

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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

TEXAS CITIZENS UNITED ) Docket No. A 23-CA-1004 RP  
FOR REHABILITATION OF )  
ERRANTS, INC., ET AL )  
 )  
vs. ) Austin, Texas  
 )  
BOBBY LUMPKIN ) April 1, 2026

TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE ROBERT L. PITMAN  
Volume 3 of 8

APPEARANCES:

For the Plaintiff: Mr. Kevin D. Homiak  
Ms. Marissa C. Joers  
Mr. Thomas A.J. Olsen  
Ms. Audry Pham  
Wheeler, Trigg, O'Donnell, LLP  
370 17th Street, Suite 4500  
Denver, Colorado 80202  
  
Mr. Brandon W. Duke  
O'Melveny & Myers, LLP  
700 Louisiana Street, Suite 2900  
Houston, Texas 77002  
  
Mr. Jeffrey S. Edwards  
Mr. David A. James  
Mr. Paul G. Samuel  
Mr. Michael Singley  
Ms. Lisa Snead  
Edward Law  
603 West 17th Street  
Austin, Texas 78701  
  
Ms. Erica Grossman  
Holland, Holland, Edwards  
& Grossman, LLC  
1437 High Street  
Denver, Colorado 80218

1   **(Appearances Continued:)**

2   For the Plaintiff:           Mr. Matthew W. Frost  
3                               Winston & Strawn  
4                               800 Capitol Street, Suite 2400  
                             Houston, Texas 77002

5   For the Defendant:        Ms. Abigail K. Carter  
6                               Mr. Wade A. Johnson  
7                               Ms. Lauren E. McGee  
8                               Mr. Brandon J. Mickle  
9                               Ms. Lauren E. Saeger  
                             Mr. Kyle S. Tebo  
                             Texas Attorney General's Office  
                             300 West 15th Street  
                             P.O. Box 12548  
                             Austin, Texas 78701

10  
11   Court Reporter:           Ms. Lily Iva Reznik, CRR, RMR  
12                               501 West 5th Street, Suite 4153  
                             Austin, Texas 78701  
                             (512) 391-8792

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

25   Proceedings reported by computerized stenography,  
transcript produced by computer-aided transcription.

|    |                   |                  |              |                 |                |
|----|-------------------|------------------|--------------|-----------------|----------------|
| 1  |                   | <b>I N D E X</b> |              |                 |                |
| 2  |                   | <u>Direct</u>    | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
| 3  | <u>Witnesses:</u> |                  |              |                 |                |
| 4  | Dale Cox          | 8                |              |                 |                |
| 5  | Craig Steigerwalt | 11               | 57           | 83              |                |
| 6  | Michael Barry     | 87               | 109          | 119             |                |
| 7  | Shannon Ramey     | 120              | 135          | 146             |                |
| 8  | Jennifer Toon     | 147              | 179          | 197             |                |
| 9  | Charlie Malouff   | 199              | 216          | 229             |                |
| 10 | Amite Dominick    | 231              | 266          |                 |                |
| 11 | Marci M. Simmons  | 276              | 299          |                 |                |

12

13

14

15

16

17

18

19

20

21

22

23

24

25

|    |                        |                |                 |
|----|------------------------|----------------|-----------------|
| 1  | <b>E X H I B I T S</b> |                |                 |
| 2  |                        | <u>Offered</u> | <u>Admitted</u> |
| 3  | <u>Plaintiffs'</u>     |                |                 |
| 4  | #77 through 79         | 211            | 212             |
| 5  | #151                   | 207            | 207             |
| 6  | #310                   | 52             | 52              |
| 7  | #416                   | 88             | 88              |
| 8  | #421                   | 121            | 121             |
| 9  | #423                   | 12             | 12              |
| 10 | #487                   | 102            | 102             |
| 11 | #500                   | 26             | 26              |
| 12 | #502                   | 25             | 25              |
| 13 | #504                   | 51             | 51              |
| 14 | #507                   | 22             | 22              |
| 15 | #535                   | 157            | 157             |
| 16 | #536                   | 158            | 158             |
| 17 | #543A-1                | 252            | 252             |
| 18 | #543B                  | 254            | 254             |
| 19 | #544                   | 165            | 166             |
| 20 |                        |                |                 |
| 21 | <u>Defendant's</u>     |                |                 |
| 22 | #39                    | 189            | 189             |
| 23 | #107                   | 129            | 129             |
| 24 | #224                   | 181            | 181             |
| 25 | #225                   | 183            | 183             |

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

**E X H I B I T S** (Continued)

|                    | <u>Offered</u> | <u>Admitted</u> |
|--------------------|----------------|-----------------|
| <u>Defendant's</u> |                |                 |
| #243               | 228            | 228             |
| #250               | 272            | 272             |

08:30:41 1 THE COURT: So I'd like to begin this morning by  
08:30:43 2 acknowledging on the record -- and this is not an April  
08:30:46 3 Fool's joke -- that today is the 80th birthday of John  
08:30:52 4 Hall, my courtroom deputy.

08:30:52 5 (Applause in courtroom.)

08:30:58 6 THE COURT: And when not serving us here in the  
08:31:01 7 courtroom, he can be found -- he's a Model A enthusiast  
08:31:05 8 and he can be found driving his Model A around the hill  
08:31:07 9 country that he bought new in 1932. So we appreciate your  
08:31:15 10 service so much and please wish him a happy birthday  
08:31:18 11 throughout the day. Thank you. And we hope we have many  
08:31:20 12 more years ahead with you. It's got to be at least three  
08:31:25 13 more years.

08:31:28 14 All right. What do we have this morning?

08:31:31 15 MR. HOMIAK: Yes, your Honor. Just a few brief  
08:31:33 16 housekeeping matters. We indicated yesterday in the  
08:31:35 17 context of the conversation about Mr. Pursifull's autopsy  
08:31:39 18 that we received yesterday that we may be recalling one of  
08:31:43 19 our witnesses. It looks like we'll be able to recall Dr.  
08:31:46 20 Vassallo to testify very briefly about that. I think if  
08:31:49 21 we're on track as I expect us to be, she will be our last  
08:31:53 22 witness today and will be the last witness for our case.  
08:31:56 23 So there's sort of two pieces of that which is we're  
08:31:59 24 recalling Dr. Vassallo, and then, we expect if we're able  
08:32:02 25 to complete her full testimony with any redirect, then

08:32:05 1 we'll rest our case today.

08:32:07 2 THE COURT: Great. That's helpful. Thank you.

08:32:09 3 MR. HOMIAK: And then, the second piece, your  
08:32:10 4 Honor, is just a brief clarification about the  
08:32:13 5 designations. I know we went back and forth yesterday.  
08:32:15 6 My recollection was that where we landed was that I  
08:32:18 7 promised you that depo clip would be less than 10 minutes  
08:32:21 8 and that as long as the clip was short and I got it down  
08:32:24 9 to four minutes, we could play it of Mr. Cox's deposition  
08:32:28 10 this morning to provide context for the project delivery  
08:32:32 11 and engineering and design folks who are going to testify  
08:32:35 12 today.

08:32:35 13 That's where I thought we landed. I just want to  
08:32:38 14 make sure I --

08:32:38 15 THE COURT: That's correct.

08:32:42 16 MR. HOMIAK: And, your Honor, I did have one  
08:32:43 17 other thing in the context of Mr. Pursifull which is we've  
08:32:47 18 conferred with opposing counsel. They have indicated they  
08:32:49 19 should be able to let us know by noon today. I just ask  
08:32:52 20 that we confirm that that opposing counsel let us know by  
08:32:57 21 noon today where Mr. Pursifull was housed and,  
08:33:01 22 specifically, whether he was in restricted housing at the  
08:33:04 23 time of his death.

08:33:06 24 MR. JOHNSON: Yes. We're looking into that. I  
08:33:07 25 think he was assigned restrictive housing but we're just

08:33:11 1 making sure.

08:33:11 2 THE COURT: Okay. If there's a way you could get  
08:33:13 3 that by noon, that would be great. Anything else, Mr.  
08:33:19 4 Johnson?

08:33:19 5 MR. JOHNSON: Nothing from our side.

08:33:21 6 THE COURT: All right. Your next witness?

08:33:21 7 MR. HOMIAK: Yes, your Honor. We're calling by  
08:33:22 8 deposition Dale Cox, who is the Director of Engineering  
08:33:27 9 for TDCJ. May I proceed, your Honor?

08:33:29 10 THE COURT: You may.

08:33:34 11 (Audio and video filed played.)

08:33:34 12 Q. "(MR. OLSEN) When did you first learn that you were  
08:33:36 13 going to be deposed in this case?

08:33:42 14 A. Several weeks ago.

08:33:44 15 Q. And fair to say in June? Was it in June?

08:33:52 16 A. Yes.

08:33:54 17 Q. And who did you learn about this deposition from?

08:34:00 18 A. My boss, the Facilities Director.

08:34:03 19 Q. And what is his name?

08:34:04 20 A. Ron Hudson.

08:34:08 21 Q. What did from Hudson say to you about this  
08:34:15 22 deposition?

08:34:15 23 A. I don't remember the exact words. Basically, he said  
08:34:28 24 we need engineering testimony as to adding AC in the  
08:34:34 25 prisons.



08:34:43 1 Q. Did you volunteer to testify when he said you needed  
08:34:47 2 -- when you, when TDCJ needed engineering testimony?  
08:34:52 3 A. Yes, because I believe I have a -- yes is the answer.  
08:34:59 4 Q. So when you say a licensed professional engineer,  
08:35:04 5 when -- you're a licensed professional engineer, correct?  
08:35:09 6 A. Yes.  
08:35:10 7 Q. What's that licensing process like?  
08:35:13 8 A. Graduation from an accredited school with a  
08:35:17 9 engineering degree, four years of work experience working  
08:35:22 10 for a licensed professional engineer, two tests, a  
08:35:28 11 fundamentals test and a principles and practices test, and  
08:35:32 12 an application to the State Board of Professional  
08:35:35 13 Engineers for the license.  
08:35:36 14 Q. Okay. And you accomplished each one of those steps  
08:35:38 15 and received your license, correct?  
08:35:39 16 A. Yes.  
08:35:40 17 Q. If we're taking the low end, you said procurement  
08:35:44 18 design is three months, right?  
08:35:47 19 A. Yes.  
08:35:49 20 Q. Design itself on the low end is 12 months, right?  
08:35:53 21 A. Yes.  
08:35:54 22 Q. That's 15 months. Procurement of construction is  
08:35:58 23 nine months, right?  
08:35:59 24 A. Yes.  
08:36:02 25 Q. So that's 24 months. And then, construction --

08:36:07 1 completion of construction is 12 months, right?

08:36:11 2 A. Yes.

08:36:12 3 Q. So you add all that up, that's 36 months, right?

08:36:17 4 A. Yes.

08:36:18 5 Q. Three years. Okay. High end, procurement of design,  
08:36:23 6 six months, correct?

08:36:26 7 A. Yes.

08:36:28 8 Q. Design itself, 15 months. So that's 21 months,  
08:36:32 9 right?

08:36:33 10 A. Yes.

08:36:36 11 Q. Procurement of construction, 12 months. So that  
08:36:41 12 comes to 33 months, correct?

08:36:47 13 A. Yes.

08:36:48 14 Q. And then, 18 months for construction, that's 51  
08:36:53 15 months. My apologies on that math. I'm a lawyer but I'm  
08:36:59 16 not also an engineer so my apologies.

08:37:02 17 So just to recap, if TDCJ had all the resources  
08:37:08 18 it needed, all the labor it needed, it could get all of  
08:37:13 19 these units air-conditioned in somewhere between 36 months  
08:37:16 20 and 51 months, based on your experience as an engineer and  
08:37:20 21 in the engineering department of TDCJ; is that right?

08:37:28 22 MS. MCGEE: Objection. Form.

08:37:30 23 A. Yes."

08:37:32 24 (End of audio and video file.)

08:37:34 25 MR. HOMIAK: That concludes the deposition

08:37:35 1 testimony courtroom presentation for this witness.

08:37:51 2 MR. OLSEN: Plaintiffs call Mr. Craig  
08:37:53 3 Steigerwalt.

08:37:58 4 THE COURT: Good morning. Before you take a  
08:38:01 5 seat, could you raise your right hand to be sworn?

08:38:03 6 THE CLERK: You do solemnly swear or affirm that  
08:38:03 7 the testimony which you may give in the case now before  
08:38:03 8 the Court shall be the truth, the whole truth, and nothing  
08:38:08 9 but the truth?

08:38:08 10 THE WITNESS: I do. Yes.

08:38:09 11 THE COURT: Please be seated.

08:38:10 12 CRAIG STEIGERWALT, called by the Plaintiff, duly sworn.

08:38:10 13 DIRECT EXAMINATION

08:38:14 14 BY MR. OLSEN:

08:38:14 15 Q. Good morning, sir. Could you please introduce  
08:38:19 16 yourself to the Court? What's your name and where do you  
08:38:21 17 work?

08:38:21 18 A. Good morning. My name is Craig Steigerwalt. I work  
08:38:25 19 at Exponent. My office is in Boston, Massachusetts.

08:38:29 20 Q. And, Paul, could you please put up Plaintiffs'  
08:38:33 21 Exhibit 423? Mr. Steigerwalt, is this a copy of your  
08:38:43 22 curriculum vitae?

08:38:44 23 A. This is, yes.

08:38:45 24 Q. And is this -- is it on Exponent's website?

08:38:50 25 A. This is located on the website, correct.

08:38:52 1 Q. And does your CV accurately describe your education,  
08:38:57 2 your professional experience and your professional  
08:39:00 3 certifications in the field of engineering?

08:39:02 4 A. It does, yes.

08:39:04 5 Q. Your Honor, I offer Plaintiffs' Exhibit 423.

08:39:09 6 MR. KERCHER: No objection.

08:39:10 7 THE COURT: Is admitted.

08:39:12 8 Q. (BY MR. OLSEN) Mr. Steigerwalt, what's your  
08:39:13 9 educational background?

08:39:14 10 A. In 2006, I obtained a Bachelor of Science in Civil  
08:39:17 11 Engineering From University of Delaware. Then in 2011, I  
08:39:23 12 received my Master's in Business Administration from  
08:39:26 13 Loyola College with emphasis on management.

08:39:31 14 Q. What is civil engineering as a discipline?

08:39:33 15 A. As a discipline, civil engineering deals with the  
08:39:38 16 planning, execution, construction, maintenance of  
08:39:43 17 infrastructure projects such as highways, sewer, buildings  
08:39:47 18 and other large infrastructure projects.

08:39:50 19 Q. And then, you also you mentioned that your MBA was a  
08:39:53 20 -- had a focus in project management. What is project  
08:39:56 21 management as a discipline?

08:39:58 22 A. Project management is the principles or the processes  
08:40:03 23 of simply managing a project from -- through the design --  
08:40:09 24 excuse me, through the initiation phase through design,  
08:40:13 25 through construction and, eventually, through closeout.

08:40:16 1 It, in essence, is a way of managing resources to  
08:40:19 2 accomplish a goal.

08:40:20 3 Q. And are you a Licensed Professional Engineer?

08:40:24 4 A. I am, yes.

08:40:25 5 Q. And how many states?

08:40:28 6 A. I believe it's five states, Maine, New Hampshire,  
08:40:33 7 Massachusetts, Vermont and New York.

08:40:37 8 Q. You heard Mr. Cox's testimony in court this morning?

08:40:42 9 A. I did. Yes.

08:40:43 10 Q. And he described what's required to become a Licensed  
08:40:48 11 Professional Engineer. Is that what you had to do to get  
08:40:52 12 those certification -- or those licenses?

08:40:55 13 A. It was identical, yes.

08:40:57 14 Q. Do you hold any other professional certifications?

08:41:01 15 A. I do. Yes.

08:41:02 16 Q. What are those?

08:41:04 17 A. So I am a Certified Project Management Professional,  
08:41:07 18 which is issued through the Project Management Institute.  
08:41:11 19 I'm also a Certified Construction Manager, which is issued  
08:41:14 20 through the Construction Management Association of  
08:41:18 21 America. I'm also a plan -- I also hold a certificate as  
08:41:21 22 a Planning and Scheduling Professional, which is issued  
08:41:25 23 through AACE. And I also hold a certification for  
08:41:31 24 construction safety.

08:41:35 25 Q. You mentioned first the Project Management

08:41:39 1 Professional certification. What is that certification  
08:41:44 2 and how do you maintain it?

08:41:46 3 A. So that, again, is the PMP through the Project  
08:41:51 4 Management Institute, which is a global organization, it's  
08:41:53 5 really the -- I think, one of the higher -- probably  
08:41:57 6 highest-level associations that affiliated with project  
08:42:00 7 management. Similar -- you have to pass an exam. You  
08:42:05 8 have to be able to demonstrate -- I believe it's a few  
08:42:08 9 years of practice as a project management -- as a project  
08:42:13 10 manager. But in essence, it certifies that you understand  
08:42:16 11 the skill sets that are required to manage projects.

08:42:21 12 Q. And then, there was the Certified Construction  
08:42:24 13 Manager certification. What do you need to do to get  
08:42:28 14 certified as a CCM, I believe is the acronym?

08:42:32 15 A. CCM and, again, that's through the Construction  
08:42:34 16 Management Association of America. Similar to PMP, you  
08:42:39 17 have to work for a certain number of years, I believe it's  
08:42:43 18 four to six years as a construction manager in our field.  
08:42:49 19 You have to pass an exam as well and it's really  
08:42:56 20 essentially the same as the PMP, but it's just more  
08:42:59 21 focused towards construction management, managing scope,  
08:43:03 22 managing budget, managing timelines of schedules, managing  
08:43:07 23 resources essentially.

08:43:07 24 Q. And then, you mentioned the Planning and Scheduling  
08:43:11 25 Professional certification. What is that?

08:43:14 1 A. PSP, that's issued through AACE. It certifies that,  
08:43:23 2 essentially, I know how to plan and schedule projects.  
08:43:25 3 It's one of the higher certifications in my industry for  
08:43:32 4 such -- for such skill sets.

08:43:34 5 Q. Tell us about your work experience in construction  
08:43:38 6 project management before you joined Exponent.

08:43:42 7 A. Sure. So I started my career at URS Corporation,  
08:43:46 8 which at the time was one of the largest engineering  
08:43:50 9 companies probably on the planet. I worked there for five  
08:43:52 10 years as a design engineer. Started as a design engineer  
08:43:56 11 and then worked my way to project management, again, on  
08:43:59 12 the design side. I eventually switched over to working  
08:44:05 13 for an infrastructure contractor for a few years as a  
08:44:08 14 contract manager.

08:44:09 15 So in that role, I was managing proposals,  
08:44:14 16 managing gridding RFPs -- or, excuse me, creating  
08:44:21 17 proposals, managing RFPs, helping project managers that we  
08:44:24 18 have on our staff, make sure that they weren't missing  
08:44:28 19 anything and things were done within our standards. From  
08:44:31 20 there, I went to work for a construction management firm  
08:44:34 21 for a few years where I served as a resident engineer for  
08:44:39 22 a large scale owner.

08:44:47 23 Q. And when did you join Exponent?

08:44:50 24 A. I believe it was 2015 February 2015.

08:44:53 25 Q. And what's the focus of your work at Exponent?

08:44:56 1 A. So I am in Exponent's construction consulting  
08:44:59 2 practice. The way I work and the way my work is broken  
08:45:04 3 down, we look at it in two forms. One is the proactive  
08:45:08 4 engagement so it's the project advisory services for large  
08:45:11 5 owners, in which case we -- and I often provide project  
08:45:16 6 management and program management services for large  
08:45:19 7 owners for the large capital programs.

08:45:21 8 The other side of that is what we consider  
08:45:23 9 reactive work, which is similar to what I'm here for  
08:45:27 10 today, provide expert testimony on cases. My area of  
08:45:30 11 expertise is really in project construction management  
08:45:34 12 and, again, I've been doing this for over 11 years.

08:45:38 13 Q. And are you a member of any professional  
08:45:41 14 associations?

08:45:42 15 A. I am, yes.

08:45:43 16 Q. And what are those?

08:45:45 17 A. AACE, which I was a past chapter president in Boston  
08:45:51 18 for a few years. I'm a member of ASCE, American Society  
08:45:56 19 of Civil Engineers. I'm actually a chairperson for the  
08:46:01 20 Boston Society of Civil Engineers in their engineering  
08:46:04 21 management group. I'm also a member of Construction  
08:46:07 22 Management Association, Project Management Institute, as  
08:46:12 23 well as a few other.

08:46:16 24 Q. Your Honor, we ask that Mr. Steigerwalt be recognized  
08:46:19 25 as an expert in construction project management.



08:46:22 1 THE COURT: Any objection?

08:46:24 2 MR. KERCHER: No, your Honor.

08:46:25 3 THE COURT: So recognized.

08:46:28 4 Q. (BY MR. OLSEN) Mr. Steigerwalt, plaintiffs retained  
08:46:32 5 your firm Exponent to serve as an expert witness on this  
08:46:35 6 case; is that right?

08:46:36 7 A. That is correct.

08:46:37 8 Q. And did you work on this case with other colleagues  
08:46:41 9 of yours at Exponent?

08:46:42 10 A. I did. There are two other experts that helped me  
08:46:45 11 draft our expert reports. Michael Barry focused on the  
08:46:52 12 mechanical design components of what TDCJ was doing as  
08:46:58 13 well as Shannon Ramey, who focused more on the  
08:47:01 14 contractor's approach because I believe he has some good  
08:47:04 15 experience as an HVAC -- I believe he actually owned an  
08:47:08 16 HVAC company previous to working at Exponent. So the  
08:47:11 17 three of us combined to draft the two reports.

08:47:14 18 Q. And what was your focus?

08:47:16 19 A. My focus was on the implementation and execution of  
08:47:22 20 how TDCJ was moving forward with these projects. My focus  
08:47:28 21 really was on schedules and timelines and how quickly they  
08:47:33 22 were accomplishing these or finishing these projects.

08:47:36 23 Q. And then, in addition to reviewing TDCJ's existing  
08:47:42 24 approach, did you also evaluate improvements that could be  
08:47:46 25 made to the approach?

08:47:48 1 A. I did. So in my analysis in reviewing the schedules  
08:47:53 2 and timelines, I identified a few inefficiencies and  
08:47:58 3 bottlenecks that are in the current process. And so, I  
08:48:03 4 offered in our report potential mitigation factors or  
08:48:06 5 techniques that can be used to help with that.

08:48:10 6 Q. And in doing your work, what documents and  
08:48:14 7 information did you consider?

08:48:17 8 A. The TDCJ production documents, there's information on  
08:48:22 9 TDCJ's website referring to the projects. There's  
08:48:27 10 information on the state's procurement website related to  
08:48:30 11 bid documents, RFPs, contracts, general industry  
08:48:36 12 documentation that I use on other projects, or other cases  
08:48:42 13 and deposition transcripts from the folks -- a few folks  
08:48:47 14 at TDCJ.

08:48:48 15 Q. And in the testimony of Mr. Cox that we just listened  
08:48:53 16 to, he testified that if TDCJ had all the resources it  
08:48:58 17 needed and all the labor it needed, it could install AC in  
08:49:04 18 all of its uncooled units in somewhere between 36 and 51  
08:49:08 19 months.

08:49:09 20 In the course of your work, did you credit Mr.  
08:49:13 21 Cox's estimate?

08:49:14 22 A. We did. He obviously is a vital part of TDCJ. He  
08:49:19 23 appears to know the processes and the timelines fairly  
08:49:23 24 well so we took him at his word for what he had said with  
08:49:27 25 his timelines.

08:49:27 1 Q. And his estimate of 36 to 51 months was based on the  
08:49:33 2 low and high ends of four different phases of  
08:49:38 3 construction. Do you recall that testimony?

08:49:39 4 A. I do. Yes.

08:49:40 5 Q. What are those phases that he described?

08:49:43 6 A. So again, the four phases, he simply broke them out  
08:49:47 7 from procurement of design, the design itself, and then,  
08:49:51 8 procurement of construction, and then, construction  
08:49:52 9 itself.

08:49:53 10 Q. And what project delivery method in your  
08:49:57 11 understanding was Mr. Cox describing?

08:49:59 12 A. So what he described was a design bid-build approach.

08:50:04 13 Q. And how did you incorporate Mr. Cox's estimate into  
08:50:09 14 your analysis and opinion?

08:50:13 15 A. So it was a vital variable in our calculation or in  
08:50:16 16 our analysis when we looked at the timelines.

08:50:22 17 Q. And based on the improvement that you identified that  
08:50:26 18 we will talk about, if TDCJ got the funding it needed and  
08:50:31 19 the labor it needed, in your opinion, could TDCJ improve  
08:50:36 20 on Mr. Cox's estimate and get AC installed systemwide  
08:50:41 21 sooner?

08:50:42 22 A. I believe so. And again, we'll get into this later,  
08:50:45 23 I assume, but there are numerous inefficiencies in their  
08:50:49 24 process that could be mitigated with simple industry  
08:50:55 25 mitigation factors.

08:50:55 1 Q. How soon do you believe if those improvements are  
08:50:59 2 implemented that TDCJ could get this done?

08:51:02 3 A. So if you're able to mitigate some of those  
08:51:04 4 inefficiencies using Mr. Cox's timeline, you could get it  
08:51:07 5 down -- and this is in our report -- to approximately two  
08:51:10 6 to three years period.

08:51:12 7 Q. And so, at the high -- the high end of your estimate  
08:51:15 8 is actually low end of Mr. Cox's estimate, right?

08:51:18 9 A. That's correct.

08:51:19 10 Q. And if we're just expressing that in terms of years,  
08:51:23 11 we're here today on April Fool's Day, when do you think if  
08:51:29 12 TDCJ implements those improvements, when do you think they  
08:51:34 13 could get it done?

08:51:36 14 A. Well, if they did make changes and helped mitigate  
08:51:41 15 some of their bottlenecks and deficiencies, they could  
08:51:44 16 ultimately have this completed by the end of -- or prior  
08:51:47 17 to 2030.

08:51:51 18 Q. Paul, could you put up Plaintiffs' Exhibit 323? I  
08:51:59 19 believe that's already been admitted.

08:52:07 20 Mr. Steigerwalt, do you recognize Plaintiffs'  
08:52:10 21 Exhibit 323?

08:52:11 22 A. I do, yes.

08:52:13 23 Q. What is it?

08:52:14 24 A. So this was TDCJ's original four-phase approach to  
08:52:18 25 implementing their air-conditioning project retrofits.

08:52:22 1 Q. And do you know, based on your review of the case  
08:52:26 2 file, when TDCJ presented the four-phase plan to the Texas  
08:52:33 3 legislature?

08:52:33 4 A. I believe it was in early 2022.

08:52:38 5 Q. And can you just -- Mr. Steigerwalt, could you just  
08:52:46 6 briefly describe what the four-phase plan called for?

08:52:52 7 A. Sure. These are broken out, I expect, four phases,  
08:52:56 8 broken out by the two-year bienniums. There are  
08:53:04 9 essentially of the 73 projects or roughly 73 projects,  
08:53:07 10 they found a way to break them out. From my  
08:53:10 11 understanding, they started with the earlier projects in  
08:53:13 12 phase one -- yeah, the easier projects in phase one and  
08:53:18 13 got into some of the older, more complex projects through  
08:53:21 14 phase two and continued to getting more involved with the  
08:53:24 15 older and older projects as they continued through phase  
08:53:27 16 three and phase four.

08:53:29 17 Q. Based on the four-phase plan, do you understand that  
08:53:34 18 as of 2022, TDCJ was projecting that it would fully air  
08:53:39 19 condition the system by 2031?

08:53:41 20 A. That's how I interpret this document, yes.

08:53:45 21 Q. Is TDCJ on pace to meet that deadline?

08:53:48 22 A. No, they are not. No.

08:53:50 23 Q. Paul, could you please put up Plaintiffs' Exhibit  
08:53:55 24 507? Mr. Steigerwalt, do you recognize this document and,  
08:54:19 25 more specifically, the layout of the tables in the

08:54:24 1 document?

08:54:24 2 A. I do, yes. This is TDCJ's dashboard that they have  
08:54:29 3 on their website that I believe is updated at least once a  
08:54:33 4 month from my understanding.

08:54:37 5 Q. Let's go to page 7, Paul. And the layout is -- could  
08:54:47 6 you just explain, you know, what these -- there's three  
08:54:49 7 different entries on what we're looking at on page 7  
08:54:52 8 continuing to page 8. What are they showing?

08:54:56 9 A. So the first one states cool beds completed since  
08:55:00 10 2018 so, in essence, that's how many non-air-conditioning  
08:55:03 11 beds that they essentially made air-conditioning beds and  
08:55:08 12 that number is 5,876. And then, they show subsequently,  
08:55:12 13 additional box, the table, cool beds under construction,  
08:55:18 14 4,509, and cool beds in design with 11,000.

08:55:21 15 Q. Got it. I'll offer Plaintiffs' Exhibit 507.

08:55:25 16 MR. KERCHER: No objection.

08:55:26 17 THE COURT: So admitted.

08:55:28 18 MR. OLSEN: Paul, could you go up on page 7 here?

08:55:34 19 Q. (BY MR. OLSEN) Okay. So, Mr. Steigerwalt, as of  
08:55:37 20 October 17th, 2023, there were 5,876 cool beds that had  
08:55:45 21 been completed since 2018, according to this document; is  
08:55:49 22 that right?

08:55:49 23 A. That's what it indicates, yes.

08:55:50 24 Q. And, Paul, could you go to page 44 of Plaintiffs'  
08:55:55 25 Exhibit 507? And this is as of March 1, 2026, do you see

08:56:08 1 that, Mr. Steigerwalt?

08:56:09 2 A. I do. Yes.

08:56:09 3 Q. And as of last month, March 2026, how many cool beds  
08:56:15 4 had TDCJ completed since 2018?

08:56:18 5 A. Approximately 15,661 beds.

08:56:22 6 Q. And based on my own math, two-and-a-half years from  
08:56:28 7 October 23, 2023 to March 2026, that's 9,785 cool beds  
08:56:37 8 that TDCJ has installed?

08:56:40 9 A. Uh-huh.

08:56:41 10 Q. What does that work out to in terms of an average  
08:56:44 11 rate of cool bed installation per year?

08:56:47 12 A. I believe it's just shy of -- just under 4,000 beds a  
08:56:52 13 year in terms of beds that have air conditioning.

08:56:59 14 Q. And based on your experience, your review of the case  
08:57:05 15 file, in your opinion, how would you characterize TDCJ's  
08:57:11 16 pace of air-conditioning installation in the past  
08:57:15 17 two-and-a-half years?

08:57:17 18 A. Given the emphasis on the criticality of timelines  
08:57:21 19 and schedules, I would classify this as grossly  
08:57:27 20 inefficient and grossly -- very slow essentially.

08:57:32 21 Q. And in your opinion, has funding played a role in  
08:57:38 22 TDCJ's pace of installation?

08:57:40 23 A. I believe it has. It is available and I believe it  
08:57:43 24 has played a role in it, yes.

08:57:45 25 Q. And, Paul, could you put Plaintiffs' Exhibit 323 back

08:57:50 1 up, please? Mr. Steigerwalt, we're looking at the phase  
08:57:57 2 four plan again. For phase one, which was for fiscal  
08:58:03 3 years 2024 and 2025, TDCJ said it needed \$226 million from  
08:58:10 4 the legislature. Do you see that?  
08:58:12 5 A. Approximately, yes.  
08:58:13 6 Q. And do you know, in reality, how much money TDCJ  
08:58:18 7 actually requested from the legislature for fiscal years  
08:58:22 8 2024 to 2025?  
08:58:24 9 A. I believe it was under \$90 million.  
08:58:28 10 Q. Phase two, that's for fiscal years 2026 and 2027,  
08:58:35 11 called for \$319 million. Do you see that?  
08:58:39 12 A. I do, yes.  
08:58:40 13 Q. And do you know how much TDCJ asked for for fiscal  
08:58:46 14 years 2026 to 2027?  
08:58:49 15 A. Again, I believe it was just north of a  
08:58:53 16 hundred-million dollars.  
08:58:54 17 Q. Paul, could you put up Defendant's Exhibit 256? It  
08:59:05 18 was admitted yesterday. Mr. Steigerwalt, this is TDCJ's  
08:59:15 19 most recent plan. If you look, Paul, if you could scroll  
08:59:21 20 to the bottom corner do you see that date there? It's  
08:59:26 21 3-15-2026. Mr. Steigerwalt, do you see that?  
08:59:30 22 A. Sorry, I don't.  
08:59:33 23 Q. You've seen this document?  
08:59:39 24 A. I have. Yes.  
08:59:41 25 Q. According to this document, TDCJ plans to ask the



08:59:51 1 legislature for \$774 million for '28 and '29 biennium and  
08:59:59 2 731 million for the 2030 to 2031 biennium. Do you see  
09:00:05 3 that?

09:00:05 4 A. I do, yeah.

09:00:06 5 Q. In your opinion, will funding alone take care of the  
09:00:11 6 problem in terms of the pace of TDCJ's installation?

09:00:15 7 A. Again, from what I've seen with the inefficiencies in  
09:00:18 8 their process, funding alone won't address this. Changes  
09:00:22 9 will need to be made if they were to execute this.

09:00:24 10 Q. Changes to what?

09:00:26 11 A. Changes to their approach, the project delivery  
09:00:29 12 methods, the way they contract with engineers and  
09:00:33 13 contractors.

09:00:40 14 Q. Let's talk about TDCJ's approach to date and based on  
09:00:47 15 what you've been able to review. Paul, could you put up  
09:00:52 16 Plaintiffs' Exhibit 502?

09:00:57 17 Mr. Steigerwalt, do you recognize this document?

09:01:02 18 A. I do. Yes.

09:01:05 19 Q. And it's similar in format to the document we just  
09:01:08 20 looked at, the current plan?

09:01:10 21 A. Yes. Yes.

09:01:13 22 Q. And if you -- I want to focus on -- I'll move to  
09:01:18 23 admit Plaintiffs' Exhibit 502.

09:01:23 24 MR. KERCHER: No objection.

09:01:24 25 THE COURT: So admitted.

09:01:26 1 Q. (BY MR. OLSEN) I want to just zoom in, Paul, on  
09:01:29 2 fiscal years '22 and '23, those units. Did you as part of  
09:01:37 3 your analysis look at TDCJ's installation of air  
09:01:47 4 conditioning in these intake units identified in fiscal  
09:01:51 5 years 2022 to 2023?

09:01:53 6 A. We did. We utilized information that was given to us  
09:01:57 7 from TDCJ. But we analyzed, yes.

09:02:02 8 Q. And so, you didn't analyze all of these projects. Is  
09:02:07 9 that fair to say?

09:02:08 10 A. I believe this is -- 2022-2023, there's '21 intakes.  
09:02:15 11 I don't believe there was information provided at all for  
09:02:17 12 '21, but we utilized the information that we had.

09:02:21 13 Q. Paul, could you please put up Plaintiffs' Exhibit  
09:02:23 14 500? Mr. Steigerwalt, do you recognize this spreadsheet?

09:02:49 15 A. I do, yes. This is one that the data sets we  
09:02:52 16 utilized for analysis.

09:02:53 17 Q. And was this spreadsheet produced to the plaintiffs  
09:02:59 18 by TDCJ to your knowledge?

09:03:00 19 A. I believe so. Yes.

09:03:01 20 Q. We move to admit 500.

09:03:04 21 MR. KERCHER: No objection.

09:03:05 22 THE COURT: So admitted.

09:03:08 23 Q. (BY MR. OLSEN) And could you just orient us going  
09:03:15 24 left to right up top, what's going on on this spreadsheet?

09:03:21 25 A. So this is essentially a milestone table for some of

09:03:24 1 the projects that are located on the left-hand side. You  
09:03:26 2 can see design process on top and then, construction  
09:03:29 3 process. So if we focused on design process, it talks  
09:03:33 4 about the date that there was a request for proposal for  
09:03:35 5 engineers, the designers, architects. It has milestone  
09:03:39 6 for design start, talks about the milestone for  
09:03:42 7 procurement for -- and completion for design. And then,  
09:03:45 8 it eventually flows over to construction and talks through  
09:03:49 9 the milestones for obtaining a contractor. And I believe  
09:03:55 10 it shows the equipment was ordered, the construction  
09:04:00 11 started, and date of construction completion as well. So  
09:04:03 12 it's essentially, a timeline -- the general timeline from  
09:04:06 13 engineering through construction for a handful of these  
09:04:10 14 projects that have been built.

09:04:11 15 Q. And did you use this spreadsheet, Plaintiffs' Exhibit  
09:04:17 16 500, and create a graph analyzing the completion dates for  
09:04:22 17 the intake units that were listed under fiscal years 2022  
09:04:26 18 and 2023?

09:04:28 19 A. I did and it's included in our initial report.

09:04:32 20 Q. Paul, could you publish Plaintiffs' Exhibit 499, page  
09:04:38 21 6, and zoom in there? Is this the graph you created, Mr.  
09:04:52 22 Steigerwalt?

09:04:52 23 A. This is, yes.

09:04:54 24 Q. And what does it reflect?

09:04:57 25 A. This shows actual completion dates for, again, a

09:05:01 1 handful of those 21 projects. So what we are looking at  
09:05:05 2 is the milestone date all the way on the right of these  
09:05:07 3 bar graphs and showing -- admitting when these projects,  
09:05:09 4 according to the TDCJ, were completed.

09:05:11 5 Q. And of the projects identified here, I take it from  
09:05:19 6 this chart that none of them were completed by 2023. Is  
09:05:23 7 that fair to say?

09:05:24 8 A. That's what's shown here and that's what the data  
09:05:27 9 represented, yes.

09:05:28 10 Q. And a handful of them continued into 2025 even; is  
09:05:35 11 that accurate?

09:05:35 12 A. Yes. There was one for March and one even in May at  
09:05:39 13 the top.

09:05:43 14 Q. Based on your analysis of the time it took TDCJ to  
09:05:48 15 complete these units and your understanding of its current  
09:05:53 16 approach to procurement, do you expect it will take TDCJ  
09:05:58 17 longer to complete the facilities slated for work in  
09:06:02 18 fiscal years 2028 through 2031 than it took them to  
09:06:07 19 complete the intake units identified in this graph?

09:06:13 20 A. Absolutely. The -- what we're looking at here, TDCJ  
09:06:17 21 would classify as some of their easier facilities.  
09:06:20 22 They're smaller scale, they're broken out by buildings.  
09:06:24 23 Some of the later projects that are planned for '28-'29  
09:06:29 24 and beyond are facilities that were built, I believe,  
09:06:32 25 before 1950, they're the complete units and they're not

09:06:38 1 just broken out by buildings. And so, from my  
09:06:40 2 understanding, the scope will get a little more complex.  
09:06:44 3 The scope will grow in size. Construction contracts will  
09:06:47 4 be much larger and so, I have no reason to believe -- we  
09:06:52 5 actually did analysis on some of these -- the timelines  
09:06:54 6 for some of those projects will be much, much longer than  
09:06:58 7 this.

09:06:58 8 Q. Let's talk about project delivery methods. I believe  
09:07:05 9 you testified earlier that TDCJ uses design bid-build; is  
09:07:13 10 that right?

09:07:13 11 A. That's correct.

09:07:13 12 Q. And in your work as a project management  
09:07:19 13 professional, have you been involved in projects employing  
09:07:22 14 the design bid-build method?

09:07:24 15 A. Many. Yes.

09:07:25 16 Q. And what are some examples?

09:07:27 17 A. Design bid-build, again, is the linear approach where  
09:07:32 18 a contractor or an owner has two contracts with the  
09:07:34 19 designer and an engineer - or, excuse me, a designer and a  
09:07:38 20 contractor. Many, many cases, I've worked on a lot of  
09:07:43 21 federal highway projects where they utilize design  
09:07:46 22 bid-build where a DOT might have a specific budget for a  
09:07:49 23 million dollars and they need to finish completion, they  
09:07:51 24 want to see what their options are; and so, there's a  
09:07:54 25 defined cost for some of these projects. So in that case,

09:07:59 1 they will use design bid-build so they'll have -- they can  
09:08:04 2 kind of pick and choose what they'll be able to allocate  
09:08:07 3 under their budget.

09:08:08 4 A lot of residential construction utilizes design  
09:08:11 5 bid-build because of the design elements and an owner  
09:08:15 6 might want certain things in their home for their new  
09:08:18 7 project and design bid-build is applicable for that.

09:08:22 8 Q. Have you been involved in any design bid-build  
09:08:25 9 projects in the prison context?

09:08:28 10 A. I have not. No.

09:08:30 11 Q. Do you believe that based on your education and  
09:08:33 12 experience in the field of projects management that the  
09:08:38 13 project management methods and principles are generally  
09:08:41 14 applicable regardless of the setting in which the project  
09:08:44 15 is being done?

09:08:46 16 A. Absolutely. The design -- what I speak to in the  
09:08:50 17 report as it relates to project management delivery  
09:08:54 18 methods or techniques to alleviate deficiencies are used  
09:08:58 19 across the board, regardless if it's residence  
09:09:01 20 construction, commercial, private institution, whatever it  
09:09:04 21 may be, these principles carry over from industry to  
09:09:07 22 industry.

09:09:07 23 Q. And Mr. Carroll discussed design bid-build on Monday,  
09:09:11 24 but just briefly, could you describe the method from  
09:09:18 25 beginning to end in your own words?

09:09:19 1 A. Design bid-build?

09:09:21 2 Q. Yes, sir.

09:09:21 3 A. So it's a very linear approach. As we saw with TDCJ  
09:09:28 4 is taking it, there is often -- you could start the  
09:09:30 5 process with procurement for engineering or architectural  
09:09:34 6 services, they need to complete design, issue what I  
09:09:38 7 usually call an IFC, or issued for construction package.  
09:09:42 8 That then goes into a bid package for a contractor, that  
09:09:44 9 goes out to the market, contractors bid on it, the owner  
09:09:48 10 selects a winning vendor. After a contract is executed,  
09:09:53 11 construction can commence and that's essentially the  
09:09:58 12 process as Mr. Cox identified. It's, I guess, a four-step  
09:10:02 13 process.

09:10:02 14 Q. And can any of those steps commence before the prior  
09:10:07 15 step is completed under design bid-build?

09:10:09 16 A. Not under design bid-build, no.

09:10:12 17 Q. And in your opinion, are TDCJ's AC retrofit projects  
09:10:20 18 well suited for design bid-build?

09:10:24 19 A. Given the large emphasis on scheduling, getting these  
09:10:29 20 projects done quickly, I don't believe design bid-build is  
09:10:32 21 the correct approach.

09:10:33 22 Q. And explain why not.

09:10:35 23 A. So we addressed this in our report, there were  
09:10:40 24 numerous inefficiencies in the process. Procurement alone  
09:10:46 25 for both the designer and the contractor takes time and,

09:10:52 1 what we've seen in data, takes a lot of time for TDCJ.  
09:10:55 2 There is also issues with procurement of materials if they  
09:11:00 3 were applicable and in this case or in these cases, they  
09:11:02 4 are applicable. And so, by waiting -- by doing this  
09:11:06 5 linear approach, you have these waiting periods and these  
09:11:10 6 inefficiencies that, again, can be mitigated through other  
09:11:13 7 techniques.

09:11:14 8 Q. Okay. Paul, could you put up Plaintiffs' Exhibit 500  
09:11:19 9 again, please? And on the -- if you could zoom in on  
09:11:30 10 there's design completion date in the middle up top here  
09:11:36 11 and then, go over just a little bit so over that way to  
09:11:44 12 the other side. There we go.

09:11:51 13 So you mentioned two separate procurement  
09:11:56 14 processes, design procurement and construction  
09:12:01 15 procurement. The facilities identified on Plaintiffs'  
09:12:05 16 Exhibit 500, are those facilities that TDCJ has already  
09:12:08 17 completed?

09:12:09 18 A. That's my understanding, yes.

09:12:11 19 Q. Okay. And for those completed facilities, did you  
09:12:16 20 observe a lag time between when TDCJ approved the design  
09:12:22 21 for the facility and when TDCJ awarded a construction  
09:12:26 22 contract?

09:12:27 23 A. I did. Yes.

09:12:28 24 Q. And could you just identify on Plaintiffs' Exhibit  
09:12:31 25 500 where that -- just what's going on on the spreadsheet



09:12:36 1 and how that's shown?

09:12:42 2 A. So if you look at the first one, take a look at the  
09:12:54 3 first one. The first row. You have design completion  
09:12:57 4 date in May of 2020. You have subsequently all the way to  
09:13:02 5 the right, date award for construction is September of  
09:13:06 6 2020. And so, in essence, you have a -- again, there's a  
09:13:10 7 lag or a process -- a period of time that is utilized to  
09:13:14 8 get from design completion to contract award for  
09:13:18 9 construction.

09:13:18 10 Q. And then, for example, the row below that, there's a  
09:13:22 11 design completion date of October 2018 and a date -- the  
09:13:29 12 construction contract to where it was November 2019.  
09:13:32 13 That's over a year, correct?

09:13:33 14 A. I see that, yes.

09:13:34 15 Q. And is that a recurring dynamic, the lag time between  
09:13:40 16 the design completion date and the award of the  
09:13:43 17 construction contract on Plaintiffs' Exhibit 500?

09:13:46 18 A. It is. Yeah. Yes.

09:13:51 19 Q. Paul, you can take down Plaintiffs' Exhibit 500. So  
09:13:56 20 we were just looking at completed facilities. Did you  
09:14:00 21 also analyze the timeline for facilities that are under  
09:14:07 22 construction as well?

09:14:08 23 A. We did, using the information that we were provided  
09:14:12 24 with, yes.

09:14:13 25 Q. And, Paul, could you publish Plaintiffs' Exhibit 499,

09:14:17 1 page 12? And while he's doing that, what information were  
09:14:25 2 you able to gather for the facilities that were under  
09:14:33 3 construction when you did your analysis?

09:14:36 4 A. So we found the -- I believe this was on the TDCJ's  
09:14:39 5 website or the state procurement website, the RFPs, or  
09:14:43 6 request for proposals, which indicated certain dates. We  
09:14:48 7 see when the project was released to the market, when the  
09:14:51 8 site visit was scheduled, the days to contract award. I  
09:14:56 9 believe that's actually the data, I think, come from the  
09:14:59 10 proposals but -- so again, the days from proposal being  
09:15:03 11 submitted from the contractor until the time the  
09:15:05 12 contractor has a contract, all of it through the time  
09:15:11 13 completion for construction.

09:15:12 14 Q. And is the graph that we are looking at now, did you  
09:15:17 15 create that?

09:15:18 16 A. I did. Yes.

09:15:19 17 Q. And based on the information that you compiled?

09:15:23 18 A. Yes.

09:15:25 19 Q. And what stood out to you about the timeline for the  
09:15:30 20 projects that were under construction?

09:15:32 21 A. So there's really two things what I see in this graph  
09:15:35 22 is -- one is that light-blue-shaded section that's about  
09:15:41 23 200 days on average, that goes right down the middle which  
09:15:44 24 is your days to contract award. So again, that's your  
09:15:47 25 time from your proposals being submitted until a contract

09:15:50 1 being awarded, 200 days is relatively long, but it does  
09:15:55 2 line up with testimony that I've seen that from members of  
09:15:59 3 the TDCJ. So that's the first thing.

09:16:01 4 Then the second thing is just the duration for  
09:16:04 5 proposed construction, some of these if you look at  
09:16:09 6 Stevenson, the longest bar on there are well over 700  
09:16:14 7 days, approximately, for construction duration, which is  
09:16:20 8 really substantial.

09:16:21 9 Q. And then, for the Goodman Unit at the bottom, what  
09:16:27 10 did you observe there?

09:16:29 11 A. So if you look at the bar graph of those two sections  
09:16:35 12 of the bar graph, essentially the time it took to execute  
09:16:38 13 a contract is approximately the same time it took to  
09:16:42 14 actually complete construction. So again, from my  
09:16:46 15 perspective, there's inefficiencies in this process.

09:16:50 16 Q. Paul, could you publish 499, page 9? And, Mr.  
09:16:59 17 Steigerwalt, just to orient the Court, is this a graphic  
09:17:03 18 you created?

09:17:04 19 A. This is, yes.

09:17:05 20 Q. And is it -- what project delivery method is it  
09:17:10 21 referring to?

09:17:11 22 A. This references the design bid-build approach.

09:17:15 23 Q. And according to this graph on the right in the build  
09:17:20 24 stage, once TDCJ awards a construction contract and issues  
09:17:26 25 a notice to proceed, there is what's called

09:17:29 1 pre-construction. What is that?

09:17:32 2 A. That's essentially when a contractor is brought on  
09:17:35 3 board and they're getting ready to plan for construction.  
09:17:39 4 From looking at some of the schedules that I've been  
09:17:42 5 provided with the majority of that time for  
09:17:44 6 pre-construction is the procurement of the materials. So  
09:17:50 7 you have submittals going back and forth between  
09:17:54 8 manufacturers and the owner and the contractor and the  
09:17:57 9 essentially waiting time for custom materials to be  
09:18:02 10 manufactured and delivered to the project sites.

09:18:03 11 Q. What are long-lead materials?

09:18:05 12 A. So in most cases, there are custom materials. You  
09:18:12 13 know, I believe in this case, there are the chillers,  
09:18:14 14 probably the air-handling units. But it's just as it  
09:18:18 15 sounds, it's material that has a long lead that -- before  
09:18:22 16 it can be delivered to the project site.

09:18:24 17 Q. Takes a while to get your hands on this stuff.

09:18:27 18 A. This isn't stuff that you can go to your local  
09:18:32 19 hardware store and get off the shelf, correct.

09:18:34 20 Q. And, Paul, could you put up Plaintiffs' Exhibit 500?

09:18:41 21 Does Plaintiffs' Exhibit 500 also include information  
09:18:45 22 about how long it took TDCJ to get equipment delivered  
09:18:51 23 after it issued a notice to proceed on the projects listed  
09:18:55 24 on the spreadsheet?

09:18:57 25 A. It does, yes.

09:18:58 1 Q. Paul, could you go to the right? And where does that  
09:19:05 2 show -- where is that shown on Plaintiffs' Exhibit 500?  
09:19:11 3 A. So fourth column from the right, there's a title is  
09:19:15 4 Equipment Delivery Duration in Days. So my understanding  
09:19:20 5 indicates the long-lead periods and if you look two  
09:19:27 6 columns to the right of that construction duration, that  
09:19:29 7 is the entire construction duration of the projects from  
09:19:31 8 the time date was awarded through completion of  
09:19:35 9 construction.  
09:19:37 10 Q. And what does this data show?  
09:19:40 11 A. It shows for a lot, if not all, of these that  
09:19:44 12 majority of your construction duration is time spent  
09:19:48 13 waiting for equipment and materials to be delivered.  
09:19:51 14 Q. And in some of these instances, what were the -- let  
09:19:59 15 me ask a better question. Based on Exhibit 500 of these  
09:20:06 16 projects, about what percentage of the construction  
09:20:08 17 durations was attributable to time spent waiting on  
09:20:13 18 long-lead materials?  
09:20:15 19 A. I think if you took an average of these, you got  
09:20:17 20 close to around 50 percent of time so half the time.  
09:20:20 21 Q. And in some of the most significant delays, what kind  
09:20:26 22 of duration are we talking about?  
09:20:29 23 A. Just looking at -- I don't know what unit it is, you  
09:20:33 24 have 451-day duration for long-lead materials and 505  
09:20:37 25 duration for delivery for long-lead time, again, there

09:20:41 1 were some pretty substantial lead times on some of these  
09:20:45 2 projects.

09:20:45 3 Q. And until those long-lead materials are delivered,  
09:20:53 4 can the construction contractor move the project forward  
09:20:59 5 in any meaningful way?

09:21:00 6 A. So I analyzed a few of the project schedules that  
09:21:05 7 were provided and what we noticed or what I noticed was  
09:21:09 8 that you had your notice of award, you had mobilization by  
09:21:15 9 the contractor. You might have had some miscellaneous  
09:21:18 10 site work that could have been done that, obviously,  
09:21:21 11 wasn't relying on on these long-lead materials. But then,  
09:21:24 12 what you saw was a huge gap in between some of that early  
09:21:28 13 scope, those early activities until the material was  
09:21:32 14 delivered before you can again complete construction.

09:21:37 15 Q. And would you characterize the wait times that TDCJ  
09:21:43 16 is encountering -- I mean, how would you characterize  
09:21:46 17 that?

09:21:47 18 A. Grossly inefficient. You're spending more than half  
09:21:51 19 the time -- once you execute a construction contract from  
09:21:55 20 my perspective, the most efficient way is to get  
09:21:58 21 resources, execute and get the job built. What you're  
09:22:01 22 doing is you're executing a construction contract, you're  
09:22:04 23 ordering materials, but you're sitting around, waiting for  
09:22:07 24 five months, six months, seven months in some cases before  
09:22:10 25 you can -- you cannot get your resources and complete the

09:22:13 1 project.

09:22:15 2 Q. So, Mr. Steigerwalt, we've been talking about design  
09:22:22 3 bid-build. I want to talk about some other project  
09:22:24 4 delivery methods. Are there other methods that in your  
09:22:29 5 opinion, TDCJ could use to expedite the installation of  
09:22:34 6 air conditioning?

09:22:34 7 A. There are, yes.

09:22:35 8 Q. Have you heard of the method CMAR?

09:22:38 9 A. Construction manager at risk, yes.

09:22:40 10 Q. Okay. And have you worked on projects in the past  
09:22:44 11 employing CMAR?

09:22:46 12 A. I have, yes.

09:22:46 13 Q. And briefly, what is CMAR and how does it differ from  
09:22:51 14 design bid-build?

09:22:52 15 A. CMAR, construction manager at risk, is essentially  
09:22:56 16 you're still hiring two contracts. You still have your  
09:22:59 17 design contractor and you have your construction  
09:23:02 18 contractor, but what you're essentially doing is you're  
09:23:04 19 bringing that construction contractor onboard earlier and  
09:23:07 20 so, you're overlapping the design with the construction.  
09:23:09 21 And so, you're getting input from your contractor usually  
09:23:13 22 at the 30 to 60 percent design mark that it helps with  
09:23:18 23 constructability. Essentially, it helps with long-lead  
09:23:22 24 materials so it's a slight overlap of your design and your  
09:23:25 25 construction.

09:23:25 1 Q. And how about the design build method? Have you  
09:23:29 2 worked on projects involving that method?

09:23:31 3 A. Numerous projects, yes.

09:23:33 4 Q. And what is design build and how does it differ from  
09:23:38 5 design bid-build and, I guess, CMAR, as well, if you can  
09:23:41 6 compare the three?

09:23:42 7 A. So again, design bid-build and CMAR have two separate  
09:23:45 8 contracts and so, the owner is essentially managing a  
09:23:49 9 designer and a contractor. With design build, that  
09:23:53 10 process, you're bringing -- the contractor and designer  
09:23:57 11 and architect is essentially under one maybe joint venture  
09:24:00 12 or one team, and so, you're able to essentially start the  
09:24:04 13 process, the construction process a lot earlier, again,  
09:24:08 14 creating numerous efficiencies in the project.

09:24:12 15 Q. On the spectrum of time, which of the methods is --  
09:24:23 16 could you just plot them from slowest to fastest,  
09:24:27 17 generally speaking?

09:24:27 18 A. So there's actually statistics out there from  
09:24:30 19 numerous associations and they all pretty much point to  
09:24:35 20 the same conclusion is that design build is essentially  
09:24:44 21 102 percent faster. So twice as fast as it compares to  
09:24:47 22 design bid-build. CMAR, also, I believe it's like 40  
09:24:53 23 percent faster than design bid-build. So again, both  
09:24:56 24 design build and construction manager at risk have been  
09:25:00 25 proven to be faster delivery methods.



09:25:02 1 Q. And I want to just briefly touch on some of those  
09:25:09 2 publications. Paul, could you put up Plaintiffs' Exhibit  
09:25:12 3 496? Do you recognize Plaintiffs' Exhibit -- Mr.  
09:25:27 4 Steigerwalt, do you recognize Plaintiffs' Exhibit 496?  
09:25:30 5 A. I do. Yes. This is an AIA document.  
09:25:32 6 Q. And is AIA authoritative in your industry?  
09:25:37 7 A. It is a very well-known organization, yes.  
09:25:39 8 Q. And did you rely on the AIA's guide to form your  
09:25:46 9 opinion that design build would be a superior project  
09:25:50 10 delivery method to design bid-build in this circumstance?  
09:25:53 11 A. It was one of the handful of documents we used for  
09:25:56 12 reference, yes.  
09:25:57 13 Q. Paul, could you go to page 2 of 496 towards the  
09:26:02 14 bottom? Under Factors to Consider When Choosing a Project  
09:26:10 15 Delivery Method.  
09:26:11 16 Mr. Steigerwalt, what did the AIA say about  
09:26:17 17 timeline and speed between the three methods?  
09:26:22 18 A. Between the three methods, I believe they came out  
09:26:25 19 and pretty much said -- I think it's identified in bullet  
09:26:28 20 No. 2 -- bullet No. 3 that design build is the -- and CMAR  
09:26:37 21 are the faster proven ways if time is critical.  
09:26:42 22 Q. Thank you, Paul. You can take that down.  
09:26:45 23 Mr. Steigerwalt, has there been -- I believe  
09:26:49 24 you've mentioned this -- published research about the time  
09:26:52 25 savings associated with the design build and CMAR versus

09:26:58 1 design bid-build?

09:26:59 2 A. Yeah. There's numerous studies and data sets that  
09:27:02 3 have been produced by a handful of organizations and  
09:27:05 4 associations in the field, yes.

09:27:07 5 Q. And, Paul, could you put up Plaintiffs' Exhibit 517?  
09:27:20 6 Mr. Steigerwalt, what is Plaintiffs' Exhibit 517?

09:27:23 7 A. This is one of those studies that had been done -- I  
09:27:27 8 believe in this case, it was a joint effort by the  
09:27:29 9 Construction Industry Institute, in this case, the Charles  
09:27:34 10 Pankow Foundation. But I believe the Construction  
09:27:36 11 Industry Institute was the leading association for this  
09:27:39 12 study together.

09:27:41 13 Q. And do you consider this report reliable?

09:27:45 14 A. I do. Yes. Anything that comes from the  
09:27:49 15 Construction Industry Institute is a fairly reliable.

09:27:55 16 Q. Did you rely on this report in forming your opinions?

09:27:58 17 A. I did. Yes.

09:28:00 18 Q. And did you in your report essentially take some of  
09:28:06 19 the tables from Plaintiffs' Exhibit 517 summarizing the  
09:28:11 20 findings of the Construction Industry Institute?

09:28:14 21 A. I believe we directly reference this document, yes.

09:28:16 22 Q. Paul, could you publish Plaintiffs' Exhibit 499, page  
09:28:21 23 19? Is this one of the tables, Mr. Steigerwalt, that you  
09:28:31 24 grabbed from the Construction Industry Institute report?

09:28:34 25 A. It is, yes.

09:28:35 1 Q. Okay. And what were the findings?

09:28:39 2 A. So if you look at the three columns on the right-hand  
09:28:43 3 side, I compare design build to construction manager at  
09:28:47 4 risk. It compares construction manager at risk to design  
09:28:50 5 bid-build, and then, compares on the right, design build  
09:28:52 6 to design bid-build. If you just focus on that one and go  
09:28:55 7 all the way to the bottom and look at delivery speed of  
09:28:59 8 design build versus design bid-build, again, it shows that  
09:29:03 9 design build within the study -- I believe the study  
09:29:06 10 incorporated 212 separate projects -- is 102 percent  
09:29:12 11 faster just over or twice as fast essentially is how I  
09:29:15 12 understand it than design bid-build.

09:29:19 13 Q. And then, did the Construction Industry Institute  
09:29:24 14 study also consider the matter of -- the relative costs of  
09:29:30 15 the delivery methods across these 200 or so projects?

09:29:34 16 A. I believe it did, yes.

09:29:36 17 Q. And, Paul, could you publish 499, page 20? And what  
09:29:41 18 were those findings?

09:29:43 19 A. Similar findings, just not as drastic, but if go all  
09:29:46 20 the way to the right, design build versus design  
09:29:50 21 bid-build, unit cost is slightly less, so to me, that's  
09:29:52 22 kind of a wash. But if you look at the cost growth, which  
09:29:55 23 I interpret that as change orders, design build through  
09:30:01 24 the study, through the 212 projects they utilized is  
09:30:04 25 roughly four percent less than design bid-build.

09:30:10 1 Q. And the Construction Industry Institute's report, I  
09:30:15 2 believe, focused on -- was it transportation projects? Is  
09:30:21 3 that right?

09:30:21 4 A. I think that's right.

09:30:22 5 Q. Was the Construction Industry Institute's report  
09:30:25 6 focused on transportation projects?

09:30:27 7 A. I don't believe so. I believe this encompassed a lot  
09:30:30 8 of different projects across all industry.

09:30:38 9 Q. In forming your opinions, did you consider whether  
09:30:46 10 TDCJ knows about design build and CMAR as options and the  
09:30:53 11 benefits they offer?

09:30:55 12 A. Definitely not on design build. I haven't seen any  
09:30:59 13 reference suggesting that they've considered design build.  
09:31:03 14 I believe Mr. Hudson, I believe it was in his deposition,  
09:31:07 15 mentioned that TDCJ's considering CMAR, but I haven't seen  
09:31:12 16 any signs of execution on that front.

09:31:15 17 Q. Did in your review of the file, did you see any  
09:31:21 18 contracts for AC retrofits that TDCJ had signed using  
09:31:27 19 CMAR?

09:31:29 20 A. I have not, no.

09:31:31 21 Q. Ultimately, would you recommend that TDCJ implement,  
09:31:44 22 apply a design build project delivery method for these  
09:31:47 23 projects?

09:31:48 24 A. Given the urge or, excuse me, the urgency that has  
09:31:53 25 been pretty well documented and shown, I would strongly

09:31:56 1 suggest the changing delivery methods to use design build  
09:32:01 2 for these projects, yes.

09:32:02 3 Q. And, Paul, could you put up Plaintiffs' Exhibit 496?  
09:32:07 4 This is, again, the AIA project delivery methods document  
09:32:13 5 and go to the bottom of page 2.

09:32:17 6 Mr. Steigerwalt, is your opinion about design  
09:32:22 7 build as the superior method, is that based solely on time  
09:32:28 8 savings?

09:32:29 9 A. No. There's numerous other factors that need to be  
09:32:33 10 considered when an owner is selecting a delivery method,  
09:32:38 11 and across the board, design build, really, it picks up  
09:32:47 12 and it covers and it's actually the better project  
09:32:48 13 delivery method as relates to, again, schedule or cost,  
09:32:52 14 risk allocation and risk management. There's a few others  
09:32:56 15 as well so it's not like you're giving up other factors by  
09:33:01 16 just focusing on speed of execution with design build.

09:33:09 17 Q. And I put this up just as a -- if you could summarize  
09:33:17 18 it. Does the AIA recognize that there are a number of  
09:33:20 19 relevant factors that go into the project delivery method  
09:33:22 20 choice and does it recognize that across a number of the  
09:33:26 21 factors that design build is advantageous over design  
09:33:31 22 bid-build?

09:33:31 23 A. It does, yes. It's pretty clear.

09:33:37 24 Q. These are renovation projects, right?

09:33:51 25 A. That's correct.

09:33:52 1 Q. Do you think that -- does that make design build  
09:33:57 2 inappropriate to use?

09:33:58 3 A. I don't think so, no.

09:34:00 4 Q. Why not?

09:34:01 5 A. So again, the delivery methods, it doesn't matter  
09:34:05 6 what the scope is. This is a very well-known, established  
09:34:11 7 delivery method. The scope if your -- shouldn't matter if  
09:34:15 8 you're installing -- doing retrofits of air conditioning  
09:34:18 9 or designing a whole new highway in the middle of nowhere,  
09:34:21 10 the same principles, policies and practices applies to  
09:34:25 11 this as it would to anything.

09:34:27 12 Q. And does the design build method provide advantages  
09:34:33 13 over design bid-build to when a project encounters  
09:34:37 14 unforeseen conditions?

09:34:40 15 A. So that's one of the -- another key benefit of  
09:34:43 16 utilizing design build is the essentially built-in  
09:34:46 17 collaboration that you have between owner -- between  
09:34:49 18 contractor and designer and in some cases, in most cases,  
09:34:53 19 owner. You know, as you compare it to a design bid  
09:34:57 20 approach, you have two separate cultures. You have the  
09:34:59 21 designer. You have the contractor. The owner essentially  
09:35:02 22 acts as a middleman, middle person in that case.

09:35:06 23 Again, using design build, you have one cohesive  
09:35:09 24 team and so, if there is an issue in the field, maybe an  
09:35:11 25 unknown risk is identified, the team's, there, they're

09:35:17 1 meeting regularly, the communication lines are already  
09:35:22 2 established, it's a much better approach in addressing  
09:35:24 3 that.

09:35:25 4 Q. And under the design build approach, is the  
09:35:30 5 construction contractor involved in the design process?

09:35:34 6 A. He or she is, yes.

09:35:36 7 Q. And is that a benefit in terms of the overall project  
09:35:42 8 timeline?

09:35:44 9 A. Absolutely. Again, it speaks to the added or  
09:35:48 10 incorporated cohesiveness and coordination. But what's  
09:35:52 11 also nice about design build is that you don't have to  
09:35:56 12 wait until your design is complete. In some cases, in  
09:36:00 13 most cases, you could release certain packages, maybe a  
09:36:03 14 civil site package or if there are electrical upgrades  
09:36:07 15 that are needed, your engineer or contractor can focus on  
09:36:09 16 that package and release those packages early to where you  
09:36:13 17 can kind of keep the resource moving and help fast-track  
09:36:16 18 some of the other activities.

09:36:18 19 Q. And does the involvement of the construction  
09:36:21 20 contractor in the design phase, does that help solve for  
09:36:26 21 constructability issues?

09:36:27 22 A. Hundred percent, yes.

09:36:30 23 Q. Does -- we talked about the long-lead material wait  
09:36:36 24 times that TDCJ has experienced under design bid-build.  
09:36:42 25 How would design build address that issue?

09:36:45 1 A. So since you have your contractor on board, you could  
09:36:48 2 focus -- TDCJ would be able to focus their attention on a  
09:36:53 3 critical path or, you know, the key milestones to the  
09:36:56 4 project. And so, if you knew that there was a chiller  
09:36:59 5 that needed to be -- your lead times for chillers was six  
09:37:01 6 months, maybe a year long, you could focus your design,  
09:37:04 7 you could focus your attention on the design early in the  
09:37:07 8 process to where you're able to essentially fast-track,  
09:37:09 9 again, that -- the process in the procurement process for  
09:37:12 10 your long-lead materials.

09:37:14 11 Q. And just to put a slightly finer point on it, does  
09:37:17 12 the involvement of the contractor in the design phase,  
09:37:21 13 does that allow for the -- once the designer selects the  
09:37:27 14 chiller that's going to be used, does that allow for the  
09:37:31 15 order to be placed then and there as opposed to down the  
09:37:35 16 line?

09:37:35 17 A. Absolutely. So again, when you compare it to a  
09:37:40 18 design bid-build approach, you're having to wait until a  
09:37:42 19 design's complete before you get a contractor on board.  
09:37:44 20 Design build, you're able to fast-track that process and  
09:37:47 21 put more focus on it much early earlier in the process.

09:37:52 22 Q. Mr. Steigerwalt, I want to turn now to project  
09:37:56 23 bundling. What is project bundling in your industry?

09:38:02 24 A. Project bundling is really just how it sounds. It's  
09:38:05 25 grouping similar projects together. Typically, I guess in



09:38:11 1 this case, it's, you know, due to geographical reasons or  
09:38:14 2 similar scope that really help create efficiencies and  
09:38:20 3 economics of scale.

09:38:22 4 Q. What is TDCJ's current approach to these projects?  
09:38:28 5 Are they bundling them or are they doing them  
09:38:30 6 independently?

09:38:31 7 A. I have not seen any indication that TDCJ is bundling  
09:38:34 8 these. They're really taking a piecemeal approach and  
09:38:37 9 doing project by project.

09:38:40 10 Q. And so, does that mean that each facility goes  
09:38:44 11 through a separate design procurement process, a separate  
09:38:51 12 design process, a separate construction procurement  
09:38:55 13 process, and a separate construction process? Is that  
09:38:58 14 right?

09:38:58 15 A. Yes.

09:39:02 16 Q. Paul, could you publish Plaintiffs' Exhibit 521,  
09:39:05 17 please? Mr. Steigerwalt, do you recognize Plaintiffs'  
09:39:27 18 Exhibit 521?

09:39:28 19 A. I do. I believe this is a document that was produced  
09:39:32 20 by, I believe, somebody at the Federal Highway  
09:39:36 21 Administration.

09:39:36 22 Q. Federal Highway Association. Does that sound right?

09:39:38 23 A. Yes.

09:39:38 24 Q. Okay. And did you rely on Plaintiffs' Exhibit 521 in  
09:39:44 25 forming your opinion?

09:39:45 1 A. I did. Yes.

09:39:49 2 Q. And is the Federal Highway Association -- or maybe  
09:39:52 3 it's the administration. I'm not -- administration. I'm  
09:40:05 4 sorry. Federal Highway Administration, are they  
09:40:08 5 considered a reliable authority in your field?

09:40:10 6 A. Absolutely, yes.

09:40:12 7 Q. And if you look at Plaintiffs' Exhibit 521, page 3,  
09:40:18 8 the second full paragraph, the Federal Highway  
09:40:23 9 Administration identifies a number of benefits to project  
09:40:28 10 bundling. Could you just identify them?

09:40:32 11 A. Sure. It's just like I had mentioned earlier.  
09:40:34 12 There's essentially the economies of scale that are  
09:40:37 13 created and efficiencies that are created, you know, by  
09:40:40 14 not having to go through those same processes again and  
09:40:43 15 again and again, you're able to essentially group those  
09:40:44 16 together, assumingly, just do it one time.

09:40:49 17 Q. And the Federal Highway Administration's publication  
09:40:58 18 involves transportation, infrastructure, you know, we're  
09:41:02 19 looking at the bottom there, bridge bundling projects. Do  
09:41:06 20 you believe its statements about the benefits of bundling  
09:41:09 21 apply to this situation?

09:41:10 22 A. Absolutely. I believe the reason it references it is  
09:41:14 23 you know Federal Highway Administration obviously has a  
09:41:17 24 lot of similar projects that they're executing, right? So  
09:41:19 25 to me, there's no difference with what TDCJ is trying to

09:41:22 1 implement in their air-conditioning rehab.

09:41:27 2 Q. Paul, could you put up Plaintiffs' Exhibit 504? Mr.

09:41:39 3 Steigerwalt, do you recognize -- I'll offer Plaintiffs'

09:41:43 4 Exhibit 504 into evidence.

09:41:45 5 THE COURT: Any objection?

09:41:47 6 MR. KERCHER: I'm sorry, your Honor. I'm not

09:41:48 7 sure we have an objection but if we could get a little --

09:41:52 8 thank you. No objection.

09:41:53 9 THE COURT: So admitted.

09:41:55 10 Q. (BY MR. OLSEN) Mr. Steigerwalt, do you recognize this

09:41:58 11 document?

09:41:58 12 A. I do. Yes.

09:41:59 13 Q. And what is it showing?

09:42:01 14 A. So this shows the breakdown essentially of the units

09:42:05 15 for TDCJ and I know, specifically, facilities with air

09:42:12 16 conditioning, I believe they're indicated on here. I

09:42:14 17 think some of the fast-track facilities are on there, the

09:42:16 18 system 1 facilities, your thousand-bed protocols, your

09:42:20 19 2215 bed protocols.

09:42:23 20 Q. Prototypes --

09:42:24 21 A. Prototype, I'm sorry.

09:42:25 22 Q. Okay. Do you believe that TDCJ the would save time

09:42:30 23 and expense, administrative burden bundling these projects

09:42:34 24 into one contract?

09:42:35 25 A. I do. So what you're looking at, again, is there's

09:42:42 1 similar design -- similar existing designs to a lot of  
09:42:45 2 these and I know the system ls may be a different animal  
09:42:48 3 because they're older. They're from, you know, older than  
09:42:52 4 1950. But definitely looking at your thousand-bed  
09:42:55 5 prototypes, your 2250 bed prototypes, there's benefit to  
09:43:01 6 bundling these through just their existing design alone.

09:43:04 7 Q. And, Paul, could you put up Plaintiffs' Exhibit 310?  
09:43:16 8 What is this document, Mr. Steigerwalt?

09:43:18 9 A. That is the -- obviously, the state of Texas, but I  
09:43:22 10 believe it indicates where the prisons are located for  
09:43:27 11 TDCJ.

09:43:27 12 Q. And do you believe that TDCJ would benefit from a  
09:43:35 13 bundling approach that took into account its own regional  
09:43:39 14 organization?

09:43:41 15 A. I do. So TDCJ's already broken out into six separate  
09:43:46 16 regions and from my perspective, there's already  
09:43:52 17 well-established regions, I guess, well-established, you  
09:43:57 18 know, subset of the projects that you could really start  
09:44:00 19 from.

09:44:01 20 Q. I offer Plaintiffs' Exhibit 310.

09:44:05 21 MR. KERCHER: No objection.

09:44:06 22 THE COURT: So admitted.

09:44:07 23 Q. (BY MR. OLSEN) In your experience, does bundling of  
09:44:14 24 projects, does that have benefits in terms of the  
09:44:21 25 contractor pool that it attracts?

09:44:24 1 A. It does. So in this case, you know, if you bundled  
09:44:28 2 projects together, you assumingly get larger contract  
09:44:32 3 values. And so, you just assumingly get larger  
09:44:36 4 contractors, you would get more interested in some of  
09:44:41 5 these projects.

09:44:42 6 Q. And, Paul, could you put up Plaintiffs' Exhibit 559?  
09:44:50 7 Mr. Steigerwalt, do you recognize this document?

09:44:52 8 A. I do. Yes.

09:44:53 9 Q. And what is it?

09:44:54 10 A. So my understanding is this is a document from HTX  
09:44:58 11 Industries, one of the contractors who's currently working  
09:45:01 12 with TDCJ that they submitted, I believe, to TDCJ  
09:45:06 13 suggesting that they bundle in this case three projects,  
09:45:09 14 Hightower, Boyd and Stevenson, into one combined project.  
09:45:15 15 And then, it goes on to essentially outline some of the  
09:45:22 16 efficiencies and pros for doing so.

09:45:26 17 Q. And, Paul, could you go to page 3, please? And am I  
09:45:37 18 right, Mr. Steigerwalt, that this reflects that HTX was  
09:45:40 19 offering a one-and-a-half-million-dollar discount across  
09:45:43 20 the three projects?

09:45:45 21 A. That's what it states there, yes.

09:45:47 22 Q. And did HTX explain why they were offering that  
09:45:52 23 discount?

09:45:53 24 A. They did. They outlined them in their bullets.

09:45:57 25 MR. KERCHER: Objection, your Honor. I don't

09:45:59 1 believe this document is in evidence and if it's not, I  
09:46:01 2 believe it's hearsay.

09:46:02 3 MR. OLSEN: I agree. He's entitled to rely on  
09:46:04 4 hearsay in forming his opinions.

09:46:06 5 Q. (BY MR. OLSEN) I can ask him, did you rely on this  
09:46:08 6 document in forming your opinions?

09:46:09 7 A. I did, yes.

09:46:11 8 MR. KERCHER: But he's not allowed to read that  
09:46:13 9 hearsay into the record. He can talk about what he  
09:46:15 10 learned and how he relied on it. But reading it into the  
09:46:19 11 record -- other than I understand he hasn't offered it but  
09:46:25 12 that would be hearsay and inadmissible.

09:46:26 13 MR. OLSEN: I won't ask him to read anything into  
09:46:28 14 the record.

09:46:29 15 THE COURT: Okay.

09:46:29 16 Q. (BY MR. OLSEN) Mr. Steigerwalt, I don't want you to  
09:46:31 17 quote the letter. I just want you to essentially  
09:46:34 18 summarize what the benefits of bundling were that were  
09:46:37 19 identified in HTX's bid to TDCJ.

09:46:41 20 A. Sure. So this really relates to what we looked at  
09:46:44 21 from the Federal Highway Administration that outlined the  
09:46:47 22 economics to scale, the efficiencies in scheduling, the  
09:46:56 23 efficiencies to the owner in terms of managing one  
09:46:59 24 contract versus three contracts and, again, it's all  
09:47:03 25 outlined here.

09:47:05 1 Q. Paul, you can take that down.

09:47:09 2 One of the experts for the defense has said that  
09:47:15 3 if you bundle projects, you would have to wait until all  
09:47:19 4 of the projects in the bundle reached the design  
09:47:23 5 completion phase before you could proceed with  
09:47:29 6 construction on any of them. Do you agree with that?

09:47:31 7 A. No. That's the attractiveness of design build and  
09:47:37 8 being able to release packages early in the process. Like  
09:47:39 9 I mentioned earlier, releasing maybe a civil package for a  
09:47:43 10 project or electrical upgrade for a project, there's these  
09:47:46 11 fast-track approach utilized in a design build approach.

09:47:52 12 Q. I also I want to touch on the idea of a programmatic  
09:48:01 13 management office. Are you familiar with that as a  
09:48:05 14 project delivery solution generally?

09:48:08 15 A. So I believe what you're speaking to is a PMO,  
09:48:11 16 project management office. It's essentially a way for the  
09:48:17 17 owner to get a better grip, standardized processes, really  
09:48:22 18 get a hold of -- standardized processes incorporate  
09:48:28 19 lessons learned, but it's a subset of an organization that  
09:48:31 20 they would utilize to help manage this program. This is a  
09:48:36 21 program that we're dealing with. This isn't -- this is a  
09:48:39 22 program and so, I believe setting up a PMO would be  
09:48:42 23 extremely beneficial to TDCJ.

09:48:44 24 Q. And how would it benefit TDCJ, specifically, if it  
09:48:49 25 adopted a PMO?

09:48:51 1 A. So the attractiveness of a PMO is it standardizes  
09:48:58 2 processes. It helps you incorporate lessons learned. It  
09:49:01 3 really provides better oversight of your contractors. You  
09:49:06 4 know, it helps -- it does it utilizing less resources. To  
09:49:11 5 me, there's time and cost savings to TDCJ through  
09:49:13 6 implementation of that.

09:49:15 7 Q. And we've heard from the defense's experts that under  
09:49:23 8 design build, that it might sacrifice TDCJ's control over  
09:49:29 9 the designer or the construction firm which TDCJ needs to  
09:49:35 10 maintain for these facilities. Do you agree with that  
09:49:37 11 statement?

09:49:38 12 A. I don't believe they lose control if you change your  
09:49:42 13 delivery method. I believe there's contractual ways to  
09:49:45 14 establish your oversight as an owner regardless of the  
09:49:48 15 delivery method.

09:49:55 16 Q. Mr. Steigerwalt, just to sum up your opinions, you've  
09:50:01 17 identified, I believe, three principal solutions that TDCJ  
09:50:09 18 could employ; is that right?

09:50:11 19 A. I believe that's correct, yes.

09:50:12 20 Q. Adopting a design build delivery method?

09:50:15 21 A. That's correct.

09:50:16 22 Q. Bundling?

09:50:18 23 A. That's correct.

09:50:19 24 Q. And programmatic management office.

09:50:21 25 A. That is correct.



09:50:22 1 Q. Are any of those methods novel or untested in the  
09:50:27 2 construction industry?

09:50:28 3 A. Absolutely not. These are well-established,  
09:50:31 4 well-known, well-documented, well -- there's reports on  
09:50:35 5 everything on how to do these and how to execute these.  
09:50:39 6 These are well-known, established protocols.

09:50:41 7 Q. And in your professional opinion, do you believe that  
09:50:48 8 implementing those solutions could get TDCJ down from Mr.  
09:50:54 9 Cox's 36-to-51-month estimate to two to three years?

09:50:58 10 A. I do. I strongly believe there are numerous  
09:51:01 11 inefficiencies in their process and I believe -- I  
09:51:04 12 strongly believe that if you make these tweaks, these  
09:51:08 13 changes, these implementations, then that you could  
09:51:11 14 dramatically cut down at least the timeline with these  
09:51:14 15 construction projects without losing control, without  
09:51:16 16 having large -- without having impacts to cost or other  
09:51:19 17 variables. I strongly believe that those changes can be  
09:51:23 18 made and it could be made easily.

09:51:25 19 Q. I'll pass the witness, your Honor. Thank you.

09:51:28 20 THE COURT: Mr. Kercher.

09:51:39 21 CROSS-EXAMINATION

09:51:41 22 BY MR. KERCHER:

09:51:41 23 Q. Good morning, Mr. Steigerwalt.

09:51:42 24 A. Good morning.

09:51:43 25 Q. Did I say that right?

09:51:44 1 A. You did. Thank you.

09:51:45 2 Q. We've not met before. My name is Ryan Kercher. I

09:51:50 3 believe my colleague, Mr. Johnson, deposed you up in

09:51:54 4 Boston a few months ago; is that right?

09:51:56 5 A. That's correct. Yes.

09:51:57 6 Q. And as a curio of the record, it was like 15 degrees

09:52:01 7 outside as we were discussing air conditioning; is that

09:52:01 8 right?

09:52:04 9 A. It was very warm that day, yes.

09:52:06 10 Q. Very warm?

09:52:07 11 A. For a Boston perspective. I'm joking. Sorry.

09:52:11 12 Q. From a Texas perspective, 15 degrees sounds like

09:52:14 13 ice-skating weather.

09:52:16 14 A. Absolutely.

09:52:17 15 Q. Let me ask you about that. You've lived in Boston

09:52:21 16 for the last decade or so; is that right?

09:52:23 17 A. Approximately.

09:52:24 18 Q. Have you gone ice-skating on an ice-skating pond

09:52:28 19 while you've been up there in that cold weather?

09:52:30 20 A. I believe I've taken my kids ice-skating, yes.

09:52:33 21 Q. Have you ever heard what you're supposed to do in an

09:52:35 22 emergency if someone falls through the ice?

09:52:41 23 A. I don't know.

09:52:43 24 Q. You're supposed to run out there on that thin ice and

09:52:46 25 possibly fall through yourself?

09:52:48 1 A. I guess in that case, no.

09:52:49 2 Q. The first rule in any emergency is don't make things  
09:52:53 3 worse, right?

09:52:54 4 A. In your scenario, that seems correct, yes.

09:52:57 5 Q. I have another two metaphors on you don't throw water  
09:53:01 6 on a grease fire, for example?

09:53:02 7 A. I guess, yes.

09:53:04 8 Q. So if you're supposed to lie down on the ice and  
09:53:08 9 spread your weight out and move carefully towards the  
09:53:11 10 person who is in danger of hypothermia, that would  
09:53:16 11 probably be an agonizing but life-saving project. Do you  
09:53:20 12 supposed that's true?

09:53:21 13 A. I suppose your analysis is true.

09:53:28 14 Q. Let's talk a little bit about your analysis of  
09:53:31 15 funding and how that pertains to TDCJ's project in this  
09:53:35 16 case, okay?

09:53:36 17 A. Okay.

09:53:36 18 Q. You understand that TDCJ, at one time, submitted a  
09:53:41 19 four-phase construction plan to install HVAC units or HVAC  
09:53:46 20 to all of its units, and submitted that to the  
09:53:48 21 legislature, right?

09:53:48 22 A. That's my understanding.

09:53:49 23 Q. And you understand that TDCJ did that because the  
09:53:53 24 Texas House Appropriations Committee asked for a plan on  
09:53:56 25 how to get the whole job done, right?

09:53:58 1 A. That's also my understanding, yes.

09:54:00 2 Q. Now, I think we looked at as an exhibit, that  
09:54:03 3 four-phase plan during your direct examination. Do you  
09:54:05 4 recall that?

09:54:05 5 A. I do, yes.

09:54:06 6 Q. And your understanding is that was TDCJ's best  
09:54:13 7 projection at the time saying here, legislature, this is  
09:54:16 8 what we need for the whole project, right?

09:54:19 9 A. I assume so, yes.

09:54:20 10 Q. Do you know whether the Texas legislature adopted  
09:54:23 11 that four-phase plan?

09:54:26 12 A. I'm not sure.

09:54:27 13 Q. And this is not meant to be a memory test and Judge  
09:54:30 14 Pitman has seen that exhibit several times, but would you  
09:54:33 15 believe me if I say that the total projected amount cost  
09:54:36 16 for that four-phase plan was about \$1.1 billion?

09:54:40 17 A. I do recall that, yes.

09:54:42 18 Q. And the first phase was about \$225 million.

09:54:45 19 A. That's correct. Yes.

09:54:48 20 Q. And after seeing that \$1.1 billion projected cost to  
09:54:54 21 install HVAC across all of TDCJ's units, the legislature  
09:55:01 22 appropriated \$86 million for AC projects, right?

09:55:05 23 A. I understand that's correct. Yes.

09:55:07 24 Q. Do you know what TDCJ did with that \$86 million that  
09:55:12 25 was appropriated for AC installation?

09:55:15 1 A. I don't know the specifics around it, but I assume  
09:55:19 2 they utilized it.

09:55:19 3 Q. They didn't sit down in mud and say this isn't enough  
09:55:22 4 money. They took what they got and tried to install as  
09:55:24 5 much AC as they could, right?

09:55:26 6 A. Again, I don't know the specifics of every dollar  
09:55:29 7 spent, but I assume they tried to make an attempt at it.

09:55:31 8 Q. And in fact, your report reflects that even before  
09:55:34 9 that four-phase plan was submitted to the legislature,  
09:55:38 10 TDCJ dug around into the seat cushions and found  
09:55:41 11 15-and-a-half-million dollars and used that towards air  
09:55:44 12 conditioning in 21 separate buildings across 13 units;  
09:55:48 13 isn't that right?

09:55:48 14 A. I do recall that. Yes.

09:55:50 15 Q. On direct examination, counsel asked you what  
09:55:58 16 happened in the following biennium in reference to roughly  
09:56:01 17 \$300 million, \$330 million in phase two of that four-phase  
09:56:06 18 plan. Do you remember that?

09:56:07 19 A. I do.

09:56:07 20 Q. And he asked you, well, how much money did TDCJ ask  
09:56:11 21 for from the legislature at that time? Was it the full  
09:56:14 22 330 million necessary to fund phase two, right?

09:56:17 23 A. I recall that, yes.

09:56:18 24 Q. And of course, TDCJ did not ask for the money  
09:56:21 25 necessary to fund phase two because they hadn't gotten the

09:56:24 1 money to fund phase one yet, right?

09:56:28 2 A. I don't know the specifics of that but I would assume  
09:56:30 3 so. I don't know.

09:56:32 4 Q. But you do know that they asked for and were awarded  
09:56:35 5 \$118 million for HVAC installation in their units, right?

09:56:39 6 A. For phase two, yes, I do recall that.

09:56:42 7 Q. And again, well, let me ask you. Is that for phase  
09:56:45 8 two or did the legislature adopt phase two?

09:56:49 9 A. I don't know the specifics.

09:56:52 10 Q. I'm not trying to make you an appropriations expert,  
09:56:55 11 but I the want the record to be clear in the most recent  
09:56:58 12 biennium, TDCJ asked for and received \$118 million for AC  
09:57:03 13 installation, right?

09:57:04 14 A. That's my understanding.

09:57:04 15 Q. And as with the \$86 million that they were  
09:57:08 16 appropriated in the previous biennium where, as far as you  
09:57:10 17 know, TDCJ had put that \$118 million to good use in  
09:57:15 18 attempting to install AC, true?

09:57:17 19 A. As far as I know.

09:57:23 20 Q. And again, not trying to turn you into an  
09:57:31 21 appropriations expert, but since we agree that budget will  
09:57:34 22 impact how TDCJ does this project, you understand that if  
09:57:39 23 TDCJ does not obligate funds in a biennium, if they don't  
09:57:42 24 get them under contract, they have to return those funds,  
09:57:45 25 right?

09:57:45 1 A. That's how I understand it, yes.

09:57:47 2 Q. At least in part because we understand that together,  
09:57:49 3 you and I agree that asking for funds that TDCJ thinks  
09:57:52 4 that they can obligate in a biennium is a reasonable  
09:57:56 5 stepped approach to installing air conditioning, right?

09:57:59 6 A. I assume so.

09:58:00 7 Q. Let's turn now more to some of the issues that are a  
09:58:14 8 little more in your bailiwick. You were looking for ways  
09:58:17 9 to improve efficiency in TDCJ's construction and design  
09:58:23 10 process. Is that sort of a fair summary?

09:58:25 11 A. Even before that we looked at the process, we looked  
09:58:29 12 and identified inefficiencies and we looked at ways to  
09:58:32 13 mitigate those inefficiencies.

09:58:33 14 Q. Sometimes your report refers to those inefficiencies  
09:58:37 15 as bottlenecks, right?

09:58:39 16 A. Yes.

09:58:39 17 Q. As a state employee, I look for bottlenecks, too, so  
09:58:42 18 that's a word that stood out to me in your reports. One  
09:58:46 19 of the bottlenecks that you identify is TDCJ's earlier  
09:58:51 20 reliance on inhouse personnel for design, right?

09:58:53 21 A. That is correct.

09:58:55 22 Q. You point out, though, that TDCJ relying on inhouse  
09:58:59 23 personnel for design work may have created efficiencies  
09:59:02 24 early on because of inhouse personnel's familiarity with  
09:59:06 25 TDCJ units, fair?

09:59:07 1 A. That's fair mainly because the projects as we  
09:59:09 2 discussed earlier were roughly smaller in scope and scale  
09:59:13 3 and size.

09:59:14 4 Q. And I'm glad that you used the word "scale" because  
09:59:17 5 as TDCJ gains experience in designs with how to implement  
09:59:22 6 these HVAC units across their units, that will allow them  
09:59:27 7 to scale up and move more quickly in the installation of  
09:59:32 8 air conditioning, right?

09:59:33 9 A. Generally speaking, yes.

09:59:34 10 Q. And you're not saying, of course, that TDCJ's inhouse  
09:59:43 11 personnel were incapable or not up to the task of doing  
09:59:47 12 this design work, particularly early on when the scale was  
09:59:51 13 small, fair?

09:59:52 14 A. Not by any means, no.

09:59:54 15 Q. And you agree that TDCJ -- strike that. And as TDCJ  
10:00:02 16 continues to scale up their design and construction work  
10:00:05 17 for these HVAC projects, you know that they are engaging  
10:00:09 18 with outside design firms, right?

10:00:11 19 A. Outside design, yes.

10:00:12 20 Q. TDCJ is awarding major work requests to larger,  
10:00:17 21 well-qualified firms in the design industry, true?

10:00:19 22 A. That's my understanding, yes.

10:00:20 23 Q. And that's a positive trend in your view?

10:00:23 24 A. That is a positive trend, yes.

10:00:24 25 Q. Another bottleneck that you were concerned about in



10:00:29 1 your report was whether TDCJ might be artificially  
10:00:33 2 limiting the pool of contractors with whom it could work  
10:00:38 3 in this HVAC project, right?

10:00:39 4 A. That's correct.

10:00:40 5 Q. But you have no reason to believe that TDCJ is  
10:00:43 6 restricting bids only to in Texas firms, right?

10:00:46 7 A. That's correct.

10:00:48 8 Q. And you don't know whether TDCJ regularly works with  
10:00:51 9 national design firms, true?

10:00:55 10 A. Can you ask the question again?

10:00:56 11 Q. You just don't know whether TDCJ regularly works with  
10:01:01 12 nationwide or out-of-state design firms?

10:01:03 13 A. Other than the documents that I reviewed and the  
10:01:05 14 contracts I reviewed on the state website, I have no other  
10:01:10 15 reason to believe one way or the other.

10:01:11 16 Q. You are familiar, though, with some of the ways that  
10:01:14 17 TDCJ is trying to attract bids whether from in state or  
10:01:19 18 out of state contractors, right?

10:01:21 19 A. I do believe they're publishing bids online such as,  
10:01:24 20 I believe, the Dodge website or source book, among others.

10:01:30 21 Q. So you've given a couple of names there, the Court  
10:01:33 22 may not be familiar with. What you're talking about are  
10:01:35 23 third-party websites where folks like TDCJ owners can post  
10:01:40 24 for bids and then contractors can go to those websites.  
10:01:44 25 It's almost like a job posting, right? It's like Monster

10:01:47 1 where contractors can go to the website, see who's asking  
10:01:50 2 for bids and see whether or not that might be a good  
10:01:52 3 match, right?

10:01:53 4 A. That's correct.

10:01:53 5 Q. In fact, just randomly, you saw a Facebook post where  
10:02:01 6 TDCJ was soliciting bids, right?

10:02:04 7 A. I did, yes.

10:02:05 8 Q. Is that because you were scouring the internet and  
10:02:08 9 social media, the TikToks and all that, just to see  
10:02:11 10 whether TDCJ was utilizing the internet or did you just  
10:02:14 11 happen across that?

10:02:15 12 A. I don't remember how that turned up, but I found it  
10:02:19 13 posted on Facebook of all places.

10:02:22 14 Q. The algorithm may have known what you were  
10:02:25 15 researching on.

10:02:29 16 You've also discussed concerns about  
10:02:32 17 inefficiencies and different kinds of procurement  
10:02:36 18 processes available to TDCJ, right?

10:02:38 19 A. That's correct, yes.

10:02:40 20 Q. And we've talked extensively -- you've talked  
10:02:42 21 extensively on direct about the difference between design  
10:02:45 22 bid-build and design build, right?

10:02:47 23 A. That's correct.

10:02:48 24 Q. And design bid-build, there are two procurement  
10:02:51 25 processes. One each for design and construction, right?

10:02:55 1 A. That's factual, yes.

10:02:57 2 Q. Importantly, and I think it's in your rebuttal report  
10:03:04 3 if you need to see it, let me know, but you and your  
10:03:07 4 colleagues opine, quote, we are not asserting that design  
10:03:15 5 bid-build is an approach -- is a failed delivery method or  
10:03:20 6 that it is unsuitable for TDCJ to utilize as it relates to  
10:03:25 7 air conditioning at their facilities, end quote. Did I  
10:03:28 8 get that right?

10:03:29 9 A. You did. Yes.

10:03:30 10 Q. In design build, those two procurement processes, one  
10:03:34 11 for design and one for construction, are combined, right?

10:03:37 12 A. That's correct.

10:03:39 13 Q. Sometimes combining those two procurement processes  
10:03:44 14 can result in or it can require a longer design phase.  
10:03:47 15 Fair to say?

10:03:49 16 A. A longer -- I don't -- can you ask that again?

10:03:53 17 Q. Let me try it another way. Let me try the inverse.  
10:03:56 18 The initial phase for design bid-build can be shorter than  
10:04:01 19 for design build, true?

10:04:03 20 A. Initial phase being which phase?

10:04:05 21 Q. The earliest design phase.

10:04:08 22 A. That's a very generic statement. It depends on  
10:04:14 23 project by project.

10:04:15 24 Q. It's a project-by-project determination, right?

10:04:17 25 A. Sure.

10:04:17 1 Q. It's dangerous to speak in generalities about whether  
10:04:22 2 one procurement method is appropriate for a project versus  
10:04:25 3 another, true?

10:04:26 4 A. Well, in your case, the way you suggested one could  
10:04:29 5 be faster, yes.

10:04:37 6 Q. Design build requires preliminary designs or what I  
10:04:41 7 think you and Mr. Johnson wound up talking about in your  
10:04:43 8 deposition as design concepts. Do you recall that?

10:04:47 9 A. I do. Yes.

10:04:48 10 Q. Now, when we spoke to you at that deposition, you  
10:04:52 11 stopped short of calling it preliminary engineering, but  
10:04:56 12 you need substantial and robust scoping documents before  
10:04:59 13 you can move forward in design build, fair?

10:05:02 14 A. I wouldn't call them substantial. You need scoping  
10:05:05 15 documents that are fairly preliminary to help guide the  
10:05:09 16 designers and architects on what they're tasked to do.

10:05:12 17 Q. You'd expect TDCJ would need to engage a design firm  
10:05:16 18 in order to put together those initial scoping documents?

10:05:18 19 A. I would assume so, yes.

10:05:20 20 Q. And that design, that conception design work is done  
10:05:25 21 as part of putting together the RFP to get the design  
10:05:30 22 build contractor-designer, right?

10:05:32 23 A. That is correct.

10:05:33 24 Q. This design concept, this preliminary scoping work,  
10:05:41 25 that's also necessary to bundle projects, right?

10:05:46 1 A. Well, if you were going to utilize design build but  
10:05:48 2 yes.

10:05:49 3 Q. You've gotta think ahead about how different sites,  
10:05:52 4 different projects might be useful in order to scale  
10:05:55 5 efficiencies, true?

10:05:55 6 A. That's true.

10:05:56 7 Q. In fact, you talked on direct about how bundling  
10:06:00 8 takes advantage of economies of scale, right?

10:06:03 9 A. That is absolutely correct.

10:06:05 10 Q. And again, I'm glad that you talked about scaling.  
10:06:09 11 As TDCJ scales up, having learned from and approved  
10:06:16 12 designs and learned from previous installation projects,  
10:06:20 13 it certainly makes sense then as they scale up to utilize  
10:06:23 14 bundling, right?

10:06:25 15 A. Can you ask that again? I'm sorry.

10:06:28 16 Q. TDCJ has already installed some air conditioning in  
10:06:34 17 some of its units, right?

10:06:36 18 A. Correct.

10:06:36 19 Q. And so, from that, they will have gained some owner  
10:06:39 20 experience, right?

10:06:40 21 A. Assuming, yeah.

10:06:41 22 Q. And they will also have gained some design  
10:06:44 23 experience, right?

10:06:45 24 A. Correct.

10:06:45 25 Q. And as they gain that design and construction

10:06:49 1 experience, that will allow them to scale up, right?

10:06:53 2 A. Assumingly, yes.

10:06:54 3 Q. And scaling up is a good time to start utilizing  
10:07:00 4 bundling, now that they have those designs and that  
10:07:02 5 experience, right?

10:07:03 6 A. I would think so, yes.

10:07:07 7 Q. And as TDCJ has kept the design work inhouse in these  
10:07:12 8 early HVAC installation phases that work, I think you  
10:07:16 9 talked about on direct control, among other reasons, they  
10:07:19 10 have a sort of a centralized brain of experience inhouse  
10:07:24 11 about how to handle HVAC installation, right?

10:07:28 12 A. I would assume so.

10:07:29 13 Q. Not unlike what you call a PMO?

10:07:32 14 A. Not unlike a PMO, can you explain?

10:07:34 15 Q. Well, what I understood you to say is that if you  
10:07:37 16 have a PMO, you're sort of putting in another layer in the  
10:07:42 17 org chart or for the construction where now you have --  
10:07:48 18 where you put a new layer in your org chart, now you sort  
10:07:52 19 of have an office of experienced personnel who were in  
10:07:55 20 charge of managing the construction from the owner's  
10:07:58 21 perspective; is that right?

10:07:59 22 A. That's correct.

10:07:59 23 Q. And if TDCJ is using inhouse personnel as a part of  
10:08:02 24 the design and who are helping keep track of these earlier  
10:08:07 25 HVAC installation, that may serve as a similar role as a

10:08:11 1 PMO, fair to say?

10:08:12 2 A. As it relates to engineering, you know, you look at a  
10:08:16 3 PMO, it's not just an engineering part of it. It really  
10:08:19 4 helps establish a strategy between how you're going to  
10:08:22 5 execute the entire program, again, not just with  
10:08:24 6 engineering but with also construction, incorporating  
10:08:27 7 lessons learned, budgeting, cost control, scheduling. A  
10:08:31 8 PMO is a much larger -- not larger but it does a lot more  
10:08:38 9 than just having inhouse experience, designers and  
10:08:40 10 engineers.

10:08:41 11 Q. We agree, though, don't we, that TDCJ's own phased  
10:08:46 12 approaches whether it's four phase or the later three  
10:08:51 13 phase anticipates scaling as much as the scope of the  
10:08:54 14 later phases is larger for construction and design.

10:08:58 15 A. It does in terms of project -- construction cost and  
10:09:02 16 scale, TDCJ's anticipating scaling up somehow with their  
10:09:06 17 approach, yes.

10:09:09 18 Q. Now, design bid-build has historically been  
10:09:13 19 considered sort of a standard procurement or design  
10:09:18 20 method, right?

10:09:19 21 A. It's known as a traditional delivery method, yes.

10:09:23 22 Q. Over the last 10 years or so, there has been  
10:09:27 23 movement, though, away from design bid-build towards CMAR  
10:09:32 24 and design build, right?

10:09:33 25 A. Absolutely, yes.

10:09:33 1 Q. It doesn't mean that everybody is, all of a sudden,  
10:09:35 2 not using design bid-build, but there's a trend away from  
10:09:41 3 it, fair?

10:09:41 4 A. That is fair to say.

10:09:42 5 Q. An design bid-build is still appropriate today for  
10:09:44 6 some kinds of projects, true?

10:09:46 7 A. For some kind of projects, yes, it's absolutely  
10:09:48 8 suitable.

10:09:49 9 Q. I can't recall whether you got into this on direct.  
10:10:02 10 You're aware, aren't you, that TDCJ is as it's scaling up  
10:10:07 11 moving towards CMAR as a delivery method?

10:10:09 12 A. I believe Mr. Hudson mentioned CMAR in his  
10:10:15 13 deposition, but I have seen no evidence that they're  
10:10:19 14 actually executing or implementing on changing that.

10:10:23 15 Q. Plaintiffs put up a document yesterday. I don't  
10:10:25 16 remember the exhibit number, but it had the word CMAR all  
10:10:28 17 over it. If there's testimony in this trial or documents  
10:10:31 18 in this trial that demonstrate TDCJ is beginning to  
10:10:34 19 utilize CMAR, you don't disagree with that, right?

10:10:37 20 A. I don't disagree with their approach of utilizing  
10:10:40 21 CMAR.

10:10:41 22 Q. That they are utilizing it?

10:10:42 23 A. I have no opinion. Again, from the documentation  
10:10:45 24 that I've seen other than Mr. Hudson's one little blip  
10:10:48 25 about they're planning on using CMAR, I've seen no



10:10:51 1 evidence of it.

10:10:52 2 Q. And the documents that you're talking about are  
10:10:55 3 documents that were provided to you by counsel, true?

10:10:57 4 A. That is correct.

10:11:02 5 Q. Let me ask you this. If it's true that TDCJ is  
10:11:06 6 moving towards CMAR as it scales up, you would consider  
10:11:11 7 that to be a positive development in terms of the  
10:11:13 8 efficiency with which additional AC units can be  
10:11:16 9 installed?

10:11:16 10 A. That is a step forward in the right direction.

10:11:22 11 Q. When you advise clients on including a procurement  
10:11:26 12 method, you're going to consider a variety of factors,  
10:11:28 13 right?

10:11:28 14 A. That's correct.

10:11:28 15 Q. You consider, among other things, possibly, the  
10:11:31 16 owner's needs, right?

10:11:33 17 A. Absolutely. That's one of them.

10:11:35 18 Q. You'll consider timelines and scheduling, right?

10:11:37 19 A. Absolutely.

10:11:38 20 Q. But you'll also have to consider budget and funding?

10:11:40 21 A. That's true. Yes.

10:11:42 22 Q. And sometimes budget and funding and scheduling go  
10:11:45 23 together, right?

10:11:46 24 A. Sometimes they do.

10:11:49 25 Q. I think we've said before, the right procurement

10:11:52 1 method is a case-by-case determination, right?

10:11:54 2 A. That's correct.

10:11:56 3 Q. I think you talked about with Mr. Johnson at your

10:11:59 4 deposition that part of choosing the right procurement

10:12:04 5 method turns on what the metric for success is that you're

10:12:09 6 evaluating, right?

10:12:09 7 A. For the owner, right, it's their project, what's

10:12:13 8 their driving factor.

10:12:14 9 Q. And we talked about the urgency -- I think you talked

10:12:17 10 about on direct the urgency of this HVAC installation

10:12:21 11 project, right?

10:12:22 12 A. Hundred percent. Yes.

10:12:22 13 Q. Your understanding is that HVAC and installation in

10:12:26 14 TDCJ facilities may be a life-or-death matter?

10:12:29 15 A. That is exactly what I understand, yes.

10:12:31 16 Q. You understand also, though, that quality assurance

10:12:35 17 and durability may also be life-or-death matters if AC is

10:12:41 18 going to save lives in prison.

10:12:43 19 A. That's true. Yes.

10:12:45 20 Q. If plaintiffs in this case are right and HVAC

10:12:50 21 installation is a life-or-death project, installing HVAC

10:12:53 22 units that work will be important, true?

10:12:53 23 A. Can you --

10:12:58 24 Q. Sure. If plaintiffs in this case are right and HVAC

10:13:00 25 installation is a life-or-death project, installing HVAC

10:13:03 1 units that work will be important.

10:13:07 2 A. Obviously, yes.

10:13:10 3 Q. You talked on direct a little bit about trying to  
10:13:24 4 quantify how much more efficient design build might be in  
10:13:28 5 a given case over design bid-build. You looked at a  
10:13:31 6 document provided some percentages. Do you remember that?

10:13:34 7 A. I do, yes.

10:13:34 8 Q. And that document was, I think, from the Construction  
10:13:37 9 Institute? Is that your memory?

10:13:38 10 A. That's correct.

10:13:38 11 Q. You don't know whether the projects surveyed in that  
10:13:47 12 report from the construction institute include ones like  
10:13:51 13 TDCJ's HVAC installation project, fair?

10:13:54 14 A. I do know there was 212 projects. I don't know the  
10:13:57 15 exact scope of each and every one of the projects, no.

10:14:01 16 Q. I'm asking because as we've talked about, it's gotta  
10:14:05 17 be a case-by-case determination for which procurement  
10:14:09 18 method is appropriate, right?

10:14:11 19 A. That's right.

10:14:12 20 Q. Another way that you have opined that TDCJ might  
10:14:16 21 improve its efficiency is by addressing the liquidated  
10:14:20 22 damages provisions and its construction contracts. Do I  
10:14:24 23 have that right?

10:14:24 24 A. We did comment on that in our initial report, yes.

10:14:27 25 Q. Well, it sounds like you're not enthusiastic about

10:14:31 1 that. Are you backing off of that opinion?

10:14:33 2 A. Not really, no. No.

10:14:38 3 Q. Liquidated damages provisions are designed to

10:14:43 4 incentivize timely completion of a construction project.

10:14:46 5 A. That's correct.

10:14:47 6 Q. The idea is if you go over a day over, then, bam,

10:14:50 7 you're hit with a contractually determined amount often on

10:14:53 8 a per diem basis, right?

10:14:54 9 A. That's correct.

10:14:55 10 Q. In the case of TDCJ's contract, that per diem is

10:15:00 11 \$470, right?

10:15:01 12 A. That's correct.

10:15:02 13 Q. You would want for that to be higher in order to more

10:15:06 14 effectively incentivize contractual timeliness

10:15:09 15 requirements, fair?

10:15:09 16 A. On projects, yes.

10:15:11 17 Q. That experience and fairness is based on -- or that

10:15:15 18 opinion is based on your experience in the private sector,

10:15:18 19 fair?

10:15:18 20 A. That's fair.

10:15:19 21 Q. And you only reviewed the liquidated damages

10:15:23 22 provisions from TDCJ contracts for this case, right?

10:15:27 23 A. That is correct.

10:15:28 24 Q. You did not review liquidated damages provisions for

10:15:32 25 other state agencies in Texas for this case, right?

10:15:36 1 A. That is correct.

10:15:37 2 Q. And I know you're not a lawyer, but I want to ask in  
10:15:39 3 terms of your awareness when you're arriving at this  
10:15:42 4 opinion, did you know that Texas law forbids liquidated  
10:15:48 5 damages provisions in state agency contracts from being  
10:15:52 6 punitive?

10:15:52 7 A. I did not know at the time, but I do know now.

10:16:04 8 Q. There were some words that stood out to me in your  
10:16:07 9 rebuttal report and I didn't hear them repeated today on  
10:16:11 10 the stand, but we've heard them from plaintiffs' counsel,  
10:16:13 11 particularly in opening statements and I know that you  
10:16:15 12 weren't here for that.

10:16:17 13 But you critique TDCJ's experts in your rebuttal  
10:16:21 14 report by saying -- or you your critique is that, quote,  
10:16:27 15 in failing to suggest a single process improvement and the  
10:16:31 16 fact they are effectively endorsing a business-as-usual  
10:16:35 17 approach. Do you remember writing those words?

10:16:37 18 A. That sounds familiar.

10:16:38 19 Q. But we've talked about the positive trends TDCJ is  
10:16:41 20 employing in its HVAC installation, right?

10:16:44 21 A. We talked about how TDCJ has identified CMAR as an  
10:16:52 22 approach, but again, we haven't identified actual  
10:16:54 23 implementation of that if that's what you're getting to.

10:16:57 24 Q. In fairness, you have not identified that, right?

10:17:00 25 A. Correct.

10:17:00 1 Q. And you know the state's going to get to put on its  
10:17:03 2 witnesses, fair?

10:17:03 3 A. That's fair.

10:17:04 4 Q. We also talked about how it is now an appropriate  
10:17:08 5 time for TDCJ to move towards bundling as it is scaling  
10:17:11 6 up, right?

10:17:12 7 A. I believe so.

10:17:13 8 Q. And that scaling up is also appropriate and TDCJ has  
10:17:17 9 begun working with nationwide firms, true?

10:17:20 10 A. That's true.

10:17:21 11 Q. Ultimately, your conclusion on what could happen by  
10:17:32 12 implementing some of these improved efficiencies is that  
10:17:36 13 TDCJ's timeline for total installation could be 24 to 36  
10:17:40 14 months, right?

10:17:41 15 A. Utilizing the information that Mr. Cox had mentioned  
10:17:46 16 in his timeline and some poignant parts of the  
10:17:49 17 inefficiencies and mitigating for those, yes.

10:17:56 18 Q. And Mr. Cox's timeline is something like 36 to 51  
10:18:01 19 months. Is that your memory?

10:18:02 20 A. That's correct.

10:18:03 21 Q. Now, Mr. Johnson deposed you in this case and this is  
10:18:06 22 not the first case in which you've testified, right?

10:18:09 23 A. That is correct.

10:18:09 24 Q. You have been deposed before and then testified in  
10:18:11 25 trial before, right?

10:18:12 1 A. I have, yes.

10:18:13 2 Q. Are you familiar with the lawyer trick where they ask  
10:18:19 3 you a question as a hypothetical and they put all these  
10:18:22 4 pieces in there, say, look, in a perfect world, assuming  
10:18:25 5 you have everything you need, isn't this true, and you  
10:18:28 6 kind of have to answer the question, and then at trial,  
10:18:31 7 they take that answer as if it is the gospel truth,  
10:18:36 8 regardless of those contingencies?

10:18:40 9 A. I've been down that road before.

10:18:43 10 Q. But you've gotta answer the question that's asked,  
10:18:45 11 right?

10:18:46 12 A. Assumingly. Very generally speaking, yes.

10:18:52 13 Q. And you and I agreed that Mr. Cox's testimony about  
10:18:54 14 that 36-to-51 timeline was about what might happen in a  
10:18:59 15 perfect world?

10:19:00 16 A. I believe the question was asked if you had all the  
10:19:02 17 resources, how quickly could you do it.

10:19:05 18 Q. If he had all the funding and all the labor, right?

10:19:08 19 A. That was one -- part of the resources, yes.

10:19:10 20 Q. And you don't know whether TDCJ has all the funding,  
10:19:13 21 right?

10:19:14 22 A. That's correct.

10:19:15 23 Q. And you don't know whether they have control over  
10:19:18 24 getting all the funding, right?

10:19:21 25 A. I don't know the ins and outs of the process but

10:19:24 1 sure.

10:19:24 2 Q. You also don't know whether TDCJ has all of the labor  
10:19:28 3 it would need, right?

10:19:29 4 A. Labor for what?

10:19:31 5 Q. For design and construction.

10:19:33 6 A. That's where -- from my perspective, that's where  
10:19:36 7 third parties come into play.

10:19:37 8 Q. But third parties coming into play depends on  
10:19:42 9 availability, right?

10:19:43 10 A. Sure. But again, there's availability in the  
10:19:47 11 marketplace for something like this.

10:19:52 12 Q. You've described that 36-to-51-month hypothetical,  
10:19:59 13 perfect world, everything-you-need timeline provided by  
10:20:02 14 Mr. Cox as being a vital variable in direct testimony. Do  
10:20:09 15 you remember that?

10:20:09 16 A. I do. That was one of the variables in our equation,  
10:20:13 17 yes.

10:20:13 18 Q. You say it's a vital variable. It's sort of the  
10:20:17 19 keystone in the arch that you're building with this final  
10:20:20 20 timeline, right?

10:20:21 21 A. As relates to timelines, yes.

10:20:23 22 Q. If there are realities not in the perfect world but in  
10:20:26 23 the real world that we know would extend that  
10:20:30 24 36-to-51-month timeline from Mr. Cox, your 24-to-36  
10:20:34 25 timeline will also have to extend, fair?



10:20:37 1 A. Generally speaking, yes.

10:20:40 2 Q. Look, I'm not trying to put you in a box. It may  
10:20:44 3 well be the case you still believe that the suggestion  
10:20:47 4 you're making would still increase efficiency. But if  
10:20:50 5 we're talking about the reliability of that 24 to 36  
10:20:53 6 months, if the 36 to 51 months from Mr. Cox proves to be a  
10:20:58 7 perfect-world rather than a real-world solution, then 24  
10:21:02 8 and 36 months just may not be feasible, fair?

10:21:05 9 A. Fair, but again, taking into account the  
10:21:08 10 inefficiencies in the current process and there's ways to  
10:21:12 11 making those more efficient.

10:21:13 12 Q. And putting together your 24-to-36-month number, you  
10:21:25 13 did not analyze all the design and construction obstacles  
10:21:29 14 that TDCJ faces in its HVAC installation project, fair?

10:21:33 15 A. Again, we utilized Mr. Cox's timeline.

10:21:36 16 Q. So the answer to my question is you did not conduct  
10:21:39 17 an independent investigation of the design construction  
10:21:42 18 obstacles TDCJ faces, true?

10:21:45 19 A. We would be -- looked at everything that TDCJ  
10:21:49 20 provided to us through the production documents. We  
10:21:51 21 identified the inefficiencies. But if there's other  
10:21:54 22 things that you're hinting towards that weren't identified  
10:21:57 23 in our reports, then I guess that's true.

10:21:59 24 Q. Well, I'm just trying to figure out constituent  
10:22:03 25 pieces that you analyzed and I understand you were handed

10:22:07 1 documents by counsel and rather than going through each of  
10:22:09 2 those documents and saying, did you or didn't you, I'm  
10:22:13 3 going to categorize for efficiency sake. Let me ask you  
10:22:15 4 this.

10:22:16 5           You did not analyze maintenance requirements on  
10:22:19 6 AC systems that TDCJ is attempting to retrofit, true?

10:22:22 7 A. That is true.

10:22:23 8 Q. You did not analyze the durability of units for  
10:22:26 9 systems to be installed as a part of this HVAC project,  
10:22:30 10 true?

10:22:30 11 A. I did not, no.

10:22:31 12 Q. Nor did you analyze construction frequency or  
10:22:35 13 construction considerations, fair?

10:22:36 14 A. Construction sequencing, a little bit, but safety,  
10:22:38 15 not so much.

10:22:41 16 Q. Counsel spoke with you about a letter from a firm  
10:22:55 17 called HTX that was sent to TDCJ. Do you recall that?

10:23:00 18 A. I do, yes.

10:23:01 19 Q. You don't know why TDCJ rejected HTX's proposal,  
10:23:09 20 fair?

10:23:09 21 A. That is fair. I don't know why.

10:23:13 22 Q. You're not aware that HTX is currently doing other  
10:23:18 23 work for TDCJ right now?

10:23:18 24 A. I am aware of that, yes.

10:23:20 25 Q. Are you aware that HTX is experiencing financial

10:23:23 1 difficulties right now?

10:23:23 2 A. I'm not aware of that.

10:23:25 3 Q. Thank you very much for your time, sir. Your Honor,

10:23:27 4 I pass the witness.

10:23:28 5 THE COURT: Mr. Olson.

10:23:30 6 MR. OLSEN: Just brief re-direct, your Honor.

10:23:32 7 THE COURT: Sure.

10:23:33 8 RE-DIRECT EXAMINATION

10:23:34 9 BY MR. OLSEN:

10:23:34 10 Q. Mr. Steigerwalt, counsel asked you about the 87

10:23:59 11 million and the 118 million that TDCJ has been putting to

10:24:05 12 use for fiscal years '24-'25, '26-'27. Do you remember

10:24:11 13 that?

10:24:11 14 A. I do. Yes.

10:24:12 15 Q. In your opinion, would that money have been put to

10:24:16 16 better use had TDCJ adopted the solutions that you have

10:24:23 17 opined about today in your testimony?

10:24:26 18 A. I believe they would have if they could have -- yes.

10:24:31 19 Yes.

10:24:33 20 Q. On the issue of bids and Texas contractors versus

10:24:40 21 national contractors, TDCJ is not restricting bids to

10:24:47 22 Texas contractors, but is its piecemeal approach to these

10:24:53 23 projects, is that likely dampening demand for their

10:24:58 24 contracts?

10:24:59 25 A. So from my perspective, you know, what TDCJ is

10:25:02 1 putting on the market for construction are these \$5  
10:25:05 2 million, \$7 million, \$8 million construction contracts,  
10:25:08 3 there may be these larger contractors throughout the U.S.  
10:25:14 4 probably have those filters turned off, and so, they're  
10:25:16 5 not probably not even seeing some of those. Then getting  
10:25:19 6 to our original point in terms of bundling, if you bundle  
10:25:23 7 some of these or all of these, you get your larger  
10:25:25 8 contract values, which, again, attracts those larger  
10:25:30 9 players who have done this, you know, this type of work,  
10:25:33 10 this type of construction management in the past  
10:25:36 11 throughout the U.S.

10:25:37 12 Q. And counsel analogized to Monster, the job search  
10:25:43 13 site. If I'm looking for a job that pays over \$150,000, I  
10:25:49 14 could filter out jobs below that threshold, right?

10:25:53 15 A. I'm sorry. Yes.

10:25:53 16 Q. And does that hold true for construction bidding  
10:25:58 17 websites?

10:25:59 18 A. It can. Depending on the contractor it can, yes.

10:26:02 19 MR. KERCHER: For the record, your Honor, OAG is  
10:26:05 20 hiring.

10:26:07 21 (Laughter in the courtroom.)

10:26:07 22 MR. OLSEN: I appreciate that.

10:26:14 23 Q. (BY MR. OLSEN) Have you seen any evidence that TDCJ  
10:26:19 24 has used or considered bundling HVAC projects in the  
10:26:24 25 manner you proposed?

10:26:26 1 A. I have not, no.

10:26:27 2 Q. Did you identify any reason why that's the case?

10:26:31 3 A. I don't believe so.

10:26:33 4 Q. And have you seen any evidence that TDCJ has used or  
10:26:36 5 considered a programmatic management office for these  
10:26:41 6 projects in the manner you proposed?

10:26:43 7 A. I've seen no evidence of that.

10:26:45 8 Q. And did you see any reason why?

10:26:49 9 A. I have not, no.

10:26:50 10 Q. And have you seen any evidence that TDCJ has used or  
10:26:55 11 considered design build for these projects?

10:26:58 12 A. I have not seen design build being thrown around at  
10:27:01 13 all.

10:27:07 14 Q. Counsel indicated that, and I believe you agreed,  
10:27:13 15 that quality assurance and durability are important  
10:27:16 16 considerations in a construction project?

10:27:18 17 A. Hundred percent, yes.

10:27:20 18 Q. And that in this case that it's a life-or-death  
10:27:22 19 project.

10:27:23 20 A. Yes. Could be.

10:27:26 21 Q. Does the selection of a project delivery method, does  
10:27:31 22 that translate to lower quality or adverse durability  
10:27:38 23 outcomes?

10:27:39 24 A. From my perspective, it does not impact those.

10:27:41 25 Again, there's ways to absorb those characteristics into

10:27:47 1 contracts or however the owner decides to bridge that in.  
10:27:51 2 But there's ways to control that and I don't think it has  
10:27:54 3 an impact on the design -- the delivery method.  
10:27:57 4 Q. And just one last question. You remember the tricky  
10:28:04 5 lawyer question?  
10:28:05 6 A. I think so.  
10:28:09 7 Q. When you were at a deposition, regardless of the  
10:28:12 8 question, is it your duty to answer that question  
10:28:16 9 truthfully?  
10:28:16 10 A. Absolutely, yes.  
10:28:18 11 Q. And do you have any reason to doubt that Mr. Cox as  
10:28:21 12 the Director of Engineering for TDCJ answered counsel's  
10:28:28 13 questions that we heard this morning untruthfully?  
10:28:31 14 A. Again, he appears to be pretty tied into what's going  
10:28:35 15 on so I have no reason to doubt Mr. Cox with his timeline.  
10:28:40 16 Q. Nothing further.  
10:28:43 17 MR. KERCHER: No additional questions, your  
10:28:45 18 Honor.  
10:28:45 19 THE COURT: Thank you, Mr. Steigerwalt. You may  
10:28:46 20 step down. You're released to go.  
10:28:48 21 All right. We are really at the two-hour mark  
10:28:52 22 and so, this makes sense to maybe take our first 20-minute  
10:28:55 23 break. Now, I neglected to mention earlier, we're going  
10:28:58 24 to have a hard 5:00 stop time. I made a commitment to  
10:29:02 25 speak at the law school before we set this trial and so,

10:29:05 1 I've gotta get to the law school to -- over-the-average IQ  
10:29:12 2 there. So for just purposes if you could plan on 5:00  
10:29:19 3 stop time and we'll be in recess for 20 minutes.

10:30:41 4 (Recess.)

10:51:20 5 THE COURT: Your next witness?

10:51:23 6 MR. OLSEN: Your Honor, plaintiffs call Michael  
10:51:25 7 Barry.

10:51:45 8 THE COURT: Before you take a seat, could you  
10:51:48 9 raise your right hand to be sworn, please?

10:51:49 10 THE CLERK: You do solemnly swear or affirm that  
10:51:49 11 the testimony which you may give in the case now before  
10:51:49 12 the Court shall be the truth, the whole truth, and nothing  
10:51:53 13 but the truth?

10:51:53 14 THE WITNESS: Yes, I do.

10:51:55 15 THE COURT: Please be seated.

10:51:56 16 THE WITNESS: Thank you.

10:51:57 17 MICHAEL BARRY, called by the Plaintiff, duly sworn.

10:51:57 18 DIRECT EXAMINATION

10:51:58 19 BY MR. OLSEN:

10:51:58 20 Q. Morning, Dr. Bury. Can you hear me?

10:52:08 21 A. Good morning, Mr. Olsen. Can you hear me?

10:52:10 22 Q. Yes, I can. Could you say your name and where you  
10:52:14 23 work for the Court?

10:52:16 24 A. Sure. My name is Michael Barry. I am a Senior  
10:52:22 25 Managing Engineer At Exponent in our science practice and

10:52:28 1 we're based out of Massachusetts.

10:52:31 2 Q. Paul, could you put up Plaintiffs' Exhibit 416? Dr.  
10:52:38 3 Barry, is this a copy of your curriculum vitae that's on  
10:52:42 4 Exponent's website?

10:52:44 5 A. Yes, it is.

10:52:45 6 Q. And does it accurately describe your education, your  
10:52:50 7 professional experience, and your certifications in the  
10:52:53 8 field of engineering?

10:52:54 9 A. Yes, it does.

10:52:55 10 Q. Move to admit Plaintiffs' Exhibit 416.

10:52:59 11 MR. KERCHER: No objection.

10:52:59 12 THE COURT: So admitted.

10:53:01 13 Q. (BY MR. OLSEN) Could you describe your educational  
10:53:04 14 background, Dr. Barry?

10:53:05 15 A. Sure. I have a Ph.D. in Mechanical Engineering from  
10:53:13 16 MIT. I also have a Master's Degree in Mechanical  
10:53:16 17 Engineering from Rutgers University and a Bachelor's of  
10:53:20 18 Science Degree in Mechanical Engineering from Rutgers  
10:53:24 19 University.

10:53:25 20 Q. And Mr. Steigerwalt talked about civil engineering.  
10:53:29 21 You're mentioning mechanical engineering. What is  
10:53:31 22 mechanical engineering?

10:53:32 23 A. Mechanical engineering is a very broad field. I have  
10:53:39 24 to characterize it at a high level, it's the design and  
10:53:45 25 implementation of physical systems and the movement of



10:53:52 1 energy within those systems.

10:54:04 2 Q. Are you currently a licensed engineer?

10:54:06 3 A. Yes. I'm currently a Licensed Professional Engineer

10:54:11 4 in 16 states, including in Texas.

10:54:17 5 Q. And are you a member of any professional associations

10:54:22 6 in the field of engineering?

10:54:23 7 A. I'm a member of multiple professional associations.

10:54:27 8 I'm a member of the American Society of Mechanical

10:54:31 9 Engineers. The American Society of Heating, Refrigeration

10:54:34 10 and Air-Conditioning Engineers. That's ASHRAE. I'm a

10:54:38 11 member of the National Association of Fire Investigators,

10:54:42 12 the National Fire Protection Association, the Society of

10:54:47 13 Fire Protection Engineers, and ASTM International.

10:54:53 14 Q. And have you presented at engineering industry

10:54:57 15 association conferences?

10:54:59 16 A. I have presented at engineering association

10:55:02 17 conferences and also at ASHRAE conferences and ASHRAE is

10:55:09 18 the leading trade association for design professionals in

10:55:12 19 the HVAC space.

10:55:15 20 Q. Do you have professional experience designing HVAC

10:55:18 21 systems?

10:55:18 22 A. I do. Prior to my graduate studies, I worked as an

10:55:24 23 HVAC design engineer at Jaros, Baum and Bolles, which is a

10:55:30 24 premier engineering design firm located in New York, and

10:55:35 25 while I was there, my duties were typical of what you

10:55:38 1 expect of a design engineer and that was arranging  
10:55:41 2 equipment in mechanical rooms and laying out systems for  
10:55:46 3 duct work, laying out systems for piping, coordinating  
10:55:51 4 with the design trades. So coordinating with the  
10:55:53 5 electrical engineers and the structural engineers on the  
10:55:56 6 project, and in addition, reviewing equipment submittals  
10:56:00 7 and reviewing shop drawings and visiting sites as needed.

10:56:04 8 Q. And what types of buildings did you design HVAC  
10:56:10 9 systems for while you were at, is it, JBB?

10:56:14 10 A. Yes, Jaros, Baum and Booles, JB & B. I worked on  
10:56:20 11 large office building while I was there.

10:56:22 12 Q. At Exponent, does your work involve the design of  
10:56:27 13 HVAC systems?

10:56:28 14 A. My work at Exponent, a large portion of it does  
10:56:33 15 involve mechanical systems. I investigate -- broadly  
10:56:37 16 speaking, I investigate failures associated with  
10:56:40 17 mechanical equipment and systems. Those failures can be  
10:56:47 18 severe in nature so it can be looking at fires,  
10:56:52 19 explosions, water losses, carbon monoxide poisonings,  
10:56:57 20 things like that, that they originate in the operation of  
10:57:01 21 equipment or the systems the equipment are functioning in.

10:57:03 22 I also -- it might not be a severe failure like  
10:57:09 23 that. It could just be a performance issue and so, I  
10:57:12 24 provide engineering assistance on projects like that. And  
10:57:16 25 I also -- maybe there hasn't been a specific failure but

10:57:19 1 it's something a client is concerned about or has risk  
10:57:22 2 considerations, and I provide engineering assistance in  
10:57:25 3 those cases as well.

10:57:28 4 Q. Your Honor, plaintiffs ask that Dr. Barry be  
10:57:31 5 recognized as an expert in HVAC mechanical engineering.

10:57:34 6 MR. KERCHER: No objection.

10:57:36 7 THE COURT: So rendered.

10:57:39 8 Q. (BY MR. OLSEN) Dr. Barry, Mr. Steigerwalt, you work  
10:57:43 9 with him at Exponent; is that right?

10:57:45 10 A. Yes, that's correct.

10:57:46 11 Q. And you worked with him on this case in preparing  
10:57:49 12 opinions in this case; is that right?

10:57:51 13 A. That is correct.

10:57:52 14 Q. And he testified about the division of labor between  
10:57:56 15 the three of you and the scope of your work. How would  
10:58:00 16 you characterize your role in Exponent's work?

10:58:05 17 A. So my role was generally to provide an engineering  
10:58:10 18 perspective to the opinions. So in the first report,  
10:58:15 19 those were largely opinions that were carried by Mr.  
10:58:18 20 Steigerwalt. We did work on the report collaboratively.  
10:58:23 21 It's me, Mr. Steigerwalt and Mr. Ramey. I provided an  
10:58:27 22 engineering perspective to assist in those opinions that  
10:58:31 23 Mr. Steigerwalt was generally carrying.

10:58:34 24 My role -- that was in the first report. My role  
10:58:37 25 in the second report was generally similar except in that

10:58:42 1 case, we were also responding to experts that had been  
10:58:47 2 served by the defense. And so, I addressed the specific  
10:58:52 3 engineering opinions that were provided by those experts.

10:58:55 4 Q. And generally speaking, what documents and  
10:58:59 5 information did you consider in the course of your work?

10:59:03 6 A. From an engineering perspective, we considered the  
10:59:09 7 TDCJ design drawings. We reviewed the RFPs and bid  
10:59:15 8 solicitation documentation associated with various  
10:59:17 9 facilities. And we also looked at contractor schedules  
10:59:22 10 for some of the facilities that had been completed. In  
10:59:25 11 terms of litigation documentation, we reviewed  
10:59:29 12 depositions, including depositions from Bobby Lumpkin, Ron  
10:59:34 13 Hudson, Dale Cox and Bryan Collier. Oh, I'm sorry, and  
10:59:43 14 one other thing just in the course of preparing the  
10:59:47 15 report, as well, I generally, as I would in my practice,  
10:59:51 16 reviewed relevant engineering documentation such as ASHRAE  
10:59:55 17 handbooks that are relevant to the practice or NFPA codes  
11:00:00 18 or standards that would be relevant.

11:00:02 19 Q. And NFPA stands for what?

11:00:04 20 A. National Fire Protection Association.

11:00:10 21 Q. So in general, what is a mechanical engineer's role  
11:00:16 22 in AC retrofit for a facility?

11:00:19 23 A. Put simply, a mechanical engineer's role is to design  
11:00:24 24 the system.

11:00:24 25 Q. And how does the mechanical engineer go about

11:00:28 1 designing a system?

11:00:31 2 A. At a high level, there are a few steps. First, the  
11:00:36 3 mechanical engineer needs to establish some basis of  
11:00:40 4 design for the system and that process will involve input  
11:00:43 5 from the owner and an understanding of design parameters  
11:00:49 6 so you know what a successful installation is going to  
11:00:51 7 look like. As that's established and we're talking about  
11:00:55 8 existing facilities, the engineer's going to need -- going  
11:01:00 9 to conduct site surveys and rely on those surveys in  
11:01:04 10 conjunction with any existing as-built drawings that may  
11:01:07 11 be available to determine what the constraints are going  
11:01:11 12 to be within the system. You're designing into a building  
11:01:14 13 that already exists, you have to account for that existing  
11:01:18 14 infrastructure in terms of your design.

11:01:22 15 Next is essentially to design the system. So you  
11:01:25 16 have to -- you generally start with the highest-level  
11:01:30 17 consideration so how much cooling am I going to need to  
11:01:34 18 successfully cool this building, a building-wide level, it  
11:01:38 19 helps you size the system, how much cooling are you going  
11:01:41 20 to need. And then, you start thinking about which type of  
11:01:45 21 system you're going to use, how are we going to supply the  
11:01:48 22 cooling, and from there, you just continue to develop the  
11:01:51 23 design. You add additional details in terms of  
11:01:54 24 distribution, where are you setting the equipment, how are  
11:01:58 25 you getting the chilled water or the ductwork out to the

11:02:02 1 places that need the cooling.

11:02:05 2           Once the design has been completed and the owner  
11:02:09 3 approves, then that design is ready to be constructed.

11:02:14 4 Q.   And based on your review of the case materials, is  
11:02:19 5 the process you just described, is that substantially the  
11:02:23 6 same design process that TDCJ has been employing for AC  
11:02:29 7 retrofits?

11:02:29 8 A.   Yes.

11:02:32 9 Q.   And are you familiar with the project management  
11:02:37 10 method that TDCJ has been employing?

11:02:39 11 A.   Yes.

11:02:39 12 Q.   And what is it?

11:02:41 13 A.   Design bid-build.

11:02:43 14 Q.   Are you familiar with design bid-build as a project  
11:02:46 15 delivery method?

11:02:47 16 A.   Yes, I am.

11:02:49 17 Q.   Have you worked on projects in the past following the  
11:02:52 18 design bid-build method?

11:02:53 19 A.   Yes, I have.

11:02:55 20 Q.   And under that method when you're in the design phase  
11:02:59 21 as the designer going through the steps you just  
11:03:02 22 described, has the construction contractor been hired?

11:03:06 23 A.   No.

11:03:08 24 Q.   And when you are in the design phase, at what point  
11:03:13 25 does the engineer decide this is the HVAC system that I'm

11:03:19 1 going to use like in terms of I believe there's chilled  
11:03:22 2 water, direct expansion, that kind of thing?

11:03:26 3 A. Generally, that will be earlier in the design process  
11:03:28 4 because that will inform how you're going to distribute  
11:03:31 5 the cooling. So if you hadn't selected that, you're not  
11:03:34 6 going to be able to develop the design.

11:03:36 7 Q. And what are the big-ticket items in terms of  
11:03:39 8 equipment that go into an AC retrofit?

11:03:44 9 A. If you're talking about, say, that chilled water  
11:03:48 10 system, the chillers will be a big-ticket item. Depending  
11:03:52 11 how you're injecting the heat, the cooling towers could be  
11:03:57 12 a big-ticket item. It really depends on what you're going  
11:04:01 13 to procure. Some items are larger than others, depending  
11:04:07 14 on how you're going to use them in the system.

11:04:10 15 Q. And in addition to being known as big-ticket items,  
11:04:14 16 are those pieces of equipment also considered long-lead  
11:04:19 17 materials in your industry?

11:04:22 18 A. Those pieces of equipment can be long-lead-time  
11:04:26 19 items, yes.

11:04:26 20 Q. And under the design bid-build method when -- once  
11:04:32 21 the engineer decides what equipment to use, is that system  
11:04:38 22 -- are the long-lead materials purchased right away?

11:04:41 23 A. No, they're not purchased at that time.

11:04:46 24 Q. And under the design bid-build method, once the  
11:04:49 25 engineer completes the design and the owner approves it,

11:04:52 1 what happens next?

11:04:54 2 A. Well, at that point, the design is put out to bid and  
11:05:00 3 contractors will evaluate the design and estimate the  
11:05:04 4 scope of services that they would provide to build it and  
11:05:07 5 they provide that bid to the owner. The owner evaluates  
11:05:11 6 the bid and then, after evaluating it, they would award  
11:05:14 7 it.

11:05:14 8 Q. And then, once the contract is awarded, what is the  
11:05:20 9 engineer's role in the construction contract -- the  
11:05:24 10 construction process?

11:05:26 11 A. The engineer continues to support the construction  
11:05:29 12 process by communicating with the contractor to ensure  
11:05:34 13 that the contractor's final installation conforms to the  
11:05:39 14 engineer's design intent.

11:05:41 15 Q. What's been your experience in terms of the  
11:05:45 16 coordination between engineer and construction contractor  
11:05:50 17 under the design bid-build method?

11:05:53 18 A. In general, it's a system that works well. There is  
11:05:58 19 an established structure for how engineers and contractors  
11:06:04 20 communicate and how they resolve any issues regarding  
11:06:07 21 design and installation. But one perspective I had in  
11:06:14 22 investigating failures is that, occasionally, you can see  
11:06:16 23 in the communication process issues where there are  
11:06:22 24 miscommunication if something is dropped and that can lead  
11:06:27 25 to failure.



11:06:28 1 Q. I want to ask you a couple of questions about some of  
11:06:38 2 the defense -- the expert opinions offered by defense.

11:06:42 3 Are you familiar with the report issued by Mr. Brian  
11:06:47 4 Richards on defendant's behalf?

11:06:49 5 A. Yes, I have.

11:06:51 6 Q. One of his opinions is that an engineer needs to have  
11:06:55 7 experience with prison design to ensure the life safety  
11:07:00 8 components of the mechanical system and the safety of the  
11:07:03 9 prison occupants have been thoroughly investigated and  
11:07:06 10 engineered. Do you agree with Mr. Richards?

11:07:09 11 A. I disagree with that.

11:07:11 12 Q. But isn't experience necessary for an engineer?

11:07:17 13 A. Yes, engineering experience is necessary and that's  
11:07:21 14 part of the process of becoming a professional engineer,  
11:07:27 15 but the license of being a professional engineer is --  
11:07:33 16 it's signifying that you have established an understanding  
11:07:36 17 of the engineering process such that you can apply it to  
11:07:40 18 scenarios that you will encounter in the future, and part  
11:07:44 19 of that engineering process is reviewing the guidance and  
11:07:50 20 reference material and codes and standards that exist  
11:07:53 21 within the industry to help guide your design.

11:07:58 22 Q. And do you have personal experience, you know,  
11:08:04 23 relying on -- let me back up. Do you have personal  
11:08:07 24 experience with the industry developing codes and  
11:08:12 25 standards for an emerging engineering application?

11:08:17 1 A. Yes. I have experience in that process through my  
11:08:21 2 work at Exponent with respect to battery safety.

11:08:24 3 Q. Tell us a little bit about that.

11:08:26 4 A. Sure. So I have been working for the last 10 years  
11:08:45 5 extensively in the issue of battery energy storage systems  
11:08:50 6 safety with respect to lithium-ion batteries, which, in  
11:08:55 7 all likelihood, everyone in this room has heard at some  
11:08:58 8 point of a lithium ion battery going into thermal runaway  
11:09:03 9 failure, which is a process where due to a failure  
11:09:06 10 mechanism inside the cell, it emits a large amount of  
11:09:10 11 energy and, also, explosible gases and this, as you might  
11:09:15 12 imagine, is a large risk consideration for any field  
11:09:18 13 that's going to employ these batteries.

11:09:21 14 And so, I have direct experience via my  
11:09:25 15 engagements with battery manufacturers and my work with  
11:09:28 16 equipment manufacturers on assessing the risk and safety  
11:09:34 17 and hazard -- risks and safety hazards associated with  
11:09:39 18 this particular failure mode of these cells. And over the  
11:09:45 19 time that I've developed this specialized expertise, it's  
11:09:48 20 not my expertise that's relevant here. It's the way that  
11:09:51 21 that expertise is used within the broader engineering  
11:09:55 22 community.

11:09:57 23 So part of my work at Exponent is that I serve on  
11:10:00 24 standards committees that write codes and standards that  
11:10:04 25 are relied upon by others in the engineering industry in

1 their designs. And so, in this case, one of the  
2 committees that I'm on is UL Standard Technical Panel  
3 9940, which is the standard that oversees UL certification  
4 of large-scale energy storage systems.

5 So the process that we are going through there is  
6 to develop a set of standards that can employ more broadly  
7 in the industry for people that have not necessarily  
8 experienced that the application of an energy storage  
9 system. Energy storage systems can be installed in  
10 typical buildings. You could have one in a building just  
11 like this and because it's a typical building, that means  
12 that the engineers are going to design it, might not have  
13 had experience with it typically. It's a pretty new  
14 application. But if they're going to effectively design  
15 that system in a way that can be implemented safely, they  
16 need to rely on guidance from the industry to show them  
17 how to do it. And I've been part of the process of  
18 generating the reliance material that engineers would use  
19 in order to cite these sort of products.

20 So the analogue here is just that it is a known  
21 -- it's a known potential issue that an engineer could en  
22 counter something they haven't had direct experience with,  
23 but the engineering process is such that you are expected  
24 to review up-to-date guidance and industry standards and  
25 literature to establish how you can modify your design or

11:11:51 1 improve your design to install it in a safe and secure  
11:11:54 2 manner.

11:11:55 3 Q. And are there industry standards that apply to the  
11:12:02 4 installation of HVAC systems in prison facilities,  
11:12:06 5 specifically?

11:12:08 6 A. So in this particular case, there is the ASHRAE  
11:12:14 7 guidance and one of the references that I cite to in my  
11:12:18 8 report, in our report is the ASHRAE handbooks.

11:12:22 9 Q. And, Paul, could you put up Plaintiffs' Exhibit 314?  
11:12:33 10 Dr. Barry, is Exhibit 314 a copy of the ASHRAE handbook  
11:12:39 11 applicable to just these facilities?

11:12:44 12 A. Yes. This is the ASHRAE handbook on HVAC  
11:12:48 13 applications.

11:12:48 14 Q. And, Paul, go down to general system requirements and  
11:12:52 15 then, continue on to the next page and zoom out a little  
11:12:58 16 bit. Dr. Barry, we're not going to go through the ASHRAE  
11:13:09 17 handbook line-by-line, but in general, what considerations  
11:13:13 18 does the ASHRAE handbook for justice facilities account  
11:13:16 19 for?

11:13:18 20 A. So it mentions numerous considerations that are  
11:13:22 21 specific to justice facilities or, actually, in this case,  
11:13:26 22 to prison facilities, and those include considerations  
11:13:31 23 around security barriers, around the siting of equipment  
11:13:38 24 and keeping it outside the secure perimeter. It addresses  
11:13:43 25 inmate access to air devices. It also addresses the fact

11:13:47 1 that prisons are unique and that they are occupied 24/7  
11:13:52 2 and operating 24/7, and so, that presents constraints.  
11:13:56 3 And it also addresses issues related to smoke control in  
11:14:02 4 the event of an emergency and, specifically, in the  
11:14:04 5 context that you have occupants who are unable to leave  
11:14:12 6 the facility in the event of an emergency. So you have to  
11:14:15 7 address that in your smoke control systems.

11:14:17 8 Q. And could an engineer without prior prison experience  
11:14:27 9 refer to the ASHRAE handbook and apply their skills and  
11:14:32 10 their training to do an AC retrofit in a prison?

11:14:38 11 A. Yes, they could rely on this material to assist in  
11:14:41 12 their design.

11:14:43 13 Q. Does the ASHRAE handbook, in addition to setting  
11:14:45 14 forth its own guidance and standards, does it also refer  
11:14:50 15 to other industry publications that could be referred to?

11:14:57 16 A. It refers you to other sources. The section contains  
11:15:00 17 a bibliography with other sources, and in the body of that  
11:15:04 18 chapter, there are also other references to other ASHRAE  
11:15:11 19 standards.

11:15:11 20 Q. And is another resource for an engineer and owners  
11:15:22 21 design parameters or criteria?

11:15:24 22 A. Yes. So as I discussed earlier, the owner's input is  
11:15:30 23 important and to the extent there's a document that the  
11:15:34 24 owner has that can be relied on, that's a useful input for  
11:15:37 25 the designer.

11:15:38 1 Q. And does TDCJ have a design criteria manual that  
11:15:44 2 includes HVAC design requirements?

11:15:47 3 A. Yes, they do.

11:15:48 4 Q. And, Paul, could you put up Plaintiffs' Exhibit 487?  
11:16:01 5 And go down to the next page. Dr. Barry, do you recognize  
11:16:08 6 Plaintiffs' Exhibit 487 as, at least from the table of  
11:16:12 7 contents, the TDCJ Design Criteria Manual?

11:16:16 8 A. Yes, I do.

11:16:18 9 Q. I'd offer Plaintiffs' Exhibit 487 into evidence and  
11:16:25 10 this is the excerpt.

11:16:27 11 MR. KERCHER: No objection. But for clarity and  
11:16:30 12 for the record, the parties have conferred this is an  
11:16:32 13 excerpt of the manual. The full manual contains security  
11:16:37 14 concerns in terms of designs and specifications. But  
11:16:41 15 having conferred, I understand counsel's only introducing  
11:16:44 16 a limited portion that does not contain those.

11:16:48 17 MR. OLSEN: That's correct.

11:16:49 18 THE COURT: Thank you. So admitted.

11:16:51 19 Q. (BY MR. OLSEN) And, Paul, could you continue down to  
11:16:55 20 the HVAC design page?

11:17:01 21 Dr. Barry, in general, what parameters does the  
11:17:09 22 TDCJ Design Criteria Manual impose on the design of HVAC  
11:17:14 23 systems?

11:17:16 24 A. So it includes multiple parameters. On this page  
11:17:20 25 here, you can see indoor environmental requirements and in

11:17:26 1 that bullet point A, you'll notice that there is maximum  
11:17:31 2 indoor temperature of 78 degrees Farenheit that is  
11:17:36 3 referencing the ASHRAE summer comfort zone.

11:17:39 4 Q. And so, on that issue, that's for staff-only spaces  
11:17:46 5 and inmate program areas, right?

11:17:48 6 A. Correct. It does say it's provided for staff-only  
11:17:51 7 and inmate program areas.

11:17:52 8 Q. And what's the ASHRAE summer comfort zone?

11:17:57 9 A. ASHRAE publishes standards relating generally to  
11:18:02 10 thermal comfort. Put simply, this is just the range of  
11:18:07 11 temperature and humidity conditions that the majority of  
11:18:11 12 the population will be comfortable in under different  
11:18:14 13 conditions.

11:18:15 14 Q. And then, continuing on, there are -- on D, there are  
11:18:21 15 other requirements and they relate to humidity and  
11:18:27 16 temperature; is that right?

11:18:27 17 A. Yes. So you'll notice that from the previous  
11:18:30 18 requirement only mentioned the temperature. Here, this  
11:18:35 19 notes that there are areas that have special requirements  
11:18:37 20 and depending on the space, they may specify also a  
11:18:42 21 humidity requirement that they want to keep the humidity  
11:18:45 22 between certain levels.

11:18:47 23 Q. And then, continue down, Paul. What do the Design  
11:19:00 24 Criteria Manual, what does it have to say about  
11:19:02 25 ventilation for HVAC systems?

1 A. This section gives you guidance on various  
2 ventilation conditions. And ventilation, to be clear, in  
3 an HVAC context would be fresh air. So you have people  
4 occupying a space, they will build up contaminants indoor,  
5 indoor contaminants, including just carbon dioxide, and  
6 so, you need to constantly be providing some volume of  
7 fresh air volume into the space to maintain the quality of  
8 the indoor air.

9 So this is giving you different flow rates as a  
10 function of number of occupants to guide your design on  
11 how much fresh air you have to introduce into the space.

12 Q. And then, Paul, continue on to the next page, please.  
13 There's reference to smoke removal standards. Why -- you  
14 know, generally, why would there be smoke removal criteria  
15 in a manual like this?

16 A. So again, as I mentioned, smoke removal is an  
17 important consideration in this context. Well, actually,  
18 smoke control is an important consideration in any  
19 building and it's very common to have egress pass maintain  
20 clear of smoke via pressurization of the space. So you'll  
21 have fans that will pressurize, say, a stairwell that may  
22 be used in the event of an emergency. So smoke removal is  
23 an important consideration that an engineer would be aware  
24 of generally in the building context.

25 But specifically here, as I mentioned in the



11:20:39 1 prison context, when you have occupants who are unable to  
11:20:43 2 leave in the event of an emergency, you have to make sure  
11:20:46 3 that they are not going to be exposed to dangerous levels  
11:20:49 4 of smoke when there is that emergency. And so, the smoke  
11:20:53 5 removal here is acknowledging that issue and providing  
11:20:57 6 some guidance on how to execute that system.

11:21:01 7 Q. And so, an engineer who is hired for a design could  
11:21:07 8 rely on the TDCJ design criteria manual to understand the  
11:21:12 9 parameters of the design that TDCJ would like to --  
11:21:19 10 requires to be incorporated?

11:21:21 11 A. They could rely on it to some, extent, depending on  
11:21:23 12 the detail in there, though, they will likely have to seek  
11:21:27 13 guidance from other sources as well.

11:21:31 14 Q. Okay. Paul, you could take that down.

11:21:36 15 Mr. Richards also opines that designing an AC  
11:21:39 16 retrofit for a prison is a complicated process. Do you  
11:21:44 17 agree with that?

11:21:46 18 A. I would agree that there are complications that are  
11:21:50 19 added as a result of it being a prison retrofit process.  
11:21:54 20 I would agree with that.

11:21:55 21 Q. And what are some of those considerations?

11:22:02 22 A. Well, first of all, and this is actually not unique  
11:22:04 23 to it being a prison. If you have as I described earlier,  
11:22:07 24 if you have an existing facility, you have to understand  
11:22:10 25 what your constraints are because of that existing

11:22:13 1 facility because you're designing into an existing space.  
11:22:16 2 So that's a consideration just for retrofits generally.  
11:22:19 3 It's not specific to prisons.

11:22:22 4 In terms of specific issues with prisons, a few  
11:22:25 5 of them are the secure nature of the facility. So if  
11:22:32 6 you're an engineer who's designing it, need to do site  
11:22:36 7 surveys, you're going to have to coordinate access to the  
11:22:39 8 site. That's something that you're going to have to  
11:22:42 9 overcome. In addition, in your design, you're going to  
11:22:45 10 have to consider the siting of the equipment. You want  
11:22:48 11 your equipment to be -- and this is in accordance with the  
11:22:53 12 ASHRAE guidance, setting your equipment outside a secure  
11:22:58 13 perimeter can be beneficial both in the sense that it  
11:23:00 14 restricts access by inmates and, also, it allows easier  
11:23:04 15 access by those who need to service the equipment.

11:23:07 16 We've already discussed the smoke removal issues  
11:23:11 17 with respect to the prison so that's something you will  
11:23:14 18 have to consider in your design. And in addition with the  
11:23:21 19 ductwork systems that you have to run throughout the  
11:23:24 20 building, you're going to have to consider inmate access  
11:23:27 21 issues and make sure that those systems are not providing  
11:23:31 22 any opportunity for tampering.

11:23:34 23 Q. And did you factor those design considerations into  
11:23:40 24 Exponent's opinions?

11:23:41 25 A. Yes.

11:23:42 1 Q. And in your opinion, do those -- were those  
11:23:46 2 considerations, would you expect them to materially delay  
11:23:50 3 or hinder a design process for a prison AC retrofit?

11:23:55 4 A. Not substantially. The access issue is just  
11:23:59 5 something that you will have to handle. But again, this  
11:24:04 6 is an anticipated issue. It's known that you're going to  
11:24:08 7 have to deal with these access issues. And some of the  
11:24:12 8 other design considerations that I mentioned, again, those  
11:24:15 9 are referenced in the ASHRAE guidance. And so, this is  
11:24:19 10 something you would anticipate as part of the design  
11:24:22 11 process.

11:24:22 12 Q. In his report, Mr. Richards opines that chilled water  
11:24:27 13 systems are the most appropriate mechanical system type  
11:24:33 14 for large, multibuilding prison campuses and he emphasizes  
11:24:39 15 their superior reliability, maintainability, and then,  
11:24:44 16 also, as you discussed, the ability to maintain them  
11:24:46 17 outside a secure perimeter.

11:24:48 18 Do you agree with Mr. Richards' opinion on that  
11:24:51 19 issue?

11:24:52 20 A. I definitely agree that chilled water systems are  
11:24:56 21 robust, reliable pieces of equipment. And in terms of  
11:25:00 22 reliability, especially compared to a direct  
11:25:04 23 expansion-type system, I would agree that they are more  
11:25:07 24 reliable.

11:25:09 25 Q. And if chilled water systems are the most appropriate

11:25:13 1 system for TDCJ to use, would that simplify the design  
11:25:18 2 process for its large facilities?

11:25:22 3 A. It does provide some simplification because it's just  
11:25:26 4 one less consideration for the designer. If the owner  
11:25:29 5 knows up front that the system is going to be a chilled  
11:25:32 6 water system, there's no need for the designer to consider  
11:25:35 7 alternate systems.

11:25:36 8 Q. And in your opinion, are the prison-specific  
11:25:44 9 considerations, you know, the security considerations, and  
11:25:49 10 then, as well as the considerations identified by Mr.  
11:25:51 11 Richards, reliability, maintainability, durability, does  
11:25:56 12 that mean that design bid-build has to be used for the  
11:26:02 13 design of these retrofit projects?

11:26:07 14 A. As an engineer, all of those considerations are  
11:26:11 15 considerations that would be a part of your process. You  
11:26:16 16 would consider the functionality of the system. You want  
11:26:18 17 to make sure that you're conforming to owner requirements  
11:26:21 18 and you want to make sure your system is to code. And so,  
11:26:26 19 that process, as I see it, is agnostic to the delivery  
11:26:30 20 method. That's going to happen as an engineer regardless.

11:26:38 21 Q. From your perspective as a mechanical engineer, would  
11:26:42 22 the design process, would your approach to the design  
11:26:45 23 process, would that differ based on the project delivery  
11:26:50 24 method?

11:26:51 25 A. Again, any design process as an engineer would be

11:26:54 1 informed by creating a system that's going to work, that's  
11:27:00 2 going to conform to owner requirements, and is going to  
11:27:02 3 adhere to the relevant codes.

11:27:04 4 Q. I'll pass the witness. Thank you.

11:27:11 5 CROSS-EXAMINATION

11:27:11 6 BY MR. KERCHER:

11:27:17 7 Q. Good morning, Dr. Barry.

11:27:18 8 A. Good morning.

11:27:18 9 Q. My name is Ryan Kercher. I work for the Texas  
11:27:21 10 Attorney General's Office.

11:27:22 11 I understand that you are a PE, a professional  
11:27:27 12 engineer, right?

11:27:27 13 A. That is correct.

11:27:28 14 Q. Licensed in several states, including Texas, right?

11:27:31 15 A. That's correct.

11:27:32 16 Q. You have done no design work in Texas; is that true?

11:27:36 17 A. I have not performed design work in Texas.

11:27:38 18 Q. And you've never testified about what procurement  
11:27:42 19 method an owner should choose in a trial like this, right?

11:27:45 20 A. No, I have not.

11:27:46 21 Q. This case is also your first experience dealing with  
11:27:50 22 TDCJ as an agency. Do I have that right?

11:27:53 23 A. That is correct.

11:27:54 24 Q. And you testified on direct, you have some experience  
11:27:57 25 with HVAC design; is that right?

11:27:59 1 A. That's correct.

11:28:01 2 Q. But you've not done any of that work in the prison  
11:28:03 3 setting, true?

11:28:05 4 A. That is correct.

11:28:06 5 Q. You've never visited a TDCJ facility, right?

11:28:11 6 A. I have not.

11:28:12 7 Q. And the only review of designs for HVAC installation  
11:28:17 8 in TDCJ facilities you've done in this case was, in your  
11:28:21 9 words, cursory, fair?

11:28:23 10 A. That is correct.

11:28:29 11 Q. You talked on direct about your opinion on the  
11:28:37 12 necessity of experience for mechanical engineers designing  
11:28:43 13 HVAC systems, having done that in the prison context,  
11:28:46 14 right?

11:28:48 15 A. I'm sorry. I don't think that's --

11:28:50 16 Q. Was not my best question. Let me try again.

11:28:53 17 You have a disagreement with one of TDCJ's  
11:28:55 18 experts about the importance of having worked on HVAC  
11:28:59 19 installation in the prison context, true?

11:29:01 20 A. That is correct.

11:29:02 21 Q. To begin, you described in broad strokes on direct  
11:29:14 22 how to design an HVAC retrofit system, right?

11:29:19 23 A. Yes.

11:29:20 24 Q. And you agreed with Mr. Olsen that TDCJ is  
11:29:24 25 appropriately following broadly that design process, true?

11:29:27 1 A. They would be part of that design process. That's  
11:29:36 2 correct.

11:29:36 3 Q. And when it comes to the necessity or not of  
11:29:40 4 experience by design professionals in the prison context  
11:29:44 5 for HVAC retrofit, your view is that there is sufficient  
11:29:49 6 literature available to mechanical engineers to figure out  
11:29:51 7 how to do that HVAC design in the prison context; is that  
11:29:56 8 right?

11:29:56 9 A. There are sufficient materials for an engineer who's  
11:30:02 10 skilled as an engineer to gain the familiarity that they  
11:30:05 11 need to to address the design, yes.

11:30:08 12 Q. When you say an engineer who's skilled as an  
11:30:16 13 engineer, in my experience -- and I'm not a quick study,  
11:30:19 14 but we gain skills through practice. Do you agree with  
11:30:22 15 that?

11:30:24 16 A. Engineers gain skill through the engineering process,  
11:30:29 17 which yes, that does involve experience.

11:30:34 18 Q. Now, you became a professional engineer in 2015. Do  
11:30:38 19 I have that right?

11:30:39 20 A. I think that's correct.

11:30:42 21 Q. Is it fair to say you're better at your job now than  
11:30:45 22 you were in 2015?

11:30:47 23 A. Absolutely.

11:30:49 24 Q. Experience matters, fair?

11:30:51 25 A. Experience matters but it's a question of, again, the

11:30:56 1 engineering process. And I think what's important to note  
11:31:01 2 is that becoming a Licensed Professional Engineer is a  
11:31:07 3 process of assessing that person's qualifications or  
11:31:10 4 education, their experience, their ability to meet the  
11:31:12 5 standard of the tests that are administered, and that  
11:31:16 6 documents that they can perform the engineering process,  
11:31:19 7 which would include assessing scenarios where they might  
11:31:23 8 not have immediate direct experience.

11:31:26 9 Q. Well, I have to say, Doctor, you're doing a good job  
11:31:30 10 answering my questions. Have you been cross-examined  
11:31:32 11 before?

11:31:32 12 A. I have been cross-examined before.

11:31:33 13 Q. Are you doing better this time than you did the first  
11:31:37 14 time you did it?

11:31:38 15 A. I was pretty good the first time.

11:31:43 16 Q. As a mechanical engineer, do you build things in your  
11:31:46 17 spare time, computers, cars, anything like that?

11:31:50 18 A. A little bit, but this job doesn't allow for so much  
11:31:53 19 free time if I'm honest.

11:31:56 20 Q. All right. You know that in this case, plaintiffs  
11:31:59 21 are arguing that installation of HVAC systems in TDCJ  
11:32:03 22 facilities is a matter of life and death. It's an  
11:32:06 23 emergency, right?

11:32:07 24 A. I'm aware of that.

11:32:08 25 Q. And you understand that TDCJ has been sued for not



11:32:12 1 putting AC in fast enough, right?

11:32:15 2 A. I'm aware of that.

11:32:15 3 Q. That they have been deliberately indifferent with the  
11:32:19 4 speed with which they have installed air conditioning.  
11:32:23 5 Generally familiar with that?

11:32:24 6 A. I'm generally familiar with that.

11:32:27 7 Q. And I know that you're not a lawyer, but you can  
11:32:31 8 imagine, right, that TDCJ could be sued just as easily,  
11:32:35 9 perhaps by these same lawyers, for failing to properly  
11:32:38 10 install HVAC units that could have a life-saving effect on  
11:32:45 11 prisoners, right?

11:32:46 12 A. I'm not sure I can weigh in on what the lawyers might  
11:32:49 13 do with respect to suing people.

11:32:51 14 Q. I mean, I could almost hear Mr. Edwards' booming  
11:32:56 15 cross-examination: And you knew the professional engineer  
11:32:57 16 that you hired to install the HVAC system had never worked  
11:33:01 17 in a prison before. Can you imagine that?

11:33:05 18 A. I can imagine that argument.

11:33:09 19 Q. It's not just lawsuits that TDCJ has to be careful  
11:33:12 20 about. HVAC installation is life and death, then TDCJ has  
11:33:16 21 no room for error in ensuring, for example, quality  
11:33:19 22 control that what they install will actually work, fair?

11:33:24 23 A. It's fair that they would be expected to supply the  
11:33:29 24 amount of work.

11:33:29 25 Q. And it's true if air conditioning in prison is a

11:33:31 1 life-and-death matter, then TDCJ has no room for error in  
11:33:35 2 assessing, for example, the durability of an HVAC system  
11:33:38 3 because if they install it and it immediately breaks, that  
11:33:40 4 will help no one, right?

11:33:42 5 A. That is correct. But it's typical in the industry  
11:33:48 6 that HVAC equipment functions.

11:33:52 7 Q. Same is true of lithium-ion batteries, I imagine,  
11:33:57 8 right?

11:33:57 9 A. That's correct.

11:33:58 10 Q. But there's a special committee that you sit on that  
11:34:01 11 helps engineers figure out what the dangers are in the  
11:34:04 12 event it does not work, right?

11:34:06 13 A. That is correct.

11:34:07 14 Q. I imagine that because you sit on a committee that  
11:34:15 15 helps describe for other engineers what dangers for  
11:34:20 16 lithium-ion batteries might emerge in different  
11:34:23 17 circumstances, that you have colleagues, other engineers  
11:34:25 18 who come to you and ask you about -- for guidance in the  
11:34:29 19 context of risk assessment for ion -- lithium-ion  
11:34:34 20 batteries; is that true?

11:34:35 21 A. That does occur.

11:34:35 22 Q. And they're coming to you maybe because they don't  
11:34:37 23 have the experience that you have in evaluating those  
11:34:39 24 dangers and they want your guidance, right?

11:34:42 25 A. That's correct.

11:34:44 1 Q. Because you have the experience in looking at those  
11:34:46 2 dangers, you might see things that someone with less  
11:34:49 3 experience will not see, fair?

11:34:52 4 A. It's fair. But it's important to add the context  
11:34:56 5 that the process you're describing, this informal process  
11:35:01 6 where someone that I know personally is trying to get  
11:35:04 7 guidance from me on a particular failure mode with  
11:35:08 8 lithium-ion batteries that that process happens in a  
11:35:13 9 roundabout way via my involvement with standards  
11:35:16 10 committee. So the standard provides guidance that I can  
11:35:21 11 give to the general engineering community and then, they  
11:35:23 12 can rely on it by referring to those codes and standards.

11:35:30 13 Q. Let me ask you this. See if I can't kind of put a  
11:35:33 14 point on this. You understand the implications between  
11:35:36 15 somebody who has read the book and someone who wrote the  
11:35:39 16 book?

11:35:40 17 A. There will be differences, sure.

11:35:41 18 Q. So, for example, my dad's got a pacemaker, okay, and  
11:35:45 19 imagine my dad's gotta have open-heart surgery. Are you  
11:35:48 20 with me so far?

11:35:49 21 A. Yes.

11:35:49 22 Q. And so, the choices that I have in choosing my  
11:35:53 23 father's medical care are between a fresh-based,  
11:35:58 24 board-certified cardiac surgeon who has never cracked a  
11:36:01 25 rib cage and a grizzled veteran who eats open-heart

11:36:05 1 surgery for breakfast. Which one do you suppose I would  
11:36:09 2 choose in that life-and-death matter?

11:36:11 3 A. Well, your choice would be up to you, but there can  
11:36:15 4 certainly be scenarios where the old, grizzled veteran has  
11:36:20 5 maybe gotten a little bit lazy about keeping up with the  
11:36:26 6 latest techniques and maybe the fresh-faced person is  
11:36:29 7 extremely diligent and involved in making sure that they  
11:36:33 8 are able to perform exactly as they should. So again, for  
11:36:39 9 the analogy, I think it would make perfect sense for you  
11:36:43 10 to go with the more experienced person, but it doesn't  
11:36:46 11 mean that that's the correct decision.

11:36:48 12 Q. It's not unreasonable to go with a veteran over the  
11:36:51 13 newbie, right?

11:36:53 14 A. I mean, you could have your reasons for that, yes.

11:36:55 15 Q. And you're not saying, just to be clear, when you're  
11:36:59 16 talking about the -- perhaps the failings of the grizzled  
11:37:01 17 veteran in this analogy, that you have seen any such  
11:37:05 18 failings in the design professionals from TDCJ?

11:37:07 19 A. I have reviewed their process in that regard.

11:37:10 20 Q. So the answer to my question is no?

11:37:11 21 A. No. That's correct.

11:37:13 22 Q. We agree that experience will help a design  
11:37:25 23 professional to properly design an HVAC system for TDCJ  
11:37:28 24 facilities. Do I have that right?

11:37:31 25 A. I agree that experience is something that can assist

11:37:33 1 someone in their design process for sure.

11:37:40 2 Q. You have been involved, right, in projects where  
11:37:44 3 design issues caused delay, true?

11:37:49 4 A. I have been involved in that, yes.

11:37:54 5 Q. And if the plaintiffs are right in this case and  
11:37:57 6 urgency requires only speed in installing HVAC units, then  
11:38:02 7 TDCJ cannot hazard delay, fair?

11:38:08 8 A. I think I want to avoid kind of stepping into the  
11:38:11 9 scheduling aspect of that. There's certainly an aspect of  
11:38:15 10 delay there, but those opinions were handled by Mr.  
11:38:17 11 Steigerwalt.

11:38:18 12 Q. Okay. You spoke on direct a little bit about some of  
11:38:21 13 your disagreements with TDCJ's expert, Mr. Higgins, right?

11:38:26 14 A. I can't exactly recall but yes.

11:38:30 15 Q. We have not heard from Mr. Higgins yet, but he  
11:38:34 16 provides opinions about timeline complexity and  
11:38:38 17 appropriate procurement processes for TDCJ HVAC  
11:38:41 18 installations. Do you recall any of that?

11:38:42 19 A. I recall that.

11:38:43 20 Q. And part of his opinion about design for prison HVAC  
11:38:45 21 is that it is particularly complex. I think you touched  
11:38:49 22 on that -- whether you agree with him but you touched on  
11:38:51 23 that in direct, right?

11:38:53 24 A. Yes.

11:38:53 25 Q. And he says that the complexity that comes with

11:39:00 1 installation in a prison facility requires building more  
11:39:05 2 time into the ordinary design process, doesn't it?

11:39:10 3 A. Yes. And I touched on this on direct. There are  
11:39:14 4 some aspects that will require additional design time such  
11:39:19 5 as dealing with the secure nature of a prison, you have to  
11:39:24 6 get access to it to do site surveys, that sort of thing.

11:39:28 7 Q. And you agree that TDCJ is correctly anticipating  
11:39:32 8 those kinds of design challenges inherent to installing  
11:39:36 9 HVAC in a secure prison environment, right?

11:39:39 10 A. I haven't evaluated TDCJ's process. But in terms of  
11:39:46 11 the descriptions of these design complexities that were  
11:39:49 12 noted by Mr. Higgins and/or Mr. Richards, many of those  
11:39:53 13 are documented in the ASHRAE literature that we discussed  
11:39:58 14 earlier.

11:40:00 15 Q. And part of your response to Mr. Higgins and I know  
11:40:03 16 that the timeline was really Mr. Steigerwalt, but you did  
11:40:05 17 look at some of Mr. Higgins' critiques, particularly  
11:40:10 18 regarding the engineering complexity. Part of your  
11:40:12 19 response to Mr. Higgins is that TDCJ is already building  
11:40:16 20 in that additional design time for their projections; is  
11:40:21 21 that right?

11:40:21 22 A. Yes. My understanding based on Dale Cox's deposition  
11:40:28 23 was he was providing that timeline in the context of a  
11:40:31 24 prison retrofit, which you would expect would already  
11:40:35 25 anticipate some of these known issues that are going to

11:40:38 1 add design time.

11:40:39 2 Q. Thank you very much for your time today. Your Honor,

11:40:41 3 I pass the witness.

11:40:47 4 MR. OLSEN: Just a few followups, your Honor.

11:40:49 5 RE-DIRECT EXAMINATION

11:40:49 6 BY MR. OLSEN:

11:40:52 7 Q. Counsel asked you questions about the importance of  
11:40:56 8 reliability and durability. I just want to make sure your  
11:41:00 9 testimony is clear. Does the project delivery method  
11:41:05 10 really have any effect on the reliability or the  
11:41:08 11 durability of a system that is the end result of your  
11:41:12 12 design processes as the engineer?

11:41:15 13 A. Again, as an engineer, I am going to design a system  
11:41:19 14 that functions, that conforms to the owner's requirements  
11:41:23 15 and that conforms to code, and to the extent that the  
11:41:26 16 owner's requirements are including specific aspects of  
11:41:30 17 reliability, those would be incorporated into the design;  
11:41:33 18 and even so, the considerations around reliability of  
11:41:39 19 equipment is something that an engineer would take into  
11:41:41 20 account in the course of really designing any project.

11:41:45 21 Q. And the analogy of, you know, the grizzled veteran  
11:41:51 22 heart surgeon, in the course of designing a system, would  
11:41:59 23 you expect that an engineer would consult with TDCJ  
11:42:04 24 engineers on staff, in addition to consulting the  
11:42:07 25 resources that we discussed on direct?

11:42:10 1 A. Absolutely. If there were consultation needed with  
11:42:14 2 TDCJ, that could be done and there could also be other  
11:42:19 3 entities that are engaged to further consult with whoever  
11:42:23 4 is designing the system.

11:42:25 5 Q. Nothing further.

11:42:28 6 MR. KERCHER: No additional questions, your  
11:42:30 7 Honor.

11:42:30 8 THE COURT: Thank you, Doctor. You may step down  
11:42:32 9 and you're free to go.

11:42:33 10 THE WITNESS: Thank you, your Honor.

11:42:36 11 MR. OLSEN: Your Honor, plaintiffs call Mr.  
11:42:38 12 Shannon Ramey.

11:43:02 13 THE COURT: Before you take a seat, if you'd  
11:43:05 14 raise your right hand to be sworn.

11:43:05 15 THE CLERK: You do solemnly swear or affirm that  
11:43:05 16 the testimony which you may give in the case now before  
11:43:05 17 the Court shall be the truth, the whole truth, and nothing  
11:43:11 18 but the truth?

11:43:11 19 THE WITNESS: I do.

11:43:12 20 THE COURT: Please be seated.

11:43:13 21 SHANNON RAMEY, called by the Plaintiff, duly sworn.

11:43:13 22 DIRECT EXAMINATION

11:43:13 23 BY MR. OLSEN:

11:43:16 24 Q. Good morning, Mr. Ramey. Could you state your name  
11:43:19 25 and tell the Court where you work?



11:43:22 1 A. My name is Shannon Ramey and I've worked for Exponent  
11:43:26 2 in our Seattle office.

11:43:28 3 Q. And, Paul, could you put up Plaintiffs' Exhibit 421?  
11:43:38 4 Mr. Ramey, is Plaintiffs' Exhibit 421 a copy of your  
11:43:41 5 resume that's on Exponent's website?

11:43:47 6 A. Yes, it is.

11:43:48 7 Q. And does it accurately reflect your education,  
11:43:51 8 background, and professional experience?

11:43:54 9 A. Yes, it does.

11:43:55 10 Q. Move to admit Plaintiffs' Exhibit 421.

11:44:00 11 MR. JOHNSON: No objection, your Honor.

11:44:01 12 THE COURT: So admitted.

11:44:03 13 Q. (BY MR. OLSEN) Mr. Ramey, do you have an  
11:44:05 14 undergraduate degree?

11:44:06 15 A. Yes, I do have a Bachelor of Science Degree in  
11:44:08 16 Mechanical Engineering from the University of Washington.

11:44:11 17 Q. And are you a Licensed Professional Engineer?

11:44:13 18 A. Yes, I am.

11:44:14 19 Q. And do you have particular experience with HVAC  
11:44:22 20 systems?

11:44:24 21 A. Yes. As I said, I graduated with an engineering  
11:44:28 22 degree. I started out in the machinery business and then,  
11:44:33 23 I went into the HVAC business in 1993 and started up a  
11:44:42 24 mechanical contracting company. I worked on  
11:44:46 25 refrigeration, HVAC and plumbing systems in all aspects of

11:44:50 1 project design and delivery. I designed HVAC  
11:44:55 2 refrigeration and plumbing systems and sprinkler systems.  
11:45:00 3 And I also in estimating project management, fabrication,  
11:45:06 4 installation and service of all those systems.

11:45:09 5 Q. And in your HVAC business, what types of buildings  
11:45:16 6 did you design HVAC systems for?

11:45:19 7 A. All kinds of buildings that were established in the  
11:45:22 8 community that needed HVAC, covers residences, apartment  
11:45:28 9 buildings, shopping malls, commercial businesses,  
11:45:35 10 restaurants, industrial facilities, even marine  
11:45:41 11 applications, hospitals, schools, fire departments, et  
11:45:47 12 cetera.

11:45:47 13 Q. Gosh, anything else? No, I'm just kidding.

11:45:52 14 Did your work involve installing ACs into  
11:45:56 15 existing buildings?

11:45:58 16 A. Quite a bit of my work was retrofit or replacement of  
11:46:02 17 HVAC systems and sometimes installing HVAC or air  
11:46:08 18 conditioning where it had not been previously installed.

11:46:11 19 Q. And how long were you in -- you said you started in  
11:46:18 20 HVAC business in 1993. How long were you operating that  
11:46:22 21 business?

11:46:23 22 A. Until about 2005 or 6.

11:46:28 23 Q. And was that when you started working at Exponent?

11:46:34 24 A. At that point, I was working as -- I began working as  
11:46:39 25 an independent consultant and engineer and I continued

11:46:42 1 designing HVAC systems. And then, in 2011, I went to work  
11:46:48 2 for a consulting firm who performed forensic engineering  
11:46:54 3 and I began developing a practice of working on  
11:47:01 4 construction defect cases in analyzing HVAC systems in all  
11:47:06 5 kinds of buildings and facilities; analyzing plumbing  
11:47:09 6 systems, fire sprinkler systems all with respect to  
11:47:12 7 failures of those systems either component failures that  
11:47:17 8 have caused damage or performance issues that, you know,  
11:47:24 9 were the topics of disputes.

11:47:26 10 Q. And before you moved into your forensic engineering  
11:47:31 11 work, how many would you estimate HVAC systems did you  
11:47:36 12 actually construct and install?

11:47:39 13 A. Hundreds.

11:47:40 14 Q. Your Honor, plaintiffs ask that Mr. Ramey be  
11:47:48 15 recognized as an expert in HVAC installation and  
11:47:51 16 construction.

11:47:52 17 MR. JOHNSON: No objection, your Honor.

11:47:53 18 THE COURT: So recognized.

11:47:56 19 Q. (BY MR. OLSEN) Mr. Ramey, did you work with Mr.  
11:48:02 20 Steigerwalt and Dr. Barry on Exponent's reports in this  
11:48:06 21 case?

11:48:06 22 A. Yes, I did.

11:48:07 23 Q. And what area of expertise did you provide insights  
11:48:14 24 on?

11:48:15 25 A. My participation in the report writing had to do with

11:48:20 1 evaluating the constructability, construction techniques  
11:48:25 2 with respect to the different methods of project delivery.  
11:48:29 3 Q. And did you, yourself, review documents in connection  
11:48:34 4 with Exponent's work?  
11:48:35 5 A. Yes, I did.  
11:48:37 6 Q. What kind of documents?  
11:48:38 7 A. Well, there was quite a bit of discovery produced in  
11:48:42 8 this case. I reviewed the types of documents that had to  
11:48:46 9 do with the engineering and construction of the systems  
11:48:53 10 that TDCJ has done. I reviewed the TDCJ design manual.  
11:49:03 11 There was a manual produced by the Texas Jails Commission  
11:49:10 12 that I reviewed. Reviewed the ASHRAE document that Mr.  
11:49:14 13 Barry talked about and depositions and reports of the  
11:49:20 14 technical engineering experts in this case.  
11:49:25 15 Q. And in the course of your work of HVAC construction,  
11:49:31 16 did you encounter the project delivery methods design  
11:49:37 17 bid-build and design build?  
11:49:38 18 A. Yes, I did.  
11:49:38 19 Q. You worked on applying both methods?  
11:49:42 20 A. Yes.  
11:49:42 21 Q. Based on your experience from the perspective of a  
11:49:48 22 construction contractor, how do those two methods compare?  
11:49:52 23 A. Well, the design bid-build method was typically used  
11:49:57 24 for some larger projects. Oftentimes, some public  
11:50:03 25 projects. It's a very regimented process and has to

1 follow strict contractual rules and arrangements between  
2 the different parties and is basically slow and clunky.

3 And then, I've done a lot of design build  
4 projects as a contractor and engineer, combination. I  
5 could take a project that somebody gave me and they just  
6 didn't know what to do in terms of HVAC for a facility and  
7 they will just say, hey, provide me HVAC air conditioning  
8 in my building and I could design it and construct it, and  
9 then, I didn't have to have a separate relationship with  
10 another engineer or another contractor.

11 So I've worked in both those areas. One as the  
12 engineer of record on projects that I just did the design  
13 and then, another contractor installed it. I've also  
14 worked in the design build realm where I was the design  
15 engineer and I was the contractor. And in terms of the  
16 speed of project delivery, the design build methodology is  
17 much faster.

18 Q. And in terms of the speed of project delivery, does  
19 the construction contractor's involvement in the design  
20 phase of the project, does that promote speed of delivery?

21 A. Well, it certainly does. Having a contractor  
22 involved means that the engineer's going to find out  
23 earlier about constructability issues. They're going to  
24 find out earlier about if there are equipment selections  
25 that have been made that are maybe not the easiest in

11:52:01 1 terms of delivery or procurement. And it helps to have  
11:52:11 2 the contractor involved very early on to help with labor  
11:52:15 3 planning and getting the project executed.

11:52:17 4 Q. And are there benefits to the project besides speed  
11:52:23 5 to having the construction contractor involved in the  
11:52:27 6 design process?

11:52:28 7 A. Yes. One is in the design build process, the  
11:52:33 8 administrative burden is reduced on all the parties. And  
11:52:38 9 so, that's one of the reasons that it goes faster is that,  
11:52:42 10 one, the owner is -- doesn't have all the responsibility  
11:52:50 11 of managing multiple contracts. They're just managing one  
11:52:55 12 contract per site. Or they bundle sites, they're actually  
11:52:58 13 managing one contract for multiple sites. So it's a lower  
11:53:07 14 administrative burden and if the owner has a lot to do as  
11:53:10 15 they would in this case if they're doing their job, then  
11:53:13 16 it's helpful to them to have that less administrative  
11:53:16 17 burden.

11:53:18 18 That falls down, too, through to the contractors  
11:53:21 19 and the engineers involved in constructing a project as  
11:53:26 20 the project moves forward because there are always changes  
11:53:29 21 and adjustments to make and if the -- with design build  
11:53:36 22 process, those are all internal processes. You don't have  
11:53:39 23 to necessarily go through all the RFIs, change orders and  
11:53:44 24 all of the, you know, the linear head-to-tail sort of  
11:53:47 25 processes that you have in a design bid-build project.

11:53:50 1 So it saves time, it saves administrative burden  
11:53:54 2 on everybody involved.

11:53:56 3 Q. And one of the opinions from the defendant's experts  
11:54:02 4 is that design build is not well suited to renovation  
11:54:09 5 projects like an AC retrofit. From your perspective as a  
11:54:15 6 construction contractor, do you agree with that?

11:54:19 7 A. No, because it's actually the opposite. I think a  
11:54:22 8 design build process is actually better for retrofits  
11:54:26 9 because it gets everybody in the room at the same time, in  
11:54:29 10 the same place, and you are able to move quickly and deal  
11:54:34 11 with all the variables involved, instead of having a round  
11:54:38 12 robin, it just keeps going around and around and around  
11:54:43 13 and playing the telephone game until you finally come to a  
11:54:45 14 solution. It's best to just get all the vital people  
11:54:50 15 involved together and come to decisions quickly to get  
11:54:53 16 things done.

11:54:54 17 Q. I want to ask about another opinion of the  
11:54:57 18 defendant's expert which is that prior prison experience,  
11:55:03 19 contracting experience is necessary for contractors to be  
11:55:08 20 able to successfully construct an AC retrofit in a prison.  
11:55:14 21 Do you agree with that?

11:55:16 22 A. Not necessarily. I mean, contractors are -- large  
11:55:21 23 contractors especially are involved with all kinds of  
11:55:24 24 facilities that they're working on on a continuous basis  
11:55:28 25 and they have to adapt to each defendant type of facility

1 that they work in. And most of these large contractors,  
2 they're working on hospitals, they're working on  
3 laboratories, they're working on universities, they're  
4 working on schools, they're working on fire stations,  
5 police departments, jails, every kind of -- you know, just  
6 look outside see all the buildings that you see, high-rise  
7 buildings, they're working on all of that. So the only  
8 difference between all the other buildings in the world  
9 and a prison is the fact that you've got some security  
10 issues, but that doesn't mean they've never dealt with  
11 security issue.

12 I mean, I've been in high-tech manufacturing  
13 facilities that manufacture, you know, top secret types of  
14 equipment, there's security there. Some of those  
15 facilities have trade secrets they want to protect and  
16 there's security there. Hospitals have security, schools  
17 have security. So, you know, the rules about how you work  
18 in a Texas prison versus how you work in other buildings,  
19 that's just -- it's just another rule that you've gotta  
20 follow.

21 Q. Fair to say that that comes with the territory as a  
22 construction contractor that different environments --  
23 different rules for different environments and you need to  
24 comply with them?

25 A. You're not going to get the job unless you comply and



11:56:58 1 you're going to have to acknowledge that those issues  
11:57:01 2 exist. You've gotta build that into your pricing to be  
11:57:04 3 able to deal with that and...

11:57:12 4 Q. Have you reviewed the rules that TDCJ has for  
11:57:16 5 civilian contractors for work in its facilities?

11:57:20 6 A. Yes.

11:57:20 7 Q. Paul, could you put up Defendant's Exhibit 107? And  
11:57:38 8 then, go to page 81, please. Mr. Ramey, is this one of  
11:57:50 9 the documents that you reviewed in the course of your  
11:57:53 10 work?

11:57:54 11 A. Yes, it is.

11:57:56 12 Q. I'd move to admit Defendant's Exhibit 107.

11:57:59 13 MR. JOHNSON: No objection.

11:58:00 14 THE COURT: So admitted.

11:58:03 15 Q. (BY MR. OLSEN) And could you just describe what it  
11:58:08 16 is, what we're looking at?

11:58:09 17 A. Yes. So like in .2 there, expectations of contractor  
11:58:17 18 and subs. And so, that lists the requirements for the  
11:58:22 19 contractors and subcontractors for accessing the facility  
11:58:26 20 and working in the facility on a daily basis.

11:58:30 21 Q. And subsection A and there's, I believe, six  
11:58:35 22 subparagraphs, is there anything particularly unique or  
11:58:41 23 burdensome about the expectations set forth in those  
11:58:46 24 paragraphs?

11:58:49 25 A. Nothing overly burdensome. Obviously, you're not

11:58:52 1 going to bring firearms. You know, you're going to lock  
11:58:55 2 your vehicle when you're not in it. You're not going to  
11:59:01 3 have contact with inmates and so on. It's pretty  
11:59:09 4 straightforward. Again, it's six points.

11:59:11 5 Q. And then, Paul, could you go further down into the B  
11:59:16 6 section? There's nine general security rules. How about  
11:59:30 7 those, Mr. Ramey? Are those particularly unique or  
11:59:36 8 onerous?

11:59:37 9 A. Well, they're probably more or less unique with  
11:59:42 10 respect to prisons, but it's not necessarily onerous.  
11:59:45 11 It's a commonsense measure to prevent tools being left  
11:59:49 12 behind in the prison and getting into the hands of inmates  
11:59:53 13 and they talk about certain classes of tools. Obviously,  
11:59:57 14 some tools may not be an issue but certain ones are.

12:00:05 15 Also, I mean, I worked on jobs where it was like  
12:00:08 16 this. You certainly couldn't bring certain things in or  
12:00:12 17 you'd have to inventory certain things, but you would also  
12:00:15 18 be subject to search on leaving the facility to make sure  
12:00:18 19 you weren't taking anything out. So it's very common to  
12:00:22 20 have security on a site. All sophisticated owners want to  
12:00:29 21 keep track of who's in their building, who's in their  
12:00:32 22 facility and what they're doing there, and make sure that  
12:00:35 23 they're just doing their job and they're doing it right  
12:00:37 24 and they're not doing anything else.

12:00:39 25 Q. And are the rules for civilian contractors set forth

12:00:43 1 in Defendant's Exhibit 107, could a reasonably competent  
12:00:51 2 contractor comply with those rules without having prior  
12:00:54 3 prison experience?

12:00:55 4 A. Yes.

12:00:58 5 Q. In the course of your work in secure facilities, is  
12:01:04 6 another requirement that some owners impose is that the  
12:01:07 7 construction contractor have background checks for its  
12:01:12 8 employees?

12:01:12 9 A. Yes.

12:01:17 10 Q. Another important consideration for the defense  
12:01:24 11 experts is the need for TDCJ to maintain a high level of  
12:01:32 12 control over the construction process. Could TDCJ  
12:01:36 13 maintain that control under design build?

12:01:38 14 A. Certainly. They have as I understand it, they have a  
12:01:44 15 staff of qualified engineers who are apparently getting  
12:01:49 16 more qualified all the time. And they also have  
12:01:55 17 consultants that they hire to help them out. Couple of  
12:01:58 18 those wrote expert reports on their behalf. So they could  
12:02:01 19 use those individuals as in their new program management  
12:02:08 20 office to oversee the design of design build contractors  
12:02:14 21 and make sure that they're following the TDCJ standards  
12:02:18 22 for the design parameters for equipment selection, for,  
12:02:25 23 you know, making sure that they're using reliable, proven  
12:02:30 24 types and brands of equipment, and that they are designing  
12:02:34 25 in accordance with the design concepts and standards that

12:02:41 1 TDCJ is interested in having implemented in their  
12:02:44 2 facilities.

12:02:47 3 Q. I want to turn, finally, to contractor capacity and  
12:02:56 4 the desirability of the contracts. There's been some  
12:03:02 5 suggestion by the defendant's experts that TDCJ cannot  
12:03:07 6 complete this work more quickly because contractor  
12:03:12 7 capacity is limited. So you referenced there are  
12:03:16 8 high-rises going up here Austin. There's data centers  
12:03:20 9 being constructed.

12:03:23 10 Would you agree that, generally speaking, TDCJ  
12:03:27 11 can only install permanent AC as quickly as it can hire  
12:03:31 12 qualified contractors to do that work?

12:03:34 13 A. Well, the process of construction is always limited  
12:03:37 14 by labor and materials and procurement, of those two  
12:03:41 15 things so, you know, that's a given with any projects.  
12:03:46 16 TDCJ's projects, as well as everybody that's building data  
12:03:49 17 centers and high-rises, et cetera. So everybody's in that  
12:03:52 18 pool.

12:03:53 19 Q. And what is your understanding of the capacity of  
12:03:59 20 construction contractors today in the United States?

12:04:03 21 MR. JOHNSON: Objection. Lack of foundation.

12:04:06 22 MR. OLSEN: Sorry.

12:04:09 23 Q. (BY MR. OLSEN) In the course of your work, are you  
12:04:12 24 regularly in touch with large vendors, large construction  
12:04:17 25 companies and representatives?

12:04:18 1 A. Yes, I am.

12:04:20 2 Q. And who are some of those construction company --  
12:04:26 3 companies they work for?

12:04:27 4 A. So some of these mechanical contractors are quite  
12:04:31 5 large, work in multistate environments. Some that I'm  
12:04:36 6 familiar with, Hermanson, McKinstry, McDonald-Miller,  
12:04:42 7 University Mechanical, RK Mechanical, and others, some of  
12:04:51 8 those companies have their own engineering staff even, so  
12:04:54 9 they're competent to do design build work within the HVAC  
12:04:57 10 area and they can contribute to the project with their  
12:05:02 11 technical expertise. Some of them, I know, have prison  
12:05:08 12 experience in terms of constructing in prison. So they're  
12:05:14 13 available. There are large contractors out there who are  
12:05:18 14 available and in the pool of labor.

12:05:21 15 Q. And based on your discussions with contacts in the  
12:05:28 16 industry, do you believe that there is sufficient  
12:05:32 17 contracting capacity for companies to take on and complete  
12:05:38 18 the installation of AC in the TDCJ prisons within the  
12:05:42 19 timeframe that Mr. Steigerwalt estimated?

12:05:45 20 A. Yes.

12:05:46 21 Q. What can TDCJ do to make these contracts more  
12:05:58 22 attractive to contractors, if anything?

12:06:00 23 A. They can do several things. One is they can enter  
12:06:07 24 into the design build process that will make some of those  
12:06:11 25 projects more attractive to the contractors because of the

12:06:17 1 reduced administrative burden and reduced costs and  
12:06:21 2 greater control over the project that the contractor could  
12:06:25 3 have.

12:06:26 4           They could also bundle projects together in  
12:06:30 5 whatever fashion they deem necessary and give contractors  
12:06:34 6 a chance to bid on larger projects that would give them  
12:06:40 7 adaptability in the execution of those projects so that  
12:06:44 8 they could slide their labor pool around. During  
12:06:47 9 interruptions of one site, they could send people to  
12:06:50 10 another site to work, for instance. If they have three  
12:06:53 11 sites going, they could keep three projects going almost  
12:06:57 12 easier than they can do with one because, as we've seen,  
12:07:01 13 there are various reasons that a project needs to shut  
12:07:06 14 down for a week or two. They're waiting for delivery of  
12:07:10 15 some component or some materials or something, what do you  
12:07:12 16 do with those people? Well, if you don't have another  
12:07:14 17 prison to work on, now you're sending them to another job  
12:07:17 18 site, all of a sudden, you've lost that part of your labor  
12:07:21 19 force for this other project and then, it's difficult to  
12:07:24 20 bring them back.

12:07:25 21           So it's much better to bundle these projects  
12:07:28 22 together so a contractor knows that they have a committed  
12:07:32 23 project stream that will be using their labor pool.

12:07:37 24 Q. Pass the witness.

12:07:50 25

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Good morning, Mr. Ramey.

A. Good morning.

Q. We haven't actually met in person but we did over Zoom back in February. Do you recall that?

A. Yes, I do.

Q. And I think you told me then that the majority of your work is in forensic investigations for your insurance and litigation -- or legal clients; is that right?

A. Yes.

Q. And five percent of your work involves consulting on construction projects?

A. Yes. Five percent, we would call that proactive work where we're assisting owners.

Q. And you have no prior experience as an expert in litigating -- litigation involving the choice of construction procurement method, true?

A. I have evaluated construction project methods in the past. Sometimes projects will go awry and people have disagreements so I've been involved in that, but not on behalf of an owner selecting a project delivery method.

Q. So not when an owner -- no litigation over which project method the owner selected; is that true?

A. Well, I just did a project on a grass seed plant

12:09:04 1 where a bunch of farmers got together and tried to, what I  
12:09:06 2 call, hand-wave a project without actually having  
12:09:11 3 specifications ahead of time and it was a giant mess. And  
12:09:17 4 so, that was an evaluation of their failure to properly  
12:09:23 5 employ a project management system.

12:09:28 6 Q. But it wasn't a project where they were discussing  
12:09:34 7 whether design build/design bid-build should have been  
12:09:37 8 used?

12:09:37 9 A. They didn't get that far.

12:09:40 10 Q. And you mentioned you're licensed, I believe, in 12  
12:09:44 11 states?

12:09:44 12 A. Yes.

12:09:45 13 Q. You're not licensed in Texas, however.

12:09:47 14 A. I am not.

12:09:48 15 Q. And you have not done any design work in Texas.

12:09:53 16 A. No, I have not.

12:09:54 17 Q. And that's because in order to do so, you have to be  
12:09:57 18 licensed in the state, right?

12:09:58 19 A. That's correct.

12:09:59 20 Q. And you've never worked in a Texas prison?

12:10:02 21 A. No, I haven't.

12:10:03 22 Q. You haven't done any design work for a Texas prison?

12:10:06 23 A. No.

12:10:07 24 Q. You haven't done any construction projects for a  
12:10:09 25 Texas prison?



12:10:09 1 A. No, I haven't.

12:10:11 2 Q. And you understand that Texas prisons are spread all  
12:10:15 3 over the state of Texas?

12:10:17 4 A. Yes, I have seen the map this morning.

12:10:19 5 Q. And Texas is a big state.

12:10:21 6 A. A big one.

12:10:26 7 Q. I think back at your deposition, you mentioned that  
12:10:31 8 you'd helped clients with selection of the construction  
12:10:38 9 procurement method several times. Do you recall that?

12:10:41 10 A. When I was a contractor.

12:10:44 11 Q. And you know in selecting the procurement method,  
12:10:47 12 it's important the consider to owner's needs.

12:10:50 13 A. Yes.

12:10:52 14 Q. And for purposes of this case, the owner is TDCJ.

12:10:56 15 A. That's correct.

12:10:58 16 Q. The design bid-build is likely more appropriate if  
12:11:04 17 the owner needs increased input on the project in terms of  
12:11:07 18 the number of bids and control over selection of the  
12:11:09 19 contractors.

12:11:15 20 A. I don't know about that.

12:11:18 21 Q. You don't recall testifying about that at your  
12:11:21 22 deposition?

12:11:22 23 A. Well, they could have as great of control as they  
12:11:26 24 want but it's -- if they want to slow everything down and  
12:11:31 25 be very deliberate about their process and take a lot of

12:11:35 1 time doing it, then they would use the design bid-build  
12:11:39 2 process.

12:11:46 3 Q. You did not perform any analysis regarding the  
12:11:49 4 schedule and timelines of TDCJ's air conditioning  
12:11:53 5 projects.

12:11:53 6 A. No, I didn't.

12:11:54 7 Q. You didn't perform any in-depth analysis with respect  
12:12:00 8 to TDCJ's four-phase or three-phase plan?

12:12:03 9 A. No, I did not.

12:12:07 10 Q. You don't have any issues with the order in which  
12:12:10 11 TDCJ is working on the units with respect to the AC  
12:12:13 12 installation.

12:12:17 13 A. Can you elaborate on that a little bit?

12:12:21 14 Q. Yeah. So you don't have an issue with the phases in  
12:12:27 15 order -- I guess, the order in which that they're actually  
12:12:31 16 installing air conditioning in each unit, you don't have  
12:12:34 17 an issue with that.

12:12:35 18 A. Well, the four-phase plan, if I remember right, was  
12:12:41 19 -- divided all the projects up into, again, four phases by  
12:12:45 20 the type of facility. If I remember correctly, one of  
12:12:50 21 those was with simple projects, maybe smaller projects,  
12:12:56 22 and then, they have one with really old buildings. The  
12:12:59 23 most challenging ones, I think, were at the end. The  
12:13:02 24 easier ones were at the beginning and some of the others  
12:13:04 25 were in the middle. That's one way to organize those four

12:13:11 1 phases.

12:13:13 2 I think that what Mr. Steigerwalt's analysis  
12:13:17 3 showed was that the -- that methodology was not going to  
12:13:23 4 lead to getting all the projects done in a timely manner,  
12:13:27 5 and if TDCJ was going to complete those projects in a  
12:13:33 6 timely manner, they would have to start all those four  
12:13:37 7 phases simultaneously.

12:13:42 8 Q. I think what I'm getting at is it makes sense for  
12:13:53 9 TDCJ to do the easier units first, true?

12:13:59 10 A. Well, that depends on your perspective.

12:14:02 11 Q. Well, I'm talking about TDCJ's perspective. If they  
12:14:05 12 have a limited amount of funds, doesn't it make sense to  
12:14:08 13 get the most bang for their buck and do the easier  
12:14:11 14 projects, the projects that will bring the most cool beds  
12:14:14 15 online the quickest, first?

12:14:15 16 A. Well, I think all those issues were, you know, really  
12:14:18 17 addressed by Mr. Steigerwalt and, you know, the selection  
12:14:21 18 of project delivery method so I don't want to cover what  
12:14:28 19 he's already talked about. But yeah, TDCJ should be able  
12:14:37 20 to, you know, walk and chew gum and do multiple types of  
12:14:43 21 projects.

12:14:43 22 Q. I'm not talking about the choice of delivery method.  
12:14:46 23 We all know that TDCJ has used the design bid-build method  
12:14:49 24 up until this point. I guess what I'm asking is you don't  
12:14:53 25 have an issue with the order in which they are doing these

12:14:55 1 units under the design bid-build approach.

12:14:58 2 A. I don't personally but, I mean, we're here because  
12:15:01 3 it's not happening fast enough.

12:15:05 4 Q. And you're not familiar with Texas procurement laws  
12:15:07 5 that apply to state agencies?

12:15:09 6 A. No, I'm not.

12:15:10 7 Q. When using a design bid -- when using a design build,  
12:15:18 8 you admit that it can be the construction company that  
12:15:20 9 responds to the request for proposal.

12:15:24 10 A. Yeah, it depends on the experience of their responder  
12:15:30 11 to the, you know, the request for bid whether it's a --  
12:15:34 12 like a national-level contracting company or who has  
12:15:39 13 design experience and staff or it's a design company who  
12:15:43 14 is working in concert with a contractor.

12:15:45 15 Q. And it depends. It can be a construction company.

12:15:48 16 A. It could be.

12:15:49 17 Q. And if it is a construction company that responds to  
12:15:52 18 a request for proposal in a design build scenario, it's  
12:15:54 19 the construction company that chooses the design or the  
12:15:58 20 designer.

12:16:00 21 A. Yeah. That's -- and the subcontractors, which is  
12:16:05 22 what's kind of the beauty of the design build system is by  
12:16:10 23 doing that, TDCJ is leveraging bidders to find people like  
12:16:17 24 designers with prison design experience, to find those  
12:16:21 25 people and use them on their project. Also, to find

12:16:25 1 contractors who have prison construction experience and  
12:16:28 2 use them on their team as well.

12:16:30 3           So if I'm a construction company and I want to  
12:16:34 4 bid on four prisons for TDCJ, you know, put an AC in  
12:16:40 5 there, I'm going to look for a design engineer that's  
12:16:42 6 going to be efficient that knows what they're doing. I'm  
12:16:44 7 going to look for subcontractors that are going to be  
12:16:46 8 efficient but know what they're doing. I'm going to put  
12:16:49 9 that team together and that's what's going to allow me to  
12:16:52 10 have the best price, that's going to attract an award from  
12:16:58 11 TDCJ for that contract.

12:16:59 12 Q. And it's the construction company that makes that  
12:17:01 13 choice of which design firm to use.

12:17:04 14 A. Well, they make the choice for who they're going to  
12:17:08 15 submit with their bid tender. TDCJ will make the choice  
12:17:13 16 whether or not they'll award that bid based on their  
12:17:15 17 analysis of that tender.

12:17:16 18 Q. You don't know the reasons why TDCJ has used the  
12:17:22 19 design bid-build procurement method for its HVAC  
12:17:29 20 renovations, do you?

12:17:30 21 A. I don't recall reading anything about that.

12:17:33 22 Q. You haven't spoken with any TDCJ individuals involved  
12:17:36 23 in the TDCJ agency retrofit projects?

12:17:40 24 A. No, I haven't.

12:17:41 25 Q. You haven't spoken with any design professionals

12:17:44 1 involved in the TDCJ air conditioning retrofit projects?

12:17:48 2 A. No, I haven't.

12:17:49 3 Q. You have not spoken with any construction

12:17:51 4 professionals involved in the TDCJ air conditioning

12:17:53 5 retrofit projects?

12:17:55 6 A. No, I haven't.

12:17:57 7 Q. You have not reviewed the existing condition drawings

12:18:00 8 for any of the previous TDCJ projects to get an

12:18:02 9 understanding of the conditions at these units.

12:18:07 10 A. I have not in detail.

12:18:09 11 Q. You have not reviewed any of the HVAC designs for any

12:18:14 12 of TDCJ's projects.

12:18:16 13 A. Only what was described by the -- in the expert

12:18:20 14 reports.

12:18:23 15 Q. You have not spoken with any of the designers of the

12:18:26 16 previous TDCJ projects to understand how the design

12:18:29 17 evolved over the course of the design process.

12:18:34 18 A. No, I haven't.

12:18:37 19 Q. You did not evaluate the maintenance issues that need

12:18:39 20 to be considered for HVAC systems that TDCJ is installing?

12:18:45 21 A. No. I've just read about what those issues are that

12:18:50 22 was listed in the expert reports.

12:18:53 23 Q. You did not perform any analysis regarding the

12:18:56 24 durability of the HVAC systems that TDCJ is considering

12:18:59 25 installing.

12:19:03 1 A. Their general spec lists the types and kinds of  
12:19:10 2 equipment that they're looking for so it's general  
12:19:15 3 knowledge what those systems would be.

12:19:17 4 Q. You didn't do any analysis regarding the durability.

12:19:21 5 A. No. I didn't need to.

12:19:25 6 Q. You're aware that AC retrofits in the TDCJ require  
12:19:31 7 that they have smoke control systems in place?

12:19:35 8 A. Yes. I was actually surprised to learn they didn't  
12:19:38 9 already have smoke control.

12:19:39 10 Q. You agree that smoke control systems are important  
12:19:41 11 for life saving?

12:19:42 12 A. Yes.

12:19:42 13 Q. You agree that design build does not always deliver a  
12:19:55 14 project faster than design bid-build.

12:20:00 15 A. Well, we saw the statistics, it's a hundred percent  
12:20:05 16 faster and I think, in almost every case, it's going to be  
12:20:08 17 faster.

12:20:11 18 Q. You're saying that it's always faster?

12:20:14 19 A. Well, I think there are like 73 prisons yet to do,  
12:20:18 20 maybe one of those might end up being, hey, we should have  
12:20:23 21 done a design bid-build.

12:20:24 22 Q. Design build is not faster than design bid-build a  
12:20:28 23 hundred percent of the time.

12:20:31 24 A. I'm sure it depends on specific circumstances at each  
12:20:36 25 site.

12:21:02 1 Q. You acknowledge that there are some obstacles to  
12:21:05 2 working in a prison setting.

12:21:08 3 A. Yeah, I've done some work in a prison and just takes  
12:21:14 4 some organization, takes preplanning to get in. It takes  
12:21:18 5 -- you've gotta have some instruction about what you do  
12:21:19 6 when you go in, where you can go, where you can't go, what  
12:21:23 7 kind of escorts you're going to have, what you can bring  
12:21:26 8 in, what you can bring out. All those things are pretty  
12:21:33 9 much general commonsense instructions and anybody that's  
12:21:38 10 going to be working in that environment needs to learn and  
12:21:41 11 acknowledge that those procedures exist and follow them.

12:21:45 12 Q. I mean, it's more difficult to work in a prison than,  
12:21:48 13 say, a residential or commercial project.

12:21:54 14 A. I mean, I don't know about that. There are some  
12:21:59 15 environments that are very, very difficult to work in  
12:22:02 16 besides prisons. Hospitals, difficult to work in.  
12:22:10 17 Industrial plants, sometimes difficult to work in for  
12:22:13 18 different reasons. So, you know, you're going to follow  
12:22:17 19 those procedures that we reviewed earlier and the rest of  
12:22:21 20 it, you know, that takes five minutes out of your day to  
12:22:25 21 figure out and then, the rest of it, seven hours and 55  
12:22:29 22 minutes, you're actually doing work.

12:22:33 23 Q. You think it takes five minutes a day to figure out  
12:22:35 24 how to overcome the obstacles of getting in and out of the  
12:22:38 25 prison?



12:22:39 1 A. Well, maybe on, you know, the first day, yeah.

12:22:45 2 Q. You don't dispute that it would be helpful for a  
12:22:47 3 contractor to have prior experience working in a prison to  
12:22:50 4 do these air conditioning retrofits.

12:22:55 5 A. That there are expectations with these, you know, set  
12:22:59 6 previously so they would know what they're getting into.

12:23:01 7 Q. Yeah. So it would be helpful.

12:23:03 8 A. Obviously.

12:23:07 9 Q. You've been involved in litigation matters concerning  
12:23:13 10 construction projects where design build was the  
12:23:16 11 construction procurement method?

12:23:20 12 A. Yes.

12:23:22 13 Q. And these litigation matters often concern design or  
12:23:26 14 construction issues?

12:23:28 15 A. They can concern design construction in a design  
12:23:33 16 build. Sometimes it's hard to separate what's design  
12:23:38 17 source of an issue and what's construction source of an  
12:23:41 18 issue. But it can also be component issues, you know,  
12:23:44 19 failures of components. It could be communication issues  
12:23:48 20 a lot of times.

12:23:52 21 Q. It's clear that even if you choose the design build  
12:23:56 22 construction procurement method, there can still be issues  
12:23:59 23 with cost overruns, delays and design issues.

12:24:03 24 A. Naturally, it is a construction project so you could  
12:24:06 25 have delays, cost overruns. It was shown earlier that in

12:24:11 1 terms of change orders, at least, that the design build  
12:24:15 2 methodology is almost four percent less expensive than a  
12:24:19 3 design bid-build project.

12:24:46 4 Q. Your Honor, that's all I've got. I'll pass the  
12:24:48 5 witness.

12:24:54 6 RE-DIRECT EXAMINATION

12:24:54 7 BY MR. OLSEN:

12:24:56 8 Q. Mr. Ramey -- just, your Honor, just one question.

12:24:59 9 THE COURT: Sure.

12:25:01 10 Q. (BY MR. OLSEN) Do you believe that design build will  
12:25:07 11 result in a faster completion of installing these AC  
12:25:12 12 retrofits in TDCJ's prisons?

12:25:15 13 A. Yes.

12:25:17 14 Q. And overall, you've mentioned that there were  
12:25:24 15 project-specific circumstances, but overall, do you  
12:25:28 16 believe that design build will -- it will get this done  
12:25:31 17 faster?

12:25:32 18 A. Yeah. It's absolutely their best hope for saving  
12:25:38 19 lives in the Texas prison system.

12:25:40 20 Q. Nothing further.

12:25:42 21 MR. JOHNSON: No further questions.

12:25:42 22 THE COURT: Thank you, sir. You may step down.  
12:25:45 23 You're free to go.

12:25:46 24 Next witness?

12:25:47 25 MR. HOMIAK: I think we're going to go a little

12:25:50 1 bit longer than -- 45 minutes on direct and cross will  
12:25:53 2 probably be, I imagine, at least that long, maybe a little  
12:25:55 3 shorter. So it may be a good time to take a lunch break  
12:25:58 4 now.

12:25:59 5 THE COURT: Let's press on for another 20 minutes  
12:26:02 6 or so, if that's okay, 20 to 30 minutes. Thank you.

12:26:11 7 MR. DUKE: Plaintiffs call Jennifer Toon.

12:26:33 8 THE COURT: Please raise your right hand to be  
12:26:35 9 sworn.

12:26:36 10 THE CLERK: You do solemnly swear or affirm that  
12:26:36 11 the testimony which you may give in the case now before  
12:26:36 12 the Court shall be the truth, the whole truth, and nothing  
12:26:40 13 but the truth?

12:26:40 14 THE WITNESS: Yes.

12:26:41 15 THE COURT: Please be seated.

12:26:46 16 JENNIFER TOON, called by the Plaintiffs, duly sworn.

12:26:46 17 DIRECT EXAMINATION

12:27:03 18 BY MR. DUKE:

12:27:03 19 Q. I was going to say good morning but good afternoon.

12:27:06 20 Can you state your name for the record?

12:27:08 21 A. Sure. My name is Jennifer Toon.

12:27:12 22 Q. And are you here testifying on behalf of an  
12:27:14 23 organization?

12:27:15 24 A. Yes, sir.

12:27:15 25 Q. Who is that?

12:27:16 1 A. Lioness Justice Impacted Women's Alliance.

12:27:19 2 Q. What is Lioness?

12:27:21 3 A. So Lioness is a nonprofit that was created and is led  
12:27:26 4 by girls, women and gender-expansive people who have  
12:27:30 5 experienced incarceration here in Texas. Our mission is  
12:27:34 6 to end the incarceration and systematic devaluation of our  
12:27:39 7 population while building power in our communities.

12:27:41 8 Q. And what's your position at Lioness?

12:27:44 9 A. I am the Cofounder and Executive Director.

12:27:48 10 Q. And as Executive Director, what's your  
12:27:52 11 responsibilities?

12:27:53 12 A. Yeah, my responsibilities are to provide the  
12:27:59 13 day-to-day overseeing of the operations of the  
12:28:01 14 organization, to implement whatever strategies that our  
12:28:05 15 board of directors have directed me to.

12:28:08 16 Q. Ms. Toon, you were previously incarcerated yourself;  
12:28:12 17 is that right?

12:28:12 18 A. That's correct.

12:28:13 19 Q. Can you tell us and the Court about your period of  
12:28:16 20 time when you were incarcerated?

12:28:18 21 A. Sure. I was incarcerated when I was 15 until I was  
12:28:24 22 25, and then, from about age 30 to almost 40.

12:28:29 23 Q. Okay. I guess, focusing on, really, either of those  
12:28:32 24 periods but, in particular, the last period, which TDCJ  
12:28:38 25 facilities were you housed at?

12:28:40 1 A. Sure. I was, let's see, the Plane State Jail and  
12:28:48 2 then, the -- well, it's now the O'Daniel Unit with a  
12:28:51 3 period at Riverside Crain Unit, and then at the Henley  
12:28:55 4 State Jail.

12:28:56 5 Q. And did any of those facilities have air conditioning  
12:28:59 6 in the living areas?

12:29:00 7 A. Yes.

12:29:00 8 Q. Which ones?

12:29:03 9 A. O'Daniel does and, I believe -- so Crain is broken up  
12:29:10 10 into several little mini units and I believe Sycamore and  
12:29:14 11 Valley have air conditioning.

12:29:15 12 Q. And were you housed in any facilities that were  
12:29:18 13 unair-conditioned?

12:29:19 14 A. Yes.

12:29:19 15 Q. Which ones?

12:29:20 16 A. Plane State and then, Riverside Crain and then, at  
12:29:26 17 the time, Henley State Jail.

12:29:28 18 Q. And then, since your release, have you personally  
12:29:32 19 visited any TDCJ facilities?

12:29:35 20 A. Yes. Actually, I went on two different tours of  
12:29:40 21 units in the Gatesville area with the superintendent and  
12:29:45 22 then, with the reentry rehabilitation director, and then,  
12:29:49 23 recently, doing some programming at the Coleman Unit.

12:29:53 24 Q. Is that both male and female units?

12:29:55 25 A. These are female units.

12:29:57 1 Q. How did you get involved with Lioness?

12:30:02 2 A. I cofounded it so...

12:30:04 3 Q. So when did you found Lioness?

12:30:06 4 A. We formed Lioness in 2022.

12:30:14 5 Q. And what motivated you and others to found Lioness?

12:30:18 6 A. Yeah. So what motivated us was, first and foremost,

12:30:24 7 you know, when we were incarcerated, many of us really

12:30:27 8 wanted to give meaning to our experience, you know,

12:30:32 9 through our incarceration and we really wanted to come out

12:30:34 10 here and figure out ways to give voices to the people that

12:30:37 11 we left behind and including like sharing our own stories.

12:30:42 12 But I think that -- well, I know the impetus was we were

12:30:45 13 working to stop Melissa Lucio's execution and so, I had

12:30:50 14 moved to Austin and I had a peer policy fellowship with

12:30:53 15 another organization, and what I learned was that women's

12:30:57 16 issues were often overlooked or talked over and we just

12:31:02 17 didn't see that Melissa Lucio was getting the same type of

12:31:05 18 robust advocacy to stop her execution maybe as some other

12:31:10 19 people had. So we decided then that we needed our own

12:31:15 20 space to be able to help our community so we decided to

12:31:21 21 form Lioness.

12:31:22 22 Q. Who else was involved in that decision?

12:31:25 23 A. The women that are currently on our board. You want

12:31:32 24 the names?

12:31:32 25 Q. Either the names or if you can discuss who they are

12:31:35 1 as people.

12:31:36 2 A. Sure, Lori Mellinger is a cofounder, Alexa Garza, who  
12:31:42 3 I was personally incarcerated with at the O'Daniel Unit,  
12:31:46 4 Angel Carroll. And then -- well, that was who was  
12:31:49 5 involved at the time and what -- do you want me to name  
12:31:52 6 all the board?

12:31:53 7 Q. No, no. Just as a category would they all -- were  
12:31:57 8 any currently incarcerated at that time or all recently  
12:32:00 9 released?

12:32:00 10 A. Oh, recently released.

12:32:02 11 Q. But they were all previously incarcerated?

12:32:04 12 A. Yes, sir.

12:32:04 13 Q. At TDCJ facilities?

12:32:06 14 A. Angel was incarcerated in the youth system.

12:32:10 15 Q. During that initial period or I think you've  
12:32:18 16 described it previously as like a grassroots period, who  
12:32:22 17 were the members of Lioness?

12:32:25 18 A. Incarcerated folks and formerly incarcerated.

12:32:30 19 Q. So how did incarcerated members learn about Lioness?

12:32:36 20 A. So we did our informal network and we sent our first  
12:32:41 21 newsletter to people we just knew and we all knew that all  
12:32:45 22 it takes is for one person to find out something and then,  
12:32:49 23 that was going to spread. So I mean, that was the only  
12:32:51 24 outreach we ever had to do was that first initial  
12:32:53 25 newsletter to folks we knew personally and that's how

12:32:57 1 people found out about Lioness.

12:32:59 2 Q. How soon after -- two question, I guess. When

12:33:02 3 Lioness was founded, how long after your release was that?

12:33:06 4 A. I'm sorry.

12:33:06 5 Q. How long after you were released from TDCJ facilities  
12:33:12 6 was Lioness founded?

12:33:14 7 A. I was released December 13th of 2018 and Lioness was  
12:33:21 8 officially formed and announced on international  
12:33:25 9 Wednesday, actually, on March 8, 2022.

12:33:28 10 Q. And at the time, was there -- in that 2022, was there  
12:33:36 11 any litigation pending that Lioness was considering  
12:33:39 12 joining?

12:33:39 13 A. No.

12:33:40 14 Q. Were there any plans to file litigation or join  
12:33:44 15 other --

12:33:45 16 A. No.

12:33:46 17 Q. How did Lioness initially receive financial  
12:33:52 18 sponsorship or operations?

12:33:54 19 A. Well, when we started out, we were just a grassroots  
12:33:59 20 group and so, we were paying for things, you know, like  
12:34:02 21 travel to different events or mutual aid, or anything like  
12:34:05 22 that, just out-of-pocket.

12:34:07 23 Q. And then, did it eventually, did something change  
12:34:10 24 about the financial, I guess, structure of Lioness?

12:34:13 25 A. Yeah. So the bigger we got and the more we were



12:34:17 1 doing activities and gaining members and producing  
12:34:20 2 newsletters and postage to write the incarcerated folks,  
12:34:26 3 we realized that was a lot of cost and we were doing the  
12:34:29 4 best we could out-of-pocket. And so, with a little  
12:34:32 5 research, I realized, well, we don't have to jump right  
12:34:35 6 into being a nonprofit. We could actually be what's  
12:34:38 7 called fiscally sponsored. And so, we found a capacity  
12:34:41 8 builder that would help us learn that process and they  
12:34:44 9 would manage our administrative things and still allow me  
12:34:48 10 at the time as the project director to learn the admin  
12:34:52 11 pieces while still developing the work.

12:34:55 12 Q. Is that what Buildup was?

12:34:58 13 A. Yes, sir.

12:34:58 14 Q. And do Lioness and Buildup still have a relationship?

12:35:03 15 A. We don't have a formal relationship anymore but we  
12:35:05 16 have a pleasant, you know, advocacy relationship.

12:35:09 17 Q. So what changed and what prompted that change?

12:35:13 18 A. So -- and the reason I want to say why we did the  
12:35:16 19 fiscal sponsorship because, I mean, if you want folks to  
12:35:20 20 donate or to get grants, you have to have some structure.  
12:35:25 21 So that's why it was important to have an entity like  
12:35:28 22 Buildup, Inc. that folks could donate money to and do all  
12:35:35 23 the IRS stuff, right? What was your question?

12:35:37 24 Q. I was going to say what --

12:35:38 25 A. I'm sorry. So then, we decided September of 2024 to

12:35:47 1 file to be our own 501(c)(3) nonprofit so we just felt we  
12:35:54 2 had kind of continued that evolution and that growth as a  
12:35:56 3 group from grassroots to fiscally sponsored to our own  
12:36:00 4 nonprofit.

12:36:00 5 Q. Okay. Now that you're your own nonprofit, how does  
12:36:04 6 Lioness sustain itself financially?

12:36:07 7 A. Through donations. Through private donors through  
12:36:11 8 grants.

12:36:12 9 Q. Does Lioness -- what are the types of grants or  
12:36:17 10 donors that make up that financial sponsorship?

12:36:19 11 A. Sure. We have a grant from the Hoff Foundation. We  
12:36:23 12 also have a grant from the Navigation Fund and St. David's  
12:36:27 13 Foundation.

12:36:27 14 Q. And do you receive funding from members?

12:36:30 15 A. So the community can donate, obviously, so that's not  
12:36:35 16 the majority, right, because our community members  
12:36:37 17 typically don't have a lot to give, but they all like to  
12:36:42 18 be able to contribute, you know, something to feel a part  
12:36:45 19 of and invested.

12:36:46 20 Q. And through this period of a grassroots -- the  
12:36:50 21 capacity-building organization and then, now as an  
12:36:53 22 independent 501(c)(3), has the purpose or mission of  
12:36:58 23 Lioness changed in any way?

12:36:59 24 A. No.

12:37:00 25 Q. Are you aware that the Court and, also, defendant has

12:37:12 1 described Lioness as a traditional membership  
12:37:15 2 organization?

12:37:15 3 A. Yes.

12:37:15 4 Q. Is that consistent with your understanding of  
12:37:18 5 Lioness?

12:37:18 6 A. Yes.

12:37:21 7 MR. TEBO: Objection. Calls for a legal  
12:37:24 8 conclusion. Membership organization, that's a term of  
12:37:26 9 art.

12:37:29 10 MR. DUKE: I was simply asking if that was  
12:37:31 11 consistent with her understanding.

12:37:32 12 THE COURT: That's okay. I'll allow it.

12:37:34 13 A. Yes.

12:37:35 14 Q. (BY MR. DUKE) Is Lioness incorporated?

12:37:37 15 A. Yes.

12:37:38 16 Q. Does it have bylaws?

12:37:40 17 A. Yes.

12:37:40 18 Q. Have those bylaws been amended?

12:37:42 19 A. Yes, sir.

12:37:43 20 Q. Can we show Exhibit 535? Do you recognize this  
12:37:53 21 document?

12:37:55 22 A. Yes.

12:37:58 23 Q. Are these the bylaws about Lioness?

12:38:03 24 A. These were the original bylaws.

12:38:05 25 Q. Are these also include the amended and restated

12:38:34 1 bylaws of Lioness?

12:38:35 2 A. Yes. These are the amended bylaws.

12:38:37 3 Q. As a corporation, does Lioness have formal corporate  
12:38:46 4 members?

12:38:46 5 A. No.

12:38:48 6 Q. Does it have a board of directors?

12:38:49 7 A. Yes.

12:38:50 8 Q. Is that who manages Lioness?

12:38:52 9 A. Yes.

12:38:52 10 Q. We spoke before about Lioness' membership. How does  
12:38:58 11 Lioness define its membership?

12:39:00 12 A. We have inside members and outside members. Folks  
12:39:04 13 who identify as a girl, woman, or a gender-expansive  
12:39:09 14 person who has experienced incarceration in Texas in any  
12:39:14 15 type of carceral setting in Texas.

12:39:15 16 Q. And how does Lioness represent or serve its members?

12:39:19 17 A. So we hear from the members what is important to us.  
12:39:26 18 For example, the incarcerated members tell us issues that  
12:39:29 19 are happening with them individually or on their unit or  
12:39:33 20 what they're seeing, and then, they tell us about it and  
12:39:37 21 pretty much ask us to be the voice for them when they  
12:39:40 22 can't be.

12:39:41 23 Q. We referenced that there was amended bylaws. When  
12:39:56 24 were these amendments adopted, if you recall?

12:39:59 25 A. I believe it was August of last year.

12:40:03 1 Q. Okay. Why were these amendments made?

12:40:05 2 A. The board of directors felt like as our evolution as  
12:40:11 3 an organization, it was really important to start  
12:40:14 4 documenting our practices. So the practices as an  
12:40:18 5 organization, we needed to start putting those things in  
12:40:21 6 writing.

12:40:22 7 Q. I'd like to admit Exhibit 535 into evidence.

12:40:27 8 THE COURT: Any objection?

12:40:28 9 MR. TEBO: No objection, your Honor.

12:40:30 10 THE COURT: So admitted.

12:40:32 11 Q. (BY MR. DUKE) You discussed formalizing the  
12:40:35 12 membership policy. Can we please look at Exhibit 536? Is  
12:40:42 13 this the membership policy that Lioness formalized?

12:40:46 14 A. Yes.

12:40:46 15 Q. And when did that policy go into effect?

12:40:50 16 A. It was last year in August.

12:40:51 17 Q. Okay. And to the extent that it's different or  
12:40:57 18 similar, why did Lioness decide to adopt a written  
12:41:00 19 membership policy?

12:41:01 20 A. Again, it was to just make very clear the practices  
12:41:05 21 that we were already doing. The board just felt like it  
12:41:09 22 was important to start establishing our practices in  
12:41:13 23 written documentation.

12:41:14 24 Q. Okay. So this sets forth criteria for membership; is  
12:41:18 25 that right?

12:41:18 1 A. Yes, sir.

12:41:18 2 Q. Did the criteria change in any way from before and  
12:41:24 3 after?

12:41:24 4 A. No.

12:41:25 5 Q. So what membership criteria did Lioness follow  
12:41:29 6 previously?

12:41:29 7 A. That you had to identify as a girl, woman, or  
12:41:33 8 gender-expansive person who had experienced incarceration  
12:41:35 9 in Texas.

12:41:36 10 Q. Were these -- was there policy adopted in part  
12:41:43 11 because of this lawsuit?

12:41:45 12 A. No.

12:41:45 13 Q. Okay. Was the written policy intended to change who  
12:41:50 14 could become a member or anything like that?

12:41:53 15 A. No.

12:41:56 16 Q. I'd like to admit 536 into evidence.

12:42:00 17 MR. TEBO: No objection.

12:42:01 18 THE COURT: So admitted.

12:42:04 19 Q. (BY MR. DUKE) Going back to that founding period,  
12:42:09 20 were all of the founding members currently or formerly  
12:42:12 21 incarcerated women or gender-expansive individuals?

12:42:15 22 A. Yes. Our entire organization governance and the  
12:42:19 23 members that we serve are all either currently or formerly  
12:42:22 24 incarcerated.

12:42:23 25 Q. I think you said that those original founding members

12:42:28 1 were also now part of Lioness' board?

12:42:30 2 A. That's correct. Yes.

12:42:31 3 Q. Are there other members who are now also part of  
12:42:37 4 Lioness' board?

12:42:38 5 A. Yes.

12:42:39 6 Q. Okay. Does Lioness' board reflect its membership?

12:42:45 7 A. Absolutely.

12:42:46 8 Q. How is that?

12:42:46 9 A. Because all of them are formerly incarcerated  
12:42:50 10 individuals that experience incarceration in Texas and  
12:42:53 11 identify as a girl, woman, or trans-person.

12:42:55 12 Q. Does Lioness have any incarcerated members as part of  
12:42:59 13 its board?

12:43:00 14 A. No.

12:43:00 15 Q. Why not?

12:43:01 16 A. So in order to have an effective board meeting, you  
12:43:06 17 know, with forum, it would be really hard to get that  
12:43:09 18 currently incarcerated member included in that and so --  
12:43:14 19 and it's not that we didn't think about it, but it would  
12:43:17 20 be really difficult, for instance, if they could call on  
12:43:20 21 the phone if one of them was on our visitation list or the  
12:43:26 22 call list to be able to call me. But do they have access  
12:43:30 23 to the phone, are they able to get, you know, access to  
12:43:33 24 call us.

12:43:34 25 And also, it's against TDCJ rules in Securus to

12:43:38 1 have third-party calls. So the second I turn on the phone  
12:43:41 2 and there's other people in the call, that call could be  
12:43:45 3 terminated, and then, that person would be removed from  
12:43:49 4 the call list. So there's just not a really feasible way  
12:43:54 5 to do that.

12:43:55 6 Q. Okay. We'll come back to incarcerated members'  
12:44:00 7 participation in a moment. But on the membership itself,  
12:44:03 8 approximately, how many members does Lioness have?

12:44:08 9 A. 500.

12:44:10 10 Q. Okay. Do you know how many of those are currently  
12:44:13 11 incarcerated at TDCJ?

12:44:16 12 A. There are about 400-ish.

12:44:18 13 Q. Okay. And does Lioness maintain a list of its  
12:44:22 14 current members?

12:44:22 15 A. Yes.

12:44:23 16 Q. I'd like to show you what's previously been admitted  
12:44:29 17 as Exhibit 62. Is this a list of Lioness members at least  
12:44:34 18 at the time that it was prepared, the members on the  
12:44:36 19 inside?

12:44:36 20 A. Yes, sir.

12:44:37 21 Q. Okay. Is it consistent with your estimate and  
12:44:44 22 recollection that there were approximately 416  
12:44:48 23 incarcerated members at Lioness at the time this  
12:44:50 24 spreadsheet was prepared?

12:44:50 25 A. Yes, sir.



12:44:51 1 Q. Do you recall which facilities those members were  
12:44:57 2 housed in?

12:44:59 3 A. In the women's facilities in TDCJ.

12:45:02 4 Q. All of the female units?

12:45:05 5 A. We've at least had one member in each of the female  
12:45:08 6 units.

12:45:09 7 Q. And those include the units with unair-conditioned  
12:45:13 8 housing.

12:45:13 9 A. Yes, sir.

12:45:13 10 Q. Okay. And so, Lioness -- does Lioness have members  
12:45:17 11 in the facilities without air conditioning?

12:45:19 12 A. Yes, sir.

12:45:21 13 Q. Are some of those facilities entirely without air  
12:45:28 14 conditioning? I can clarify. Entirely without air  
12:45:31 15 conditioning in the living areas.

12:45:32 16 A. In the housing areas for what I know, yes.

12:45:35 17 Q. Is it consistent with your recollection that there  
12:45:40 18 are approximately 118 incarcerated Lioness members in  
12:45:47 19 non-air-conditioned units?

12:45:48 20 A. Yes, sir.

12:45:49 21 Q. Are you aware or as of today, how many members are  
12:45:52 22 currently in unair-conditioned units?

12:45:54 23 A. Approximately, the 118 folks.

12:45:59 24 Q. Are you aware how many members are currently -- or  
12:46:03 25 strike that. As long as TDCJ has facilities with uncooled

12:46:07 1 beds, is it possible or likely that Lioness members will  
12:46:12 2 be housed in those units?

12:46:13 3 A. Yes.

12:46:14 4 Q. In your experience, can inmates be moved in and out  
12:46:19 5 of cool beds?

12:46:21 6 A. Yes.

12:46:25 7 Q. How do incarcerated persons join or become members?

12:46:32 8 A. Yeah, they just write us and say, I want to be a  
12:46:34 9 member and we send them a membership form that includes  
12:46:39 10 our mission, vision, value, our community agreements. It  
12:46:43 11 gives them instructions on what to do if they don't want  
12:46:46 12 to be a member anymore and they fill that out and then  
12:46:48 13 they start communicating with us.

12:46:50 14 Q. Does Lioness ever solicit membership?

12:46:53 15 A. No. I mean, the only outreach we ever did was when  
12:46:56 16 we first started just to let folks know that we existed  
12:47:00 17 and then, after that, it's always been attraction.

12:47:03 18 Q. Is participation in Lioness voluntary?

12:47:07 19 A. Yes, sir.

12:47:07 20 Q. Do members pay dues?

12:47:09 21 A. They do not.

12:47:10 22 Q. Why not?

12:47:11 23 A. Well, like I mentioned earlier, our community is  
12:47:15 24 often low income or not having physical, feasible means to  
12:47:21 25 be able to contribute so we just really believe it's

12:47:25 1 important to continue to offer things for free.

12:47:28 2 Q. Even with that, do Lioness members who are

12:47:32 3 incarcerated still donate to the organization in any way?

12:47:34 4 A. They do. Actually, our first deposit was from an

12:47:39 5 incarcerated individual. I like to think of it as the

12:47:42 6 biblical story of the widow with her one coin. So yeah,

12:47:46 7 occasionally, they do.

12:47:48 8 Q. That still happens today?

12:47:50 9 A. Sure. Yeah.

12:47:51 10 Q. You mentioned a form just to flesh that a little bit.

12:47:56 11 When someone wants to become a member, what is the process

12:47:59 12 for doing so?

12:47:59 13 A. So I send them a form, they fill it out, they mail it

12:48:04 14 back, and then after that, they begin corresponding with

12:48:07 15 our Director of Member Relations. Her title used to be

12:48:12 16 Director of Outreach, Diane.

12:48:13 17 Q. Is that how Lioness communicates with its members?

12:48:17 18 A. Yes, through physical mail and then, Diane will

12:48:21 19 communicate with them via Securus and JPay, the electronic

12:48:26 20 e-mail system.

12:48:27 21 Q. How frequently does Lioness and Diane correspond with

12:48:32 22 incarcerated members?

12:48:32 23 A. Every day, even though I tell Diane to please not

12:48:35 24 work on the weekends. She receives JPays and e-mails just

12:48:40 25 constantly, frequently.

12:48:41 1 Q. Do you have an idea of the volume of correspondence?

12:48:43 2 A. I mean, she's getting at least six to 10 e-mails a

12:48:47 3 day. And then, when I check our post office box at the

12:48:51 4 end of the week, there's usually about 10 letters there.

12:48:53 5 Q. And does Lioness respond to all of its letters?

12:48:57 6 A. Every single correspondence.

12:48:58 7 Q. I want to look back at Exhibit 62 and can you turn to

12:49:01 8 page 16? What is this?

12:49:11 9 A. Yeah, so this is part of that spreadsheet that Diane

12:49:16 10 tracks her responses. Not only does she track their

12:49:19 11 letters to us, she is very meticulous in documenting what

12:49:24 12 their concerns are, how she's responding to them, the

12:49:28 13 date, the times, and any other data that she thinks is

12:49:31 14 important.

12:49:32 15 Q. Looking at it, it looks like maybe 50. Do you have

12:49:37 16 an idea of how many communications are listed there? You

12:49:42 17 don't need to count --

12:49:43 18 A. I mean, how many are you telling me is there. I know

12:49:45 19 it's --

12:49:45 20 Q. I made the mistake of not actually looking. So it's

12:49:48 21 a good amount, right?

12:49:49 22 A. Yeah, it's a lot.

12:49:50 23 Q. Okay. So page 16 shows that. And what about page

12:49:53 24 17?

12:49:54 25 A. Still quite a bit.

12:49:56 1 Q. Page 18?

12:49:57 2 A. Yes, sir.

12:49:58 3 Q. Nineteen?

12:49:59 4 A. Yes.

12:49:59 5 Q. Twenty?

12:50:00 6 A. Yes.

12:50:01 7 Q. Twenty-one?

12:50:02 8 A. Yep. Yes.

12:50:04 9 Q. You can jump ahead to 25.

12:50:06 10 A. Yeah. Yep.

12:50:08 11 Q. So is Exhibit 62 reflective of Lioness'

12:50:12 12 communications with its members?

12:50:14 13 A. Yes.

12:50:14 14 Q. Can we please look at and public Exhibit 544? Now,

12:50:29 15 we just looked at that list that Diane maintains. Is this

12:50:35 16 -- are these examples of correspondence that Lioness

12:50:38 17 receives from its members?

12:50:39 18 A. Yes, sir. The physical mail, yes.

12:50:44 19 Q. And in particular, can we look at page 24? But

12:50:51 20 before we do, can we admit Exhibit 544 into evidence?

12:50:55 21 MR. TEBO: Sorry. Which exhibit is this?

12:50:58 22 MR. OLSEN: 544.

12:51:01 23 MR. TEBO: I think we may have a hearsay

12:51:03 24 objection. I mean, to the extent that it is read into the

12:51:06 25 record, we consider it out-of-court statements.

12:51:09 1 MR. DUKE: No. We're not offering it for the  
12:51:11 2 truth of the statements. It's reflective of how Lioness  
12:51:16 3 communicates with its members and how they participate in  
12:51:18 4 the organization.

12:51:20 5 MR. TEBO: For that limited use, I have no  
12:51:22 6 objection.

12:51:22 7 THE COURT: Thank you. So admitted.

12:51:25 8 Q. (BY MR. DUKE) Is this correspondence by mail and  
12:51:28 9 electronic?

12:51:28 10 A. Yes, sir.

12:51:29 11 Q. Do you know what types of information incarcerated  
12:51:33 12 members typically share with Lioness?

12:51:35 13 A. It is usually advocacy related. It's usually about  
12:51:39 14 conditions of confinement or perhaps patterns of anything  
12:51:44 15 they believe is abuse or neglect. Sometimes it's their  
12:51:48 16 own personal things about their own personal cases, but  
12:51:53 17 most of it is just to let us know what's happening on the  
12:51:55 18 units and in their dorms.

12:51:57 19 Q. Yeah. If you look at what I'm showing on page 24 of  
12:52:01 20 Exhibit 544, does that include correspondence addressing  
12:52:05 21 heat conditions?

12:52:05 22 A. Yes, sir.

12:52:05 23 Q. Does this response from incarcerated members guide  
12:52:11 24 this work?

12:52:11 25 A. Absolutely.

12:52:12 1 Q. How so?

12:52:12 2 A. So Diane -- what will happen in our team meetings and  
12:52:17 3 then, one-on-one, Diane will let the team know what she's  
12:52:21 4 hearing from our inside members so that it informs me and  
12:52:25 5 certainly our director of communications that when we go  
12:52:27 6 speak at board meetings, or legislative hearings, or  
12:52:30 7 policy work group meetings, that we come with the  
12:52:33 8 information from our inside members. So it's not -- yes,  
12:52:38 9 it's our lived experience guiding when we do advocacy with  
12:52:41 10 state agencies, but it is driven by what is currently  
12:52:49 11 happening with our members who are incarcerated.

12:52:50 12 Q. Can you give us an example of time when Lioness took  
12:52:54 13 action to address this specific concern raised by an  
12:52:57 14 incarcerated member?

12:52:58 15 A. Sure. This was very recently. We had a member who  
12:53:02 16 was disciplined for a rule infraction that we believe was  
12:53:05 17 misinterpretation of TDCJ rules. We partnered with  
12:53:09 18 another advocacy legal organization to try to get this  
12:53:13 19 resolved and addressed to the ombudsman. The real concern  
12:53:17 20 there was yes, the misapplication of the policy, but it  
12:53:22 21 seemed very strange that at the same time she got  
12:53:25 22 disciplined, her heat score disappeared with no  
12:53:29 23 explanation to her, with her reaching out to medical and  
12:53:35 24 classification to understand why this happened, and nobody  
12:53:38 25 could give her an answer.

12:53:40 1 And so, she was -- she was at Crain. She was in  
12:53:45 2 a cool bed at Crain and she was transferred to Lane Murray  
12:53:49 3 to an uncooled bed, and so, it felt very retaliatory  
12:53:53 4 without any real --

12:53:54 5 MR. TEBO: Your Honor, first of all, I think this  
12:53:56 6 is turning into the form of a narrative. Second, the  
12:54:00 7 response is hearsay.

12:54:05 8 MR. DUKE: I think she's testifying with respect  
12:54:07 9 to what she knows about the situation but we could narrow  
12:54:11 10 it.

12:54:11 11 THE COURT: That would be great.

12:54:13 12 Q. (BY MR. DUKE) I guess my real question was how did  
12:54:16 13 Lioness respond to receiving that information?

12:54:22 14 A. Sure. We responded by letting her know that we were  
12:54:25 15 partnering with another legal advocacy organization and  
12:54:30 16 that we had met and spoke with the ombudsman about these  
12:54:34 17 concerns.

12:54:35 18 Q. Is it difficult for incarcerated persons to  
12:54:38 19 communicate with Lioness or others outside of prison?

12:54:41 20 A. I would say yes, right, because it involves being  
12:54:44 21 able to pay for the postage.

12:54:53 22 Q. You mentioned or you said yes, at least that Lioness  
12:54:57 23 has received communications about the conditions and the  
12:55:00 24 heat inside TDCJ facilities. Do I have that right?

12:55:03 25 A. Yes, sir.



12:55:04 1 Q. What action or response has -- if any, that has  
12:55:07 2 Lioness taken in response to hearing about those  
12:55:12 3 heat-related or at least notice of heat-related issues?

12:55:14 4 A. We have lifted their concerns to the agency to  
12:55:19 5 legislators. We have done rallies and protests. We've  
12:55:24 6 educated the public. So in any space that we felt like it  
12:55:26 7 was important to be able to let people know that our  
12:55:30 8 inside members were experiencing extreme heat, we've done  
12:55:34 9 so.

12:55:34 10 Q. Okay. Is the information that Lioness has received  
12:55:38 11 regarding the heat consistent with your own experience or  
12:55:41 12 what you personally know about TDCJ's unair-conditioned  
12:55:44 13 units?

12:55:45 14 A. Yes, sir.

12:55:45 15 Q. Have you communicated directly with TDCJ officials  
12:55:53 16 about these concerns?

12:55:54 17 A. Yes, sir.

12:55:55 18 Q. Who at TDCJ have you communicated with?

12:55:58 19 A. Let's see, Regional Director Jennifer Cozby, Mr. Eric  
12:56:05 20 Guerrero, Brittany at Family -- the Family Office and Mr.  
12:56:17 21 Lumpkin, Bobby.

12:56:20 22 Q. Can we show Exhibit 538, please? And turn to page  
12:56:24 23 13. So is this a chain of communication between you and  
12:56:33 24 others at TDCJ?

12:56:36 25 A. Yes, sir.

12:56:37 1 Q. Okay. And is this an example of the communications  
12:56:41 2 from TDCJ about the concerns raised by Lioness members?

12:56:45 3 A. Yes. There is an example.

12:56:47 4 Q. And if you look down at the bottom of page 13 and the  
12:56:49 5 top of page 14, is this the type of response that you  
12:56:54 6 would receive? I think Regional Director Cozby states, I  
12:56:57 7 will have this investigated?

12:56:58 8 A. Yes, sir.

12:56:58 9 Q. Okay. And what is she investigating?

12:57:02 10 A. The concerns that I laid out in the e-mail.

12:57:06 11 Q. And those included things like inadequate water  
12:57:09 12 access?

12:57:10 13 A. Yes, sir.

12:57:11 14 Q. And reports of restricted access to respite?

12:57:15 15 A. Yes, sir.

12:57:17 16 Q. And then, also, lack of grievance access?

12:57:19 17 A. Yes, sir.

12:57:19 18 Q. On that grievance point, what was the notified  
12:57:25 19 complaint?

12:57:26 20 A. That they wanted to grieve things that they were  
12:57:31 21 reporting to us, but those forms were not available. You  
12:57:36 22 know, in their housing unit or wherever they could access  
12:57:39 23 the forms, they weren't available.

12:57:40 24 Q. So here, the report was that at least for over a  
12:57:44 25 month, grievance forms weren't available?

12:57:47 1 A. Yes, sir.

12:57:47 2 Q. Okay. And is there a way to grieve -- send in a  
12:57:50 3 grievance without the form?

12:57:51 4 A. No, sir, not in my experience. It has to be on that  
12:57:55 5 step one grievance.

12:57:56 6 Q. How often do you or anyone else from Lioness send  
12:57:59 7 communications like this to TDCJ?

12:58:01 8 A. Probably more than one -- just kidding. Often.  
12:58:10 9 Often.

12:58:10 10 Q. Can we go back to Exhibit 62? Periodically, in the  
12:58:35 11 column, it says report it, question mark how. Does  
12:58:40 12 Lioness through this document track the inmate grievances  
12:58:45 13 including heat-related grievances?

12:58:47 14 A. Yes, sir. If they tell us.

12:58:49 15 Q. Okay. You mentioned that Lioness corresponds with  
12:59:01 16 its members, I think various means, including newsletters;  
12:59:05 17 is that right?

12:59:05 18 A. Yes, sir.

12:59:06 19 Q. Can you describe those newsletters?

12:59:07 20 A. Yeah. Those newsletters go to our incarcerated  
12:59:11 21 members. They have things on there like, you know,  
12:59:15 22 celebrating events that we've done or accomplishments that  
12:59:18 23 we've had. Sometimes we use that as education of how the  
12:59:24 24 legislature works, how a bill gets passed. It's a variety  
12:59:28 25 of things.

12:59:28 1 Q. And how often do those go out?

12:59:30 2 A. Those now go out once a quarter.

12:59:32 3 Q. And how long has Lioness been sending those?

12:59:34 4 A. Since day one since the moment we were formed.

12:59:37 5 Q. What happens when a newsletter recipient indicates

12:59:41 6 that they don't want to be a member?

12:59:44 7 A. We've never had that happen.

12:59:45 8 Q. Okay. So you don't know.

12:59:47 9 A. I don't know. Nobody ever asked.

12:59:50 10 Q. I wouldn't want you to speculate either so what

12:59:52 11 information is typically excluded -- are there other ways

13:00:01 12 that Lioness interacts with the TDCJ inmate population at

13:00:07 13 large?

13:00:07 14 A. At large, I mean, we certainly have been guests on

13:00:13 15 the Prison Show, which is a platform of a show that all

13:00:17 16 the incarcerated people have access now to on their

13:00:21 17 tablets.

13:00:23 18 Q. Does Lioness advocate for incarcerated members in

13:00:28 19 other ways or through the legislature?

13:00:31 20 A. Yeah. Rallies, protests, vigils, things like that.

13:00:35 21 Q. Have you testified before at legislative hearings?

13:00:39 22 A. Yes, sir.

13:00:39 23 Q. Have any of those legislative efforts focused on lack

13:00:43 24 of air conditioning?

13:00:44 25 A. Yes, sir.

13:00:44 1 Q. Can you describe those or explain which ones?

13:00:49 2 A. You mean legislative actions? Well, certainly over

13:00:52 3 the past two or three sessions that we've participated in,

13:00:57 4 we're always at the criminal justice hearings to be able

13:01:00 5 to provide testimony or to drop a card in favor or against

13:01:06 6 something. But certainly around conditions of

13:01:08 7 confinement, especially extreme heat, we're always there.

13:01:11 8 Q. In the context of extreme heat, presumably, not in

13:01:16 9 favor of extreme heat, but what measures were you

13:01:18 10 supporting or advocating for?

13:01:19 11 A. Yes, sir. We were advocating for legislation to pass

13:01:22 12 that would provide air conditioning for TDCJ units.

13:01:28 13 Q. And was this before Lioness was involved in this

13:01:33 14 litigation?

13:01:33 15 A. Yes, sir.

13:01:33 16 Q. I think you also mentioned training. Is that another

13:01:39 17 aspect of Lioness's work?

13:01:41 18 A. Yes, sir.

13:01:42 19 Q. What kind of training is provided?

13:01:44 20 A. We do leadership training. We do civic engagement

13:01:48 21 training. We train our outside members to really learn

13:01:51 22 how to participate in things that would help them become a

13:01:56 23 productive, good citizen like, you know, how do you

13:02:00 24 register to vote, understanding political systems to

13:02:03 25 inform your decision on how you vote, things like that.

13:02:07 1 Q. And were you here yesterday during Executive Director  
13:02:11 2 Lumpkin's testimony?

13:02:12 3 A. Yes, sir.

13:02:13 4 Q. I believe he mentioned you by name and then, also  
13:02:16 5 called Lioness a fixture of -- in the space. Do you agree  
13:02:22 6 with that?

13:02:22 7 A. Yes.

13:02:23 8 Q. When did the issue of extreme heat in TDCJ prisons  
13:02:30 9 first become a priority for Lioness?

13:02:32 10 A. I mean, it always was.

13:02:33 11 Q. So from day one?

13:02:34 12 A. Yes, sir.

13:02:34 13 Q. And so, for Lioness members currently in  
13:02:38 14 air-conditioned facilities, I think you said they can be  
13:02:41 15 moved from unair-conditioned facilities at any time?

13:02:45 16 A. Yes, sir.

13:02:45 17 Q. To unair-conditioned facilities any time?

13:02:48 18 A. Yes, sir.

13:02:48 19 Q. So when you're advocating, you're advocating for all  
13:02:51 20 of your members inside TDCJ units?

13:02:54 21 A. Yes, sir.

13:02:54 22 Q. Have Lioness continued to receive complaints from  
13:03:00 23 incarcerated members about extreme heat?

13:03:03 24 A. Yes.

13:03:04 25 Q. Has the number of complaints increased, or decreased,

13:03:09 1 or stayed the same over the last four years?

13:03:10 2 A. It is constat and consistent and during the summer

13:03:16 3 months is -- you know, increases in volume.

13:03:18 4 Q. So to your knowledge, do Lioness members continue to

13:03:21 5 suffer from exposure to extreme heat each summer?

13:03:25 6 A. Yes.

13:03:25 7 Q. In your experience or to your knowledge, what's the

13:03:36 8 only effective way to get relief from extreme heat in

13:03:40 9 these units?

13:03:40 10 A. Air conditioning.

13:03:49 11 Q. What is preventing air conditioning from being

13:03:53 12 installed in TDCJ's units?

13:03:57 13 MR. TEBO: Objection. Calls for speculation.

13:03:59 14 THE COURT: Ask if she knows.

13:04:01 15 Q. (BY MR. DUKE) If you know.

13:04:02 16 A. No, I don't.

13:04:03 17 Q. Does TDCJ have a policy requiring that its units be

13:04:08 18 cooled or temperature controlled?

13:04:11 19 A. No. Not that I know of.

13:04:13 20 Q. And is that policy the focus of this litigation or

13:04:19 21 the lack of a policy a fact of this litigation?

13:04:21 22 A. Yes, sir.

13:04:22 23 Q. Okay. And is that the -- what is the relief that

13:04:27 24 Lioness is seeking?

13:04:28 25 A. That we have air-condition, temperature control

13:04:31 1 installed in all the facilities.

13:04:33 2 Q. And is the policy specific to women's units or lack  
13:04:38 3 of a policy specific to women's units?

13:04:40 4 A. No, sir.

13:04:41 5 Q. Is it systemwide?

13:04:43 6 MR. TEBO: Objection lack of foundation. This is  
13:04:45 7 the first I've heard of a policy.

13:04:47 8 MR. DUKE: I said lack of a policy.

13:04:50 9 MR. TEBO: First I've heard of lack of policy --

13:04:50 10 THE COURT: I'll allow that.

13:04:51 11 Q. (BY MR. DUKE) As far as you're aware, is there any  
13:04:53 12 policy requiring TDCJ units to be air-conditioned?

13:04:57 13 A. No, not that I'm aware.

13:04:58 14 Q. And is that lack of a policy specific to women units?

13:05:04 15 A. No.

13:05:05 16 Q. Is it a systemwide failure to provide or require  
13:05:12 17 temperature-controlled units?

13:05:13 18 A. Yes, sir.

13:05:16 19 THE COURT: Mr. Duke, would this be a good time  
13:05:19 20 for us to take --

13:05:19 21 MR. DUKE: I have, literally, two more questions.

13:05:22 22 THE COURT: Great.

13:05:24 23 Q. (BY MR. DUKE) Do Lioness members support the  
13:05:27 24 organization's participation in this lawsuit?

13:05:31 25 A. Absolutely.



13:05:34 1 Q. Can Lioness members -- I said two so I'm going to  
13:05:38 2 strike that. Does Lioness have anything to gain by  
13:05:50 3 participating in this lawsuit?

13:05:51 4 A. The only thing we have to gain is relief for our  
13:05:53 5 members from the harm that they're experiencing.

13:05:56 6 Q. Thank you. I'll pass the witness.

13:05:58 7 THE COURT: Thank you. We're going to take our  
13:06:00 8 30-minute lunch break. It's 1:05, if we could reconvene  
13:06:04 9 at 1:35 and, of course, we'll have you back then. And so,  
13:06:09 10 we'll take a 30-minute break. We'll be in recess.

13:06:23 11 (Lunch recess.)

13:37:26 12 MR. HOMIAK: If I may with one housekeeping  
13:37:30 13 issue?

13:37:30 14 THE COURT: Sure.

13:37:32 15 MR. HOMIAK: We're actually moving ahead of  
13:37:32 16 schedule. I just wanted to update the Court. So looks  
13:37:34 17 like we're tracking for finishing around 4:30 to 5:00 with  
13:37:39 18 Ms. Simmons is our last witness for today, Dr. Vassallo  
13:37:44 19 testifies first thing tomorrow. We're still ahead of  
13:37:49 20 schedule. I just want to check with the Court, if we end  
13:37:50 21 up ending at the shorter end of that range at 4:30, if  
13:37:54 22 that's going to be okay, or if we should have Dr. Vassallo  
13:37:56 23 on standby for rebuttal. Seems like a possible but  
13:37:59 24 unlikely event that we end Ms. Simmons' exam --

13:38:04 25 THE COURT: I would say you've been pretty good

13:38:06 1 so far with estimations and so, if we're at least at 4:30,  
13:38:10 2 then we can head out a little early.

13:38:14 3 MR. HOMIAK: Okay. Great.

13:38:16 4 THE COURT: That way, I can have a beer before I  
13:38:18 5 go to law school.

13:38:20 6 MR. HOMIAK: Anything to help you out.

13:38:34 7 THE COURT: Mr. Tebo.

13:38:43 8 MR. TEBO: Your Honor, before I begin my  
13:38:45 9 cross-examination of the witness, just quickly,  
13:38:48 10 plaintiffs' counsel brought up Plaintiffs' Exhibit 62, I  
13:38:51 11 believe, without offering it to the Court. That was  
13:38:53 12 brought up at the preliminary injunction hearing and I  
13:38:55 13 understand that the Court will consolidate the PI record  
13:39:00 14 with this trial record. At the PI, we did object to that  
13:39:05 15 exhibit, my recollection, on hearsay. Basically, the same  
13:39:09 16 hearsay objection that I raised previously, hearsay  
13:39:11 17 insofar as it is asserted for the truth of the  
13:39:17 18 descriptions of correspondence that it reports but not as  
13:39:21 19 evidence for correspondence between Lioness and  
13:39:25 20 incarcerated members.

13:39:25 21 THE COURT: Okay. And it was offered and  
13:39:27 22 admitted at that hearing?

13:39:28 23 MR. TEBO: I don't know if it was admitted, your  
13:39:31 24 Honor.

13:39:31 25 MR. DUKE: My understanding, our understanding it

13:39:38 1 was admitted. I can't tell you it was admitted for --

13:39:44 2 THE COURT: It was admitted. The record will  
13:39:47 3 reflect you have a continuing objection on those grounds.

13:39:50 4 MR. TEBO: I appreciate that, your Honor. Thank  
13:39:52 5 you.

13:39:53 6 CROSS-EXAMINATION

13:39:55 7 BY MR. TEBO:

13:39:55 8 Q. Good afternoon, Ms. Toon.

13:39:57 9 A. Good afternoon.

13:39:57 10 Q. It's a pleasure to see you live in person.

13:40:01 11 A. Yes.

13:40:01 12 Q. And it's a pleasure to see you on the first day of  
13:40:08 13 reentry month if I understand that correctly?

13:40:08 14 A. I'm sorry?

13:40:11 15 Q. The first day of reentry month.

13:40:11 16 A. Oh, yes. It's the second chance month, yes.

13:40:14 17 Q. Second chance month. You testified the last you were  
13:40:21 18 incarcerated was 2018, right?

13:40:22 19 A. That was when I was released.

13:40:24 20 Q. And the last year you were held in a TDCJ unit was  
13:40:28 21 2018, right?

13:40:29 22 A. Yes, sir.

13:40:30 23 Q. Do you recall the month that you were released?

13:40:35 24 A. I remember the day. It was December 13th.

13:40:38 25 Q. And since December 2018, you've not been housed in a

13:40:41 1 TDCJ unit, right?

13:40:42 2 A. No.

13:40:43 3 Q. And you've not experienced TDCJ prison conditions as  
13:40:48 4 an incarcerated person since December 2018, right?

13:40:51 5 A. Correct.

13:40:52 6 Q. Since your release in 2018, did you testify that  
13:40:57 7 you've made two visits inside TDCJ units?

13:41:00 8 A. I've made three. The two facilities tours in  
13:41:06 9 Gatesville and then, recently at the Coleman Unit.

13:41:09 10 Q. And you testified about the units you were held in  
13:41:21 11 while you were an inmate in TDCJ, right?

13:41:23 12 A. Yes, sir.

13:41:24 13 Q. And I'm not sure if I heard it, heard them all  
13:41:29 14 correctly, but I think you said you were held in the  
13:41:31 15 O'Daniel Unit, the Lane Murray Unit, the Crain Unit and  
13:41:36 16 the Henley Unit; is that right?

13:41:38 17 A. And Plane State.

13:41:40 18 Q. And also, the Plane Unit?

13:41:41 19 A. Yes, sir.

13:41:42 20 Q. And at the time that you were an inmate, some of the  
13:41:48 21 units were already air-conditioned, right?

13:41:51 22 A. Yes. Yes, sir.

13:41:53 23 Q. And are you aware that since you have been released,  
13:41:58 24 some of those units that were previously unair-conditioned  
13:42:01 25 have been air-conditioned since?

13:42:03 1 A. I'm aware that some of them are partially  
13:42:06 2 air-conditioned with some housing, yes.

13:42:08 3 Q. Brian, could you please bring up Defendant's Exhibit  
13:42:14 4 224? Ms. Toon, do you recognize what's displayed in front  
13:42:21 5 of you?

13:42:21 6 A. Yes, sir.

13:42:23 7 Q. Could you tell me what it is?

13:42:25 8 A. Yeah. It's TDCJ's public-facing data about the rate  
13:42:30 9 of cool beds available and under construction.

13:42:33 10 Q. And do you see the date displayed as March 1, 2026?

13:42:36 11 A. Yes, sir.

13:42:37 12 Q. And is this air conditioning dashboard, is this  
13:42:40 13 something that you can access on the TDCJ website?

13:42:43 14 A. Yes, sir.

13:42:43 15 Q. You've accessed it yourself before, fair to say?

13:42:48 16 A. Sure. Yes.

13:42:51 17 Q. Your Honor, I'd like go ahead and offer Defendant's  
13:42:54 18 Exhibit 224.

13:42:55 19 THE COURT: Any objection?

13:42:56 20 MR. DUKE: No objection.

13:42:57 21 THE COURT: So admitted.

13:43:00 22 Q. (BY MR. TEBO) And do you see on this dashboard, the  
13:43:05 23 names of various units are listed?

13:43:07 24 A. Yes, sir.

13:43:18 25 Q. Do you see in the left-hand column somewhat mid down,

13:43:23 1 the Murray Unit is listed?

13:43:25 2 A. Yes, sir.

13:43:25 3 Q. And if you'd go back to the first page. Do you see  
13:43:31 4 that the heading of that column is Cool Beds Completed  
13:43:33 5 Since 2018?

13:43:34 6 A. Yes, sir.

13:43:35 7 Q. And then, the right-hand column is cool beds  
13:43:38 8 currently in design, right?

13:43:39 9 A. Yes.

13:43:40 10 Q. And the Murray Unit appears in both columns.

13:43:43 11 A. Yes.

13:43:43 12 Q. Are you aware if you add together those two numbers,  
13:43:49 13 the total will be all beds currently operational in the  
13:43:54 14 Murray Unit?

13:43:55 15 A. Seems right, yes.

13:43:56 16 Q. In other words, this shows that all the beds in the  
13:44:03 17 Murray Unit either are currently air-conditioned or are  
13:44:08 18 having air-conditioned installed in them, right?

13:44:11 19 A. Yes.

13:44:11 20 Q. When you were held at Murray, it was mostly  
13:44:17 21 unair-conditioned, right?

13:44:18 22 A. When I was incarcerated at the Lane Murray Unit, it  
13:44:21 23 was completely unair-conditioned.

13:44:22 24 Q. Completely unair-conditioned?

13:44:24 25 A. Yes.

13:44:24 1 Q. So all this air conditioning displayed here is  
13:44:26 2 progress since your release, right?

13:44:28 3 A. Yes.

13:44:29 4 Q. Brian, could you please pull up Defendant's Exhibit  
13:44:43 5 225? Your Honor, this exhibit is accompanied by a  
13:45:04 6 business records affidavit. I'd like to go ahead and  
13:45:07 7 offer it as a self-authenticating exhibit.

13:45:10 8 THE COURT: Any objection?

13:45:15 9 MR. TEBO: Brian, could you scroll through the  
13:45:18 10 exhibit, please? It's very short.

13:45:36 11 MR. DUKE: Per my colleague, no objection.

13:45:37 12 THE COURT: All right. So admitted.

13:45:40 13 Q. (BY MR. TEBO) Ms. Toon, do you see the bolded text in  
13:46:11 14 that third paragraph?

13:46:13 15 A. Yes.

13:46:14 16 Q. I'm going to go ahead and read it and you can tell me  
13:46:18 17 if I read it correctly. Attached is a true and correct  
13:46:20 18 copy of the spreadsheet which tracks total air-conditioned  
13:46:22 19 beds versus non-air-conditioned beds in TDCJ units which  
13:46:25 20 is kept by the TDCJ in the regular course of its business  
13:46:28 21 activity.

13:46:29 22 Did I read that correctly?

13:46:29 23 A. Yes, sir.

13:46:30 24 Q. Thanks. Ms. Toon, do you see all of the beds -- do  
13:46:55 25 you see that this table shows all the beds at the O'Daniel

13:46:58 1 Unit are currently air-conditioned?

13:46:59 2 A. Yes, sir.

13:47:00 3 Q. And you testified that you were housed at O'Daniel

13:47:04 4 for part of your incarceration, right?

13:47:06 5 A. Yes, sir.

13:47:06 6 Q. Were all the beds at O'Daniel air-conditioned during

13:47:09 7 your stint there?

13:47:10 8 A. There were beds in cell blocks that were not.

13:47:14 9 Q. It was partially air-conditioned. Some were -- some

13:47:17 10 beds were, some beds weren't?

13:47:18 11 A. Yes, sir.

13:47:18 12 Q. So that full air conditioning is progress since your

13:47:23 13 release, right?

13:47:24 14 A. Yes.

13:47:24 15 Q. Now, Ms. Toon, it's true, isn't it, that of the

13:47:37 16 roughly 104 prison units within the TDCJ system, only 12

13:47:42 17 house female inmates?

13:47:46 18 A. That sounds about right, yes.

13:47:49 19 Q. And do you recall at the time of your deposition, you

13:47:53 20 testified that there were eight units that were not fully

13:47:57 21 air-conditioned that housed female inmates?

13:48:00 22 A. Yes.

13:48:05 23 Q. And specifically, do you recall that they were the

13:48:08 24 then the Murray Unit, the Hobby Unit, the Young Unit,

13:48:13 25 Hilltop, O'Daniel, Woodman, Plane and Crain Units?



13:48:18 1 A. Yes, sir.

13:48:20 2 Q. We've already seen that O'Daniel now is fully  
13:48:31 3 air-conditioned.

13:48:32 4 A. Yes, sir.

13:48:33 5 Q. Does this also show that the Plane Unit is now fully  
13:48:43 6 air-conditioned?

13:48:44 7 A. Yes.

13:48:45 8 Q. And that's 2,296 air-conditioned beds at the Plane  
13:48:50 9 Unit?

13:48:50 10 A. Yes, sir.

13:48:52 11 Q. Do you see that this shows that the Young Unit is  
13:49:00 12 almost fully air-conditioned minus eight beds?

13:49:04 13 A. Yes, sir.

13:49:08 14 Q. And those totals were not -- most of those beds were  
13:49:13 15 not air-conditioned at the time of your deposition in this  
13:49:15 16 case last year, right?

13:49:17 17 A. As far as I know, yes.

13:49:30 18 Q. Do you see that the Woodman Unit, according to this  
13:49:33 19 table, is partially air-conditioned?

13:49:34 20 A. Yes, sir.

13:49:34 21 Q. And there are 391 unair-conditioned beds right now at  
13:49:38 22 the Woodman Unit?

13:49:39 23 A. Yes.

13:49:39 24 Q. Do you see in the right-hand column, there's an entry  
13:49:56 25 for the Woodman Unit?

13:49:57 1 A. Yes, sir.

13:49:59 2 Q. And besides -- aside Woodman, the number 391 appears,  
13:50:05 3 right?

13:50:05 4 A. Yes.

13:50:05 5 Q. And that gives the number of beds that are currently  
13:50:09 6 in design at the Woodman Unit according to this dashboard?

13:50:12 7 A. Yes, sir.

13:50:13 8 Q. And as we saw from the previous exhibit, that's all  
13:50:16 9 the beds at Woodman that are currently unair-conditioned,  
13:50:19 10 right?

13:50:19 11 A. Yes.

13:50:19 12 Q. In other words, Woodman is on its way to being a  
13:50:24 13 fully air-conditioned unit. Is that fair to say?

13:50:35 14 A. I can't be certain of that but, I mean, the  
13:50:37 15 connections you're making here, one would infer.

13:50:42 16 Q. A very measured answer. And you see there that the  
13:51:06 17 Crain Unit is partially air-conditioned. Some beds are  
13:51:09 18 unair-conditioned and some beds are currently  
13:51:13 19 air-conditioned?

13:51:14 20 A. Yes, sir.

13:51:15 21 Q. You see here, likewise, Murray is currently partially  
13:51:33 22 air-conditioned and partially unair-conditioned as of  
13:51:35 23 right now?

13:51:35 24 A. Yes, sir.

13:51:36 25 Q. Do you see the right-hand column -- there's an entry

13:51:46 1 that says 975 beds in design?

13:51:49 2 A. Yes, sir.

13:51:49 3 Q. Do you see in that right-hand column in the Murray

13:51:56 4 row, there are 975 unair-conditioned beds currently?

13:52:00 5 A. Yes.

13:52:02 6 Q. In other words, all the currently unair-conditioned

13:52:05 7 beds at Murray are currently on track to be

13:52:07 8 air-conditioned as well, fair to say?

13:52:11 9 A. By this, yes.

13:52:18 10 Q. So I know that's a lot to keep track of, but by my

13:52:23 11 tabulation, currently, there are already seven out of 12

13:52:27 12 fully air-conditioned women's facilities at TDCJ. Does

13:52:30 13 that sound right from what we've been discussing?

13:52:33 14 A. I'm sorry. Say it again.

13:52:34 15 Q. From what we've been discussing, currently, there are

13:52:37 16 seven of the out 12 female units are fully

13:52:41 17 air-conditioned?

13:52:42 18 A. Yes.

13:52:42 19 Q. And another nine out of 12 will be fully

13:52:50 20 air-conditioned once work that is currently underway is

13:52:54 21 complete. Does that sound right?

13:52:56 22 A. From what you showed me, yes.

13:52:59 23 Q. And in addition to those numbers, currently, the

13:53:04 24 Crain Unit is already partially air-conditioned.

13:53:07 25 A. According to those numbers, yes.

13:53:10 1 Q. Altogether, that leaves only two units that will be  
13:53:15 2 -- that will not be air-conditioned at all, the Hilltop  
13:53:18 3 and the Hobby Units. Does that sound right?

13:53:20 4 A. Yes, sir.

13:53:21 5 Q. And I believe you testified that Lioness' members are  
13:53:36 6 only housed in female-only TDCJ units, right?

13:53:41 7 A. Our current members are in women's facilities.

13:53:43 8 Q. Current members, right. In other words, the majority  
13:53:50 9 of TDCJ units Lioness members are currently housed are  
13:53:54 10 already fully air-conditioned, right?

13:53:58 11 A. Based on the numbers that you just presented, yeah.

13:54:02 12 Q. Based on these numbers and these numbers as we've  
13:54:04 13 seen are TDCJ's numbers.

13:54:06 14 A. Correct.

13:54:07 15 Q. To be accurate, right?

13:54:08 16 A. Yes, sir.

13:54:09 17 Q. I'm going to pivot a little bit now, Ms. Toon. Do  
13:54:23 18 you remember talking in your direct examination a little  
13:54:26 19 bit about Lioness' members -- membership? And I believe  
13:54:34 20 counsel may have showed you a membership list. I'm just  
13:54:37 21 going to show you one more list. It may be the same list  
13:54:40 22 just to be sure. Brian, can you go ahead and bring up  
13:54:45 23 Defendant's Exhibit 39?

13:54:57 24 I know you may have to squint a little bit, but  
13:55:00 25 does this look like the membership list that you shared

13:55:07 1 with the defendant?

13:55:08 2 A. Yes, sir.

13:55:08 3 Q. Your Honor, could I offer Defendant's Exhibit 39?

13:55:12 4 THE COURT: Any objection?

13:55:18 5 MR. DUKE: No objection.

13:55:24 6 THE COURT: So admitted.

13:55:26 7 Q. (BY MR. TEBO) And do you remember telling me at your  
13:55:32 8 deposition that this was a true and accurate list of  
13:55:37 9 Lioness' inside members at the time that Lioness joined  
13:55:41 10 this litigation?

13:55:42 11 A. Yes, sir.

13:55:43 12 Q. And that's still your testimony today, right?

13:55:46 13 A. Yes, sir.

13:55:47 14 Q. Just wanted to make sure. Do you remember testifying  
13:55:58 15 during your direct about a starting donation made by an  
13:56:03 16 inmate for Lioness?

13:56:04 17 A. Yes, sir.

13:56:05 18 Q. Was that donation a one-time thing? Let me ask you a  
13:56:17 19 different question. Lioness members, you also testified,  
13:56:19 20 don't routinely pay dues to fund Lioness, right?

13:56:21 21 A. Correct. We don't charge membership fees.

13:56:24 22 Q. It's rare for an incarcerated person to make a  
13:56:28 23 donation to Lioness. Is that fair to say?

13:56:30 24 A. Yes.

13:56:31 25 Q. Do you also remember testifying about a written

13:56:36 1 membership policy that Lioness has developed?

13:56:38 2 A. Yes, sir.

13:56:39 3 Q. Did Lioness develop that membership policy after it  
13:56:44 4 joined this litigation?

13:56:45 5 A. The membership form, yes.

13:56:48 6 Q. In other words, none of the individuals on the list  
13:56:51 7 that I just showed you on Lioness' membership list had  
13:56:56 8 joined by submitting that formal membership form at the  
13:57:01 9 time that Lioness joined this litigation, right?

13:57:05 10 A. So the members on the list that was given to you, you  
13:57:09 11 know, when I talked about earlier about documenting  
13:57:11 12 practice, they made that very clear to Diane who they were  
13:57:15 13 corresponding with that they were members of Lioness.

13:57:19 14 Q. They didn't make that clear by submitting a formal  
13:57:22 15 membership form, though, right?

13:57:24 16 A. Using that form, no, not at the time.

13:57:41 17 Q. And you testified a little bit about your cooperation  
13:57:45 18 with TDCJ. Is that fair to say?

13:57:47 19 A. Yes, sir.

13:57:48 20 Q. You communicate with TDCJ personnel on behalf of  
13:57:53 21 inmates frequently, right?

13:57:55 22 A. On behalf of our members, yes, sir.

13:58:00 23 Q. And sometimes that involves you raising Lioness  
13:58:03 24 members' issues with TDCJ staff and officials, right?

13:58:06 25 A. Yes, sir.

13:58:06 1 Q. You even said that one of those officials was the  
13:58:09 2 Defendant Bobby Lumpkin, right?  
13:58:12 3 A. Yes, sir.  
13:58:13 4 Q. Needless to say, Director Lumpkin is a pretty  
13:58:16 5 high-ranking TDCJ official.  
13:58:17 6 A. Yes, sir.  
13:58:18 7 Q. And you also have opportunities to raise member  
13:58:24 8 issues with other TDCJ staff as well, right?  
13:58:27 9 A. Yes, sir.  
13:58:30 10 Q. And is it fair to say that sometimes you get  
13:58:32 11 favorable responses when you raise issues?  
13:58:35 12 A. Yes.  
13:58:37 13 Q. Sometimes you bring a problem to TDCJ and TDCJ solves  
13:58:41 14 the problem. Is that fair to say?  
13:58:43 15 A. There have been times, yes.  
13:58:46 16 Q. Are you familiar with the open meetings that TDCJ  
13:58:51 17 holds periodically?  
13:58:53 18 A. Yes, sir.  
13:58:54 19 Q. And is it fair to describe those open meetings as an  
13:58:57 20 opportunity where members of the interested public are  
13:59:01 21 invited to attend and comment on TDCJ policy?  
13:59:05 22 A. Yes, sir.  
13:59:06 23 Q. And not just TDCJ policy but other issues surrounding  
13:59:09 24 TDCJ inmates?  
13:59:11 25 A. Yes, sir.

13:59:11 1 Q. Do you regularly attend those meetings?

13:59:14 2 A. I do.

13:59:15 3 Q. Do you find those meetings beneficial?

13:59:20 4 A. Sometimes. Sometimes they are extremely beneficial  
13:59:23 5 and other times, just absolutely not.

13:59:31 6 Q. And those meetings are a forum for you to make  
13:59:34 7 recommendation to TDCJ about prison policy. Is that fair  
13:59:37 8 to say?

13:59:37 9 A. Yes, sir.

13:59:38 10 Q. And they're also an opportunity, give you an  
13:59:41 11 opportunity to -- another opportunity, I suppose, to raise  
13:59:45 12 issues conveyed to you by Lioness' members, right?

13:59:49 13 A. Yes, sir.

13:59:50 14 Q. And we already touched on this a little bit, but  
13:59:58 15 you've been invited to tour certain TDCJ units by TDCJ,  
14:00:03 16 right?

14:00:03 17 A. Yes, sir, and Windham.

14:00:10 18 Q. Are you familiar with TDCJ's reentry program?

14:00:14 19 A. With their division, yes.

14:00:19 20 Q. Could you just briefly tell us what that division  
14:00:22 21 does?

14:00:23 22 A. That division, which is now Reentry and  
14:00:25 23 Rehabilitation Division, they are responsible for  
14:00:30 24 overseeing programs that revolve around successful reentry  
14:00:35 25 and rehabilitation of the people incarcerated there at



14:00:37 1 TDCJ.

14:00:38 2 Q. And those programs don't just involve inmates.

14:00:42 3 Sometimes they involve people, family members and people

14:00:45 4 on the outside, right?

14:00:46 5 A. Yes, sir.

14:00:47 6 Q. And you're involved with some of those programs,

14:00:51 7 right?

14:00:51 8 A. Currently, as a volunteer, yes.

14:00:54 9 Q. Am I right that you've applied to be a TDCJ reentry

14:00:58 10 volunteer?

14:00:59 11 A. Just an overall volunteer, yes.

14:01:08 12 Q. And are you aware that TDCJ sometimes holds

14:01:11 13 graduation ceremonies for inmates that are about to be

14:01:14 14 released?

14:01:14 15 A. Yes.

14:01:15 16 Q. And have you been invited to attend one or more of

14:01:17 17 those graduation ceremonies?

14:01:19 18 A. Yes, I spoke at one.

14:01:25 19 Q. And do you find all these invitations that you've

14:01:30 20 received from TDCJ to participate in various of their

14:01:31 21 programs helpful and relevant to Lioness' work?

14:01:36 22 A. Yes.

14:01:36 23 Q. Ms. Toon, would it surprise you to -- or does it

14:01:50 24 sound accurate to you that if you added up all the

14:01:52 25 currently air-conditioned beds in the 12 women's-only TDCJ

14:01:55 1 units, the total would exceed 7,000 beds?

14:02:01 2 A. I mean, are you asking me am I surprised by that?

14:02:04 3 Q. Sure. Are you surprised by that? Would you be?

14:02:07 4 MR. DUKE: Sorry. Objection, your Honor. Are  
14:02:10 5 you testifying to that number or...

14:02:13 6 MR. TEBO: I'm just asking if that is familiar to  
14:02:15 7 the witness.

14:02:18 8 MR. DUKE: Yeah. So what's the foundation?

14:02:19 9 MR. TEBO: The foundation is she's an inmate that  
14:02:23 10 has been housed in most of those facilities.

14:02:26 11 THE COURT: You can ask the question. You could  
14:02:29 12 ask if she knows.

14:02:30 13 A. If I know that's the total? I mean...

14:02:32 14 Q. (BY MR. TEBO) If it sounds like a realistic ballpark.

14:02:36 15 A. Perhaps.

14:02:37 16 Q. Do you see that there are, according to this, more  
14:03:02 17 than 2,000 air-conditioned beds at the Plane Unit?

14:03:06 18 A. Yes.

14:03:07 19 Q. And you also see the Murray Unit has another 289  
14:03:15 20 beds. I don't want to go over all the numbers again, but  
14:03:18 21 suffice to say that the number, according to this, the  
14:03:21 22 number on currently air-conditioned beds at the women's  
14:03:25 23 facilities is in 12,000?

14:03:31 24 A. Yes.

14:03:31 25 Q. Now, do you recall that at the time that you were

14:03:34 1   deposed in this case, you testified that Lioness had about  
14:03:38 2   158 members housed in unair-conditioned housing?  
14:03:42 3   A.   Sounds right.  
14:03:44 4   Q.   And did I hear you testify on direct that currently,  
14:03:49 5   Lioness has 118 members in unair-conditioned housing?  
14:03:54 6   A.   Somewhere around there.  
14:03:55 7   Q.   Those numbers sound accurate.  
14:03:56 8   A.   Pretty much.  
14:03:58 9   Q.   In any event, much less than 7,000, right?  
14:04:03 10  A.   Yes.  
14:04:04 11  Q.   In order of magnitude, less even.  
14:04:07 12  A.   Yes.  
14:04:10 13  Q.   And you've testified, did you not, that inmates can  
14:04:14 14  be moved out of air-conditioned beds, right?  
14:04:15 15  A.   Yes.  
14:04:15 16  Q.   Is that something that happened to you while you were  
14:04:19 17  incarcerated?  
14:04:20 18  A.   Yes.  
14:04:20 19  Q.   And conversely, isn't it true that inmates can be  
14:04:23 20  moved out of unair-conditioned into air-conditioned beds?  
14:04:26 21  A.   Yes.  
14:04:27 22  Q.   Either can happen.  
14:04:29 23  A.   Correct.  
14:04:31 24  Q.   Are you aware of a statute called the Prison  
14:04:34 25  Litigation Reform Act that limits relief, the relief

14:04:38 1 courts can award to be least intrusive relief necessary to  
14:04:42 2 remedy a constitutional violation?

14:04:44 3 A. Yes.

14:04:49 4 Q. Can you understand that it might be easier to move an  
14:04:51 5 inmate to a currently air-conditioned cell than to install  
14:04:55 6 new air conditioning in a prison?

14:04:59 7 A. Ask me again.

14:05:02 8 Q. Just if it might be easier to move an inmate into a  
14:05:08 9 cell that is already air-conditioned than to add air  
14:05:11 10 conditioning to a new cell?

14:05:13 11 MR. DUKE: Objection. Lack of foundation.

14:05:16 12 THE COURT: I'll allow it.

14:05:19 13 A. I mean, yes. Maybe. Yeah.

14:05:24 14 Q. (BY MR. TEBO) And it also might be less intrusive as  
14:05:27 15 far as TDCJ's operations are concerned to move an inmate  
14:05:30 16 to already air-conditioned cell than to install new air  
14:05:34 17 conditioning?

14:05:34 18 MR. DUKE: Objection. This is calling for legal  
14:05:39 19 conclusion about the PLRA.

14:05:42 20 THE COURT: I'll allow the question. Go ahead.

14:05:44 21 A. Yeah.

14:05:47 22 Q. (BY MR. TEBO) Your answer was yes?

14:05:48 23 A. Ask me again. I'm sorry.

14:05:50 24 Q. I'll re-ask the question. Do you understand that it  
14:05:52 25 might be less intrusive for TDCJ's operations to move an

14:05:56 1 inmate to an already air-conditioned cell than to install  
14:06:00 2 new air conditioning?

14:06:01 3 A. Yes.

14:06:02 4 Q. Ms. Toon, I'd just like to thank you for your  
14:06:18 5 testimony here today. Your Honor, I pass the witness.

14:06:37 6 RE-DIRECT EXAMINATION

14:06:37 7 BY MR. DUKE:

14:06:44 8 Q. I have just a question or two about Exhibit 62 for  
14:06:52 9 defendants, which I think is also Exhibit 204 for  
14:06:55 10 plaintiffs. Do you know how many or approximately how  
14:07:11 11 many female inmates there are in TDCJ units?

14:07:15 12 A. The number is close to 8, 9,000. Fluctuates.

14:07:21 13 Q. If it was, in fact, 10,685 or so, would that be close  
14:07:26 14 to your general understanding of the number of inmates?

14:07:29 15 A. Yes, because women are the fastest-growing population  
14:07:34 16 in carceral settings.

14:07:35 17 Q. Okay. I'm also not going to require you to do math,  
14:07:38 18 but if we walk through the number of uncooled beds that  
14:07:45 19 remain in the female units as of today, would the number  
14:07:50 20 of 4,000 or so seem to be right based off of the  
14:07:55 21 information you were shown? I can put those numbers back  
14:07:57 22 up if it would be helpful.

14:07:57 23 A. No. That sounds right.

14:08:00 24 Q. 4,000 of about 10,000, that's about 40 percent,  
14:08:06 25 right?

14:08:06 1 A. Yes.

14:08:07 2 Q. That's a significant portion of female-assigned  
14:08:11 3 inmates in TDCJ's prisons.

14:08:14 4 A. Yes.

14:08:15 5 Q. And that's today.

14:08:16 6 A. Yes.

14:08:17 7 Q. And even with the -- if you take the beds in design  
14:08:20 8 figure that was shown, there would still be thousands of  
14:08:24 9 inmates -- female-assigned inmates in TDCJ's housing.

14:08:29 10 A. Yes.

14:08:30 11 Q. And like you said, inmates can be moved anytime from  
14:08:43 12 cool beds to uncool beds, or vice versa, right?

14:08:46 13 A. Yes.

14:08:46 14 Q. Do you think that then the only effective remedy is  
14:08:55 15 systematic or systemwide air conditioning?

14:08:59 16 A. Yes, because we can get transferred at the drop of a  
14:09:04 17 hat for reasons we don't always understand, and so, the  
14:09:06 18 only way that I feel and our organization feels that will  
14:09:09 19 protect all our members is that everything be  
14:09:14 20 air-conditioned.

14:09:15 21 Q. And then, my friend asked you about whether or not it  
14:09:19 22 would be easier to move inmates from uncool beds to cool  
14:09:26 23 beds. Do you remember him asking you that?

14:09:29 24 A. Yes, sir.

14:09:30 25 Q. Is that possible if there's not enough uncool beds to

14:09:33 1 house the inmates in?

14:09:35 2 A. Right. It's not possible.

14:09:36 3 Q. And currently, that's the case, correct?

14:09:38 4 A. Yes, sir.

14:09:39 5 Q. And as far as we understand, that will continue to be  
14:09:41 6 the case based off of TDCJ's current projections?

14:09:46 7 A. Yes, sir.

14:09:48 8 Q. No further questions.

14:09:56 9 MR. TEBO: Nothing further, your Honor.

14:09:57 10 THE COURT: Thank you. You may step down.

14:10:01 11 Next witness?

14:10:05 12 MS. GROSSMAN: Plaintiffs call Charlie Malouff.

14:10:37 13 THE COURT: Before you take a seat, please raise  
14:10:39 14 your right hand to be sworn.

14:10:39 15 THE CLERK: You do solemnly swear or affirm that  
14:10:39 16 the testimony which you may give in the case now before  
14:10:39 17 the Court shall be the truth, the whole truth, and nothing  
14:10:47 18 but the truth?

14:10:47 19 THE WITNESS: Yes.

14:10:47 20 THE COURT: Please be seated.

14:10:48 21 CHARLIE MALOUFF, called by the Plaintiff, duly sworn.

14:10:48 22 DIRECT EXAMINATION

14:10:48 23 BY MS. GROSSMAN:

14:10:53 24 Q. Good afternoon.

14:10:53 25 A. Good afternoon.

14:10:54 1 Q. Please state your name for the record.

14:10:56 2 A. Charlie Malouff.

14:10:58 3 Q. Mr. Malouff, what organization are you testifying on  
14:11:01 4 behalf of?

14:11:01 5 A. Texas CURE.

14:11:03 6 Q. What is Texas CURE's mission?

14:11:05 7 A. To advocate, educate the inmates, the families, the  
14:11:11 8 legislature and the public about issues within the prison  
14:11:15 9 system.

14:11:16 10 Q. And what is your role at Texas CURE?

14:11:20 11 A. I'm the Vice-President and I run the day-to-day  
14:11:22 12 operations.

14:11:23 13 Q. And you've been Vice-President of Texas CURE since  
14:11:26 14 2022; is that right?

14:11:26 15 A. Yes, ma'am.

14:11:27 16 Q. And is one of the major policy goals seeking relief  
14:11:32 17 from extreme heat of TDCJ prisons?

14:11:36 18 A. Yes.

14:11:36 19 Q. Has that been the major policy goal since the  
14:11:39 20 inception of Texas CURE?

14:11:40 21 A. Yes.

14:11:41 22 Q. Why is that?

14:11:41 23 A. Goes all the way back to when I was incarcerated in  
14:11:46 24 Pack over the years, I've been an advocate of ongoing  
14:11:52 25 trying to get air conditioning. Having been part of that,



14:11:57 1 having been assigned to unair-conditioned units, having  
14:12:01 2 medical conditions, it's something that needs to take  
14:12:06 3 place sooner than later.

14:12:08 4 Q. And at the preliminary injunction hearing, you  
14:12:11 5 testified that you were incarcerated before in the TDCJ,  
14:12:14 6 right?

14:12:14 7 A. Yes.

14:12:14 8 Q. About three-and-a-half years?

14:12:16 9 A. Yes.

14:12:16 10 Q. And when were you released?

14:12:17 11 A. June 1st, 2018.

14:12:19 12 Q. Are you on parole?

14:12:20 13 A. Yes.

14:12:21 14 Q. And did any of those facilities of the prisons that  
14:12:26 15 you were incarcerated at have air conditioning in the  
14:12:29 16 living areas when you were housed there?

14:12:31 17 A. Only Pack after we won the lawsuit.

14:12:34 18 Q. So fair that three or four summers were in  
14:12:40 19 unair-conditioned units?

14:12:40 20 A. Yes.

14:12:40 21 Q. And the Texas CURE does not have traditional members;  
14:12:50 22 is that right?

14:12:50 23 A. Correct.

14:12:51 24 Q. And why not?

14:12:54 25 A. We are a corporation. In Texas, a corporation if you

14:12:58 1 have members, they're also the same as shareholders. And  
14:13:03 2 generally, members would pay dues or not necessarily but  
14:13:07 3 you're focused on those members. We have constituents  
14:13:10 4 because we reach out to all of the inmates in TDCJ, all of  
14:13:15 5 the inmates in the BOP in Texas, all of their family  
14:13:17 6 members, which was about 700,000-plus. And then, now  
14:13:22 7 since August, we've opened our doors to all of the county  
14:13:25 8 jails in the 254 counties.

14:13:27 9 Q. And do you charge money to be part of the  
14:13:30 10 organization or be a constituent?

14:13:32 11 A. No.

14:13:32 12 Q. Did you feel like charging money to members would  
14:13:35 13 limit the people that could be your members?

14:13:37 14 A. No.

14:13:37 15 Q. Given they're inmates?

14:13:39 16 A. Absolutely. You have indigent guys. You have guys  
14:13:41 17 that are barely struggling. They're always bugging their  
14:13:45 18 family, I need commissary, I need programs, phone. It's  
14:13:48 19 an extreme hardship, a financial hardship.

14:13:51 20 Q. And when you were in -- or in TDCJ, did you get paid  
14:13:55 21 as an inmate if you're working?

14:13:57 22 A. No. You got work credit or good time credit, but you  
14:14:03 23 did not get paid.

14:14:04 24 Q. And so, instead of members, Texas CURE has  
14:14:06 25 constituents?

14:14:08 1 A. Yes.

14:14:08 2 Q. And who do you consider Texas CURE's constituents?

14:14:12 3 A. Any inmate, any family member, even the kids that are  
14:14:20 4 Justice Impacted kids. We have a youth program, it's  
14:14:24 5 prevention intervention. And then, our constituents are  
14:14:28 6 anybody that's affiliated with the justice system to work  
14:14:30 7 on making positive change.

14:14:32 8 Q. And in what TDCJ units does Texas CURE have  
14:14:36 9 constituents?

14:14:36 10 A. Every one of them.

14:14:37 11 Q. Christopher Flores is incarcerated in the Stiles  
14:14:41 12 Unit. Do you consider Mr. Flores to be a constituent of  
14:14:43 13 Texas CURE?

14:14:44 14 A. Yes.

14:14:45 15 Q. And who sits on Texas CURE's board?

14:14:49 16 A. We have currently, eight members. We have retired a  
14:14:52 17 brigadier general who is our president. We have a lady  
14:14:57 18 who has been in the banking business for over 30 years as  
14:15:01 19 our treasurer. We've got a doctor in nursing. We've got  
14:15:04 20 a licensed counselor supervisor. We've got a mom whose  
14:15:09 21 son passed in prison and we have just citizens.

14:15:17 22 Q. How many members have been formerly incarcerated?

14:15:22 23 A. Two.

14:15:23 24 Q. Do you have any currently incarcerated members in the  
14:15:26 25 board?

14:15:26 1 A. No.

14:15:27 2 Q. And why not?

14:15:28 3 A. It's impractical.

14:15:32 4 Q. Feels a little obvious, but can you set your own  
14:15:36 5 schedule in prison and have board meetings? Do you have  
14:15:39 6 that kind of time when you're in prison?

14:15:41 7 A. No.

14:15:41 8 Q. Are you able to advocate for people that are in  
14:15:48 9 prison constituents more effectively on the outside?

14:15:51 10 A. Yes.

14:15:51 11 Q. When you were incarcerated, it wasn't your experience  
14:15:56 12 that they made exceptions to have board members or  
14:15:59 13 anything like that in the prison rules. Is that fair?

14:16:01 14 A. Yeah.

14:16:03 15 Q. And does Texas CURE's constituents, the issues that  
14:16:08 16 they face in the prisons, do the issues that they face,  
14:16:13 17 does that guide the organization it advocates for?

14:16:16 18 A. Yes.

14:16:18 19 Q. And how do you determine what the most pressing  
14:16:20 20 issues are on behalf of the constituents?

14:16:25 21 A. So it's situational, if you will. April to October,  
14:16:31 22 air conditioning is high on the list. Could be a  
14:16:35 23 situation medical. Like right now, we've go to a TB  
14:16:38 24 outbreak at Connally Unit so the TB outbreak is going to  
14:16:42 25 be a high priority for us. We had that before. We had

14:16:45 1 over 500 people exposed. We had contaminated water going  
14:16:48 2 out to the farm fields outside the prison so that was  
14:16:52 3 something that was extremely high on our priority list.  
14:16:53 4 So it's issue by issue. But the air conditioning, because  
14:16:59 5 we're going into the heat now, is extremely high on our  
14:17:02 6 list.

14:17:03 7 Q. Where would you say it ranks on the list from April  
14:17:09 8 till October?

14:17:10 9 A. Number one to one and a half, based on the situation.

14:17:14 10 Q. And how do you learn about what's happening in the  
14:17:17 11 prison? How do you understand what's going on to your  
14:17:20 12 Texas constituents?

14:17:22 13 A. Either direct letters. We belong to multiple  
14:17:29 14 Facebook family groups that are TDCJ related, posts on  
14:17:34 15 those groups. I will get messages two or three in the  
14:17:38 16 morning all day long, my loved one just called me, please  
14:17:41 17 call for help, reach out to Texas CURE, we're having this  
14:17:45 18 issue, I'm having this issue, I'm not getting medical,  
14:17:48 19 they're not allowing me to get grievances, we haven't had  
14:17:51 20 chow in 14 hours, a number of ways that they reach out.

14:17:54 21 Q. So you learn about the issues that your constituents  
14:17:58 22 face from letters, from groups, from phone calls, all  
14:18:04 23 those methods of communication?

14:18:05 24 A. Yes, ma'am.

14:18:05 25 Q. And do you also know it from your personal experience

14:18:08 1 from being incarcerated yourself as well?

14:18:10 2 A. Yes.

14:18:10 3 Q. And in those communications and also from your own  
14:18:18 4 experience, is heat one of the biggest problems faced by  
14:18:21 5 inmates in prison?

14:18:22 6 A. Right now, yes.

14:18:25 7 Q. Have you received multiple complaints from  
14:18:28 8 incarcerated constituents about extreme heat?

14:18:30 9 A. Yes.

14:18:31 10 Q. If you could please pull up Exhibit 151. Do you  
14:18:59 11 recognize this document?

14:19:07 12 A. Sort of. I mean, it's, oh, Billy Mitchell, yes.

14:19:14 13 MR. TEBO: Briefly interject. I think you said  
14:19:18 14 Exhibit 159, but this is 151.

14:19:22 15 MS. GROSSMAN: I meant to say 151.

14:19:33 16 Q. (BY MS. GROSSMAN) I'm sorry, what is this?

14:19:34 17 A. It's a letter from Billy Mitchell. He was with me at  
14:19:38 18 Pack and then, this was after Pack.

14:19:44 19 Q. And I know what you mean by Pack, but are you  
14:19:47 20 referring to when you say you're part of the Pack lawsuit,  
14:19:50 21 the Pack lawsuit get air conditioning; is that right?

14:19:51 22 A. Yes, ma'am.

14:19:52 23 Q. And Mr. Mitchell, was he writing to you in your role  
14:19:57 24 as Vice-President of Texas CURE?

14:19:58 25 A. Yes. We were at the trustee camp and he --

14:20:01 1 apparently, he was moved to another unit and he was having  
14:20:06 2 some issues at the unit he was at. He's at the Choice  
14:20:12 3 Moore. This letter, he was at the Choice Moore.

14:20:17 4 Q. Is he complaining to you here about the heat, need  
14:20:20 5 for air conditioning?

14:20:20 6 A. Yes.

14:20:21 7 MR. TEBO: Your Honor, I'd like to object as  
14:20:23 8 hearsay.

14:20:24 9 MS. GROSSMAN: It's not admitted for the truth of  
14:20:27 10 the matter. It's admitted for communicating on behalf of  
14:20:30 11 Texas CURE with constituents.

14:20:32 12 THE COURT: Overrule the objection. Go ahead.

14:20:38 13 Q. (BY MS. GROSSMAN) Is he complaining to you about the  
14:20:40 14 heat and need for air conditioning?

14:20:42 15 A. Yes.

14:20:42 16 Q. I'd like to move Exhibit 151, please.

14:20:45 17 THE COURT: Over the objection of the defendants,  
14:20:47 18 it's admitted.

14:20:49 19 Q. (BY MS. GROSSMAN) And approximately how many letters  
14:20:54 20 like this do you think you've received over the last few  
14:20:57 21 summers, years?

14:21:03 22 A. Probably maybe three file cabinet drawers full of  
14:21:09 23 folders, letters.

14:21:10 24 Q. All complaining about heat or what's happening or the  
14:21:13 25 measures or needs for air conditioning?

14:21:15 1 A. Everything.

14:21:16 2 Q. And how much time do you spend communicating with  
14:21:19 3 Texas CURE constituents about the extreme heat in prisons?

14:21:22 4 A. If we get a lawyer, we respond within 72 hours. If  
14:21:26 5 it's a message, e-mail, family posts, whatever the case,  
14:21:31 6 right then there and there as they come up.

14:21:33 7 Q. Do you feel like you spend your personal time -- does  
14:21:36 8 it take a lot of your time in these occasions?

14:21:40 9 A. Over 40 hours a week.

14:21:42 10 Q. You also communicate with the families as well about  
14:21:47 11 the heat in Texas prisons?

14:21:48 12 A. Absolutely.

14:21:49 13 Q. Why is that important?

14:21:50 14 A. Well, they're the link, they're the lifeline to that  
14:21:54 15 inmate and so, most of the time, the inmate can't just  
14:21:59 16 pick up the phone and call me and so, reach out to the  
14:22:02 17 family. And then, a lot of them, I need your help. This  
14:22:08 18 is what's going on at this unit and so, okay, based on the  
14:22:11 19 situation, here's what you need to do. Here's the steps  
14:22:14 20 that need to be taken.

14:22:16 21 Q. Do Texas CURE's constituents support the  
14:22:20 22 organization's participation in this lawsuit?

14:22:21 23 A. Yes.

14:22:22 24 Q. Can you think of any constituents that you've talked  
14:22:26 25 to at all that disapprove of this lawsuit, or this case,



14:22:31 1 or this mission?

14:22:32 2 A. No.

14:22:32 3 Q. And how does Texas CURE advocate on behalf of its  
14:22:36 4 constituents for them?

14:22:38 5 A. Anything. We are part of formal meetings with TDCJ,  
14:22:44 6 with the independent ombudsman with a new program that  
14:22:48 7 they started for the advocates so we can bring direct  
14:22:51 8 issues to like quarterly meetings that we could bring  
14:22:55 9 direct issues. If the inmates have filed grievances and  
14:23:00 10 they're not getting resolution and it's been addressed,  
14:23:03 11 then I will go down to the capitol to the Corrections  
14:23:06 12 Committee and deal with them. They're the oversight over  
14:23:09 13 the agency. And then, guiding them on filing grievances  
14:23:15 14 on what needs to get done. So there's a whole process.

14:23:19 15 Q. Have you testified in front of the Texas legislature  
14:23:24 16 on behalf of your constituents as well?

14:23:25 17 A. Yes.

14:23:26 18 Q. About heat and heat-related issues in prisons?

14:23:31 19 A. That, too.

14:23:31 20 Q. And how many times do you think you've testified in  
14:23:33 21 front of the Texas legislature about need for air  
14:23:36 22 conditioning and heat problems in the prisons?

14:23:38 23 A. At least -- every time there's a bill so at least  
14:23:44 24 maybe three times every session.

14:23:47 25 Q. Did you say every time there's a bill? Do you

14:23:50 1 testify every single time there's a bill on air

14:23:53 2 conditioning?

14:23:53 3 A. Yes.

14:23:53 4 Q. Did you testify at the last session?

14:23:55 5 A. Yes.

14:23:56 6 Q. How many times have you testified in the last session

14:23:58 7 about the need for air conditioning in the prisons?

14:24:00 8 A. I know we had several bills and I think we had two

14:24:07 9 that went to public hearing, maybe three.

14:24:11 10 Q. I'd like to show you Exhibit 77, please. Do you

14:24:27 11 recognize this document?

14:24:29 12 A. Yes.

14:24:29 13 Q. What is it?

14:24:31 14 A. That's one of my testimonies.

14:24:34 15 Q. And when you say testimony, are you talking about

14:24:40 16 speaking verbally or giving written submissions?

14:24:46 17 A. Both. So when you go to testify, you basically have

14:24:50 18 two minutes and most of the time, that's because you have

14:24:54 19 a full group and so, you have a limited time to try to get

14:24:58 20 what you want to do. So I both document so I can submit

14:25:04 21 to all the legislators my full testimony for what doesn't

14:25:07 22 get verbally relayed, and then, I get up there and do

14:25:12 23 everything that I can do to try to read my testimony so

14:25:16 24 that I'm on task, clear and concise and try to get

14:25:21 25 everything in in two minutes.

14:25:22 1 So it's kind of I come before you, stand behind  
14:25:24 2 you and talk about this fast so you can try to understand  
14:25:26 3 what I'm trying to tell you.

14:25:27 4 Q. And then, so if you also can't get it all in two  
14:25:31 5 minutes, then I'm going to look at the document and figure  
14:25:33 6 you can't. Do you then submit written testimony so it's  
14:25:36 7 all understood?

14:25:37 8 A. Yes. There's about nine to 11 copies to each one and  
14:25:42 9 then, I'm not really addressing the dais as much as I'm  
14:25:46 10 actually reading my testimony.

14:25:48 11 Q. Was Exhibit 77 part of that testimony that you  
14:25:52 12 submitted on behalf of the bill for air conditioning?

14:25:54 13 A. On -- for 1555, yes, ma'am.

14:25:58 14 Q. Can you turn to Exhibit 78? Is this also written  
14:26:05 15 testimony that you submitted on behalf of the bill for air  
14:26:07 16 conditioning?

14:26:07 17 A. Yes. That was for 2950.

14:26:10 18 Q. All right. Let's look at Exhibit 79. Is this also  
14:26:16 19 testimony you submitted on behalf of the bill for air  
14:26:18 20 conditioning?

14:26:18 21 A. 1708.

14:26:20 22 Q. I'd like to move to Exhibit 77 and 79.

14:26:23 23 THE COURT: Any objection?

14:26:26 24 MS. GROSSMAN: Seventy-seven, 78, 79. That's  
14:26:31 25 what I thought I said again, apparently not. Move to

14:26:34 1 admit --

14:26:34 2 MR. TEBO: No objection.

14:26:35 3 THE COURT: All right. So admitted.

14:26:36 4 Q. (BY MS. GROSSMAN) For how many years have you  
14:26:42 5 advocated on behalf of individuals incarcerated in Texas  
14:26:45 6 prisons?

14:26:46 7 A. I started when I was in at the Pack, I became a  
14:26:51 8 interested party and advocated for over 500 of us mainly  
14:26:55 9 at the objections and settlement proceedings. I was  
14:26:57 10 released June 1st. June 2nd, I became an advocate.

14:27:00 11 Q. What representatives or senators have you talked to  
14:27:04 12 about the issues of extreme heat in prisons?

14:27:06 13 A. Every one, every legislative session senate and  
14:27:10 14 house.

14:27:12 15 Q. And you stand out?

14:27:15 16 A. Yes.

14:27:16 17 Q. Are there other members' names that you talk to more  
14:27:19 18 than others that stand out?

14:27:21 19 A. Well, primarily the Corrections Committee, they're  
14:27:24 20 the primary committee. And then, criminal justice in the  
14:27:28 21 Senate and then veterans. We have now over almost 11,000  
14:27:32 22 incarcerated veterans. Before, it was between six and  
14:27:36 23 eight before Thanksgiving and so, veterans are high on the  
14:27:40 24 list as well. And then, the general investigating,  
14:27:48 25 appropriations, for the most part, that's the -- but all

14:27:55 1 of the representatives and legislators count because if  
14:27:57 2 the bill makes it to the floor, then every one of them  
14:28:00 3 counts.

14:28:01 4 Q. So you got out in 2018; is that right?

14:28:04 5 A. Yes, ma'am.

14:28:05 6 Q. You've been testifying since 2019?

14:28:07 7 A. Yes, ma'am.

14:28:08 8 Q. So about four special sessions?

14:28:12 9 A. All those, too.

14:28:23 10 Q. In your communications with constituents, have you  
14:28:25 11 heard about -- have you heard from them issues with  
14:28:28 12 respect to where the cool beds are located?

14:28:33 13 A. Yes.

14:28:34 14 Q. What issues have come up?

14:28:38 15 A. The issues that come up are the designated beds are  
14:28:42 16 back in solitary confinement, ad seg, whatever you want to  
14:28:47 17 call it, solitary, and the concerns that if they go back  
14:28:53 18 there, it's going to become punitive. They'll lose their  
14:28:57 19 privileges. Yes, they're getting a bed, but the freedoms  
14:29:02 20 that they'll lose to take that bed becomes an issue with  
14:29:05 21 them. And then, the other issue that I've had is those  
14:29:10 22 that don't take it were basically forced to sign a waiver  
14:29:15 23 saying they're not going to sue TDCJ, and without having  
14:29:20 24 access to an attorney, I think that creates some potential  
14:29:25 25 due process issues because it becomes potentially punitive

14:29:28 1 and may affect other things that they may have legitimate  
14:29:31 2 claim for. And those are the types of complaints that we  
14:29:36 3 get.

14:29:36 4 Q. And from communicating with your constituents, is it  
14:29:39 5 your understanding that they didn't want those cool beds  
14:29:42 6 because they were in restrictive housing and they would  
14:29:44 7 lose their privileges?

14:29:45 8 A. Yes.

14:29:46 9 MR. TEBO: Objection, your Honor. Calls for  
14:29:48 10 hearsay.

14:29:48 11 MS. GROSSMAN: Also goes to the present-sense  
14:29:50 12 impression notice and effect on why Mr. Malouff is  
14:29:54 13 testifying for the legislature and what he's doing on  
14:29:56 14 behalf of them.

14:29:57 15 MR. TEBO: If I may, there's absolutely no  
14:30:00 16 communication that any of this was relayed to the  
14:30:01 17 defendant.

14:30:08 18 MS. GROSSMAN: There's been many grievances  
14:30:09 19 submitted on behalf that many of these organizations have  
14:30:12 20 also helped with. So it does go to, I think, notice with  
14:30:16 21 the defendant in terms of cool beds.

14:30:19 22 MR. TEBO: To be clear, you weren't asking about  
14:30:22 23 grievances. You were asking about correspondence.

14:30:28 24 MS. GROSSMAN: I can rephrase.

14:30:29 25 Q. (BY MS. GROSSMAN) Have you communicated to TDCJ the

14:30:33 1 issues that you've heard from your constituents about the  
14:30:36 2 location of cool bed housing staying is seg, restrictive  
14:30:41 3 housing?

14:30:42 4 A. To TDCJ, I don't really recall specific issues --  
14:30:47 5 specific individuals having specific issues. I always  
14:30:53 6 want them to file grievances so that I have the exhaustion  
14:30:57 7 remedy and what exactly the problem is in writing.

14:31:00 8 Q. And did you help or did you explain the grievance  
14:31:03 9 process to them and help them file those grievances?

14:31:05 10 A. Yes. Well, I will tell them, okay, here's what the  
14:31:09 11 policy is, here's, you know, if it's in violation of  
14:31:13 12 10.64, the heat directive, if they're not getting respite,  
14:31:17 13 whatever the circumstance is, then here's what you need to  
14:31:19 14 address and make sure you have the who, what, when, where,  
14:31:21 15 why and how.

14:31:22 16 Q. And I wasn't trying to imply you filed them. I just  
14:31:26 17 meant explain the process, here's how you do it, here's  
14:31:28 18 what you should do.

14:31:29 19 A. Yes.

14:31:29 20 Q. Were you involved in the decision for Texas CURE to  
14:31:38 21 join the lawsuit?

14:31:40 22 A. Yes.

14:31:42 23 Q. Was the decision to join this lawsuit a direct  
14:31:45 24 response to the concerns that your constituents have  
14:31:47 25 raised and your own experience with respect to extreme

14:31:51 1 heat in the prisons?

14:31:51 2 A. Yes. And at the time that we agreed, we being the  
14:31:55 3 board, we had two other prison moms and a wife on the  
14:32:00 4 board and it was unanimous that that was the purpose of  
14:32:04 5 why we are here.

14:32:05 6 Q. And has any of your constituents objected to the  
14:32:09 7 participation in this lawsuit?

14:32:09 8 A. No.

14:32:10 9 Q. And does Texas CURE stand to gain anything  
14:32:13 10 financially from this lawsuit?

14:32:14 11 A. No.

14:32:14 12 Q. Thank you. That's all I have.

14:32:21 13 CROSS-EXAMINATION

14:32:21 14 BY MR. TEBO:

14:32:40 15 Q. Good afternoon, Mr. Malouff. It's nice to see you  
14:32:43 16 again.

14:32:43 17 A. Yes, sir. You too.

14:32:44 18 Q. Mr. Malouff, you testified a little bit today about  
14:32:55 19 your previous incarceration at TDCJ, right?

14:32:58 20 A. Yes.

14:32:58 21 Q. And the last year you were previously incarcerated  
14:33:01 22 was 2018; is that right?

14:33:03 23 A. Yes.

14:33:03 24 Q. Do you recall the month you were released?

14:33:07 25 A. Pardon?



14:33:08 1 Q. Do you recall which month in 2018 you were released?

14:33:11 2 A. June 1st.

14:33:13 3 Q. And since June 2018, you've not been housed in a TDCJ

14:33:16 4 unit, right?

14:33:16 5 A. Correct.

14:33:18 6 Q. Since June 2018, you've not been back in a TDCJ unit

14:33:23 7 at all except perhaps for areas open to visitors and the

14:33:26 8 public, fair to say?

14:33:28 9 A. Open to the public, yes.

14:33:32 10 Q. You don't have personal knowledge of living

14:33:35 11 conditions inside a unit more recent than June 2018,

14:33:38 12 right?

14:33:38 13 A. Other than what I get from the inmates directly or

14:33:42 14 through their families.

14:33:45 15 Q. Which TDCJ units were you housed in during your

14:33:52 16 incarceration?

14:33:56 17 A. Byrd, Hamilton, Torres, Pack, Michael, Dominguez,

14:34:04 18 Darrington, Estelle, Diboll. I think that's all of them.

14:34:09 19 It was a lot of them.

14:34:13 20 Q. During the time you were incarcerated, only Pack had

14:34:17 21 air conditioning, right?

14:34:18 22 A. After the lawsuit.

14:34:19 23 Q. And were you there for some of that?

14:34:22 24 A. Oh, yes.

14:34:23 25 Q. In other words, towards the end of your time in TDCJ,

14:34:28 1 Pack had some air conditioning, right?

14:34:29 2 A. We got the temporary air conditioning and it was done  
14:34:32 3 in less than 90 days. And then, they worked on a  
14:34:37 4 permanent installation, but we got the temporary like  
14:34:44 5 right then, it was done.

14:34:44 6 Q. You only had temporary air conditioning while you  
14:34:46 7 were there at Pack, right?

14:34:47 8 A. Yes.

14:34:47 9 Q. And are you aware that today, the entire Pack Unit is  
14:34:51 10 permanently air-conditioned?

14:34:52 11 A. Yes.

14:34:52 12 Q. Brian, could you pull up Defendant's 224 again? Are  
14:35:12 13 you familiar with this -- with what's displayed in front  
14:35:18 14 of you, Mr. Malouff?

14:35:19 15 A. Yes. I've seen this so I think it's kind of  
14:35:21 16 misleading, but I understand it.

14:35:24 17 Q. In any event, it's the dashboard that displays TDCJ's  
14:35:27 18 recent progress in air conditioning in its prison system,  
14:35:30 19 right?

14:35:31 20 A. Yes.

14:35:32 21 Q. And you testified that you were incarcerated in the  
14:35:39 22 Pack, Michael, Byrd, Holliday, Darrington, Dominguez,  
14:35:45 23 Torres, Huntsville and Estelle Units?

14:35:48 24 A. And a stop at the Walls.

14:35:51 25 Q. Well, the Walls is --

14:35:52 1 A. In Huntsville, now.

14:35:54 2 Q. And Darrington is an alternative name for the  
14:35:57 3 Memorial Unit?

14:35:58 4 A. All that was after the fact, yeah, so I know it as  
14:36:02 5 the old names.

14:36:03 6 Q. I know a lot of these TDCJ units have nicknames that  
14:36:06 7 inmates like to give them, right?

14:36:08 8 A. Walls has been known as the Walls for...

14:36:13 9 Q. In any event, do you see displayed within this  
14:36:21 10 graphic this air conditioning dashboard, the Memorial  
14:36:32 11 Unit?

14:36:32 12 A. Yeah, 390.

14:36:37 13 Q. And that's 390 beds within the Memorial Unit that are  
14:36:40 14 currently underway in design according to the graphic,  
14:36:43 15 right?

14:36:43 16 A. Yes.

14:36:44 17 Q. And do you also see the Estelle Unit?

14:37:04 18 A. Yes. That's under construction.

14:37:06 19 Q. Some are under construction and if you see towards  
14:37:09 20 the right of the graphic, some are also -- some additional  
14:37:11 21 beds are also in design.

14:37:14 22 A. Okay.

14:37:21 23 Q. Are you familiar that TDCJ has designs to air  
14:37:27 24 condition its entire prison system?

14:37:29 25 A. Well, I know that.

14:37:31 1 Q. Have you heard that before?

14:37:32 2 A. Yes.

14:37:32 3 Q. And I guess to save a little bit of time, kind of  
14:37:37 4 back and forth over this exhibit, would it surprise you  
14:37:41 5 that if of the nine units you were incarcerated in,  
14:37:44 6 according to this graphic, only the Torres and Huntsville  
14:37:47 7 units have not had any progress in air-conditioned beds?

14:37:51 8 A. That wouldn't surprise me and I see a big deficiency  
14:37:55 9 with Beto because I have a current issue with some  
14:37:59 10 veterans up there.

14:38:01 11 Q. Now, one of the units you were incarcerated in was  
14:38:04 12 the Huntsville Unit?

14:38:06 13 A. Yes, sir.

14:38:06 14 Q. And do you know when the Huntsville Unit was  
14:38:09 15 originally constructed?

14:38:10 16 A. A long time ago. It was one of the first.

14:38:13 17 Q. It's an old unit. Would it surprise you to know that  
14:38:16 18 it was constructed in 1849?

14:38:18 19 A. I was going to say 1839, but 1849 would be okay.

14:38:22 20 Q. And as we mentioned, there hasn't been any progress  
14:38:26 21 air conditioning the Huntsville Unit yet, fair?

14:38:29 22 A. To the best of my knowledge, correct.

14:38:32 23 Q. Can you understand it might be harder to renovate a  
14:38:34 24 19th century prison than a 20th century prison?

14:38:37 25 A. Pack was a red brick. We got temporary and it want

14:38:40 1 through pretty quick.

14:38:42 2 Q. But Pack wasn't built in 1849, right?

14:38:44 3 A. No, but having been to the Walls to be able to go

14:38:48 4 through a window or to put a hole and then run a duct

14:38:52 5 system through the main channel --

14:38:53 6 Q. I understand there are a lot of details you can go

14:38:57 7 into between the two different units, but just in terms of

14:39:00 8 age, Pack is much newer than the Huntsville Unit, right?

14:39:04 9 A. Yes.

14:39:04 10 Q. And you can understand that that age might be an

14:39:08 11 added difficulty for renovating the Huntsville Unit?

14:39:14 12 A. Not in my opinion.

14:39:19 13 Q. But from the perspective of someone trying to install

14:39:24 14 air conditioning, that might be a factor that makes air

14:39:28 15 conditioning more difficult?

14:39:29 16 MS. GROSSMAN: Objection. Foundation.

14:39:31 17 MR. TEBO: I'll move on.

14:39:37 18 Q. (BY MR. TEBO) Mr. Malouff, you've testified a little

14:39:59 19 bit about lobbying you've done in support of air

14:40:04 20 conditioning legislation, right?

14:40:05 21 A. Yes.

14:40:08 22 Q. You've testified in front of the Texas legislature on

14:40:11 23 behalf of pieces of legislation, right?

14:40:13 24 A. Yes.

14:40:14 25 Q. And Ms. Grossman asked you about a few of them,

14:40:19 1 right?

14:40:19 2 A. Yes.

14:40:19 3 Q. And one of the pieces of legislation you lobbied in  
14:40:24 4 support of was House Bill 1708, right?

14:40:27 5 A. Yes.

14:40:27 6 Q. Do you recall that you also legislated -- do you  
14:40:39 7 recall that you also lobbied concerning House Bill 1355  
14:40:46 8 and House Bill 2950?

14:40:49 9 A. Yes.

14:40:50 10 Q. All these pieces, these three pieces of legislation  
14:40:54 11 were submitted to the 88th Regular Session of the Texas  
14:40:58 12 legislature, right?

14:40:59 13 A. I believe that's correct.

14:41:03 14 Q. You lobbied against House Bill 1355 and against House  
14:41:07 15 Bill 2950, right?

14:41:09 16 A. Yes, sir.

14:41:09 17 Q. And as we said in support of House Bill 1708.

14:41:14 18 A. In support of because of the timeline. I was against  
14:41:17 19 the other two because they extended the timeline to what I  
14:41:21 20 considered to be unreasonable, especially having been at  
14:41:24 21 Pack and seeing the temporary air to go years and years  
14:41:28 22 and years, to me, was not fair so I objected against those  
14:41:33 23 bills.

14:41:33 24 Q. Sure. Let's just take it one step at a time. So  
14:41:36 25 first of all, all three pieces of legislation set a

14:41:40 1 mandatory temperature range within the TDCJ system of 65  
14:41:44 2 to 85 degrees, right?

14:41:46 3 A. Correct.

14:41:46 4 Q. And that's the same temperature range that plaintiffs  
14:41:49 5 are requesting in this litigation, right?

14:41:51 6 A. It's been that way since Pack and that's never been  
14:41:54 7 an issue.

14:41:56 8 Q. That wasn't quite my question. So Texas CURE --  
14:42:00 9 you're affiliated with Texas CURE?

14:42:02 10 A. Yes.

14:42:02 11 Q. And Texas CURE is a plaintiff in this litigation?

14:42:05 12 A. Right. Yes, sir.

14:42:06 13 Q. And as a plaintiff in this litigation, Texas CURE is  
14:42:09 14 requesting that the temperature within TDCJ units be  
14:42:12 15 maintained at 65 to 85 degrees, right?

14:42:14 16 A. Yes, sir.

14:42:15 17 Q. Okay. That's all I wanted to know in that question.  
14:42:20 18 And it's also true that all three pieces of legislation  
14:42:23 19 that you lobbied concerning would have required TDCJ to  
14:42:26 20 install air conditioning in all of its prisons.

14:42:28 21 A. Yes.

14:42:29 22 Q. And that's also part of the relief that plaintiffs  
14:42:33 23 are requesting in this litigation, right?

14:42:34 24 A. Correct.

14:42:35 25 Q. Now, the legislature didn't pass House Bill 1708,

14:42:44 1 right?

14:42:44 2 A. Correct.

14:42:47 3 Q. And the legislature didn't pass House Bills 1355 or  
14:42:52 4 2950 either, right?

14:42:55 5 A. Collectively, no. You have bills that passed in the  
14:42:59 6 house that never made it to the senate so no.

14:43:02 7 Q. In other words, those bills made it through some of  
14:43:05 8 the steps of the legislative process, but they were never  
14:43:07 9 enacted by the legislature into law?

14:43:09 10 A. Correct.

14:43:10 11 Q. Brian, could you show the fiscal note for house bill  
14:43:17 12 1355? Could you scroll down a little bit? Mr. MOUFR, do  
14:43:39 13 you see the red box on this fiscal note?

14:43:42 14 A. Yes.

14:43:42 15 Q. Do you see where it estimates a negative impact of  
14:43:53 16 roughly \$1.1 billion from House Bill 1355?

14:44:00 17 A. Yes.

14:44:01 18 Q. And, Brian, could you also bring up the fiscal note  
14:44:05 19 for House Bill 2950? And you see that same red box where  
14:44:14 20 it gives the same estimate with respect to the fiscal  
14:44:18 21 effects of House Bill 2950?

14:44:20 22 A. Yes.

14:44:21 23 Q. That fiscal effect is a net negative impact of  
14:44:24 24 roughly \$1.1 billion on the state treasury, right?

14:44:28 25 A. Yes.



14:44:32 1 Q. And are you aware that TDCJ's current total estimate  
14:44:35 2 for air conditioning its entire system is actually  
14:44:39 3 somewhat higher than this 1.1 billion figure?

14:44:45 4 A. Now, yes.

14:44:45 5 Q. Now, as we discussed, both pieces of legislation 2950  
14:44:50 6 and 1355 would have required air conditioning the entire  
14:44:53 7 TDCJ prison system, right?

14:44:54 8 A. Correct.

14:44:55 9 Q. And are you aware, in fact, that the text of House  
14:45:00 10 Bill 1355 expressly required the installation of air  
14:45:05 11 conditioning in TDCJ units?

14:45:07 12 A. Yes.

14:45:10 13 Q. The legislature considered that proposal to air  
14:45:16 14 condition all TDCJ prisons at a cost of about 1.1 billion  
14:45:22 15 and rejected it, right?

14:45:24 16 A. The legislature at the end rejected it, yes.

14:45:30 17 Q. And it rejected the same proposal in the form of  
14:45:34 18 House Bill 2950?

14:45:39 19 A. Yes.

14:45:39 20 Q. Now, the 88th Regular Session convened in 2023. Do  
14:45:44 21 you recall that?

14:45:44 22 A. Yes.

14:45:46 23 Q. And does it sound right that it ran roughly from  
14:45:49 24 January 10th until May 29th?

14:45:52 25 A. About that.

14:45:53 1 Q. And all three pieces of legislation we've been  
14:45:55 2 talking about were submitted between those two dates,  
14:45:58 3 right?

14:45:58 4 A. Yes.

14:45:58 5 Q. This litigation was originally filed that same year,  
14:46:04 6 right, in 2023?

14:46:07 7 A. Probably.

14:46:09 8 Q. If I say it was filed in August 2023, does that sound  
14:46:12 9 right?

14:46:13 10 A. Yes.

14:46:14 11 Q. And Texas CURE joined as a plaintiff several months  
14:46:17 12 later in 2024. Does that sound right?

14:46:18 13 A. Correct.

14:46:19 14 Q. Did you advocate for and against legislation we've  
14:46:25 15 been talking about on behalf of Texas CURE?

14:46:28 16 A. At the hearing, yes.

14:46:30 17 Q. So Texas CURE initially advocated for air  
14:46:34 18 conditioning and temperature control by engaging with the  
14:46:37 19 legislature, right?

14:46:38 20 A. Yes.

14:46:39 21 Q. When the legislative process didn't provide CURE with  
14:46:45 22 temperature control and air conditioning, it then brought  
14:46:47 23 a lawsuit asking the Court to order that relief, right?

14:46:51 24 A. Yes.

14:46:51 25 Q. Mr. Malouff, I'm going to switch to a different line

14:47:11 1 of questioning. You testified, did I hear you correctly,  
14:47:19 2 that the board of Texas CURE does not have any currently  
14:47:23 3 incarcerated people serving on it?

14:47:24 4 A. We have two.

14:47:25 5 Q. Current?

14:47:27 6 A. Oh, no current.

14:47:28 7 Q. Two formerly incarcerated --

14:47:29 8 A. Yes.

14:47:29 9 Q. -- board members, right? And Texas CURE does not  
14:47:33 10 collect dues from inmates, right?

14:47:36 11 A. Don't collect dues from nobody. Strictly grants.

14:47:42 12 Q. And Texas CURE does not have any members, right?

14:47:45 13 A. Correct.

14:47:45 14 Q. You have constituents, right?

14:47:47 15 A. Yes.

14:47:48 16 Q. You claim the entire prison population as CURE's  
14:47:52 17 constituency?

14:47:54 18 A. Them and their families.

14:47:56 19 Q. So Texas CURE doesn't have a membership policy,  
14:47:59 20 right?

14:48:00 21 A. No.

14:48:00 22 Q. Doesn't have membership roles, right?

14:48:03 23 A. Correct.

14:48:03 24 Q. Brian, could you bring up Defendant's Exhibit 243?

14:48:28 25 You may need to take your time, but do you recognize this

14:48:30 1 list as a mailing list compiled by Texas CURE and provided  
14:48:38 2 to defendant?

14:48:40 3 A. Yes.

14:48:42 4 Q. Your Honor, I'd like to offer Defendant's Exhibit  
14:48:45 5 243.

14:48:46 6 THE COURT: Any objection?

14:48:47 7 MS. GROSSMAN: No objection.

14:48:48 8 THE COURT: So admitted.

14:48:52 9 Q. (BY MR. TEBO) And do you remember testifying at your  
14:48:54 10 deposition that this mailing list reported 75 inmates with  
14:48:58 11 whom Texas CURE corresponded?

14:49:02 12 A. Probably.

14:49:03 13 Q. And do you recall testifying that the total number of  
14:49:07 14 entries -- unique entries in this list was 222  
14:49:12 15 individuals?

14:49:13 16 A. The list is the high value data set and then,  
14:49:18 17 identified what I believe through those that are  
14:49:21 18 highlighted are the ones we've had direct correspondence  
14:49:23 19 with.

14:49:25 20 Q. So the high value data set is part of this list, in  
14:49:28 21 other words, right?

14:49:28 22 A. It is the list, yes. Or should be.

14:49:33 23 Q. Do you remember testifying that some of the entries  
14:49:35 24 in this list are a separate list reporting -- that reports  
14:49:40 25 correspondence between Texas CURE and inmates?

14:49:42 1 A. I don't recall that but probably.

14:49:45 2 Q. That sounds right --

14:49:46 3 A. Separated, yeah.

14:49:51 4 Q. Do you recall testifying at your deposition the total  
14:49:53 5 number of inmates who participate in Texas CURE's programs  
14:49:58 6 are between 50 and 100?

14:50:02 7 A. It's increased now so...

14:50:05 8 Q. At the time of your deposition, I mean.

14:50:06 9 A. Probably.

14:50:07 10 Q. That sounds right?

14:50:08 11 A. Yes.

14:50:09 12 Q. No further questions, your Honor. I pass the  
14:50:26 13 witness. Thank you, Mr. Malouff.

14:50:28 14 A. Thank you, sir.

14:50:30 15 RE-DIRECT EXAMINATION

14:50:30 16 BY MS. GROSSMAN:

14:50:38 17 Q. You were just shown a list of the high value data set  
14:50:41 18 is what you called it?

14:50:42 19 A. Yes.

14:50:43 20 Q. But the names on that list does not -- it doesn't  
14:50:45 21 reflect the only inmates that you communicate with on  
14:50:51 22 behalf of Texas CURE, does it?

14:50:52 23 A. Well, the high value data list is who's incarcerated  
14:50:58 24 at that time when that list -- that's everybody in the  
14:51:01 25 system. So you may be on the list because it was issued,

14:51:07 1 say, June 5th, but June 7th, I get a letter that you just  
14:51:11 2 got released.

14:51:13 3 Q. And do you communicate in many ways when you get  
14:51:18 4 message boards and you communicate with inmates' families?

14:51:21 5 A. Families, yes, but not directly through the tablets  
14:51:24 6 to the inmates.

14:51:24 7 Q. Not tablets. That's with letters and other ways,  
14:51:29 8 right?

14:51:29 9 A. Yes.

14:51:29 10 Q. Okay. Thank you.

14:51:34 11 THE COURT: Mr. Tebo, do you have anything  
14:51:38 12 further?

14:51:38 13 MS. GROSSMAN: No further question.

14:51:40 14 THE COURT: Do you have anything further?

14:51:41 15 MR. TEBO: Nothing further.

14:51:42 16 THE COURT: Thank you, sir. You may step down.  
14:51:44 17 Your next witness?

14:51:45 18 MR. HOMIAK: Yes, your Honor. And I don't know  
14:51:47 19 if you want to take a afternoon break since we're ending  
14:51:50 20 early. Just now may be a good time before Dr. Dominick  
14:51:56 21 does. And then, after that, we'll have Dr. Vassallo or we  
14:51:59 22 could push on.

14:52:00 23 THE COURT: I think if we can get started.  
14:52:02 24 Probably another 20 or 30 minutes would be great.

14:52:05 25 MR. HOMIAK: Thank you, your Honor.

14:52:28 1 MS. JOERS: Plaintiffs call Dr. Dominick to the  
14:52:39 2 stand.

14:52:39 3 THE COURT: Before you take a seat, could you  
14:52:41 4 raise your right hand to be sworn, please?

14:52:43 5 THE CLERK: You do solemnly swear or affirm that  
14:52:43 6 the testimony which you may give in the case now before  
14:52:43 7 the Court shall be the truth, the whole truth, and nothing  
14:52:48 8 but the truth?

14:52:48 9 THE WITNESS: Yes.

14:52:56 10 AMITE DOMINICK, called by the Plaintiff, duly sworn.

14:52:56 11 DIRECT EXAMINATION

14:52:56 12 BY MS. JOERS:

14:52:58 13 Q. Good afternoon. Could you just introduce yourself to  
14:52:59 14 the Court?

14:53:00 15 A. Dr. Amite Dominick.

14:53:03 16 Q. And what organization are you here testifying on  
14:53:06 17 behalf of?

14:53:06 18 A. Texas Prisons Community Advocates, also known as  
14:53:10 19 TPCA.

14:53:10 20 Q. What is your current title with TPCA?

14:53:14 21 A. Founder and President.

14:53:16 22 Q. You said founder. When did you found TPCA?

14:53:19 23 A. In 2021.

14:53:20 24 Q. Have you been the President that entire time as well?

14:53:23 25 A. Yes.

14:53:23 1 Q. And, Dr. Dominick, as you know, the Court has agreed  
14:53:27 2 to consider all evidence and testimony from the  
14:53:29 3 preliminary injunction hearing so I don't want to rehash  
14:53:32 4 everything that you've already testified to. But just  
14:53:36 5 briefly, could you describe again your educational  
14:53:39 6 background?

14:53:40 7 A. I have a Bachelor's in Psychology with an emphasis on  
14:53:44 8 child development. My master's is in psychology with the  
14:53:49 9 emphasis on experimental and systems-based psychology,  
14:53:54 10 also known as social psychology. And my doctorate is from  
14:53:57 11 Loma Linda University which focuses on research regarding  
14:54:04 12 systems and social psychology.

14:54:06 13 Q. And did any part of your education have any emphasis  
14:54:09 14 on prisons?

14:54:11 15 A. Yes. My education and my professional teaching.

14:54:17 16 Q. And could you tell us more about your professional  
14:54:20 17 teaching?

14:54:21 18 A. I taught as an adjunct professor at several junior  
14:54:28 19 colleges in California. I also was an adjunct professor  
14:54:31 20 at Argosy University and University of Wisconsin-Parkside.  
14:54:36 21 And then, I moved on to being assistant professor at  
14:54:42 22 Argosy University and Farmers Branch in the clinical  
14:54:46 23 psychology department focusing on experimental areas in  
14:54:49 24 psychology.

14:54:49 25 Q. And briefly, could you tell the Court what, if any,



14:54:53 1 parts of your teachings touched on the prison system?

14:54:57 2 A. Well, there's been a well-established relationship

14:55:00 3 between the field of psychology and prisons. A lot of the

14:55:05 4 earlier experimentation were done within the prison

14:55:08 5 system. Most infamous, of course, is the Philip Zimbardo

14:55:14 6 study and some of the work that the military did with

14:55:18 7 incarcerated individuals.

14:55:20 8 Q. And, Dr. Dominick, when did you first get involved in

14:55:23 9 prison advocacy work?

14:55:24 10 A. In 2015.

14:55:26 11 Q. So you testified that that TPCA was founded in 2021.

14:55:30 12 So that's long before TPCA came around. And you spoke on

14:55:34 13 this at the preliminary injunction hearing, but could you

14:55:38 14 remind the Court what your personal connection is to

14:55:41 15 extreme heat in TDCJ facilities?

14:55:43 16 A. My ex-husband became incarcerated in 2015.

14:55:48 17 Q. Was that in a TDCJ facility?

14:55:50 18 A. Yes.

14:55:51 19 Q. Do you recall which one?

14:55:55 20 A. I think his first stopover was the Gurney Unit. It

14:55:59 21 was then called a transfer unit.

14:56:02 22 Q. The unit or units that he was housed in, were they

14:56:05 23 air-conditioned?

14:56:06 24 A. No.

14:56:08 25 Q. Did he experience extreme heat while housed in TDCJ

14:56:12 1 facilities?

14:56:13 2 A. Absolutely. At the Gurney Unit, it's amongst the  
14:56:21 3 prison community, it's known for being one of the hotter  
14:56:24 4 prisons, especially because there's no outlet so you can't  
14:56:27 5 even plug in a personal fan in those situations. My  
14:56:30 6 ex-husband had really bad allergies and one of the other  
14:56:34 7 impacts of the heat is a person who has asthma or  
14:56:37 8 allergies are negatively impacted.

14:56:40 9 So oftentimes, I would go to visit him and I'd  
14:56:43 10 have to wait like four hours outside just to get there at  
14:56:48 11 the time. That was the hottest part of the day and when  
14:56:52 12 he'd walk in, his face was red and swollen. His eyes were  
14:56:55 13 almost swollen shut. And because the visitation room  
14:57:00 14 sometimes have air conditioning in them, the impacts of  
14:57:04 15 the air conditioning, I would sit across the table from  
14:57:06 16 him and within that two-hour framework, I could begin to  
14:57:10 17 see the pupils of his eyes because the swelling would  
14:57:15 18 begin to decrease. And, of course, he was hot and sweaty  
14:57:17 19 from walking all the way over to the visitation area.

14:57:19 20 Q. And, Dr. Dominick, if I understood you correctly, did  
14:57:23 21 you say that you would wait outside TDCJ facilities so  
14:57:27 22 that you were only going in to visit your ex-husband when  
14:57:31 23 it was the hottest part of the day, and if, so why?

14:57:34 24 A. I know that the hottest part of the day is typically  
14:57:39 25 around 3:00 p.m. and I wanted to get him out of the AC

14:57:45 1 during that time because I knew that was going to be the  
14:57:49 2 most impactful time during the day and I wasn't the only  
14:57:52 3 one. There were other family members and still, to this  
14:57:56 4 day, I know family members who try and plan their visits  
14:57:59 5 around getting there at a time where it's the hottest  
14:58:03 6 point in the day.

14:58:05 7 Q. Now, you testified that your full prison advocacy  
14:58:11 8 work started around 2015. Can you give the Court a brief  
14:58:14 9 description of how you got involved?

14:58:17 10 A. So as a prison wife being part of that community, you  
14:58:20 11 begin to learn about all the atrocities that exist within  
14:58:24 12 TDCJ and it's a difficult process for family members to  
14:58:31 13 navigate. So I would do things like car pooling. I would  
14:58:34 14 go to support groups and hearing everybody's suffering, I  
14:58:39 15 started looking into how do we fix this, how do we change  
14:58:44 16 these circumstances.

14:58:45 17 My investigations led me, first of all, to the  
14:58:50 18 legislative body. So what I started doing was  
14:58:53 19 investigating the legislative process, and then, I created  
14:58:57 20 my first little letters and I brought my little letters to  
14:59:01 21 the TIFA support group meetings and I said, here, sign  
14:59:05 22 this letter and here's a list of all your legislators and  
14:59:08 23 here's where you find them on the website and, you know,  
14:59:11 24 started kind of just rallying people.

14:59:14 25 And later on, I started a prayer campaign

1 because, literally, I would just be on the phone calling  
2 ministries saying, hey, this is what you can pray about  
3 and I'd get kicked off of Facebook because I was sending  
4 people things through direct messaging to help -- to bring  
5 them into a place to helping to make some kind of change.

6 I'll never forget my first letter to  
7 now-Congresswoman Sylvia Garcia and I remember just  
8 writing, I cry, cry every time I leave him because I know  
9 what I'm leaving him to.

10 Q. At the same time that you became involved in the  
11 legislature, did you also become involved in Texas CURE?

12 A. Prior to -- well, as I was writing the letters, I met  
13 Joan Covici, who was then the Director of Texas CURE, and  
14 Michael Jewell and they decided to kind of take me under  
15 their wing and they said yes, we'll help you in this  
16 process. Because Texas CURE was already doing the  
17 indigent fan project and they had a long-established  
18 process, and so, they taught me a bit more about  
19 advocating and how to respond to the letters. And then,  
20 they took my little letter and they farmed it out to their  
21 e-mail list and I became a board member at Texas CURE for  
22 a brief time.

23 Q. Was that brief time about 2016 to 2017?

24 A. Yes.

25 Q. And you just said this but did you hear -- were you

15:00:54 1 in the courtroom yesterday?

15:00:54 2 A. Yes.

15:00:55 3 Q. Did you hear testimony from Director Lumpkin about  
15:00:58 4 the Texas CURE donating fans?

15:01:01 5 A. Yes. I actually tried to reestablish that program  
15:01:07 6 under TPCA, and at that time, Director Collier wouldn't  
15:01:14 7 let me and they started giving fans to indigent  
15:01:18 8 incarcerated individuals.

15:01:18 9 Q. So you're not on the board of Texas CURE anymore?

15:01:22 10 A. No.

15:01:23 11 Q. To your knowledge, is Texas CURE still doing advocacy  
15:01:26 12 work in the area of air conditioning TDCJ facilities?

15:01:29 13 A. Absolutely. I oftentimes joke with Charlie about it  
15:01:32 14 and we vie for a position there on who's the most  
15:01:37 15 committed.

15:01:38 16 Q. And are you aware that Texas CURE is one of the other  
15:01:42 17 organizational plaintiffs in this case?

15:01:43 18 A. Yes.

15:01:44 19 Q. Did you just hear Charlie testifying?

15:01:47 20 A. Yes.

15:01:47 21 Q. What did you do after your time at Texas CURE?

15:01:52 22 A. After Texas CURE, that's when I started the prayer  
15:01:55 23 campaign and I put that out on Facebook and I tried to get  
15:02:02 24 other larger organizations to, you know, help me take the  
15:02:06 25 issue on. I said, hey, I'll come on board or I'll work

15:02:09 1 the issue for free. And then, there was a lady by the  
15:02:13 2 name of Casey Phillips who saw some of my work online. I  
15:02:17 3 had the list still online and the political letter, what  
15:02:21 4 have you, and we got together as a group of prison wives  
15:02:25 5 and started Texas Prisons Air Conditioning Advocates.  
15:02:29 6 Q. And just briefly, that prayer campaign that you  
15:02:33 7 mentioned, was that praying for air conditioning in TDCJ  
15:02:35 8 facilities?  
15:02:35 9 A. Absolutely. It was bringing awareness to the  
15:02:39 10 faith-based community. Like I mentioned before, I would  
15:02:43 11 literally just call one place after another on their  
15:02:46 12 prayer list. If they said they prayed, I'm telling them  
15:02:49 13 to pray for this.  
15:02:50 14 Q. And you mentioned that you also worked for Texas  
15:02:53 15 Prison Air Conditioning Advocates and I think it probably  
15:02:57 16 sounds self-explanatory, but what was their mission?  
15:03:00 17 A. Solely devoted to getting air conditioning in the  
15:03:03 18 Texas prisons.  
15:03:04 19 Q. And did you found TPCA right after your time Texas  
15:03:09 20 Prison Air Conditioning Advocates?  
15:03:12 21 A. Yes. We dissolved TPAA and I continued on with TPCA.  
15:03:17 22 Q. And are you currently doing any other prison advocacy  
15:03:20 23 work in addition to your work with TPCA?  
15:03:24 24 A. Yes, I am on the advisory team for Voices For  
15:03:29 25 Veterans. I also work with Circle and Circle is a

15:03:35 1 research-based advocacy group so it's bringing professors  
15:03:39 2 and advocates and impacted individuals together. We focus  
15:03:46 3 on hazardous conditions within the prisons across the  
15:03:49 4 nation, predominantly, the AC issue, along with another  
15:03:53 5 advocacy group out of New York. And then, the National  
15:03:58 6 Trauma -- I always butcher this name, I apologize -- the  
15:04:01 7 National Trauma Policy Organization. I'm on their  
15:04:04 8 advisory team focusing on prison conditions.

15:04:09 9 Q. Is that the National Trauma Education Policy Board?

15:04:12 10 A. Yes.

15:04:12 11 Q. And going back to Circle, you mentioned that it works  
15:04:18 12 -- part of their mission is hazardous conditions in  
15:04:20 13 prisons nationwide and does that include Texas?

15:04:23 14 A. Yes.

15:04:25 15 Q. Is that because TPCA is a primary cofounder of that  
15:04:29 16 organization?

15:04:29 17 A. Yes.

15:04:30 18 Q. And do all of these organizations work on the issues  
15:04:34 19 of extreme heat in prisons, including in TDCJ?

15:04:37 20 A. Absolutely.

15:04:39 21 Q. Have you done any recent expert work on the issue of  
15:04:43 22 extreme heat in Texas prisons on behalf of TPCA?

15:04:48 23 A. Yes. Recently, England -- the Court of England and  
15:04:52 24 Wales had contacted me. They're looking at extraditing a  
15:04:56 25 man by the name of John Freeman and they had me write a

15:05:01 1 expert testimony as to why the Texas prisons are inhumane  
15:05:06 2 and why they should not extradite him.

15:05:09 3 Q. If I understand you correctly, so you were retained  
15:05:13 4 to write an expert report; is that right?

15:05:15 5 A. Yes.

15:05:15 6 Q. And so, is it that the state of Texas is looking to  
15:05:18 7 extradite a prisoner from England? Is that right?

15:05:21 8 A. Yes.

15:05:21 9 Q. And what were your expert opinions in the report that  
15:05:24 10 you created?

15:05:26 11 A. That the Texas prisons are inhumane and he would  
15:05:29 12 likely suffer through inhumane conditions if he were  
15:05:35 13 extradited, specifically due to things like the extreme  
15:05:38 14 heat, the overstaffing issues, toxic water. We went  
15:05:44 15 through several conditions.

15:05:46 16 Q. And you say overstaffing, did you mean under --

15:05:52 17 A. Understaffing. My apologies.

15:05:54 18 Q. So is it fair to say, Dr. Dominick, that since 2015,  
15:05:57 19 you have been actively involved in advocating on the issue  
15:06:00 20 of extreme heat in TDCJ prisons and the need for air  
15:06:06 21 conditioning?

15:06:06 22 A. Yes, I think that's fair to say. Even my chat says  
15:06:10 23 I'm doing more than any human should be doing so yes.

15:06:13 24 Q. And that includes with TPCA; is that right?

15:06:18 25 A. Yes.



15:06:18 1 Q. Are you aware, Dr. Dominick, that this lawsuit was  
15:06:21 2 filed in 2023?

15:06:21 3 A. Yes.

15:06:22 4 Q. So you were advocating on your own with other  
15:06:25 5 organizations and with TPCA for years before this lawsuit  
15:06:29 6 was filed; is that right?

15:06:30 7 A. Yes. It's always been an issue of urgency for me.

15:06:34 8 Q. We've talked a lot about TPCA, but we haven't really,  
15:06:38 9 you know, dove back into it. Just to remind the Court,  
15:06:41 10 what is TPCA's mission?

15:06:43 11 A. TPCA's mission is to amplify the voices of impacted  
15:06:50 12 individuals to empower those individuals towards advocacy,  
15:06:55 13 to train them towards advocacy, and to a lesser extent,  
15:07:01 14 hold TDCJ accountable.

15:07:03 15 Q. And is one of -- is air conditioning a part of TPCA's  
15:07:10 16 mission, air conditioning TDCJ's facilities?

15:07:11 17 A. It is the birthing point of the whole organization.  
15:07:17 18 We're not -- a lot of nonprofits, they start with bringing  
15:07:22 19 an organization together and then, they bring on their  
15:07:24 20 agenda items. We started because of the air-conditioning  
15:07:28 21 issues and the other inhumane conditions.

15:07:34 22 Q. Are you familiar with the 85 To Stay Life campaign?

15:07:38 23 A. Yes. The 85 To Stay Alive campaign and coalition is  
15:07:45 24 TPCA's attempt to formalize the issue. We used to be  
15:07:51 25 called Beat The Heat and that was the basic campaign name,

1 and then, in 2023, I started formalizing all of our  
2 campaigns and we found the need to talk to people from  
3 other states, right? Through my interactions, I was  
4 speaking with people with other states. They were  
5 wondering what do we do about our prisons, they're getting  
6 hotter due to climate change. What are you guys doing  
7 over here? And so, we started to learn that there was  
8 this great need to have a system that other states could  
9 template, if you will, on some level.

10 So, for example I've been working with a  
11 coalition in California recently. I work with coalitions  
12 in Florida, across the United States, and giving some  
13 advisement as to what our process has been like, what are  
14 some of the pitfalls that they might experience and how to  
15 address those things. So we bring together folks from all  
16 kinds of different backgrounds so our legislators, legal  
17 professionals, medical professionals, impacted  
18 individuals, of course, are primary. That is a thread  
19 that goes through everything with TPCA. And students,  
20 people who are well versed in media, we were trying to  
21 bring all these people together collaboratively and say  
22 that, you know, you're affected by this situation and  
23 there are ways within your discipline that you can assist  
24 the movement.

25 Q. And 85 To Stay Life is a part of TPCA, right? It's a

15:09:33 1 coalition or a campaign out of TPCA?

15:09:34 2 A. It's our coalition and campaign that's housed within

15:09:38 3 TPCA. It has two main levels, our Texas level and now our

15:09:43 4 national level.

15:09:43 5 Q. And earlier, you said impacted individuals. What do

15:09:47 6 you mean by that?

15:09:47 7 A. Impacted individuals, of course, are currently

15:09:55 8 incarcerated individuals, formerly incarcerated

15:09:58 9 individuals and their families and friends.

15:10:02 10 Q. Does TPCA serve all impacted individuals in Texas?

15:10:07 11 A. Yes.

15:10:08 12 Q. Related to TDCJ?

15:10:09 13 A. Yes.

15:10:12 14 Q. And you talked a lot about the 85 To Stay Alive

15:10:16 15 campaign and how you bring all these groups of people

15:10:19 16 together. How do you do that? Are there events? What

15:10:20 17 does that look like?

15:10:22 18 A. We do a number of activities. We've done panels.

15:10:32 19 We've done rallies. We do webinars, trainings, townhouse

15:10:38 20 meetings, vigils. I'm sure I'm leaving something out

15:10:43 21 here, but the thing that we're most noted for is our mock

15:10:49 22 cell events.

15:10:49 23 Q. And what is a heated mock cell?

15:10:53 24 A. So our mock cell is a six-by-nine mock cell that we

15:10:59 25 set up onsite. In fact, we have two now. We used to just

1 have the one we set up. Now, we have a trailer version as  
2 well. And it gives people the realities of what it's like  
3 to actually be in that cell during the heat. We usually  
4 do it during the summer months, and like I mentioned, we  
5 set it up onsite. We brought to it the capitol. We  
6 brought it to colleges. And while the individuals go into  
7 this prison cell, there's a directly impacted person who  
8 speaks with them for about seven minutes. We give them a  
9 seven-minute challenge and so that gives the impacted --  
10 directly impacted individual voice to communicate their  
11 realities. The realities of their loved ones and what they  
12 have personally experienced within the prisons.

13           So once they spend that time in that cell with  
14 those individuals, you know, we have them even monitor  
15 their breathing while they're in the cell. And when they  
16 walk out, if it's a hundred-degree day, how it suddenly  
17 feels cooler when you're walking out. But you can get  
18 air, you can breathe when you're walking out and then,  
19 from there we walk them over to our prison conditions  
20 exhibit. And our prison conditions exhibit is, once  
21 again, driven fully by incarcerated individuals and their  
22 impacted family and friends, all of the things they've  
23 told us about.

24           There's a Home Depot water cooler that's got bugs  
25 in it and that's dirty because that's what they're telling

1 us on the inside that they're experiencing. There's  
2 banners around the canopy and these banners address other  
3 horrendous prison conditions. There's a man -- a picture  
4 of man's arm who was eaten away because he didn't get  
5 medical care while he was in TDCJ. There's examples of  
6 letters. There's media reports.

7 There's quotes from political officials and we've  
8 had several political officials who've participated in our  
9 mock cell events of note. I'm thinking about Congressman  
10 Al Green has been there. Representative Ron Reynolds. Of  
11 course representative, Sherman, Representative Rosenthal,  
12 Representative Plesa, and those from top of mind --

13 MR. TEBO: Your Honor, I'd like to object at this  
14 point. It's a narrative.

15 MS. JOERS: She was done.

16 MR. TEBO: If she was done, of course.

17 Q. (BY MS. JOERS) So if I understand you correctly, Dr.  
18 Dominick, the idea of this heated mock cell was to  
19 replicate the conditions in summer inside a TDCJ cell; is  
20 that correct?

21 A. My grandmother always said you never know where  
22 someone's been unless you walk a mile in their shoes. The  
23 idea is to help people to walk a mile in someone else's  
24 shoes.

25 Q. When did you start doing these heated mock cell

15:13:53 1 events?

15:13:53 2 A. 2019.

15:13:55 3 Q. And again, that was four years before this lawsuit  
15:13:57 4 was filed, right?

15:13:59 5 A. Yes.

15:14:00 6 Q. When was the last time that you held one of these  
15:14:04 7 events?

15:14:06 8 A. The last time was last summer in Houston and they  
15:14:10 9 took me away in an ambulance because I overheated.

15:14:16 10 Q. I want to talk about who TPCA serves, who this is all  
15:14:21 11 for. Who does TPCA consider its constituents?

15:14:28 12 A. This question is hard for me because I can't help but  
15:14:33 13 think about their experiences. They serve the people who  
15:14:39 14 are right now living without air conditioning. All of the  
15:14:44 15 incarcerated individuals and their family members, the  
15:14:49 16 family members who are doing things like taking the  
15:14:52 17 temperatures at 3:00 every day just to get an  
15:14:55 18 understanding of what their loved ones are going through.

15:14:58 19 Q. And if you need to take a break, let us know. But  
15:15:04 20 for TPCA's constituents, do you consider all TDCJ inmates,  
15:15:08 21 their families, their friends as constituents of TPCA?

15:15:12 22 A. Absolutely.

15:15:13 23 Q. Regardless of whether they're housed in air  
15:15:16 24 conditioning or not?

15:15:16 25 A. Yes, because this is a systematic problem so

15:15:22 1 everyone -- we've talked a lot during this trial about the  
15:15:25 2 deaths but the collateral damage starts way before the  
15:15:30 3 deaths. I mean, we see things like suicide rates  
15:15:33 4 increasing during the hotter months. People are impacted  
15:15:37 5 by other people's moods due to the heat. There's so many  
15:15:42 6 areas that are touched by this issue so everyone is  
15:15:48 7 affected by this.

15:15:49 8 Q. And so, all 141,000-plus TDCJ inmates are  
15:15:54 9 constituents of TPCA; is that right?

15:15:56 10 A. Yes.

15:15:57 11 Q. Who does TPCA consider its members?

15:16:02 12 A. We have different levels of members so anyone who is  
15:16:06 13 interacting with us, who's writing us, who's part of our  
15:16:10 14 newsletter list, who's part of our e-mail blast list,  
15:16:13 15 those are our first level of membership, and then, a  
15:16:16 16 closer set would be our incarcerated and free-world  
15:16:20 17 volunteers.

15:16:21 18 Q. I want to stick just with the members for a second.  
15:16:26 19 Last time you checked, do you know about how many  
15:16:28 20 incarcerated individuals you have as members that are  
15:16:31 21 actively interacting with TPCA?

15:16:34 22 A. I want -- the list varies quite a bit, of course,  
15:16:38 23 with people getting in and out. I want to say we were  
15:16:41 24 over 2,000.

15:16:43 25 Q. And do you also -- does TPCA also have

15:16:46 1 non-incarcerated members?

15:16:48 2 A. Yes.

15:16:48 3 Q. And do you recall, at last count, approximately how  
15:16:52 4 many TPCA had?

15:16:53 5 A. We have about 5,000 on our e-mail blast list.

15:16:57 6 Q. But like you said, those numbers are ever changing;  
15:16:59 7 is that right?

15:16:59 8 A. Yes.

15:17:01 9 Q. And I know it was a long time ago but I don't want to  
15:17:04 10 waste the Court's time, but do you remember at the  
15:17:07 11 preliminary injunction hearing being shown a copy of  
15:17:10 12 TPCA's mailing list which was admitted as Plaintiffs'  
15:17:14 13 Exhibit 146?

15:17:15 14 A. Yes.

15:17:15 15 Q. Does TPCA still maintain a mailing list of its  
15:17:19 16 members?

15:17:19 17 A. Yes.

15:17:20 18 Q. And do your members pay any kind of membership fee?

15:17:24 19 A. No. They can't afford to.

15:17:26 20 Q. What do you mean by that?

15:17:28 21 A. Well, we're serving individuals in the free world who  
15:17:33 22 are typically lower socioeconomic status and in the  
15:17:39 23 carceral world, these individuals aren't getting paid, so  
15:17:43 24 we're freely giving out what we've been given.

15:17:48 25 Q. And when you say these individuals are not getting



15:17:50 1 paid, you mean that inmates who are working inside TDCJ  
15:17:54 2 facilities generally don't get paid; is that right?

15:17:56 3 A. Correct.

15:17:57 4 Q. So we're going back to the volunteers now and we're  
15:18:02 5 going to think back to the preliminary injunction hearing  
15:18:05 6 again. Do you recall being shown a document that  
15:18:08 7 contained examples of TPCA's incarcerated volunteers,  
15:18:12 8 which was admitted as Plaintiffs' Exhibit 147?

15:18:15 9 A. Yes.

15:18:16 10 Q. Does TPCA still have incarcerated volunteers?

15:18:19 11 A. Yes.

15:18:19 12 Q. And you referred to --

15:18:23 13 MR. TEBO: Your Honor, I'd like to object. I  
15:18:24 14 think if she's going to ask the witness about exhibits  
15:18:27 15 that have been admitted, she should -- or may have been  
15:18:28 16 admitted, she should offer the exhibits here so I can see  
15:18:33 17 what she's talking about.

15:18:34 18 MS. JOERS: These were admitted at the  
15:18:36 19 preliminary injunction hearing, your Honor, and I was  
15:18:38 20 moving on. But I'm happy to show them. I just didn't --

15:18:40 21 THE COURT: Or if you can just identify them by  
15:18:42 22 exhibit number if you have those readily available.

15:18:45 23 MS. JOERS: Yes. It's Plaintiffs' Exhibit 146  
15:18:47 24 and Plaintiffs' Exhibit 147.

15:18:49 25 MR. TEBO: Thank you.

15:18:54 1 Q. (BY MS. JOERS) Dr. Dominick, you referred to TPCA's  
15:19:00 2 incarcerated volunteers also as core team members, right?  
15:19:03 3 A. Yes.  
15:19:03 4 Q. And last count, approximately how many incarcerated  
15:19:08 5 volunteers or core team members does TPCA have?  
15:19:12 6 A. I think we're a little bit under a dozen.  
15:19:15 7 Q. And does TPCA also have free-world or  
15:19:20 8 non-incarcerated volunteers?  
15:19:21 9 A. Yes.  
15:19:21 10 Q. Do you recall about how many at last count?  
15:19:24 11 A. Around 28, last time I looked at the list.  
15:19:27 12 Q. And similar with members, is that list kind of ever  
15:19:31 13 changing?  
15:19:31 14 A. Ever changing. We've had as few as five volunteers  
15:19:34 15 and as many as 45.  
15:19:37 16 Q. How does someone become a free-world volunteer for  
15:19:40 17 TPCA?  
15:19:42 18 A. So they would either see one of our advertisements on  
15:19:47 19 social media somewhere or they would contact us through  
15:19:53 20 someone who's already a TPCA volunteer. Or sometimes I  
15:19:56 21 get direct e-mails or DMs about the issue and then, they  
15:20:01 22 would be referred to our volunteer form. They fill out  
15:20:04 23 the volunteer form and then, they have an interview, and  
15:20:08 24 then, after the interview, we find placement entering.  
15:20:12 25 Q. You also have incarcerated volunteers, right?

15:20:14 1 A. Yes.

15:20:15 2 Q. And how do they become volunteers?

15:20:17 3 A. So they write us and tell us that they want to be a  
15:20:21 4 volunteer. They want to help more with the advocacy  
15:20:23 5 efforts and they receive -- well, we have an outside  
15:20:29 6 volunteer who would screen those and then, based on that,  
15:20:32 7 they reach out to the incarcerated individuals, send them  
15:20:36 8 a packet, an e-mail and a volunteer agreement.

15:20:40 9 Q. Now, I'd like to show you a few pages from  
15:20:43 10 Plaintiffs' Exhibit 543-A. If you could bring that up,  
15:20:48 11 Mr. Samuels. So 543-A is on our exhibit list. It's been  
15:20:53 12 provided to opposing counsel. I'm just going to show an  
15:20:57 13 excerpt from that and I will mark it as Plaintiffs' 543-A1  
15:21:02 14 and provide a stamped copy to counsel and the Court.

15:21:06 15 Dr. Dominick, are you familiar with these types  
15:21:10 16 of documents?

15:21:11 17 A. Yes.

15:21:11 18 Q. What are they?

15:21:14 19 A. So that, I think, is an introductory, a welcome  
15:21:18 20 aboard letter that we send out to incarcerated  
15:21:22 21 individuals.

15:21:22 22 Q. And is that on the Securus platform?

15:21:26 23 A. I'm not certain if we use Securus for this. I want  
15:21:31 24 to say yes but I'm not positive.

15:21:32 25 Q. Do you see where it says Securus just at the top --

15:21:34 1 A. Yeah, it is. I wasn't even looking at that part.

15:21:43 2 Q. So what is Securus?

15:21:45 3 A. Securus is a system that's used for various prisons

15:21:50 4 where you can communicate through e-messaging and phone

15:21:52 5 calls.

15:21:54 6 Q. Do TPCA's incarcerated constituents, members,

15:21:57 7 volunteers often communicate with TPCA through Securus?

15:22:02 8 A. Yes.

15:22:02 9 Q. And do you recognize this particular Securus message

15:22:05 10 as an onboarding letter to an incarcerated individual who

15:22:09 11 wanted to become a volunteer?

15:22:11 12 A. Yes.

15:22:11 13 Q. Is this a fair and accurate copy of that message?

15:22:14 14 A. Yes.

15:22:14 15 Q. Your Honor, I move to admit Plaintiffs' 543-A1.

15:22:19 16 THE COURT: Any objection?

15:22:20 17 MR. TEBO: No objection.

15:22:21 18 THE COURT: So admitted.

15:22:22 19 Q. (BY MS. JOERS) And, Dr. Dominick, this Securus

15:22:26 20 message, is this just one example of many that you get

15:22:29 21 from incarcerated individuals in TDCJ?

15:22:31 22 A. Yes.

15:22:33 23 Q. To TPCA?

15:22:34 24 A. Yes.

15:22:37 25 Q. And is this just one example of many incarcerated

15:22:40 1 individuals in TDCJ who sign up to be incarcerated

15:22:44 2 volunteers with TPCA?

15:22:45 3 A. Yes.

15:22:46 4 Q. Does TPCA have a formal board?

15:22:52 5 A. Yes.

15:22:53 6 Q. And is anyone on the board formerly incarcerated?

15:22:57 7 A. Yes.

15:22:58 8 Q. Is anyone currently incarcerated?

15:23:00 9 A. No. We can't do that.

15:23:03 10 Q. Could you tell the Court why?

15:23:05 11 A. They can't participate in board meetings would be the

15:23:08 12 short answer to that. I believe some of my cohorts

15:23:13 13 explained some of the dilemmas that we have with actually

15:23:16 14 having group phone calls with incarcerated individuals.

15:23:20 15 Q. Can you just set a board meeting at 8:00 a.m. and

15:23:24 16 expect that an incarcerated individual be able to attend

15:23:26 17 that meeting within a TDCJ facility?

15:23:29 18 A. No. They could possibly lose their phone calls and

15:23:32 19 visitation for that because it's a third-party call.

15:23:36 20 Q. Dr. Dominick, how is TPCA funded?

15:23:40 21 A. Through donations and grants.

15:23:41 22 Q. Do its constituents ever donate?

15:23:44 23 A. Yes.

15:23:45 24 Q. Members?

15:23:46 25 A. Yes.

15:23:47 1 Q. Volunteers?

15:23:48 2 A. Yes.

15:23:51 3 Q. I'd like to show you another excerpt of Plaintiffs'  
15:23:55 4 Exhibit -- this is 543. Again, this is on our exhibit  
15:23:58 5 list, your Honor. It's been provided to opposing counsel.  
15:24:01 6 I'll mark this exhibit as 543-B, providing a stamped copy  
15:24:07 7 to the Court and opposing counsel.

15:24:10 8 Dr. Dominick, are you familiar with these  
15:24:12 9 documents?

15:24:12 10 A. Yes.

15:24:12 11 Q. Are these just a few examples of how TPCA's  
15:24:18 12 incarcerated members communicate with TDCJ?

15:24:20 13 A. Yes.

15:24:21 14 Q. Or with TPCA, I apologize.

15:24:23 15 A. Yes.

15:24:23 16 Q. And even how they donate to TPCA?

15:24:27 17 A. Yes.

15:24:27 18 Q. Is this a fair and accurate copy of some of those  
15:24:31 19 letters and donations that you've received from TDCJ  
15:24:34 20 inmates to TPCA?

15:24:35 21 A. Yes.

15:24:36 22 Q. Your Honor, I move to admit Plaintiffs' Exhibit  
15:24:40 23 543-B.

15:24:41 24 MR. TEBO: No objection.

15:24:42 25 THE COURT: So admitted.

15:24:47 1 Q. (BY MS. JOERS) Dr. Dominick, now this excerpt that  
15:24:49 2 I'm showing you, are these just a few examples of the  
15:24:52 3 communications and the donations that TPCA might receive  
15:24:55 4 from its incarcerated constituents?

15:24:58 5 A. Yes.

15:25:00 6 Q. How else in addition to -- we saw Securus messages  
15:25:05 7 and we've seen letters. How else do incarcerated  
15:25:08 8 individuals in TDCJ communicate with TPCA?

15:25:13 9 A. We get Securus messages. Of course, we get phone  
15:25:17 10 calls. Sometimes we -- one of the other primary streams  
15:25:25 11 is incarcerated individuals speaking through their family  
15:25:27 12 members and asking us to contact them that way.

15:25:32 13 Q. Has TPCA also sent out newsletters, surveys, things  
15:25:35 14 like that?

15:25:36 15 A. Oh, yes. We've done several surveys and we send out  
15:25:41 16 our newsletter.

15:25:41 17 Q. And going back to Securus for a moment, does it cost  
15:25:47 18 money for an inmate to message TPCA through Securus?

15:25:51 19 A. Yes, and it cost us money to respond.

15:25:54 20 Q. So incarcerated constituents of TPCA inside  
15:25:59 21 facilities are using what little money they have to  
15:26:01 22 communicate with TPCA?

15:26:03 23 A. Yes.

15:26:04 24 Q. Is that right? How frequently does TPCA receive  
15:26:08 25 correspondence from its incarcerated constituents?

15:26:10 1 A. Constantly.

15:26:13 2 Q. When you say constantly, does that mean daily? How  
15:26:18 3 would you describe that?

15:26:18 4 A. Yeah. I would definitely say daily. I don't think  
15:26:23 5 I've ever gone to our mailbox and there wasn't a piece of  
15:26:26 6 mail in there.

15:26:28 7 Q. And is extreme heat one of the issues that you hear  
15:26:30 8 about from your incarcerated constituents at TDCJ?

15:26:34 9 A. Yes. It's the primary thing we hear about them from.

15:26:39 10 Q. And has that always been true since the founding of  
15:26:42 11 TPCA that you've been hearing about the need to air  
15:26:46 12 condition TDCJ facilities?

15:26:47 13 A. Absolutely.

15:26:49 14 Q. And we've been talking a lot about how extreme heat  
15:26:56 15 in TDCJ facilities affects the incarcerated individuals  
15:26:59 16 there. Do you ever hear from TDCJ correctional staff  
15:27:02 17 about the heat?

15:27:03 18 A. Yes, I have. Both the correctional staff --

15:27:08 19 MR. TEBO: Objection, your Honor. Leading.

15:27:09 20 THE COURT: Overruled.

15:27:11 21 A. Correctional staff and even sometimes Windham  
15:27:15 22 employees have reached out. Most of them will --

15:27:18 23 MR. TEBO: Your, Honor, I'd also like to raise a  
15:27:21 24 hearsay objection.

15:27:22 25 MS. JOERS: Your Honor, this is offered for its



1 effect on the listener. As Dr. Dominick has already  
2 explained, TPCA's mission is to serve all impacted  
3 individuals and constituents and correctional officers who  
4 are impacted by the heat inside TDCJ facilities would fall  
5 under the umbrella of impacted individuals.

6 MR. TEBO: It sounds like the listener is just a  
7 witness and that's not relevant to this case.

8 THE COURT: I'll allow for that purpose. Go  
9 ahead.

10 A. We've even had officers participate in our mock cell  
11 event at the capitol but they oftentime -- one of the  
12 things that comes to my mind is they asked me years ago to  
13 create an action letter for them, and three years later, I  
14 was finally able to do that for them. Most of the time,  
15 they want to remain anonymous. I've even had them apply  
16 to be volunteers and one I did take on as a volunteer,  
17 actually.

18 Q. (BY MS. JOERS) Switching gears just a little bit, has  
19 TPCA engaged in advocacy at the Texas legislature on the  
20 issue of extreme heat in prison?

21 A. Absolutely.

22 Q. How long have you been doing it, Dr. Dominick?

23 A. I was part of authoring the first bills that were  
24 ever filed on the topic and that was in 2019. So from  
25 2019 to present, we don't do AC just during the summer

15:28:46 1 months. We do it all year long.

15:28:49 2 Q. And you said 2019 so, again, that was four years  
15:28:51 3 before this lawsuit was ever filed, right?

15:28:53 4 A. Yes.

15:28:53 5 Q. Were there bills before the Texas legislature related  
15:28:59 6 to heat in Texas prisons in the last legislative session?

15:29:03 7 A. Yes.

15:29:03 8 Q. Did you testify on behalf of TPCA regarding any of  
15:29:08 9 those bills?

15:29:08 10 A. Yes, I always do.

15:29:10 11 Q. How many of them?

15:29:12 12 A. Oh, I've lost track. Anytime that there's a hearing  
15:29:18 13 that's associated with AC, I'm going to be there unless  
15:29:21 14 something dramatic happens to stop me.

15:29:23 15 Q. Have you also provided expert testimony to the Texas  
15:29:27 16 legislature on the issue of extreme heat in TDCJ?

15:29:29 17 A. Yes.

15:29:29 18 Q. When you're providing testimony to the Texas  
15:29:35 19 legislature on this issue, are you doing that as part of  
15:29:38 20 your role with TPCA as the founder and the president?

15:29:42 21 A. Yes.

15:29:44 22 Q. Have you seen Director Lumpkin at legislative  
15:29:47 23 hearings in which you've testified about the issue of  
15:29:50 24 extreme heat in TDCJ?

15:29:51 25 A. Yes.

15:29:52 1 Q. Have you seen former Director Collier at legislative  
15:29:56 2 hearings in which you have testified about the extreme  
15:29:58 3 heat in TDCJ?

15:29:59 4 A. Consistently.

15:30:02 5 Q. Have you spoken with Director Collier directly about  
15:30:05 6 the need for air conditioning in TDCJ?

15:30:09 7 A. Yes. I spoke directly with him on one occasion, we  
15:30:14 8 were at Representative Sherman's Hope Summit and I asked  
15:30:19 9 him about -- so I was very new at the time of this. I  
15:30:22 10 asked him if we could work together on the issue, and he  
15:30:25 11 abruptly said no, the only way to do this is to add AC to  
15:30:28 12 the maintenance budget.

15:30:29 13 Q. And so, we've heard a decent amount through this  
15:30:32 14 trial about the Sunset Commission. Are you familiar with  
15:30:36 15 the Sunset Commission?

15:30:37 16 A. Very.

15:30:38 17 Q. Are you familiar with the report that it put out  
15:30:41 18 reviewing major issues with TDCJ?

15:30:44 19 A. Yes.

15:30:44 20 Q. And did you ever meet with the Sunset Commission?

15:30:47 21 A. Yes, on multiple occasions.

15:30:49 22 Q. Have other TPCA members also met with the Sunset  
15:30:53 23 Commission?

15:30:53 24 A. Yes.

15:30:55 25 Q. And in those meetings, was extreme heat in TDCJ

15:30:59 1 discussed?

15:30:59 2 A. Absolutely.

15:31:01 3 Q. Did you encourage your constituents to write into the  
15:31:05 4 Sunset Commission?

15:31:05 5 A. Yes. We had a full media campaign. We went on  
15:31:09 6 things like podcasts, like the Prison Show, and encouraged  
15:31:13 7 family members to tell their loved ones inside to write  
15:31:16 8 in. We encouraged family members to write in themselves.  
15:31:19 9 We did training on the different aspects of the process of  
15:31:25 10 the Sunset Commission meeting. Then we encouraged family  
15:31:28 11 members to come to the hearings to testify and gave  
15:31:33 12 trainings of what that process would be like.

15:31:37 13 Q. Does input and information that you get that TPCA  
15:31:42 14 gets from its constituents help drive TPCA's missions?

15:31:46 15 A. It's everything. I think we even sent a survey out  
15:31:53 16 to incarcerated individuals which we asked, specifically,  
15:31:56 17 what were the issues that you want us to focus in on.

15:32:00 18 Q. And what was one of those issues?

15:32:03 19 A. After the heat -- because we took the heat off of  
15:32:07 20 that one for a change because we already knew that the  
15:32:09 21 heat was their primary issue. Second to that was medical  
15:32:13 22 if I recall correctly.

15:32:15 23 Q. And I want to focus in on this lawsuit, specifically,  
15:32:18 24 Dr. Dominick. When TPCA decided to join the lawsuit, was  
15:32:21 25 that decision driven by constituents' input?

15:32:26 1 A. Yes. It was driven by their suffering and their  
15:32:32 2 need.

15:32:32 3 Q. And you know about their suffering and their need  
15:32:35 4 from the communications that you received from them; is  
15:32:38 5 that right?

15:32:38 6 A. I know about it because of the communications I  
15:32:42 7 received from them and my experiences with the heat having  
15:32:47 8 a mock cell and being in there myself and testing it out  
15:32:51 9 with medical conditions, it's very, very real to me even  
15:32:56 10 though I was not, you know, incarcerated and I'd always  
15:33:00 11 deferred to an incarcerated person.

15:33:01 12 Q. Are you aware of any incarcerated TPCA constituents  
15:33:05 13 who have objected to TPCA's participation in this  
15:33:09 14 litigation?

15:33:09 15 A. No.

15:33:10 16 Q. Have you heard the opposite?

15:33:11 17 A. Yes. One of my favorite is sometimes the letters  
15:33:17 18 that just say thank you and I just want to encourage you  
15:33:19 19 today, keep fighting for us. Or when individuals get out  
15:33:25 20 and they find out about the mock cell, they say, we didn't  
15:33:27 21 know that somebody out here was fighting for us.

15:33:32 22 Q. Dr. Dominick, does TPCA receive any financial benefit  
15:33:35 23 from participating in this lawsuit?

15:33:37 24 A. No.

15:33:38 25 Q. Is TPCA a nonprofit organization?

15:33:43 1 A. Yes.

15:33:43 2 Q. Is there any other reason besides serving your  
15:33:47 3 incarcerated constituents' interests that TPCA joined this  
15:33:50 4 lawsuit?

15:33:50 5 A. No.

15:33:51 6 Q. Dr. Dominick, are you familiar with the name Jason  
15:33:58 7 Wilson?

15:33:59 8 A. Yes.

15:34:01 9 Q. How so?

15:34:02 10 A. Jason Wilson was one of our team members who passed  
15:34:06 11 away due to the heat.

15:34:09 12 Q. And when you say core team member, he was a volunteer  
15:34:12 13 with TPCA; is that right?

15:34:13 14 A. Yes.

15:34:14 15 Q. Was he corresponding with TPCA?

15:34:17 16 A. Yes.

15:34:17 17 Q. Did he have a nickname that you knew him by?

15:34:21 18 A. Oh, Blue.

15:34:23 19 Q. Are you aware that Mr. Wilson died in a TDCJ facility  
15:34:27 20 in the summer of 2024, specifically, July?

15:34:30 21 A. Yes.

15:34:32 22 Q. How did you learn about Jason Wilson's death?

15:34:36 23 A. One of our TPCA volunteers Brittany Robertson, who at  
15:34:40 24 the time was the director of our carceral support area, it  
15:34:45 25 was a very tearful Zoom meeting.

15:34:48 1 Q. And what was Ms. Roberson's role at the time in TPCA?

15:34:53 2 A. She was the director of our carceral support areas

15:34:58 3 so she was instrumental in putting together our packets

15:35:02 4 for our incarcerated volunteers. We have worked

15:35:06 5 collaboratively prior to her becoming a TPCA volunteer so

15:35:09 6 she had a fairly intimate, longstanding relationships with

15:35:15 7 a lot of incarcerated individuals.

15:35:17 8 Q. To your knowledge, did Ms. Robertson know Jason

15:35:22 9 Wilson?

15:35:23 10 A. She had been corresponding with him as far back as

15:35:26 11 2022.

15:35:28 12 Q. To your knowledge, did Jason Wilson ever correspond

15:35:31 13 with Ms. Robertson about the extreme heat in TDCJ before

15:35:34 14 his death?

15:35:34 15 A. Yes.

15:35:35 16 Q. Were you in the room for former Director Collier's

15:35:38 17 testimony?

15:35:39 18 A. Yes.

15:35:40 19 Q. Did you see the grievances and the Securus messages

15:35:43 20 that Jason --

15:35:45 21 MR. TEBO: Your Honor, I'm not sure I understand

15:35:46 22 the foundation of this question. Director Collier's

15:35:50 23 testimony, that doesn't seem to follow on any of the

15:35:52 24 witness' immediate answers.

15:35:55 25 THE COURT: What's your question?

15:35:56 1 MS. JOERS: My question was she testified she was  
15:36:00 2 in the room for Director Collier's testimony. I asked if  
15:36:03 3 she saw the exhibits that were put up that were the  
15:36:06 4 grievances and the Securus messages that Mr. Wilson sent  
15:36:09 5 and those were put up during Director Collier's testimony.

15:36:12 6 MR. TEBO: I'm not sure I object to the question.  
15:36:14 7 I just don't understand that a foundation has been laid  
15:36:17 8 about a -- previously you were asking -- previously, Ms.  
15:36:22 9 Joers was asking the witness about how much she knows  
15:36:25 10 about the relationship between Brittany Robertson and an  
15:36:28 11 inmate.

15:36:29 12 THE COURT: I'll allow the question. Go ahead.

15:36:32 13 Q. (BY MS. JOERS) Thank you. I'll ask the question  
15:36:34 14 again.

15:36:34 15 When you were in the room for Director Collier's  
15:36:36 16 testimony, did you see the grievances and the Securus  
15:36:40 17 messages that Jason Wilson sent, including to Brittany  
15:36:44 18 Roberson at TPCA, complaining about the heat and about not  
15:36:47 19 getting water before his death?

15:36:49 20 A. Yes.

15:36:49 21 Q. Were you here for the testimony of Drs. Vassallo and  
15:36:55 22 Uribe on Monday?

15:36:55 23 A. Yes.

15:36:56 24 Q. So you heard that both Drs. Vassallo and Uribe  
15:36:59 25 testified that Jason Wilson's death was heat-related?



15:37:02 1 A. Yes.

15:37:02 2 Q. So according to plaintiffs' experts, a core team  
15:37:06 3 member, an incarcerated volunteer of TPCA, died of  
15:37:09 4 heat-related death in a TDCJ facility in summer of 2024;  
15:37:13 5 is that correct?

15:37:13 6 A. Yes.

15:37:14 7 Q. Dr. Dominick, in your years leading TPCA and  
15:37:19 8 advocating for people inside TDCJ facilities, how would  
15:37:23 9 you describe what's at stake in this case?

15:37:29 10 A. Lives. Lives and peace, mental status. It's urgent.  
15:37:46 11 It's hard for me to articulate the amount of human  
15:37:51 12 suffering that is taking place due to just this issue.

15:37:56 13 Q. Dr. Dominick, do you believe that the extreme heat in  
15:38:00 14 TDCJ facilities and the need to air condition it is an  
15:38:03 15 emergency?

15:38:04 16 A. Absolutely. So much so that I knowingly go to some  
15:38:10 17 of these events with hypertension medicine and diabetic  
15:38:13 18 medicine so I've put myself on the back burner. That's  
15:38:19 19 how urgent I think this issue is.

15:38:23 20 Q. And, Dr. Dominick, I apologize but I didn't clarify  
15:38:26 21 this earlier. You mentioned that Mr. Wilson was  
15:38:30 22 corresponding with Ms. Roberson as far as back as 2022.  
15:38:33 23 Would he have been a core team member of TPCA during that  
15:38:36 24 time?

15:38:37 25 A. In collaborative efforts, he would have been.

15:38:41 1 Q. Thank you. Pass the witness.

15:38:43 2 THE COURT: Thank you. We're going to take a  
15:38:45 3 break now. We'll take -- let's take an abbreviated  
15:38:49 4 15-minute break since we're kind of going on a short final  
15:38:54 5 to the end of the day. So 15 minutes and we will resume  
15:38:58 6 then. After that, do you have another witness?

15:39:02 7 MR. HOMIAK: Yes, your Honor.

15:39:02 8 THE COURT: Okay. We'll drudge on. All right.  
15:39:05 9 Fifteen minutes. Thank you.

15:39:37 10 (Recess.)

15:55:53 11 THE COURT: Mr. Tebo.

15:55:56 12 CROSS-EXAMINATION

15:55:56 13 BY MR. TEBO:

15:55:59 14 Q. Hello, Dr. Dominick.

15:56:00 15 A. Hi.

15:56:00 16 Q. I don't believe we've had the opportunity to meet  
15:56:03 17 yet, but I'm Kyle Tebo. I'm one of the attorneys with the  
15:56:07 18 defense. Thank you for being here today.

15:56:08 19 A. Thank you.

15:56:09 20 Q. Dr. Dominick, you've never been incarcerated before,  
15:56:15 21 right?

15:56:16 22 A. I have briefly been incarcerated.

15:56:19 23 Q. So you've never been incarcerated at TDCJ before,  
15:56:25 24 right?

15:56:25 25 A. No.

15:56:25 1 Q. And you've never been housed in a TDCJ unit?

15:56:28 2 A. No.

15:56:28 3 Q. You've never set foot in a TDCJ unit except for  
15:56:33 4 visitors or other public areas, right?

15:56:37 5 A. I attended a marriage seminar at one of the units and  
15:56:43 6 we had to walk through various areas within the unit.

15:56:47 7 Q. And that experience is the one exception?

15:56:50 8 A. Yes.

15:56:51 9 Q. Understood. You've never seen the inside of the  
15:57:09 10 housing area at the Gurney Unit, right?

15:57:12 11 A. Correct.

15:57:12 12 Q. You testified that your ex-husband is currently  
15:57:15 13 incarcerated at the Gurney Unit?

15:57:16 14 A. No.

15:57:17 15 Q. He was formerly incarcerated at the Gurney Unit; is  
15:57:22 16 that right?

15:57:22 17 A. The Gurney Unit was one of the units he was  
15:57:25 18 incarcerated at. He is currently at Goree.

15:57:31 19 Q. When is the last time you visited your ex-husband?

15:57:38 20 A. Oh, it's been a few years. I received a phone call  
15:57:41 21 from him Monday.

15:57:44 22 Q. And that last time you visited him, was that at the  
15:57:48 23 Gurney Unit?

15:57:49 24 A. No. That was at Goree.

15:57:51 25 Q. In any event, are you aware -- or let me back up a

15:57:57 1 little bit. When you did visit your ex-husband at the  
15:58:01 2 Gurney Unit, was the Gurney Unit unair-conditioned?  
15:58:03 3 A. Correct.  
15:58:04 4 Q. And are you aware that air conditioning is currently  
15:58:07 5 being installed at the Gurney Unit?  
15:58:10 6 A. I heard rumors to that effect.  
15:58:12 7 Q. Brian, could you go ahead and pull up Defendant's  
15:58:19 8 224? Do you see -- let me ask, are you familiar with this  
15:58:24 9 graphic, Dr. Dominick?  
15:58:25 10 A. Yes.  
15:58:25 11 Q. You've seen it before.  
15:58:30 12 A. Yes.  
15:58:31 13 Q. Do you see the second column Cool Beds Under  
15:58:35 14 Construction?  
15:58:35 15 A. Yes.  
15:58:35 16 Q. There's an entry for the Gurney Unit, right?  
15:58:37 17 A. Yes. That unit's currently idle, right?  
15:58:44 18 Q. Well, just sticking with this question for the  
15:58:49 19 moment. You see beside the Gurney Unit, there's an entry  
15:58:52 20 for 2,128, right?  
15:58:54 21 A. Yes.  
15:58:54 22 Q. And that's the number of cool beds at the Gurney Unit  
15:58:57 23 currently under construction, right?  
15:59:01 24 A. Yes.  
15:59:02 25 Q. That sounds right? And do you know that that 2,128

15:59:10 1 total includes all the beds at the Gurney Unit?

15:59:13 2 A. If you say so.

15:59:15 3 Q. Well, you visited the Gurney Unit before, obviously.

15:59:18 4 A. Right, but I know that TDCJ has changed the numbers

15:59:21 5 in some of their beds and capacity rotates, so that's all

15:59:24 6 I could go with.

15:59:25 7 Q. Absolutely. Would it surprise you that that 2,128

15:59:29 8 figure is actually more -- is a higher figure than the

15:59:33 9 number of beds that were operational while your husband

15:59:37 10 was incarcerated there?

15:59:38 11 A. No.

15:59:39 12 Q. That doesn't surprise you?

15:59:40 13 A. No.

15:59:41 14 Q. And are you aware that the reason for that is because

15:59:45 15 TDCJ is actually expanding?

15:59:48 16 A. Yes.

15:59:48 17 Q. The capacity of the Gurney Unit. You've heard that

15:59:51 18 before?

15:59:51 19 A. I know that they've made expansion throughout the

15:59:55 20 system.

15:59:55 21 Q. They're constructing several expansion dorms for

15:59:59 22 inmates at the Gurney Unit. Does that sound right?

16:00:02 23 A. I'm relying on you for that, yes.

16:00:04 24 Q. And all that construction is currently underway

16:00:08 25 according to this graphic, right?

16:00:12 1 A. If that's what you're telling me, yes.

16:00:14 2 Q. And once it's complete, it will add more than 2,000  
16:00:18 3 cool beds to the TDCJ system, right?

16:00:23 4 A. If that's what you're saying.

16:00:25 5 Q. Are you aware that that installation at Gurney is  
16:00:29 6 projected to be complete by October of 2026?

16:00:33 7 A. No.

16:00:35 8 Q. October 2026 is about six months away from today,  
16:00:39 9 right?

16:00:40 10 A. Yes. Approximately, yeah.

16:00:45 11 Q. I'll switch gears a little bit, Dr. Dominick. You  
16:00:48 12 testified some about TPCA's membership, right?

16:00:53 13 A. Yes.

16:00:53 14 Q. And you testified that TPCA has volunteers, right?

16:00:57 15 A. Yes.

16:00:58 16 Q. And those volunteers assist TPCA with outreach to  
16:01:04 17 inmates, among other things?

16:01:05 18 A. Yes.

16:01:07 19 Q. And you testified that some of TPCA's volunteers are  
16:01:11 20 inmates?

16:01:11 21 A. Yes.

16:01:14 22 Q. And I believe I heard you say that the number of  
16:01:17 23 currently incarcerated volunteers was less than 12; is  
16:01:24 24 that right?

16:01:24 25 A. That have received their packet and responded back,

16:01:27 1 that number is less than 12.

16:01:31 2 Q. And when you say that have received a packet and

16:01:33 3 responded, in other words, the number of inmates that have

16:01:37 4 actually become volunteers is about 12?

16:01:39 5 A. Yes.

16:01:40 6 Q. Or less than 12, right?

16:01:41 7 A. Yes.

16:01:44 8 Q. Sometimes TPCA sends e-mails or sends maybe a

16:01:50 9 volunteer offer to an inmate and that inmate doesn't

16:01:55 10 accept it, right?

16:01:57 11 A. Incarcerated individuals write as asked to

16:02:02 12 participate, we have a fuller list of individuals who are

16:02:04 13 interested in participating, and then, if we have outside

16:02:08 14 volunteers who can correspond, then we then can send them

16:02:12 15 the packets inside. So it's a rotating number, depending

16:02:18 16 on capacity.

16:02:19 17 Q. Was part of your testimony, though, that TPCA has

16:02:22 18 sent volunteer packets to serve inmates and those inmates

16:02:28 19 have not responded?

16:02:28 20 A. To the best of my knowledge, yes.

16:02:31 21 Q. Now, TDCJ operates around 104 different units. Does

16:02:36 22 that sound right?

16:02:37 23 A. Yes.

16:02:37 24 Q. So TPCA does not have at least one volunteer in each

16:02:44 25 TDCJ unit, right?

16:02:46 1 A. No. Not right now.

16:02:48 2 Q. You have 12 or so volunteers and TDCJ has 104 or so  
16:02:54 3 units, right?

16:02:57 4 A. Yeah. It's very driven by our outside volunteers  
16:03:01 5 whether or not we have capacity.

16:03:10 6 Q. Brian, could you pull up Defendant's Exhibit 250? Do  
16:03:21 7 you recognize this as a mailing list that TPCA compiled  
16:03:25 8 and produced to the defendant?

16:03:27 9 A. Yes.

16:03:30 10 Q. And do you recall testifying that it was compiled  
16:03:34 11 around June 2024?

16:03:37 12 A. I don't recall the exact date for this one. Our list  
16:03:41 13 is always rotating so I can't honestly say I remember that  
16:03:46 14 it was June 2024.

16:03:49 15 Q. If I said that you testified at your deposition that  
16:03:52 16 this was created around June 2024, would that sound --

16:03:55 17 A. Then I wouldn't argue with that. I would agree with  
16:03:58 18 it.

16:03:58 19 Q. That sounds accurate?

16:03:59 20 A. Yes.

16:04:01 21 Q. I'd like to go ahead and offer this as Defendant's  
16:04:03 22 Exhibit 250, your Honor.

16:04:06 23 MS. JOERS: No objection, your Honor.

16:04:06 24 THE COURT: So admitted.

16:04:13 25 Q. (BY MR. TEBO) And do you recall testifying that this



16:04:16 1 list contains the name and other information of inmates  
16:04:20 2 with whom TPCA corresponds?

16:04:25 3 A. Yes.

16:04:27 4 Q. And that's true, right? That is what this list  
16:04:30 5 contains?

16:04:33 6 A. Yes, but it's our mailing list and they are  
16:04:37 7 incarcerated people that we correspond with. They have  
16:04:40 8 reached out to us.

16:04:50 9 Q. Now, you testified that TPCA considers itself or  
16:04:56 10 considers all TDCJ inmates its constituents; is that  
16:05:00 11 right?

16:05:00 12 A. Yes.

16:05:01 13 Q. But you also testified that TPCA also considers  
16:05:04 14 itself to have members; is that right?

16:05:06 15 A. Yes.

16:05:06 16 Q. So you have both constituents and members; is that  
16:05:10 17 right?

16:05:10 18 A. Yes.

16:05:11 19 Q. But you don't have a membership policy. TPCA doesn't  
16:05:14 20 have a membership policy, right?

16:05:17 21 A. We determine membership based -- our governing body  
16:05:25 22 has the ability to determine membership based on  
16:05:27 23 groupings.

16:05:30 24 Q. And the governing body has not formulated a formal  
16:05:33 25 membership policy or anything like that, right?

16:05:45 1 A. I'm trying to understand your question. Can you  
16:05:49 2 repeat the question? The governing body.

16:05:51 3 Q. The governing body at TPCA has not formulated a  
16:05:54 4 formal membership policy, fair to say?

16:05:57 5 A. The governing body has not formulated a policy. The  
16:06:02 6 department of our -- our support department has membership  
16:06:06 7 criteria.

16:06:09 8 Q. And TPCA doesn't keep membership roles, fair to say?

16:06:13 9 A. Our mailing list is what we consider a membership  
16:06:17 10 role and our volunteer list is what we consider a  
16:06:20 11 membership role.

16:06:21 12 Q. When you were referring to the mailing list just  
16:06:24 13 then, is that the mailing list I just showed you?

16:06:26 14 A. Yes.

16:06:26 15 Q. There are no inmates on TPCA's leadership board,  
16:06:32 16 right?

16:06:33 17 A. Right.

16:06:38 18 Q. And isn't it true that inmates do not pay dues to be  
16:06:44 19 TPCA members?

16:06:45 20 A. They can't afford to, no.

16:06:47 21 Q. Inmates don't pay regular dues to TPCA.

16:06:51 22 A. No.

16:06:51 23 Q. And TPCA doesn't collect or expect dues from its  
16:06:54 24 members or its constituents, right?

16:06:56 25 A. No.

16:07:01 1 Q. But you did testify that TPCA had received occasional  
16:07:06 2 donations from inmates and other people, right?

16:07:08 3 A. Yes.

16:07:08 4 Q. But the majority of TPCA's funding doesn't come from  
16:07:15 5 inmates, correct?

16:07:15 6 A. Correct.

16:07:16 7 Q. In fact, very little of TPCA's total funding comes  
16:07:20 8 from inmates, fair to say?

16:07:21 9 A. Fair to say.

16:07:22 10 Q. Dr. Dominick, thank you for answering my questions  
16:07:42 11 today. No further questions at this time, your Honor.

16:07:45 12 THE COURT: Any further questions?

16:07:47 13 MS. JOERS: No further questions, your Honor.

16:07:49 14 THE COURT: Thank you, Doctor. You may stop  
16:07:51 15 down.

16:07:52 16 Next witness?

16:07:52 17 MR. HOMIAK: Yes, your Honor. At this time,  
16:07:53 18 plaintiffs call Marci Marie Simmons to the stand.

16:08:16 19 THE COURT: Good afternoon, ma'am. Before you  
16:08:19 20 take a seat, could you please raise your right hand to be  
16:08:21 21 sworn?

16:08:22 22 THE CLERK: You do solemnly swear or affirm that  
16:08:22 23 the testimony which you may give in the case now before  
16:08:22 24 the Court shall be the truth, the whole truth, and nothing  
16:08:26 25 but the truth?

16:08:26 1 THE WITNESS: I do.

16:08:29 2 THE COURT: Please be seated.

16:08:30 3 MARCI M. SIMMONS, called by the Plaintiff, duly sworn.

16:08:30 4 DIRECT EXAMINATION

16:08:30 5 BY MR. HOMIAK:

16:08:34 6 Q. Can you please state your name for the record?

16:08:36 7 A. Marci Marie Simmons.

16:08:39 8 Q. Which organization are you testifying on behalf of  
16:08:41 9 today, Ms. Simmons?

16:08:42 10 A. On behalf of Lioness Justice Impacted Women's  
16:08:46 11 Alliance.

16:08:46 12 Q. What is your current title with Lioness?

16:08:49 13 A. Director of Communications.

16:08:50 14 Q. Can you tell us what your responsibilities are in  
16:08:54 15 that role?

16:08:54 16 A. I handle all of the social and digital media. I  
16:08:57 17 handle relationships with partner organizations, including  
16:09:02 18 like organizations we might want to collaborate with and  
16:09:05 19 even universities that we might want to collaborate on  
16:09:07 20 research projects with.

16:09:09 21 Q. Is it accurate that you were previously incarcerated  
16:09:12 22 in the TDCJ system?

16:09:13 23 A. Yes, sir.

16:09:14 24 Q. For how long?

16:09:15 25 A. I was incarcerated for almost 10 years.

16:09:18 1 Q. What period of time was that?

16:09:19 2 A. From 2011 to 2021.

16:09:22 3 Q. How much of that time did you spend in

16:09:25 4 unair-conditioned facilities?

16:09:26 5 A. Every summer that I was incarcerated, I was in

16:09:30 6 unair-conditioned facilities. The last five months, I was

16:09:34 7 at Henley Unit and they had at that time some kind of

16:09:39 8 climate control. It wasn't air-conditioned, but it was

16:09:42 9 like a swamp cooler-type system; but that was in the

16:09:45 10 winter and spring and so, I didn't experience that in the

16:09:47 11 summer.

16:09:48 12 Q. You talked about your experience while inside at the

16:09:51 13 preliminary injunction hearing so I don't want to rehash

16:09:53 14 any of that except to clarify one thing based on Director

16:09:57 15 Lumpkin's testimony yesterday. Were you here in the

16:10:00 16 courtroom yesterday when Director Lumpkin said that it

16:10:02 17 was, quote, ridiculous for TDCJ inmates to claim that they

16:10:07 18 use water from the toilet in their cell to cool themselves

16:10:11 19 down because there's water in their sinks?

16:10:14 20 A. Yes, sir, I did hear that.

16:10:16 21 Q. While you were housed in the TDCJ system, did you use

16:10:20 22 toilet water to cool yourself down?

16:10:22 23 A. I did, yes, sir. That was common.

16:10:25 24 Q. And that was something that you testified about on

16:10:28 25 the stand, under oath at the preliminary injunction

16:10:30 1 hearing?

16:10:31 2 A. Yes, sir. It was not easy to say that in front of a  
16:10:34 3 roomful of people that have not experienced that.

16:10:37 4 Q. Why did you use toilet water as opposed to the water  
16:10:41 5 in the sink in your cell to cool yourself down?

16:10:45 6 A. In the cells that I was in, it was like a toilet-sink  
16:10:49 7 combo and the sink had a spout that was one button, and  
16:10:54 8 so, in the summers that water was warm and, also, the  
16:10:58 9 pressure was not a lot so you would push the button and  
16:11:02 10 get just a small, little bit of water.

16:11:04 11 Q. It's fair to say there was no way for you to control  
16:11:07 12 the temperature of that water in your sink during the  
16:11:09 13 summer, as you said, it was hot and in the winter, that  
16:11:13 14 water was cold?

16:11:13 15 A. That's correct, sir, and I had no ability to change  
16:11:15 16 that.

16:11:15 17 Q. Ms. Simmons, just to be clear, this is something that  
16:11:19 18 actually happened to you. You didn't make this up.

16:11:22 19 A. Yes, sir. That actually took place.

16:11:23 20 Q. How did you feel when you heard Director Lumpkin  
16:11:26 21 testify to that yesterday?

16:11:27 22 A. I felt really disappointed and I felt sad. He's used  
16:11:39 23 the word "ridiculous" and I felt like he tried to  
16:11:44 24 invalidate my experience and the experience of the people  
16:11:47 25 I was incarcerated with. I think that it took a lot of

16:11:53 1 encourage for me to say that I splashed toilet water on me  
16:11:59 2 and that's not widely accepted outside of a prison setting  
16:12:05 3 in front of a room of people wearing expensive suits, it  
16:12:09 4 was embarrassing. It was embarrassing for me to testify  
16:12:13 5 that and it was embarrassing to be called ridiculous for  
16:12:16 6 that.

16:12:17 7 Q. You said it's not widely accepted on the outside. Is  
16:12:21 8 it widely accepted on the inside while you were at TDCJ?

16:12:23 9 A. Yes. In cell block housing, it is very widely  
16:12:27 10 accepted. It is the way that we stay cool and try to  
16:12:30 11 regulate our body temperatures in the summer.

16:12:32 12 Q. You told us on the preliminary injunction hearing,  
16:12:34 13 it's one of the only ways you could get cool inside an  
16:12:38 14 unair-conditioned TDCJ prison.

16:12:39 15 A. And that is correct from the cell block housing, yes,  
16:12:42 16 sir.

16:12:42 17 Q. You were released from TDCJ physical custody in the  
16:12:45 18 spring of 2021; is that right?

16:12:46 19 A. That's correct.

16:12:48 20 Q. And are you still on parole today?

16:12:50 21 A. I am until 2030.

16:12:51 22 Q. What happens if you're found in violation of your  
16:12:54 23 parole?

16:12:54 24 A. If I'm found violating my parole, I could get sent  
16:12:58 25 back to prison and be away from my family.

16:13:01 1 Q. Since your release, have you maintained connections  
16:13:03 2 with women who are still incarcerated in TDCJ facility?

16:13:08 3 A. I have, yes, sir.

16:13:08 4 Q. And that includes women who are still incarcerated in  
16:13:11 5 unair-conditioned facilities?

16:13:12 6 A. Yes, sir, I have.

16:13:13 7 Q. Do you consider them your friend and your family?

16:13:16 8 A. I consider them more my family than friends. They're  
16:13:22 9 women that, you know, I spent in prison where we sleep  
16:13:25 10 together, eat together, go to rec together. We read  
16:13:29 11 family mail together, celebrate wins and help each other  
16:13:33 12 through losses, and those women are my family.

16:13:36 13 Q. I'd like to focus on what you did after you were  
16:13:39 14 released which we didn't really talk much about at the  
16:13:42 15 preliminary injunction hearing.

16:13:43 16 When did you first start working on raising  
16:13:46 17 awareness about the conditions inside Texas prison?

16:13:49 18 A. In a way, I started raising awareness during my  
16:13:52 19 incarceration through the grievance process, through  
16:13:55 20 talking with ranking officers and raising concerns there,  
16:13:58 21 and also, through helping other incarcerated people  
16:14:02 22 navigate the grievance process. And then,  
16:14:07 23 post-incarceration, it really started almost just  
16:14:09 24 immediately through storytelling.

16:14:12 25 Q. Tell me about that.



16:14:15 1 A. So I got out of prison and just after talking to my  
16:14:19 2 family and realizing that even my oldest son, who had  
16:14:24 3 visited me throughout my incarceration, did not realize  
16:14:27 4 that there was not climate control in Texas prisons and it  
16:14:31 5 really kind of made me realize people just might not know.  
16:14:35 6 You know, when I was inside, I thought, oh, people don't  
16:14:38 7 care, and then, I get out and I realize, oh, a lot of  
16:14:40 8 people just don't know. And so, I started telling my  
16:14:44 9 experiences of incarceration on social media.

16:14:48 10 Q. Now, a number of people leave prison. They move on  
16:14:51 11 and they put that part of their lives behind them and they  
16:14:55 12 try not to think about it ever again. Why wasn't that the  
16:14:57 13 path for you?

16:14:58 14 A. No. I understand that that's the way that a lot of  
16:15:01 15 people can cope with the trauma of incarceration and  
16:15:04 16 there's no shame in that. For me, like I said, the people  
16:15:10 17 that I met during my incarceration, I consider them my  
16:15:14 18 family. I care about them. They're humans. They all  
16:15:17 19 have their own unique stories. And then, in particular,  
16:15:21 20 you know, I start telling my story online a little bit and  
16:15:25 21 it's like my first summer home and I wake up, my partner,  
16:15:31 22 who is also formerly incarcerated in the Texas prisons on  
16:15:35 23 climate control, we make up and it's like late spring and  
16:15:39 24 we hadn't turned on the air conditioning and the room is  
16:15:41 25 hot and we're like, uh, hot, uncomfortable, complaining.

16:15:48 1 Throwing the covers off of us and we kind of made eye  
16:15:53 2 contact and both of us realize that we were complaining  
16:15:58 3 that we were mildly uncomfortable and people that we very  
16:16:02 4 much love are fighting to breathe, and we realize yeah, we  
16:16:09 5 really have to step up our game in how we're helping them.  
16:16:12 6 Q. You said one of the ways you start your advocacy work  
16:16:15 7 after you were released was by posting online. Can you  
16:16:18 8 tell us about that?  
16:16:19 9 A. Yes, sir. I just started making a few videos on  
16:16:24 10 social media platforms, mainly TikTok, and started just  
16:16:30 11 kind of telling my experiences through my incarceration.  
16:16:35 12 People would start in the comment section asking me all  
16:16:37 13 kinds of questions. They wanted to learn more. They  
16:16:38 14 wanted to know more about what happens inside of Texas  
16:16:42 15 prisons and I really started answering those questions and  
16:16:45 16 it grew.  
16:16:46 17 Q. For those of us who don't know, what is TikTok?  
16:16:50 18 A. TikTok -- and I didn't know while I was incarcerated  
16:16:53 19 either. So TikTok is an app and it's a social media app  
16:16:57 20 that plays like short-form videos.  
16:17:01 21 Q. You started these social media posts, including the  
16:17:05 22 TikToks, right after you were released in 2021?  
16:17:07 23 A. Yes, sir.  
16:17:08 24 Q. As of today, how many TikTok followers do you have?  
16:17:12 25 A. 297,000.

16:17:13 1 Q. And what are these TikToks about, generally speaking?

16:17:17 2 A. Mostly, they are about my experiences inside of Texas  
16:17:21 3 prisons and, also, my journey and reentry progress,  
16:17:28 4 navigating parole stipulations, and also, dealing with my  
16:17:32 5 family and my kids post-incarceration.

16:17:34 6 Q. From the beginning, did your TikToks focus on extreme  
16:17:38 7 heat in unair-conditioned prisons in Texas?

16:17:40 8 A. Yes, sir.

16:17:41 9 Q. And have you posted on other social media, not just  
16:17:44 10 TikTok?

16:17:45 11 A. Yes, sir. I have a platform on Facebook, Instagram,  
16:17:49 12 YouTube, an app lesser known called Clapper.

16:17:53 13 Q. So how did you get from social media or TikTok  
16:17:57 14 influencer to joining Lioness?

16:17:59 15 A. Right around that time where my wife and I woke up  
16:18:04 16 and really realized we needed to step up our game, I  
16:18:07 17 realized that I had a voice online, but I didn't know how  
16:18:11 18 to bring that to like legislation. I was very nervous  
16:18:15 19 about how that worked, and just to be real with you, I  
16:18:17 20 didn't even know how a bill got passed, you know, so I  
16:18:21 21 realized I needed help in training in that.

16:18:23 22 I contacted my good friend who used to report on  
16:18:26 23 Texas prisons for the Marshall Project. She now works for  
16:18:30 24 ProPublica. And I said help me. Who do I get connected  
16:18:36 25 with? I need to get hooked up with somebody that's

16:18:38 1 working on these things. And yeah, she even said like,  
16:18:42 2 well, tell me about the most important issues to you and  
16:18:44 3 heat was one of those issues.

16:18:46 4 Q. And so, you reached out to a friend of yours who was  
16:18:50 5 on the prison beat at the Marshall Project and she pointed  
16:18:53 6 you to who?

16:18:54 7 A. She pointed me to two organizations, TPCA and  
16:18:57 8 Lioness.

16:18:58 9 Q. When did you join Lioness?

16:18:59 10 A. I joined Lioness very shortly after that. I  
16:19:02 11 volunteered for both organizations and ended up really  
16:19:07 12 getting intertwined with Lioness because those were really  
16:19:10 13 my community of formerly incarcerated women.

16:19:13 14 Q. And you've been a member ever since?

16:19:14 15 A. Yes, sir.

16:19:15 16 Q. And why did you decide to join Lioness?

16:19:19 17 A. Their mission really aligned with what I believed in  
16:19:22 18 and they offered a committee and sisterhood and support  
16:19:25 19 that I didn't really find anywhere else, and they were  
16:19:30 20 teaching me how to get involved with policy changes and  
16:19:33 21 really helping me perfect my storytelling and teaching me  
16:19:36 22 things that I didn't really know.

16:19:37 23 Q. From the beginning when you joined, was Lioness  
16:19:40 24 focused on the issue of extreme heat in Texas prisons?

16:19:44 25 A. Yes, sir.

16:19:45 1 Q. How did Lioness come to exist?

16:19:47 2 A. Lioness came to exist -- so it was just a little bit  
16:19:50 3 before I got involved but our founding members, there was  
16:19:54 4 a death policy case, Melissa Lucio, and nobody was really  
16:19:59 5 working on her case, and for us, Melissa was one of us and  
16:20:05 6 it was important that her story be elevated. So they  
16:20:09 7 started working on that. I got involved just shortly  
16:20:14 8 after that.

16:20:17 9 Yeah, it was very grassroots. So we had our  
16:20:20 10 first event, which wasn't an official event, it was an  
16:20:24 11 event here in Austin, we were actually volunteering for  
16:20:28 12 another organization, and the table next to that  
16:20:31 13 organization was empty because someone didn't show up and  
16:20:36 14 our executive director now sat at that table and she wrote  
16:20:41 15 Lioness on a piece of paper and we set it on that table  
16:20:44 16 and people would come by and be like what is this. We're  
16:20:48 17 like we're formerly incarcerated women trying to make a  
16:20:52 18 change.

16:20:52 19 Q. So you took over one of the other tables with a  
16:20:55 20 homemade sign with a permanent marker?

16:20:58 21 A. It was with a ballpoint pen and we didn't have a  
16:21:01 22 marker. Yes, sir.

16:21:03 23 Q. So fair to say this was an organic, grassroots effort  
16:21:08 24 that grew out of formerly incarcerated women's  
16:21:10 25 relationships with each other and women who were still

16:21:13 1 incarcerated in the TDCJ system?

16:21:14 2 A. Yes, sir, and trans-men as well.

16:21:16 3 Q. Now, was Lioness founded to file this lawsuit or any  
16:21:20 4 other lawsuit?

16:21:20 5 A. No. No, sir. None of us have any history, like  
16:21:25 6 we're not attorneys. None of us parents aren't even  
16:21:28 7 attorneys. This was not on our radar.

16:21:30 8 Q. Was that thinking on your mind when you joined the  
16:21:32 9 organization, you're going to file a lawsuit?

16:21:34 10 A. No, not even a little bit, sir.

16:21:36 11 Q. And is Lioness' board comprised entirely of women who  
16:21:39 12 are formerly incarcerated in TDCJ prisons?

16:21:42 13 A. Yes. Women and gender-expansive folks, yes, sir.

16:21:46 14 Q. From your perspective, what is Lioness' mission?

16:21:48 15 A. Lioness' mission is to end the incarceration and  
16:21:54 16 devaluation of women, girls and gender-expansive people  
16:21:57 17 that are impacted by the Texas criminal legal system, and  
16:22:02 18 build power in our communities which really looks like  
16:22:05 19 training. It looks like support like helping each other  
16:22:09 20 figure out a smartphone when we get out of prison to  
16:22:13 21 giving competent storytelling skills.

16:22:16 22 Q. Just at a 10,000-foot level, what does Lioness do for  
16:22:20 23 its members?

16:22:21 24 A. I think at the broadest level, there are like,  
16:22:25 25 really, three categories that Lioness does for our

16:22:28 1 members. We advocate for our members. We elevate their  
16:22:34 2 stories by bringing awareness and we communicate with our  
16:22:40 3 members and hear their input.

16:22:42 4 Q. Let's take each of those in turn. Who at Lioness is  
16:22:46 5 primarily responsible for communicating with the  
16:22:48 6 organization's incarcerated?

16:22:50 7 A. Diane Thompson, she writes a lot of people in prison.

16:22:56 8 Q. How frequently does Ms. Thompson communicate directly  
16:22:58 9 with Lioness' incarcerated members?

16:23:00 10 A. Every day.

16:23:02 11 Q. What's the volume of this correspondence on a daily  
16:23:05 12 basis?

16:23:05 13 A. Five to eight letters.

16:23:08 14 Q. And that's just the correspondence of Lioness  
16:23:10 15 receives from its incarcerated members?

16:23:12 16 A. That's correct. Yes, sir.

16:23:13 17 Q. So five to eight letters a day, we're talking over a  
16:23:16 18 thousand letters per year that Lioness receives from its  
16:23:19 19 members incarcerated in TDCJ facilities?

16:23:21 20 A. Yes, sir. Diane responds to every single one of  
16:23:24 21 those letters.

16:23:24 22 Q. Is communicating with those incarcerated members Ms.  
16:23:28 23 Thompson's entire job?

16:23:30 24 A. It is, yes, sir.

16:23:31 25 Q. And what does she do once she receives that

16:23:35 1 correspondence?

16:23:35 2 A. So she takes that letter and she reads the issue. If  
16:23:40 3 there is an issue -- because sometimes they're just  
16:23:42 4 thanking us. But oftentimes, there are issues or  
16:23:45 5 something that's going on with them individually or within  
16:23:48 6 the prison system that they want to let us know, she  
16:23:51 7 categorizes that so that it -- just for example, if we had  
16:23:57 8 eight letters from one certain unit about one issue, we  
16:24:00 9 would know, oh, we definitely need to jump on fixing that  
16:24:05 10 issue.

16:24:05 11 Q. It's almost like a representative or senator's office  
16:24:08 12 keeping track of issues that members are raising with  
16:24:11 13 Lioness about the conditions and what's going on inside  
16:24:15 14 TDCJ facilities?

16:24:16 15 A. Not almost. It is exactly like that. It's modeled  
16:24:20 16 after that. The only difference is we actually respond.

16:24:26 17 Q. So Lioness is getting daily direct feedback from its  
16:24:29 18 members who are currently incarcerated in TDCJ facilities?

16:24:32 19 A. Yes, sir.

16:24:32 20 Q. How does that direct feedback guide the  
16:24:35 21 organization's advocacy work?

16:24:36 22 A. It guides our advocacy work, I mean, almost a hundred  
16:24:41 23 percent. I would say that our formerly incarcerated  
16:24:43 24 members, also, because we have advocacy around not only  
16:24:47 25 prison conditions but reentry barriers and parole things.



16:24:51 1 So -- but our members did that work a hundred percent.

16:24:54 2 Q. So fair to say Lioness' advocacy and awareness

16:24:57 3 actions are directly connected to and in response to the

16:25:00 4 direct communications the organization receives from its

16:25:03 5 currently and formerly incarcerated members?

16:25:05 6 A. 100 percent, yes, sir.

16:25:07 7 Q. Do Lioness' incarcerated members have to pay to send

16:25:10 8 electronic mail or snail mail to the organization?

16:25:13 9 A. They do, yes, sir.

16:25:14 10 Q. And at least to your knowledge, how much is it for an

16:25:18 11 incarcerated member to send snail mail?

16:25:20 12 A. I should have looked up the price of the stamp. I

16:25:24 13 didn't. But however much a price of a stamp is for

16:25:27 14 postage.

16:25:27 15 Q. And what about electronic mail?

16:25:29 16 A. It's 47 cents a page.

16:25:32 17 Q. Not per message, per page?

16:25:34 18 A. Yes, sir.

16:25:34 19 Q. And do Lioness' incarcerated members have to pay for

16:25:39 20 phone calls?

16:25:40 21 A. They do, yes, sir.

16:25:42 22 Q. Do you how much that is?

16:25:42 23 A. There's a flat fee that's charged and I don't know

16:25:46 24 the exact amount of the flat fee, and then, it's six cents

16:25:49 25 a minute after that. For a 30-minute phone call, I think

16:25:52 1 it's about right shy of \$5.

16:25:56 2 Q. How easy is it to schedule a call with someone who is  
16:26:00 3 incarcerated in the TDCJ system, assuming they can even  
16:26:03 4 pay for it?

16:26:04 5 A. Yeah. It's almost impossible to schedule a phone  
16:26:07 6 call. There's lots of things that happen in a prison  
16:26:11 7 setting that can prevent someone from being able to make a  
16:26:14 8 phone call. Early on in my incarceration, I learned like  
16:26:18 9 not to tell my kids, hey, I'm going to call you tomorrow  
16:26:21 10 at lunchtime because, inevitably, tomorrow at lunchtime,  
16:26:25 11 an ICS would happen or something, we would be locked down  
16:26:28 12 or the phones would be cut off or -- and I can't keep that  
16:26:32 13 promise. It's really hard to make that kind of commitment  
16:26:35 14 for a time.

16:26:36 15 Q. So you can't just hold a board meeting with  
16:26:39 16 incarcerated members?

16:26:40 17 A. Absolutely not.

16:26:41 18 Q. What does it take for you to visit an incarcerated  
16:26:43 19 member at a TDCJ facility given that you're on parole?

16:26:48 20 A. So for me to visit one of my -- anybody inside of a  
16:26:53 21 Texas prison, I have to be on their visitation list. So  
16:26:57 22 they have to submit a form and get that done. And then, I  
16:27:00 23 have to get approval from my parole officer and approval  
16:27:03 24 from the warden on the unit.

16:27:06 25 Q. Has a TDCJ warden ever denied a request for you to

16:27:09 1 visit a Lioness member?

16:27:10 2 A. Yes, sir, several times.

16:27:12 3 Q. Have you ever been given an explanation?

16:27:13 4 A. I've never been given an explanation.

16:27:15 5 Q. Has that happened to other formerly incarcerated

16:27:18 6 Lioness members who try to visit incarcerated members?

16:27:20 7 A. Yes, sir.

16:27:21 8 Q. What about membership dues? Does the organization's

16:27:25 9 members pay membership dues?

16:27:27 10 A. So we would never charge membership dues because that

16:27:31 11 would create an unnecessary barrier. Dr. Dominick had

16:27:36 12 stated that incarcerated folks in Texas don't get paid for

16:27:39 13 their labor so they don't really have financial means to

16:27:43 14 pay membership dues. And then, on the flip side of that,

16:27:47 15 folks getting out of prison, our formerly incarcerated

16:27:51 16 members are trying to rebuild their lives and so, like you

16:27:54 17 walk out of prison with a hundred dollars, we would never

16:27:57 18 ask them to take money out of that.

16:28:00 19 Q. Inmates aren't paid at all for their work?

16:28:02 20 A. No, sir.

16:28:02 21 Q. Did any of the organization's members donate

16:28:07 22 financially, regardless?

16:28:08 23 A. They do. Yes.

16:28:09 24 Q. Are those formerly incarcerated members?

16:28:11 25 A. Yes. Like any nonprofit, we occasionally run

16:28:16 1 fundraisers and it's really exciting to see folks  
16:28:23 2 investing, like investing in us and in our mission and  
16:28:27 3 believing in us.

16:28:29 4 Q. What about awareness? How does Lioness raise  
16:28:32 5 awareness of the conditions inside Texas prisons?

16:28:34 6 A. So we do a lot of storytelling. We do storytelling  
16:28:38 7 via social media, through rallies and marches. We hold  
16:28:43 8 events where there are like open mic availability for our  
16:28:47 9 members to speak on things that are important to them or  
16:28:51 10 share some of their story. We are on lots of podcasts.

16:28:57 11 Q. Can you give us a couple of examples of events you've  
16:29:00 12 held in the community, in particular?

16:29:03 13 A. Yes, sir. So last year in March, we had a really big  
16:29:09 14 event. It was, amazingly, thousands of people because we  
16:29:14 15 were able to speak behind Elizabeth Warren, which was  
16:29:17 16 wild, and we had about nine of our members spoke and we're  
16:29:26 17 really strategic about everything that we wanted to say  
16:29:28 18 and then, who -- what was important to each individual so  
16:29:32 19 that they got to write their own speech and we practiced  
16:29:35 20 together and gave it to thousands of people.

16:29:38 21 Q. And what was the focus of this event?

16:29:40 22 A. So that event was to raise awareness. It was Women's  
16:29:44 23 History Month we were talking about women's experience in  
16:29:47 24 incarceration and, also, conditions of confinement. So  
16:29:52 25 some of those conditions included solitary confinement

16:29:55 1 and, also, extreme and dangerous temperatures.

16:29:58 2 Q. Have any of your other community events or can you  
16:30:01 3 give us any examples of any other community events that  
16:30:03 4 have focused on the issue of extreme heat in Texas  
16:30:06 5 prisons?

16:30:06 6 A. Yes, sir. So once a year, we hold an event in  
16:30:10 7 Gatesville, Texas. And Gatesville is like where most of  
16:30:14 8 the women's prisons are housed so it's really a special  
16:30:17 9 place for a lot of us that lived there for so long and  
16:30:22 10 it's a candlelight vigil, and that event includes  
16:30:26 11 community members, Lioness members, staff of TDCJ have  
16:30:31 12 attended those events, former staff, families of  
16:30:35 13 incarcerated folks, and it gives people with lived  
16:30:40 14 experience a chance to talk about how that has affected  
16:30:43 15 them, and it gives us a chance to be in community. And we  
16:30:49 16 also really hold space for all of the lives that have been  
16:30:53 17 lost because of dangerous temperatures inside of Texas  
16:30:56 18 prisons.

16:30:56 19 Q. For how long has the organization held that vigil?

16:31:01 20 A. Our first one was in 2022 and we've held it once a  
16:31:03 21 year since then.

16:31:04 22 Q. Now, I know you also host or participate -- I think  
16:31:08 23 you mentioned that you host or participate in a number of  
16:31:10 24 podcasts. Can you just briefly describe those?

16:31:12 25 A. Yes. So myself and our members, including Jennifer,

16:31:18 1 our Executive Director, have been guests on podcasts.  
16:31:22 2 Also, I co-host my own podcast, it's called On the Rec  
16:31:27 3 Yard: Women's Prison Podcast.  
16:31:29 4 Q. And how often do you release that podcast?  
16:31:32 5 A. Two times a week.  
16:31:33 6 Q. How long are these podcasts?  
16:31:36 7 A. So we used to have a format that it was one hour a  
16:31:39 8 week and now, it's like to 30 minutes a week.  
16:31:43 9 Q. So you're making a -- this is a live podcast?  
16:31:46 10 A. Some of them are live. So like we've just recently  
16:31:51 11 changed format so used to be all of them were live. We  
16:31:54 12 would just get on live, very candid, and I want to say  
16:31:58 13 that we elevated to the next level where we're trying to  
16:32:02 14 do a little more planning. And so, now it just -- we  
16:32:05 15 would say our plan is to go be live once a month and the  
16:32:08 16 rest are like prerecorded.  
16:32:10 17 Q. And as the name suggests, On the Rec Yard is about  
16:32:14 18 prison conditions?  
16:32:15 19 A. It is. It's about prison conditions, our experience  
16:32:19 20 inside Texas prisons, our views on life as formerly  
16:32:23 21 incarcerated women but not just -- it's not just the heavy  
16:32:28 22 stuff. We talk about how we made family and community and  
16:32:31 23 how we survived and found joy even kind of in the midst of  
16:32:35 24 this craziness of incarceration.  
16:32:38 25 Q. Did you talk about extreme heat in Texas'

16:32:41 1 unair-conditioned prisons in those podcasts?

16:32:43 2 A. We do. Yes, sir. We've had several episodes about  
16:32:46 3 that.

16:32:47 4 Q. I understand you just released a short film very  
16:32:49 5 recently. Was it this weekend?

16:32:51 6 A. So it premiered in July of last year but I've been  
16:32:55 7 screening it and I screened it last weekend. Yes, sir.

16:32:58 8 Q. Can you tell us what that film's about?

16:33:01 9 A. Yes, sir. That film was about the intersection of  
16:33:03 10 pregnancy and incarceration and the generational trauma of  
16:33:10 11 incarceration. Basically, sir, in 2019, Texas passed  
16:33:16 12 legislation saying that incarcerated women don't have to  
16:33:22 13 be shackled when they give birth. What we were hearing is  
16:33:24 14 that that was still happening. So I interviewed 20 women  
16:33:27 15 who had hair babies inside -- during incarceration after  
16:33:31 16 that legislation passed, 17 out of those 20 women were  
16:33:36 17 shackled. I wrote a collective narrative and wrote,  
16:33:40 18 directed, produced a film.

16:33:41 19 Q. These are 17 women who gave birth while shackled at  
16:33:44 20 Texas prisons after that law passed in 2019?

16:33:48 21 A. So to be very clear, three of those women out of 17  
16:33:52 22 were housed in Texas jails.

16:33:54 23 Q. And the rest were in Texas prison?

16:33:56 24 A. Yes, sir.

16:33:57 25 Q. Now, let's just briefly talk about your advocacy

16:34:00 1 efforts. Does the organization advocate for its  
16:34:04 2 incarcerated members at the Texas state legislature?

16:34:06 3 A. We do, yes, sir.

16:34:07 4 Q. How so?

16:34:08 5 A. We like other folks y'all have heard today, we are at  
16:34:12 6 the legislative hearings anytime they're talking about  
16:34:16 7 anything that directly affects our community. Whether  
16:34:19 8 we're for it or against it, we want to make sure that  
16:34:21 9 we're bringing our members' voices to the capitol so we  
16:34:26 10 either drop cards or testify.

16:34:29 11 Q. And do those advocacy efforts at the legislature  
16:34:32 12 focus on bills related to extreme heat and the lack of air  
16:34:35 13 conditioning in Texas prisons?

16:34:37 14 A. Yes, sir, they absolutely do.

16:34:38 15 Q. And have you personally spoken at legislative  
16:34:41 16 hearings before the Texas legislature on those bills?

16:34:43 17 A. Yes, sir, I have.

16:34:44 18 Q. Can you tell us when the issue of extreme heat in  
16:34:47 19 Texas prisons first got online on Lioness' radar?

16:34:52 20 A. I would say that the dangerous temperatures were on  
16:34:55 21 all of our radars long before Lioness even formed because  
16:35:00 22 we lived that. We experienced that. And then, from day  
16:35:05 23 one, after we decided to be Lioness, that was on our  
16:35:08 24 radar.

16:35:09 25 Q. And without getting into the content of the



16:35:11 1 correspondence itself, fair to say that Lioness has  
16:35:14 2 received correspondence from its incarcerated members  
16:35:16 3 raising concerns about extreme heat in unair-conditioned  
16:35:20 4 prisons before it joined the lawsuit?

16:35:23 5 A. Yes, sir, definitely. And not just concerns. I  
16:35:27 6 would say, also, fearful statements. People that were  
16:35:31 7 scared for their health.

16:35:32 8 Q. And has the number of complaints from Lioness'  
16:35:35 9 members about the heat in the unair-conditioned prisons  
16:35:39 10 increased, decreased, or stayed the same since you joined  
16:35:41 11 the organization in 2022?

16:35:42 12 A. Stayed the same.

16:35:44 13 Q. Were you involved in the decision for Lioness to join  
16:35:48 14 this lawsuit?

16:35:48 15 A. I was, yes, sir. It wasn't an easy decision.

16:35:52 16 Q. Why is that?

16:35:53 17 A. So we have a -- our members and including myself,  
16:35:59 18 lots of us are still under the direct authority of the  
16:36:02 19 Texas Department of Criminal Justice so there's a fear to  
16:36:08 20 be in a lawsuit against the people that have power over  
16:36:13 21 our freedom.

16:36:14 22 Q. To your knowledge, had the organization ever  
16:36:17 23 participated in a lawsuit before?

16:36:17 24 A. No, sir.

16:36:18 25 Q. And why did Lioness ultimately decide to join the

16:36:21 1 lawsuit?

16:36:21 2 A. We really weighed everything, right? We looked at  
16:36:25 3 the possible retaliation for especially our incarcerated  
16:36:29 4 members, which I would say are the most vulnerable of our  
16:36:32 5 membership, and then, our folks on parole. We weighed  
16:36:35 6 that against very real risks of our members' health,  
16:36:40 7 including the chance of that their lives be lost.

16:36:43 8 Q. Was the decision to join the lawsuit ultimately a  
16:36:46 9 direct response to the concerns that Lioness received for  
16:36:50 10 members currently incarcerated in unair-conditioned TDCJ  
16:36:53 11 facilities as well as your own lived experience in those  
16:36:57 12 facilities?

16:36:58 13 A. Yes, sir, definitely.

16:36:59 14 Q. Have any of Lioness' members objected to you about  
16:37:03 15 the organization's participation in the lawsuit?

16:37:05 16 A. Not at all, sir.

16:37:06 17 Q. From your perspective, does the organization stand to  
16:37:09 18 gain anything financially from the lawsuit?

16:37:11 19 A. We do not.

16:37:12 20 Q. Does the organization have anything at all to gain  
16:37:14 21 from participating in the lawsuit?

16:37:16 22 A. I mean, yes. This is a systemwide system that is  
16:37:24 23 causing people's health at risk, taking lives, and at this  
16:37:31 24 point, the only way I see that that would change is if the  
16:37:34 25 state had a court order and we would have to gain that

16:37:38 1 lives would be saved.

16:37:40 2 Q. Thank you, Ms. Simmons. Thank you, your Honor. No  
16:37:44 3 further questions.

16:37:46 4 CROSS-EXAMINATION

16:37:46 5 BY MR. TEBO:

16:37:55 6 Q. Good afternoon, Ms. Simmons.

16:37:56 7 A. Yes, sir.

16:37:57 8 Q. I don't think we've met before. My name is Kyle  
16:37:59 9 Tebo. I'm one of the attorneys with the defense.

16:38:02 10 A. Nice to meet you.

16:38:02 11 Q. Likewise. Ms. Simmons, you've testified that you  
16:38:08 12 were previously in TDCJ's custody, right?

16:38:10 13 A. Yes, sir.

16:38:10 14 Q. And you were released in 2021?

16:38:12 15 A. Yes, sir.

16:38:13 16 Q. And you weren't incarcerated after 2021 another time,  
16:38:17 17 right?

16:38:17 18 A. That is correct.

16:38:19 19 Q. What month were you released in 2021, do you  
16:38:22 20 remember?

16:38:22 21 A. So my freedom happened in March, but I went to a  
16:38:26 22 halfway house. So from TDCJ's direct authority, the  
16:38:31 23 prison, was January and then, I went to a TDCJ-approved  
16:38:34 24 halfway house until March. So I call my freedom day in  
16:38:38 25 March. The state probably says January.

16:38:41 1 Q. And since January of 2021, you've not been inside the  
16:38:48 2 housing area of a TDCJ unit, right?

16:38:50 3 A. I have not been inside of the housing area, no, sir.

16:38:53 4 Q. You don't have any direct knowledge of living  
16:38:55 5 conditions as a TDCJ inmate more recently than -- that is  
16:38:59 6 more recent than January of 2021, right?

16:39:00 7 A. I do, because I'm in constant communication with  
16:39:03 8 people that are currently incarcerated.

16:39:05 9 Q. I'm asking you about direct knowledge. So your  
16:39:09 10 personal knowledge --

16:39:11 11 A. I apologize. As an incarcerated person, no, not  
16:39:13 12 since 2021.

16:39:14 13 Q. Could you tell me which TDCJ units you were  
16:39:25 14 incarcerated in during your stint of confinement?

16:39:28 15 A. Yes, sir. I started Plane State Jail. I did the  
16:39:32 16 biggest chunk of my time on the Dr. Lane Murray Unit. And  
16:39:35 17 then, I ended the last five months on the Henley Unit.

16:39:38 18 Q. And while you were incarcerated in those units, were  
16:39:41 19 you ever housed without air conditioning?

16:39:44 20 A. The entire time, yes, sir.

16:39:47 21 Q. And while you were housed in those units, were they  
16:39:51 22 -- were any of them fully air-conditioned?

16:39:53 23 A. None of them were fully air-conditioned.

16:39:57 24 Q. Brian, could you pull up Defendant's Exhibit 225?

16:40:09 25 Just to make sure that I've got it crisp in my memory, you

16:40:12 1 said you were incarcerated three different units, the  
16:40:15 2 Plane Unit, Lane Murray Unit and Henley Unit?  
16:40:18 3 A. Yes, sir.  
16:40:19 4 Q. Brian, could you pull up the Plane Unit? Do you see  
16:40:32 5 the center column that records the total number of  
16:40:35 6 air-conditioned beds?  
16:40:36 7 A. I do, yes, sir.  
16:40:37 8 Q. And in general in this Plane Unit row, you see all  
16:40:42 9 the beds currently are listed as of March 1st, 2026 are  
16:40:46 10 listed as air-conditioned?  
16:40:47 11 A. I do. I wish all the units look like that, sir.  
16:40:50 12 Q. And, Brian, could you zoom to the Murray entry? And  
16:41:01 13 do you see for Murray, some of the beds are currently  
16:41:05 14 air-conditioned and others are not air-conditioned?  
16:41:06 15 A. I see that, yes, sir.  
16:41:08 16 Q. And finally, Brian, could you go to the Henley entry.  
16:41:24 17 And do you see there that all of the beds at the Henley  
16:41:28 18 Unit are currently air-conditioned?  
16:41:29 19 A. I do see that. I was on the electrician crew on  
16:41:32 20 Henley helping run line when that was starting.  
16:41:36 21 Q. So you contributed to the air conditioning at the  
16:41:39 22 Henley Unit?  
16:41:40 23 A. Yes, sir.  
16:41:40 24 Q. You helped make this happen?  
16:41:42 25 A. Well, in a way, right? Yes, sir.

16:41:45 1 Q. And, Brian, could you pull up Defendant's 224? And,  
16:41:55 2 Ms. Simmons, do you see in the right-hand --  
16:41:58 3 most-right-hand column, there's an entry for Murray?  
16:42:02 4 A. Yes, sir.  
16:42:02 5 Q. And that says there are 975 cool beds in design?  
16:42:06 6 A. Yes, sir.  
16:42:07 7 Q. And are you familiar that as this graphic shows, TDCJ  
16:42:16 8 is currently air conditioning the remainder  
16:42:21 9 unair-conditioned beds at the Murray Unit?  
16:42:22 10 A. I see that that's what their document says, yes, sir.  
16:42:26 11 Q. Putting that all together then, of the three TDCJ  
16:42:35 12 units where you were incarcerated, two are already fully  
16:42:39 13 air-conditioned, right?  
16:42:40 14 A. That is correct.  
16:42:41 15 Q. And the third will soon be fully air-conditioned,  
16:42:44 16 right?  
16:42:44 17 A. I don't know about "soon be," sir, but I see that  
16:42:47 18 there might be a plan in place to air condition that unit.  
16:42:50 19 Q. In fact, you see that air conditioning is underway at  
16:42:53 20 that Murray Unit, right? Or to be more precise, the  
16:42:59 21 remaining unair-conditioned beds at the Murray Unit are  
16:43:02 22 currently in design?  
16:43:03 23 A. I see that that's -- the TDCJ says that those beds  
16:43:07 24 are currently in design to be cool.  
16:43:21 25 Q. Are you familiar with TDCJ's plans to add air

16:43:25 1 conditioning to its entire prison system by 2031?

16:43:28 2 A. I have sat in board meetings where that plan has been  
16:43:31 3 put out.

16:43:50 4 Q. Given the figures that we have reviewed as to the  
16:43:52 5 three TDCJ units where you were housed, if you were to go  
16:43:58 6 back to any of those units, you would -- let me rephrase  
16:44:05 7 that. The majority of beds at these three units are  
16:44:08 8 currently air-conditioned, right?

16:44:10 9 A. Well, on the Dr. Lane Murray, I think it looked like  
16:44:13 10 about one fifth of the beds were currently  
16:44:15 11 air-conditioned.

16:44:15 12 Q. I mean, taking those three units collectively.

16:44:20 13 A. I'm not great with math, but if you're telling me  
16:44:23 14 that, I will trust that, yes, sir.

16:44:25 15 Q. I'll just put it this way then to make it simple.  
16:44:28 16 Out of the three units where you were held, two are  
16:44:31 17 currently, fully air-conditioned?

16:44:35 18 A. That is correct.

16:44:35 19 Q. I have no further questions for you today, Ms.  
16:44:39 20 Simmons. Thank you very much.

16:44:39 21 A. Thank you.

16:44:41 22 MR. TEBO: Pass the witness, your Honor.

16:44:43 23 MR. HOMIAK: Nothing further for this witness,  
16:44:44 24 your Honor. I ask that she be excused.

16:44:46 25 THE COURT: Ms. Simmons, you may be excused.

16:44:48 1 THE WITNESS: Thank you very much, sir.

16:44:49 2 THE COURT: All right. Is that it for the day?

16:44:52 3 MR. HOMIAK: Yes, your Honor. I had mentioned  
16:44:54 4 earlier that we will be calling Dr. Vassallo. That will  
16:44:56 5 be our last witness tomorrow unless something happens  
16:44:59 6 overnight, which I certainly hope it does not. But we  
16:45:02 7 expect to rest after that.

16:45:02 8 THE COURT: Okay. Very good. And so, we'll pick  
16:45:05 9 up with your case then as soon as we finish with their  
16:45:08 10 last witness.

16:45:10 11 MR. JOHNSON: We'll be ready.

16:45:11 12 THE COURT: You'll be ready to carry through the  
16:45:13 13 end of the day then.

16:45:14 14 MR. JOHNSON: Yes, your Honor.

16:45:15 15 THE COURT: Okay. Anything else we need to cover  
16:45:16 16 before we end for the day?

16:45:18 17 MR. HOMIAK: Nothing from the plaintiffs, your  
16:45:18 18 Honor. Thank you.

16:45:19 19 THE COURT: Thank you all so much. We'll be in  
16:45:20 20 recess until 8:30.

21 (Proceedings adjourned.)

22

23

24

25



\* \* \* \* \*

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 25th day of April,  
2026.

*Lily Iva Reznik*

~~~~~  
LILY I. REZNIK, CRR, RMR  
Official Court Reporter  
United States District Court  
Austin Division  
501 West 5th Street,  
Suite 4153  
Austin, Texas 78701  
(512) 391-8792  
SOT Certification No. 4481  
Expires: 1-31-27