:54 Q. Can these processes happen simultaneously or in
17:33:57 tandem?
17:33:57 A. They cannot. One has to be fully completed the plans
17:34:01 fully drawn before you can start the second procurement
17:34:04 cycle.
17:34:04 Q. Just give us a sense of how many months a typical
17:34:07 procurement process takes and whether it's different for a
17:34:11 design procurement process than it is for the construction
17:34:13 process.
17:34:13 A. That process could take three to 12 months, depending
17:34:16 of what's involved, the speed of the agency for the design
17:34:19 process. Likewise, you could have another three to 12
17:34:21 months on the back side of that for selection of the
17:34:24 contractor. So you could have six to 24 months spent just
17:34:28 procuring the parties to do the needed work by the state.
17:34:31 Q. Just on the procurement, not on any actual design or
17:34:34 installation.

17:34:34 A. That is correct. That is no work on drawing the
17:34:37 drawings or building the facility.
17:34:38 Q. What about design build? What's that?
17:34:41 A. Design build is a process developed over time to
17:34:43 address concerns and procurement. The process basically
17:34:47 said we're going to do one procurement step. We're going
17:34:50 to select a team, a design builder that has both design
17:34:54 and the construction responsibilities through one
17:34:56 procurement process, and then, we're going to provide them
17:34:59 guide rails through the design criteria that's called for
17:35:01 in the statute to turn them loose to start constructing
17:35:04 and designing the work as a team.
17:35:06 Q. So unlike design bid-build where you're talking about
17:35:10 two contracts and two processes, in design build, you've
17:35:12 not one contract, one process with the design and
17:35:15 installation under the same roof?
17:35:16 A. Yes, sir. That is correct.
17:35:17 Q. What about construction manager at risk or the CMAR
17:35:22 delivery method?
17:35:22 A. CMAR's a method that fits somewhere in between. You
17:35:26 still have two procurement steps. You have to have a
17:35:29 design prepared by a design team. The second, you select
17:35:31 the construction manager at risk to build the project.
17:35:35 The idea is you bring a little bit of benefit by the CMAR
17:35:38 can be selected a little earlier in the process, but it's

17:35:40 still a two-step procurement action.
17:35:42 Q. So fair to say it's closer to design bid-build than
17:35:46 design build?
17:35:46 A. I would say that, yes, sir.
17:35:48 Q. Just to confirm, Texas procurement law allows TDCJ to
17:35:52 use any of these delivery methods that we've talked about?
17:35:55 A. That is correct.
17:35:56 Q. Is there a universal best project delivery method for
17:35:59 every project?
17:36:00 A. No, sir, there is not.
17:36:01 Q. What project delivery method is TDCJ using for
17:36:06 designing and installing its air conditioning right now?
17:36:08 A. They are currently using the design bid-build
17:36:12 methodology.
17:36:13 Q. What impact does that choice have on how long it
17:36:15 takes to install -- to design and install permanent air
17:36:19 conditioning?
17:36:19 A. It is absolutely the slowest possible way to get a
17:36:22 project delivered.
17:36:22 Q. Why is that?
17:36:23 A. Because there's two steps in the procurement.
17:36:26 There's less coordination amongst the team of the
17:36:29 contractor and the design team. In the construction space
17:36:33 where I work, we want to make that communication as quick
17:36:35 as possible because construction's not perfect. Things

happen. Things have to be sorted out. But when you put that all under one roof, the process goes faster and that's what the literature tells us it goes faster as a design build project.

Q. So let me make sure I understand that. It's not just the fact that we're talking about two procurement processes instead of one that delays projects that use design bid-build. Or it's not just the fact that you're talking about one contract that speeds it up in design build?

A. It's two separate things. One, we're reducing a procurement step, but two, the process inherently is the fastest process we know to build a project.

Q. Because in design bid-build, you're talking about two companies trying to figure out how to work together as opposed to design build, it's one company?

MR. KERCHER: Objection. Leading, your Honor.

A. Well, on top of that, you have an owner so you really have three people trying to get along together versus two people in design build, an owner and design build contractor.

Q. (BY MR. HOMIAK) Given the emergency that TDCJ is currently facing, what project delivery method would you recommend they use?

A. I recommend that they use the design build project.

17:37:39 Q. Why is that?
17:37:39 A. Because it's the fastest method to use so it would
17:37:44 deliver a completed project quicker. Typically, those
17:37:46 projects are delivered cheaper in the process which is
17:37:49 consistent with the literature in my experience. Third,
17:37:52 the quality is higher on those projects based on the
17:37:55 industry literature in my experience.
17:37:56 Q. In making that recommendation, it sounds like your
17:38:00 concerns were not just to -- the only fact you looked at
17:38:02 wasn't just time; is that right?
17:38:03 A. It was not. I looked at a myriad of factors that
17:38:06 took a wholistic approach to making that determination.
17:38:08 Q. If we can pull up what's been marked as Plaintiffs'
17:38:11 Exhibit 491 that has not been admitted. Mr. Carroll, what
17:38:16 are we looking at here?
17:38:17 A. This is an industry publication that was developed by
17:38:19 the Texas A & M Transportation Institute, which is one of
17:38:22 the premier transportation research organizations at the
17:38:26 university level in the country.
17:38:27 Q. Did you review and rely on Plaintiffs' Exhibit 491 in
17:38:32 reaching your opinions in this case?
17:38:33 A. Yes, I did.
17:38:34 Q. Do you consider Plaintiffs' Exhibit 491 to be an
17:38:37 authoritative and reliable source on the topic of project
17:38:39 delivery methods?

17:38:40 A. Absolutely.
17:38:41 Q. Your Honor, plaintiffs move to admit Plaintiffs'
17:38:43 Exhibit 491.
17:38:45 THE COURT: Objection?
17:38:46 MR. KERCHER: Your Honor, while we don't object
17:38:47 to a designated expert testifying about the underlying
17:38:50 facts and data on which he relied reaching his
17:38:52 conclusions. 703, as the Court knows, is not an
17:38:56 opportunity to dump the facts and data that he relied on
17:39:00 into evidence. And so, on that basis we would object to
17:39:04 relevance and this is hearsay as well.
17:39:08 THE COURT: Mr. Homiak.
17:39:09 MR. HOMIAK: Yes, your Honor. I believe this
17:39:10 comes in as a learned treatise, but I'm also happy to have
17:39:13 Mr. Carroll just talk about his takeaways from the report.
17:39:17 So it's not necessary for me to admit it. Certainly the
17:39:19 Court's preference.
17:39:19 THE COURT: If I could just get testimony about
17:39:20 it, that would be fine.
17:39:21 MR. HOMIAK: Sure. Happy to do that, your Honor.
17:39:23 Q. (BY MR. HOMIAK) So, Mr. Carroll, generally speaking,
17:39:25 what did Texas and A & M evaluate in this study?
17:39:28 A. It was a research study to different procurement
17:39:32 methods and to analytically look at those methods and
17:39:35 determine which was fastest, which produced cheaper

17:39:38 projects, which produced higher quality.
17:39:40 Q. And generally speaking, what were the projects that
17:39:43 were being looked at? Where were they located?
17:39:45 A. They were located in various states across the U.S.
17:39:48 They looked at projects in Texas, they looked at projects
17:39:50 in Florida, but across the U.S. to try to rule out was
17:39:53 there a regional bias or something of that nature to the
17:39:57 projects.
17:39:57 Q. And ultimately, what conclusion did the Texas A & M
17:40:00 study reach?
17:40:01 A. They came to the conclusion that it was very clear
17:40:03 that the design build methodology achieved the three goals
17:40:07 of quicker delivery, cheaper delivery and higher quality
17:40:11 in delivery of the projects.
17:40:12 Q. As compared to other project delivery methods?
17:40:15 A. Yes, as compared to traditional design bid-build,
17:40:18 which is common in the civil construction space.
17:40:21 Q. Now, of course, TDCJ isn't building highways, but
17:40:24 based on your experience, is there anything that would
17:40:26 lead you to believe that the Texas A & M report's
17:40:29 conclusions don't apply to the agency's air conditioning
17:40:33 projects?
17:40:34 A. These conclusions are absolutely applicable to the
17:40:37 projects this agency is facing.
17:40:38 Q. So we talked about the benefits. Are there any

17:40:40 downsides to using design build in the context of
17:40:43 installing air conditioning in Texas prisons?
17:40:46 A. There are no downsides based on the fact pattern
17:40:49 that's been presented to me.
17:40:50 Q. Does Texas procurement law provide a mechanism for
17:40:53 agencies to maintain control over the design and
17:40:55 construction even in the design build context?
17:40:58 A. Absolutely. The statutes require that the agency
17:41:02 select an independent architect or engineer to serve as
17:41:07 its representative through the process. They also allow
17:41:09 for the development of what's called design criteria.
17:41:12 They function kind of as high0level guardrails of giving
17:41:14 the design builder the general concept of what's wanted by
17:41:17 the agency and TDCJ's actually already developed that
17:41:20 document.
17:41:20 Q. So we've got the required engineer. We've got the
17:41:23 design criteria. Then I assume the contract itself, TDCJ
17:41:26 can specify milestones, requirements and approvals along
17:41:30 the way.
17:41:30 A. Absolutely. They can further tweak that through the
17:41:32 contract documents.
17:41:34 Q. Have you seen any examples of other Texas state
17:41:38 agencies using design build?
17:41:40 A. Yes, I have. The Texas Department of Public Safety
17:41:44 used it here on their headquarters building in Austin.

17:41:46 University of Texas at Arlington used it for a large
17:41:50 museum project on campus are two that I can recall right
17:41:52 off the top of my head.
17:41:54 Q. Fair to say that based on your experience, what
17:41:57 you've read and what you've learned, design build is not
17:41:59 only an acceptable delivery method for Texas agencies to
17:42:02 use but it's, in fact, widely used by agencies for
17:42:05 projects of all types?
17:42:06 A. Yes. That is a correct statement.
17:42:08 Q. Have you seen any evidence that TDCJ has ever used or
17:42:11 considered using design build for designing and installing
17:42:15 permanent air conditioning in Texas prison facilities?
17:42:17 A. I have seen no such evidence.
17:42:19 Q. When you were preparing your report, did you see
17:42:21 anything to suggest that a design build project delivery
17:42:24 method could not be used for this purpose?
17:42:26 A. I'm aware of no reason why it could not be used.
17:42:29 Q. Have you been able to identify any reason why TDCJ
17:42:32 has apparently never used or considered using design build
17:42:34 in this context?
17:42:35 A. I have not been able to identify any reason TDCJ has
17:42:39 not explored using the design build process.
17:42:42 Q. Have you seen evidence that TDCJ has considered using
17:42:45 a CMAR delivery method?
17:42:47 A. I had seen that in some of the documents I reviewed

17:42:49 that they were contemplating that. Yes, sir.
17:42:52 Q. That was my next question which is whether you've
17:42:54 seen any evidence that this was something that the agency
17:42:56 has actually done as opposed to something they're just
17:42:58 contemplating?
17:42:59 A. Based on the documents I reviewed, they were
17:43:00 considering it, but they have not actually deployed a CMAR
17:43:03 contract in their system.
17:43:05 Q. And would CMAR be more efficient than design
17:43:09 bid-build?
17:43:09 A. It is better than what they're doing now but not by
17:43:12 much.
17:43:12 Q. Is it better than design build?
17:43:14 A. Not in this fact pattern, no, sir.
17:43:19 Q. One of the things that you mentioned the state agency
17:43:22 faced with an emergency like this could do is make its
17:43:25 contracts more attractive to vendors. Did I hear you
17:43:28 correctly?
17:43:29 A. That is correct. They could bundle multiple units or
17:43:31 multiple areas together to make the contracts more
17:43:34 attractive to bidders both statewide and national.
17:43:38 Q. Have you seen evidence in your review that the
17:43:40 vendors working on TDCJ's HVAC projects are typically
17:43:44 smaller Texas-based companies?
17:43:45 A. Yes, that is what I've seen from my document review.

17:43:48 Q. Does Texas procurement law require TDCJ to only use
17:43:51 Texas=based vendors?
17:43:52 A. It does not.
17:43:53 Q. Does any other law require the agency to use only
17:43:56 Texas-based vendors?
17:43:57 A. There is no such law in the state of Texas.
17:43:59 Q. Is there any preference in the procurement
17:44:01 regulations for Texas-based vendors?
17:44:03 A. There is a potential preference statute if a vendor
17:44:06 comes from another state to Texas, that state has a
17:44:10 preference statute in that state, Texas will require that
17:44:13 to be mirrored in Texas, but that would not prohibit
17:44:16 someone from that state coming to Texas to bid on the
17:44:18 work.
17:44:19 Q. So it's a preference, not a requirement?
17:44:21 A. That's correct.
17:44:22 Q. Are you generally familiar with the largest
17:44:26 construction and design firms that work on prison projects
17:44:30 across the country?
17:44:30 A. Yes, sir, I am.
17:44:31 Q. How so?
17:44:32 A. I've been in the industry for 25 years. I interact
17:44:35 with those companies because they're big, they're large,
17:44:38 they typically do other things besides prisons as well.
17:44:41 So yes, I am familiar with those companies.

17:44:43 Q. In your experience, are those -- have those companies
17:44:47 taken on projects in Texas?
17:44:48 A. Yes, they have.
17:44:49 Q. Have you seen any evidence in your review that TDCJ
17:44:51 has ever solicited bids from these companies to design or
17:44:55 install air conditioning systemwide?
17:44:57 A. I have seen no evidence of that.
17:44:58 Q. Have you seen any evidence in your review that TDCJ
17:45:01 has ever worked with these companies on air conditioning
17:45:04 of prisons?
17:45:04 A. I have seen no evidence of HVAC work with national
17:45:07 companies.
17:45:08 Q. Based on your experience and your conversations with
17:45:10 these vendors, do you believe they have capacity to take
17:45:12 on this work?
17:45:13 A. There is massive capacity in the construction
17:45:15 industry in the U.S. at this time.
17:45:18 Q. So why is it that these companies are not bidding on
17:45:22 the agency's HVAC projects?
17:45:24 A. Because the projects as they're being put forth are
17:45:27 too small in size. A national company out of Virginia,
17:45:31 Kansas, California is not going to come to Texas for a
17:45:35 50,000 or hundred-thousand-dollars contract. They're
17:45:37 chasing large projects of large scope and scale
17:45:40 nationally, in some cases, international.

17:45:42 Q. And is that also true not just for nationwide
17:45:45 companies but also large vendors in Texas?
17:45:48 A. Yes, sir, it is.
17:45:49 Q. And so, when you say the contracts are too small, how
17:45:52 large are the contracts we're talking about here that TDCJ
17:45:55 is using under the current design bid-build method?
17:45:57 A. They're 20,000 to maybe a hundred-thousand-dollar
17:46:00 contracts. They are not very large.
17:46:02 Q. Sorry. I'm talking about the design and construction
17:46:05 of air conditioning as far as what you've seen for the
17:46:08 unit-wide installation and design of air conditioning.
17:46:12 A. They're very small.
17:46:13 Q. But we're certainly talking about something more in
17:46:17 the 10 to $20 million range than something in the hundreds
17:46:21 of millions?
17:46:22 A. That's correct.
17:46:22 Q. How big does a contract need to be to get on these
17:46:25 vendors, these large vendors' radars?
17:46:27 A. Typically, you're looking a hundred million and up.
17:46:30 Q. To your knowledge, has TDCJ ever bid out a contract
17:46:34 of that size for the design or installation of air
17:46:38 conditioning in prisons?
17:46:39 A. I have never seen evidence of that.
17:46:41 Q. So we talked a little bit about bundling earlier.
17:46:45 You just mentioned it a couple of minutes ago and you said

17:46:47 that that's one way to make the contracts larger and more
17:46:52 attractive. Did I hear you correctly?
17:46:53 A. You did.
17:46:54 Q. And so, rather than -- just so I'm understanding it,
17:46:57 rather than one contract for 20 million to design and
17:47:00 install air conditioning for one unit, we're talking,
17:47:03 let's say, one contract for 200 million to design and
17:47:05 install air conditioning for 10 units.
17:47:08 A. That's correct. We would effectively cut the number
17:47:11 of procurements down by 19 because we would skip all the
17:47:14 design procurement steps. We would then skip nine of the
17:47:18 10 contracting steps to get to the design build so it's
17:47:21 dramatically less procurement time spent.
17:47:23 Q. Do you recall reading Ron Hudson's deposition
17:47:26 testimony in this case, a TDCJ official where he said it's
17:47:30 difficult for the agency to find vendors willing to
17:47:32 install air conditioning in places like Cuero and Teague,
17:47:37 Texas?
17:47:37 A. Yes, I did. I recall that.
17:47:39 Q. In your experience, would bundling contracts make it
17:47:41 more likely that a vendor would be willing to take on
17:47:44 these projects?
17:47:44 A. Absolutely. That's how projects for the U.S.
17:47:46 government get built all over the world by packaging them
17:47:48 in large groups in remote, isolated places by bundling

because it makes it more economically attractive to have a contractor bring their forces to Texas and go to work.

Q. You said that bundling -- one way bundling would speed up the installation of air conditioning is it would eliminate a significant number of procurement processes. Would it do anything else or would it help in any other way to speed up air conditioning?

A. It would by doing the design build approach, we allow ourselves to get ahead of what are called long-lead-time items so we could identify the types of air conditioning units that take a long time to build and order, those could be ordered earlier. Ductwork components, things that are fairly fungible in the system could be ordered earlier that would prevent those, what we call, procurement delays from occurring in pushing out the length of the construction.

Q. So just so I understand it, to just briefly review the options, is there anything in Texas procurement law preventing TDCJ from soliciting a systemwide bid to install air conditioning systemwide with one company?

A. There is no such restriction.

Q. Have you seen any indication that TDCJ has considered using a bundled approach to design and install air conditioning, let's say, 10 or 20 units at a time for one contract?

17:49:03 A. I have seen no evidence of that.
17:49:06 Q. Have you seen any evidence that TDCJ has used design
17:49:09 build or one contract per unit?
17:49:11 A. I have seen no evidence of that.
17:49:14 Q. And what they're doing instead is what?
17:49:16 A. The slowest method possible design, bid-build on a
17:49:20 single-unit basis.
17:49:22 Q. Now, finally, Mr. Carroll you mentioned that the
17:49:24 agency could use its emergency purchase power to expedite
17:49:28 the design and installation of air conditioning. What is
17:49:31 that?
17:49:32 A. So Texas has an exception to our procurement laws if
17:49:36 there was an emergency. The classic example, we think
17:49:39 there's a hurricane or a tornado, the government has the
17:49:43 ability to suspend typical procurement rules and direct
17:49:46 source the needs to address life, health, safety
17:49:49 emergencies without going through all the typical
17:49:51 requirements of state law because people's lives are at
17:49:54 stake and we want to make sure people and property are
17:49:56 protected.
17:49:57 Q. So certain procurement requirements just wouldn't
17:49:59 apply at all?
17:49:59 A. They would not. We need to do our best to try to
17:50:02 look at them, but literally, you could direct source to a
17:50:05 single vendor to address these.

17:50:07 Q. How many time would you say that saves per
17:50:11 procurement process?
17:50:12 A. I mean, it could shorten the process down to a matter
17:50:14 of days.
17:50:15 Q. Can you give us an example where you've seen this
17:50:19 power invoked?
17:50:20 A. Sure. So I was involved with a project where there
17:50:24 was a concern over replacement of fire hydrants to protect
17:50:27 for fire service for an area and it was used for that to
17:50:30 direct source and avoid all the procurement rules to buy
17:50:34 fire hydrants.
17:50:35 Q. How many hire hydrants are we talking about?
17:50:37 A. Thousands. Maybe tens of thousands.
17:50:39 Q. For an entire city?
17:50:40 A. Yes, sir.
17:50:41 Q. And in your experience, would extreme heat qualify as
17:50:45 a hazard to, life, health and safety?
17:50:47 A. Absolutely.
17:50:48 Q. Would complying with a court order that a system is
17:50:50 plainly unconstitutional qualify?
17:50:53 A. Yes.
17:50:53 MR. KERCHER: I'll object to outside the witness'
17:50:56 scope, your Honor.
17:50:57 MR. HOMIAK: Your Honor, this was mentioned in
17:50:58 his expert report. He has testified that he's an expert

17:51:02 in procurement laws.
17:51:03 THE COURT: Go ahead.
17:51:04 MR. HOMIAK: Thank you, your Honor.
17:51:06 Q. (BY MR. HOMIAK) And this emergency power, just to be
17:51:08 clear, can be invoked by the director of an agency?
17:51:11 A. All it takes is the executive director of an agency
17:51:14 to invoke it. It doesn't take the governor's office or
17:51:17 the legislature to invoke that power.
17:51:18 Q. It requires -- what would they have to do exactly?
17:51:21 A. Basically, they'd make a finding in a memo that
17:51:23 there's an emergency that's put into the file to explain
17:51:26 why they need an emergency determination and that's
17:51:29 basically all they have to do. It's quite simple.
17:51:32 Q. Direct Lumpkin could invoke that power tomorrow?
17:51:34 A. He could.
17:51:35 Q. Have you as a construction and procurement lawyer
17:51:37 ever challenged the Texas agency's use of the emergency
17:51:40 purchase power?
17:51:41 A. I have.
17:51:41 Q. And these are cases where your clients are
17:51:44 challenging the agency's use of the emergency power
17:51:46 because another company got the contract instead of them.
17:51:49 A. That is correct, sir. Yes, sir.
17:51:51 Q. And your clients are saying -- you were saying on
17:51:53 behalf of your clients this was not actually a health and

17:51:55 safety emergency?
17:51:56 A. That's what we said, yes, sir. We made that
17:51:59 argument.
17:51:59 Q. Are you willing to share your win-loss record with
17:52:01 us?
17:52:01 A. I'm somewhat disappointed to tell you, your Honor,
17:52:03 but I have never succeeded in one of those challenges.
17:52:07 They're almost impossible to win and I would say
17:52:09 impossible to win because I've never seen one successfully
17:52:12 challenged in one in my practice.
17:52:15 Q. Have you seen any evidence that TDCJ has used or
17:52:18 considered using the emergency purchase power to expedite
17:52:20 the design or installation of air conditioning?
17:52:22 A. I have seen no evidence of that.
17:52:24 Q. Have you identified any reason why the agency has not
17:52:26 used or considered using its emergency purchase power to
17:52:30 do either of those things?
17:52:31 A. I have not been able to identify any reason why they
17:52:33 have not considered that as an option.
17:52:35 Q. So from everything that we've discussed and that you
17:52:37 read and heard today, is TDCJ treating this like an
17:52:41 emergency from a construction and procurement standpoint?
17:52:43 A. They are not.
17:52:44 Q. Thank you, your Honor. No further questions.
17:52:45 THE COURT: Thank you. Mr. Carroll, I'm sorry

17:52:48 that we're going to have to postpone the fun part of this
17:52:51 exercise until tomorrow.
17:52:53 THE WITNESS: Yes, sir.
17:52:53 THE COURT: So we'll get Mr. Kercher the night to
17:52:56 think of his questions and sorry for that but we just -- I
17:53:00 can't go past 6:00 and so, I'm afraid he probably has more
17:53:04 than five minutes for you.
17:53:05 THE WITNESS: I could keep my fingers crossed.
17:53:07 THE COURT: Exactly. So with that, I think we
17:53:10 covered a lot of ground. I appreciate everybody's
17:53:12 willingness to stick to it and I think we're making real
17:53:17 progress. We will be in recess till tomorrow morning at
17:53:21 8:30. Anything we need to talk about before we break for
17:53:24 the day?
17:53:27 MR. HOMIAK: Nothing further from plaintiffs,
17:53:28 your Honor.
17:53:29 MR. JOHNSON: Nothing from us.
17:53:30 THE COURT: Thank you. You may step down.
(Proceedings adjourned.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter, Registered Merit Reporter, in my capacity as Official Court Reporter of the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 20th day of April, 2026.

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