UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BERNHARDT TIEDE, II, TEXAS CITIZENS UNITED FOR REHABILITATION OF ERRANTS, INC., COALITION FOR TEXANS WITH DISABILITIES, INC., TEXAS PRISONS COMMUNITY ADVOCATES, BUILD UP, INC., A/K/A JUSTICE IMPACTED WOMEN'S ALLIANCE) Docket No. A 23-CA-1004 RP

vs.) Austin, Texas

BRYAN COLLIER, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL) July 31, 2024

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ROBERT L. PITMAN
Volume 2 of 4

APPEARANCES:

For the Plaintiff:

Ms. Ellen R. Blatt
Mr. Kevin D. Homiak
Mr. Thomas A.J. Olsen
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. Michael Singley
Ms. Lisa A. Snead
Edwards Law
603 West 17th Street
Austin, Texas 78701

1 **(Appearances Continued:)**

2 For the Plaintiff: Ms. Erica Grossman
Holland, Holland,
3 Edwards & Grossman, LLC
1437 High Street
4 Denver, Colorado 80218

5 Ms. Jodi Callaway Cole
Law Office of Jodi Callaway Cole
6 203 East Murphy Street
Alpine, Texas 79830
7

8 For the Defendant: Ms. Abigail K. Carter
Ms. Marlayna M. Ellis
9 Ms. Lauren E. McGee
Mr. Zachary L. Rhines
10 Ms. Kelsey L. Warren
Texas Attorney General's Office
11 300 West 15th Street
Austin, Texas 78701
12

13 Court Reporter: Ms. Lily Iva Reznik, CRR, RMR
501 West 5th Street, Suite 4153
14 Austin, Texas 78701
(512)391-8792
15

16

17

18

19

20

21

22

23

24

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

I N D E X

Witnesses:	Direct	Cross	Redirect	Recross
Susi Vassallo	8	72	124	128
Michele Deitch	137	154	158	
Jhilam Biswas	160	193		
Dean Williams	222	256	276	277
Paul S. Uribe	280	313		
Amite Dominick	335	350		
Brittany Robertson	362	375	378	

1 **E X H I B I T S**

Plaintiffs'	Offered	Admitted
#3	128	128
#6	47	47
#10	26	26
#11	175	176
#13	44	44
#15	34	34
#23	25	25
#24	23	23
#33	182	182
#35	176	176
#42	31	31
#43 through 44	193	193
#45	7	7
#50	193	193
#55	7	7
#76	176	176
#102	232	233
#103	179	179
#113	128	128
#132	7	7
#137	365	366
#146	348	348

E X H I B I T S (Continued)

Plaintiffs'	Offered	Admitted
#147	349	349
#150	7	7
#152	374	375
#161, 161A, 161B	288	288
#168, 168A	290	291
#169, 169A	301	302
#192, 192A, 192B	296	296
#200, 200A, 200B	303	304
#207	243	244
#251	283	283
#264	370	371
#266	144	145
#269	243	243
#272	345	345

Defendants'	Offered	Admitted
#1	147	148
#33	356	356
#35	379	379
#45	91	91
#51	262	262

08:29:47 1 THE COURT: And good morning. Ready to pick up
08:29:51 2 where we left off?
08:29:55 3 MR. HOMIAK: The first is that we have a
08:29:57 4 correction to make to the list of cases that we provided
08:30:01 5 the Court yesterday. I believe it was the third bullet
08:30:04 6 point, the Risso (phonetic) case, it should have been
08:30:07 7 indicated or identified as a concurring opinion, it was
08:30:09 8 not. So I just wanted to make sure that we were able to
08:30:11 9 correct that error.
08:30:14 10 THE COURT: Very good. I've made a note. Thank
08:30:16 11 you.
08:30:16 12 MR. HOMIAK: Thank you, your Honor. And the
08:30:16 13 second piece, I believe, is a housekeeping matter for Mr.
08:30:19 14 Edwards.
08:30:20 15 MR. EDWARDS: Yes. I neglected to admit some of
08:30:23 16 the exhibits that were discussed during the deposition.
08:30:26 17 I'd just like to ask the Court to admit them. They are
08:30:28 18 Exhibit 150, which is a discussion of TDCJ air
08:30:33 19 conditioning projects.
08:30:34 20 THE COURT: Any objection?
08:30:35 21 MS. ELLIS: So I'd just ask the Court to rule on
08:30:38 22 the objections that were made during the deposition. So
08:30:41 23 obviously, we didn't have a chance to do that yet. I
08:30:44 24 don't know specifically if that one was objected to. But
08:30:47 25 I would want to know if that was something the Court could

08:30:51 1 defer until we were able to submit our materials.
08:30:53 2 MR. EDWARDS: None of them were objected to. And
08:30:55 3 it's important for us to at least try to get this evidence
08:30:57 4 admitted to the Court. I don't want to wait for them to
08:30:59 5 make an objection they're not going to make.
08:31:02 6 MS. ELLIS: Well, you did ambush us with the
08:31:04 7 designations --
08:31:04 8 THE COURT: Okay, hey, hey, hey. And I get your
08:31:07 9 point. For purposes of this hearing, I'll admit these
08:31:11 10 documents subject to any objections.
08:31:12 11 MS. ELLIS: Thank you, your Honor.
08:31:14 12 THE COURT: That will be made.
08:31:15 13 MR. EDWARDS: That will be fine, your Honor.
08:31:16 14 Just for the Court's benefit, they are Plaintiffs' Exhibit
08:31:18 15 150, Plaintiffs' Exhibit 45, Plaintiffs' Exhibit 132.
08:31:27 16 THE CLERK: 130 what?
08:31:30 17 MR. EDWARDS: 132 and then, Exhibit 55, which is
08:31:34 18 ECF 50-32, which is the Purdum study, which was discussed
08:31:40 19 during the deposition.
08:31:40 20 THE COURT: Those are admitted subject to later
08:31:43 21 objection by the government.
08:31:44 22 MS. ELLIS: Thank you.
08:31:44 23 THE COURT: Anything else?
08:31:47 24 MR. HOMIAK: Nothing from plaintiffs, your Honor.
08:31:49 25 Thank you.

08:31:49 1 THE COURT: Your next witness.
08:31:51 2 MR. SINGLEY: Plaintiffs call Dr. Susi Vassallo,
08:31:54 3 your Honor.
08:31:54 4 THE COURT: If you'd come forward, ma'am, walk to
08:31:56 5 that corner of the courtroom and then, back toward me.
08:32:12 6 THE WITNESS: Good morning, your Honor.
08:32:13 7 THE COURT: Good morning. Before you're seated,
08:32:14 8 if you could please raise your right hand to be sworn.
08:32:17 9 THE CLERK: You do solemnly swear or affirm that
08:32:17 10 the testimony which you may give in the case now before
08:32:17 11 the Court shall be the truth, the whole truth, and nothing
08:32:22 12 but the truth?
08:32:22 13 THE WITNESS: I do.
08:32:26 14 SUSI VASSALLO, called by the Plaintiff, duly sworn.
08:32:26 15 DIRECT EXAMINATION
08:32:27 16 BY MR. SINGLEY:
08:32:27 17 Q. Dr. Vassallo, good morning. Would you give us your
08:32:30 18 full name for the record, please?
08:32:30 19 A. Susi Vassallo.
08:32:32 20 Q. And you are a medical doctor?
08:32:34 21 A. Yes, I am.
08:32:35 22 Q. How long have you been licensed and in what states?
08:32:40 23 A. I finished medical school in 1987 and here in Texas,
08:32:46 24 then you have a year, then you become licensed. So I've
08:32:50 25 been licensed here since about that time, and in New York,

08:32:52 1 approximately a year or two later because I did a
08:32:55 2 fellowship in New York City.
08:32:57 3 Q. Okay. Do you have board certifications, Doctor?
08:33:00 4 A. I'm board certified in emergency medicine and I'm
08:33:04 5 board certified in medical toxicology.
08:33:05 6 Q. And how long have you held those board
08:33:08 7 certifications, Doctor?
08:33:08 8 A. Approximately since 1989, approximately.
08:33:13 9 Q. And how were you employed? What kind of practice and
08:33:17 10 work do you do?
08:33:17 11 A. I've been employed since 1987 by the New York
08:33:22 12 University School of Medicine.
08:33:25 13 Q. And in what capacity?
08:33:27 14 A. As an emergency medicine physician and a member of
08:33:30 15 the faculty.
08:33:31 16 Q. And tell us what that means. As a member of the
08:33:33 17 faculty, you teach, what's your title and in what
08:33:36 18 capacity, what do you teach?
08:33:37 19 A. That's right. So I'm a clinical professor of
08:33:42 20 emergency medicine at this time. We have a large
08:33:44 21 residency, a training program in emergency medicine.
08:33:47 22 There are about 18 people per year. It's a four-year
08:33:52 23 program. And I'm also a faculty consultant to the New
08:33:58 24 York City Regional Poison Control and we have three
08:34:00 25 fellows per year. That's people who finish their

08:34:02	1	residency training. And so, there's about six times, you
08:34:06	2	know, about six fellows every year so I've been teaching
08:34:12	3	there, as well.
08:34:13	4	Q. And your hands-on clinical practice is in the ER, I
08:34:18	5	think you told us?
08:34:18	6	A. Right. I've been in the Bellevue emergency
08:34:21	7	department for probably the first 34 years and now the
08:34:24	8	dean said he wanted the faculty in the last two years to
08:34:26	9	transfer from Bellevue and work to the NYU Hospital. So
08:34:30	10	for about two years, I've practiced only at Bellevue as a
08:34:33	11	toxicologist. Other than that, the last -- the first
08:34:36	12	30-something years were at Bellevue.
08:34:39	13	Q. And I imagine working in the emergency room for
08:34:41	14	decades, you've seen all kinds of patients and treated all
08:34:45	15	sorts of cases, including heat-related cases; is that
08:34:49	16	fair?
08:34:49	17	A. Yes.
08:34:50	18	Q. Can you estimate for us how many patients that you've
08:34:55	19	treated over the decades that have heat-related illnesses?
08:34:58	20	Is it hundred, thousands?
08:35:00	21	A. Well, hundreds. When I went to New York, I was on an
08:35:05	22	Aaron Diamonds fellowship to study thermoregulation. So I
08:35:09	23	went there to study and that as part of that, I studied
08:35:12	24	medical toxicology they're so interwoven. So the answer
08:35:17	25	is I am continuously called for heat strokes, for

08:35:22 1 hypothermia, as well, and so, that's -- I would be
08:35:26 2 somebody that they would still go to any kind of case like
08:35:28 3 that.
08:35:29 4 Q. From that testimony, it sounds like you have a bit of
08:35:31 5 a specialization in heat-related medicine?
08:35:33 6 A. That's right.
08:35:34 7 Q. And you use the word "thermoregulation." Just
08:35:36 8 briefly, what does that mean?
08:35:37 9 A. It really refers to the body's ability to keep itself
08:35:43 10 right about 98.6 degrees, within a degree or so of that
08:35:48 11 temperature to maintain the temperature of the body is a
08:35:53 12 process. It's a physiological process called
08:35:57 13 thermoregulation.
08:35:57 14 Q. And you've mentioned that you're board certified in
08:36:00 15 toxicology. Can you just tell us briefly what that -- I
08:36:04 16 think much of us understand emergency room on a general
08:36:08 17 level but what about medical toxicology?
08:36:08 18 A. Medical toxicology, it's a study in living people of
08:36:12 19 overdoses, the effects of drugs in the body, the effects
08:36:18 20 particularly of toxicity of drugs and chemicals of many
08:36:22 21 different types on the human body and in the human body.
08:36:28 22 It's a specialty where consultants around the world at the
08:36:33 23 New York Regional Poison Control, we gets calls from all
08:36:37 24 over the world because we're well-known there from one of
08:36:40 25 the largest -- Denver and ourselves are the largest poison

08:36:43 1 centers in the United States.
08:36:45 2 Q. And you mentioned briefly when you graduated from
08:36:48 3 medical school, if you could just briefly summarize your
08:36:51 4 medical education, medical school, where you went, when
08:36:53 5 you graduated, residency, fellowship.
08:36:55 6 A. Sure. I went here -- I'm born and raised here in
08:36:57 7 Austin. I went to the University of Texas, then I went to
08:37:00 8 the University of Texas in Houston for medical school.
08:37:04 9 Then I wanted to do emergency medicine so I went to
08:37:08 10 Detroit, Wayne State University, which was sort of the
08:37:12 11 manor or the birth place of emergency medicine in this
08:37:15 12 country. And then, I went to Bellevue and NYU School of
08:37:19 13 Medicine for my -- and the Regional Poison Center for my
08:37:24 14 two years of post-emergency medicine training in
08:37:28 15 toxicology.
08:37:29 16 Q. Thank you. And have you had the chance to publish in
08:37:33 17 the area of thermoregulation and heat-related disease,
08:37:37 18 heat effects on the human body?
08:37:38 19 A. Yes. Every few years, we write in the Goldfrank's
08:37:43 20 Toxicologic Emergencies. I've always written the
08:37:46 21 thermoregulation chapter there and other -- I guess my CV
08:37:51 22 would include other publications regarding temperature and
08:37:56 23 drugs and toxins.
08:37:59 24 Q. And you've been in previous cases, you've been
08:38:03 25 qualified as an expert in various federal courts,

08:38:06 1 including here in Texas correct?
08:38:07 2 A. That's correct.
08:38:08 3 Q. One of those cases would be the Pack Unit case in
08:38:12 4 Judge Ellison's court in Houston against TDCJ also
08:38:15 5 involving un-air-conditioned housing of inmates, correct?
08:38:20 6 A. That's correct.
08:38:21 7 Q. Your Honor, at this time, I would tender Dr. Vassallo
08:38:24 8 as an expert -- a medical expert in the areas of
08:38:26 9 toxicology, emergency room medicine and, also, heat and
08:38:32 10 medicine and the effects on the human body.
08:38:34 11 THE COURT: I can't imagine there'd be any
08:38:36 12 objection to that; is that correct?
08:38:38 13 MS. CARTER: No objection, your Honor.
08:38:40 14 THE COURT: All right. She's so recognized.
08:38:42 15 MR. SINGLEY: Thank you.
08:38:43 16 Q. (BY MR. SINGLEY) All right. I'd like, if we could,
08:38:45 17 to just sort of briefly talk about some of the medicine of
08:38:48 18 heat and heat diseases before we move on to other topics
08:38:53 19 at issue in this case. So you mentioned what
08:38:55 20 thermoregulation is. Can you just tell us a little bit
08:38:58 21 about what happens to disrupt thermoregulation in high
08:39:03 22 heat? How does high heat get that out of whack? What
08:39:07 23 does it do to the body and what kind of problems does that
08:39:09 24 cause?
08:39:09 25 A. So the process by which the body maintains its

08:39:15 1 temperature in humans is primarily through sweating, which
08:39:18 2 relies on the functioning of the sweat gland and by
08:39:23 3 vasodilation. That's just the enlargement of blood
08:39:26 4 vessels so that people when they look pink in the face or
08:39:30 5 their skin looks pink, that's because they're vasodilated.
08:39:34 6 The veins an the vessels are bringing the blood to the
08:39:37 7 skin at which point there's an interaction, a chemical
08:39:40 8 interaction so that vasodilation and the sweat glands are
08:39:46 9 closely interrelated. And so, sweating and vasodilation
08:39:52 10 cause cooling by evaporative cooling.
08:39:55 11 The other central part to that is, of course, the
08:39:59 12 temperature epicenter, which is known as the hypothalamus
08:40:02 13 and is greatly affected by -- is actually the driving
08:40:05 14 force to make those bodily functions work. Of course, the
08:40:10 15 spinal cord is necessary in order to vasodilate and make
08:40:13 16 all these things work. And of course, the heart is
08:40:16 17 critical because the heart is responsible for pumping
08:40:20 18 harder and faster in order to bring the blood to the
08:40:24 19 surface of the skin and that is a major -- majorly at
08:40:31 20 play, as well.
08:40:31 21 Q. And let's talk about what happens when things get out
08:40:34 22 of whack due to high heat and the diseases it can cause
08:40:37 23 and maybe we've all heard about and talked about heat
08:40:41 24 stroke. How is heat stroke caused? How does that
08:40:45 25 regulating process get out of whack to cause heat stroke

08:40:48 1 and what is that?
08:40:49 2 A. So the process of thermoregulation that I just
08:40:55 3 described, sweating and cooling through vasodilation, can
08:41:00 4 be overcome by the amount of heat that's transferred to
08:41:04 5 the body from the environment, for example. So you can be
08:41:09 6 maximally sweating, you can be maximally vasodilated in
08:41:16 7 the body's attempt to maintain the temperature, 97 or so,
08:41:22 8 within a brief -- a small span. So however, the need to
08:41:27 9 maintain blood pressure, that is that I'm sitting up right
08:41:30 10 now, the need to maintain blood pressure wins out so that
08:41:35 11 at some point, if you take in more heat from the
08:41:37 12 environment, you will develop an increased body
08:41:43 13 temperature and you will develop heat stroke at its worst
08:41:46 14 manifestation.
08:41:47 15 There are lesser manifestations that heat can
08:41:50 16 affect the sweat glands and you could develop a heat rash.
08:41:53 17 There's heat exhaustion and I just described how the need
08:41:56 18 to maintain blood pressure is critical, but if you don't,
08:42:01 19 you might have what's called a heat syncope. Syncope just
08:42:04 20 means fainting so that would be heat syncope, heat
08:42:10 21 exhaustion, heat rash to the spectrum of heat stroke.
08:42:16 22 So understanding that this is not a spectrum that
08:42:19 23 is predictable, that heat stroke can occur with almost no
08:42:22 24 -- with no warning. And you could see then that if you
08:42:28 25 have to be -- if the heart has to beat fast and hard, then

08:42:32 1 you need -- any medication that keeps that from happening
08:42:37 2 would interfere with the ability to thermoregulate. You
08:42:40 3 could see then that any medication that affects the
08:42:43 4 function of the sweat glands would impair
08:42:47 5 thermoregulation, would not allow you to sweat so you're
08:42:50 6 not having evaporative cooling and you are prone to heat
08:42:55 7 gain inside the body.
08:42:57 8 Q. Okay. And how serious a disease is heat stroke? It
08:43:01 9 can be fatal; is that right?
08:43:02 10 A. Well, heat stroke is often fatal, yes.
08:43:05 11 Q. And if it's not fatal, can it have lasting
08:43:09 12 consequences for patients who don't die?
08:43:11 13 A. Yes. And so, of course, people have all kinds of
08:43:15 14 lasting consequences, particularly to the brain, to the
08:43:22 15 phrenic nerve, which is the nerve that keeps your
08:43:25 16 diaphragm alive that allows you to breathe properly and
08:43:30 17 you may be heat intolerant in the future. That's
08:43:32 18 something that the Army's always working on because it is
08:43:35 19 such a -- they want to keep their young healthy military
08:43:38 20 recruits from suffering from heat stroke, if possible.
08:43:42 21 Q. The other short heat stroke -- the other heat-related
08:43:45 22 disease that you've mentioned, I think, heat exhaustion
08:43:48 23 and heat syncope, which is dizziness or fainting, are
08:43:52 24 those serious diseases, as well?
08:43:54 25 A. Well, they are -- heat exhaustion usually maintains a

08:44:01 1 normal body temperature, although you can see people who
08:44:03 2 maintain their blood -- maintain their mentation, that
08:44:07 3 means they're thinking clearly, and their temperature goes
08:44:09 4 up a little bit to maybe like 104, but they're just as
08:44:13 5 clear as you and I will right now in their mental status.
08:44:16 6 So the thing that separates heat exhaustion from
08:44:19 7 heat stroke is the temperature, but it's also that heat
08:44:23 8 stroke has altered mental status. Could be coma,
08:44:27 9 confusion, inability to communicate. There's some
08:44:30 10 alteration of your ability to think in heat stroke and
08:44:32 11 that's what the definition is.
08:44:34 12 It's interesting because there are many cases
08:44:37 13 where someone will come into the hospital with a lower
08:44:40 14 temperature. For example, this was well described in the
08:44:43 15 South African mines where by the time they got to the
08:44:47 16 hospital, the temperature was low but the pattern of heat
08:44:50 17 stroke and the stuff with the chemical and the
08:44:55 18 abnormalities and the physiological abnormalities were
08:45:00 19 clear while the patient was in the hospital what they
08:45:02 20 developed, so this was known that this was heat stroke.
08:45:06 21 Q. There are some conditions or characteristics of
08:45:09 22 people that can make them especially vulnerable to the
08:45:14 23 heat; is that correct?
08:45:14 24 A. Right.
08:45:15 25 Q. Can you tell us what some of those things are?

08:45:18 1 A. Well, the older you are and the less you're healthy,
08:45:23 2 diabetes, because it's really a disease of the
08:45:27 3 microvasculature, that means the blood vessels have to
08:45:32 4 enlarge, like I mentioned, vasodilate, and diabetes
08:45:35 5 interferes with that process. Diabetes, of course, is
08:45:38 6 associated with heart failure, heart attacks, and this is
08:45:42 7 all about the microvasculature of the body.
08:45:46 8 So diabetes, obesity, hypertension, hardening of
08:45:53 9 the arteries, atherosclerosis as it's known, all of those
08:45:59 10 things interfere and, of course, age. The older and the
08:46:01 11 more infirm, the more likely you are to suffer from heat.
08:46:04 12 Q. And is there a particular age that you generally
08:46:07 13 think of as being a threshold particularly at risk?
08:46:10 14 A. Well, 65 is in all of the literature.
08:46:13 15 Q. Okay. What about pulmonary diseases? Can pulmonary
08:46:17 16 diseases increase your risk for heat disease?
08:46:20 17 A. Well, what happens there is a little bit the reverse.
08:46:23 18 What we always talk about is heat stroke, but it's well
08:46:29 19 understood that heat works in underlying conditions and it
08:46:34 20 worsens underlying pulmonary diseases, such as asthma,
08:46:37 21 such as chronic obstructive pulmonary disease, such as
08:46:41 22 emphysema. And of course, if you can't breathe, you're
08:46:45 23 not going to be able to -- sufficiently and exchange
08:46:48 24 gases, that may be a problem.
08:46:49 25 But the primary presentation in hot conditions is

08:46:55 1 an exacerbation or a worsening of asthma and pulmonary
08:46:59 2 diseases.
08:46:59 3 Q. And there's a number of medications that can increase
08:47:03 4 your risk for heat load and heat disease; is that right?
08:47:06 5 A. Yes. I just also wanted to say one another addition
08:47:12 6 is cardiovascular is also strokes. We think of cardio
08:47:16 7 meaning the heart but vascular is in the brain. So the
08:47:20 8 incidents and risk of stroke in heat is also increased.
08:47:24 9 Now, you're asking about medication, of course
08:47:27 10 you need to have a lot of blood and a lot of fluid to pump
08:47:31 11 around to the heart so the heart can send -- goes from
08:47:33 12 four liters per minute to eight liters per minute and it's
08:47:37 13 pumping. But if the tank is empty because you're on a
08:47:40 14 dieretic or what some people call a water pill, well, that
08:47:43 15 puts you at risk. So diuretics.
08:47:48 16 Sticking just with the cardiovascular system for
08:47:51 17 a minute or the heart, of course, anything that is used to
08:47:53 18 treat blood pressure, lowers the blood pressure, that
08:47:56 19 means that it's going to block the number of times that
08:48:01 20 the heart is beating, for example, a beta blocker,
08:48:04 21 metoprolol, all those things that people are taking, and a
08:48:07 22 calcium channel blocker also decreases hypertension or
08:48:11 23 treats hypertension by decreasing the -- what they call
08:48:15 24 the inotropy, which is the muscle strength -- the force of
08:48:19 25 contraction of the heart.

08:48:21 1 So if you have to pump harder and more
08:48:24 2 frequently, anything that's treating hypertension,
08:48:27 3 congestive heart failure, those kinds of medications are
08:48:30 4 going to affect the ability of the heart and the ability
08:48:33 5 to thermoregulate. Anything that treats like there have
08:48:39 6 been many instances where a person was on a nasal
08:48:45 7 decongestant, anything that constricts the blood vessels.
08:48:48 8 And if you have a stuffy nose, you spray yourself
08:48:51 9 with neo-synephrine or Afrin, or one of those drugs, that
08:48:52 10 illustrates the point of this type of medication
08:48:57 11 constricting veins and vessels. It's not to say that
08:49:02 12 Afrin sprayed in your nose, but if you're taking a pill
08:49:05 13 with a similar vasoconstrictive properties, that also will
08:49:11 14 increase your possibility of heat stroke.
08:49:15 15 And of course, anything that is affecting the
08:49:18 16 hypothalamus -- remember that's the temperature or the
08:49:21 17 thermometer for the brain so if you are on some kind of
08:49:25 18 antidepressant, anything to treat mental illness, all of
08:49:29 19 them affect the hypothalamus and the temperature sense and
08:49:33 20 they also can affect those peripheral things I've been
08:49:35 21 talking about, vasodilation and sweating.
08:49:37 22 Q. Thank you, Doctor. I'd like to shift gears a little
08:49:41 23 bit and discuss with you your opinions about what you
08:49:42 24 consider to be dangerous levels of heat and the effects of
08:49:48 25 heat in the population in causing heat-related illness and

08:49:53 1 death, okay?
08:49:54 2 A. Yes.
08:49:54 3 Q. And you brought some materials that help illustrate
08:49:59 4 your opinions here today; is that right?
08:50:00 5 A. Yes.
08:50:00 6 Q. Let's start with, Paul, if you could please put up
08:50:05 7 Exhibit 24. All right, Doctor. Could you tell us what
08:50:26 8 we're looking at here? This being Plaintiffs' Exhibit 24.
08:50:29 9 A. So this is the National Weather Service Heat Index
08:50:34 10 Chart, which tells us, compares temperature -- really
08:50:39 11 tells us -- it says at the bottom here, the likelihood of
08:50:41 12 heat disorders With Prolonged Exposure and/or Strenuous
08:50:48 13 Activity. This is -- the reason this is important is it
08:50:51 14 shows temperature and humidity so that's why -- because
08:50:57 15 when the air is saturated, it's very, very humid, you're
08:51:01 16 unable to evaporatively cool with the sweat. That's why
08:51:06 17 humidity puts you at so much of a risk.
08:51:08 18 Q. Thank you, Doctor. I don't think we talked about the
08:51:10 19 concept of heat index versus temperature and I think most
08:51:14 20 of us know just as lay people what that is, but that
08:51:17 21 factors in a concept of humidity as well as temperature?
08:51:22 22 A. That's right. Enormously important, humidity.
08:51:26 23 Q. Okay. And the humidity is enormously important
08:51:29 24 because of its effect why?
08:51:31 25 A. The whole way that you cool is you're sweating and

08:51:36 1 that water is -- what's on your skin is evaporating and we
08:51:41 2 all know that if you can't evaporatively cool, it's going
08:51:45 3 to be wet, it's going to sit there, it's going to be
08:51:47 4 dripping off of you, but you're not cooling because it's
08:51:50 5 not -- it's the release of energy or heat comes from the
08:51:53 6 process of changing that water on your skin which is sweat
08:51:57 7 to air.
08:52:00 8 Q. And this is a U.S. government document from the
08:52:03 9 National Weather Service and expressed in terms of heat
08:52:07 10 index, correct?
08:52:07 11 A. That's right.
08:52:08 12 Q. And it looks like you were talking about that it
08:52:10 13 shows talking about heat disorders either with prolonged
08:52:16 14 exposure or strenuous activity. So it could just be heat
08:52:20 15 exposure. You don't have to be doing anything.
08:52:21 16 A. That's right.
08:52:22 17 Q. And it looks like we've got some colors talking about
08:52:24 18 danger levels, but we have the caution level starting at
08:52:29 19 heat index of even about 80, right?
08:52:31 20 A. That's right. So 80 temperature and 40 percent
08:52:34 21 humidity, you're already into the caution area.
08:52:37 22 Q. And, Doctor, in giving your opinions and in your
08:52:44 23 practice and review of literature, have you come up with a
08:52:48 24 particular threshold of heat index that you consider to
08:52:52 25 start posing a substantial risk of heat problems to

08:52:57 1 people?
08:52:57 2 A. Yes. So starting in the '90s, there were a series of
08:53:02 3 publications that show that the risk of presenting to the
08:53:06 4 emergency department, the risk of being hospitalized --
08:53:09 5 and those are other morbidities, that is, other illnesses,
08:53:13 6 or heat stroke, or death -- started around -- not started
08:53:18 7 but was around 88 degrees heat index.
08:53:21 8 Q. You said 88 degrees?
08:53:23 9 A. That's right.
08:53:24 10 Q. Is that the number you use in giving your opinions
08:53:26 11 for a threshold where it becomes a substantial risk?
08:53:29 12 A. I do.
08:53:30 13 Q. And we'll look at some of that literature. Before I
08:53:33 14 move on, I'd move to admit Plaintiffs' Exhibit 24.
08:53:36 15 THE COURT: Any objection?
08:53:39 16 MS. CARTER: No objection.
08:53:39 17 THE COURT: So admitted.
08:53:41 18 Q. (BY MR. SINGLEY) Paul, if you could bring up Exhibit
08:53:46 19 23, please. There's a paper where the lead author is Dr.
08:53:55 20 Petitti. Could you tell us about this paper and how it
08:53:58 21 informed your opinions on what you're just discussing
08:54:00 22 about the 88 degree heat index threshold?
08:54:02 23 A. Well, Dr. Petitti, first of all, performed this study
08:54:07 24 in Phoenix, Arizona, one of the hottest places in the
08:54:09 25 United States, and if you -- what she looked at was

08:54:15 1 presentations to the emergency department,
08:54:18 2 hospitalizations and mortality from exposure to
08:54:22 3 environmental health -- heat. That was what the essence
08:54:25 4 of this study was.
08:54:27 5 Q. And, Paul, if you wouldn't mind going down to page 5
08:54:31 6 on this exhibit. And figure 5 down at the bottom, please.
08:54:40 7 Thank you.
08:54:40 8 All right, Doctor, this is figure 5 in this
08:54:44 9 Petitti paper, Exhibit 23. Could you tell us about this
08:54:48 10 and how it forms your opinion on the 88 degree heat index
08:54:52 11 threshold?
08:54:52 12 A. If you see the very top there, it says mortality
08:54:56 13 relative risk of -- actually, all of them. This J-shaped
08:55:00 14 curve going up, the spike is represented nicely in this
08:55:06 15 paper from 2016 or so and it's been looking like this for
08:55:11 16 about 20 years in various literature. And you see that
08:55:15 17 around 88 degrees heat index that you start to see the
08:55:21 18 spike in this J shape shoot up. So here, you have
08:55:25 19 mortality on the left, you have hospitalizations and you
08:55:29 20 have emergency department, and this is relative risk.
08:55:32 21 So as the temperature gets higher, around the 88
08:55:35 22 degree index, and this is heat index, HI, you start to see
08:55:41 23 those things increase and this has been shown multiple
08:55:44 24 times epidemiologically.
08:55:46 25 Q. Okay. I'll notice you're talking about an 88 heat --

08:55:49 1 degree heat index. This paper as some are is expressed in
08:55:54 2 Celsius, correct?
08:55:55 3 A. Yes.
08:55:55 4 Q. So when we do the conversion you're mentioning, you
08:55:58 5 see a J-shape curve around that point. Tell us a bit more
08:56:04 6 about that.
08:56:04 7 A. Yes. You know, I was being -- as a Texan, I think I
08:56:08 8 was being very conservative. You see that here. If 30
08:56:13 9 degrees is about 95 and 27 is about 88, you see that the
08:56:17 10 curve actually starts to go up earlier than 88 degrees
08:56:21 11 heat index. And so -- and that's between this and many
08:56:27 12 other papers, that's why I came to this particular
08:56:32 13 conclusion.
08:56:30 14 Q. Okay. This is just one of those papers?
08:56:32 15 A. That's right.
08:56:33 16 Q. Your Honor, I'd move to admit Plaintiffs' Exhibit 23.
08:56:38 17 THE COURT: Any objection? So admitted.
08:56:41 18 MS. CARTER: No objection.
08:56:43 19 Q. (BY MR. SINGLEY) Paul, if you could bring up Exhibit
08:56:46 20 10. Doctor, tab 3. This is a paper by Dr. Davis. Can
08:56:53 21 you talk to us a little bit about how this informed your
08:56:55 22 opinions, Doctor?
08:56:56 23 A. So this is, once again, talking about mortality and
08:57:00 24 this is -- and the word here is "apparent temperature,"
08:57:04 25 again, it's heat index and it's -- again, this paper is

08:57:08 1 showing how the mortality increases for -- the daily
08:57:15 2 mortality increases as the heat index increases and it's
08:57:20 3 the same J-shaped curve.
08:57:23 4 Q. Paul, if you wouldn't mind going to page 3 of this
08:57:27 5 exhibit at the bottom, please, figure 1. You said
08:57:34 6 J-shaped curve, is that what you were looking at in this
08:57:37 7 paper?
08:57:37 8 A. Right. And this is just another example of many of
08:57:40 9 this -- how the temperature -- as the heat index
08:57:44 10 increases, mortality, this is deaths increase.
08:57:48 11 Q. And again, I think I heard you say apparent
08:57:50 12 temperature. AT is just at way of saying heat index?
08:57:54 13 A. That's correct.
08:57:54 14 Q. And again, Celsius so you're talking Farenheit 88 but
08:57:57 15 this paper's expressed in Celsius.
08:57:59 16 A. That's right.
08:57:59 17 Q. But you're identifying the same sort of J-shape curve
08:58:03 18 as we saw in the Petitti paper.
08:58:05 19 A. That's right.
08:58:06 20 Q. Thank you, Doctor. Your Honor, move to admit
08:58:10 21 Plaintiffs' Exhibit 10.
08:58:11 22 THE COURT: Objection? So admitted.
08:58:13 23 MS. CARTER: No objection.
08:58:16 24 Q. (BY MR. SINGLEY) All right. Doctor, so we've talked
08:58:18 25 a little bit about that 88 degree heat index threshold

08:58:22 1 that's part of your opinions. Above -- once you hit that
08:58:26 2 level and above -- we talked about how some people are
08:58:28 3 particularly vulnerable because of medical conditions or
08:58:31 4 age or medications or such, but in addition to those type
08:58:33 5 of folks, in your opinion, is the population as a whole,
08:58:37 6 including young healthy people, at substantial risk of
08:58:40 7 death or injury above that threshold?
08:58:42 8 A. Yes, and that's what's being looked at in these
08:58:45 9 epidemiological studies. They're looking at the
08:58:48 10 population as a whole. This is a -- so the answer is yes.
08:58:53 11 Q. And, Doctor, I probably should have done this earlier
08:58:56 12 on, but as I discussed your opinions with you, will you
08:58:59 13 render your opinions to a reasonable degree of medical
08:59:01 14 certainty?
08:59:02 15 A. Yes.
08:59:02 16 Q. And all the opinions you've given so far in your
08:59:05 17 testimony, have they been to a reasonable medical
08:59:08 18 certainty?
08:59:08 19 A. Absolutely.
08:59:09 20 Q. Thank you, Doctor. So I'd like to move to some
08:59:15 21 materials discussing that risk to the general population
08:59:17 22 as you've just testified. Paul, if you could bring up
08:59:21 23 Exhibit 42, please. And tab 7, Doctor.
08:59:35 24 This is a publication, looks like, from the CDC.
08:59:40 25 A. That's right. The MMWR is the Morbidity and

08:59:43 1 Mortality Weekly Report, publication from the CDC.
08:59:48 2 Q. And is that a well-recognized and accepted
08:59:51 3 publication?
08:59:52 4 A. We all look to the MMWR for information, yes.
08:59:55 5 Q. Okay. And so, let's talk about how this informed
08:59:59 6 your opinion about risk to the population as a whole.
09:00:05 7 A. Well, this is looking at heat conditions over a
09:00:12 8 period of 14 years. It looked -- what was important about
09:00:16 9 this paper is it looked at two things. It looked at where
09:00:21 10 heat caused the death, for example, heat stroke, and where
09:00:24 11 heat contributed to the death. And in other words, if you
09:00:28 12 put in an obese, diabetic person with hypertension and
09:00:35 13 mental illness, let's say, into a hot circumstance, they
09:00:36 14 are much more likely to die from heat. That's
09:00:40 15 contribution. And whenever we discuss the number of
09:00:44 16 people who die of heat, this where heat was a contributing
09:00:49 17 factor is always underestimated and the CDC and MMWR has
09:00:54 18 made this point every time they publish on the heat, they
09:00:58 19 make this point as do many other authors.
09:01:01 20 Q. And well before we move on to discuss this paper, I
09:01:04 21 want to follow up on that topic, Doctor, and let me unpack
09:01:07 22 it and make sure I understood what you told us. We can
09:01:09 23 look at deaths caused by heat maybe in two different ways.
09:01:12 24 One is just a direct heat death, it's a heat stroke, you
09:01:16 25 don't have any other complicating condition involved.

09:01:19 1 It's a direct heat death.
09:01:21 2 A. Right.
09:01:21 3 Q. That's one category. But I think what you've just
09:01:24 4 mentioned is that you can look at a second category of
09:01:27 5 heat deaths that maybe aren't straight heat stroke or
09:01:32 6 labeled hyperthermia only on the death certificate, but it
09:01:36 7 might be that someone has cardiovascular disease and
09:01:40 8 because of the heat acting upon that, it may be the actual
09:01:44 9 cause of the death combined with the condition. Did I get
09:01:46 10 that right or would you help me with that?
09:01:48 11 A. Yes. For example, if somebody is in the heat, their
09:01:52 12 heart is having to pump faster and harder to meet the
09:01:55 13 demands that the heat strain is putting on their body.
09:01:57 14 They may have a heart attack. So that death, their
09:02:00 15 temperature didn't rise to 106 or 105.5 or altered mental
09:02:06 16 status but they would not -- except for the environmental
09:02:08 17 heat stress, they would not have had that heart attack
09:02:13 18 under those circumstances.
09:02:14 19 Q. In that case in your opinion, that would also be a
09:02:16 20 heat-related death just via the mechanism of another
09:02:19 21 condition and making it worse?
09:02:21 22 A. That's right.
09:02:23 23 Q. All right. Let's turn back to this paper. Paul, if
09:02:26 24 you could go to page 3 on Exhibit 42, please. Doctor, I
09:02:35 25 think you were discussing this paper and how it discusses

09:02:37 1 these two categories. I think we see them there,
09:02:40 2 heat-related codes as the underlying cause and
09:02:43 3 heat-related codes as the contributing cause. Those are
09:02:46 4 the two concepts we were just discussing.
09:02:47 5 A. Right. And this table is about death.
09:02:50 6 Q. Okay.
09:02:52 7 A. So people die. People who die.
09:02:55 8 Q. And how does this inform your opinions about a risk
09:02:58 9 to the general population of heat deaths?
09:03:01 10 A. One of the most important things about the CDC and
09:03:03 11 the MMWR in this paper is demonstrating how heat is a
09:03:08 12 contributing factor. So there are a lot of codes, there
09:03:13 13 are a lot of ages, so this is going to include where the
09:03:16 14 environmental heat strain has result -- has contributed to
09:03:21 15 whatever else the patient died from, whether it be stroke,
09:03:27 16 heart attack, all the things -- congestive heart failure,
09:03:30 17 all the things that can make somebody die as well as just
09:03:33 18 where it's simply heat stroke death.
09:03:36 19 Q. And I think you'd mentioned earlier in your testimony
09:03:39 20 that you consider the heat as a contributing cause to
09:03:42 21 deaths to be undercounted when they act on cardiovascular
09:03:46 22 disease, for example, and this study's getting at
09:03:49 23 quantifying that type of heat death.
09:03:51 24 A. That's right.
09:03:52 25 Q. And you'd mentioned earlier that 65 is considered a

09:03:55 1 threshold for really increasing the risk from heat. What
09:03:57 2 do we see here in this paper for heat deaths in both
09:04:01 3 categories for ages below 65?
09:04:03 4 A. So if you look at the first category and you start
09:04:06 5 with the young people, 15 to 24, there's people who die in
09:04:10 6 there. You see people dying throughout those categories.
09:04:14 7 You see that 45 to 54 years old, thousand deaths.
09:04:20 8 Fifty-five and until you get older and older, the more
09:04:24 9 risk you have.
09:04:26 10 Q. Okay. And you see that those deaths through all the
09:04:30 11 age ranges both for the direct heat deaths and the
09:04:32 12 contributory heat?
09:04:33 13 A. As well, yes.
09:04:34 14 Q. Your Honor, we'd move to admit Plaintiffs' Exhibit
09:04:37 15 42.
09:04:37 16 MS. CARTER: No objection.
09:04:38 17 THE COURT: So admitted.
09:04:39 18 Q. (BY MR. SINGLEY) Paul, if you could bring up Exhibit
09:04:43 19 15, please. Doctor, this is tab 8. This is a paper about
09:04:51 20 California Heat Wave, whose lead author is Knowlton.
09:04:55 21 Would you tell us a bit about this paper and how it
09:04:57 22 informed your opinions?
09:04:59 23 A. The main issue here is that this was comparing
09:05:02 24 counties throughout California and looking at the relative
09:05:07 25 risk, that is, the risk for people with -- again, they

09:05:10 1 looked similar -- they looked at emergency department
09:05:15 2 visits, they looked at hospital admissions for those
09:05:18 3 people who came to the emergency department, and they
09:05:20 4 looked at serious illness and this, again, is when the
09:05:23 5 heat can cause by virtue of dehydration, it can
09:05:27 6 contribute, I should say, to renal failure which is kidney
09:05:31 7 failure. It can cause nephritis, which is an inflammatory
09:05:36 8 condition of the kidney, electrolyte imbalance, and many
09:05:39 9 other things. And again, you look here, you see that in
09:05:42 10 the age group off to the left --
09:05:46 11 Q. I'm sorry, one second, Doctor. Maybe I'll get this
09:05:48 12 on the correct page. Paul, if you wouldn't mind ticking
09:05:51 13 this to page 5 of the Exhibit, please, table 3 at the
09:05:56 14 bottom.
09:05:58 15 Before we dive into this table, Doctor, maybe we
09:06:05 16 unpack a couple of things. Mortality versus morbidity.
09:06:10 17 Mortality's death obviously and we've seen some papers
09:06:12 18 talking about heat deaths, correct?
09:06:14 19 A. Right.
09:06:14 20 Q. But one of the things you brought up about this paper
09:06:17 21 is it's not just death that we're dealing with, we're
09:06:19 22 dealing with illnesses. So this is a morbidity study,
09:06:23 23 which means illnesses but not death.
09:06:26 24 A. That's right. And I've been focusing on the
09:06:29 25 worsening of underlying conditions and I haven't really

09:06:32 1 mentioned frequently enough heat exhaustion, dehydration,
09:06:36 2 heat cramps, heat syncope, the things that will also bring
09:06:39 3 you to the emergency department that are related to heat
09:06:42 4 short of heat stroke or short of death.
09:06:46 5 Q. So one thing to keep in mind is we're not just
09:06:48 6 talking about the ultimate consequence of keeling over
09:06:51 7 dead from heat. One consequence is, also, you've gotta be
09:06:54 8 admitted to the hospital or the emergency room for a while
09:06:57 9 for an illness.
09:06:58 10 A. That's right.
09:06:59 11 Q. Let's walk us through table 3, Doctor, what you're
09:07:02 12 seeing here that informs your opinions. What do we have
09:07:05 13 going on?
09:07:06 14 A. So again, it's similar with a heat-related illnesses,
09:07:10 15 the electrolytes dehydration, kidney -- injury to the
09:07:14 16 kidney. All of those are serious illnesses and this whole
09:07:17 17 table is just about illness or morbidity and not about
09:07:20 18 death. And I was looking here particularly at the age
09:07:25 19 ranges. You could see that there's -- that's a broad
09:07:28 20 range from five to 64, but the relative risk was 5.4 for
09:07:35 21 emergency department visits, meaning there are 5.4 times
09:07:42 22 the risk.
09:07:43 23 Q. Just to make sure we're with you, there's a column on
09:07:45 24 the left that says heat-related illnesses, that's where
09:07:47 25 you are?

09:07:48 1 A. That's right. I'm in the first column.
09:07:49 2 Q. And we've got emergency ER visits and then, actually
09:07:53 3 being admitted to the hospital and it's unlike you're
09:07:55 4 talking about the age range.
09:07:57 5 A. That's right.
09:07:57 6 Q. Which age range are you on?
09:07:59 7 A. Well, I was on the five to 64, but when you look at
09:08:03 8 the greater than age 65 and you see that for hospital
09:08:06 9 admissions, you're 14 times as likely when you're at that
09:08:08 10 age to be admitted to the hospital for a heat-related
09:08:12 11 illness and to visit the emergency department, as well.
09:08:14 12 Q. All right. So that kind of reflects your prior
09:08:16 13 testimony. Sixty-five and older, we really see a dramatic
09:08:20 14 increase in risk; but before that, even in the younger
09:08:22 15 folks here, we're seeing very significant increases in the
09:08:26 16 risk of going to the hospital or ER.
09:08:28 17 A. That's right.
09:08:30 18 Q. Your Honor, I'd move to admit Plaintiffs' Exhibit 15.
09:08:34 19 MS. CARTER: No objection.
09:08:34 20 THE COURT: So admitted.
09:08:35 21 Q. (BY MR. SINGLEY) Paul, if you'd bring up Exhibit 54,
09:08:43 22 please. Doctor, this is tab 10. And tell us a little bit
09:08:55 23 about this paper, if you would, Doctor.
09:08:57 24 A. So, once again, this is talking about extreme heat
09:09:01 25 with mortality so this, again, is death and this is in the

09:09:05 1 contiguous United States so this is death from heat in the
09:09:08 2 United States over about a nine-year period.
09:09:13 3 Q. And I guess it's right there in the title, the
09:09:16 4 association between extreme heat and death from all
09:09:19 5 causes, right?
09:09:19 6 A. Right.
09:09:20 7 Q. Okay. And, Paul, if you wouldn't mind going to page
09:09:24 8 7 of the exhibit. Tell us what we have here that informs
09:09:41 9 your opinions, please.
09:09:42 10 A. Well, if you look here, for example, of the 20 to 64,
09:09:48 11 there are 500 -- in the far right, the annual estimated
09:09:51 12 deaths associated with extreme heat, you see there are 562
09:09:55 13 people who died. You see, if you look at greater than age
09:09:59 14 of 65, you have 800 people who died. And this article is
09:10:04 15 from a couple of years ago and we know it's just even in
09:10:12 16 last two months, we've had the hottest days on the planet
09:10:16 17 ever recorded.
09:10:18 18 Q. This is the lower -- whole lower 48, 2008 to 2017?
09:10:24 19 A. That's right.
09:10:25 20 Q. And again, we see reflected the risk of age 65 or
09:10:28 21 above, 802 deaths a year from heat. But we also see in
09:10:32 22 the young category 20 to 64, 562 deaths a year.
09:10:38 23 A. We know that young people die. We know that it's the
09:10:42 24 number-one killer of high school athletes in America,
09:10:47 25 heat. We know that it's a killer of soldiers, young

09:10:51 1 healthy soldiers and this is -- so we know that young
09:10:55 2 people die and we also know that young people have
09:10:59 3 undiagnosed conditions. We see basketball players dying
09:11:03 4 of prolonged QT running up and down which is really not --
09:11:07 5 but we didn't know they had that condition. So there are
09:11:09 6 young people do die of the heat and that's really
09:11:14 7 important to keep in mind, I think.
09:11:17 8 Q. Stepping back, Doctor, I mean, obviously, you
09:11:20 9 reviewed literature and the science is important but
09:11:23 10 you've been an ER clinician for decades, right?
09:11:27 11 A. Right.
09:11:27 12 Q. And is this the kind of thing you've personally seen
09:11:30 13 in your hands-on clinical work in the ER trenches, so to
09:11:33 14 speak, have you seen young people, healthy people affected
09:11:36 15 by heat disease?
09:11:37 16 A. Yes. I mean, when they come to us at Bellevue, we
09:11:40 17 have a big-old huge bed filled with a one foot side's
09:11:46 18 filled with ice ready for this. So if you make it to
09:11:48 19 Bellevue and you have 111 temperature, I can lower your
09:11:51 20 temperature in 20 minutes because I dunk you like a
09:11:54 21 sardine into the ice and I also paralyze you so you don't
09:11:58 22 have muscle rigidity and I support your respirations and
09:12:02 23 get you sedated so that everything relaxes, and you're
09:12:05 24 just packed in ice and I can save those people and
09:12:09 25 routinely do that.

09:12:09 1 Q. Have you had to do that to young healthy, people, as
09:12:12 2 well?
09:12:12 3 A. Yes.
09:12:12 4 Q. So again, it's not just the literature angle,
09:12:16 5 although that's important. You've got a lot of personal
09:12:18 6 clinical experience dealing with it.
09:12:19 7 A. That's right. The first person I ever had when I was
09:12:22 8 a fellow -- toxicology fellow was brought down from the
09:12:25 9 clinic, she had 109 body temperature. The geriatrician
09:12:31 10 came with her and she -- the geriatrician had told her to
09:12:37 11 stop her tricyclic antidepressant, which is an
09:12:39 12 anticholinergic so it affects the sweat glands. And we
09:12:42 13 dumped her in ice. I have pictures of myself as a young
09:12:45 14 person at the bedside with her and I saw her many years
09:12:48 15 later and she had webbed toes and I recognized the webbed
09:12:51 16 toes, and I said, listen, we have to admit you to the
09:12:54 17 hospital, you're 102 degrees. She said, that's nothing.
09:12:57 18 I was 109 one time. So that's why I knew it was the same
09:13:00 19 person. And likewise, we have many young people that come
09:13:04 20 in either exercising or, of course, if you're on a
09:13:07 21 sympathomimetic, anything that increases your motor
09:13:10 22 movement, that also can just -- kind of equivalent of
09:13:14 23 exercising.
09:13:15 24 Q. Thank you, Doctor. Let's put up Exhibit 70, which I
09:13:19 25 believe has been admitted already. Skarha study.

09:13:26 1 MR. EDWARDS: Subject to their objection, yes.
09:13:30 2 Oh. Yes. It has been admitted.
09:13:32 3 Q. (BY MR. SINGLEY) All right, Doctor. You've reviewed
09:13:33 4 this paper by Dr. Skarha that's been admitted already as
09:13:37 5 Plaintiffs' Exhibit 70. Specifically looks at air
09:13:42 6 conditioning and heat-related death in the Texas prisons.
09:13:46 7 You've reviewed this paper?
09:13:47 8 A. Yes.
09:13:47 9 Q. Okay. Tell us how this informs your opinions about
09:13:50 10 what's going on with heat death and the effect on
09:13:54 11 un-air-conditioned housing.
09:13:55 12 A. It tells me that the danger is the heat. People who
09:14:00 13 are in air-conditioned units in the prisons of Texas don't
09:14:04 14 die of heat because there's no heat. And you see here,
09:14:08 15 also, that there are average of 14 deaths per year in
09:14:14 16 prison in the un-air-conditioned prisons. And this 14 is
09:14:20 17 -- I can assure you is an underestimate because of the way
09:14:25 18 that heat impacts underlying illnesses and the way that it
09:14:30 19 works in underlying deaths.
09:14:32 20 So if there was a death from asthma in an
09:14:35 21 un-air-conditioned unit, that would not be listed here.
09:14:41 22 So that's what's so important. But this is an enormous
09:14:44 23 number of people who have died because they're in
09:14:47 24 un-air-conditioned units.
09:14:48 25 Q. Just to take the second part of that, the study found

09:14:51 1 that there were 14 heat-related deaths a year in
09:14:54 2 un-air-conditioned housing and zero heat-related deaths in
09:14:58 3 air conditioned --
09:14:59 4 A. Right. I think we did the Pack Unit and Judge
09:15:02 5 Ellison's court in Houston, I think it was around 2014 and
09:15:06 6 there was a lot of talk about showers and fans and moving
09:15:11 7 people into cool places and clearly, there's still in the
09:15:15 8 last -- they're still dying. They're still dying so
09:15:18 9 mitigation does not remove the heat. You remove the heat
09:15:23 10 and nobody dies of heat and that's what this showed us.
09:15:26 11 Something that common sense would tell you but it's right
09:15:32 12 here being published.
09:15:33 13 Q. So in other words, whatever mitigation procedures
09:15:37 14 that TDCJ says they're talking short of air conditioning
09:15:42 15 for this time period 2001 to 2019, we still see heat
09:15:47 16 deaths in un-air-conditioned housing?
09:15:48 17 A. That's right.
09:15:51 18 Q. All right. We just mentioned about fans and showers
09:15:56 19 and other mitigation measures that TDCJ is -- tells us
09:16:02 20 that they're taking. I want to discuss a little bit some
09:16:05 21 papers that have to do with that but, also, go into some
09:16:07 22 vulnerabilities, risks of people who are vulnerable.
09:16:10 23 Paul, if you'd bring up Exhibit 13 and it's tab 12,
09:16:16 24 Doctor.
09:16:16 25 Doctor, this is a Bouchama metaanalysis study.

09:16:24 1 Are you familiar with this paper?
09:16:24 2 A. One moment. I just turned to 13. Yes.
09:16:31 3 Q. Sort of carrying on our discussion, we were
09:16:35 4 discussing issues of fans and showers, you were -- Paul,
09:16:37 5 if you'd take us to page 4 of the exhibit. Figure 3.
09:16:47 6 So we have -- first of all, this is a
09:16:49 7 metaanalysis, Doctor; is that right?
09:16:51 8 A. This is a powerful way to look at a number of studies
09:16:54 9 and see what is found so it's a very powerful way to study
09:16:59 10 a problem.
09:17:00 11 Q. And we see on the figure a number of prior papers
09:17:03 12 being listed and the metaanalysis is aggregating them to
09:17:08 13 achieve increased statistical power? Is that the short
09:17:11 14 version?
09:17:11 15 A. That's right.
09:17:12 16 Q. And tell us what we see here about, first of all,
09:17:15 17 when one of the categories is has a working home air
09:17:21 18 conditioner. So what kind of protective effect do we see
09:17:23 19 from having an air conditioner on the metaanalysis?
09:17:26 20 A. Let me see if I'm on the right.
09:17:30 21 Q. This would be figure 3.
09:17:32 22 A. Okay. One moment, please. Thank you. So when you
09:17:40 23 look at this, the decrease to 0.23 percent has a working
09:17:46 24 air conditioner or reduces the risk of -- by 77 percent.
09:17:51 25 So working air conditioners are extremely protective.

09:17:56 1 Q. Just to jump in quickly on that, Doctor, if the sort
09:18:00 2 of baseline risk is one when it goes down to .23, that
09:18:03 3 indicates that it's protective, it lowers the risk.
09:18:05 4 A. Exactly.
09:18:06 5 Q. Now let's look at some of the other things that we've
09:18:08 6 got going on here. So this metaanalysis looked at visited
09:18:14 7 other air conditioned places, correct?
09:18:17 8 A. Yes.
09:18:18 9 Q. And what do we see there on the effect of doing that?
09:18:21 10 A. So people in the free world that visited
09:18:25 11 air-conditioned places had a reduction in their risk of
09:18:30 12 death, however, it was still -- you see 0.34 versus 0.23,
09:18:36 13 it was still 10 percent more death than those people who
09:18:41 14 had a working home air conditioner. So visiting
09:18:45 15 air-conditioned places was protective, but it was still
09:18:50 16 not equal to having an air conditioning in your home.
09:18:55 17 Q. Ten percent more death?
09:18:57 18 A. Ten percent more death is a lot of death when you
09:19:00 19 look at a lot of people.
09:19:00 20 Q. And this metaanalysis also looked at working fans and
09:19:05 21 takes extra showers. What are those findings, Doctor?
09:19:08 22 A. Well, with the fans, the fans didn't help, the
09:19:16 23 crossed one, so it's not statistically significant and
09:19:18 24 they say that here, taking extra -- in the bottom of this,
09:19:22 25 they say that themselves in the article, I say that, the

09:19:26 1 CDC says that. Nobody's recommending fans as a way --
09:19:30 2 plus fans don't change the temperature in the room.
09:19:32 3 Q. And let me make sure, Paul, if you could --
09:19:35 4 A. Has a working fan.
09:19:37 5 Q. To the text below the table.
09:19:42 6 A. When you're looking at relative risk.
09:19:45 7 Q. I think, Doctor, let me make sure we're on the same
09:19:47 8 page here. Figure 3 to the bottom right here, Doctor,
09:19:52 9 this is associated with lower risk, figure 3 shows that
09:19:55 10 having a working air conditioning at home, let's go to the
09:19:59 11 bottom, taking extra showers or baths and using fan
09:20:03 12 ventilation during the heat wave were associated with a
09:20:05 13 trend towards lower risk of death but were no...
09:20:09 14 A. They were not statistically significant.
09:20:14 15 Q. And I think you'd mentioned that the confidence
09:20:16 16 interval cross one to 1.1?
09:20:18 17 A. Right. And I'd just like to say, as well, that this
09:20:23 18 is -- the CDC no longer recommends fans. This has been 20
09:20:27 19 years that wave known this. When it's above 90 degrees,
09:20:30 20 if you can't evaporatively cool because of the humidity,
09:20:33 21 what's needed is something that changes the temperature,
09:20:36 22 lowers the temperature in the room.
09:20:41 23 Q. Again, moving beyond this metaanalysis and the
09:20:46 24 science is obviously important, but let's turn again to
09:20:48 25 your clinical experience. Does it make sense to you that

09:20:51 1 you could, you know, put a fan on someone or even put
09:20:55 2 someone in air conditioning for a couple of hours a day
09:20:57 3 and that eliminates the heat risk like air conditioning
09:21:00 4 does?
09:21:00 5 A. If you put somebody into an air conditioner for two
09:21:03 6 hours, that means they're still in heat for 19 or 20
09:21:06 7 hours, whatever it is. So it's the total accumulated heat
09:21:11 8 stress for the 20 hours you're in the temperatures that
09:21:14 9 we're having here in Texas is what matters. And that's
09:21:18 10 why the temperature in the cells or in the areas where the
09:21:25 11 prisoners spend most of their time has to be lowered in
09:21:29 12 order to protect against the danger of the heat.
09:21:31 13 Q. Thank you, Doctor. Paul, if you'd move up to page 3
09:21:35 14 of this exhibit. Figure 2.
09:21:39 15 Doctor, we've been talking about some -- you
09:21:40 16 mentioned earlier in your testimony some conditions that
09:21:43 17 increase the heat risk and this paper addressed that
09:21:48 18 topic, as well, did it?
09:21:51 19 A. Yes.
09:21:51 20 Q. And tell us a little bit about the findings of the
09:21:54 21 risk to people in various categories of illnesses. You'd
09:21:57 22 mentioned before cardiovascular and such. What are we
09:21:59 23 seeing here?
09:22:00 24 A. So here, you see that if you have cardiovascular
09:22:03 25 illness, you're 2.4 times greater relative risk. If you

09:22:08 1 see mental illness, it's 3.61 relative risk means you're
09:22:12 2 at that much of an increased -- three times as much, two
09:22:16 3 times as much. If you have pulmonary illness, 1.61. If
09:22:20 4 you have asthma, COPD, your risk of dying from the heat is
09:22:25 5 this much greater. If you're taking psychotropic
09:22:29 6 medications, I've already explained that that is
09:22:31 7 medications that interfere with the ability --
09:22:35 8 physiological ability to release heat to the environment,
09:22:38 9 you're 1.9, two times.
09:22:41 10 Q. Thank you Doctor. We'd move to admit Plaintiffs'
09:22:48 11 Exhibit 13.
09:22:49 12 MS. CARTER: No objection.
09:22:49 13 THE COURT: So admitted.
09:22:51 14 Q. (BY MR. SINGLEY) And one more paper. Paul, Exhibit
09:22:55 15 6, please. And this is tab 13, Doctor. Tell us about
09:23:05 16 this study, Doctor. What kind of study is this?
09:23:07 17 A. This is an epidemiological study conducted during the
09:23:12 18 Chicago heat wave of 1995 when there were 700 excess
09:23:17 19 deaths and it's one of the most commonly quoted or
09:23:21 20 referred-to articles in epidemiology of heat.
09:23:29 21 Q. First of all, there's some findings about air
09:23:33 22 conditioning versus -- various types of access to air
09:23:38 23 conditioning; is that right?
09:23:38 24 A. Correct.
09:23:51 25 Q. And what do we see -- table 2 in the upper left,

09:23:54 1 Doctor, it's discussing the -- this is a death study
09:23:58 2 mortality?
09:23:58 3 A. This is a death study and you see here again that
09:24:01 4 having a working air conditioner in your home is 80
09:24:06 5 percent protective. So the odds ratio here is 0.2 so it's
09:24:11 6 80 percent protective against death.
09:24:14 7 Q. And what are the other findings with -- if you don't
09:24:17 8 have a working air conditioner in your home or have lesser
09:24:21 9 access to air conditioning, what kind of protective
09:24:23 10 effects are we seeing in these other categories?
09:24:24 11 A. So if you were in an apartment and you had access to
09:24:27 12 an air-conditioned lobby, well, and you spend a lot of
09:24:30 13 time in the lobby, the lobby was also air conditioned and
09:24:33 14 the lobby was helpful, as well.
09:24:34 15 Q. Doctor, just quickly, in the free world, does someone
09:24:37 16 living in an apartment with an air-conditioned lobby in
09:24:40 17 any way resemble prison conditions --
09:24:42 18 A. No, it doesn't.
09:24:43 19 Q. What are the other categories that we see?
09:24:45 20 A. If you visit cooling shelters, that's also protective
09:24:48 21 and if you visit other air-conditioned places. As long as
09:24:52 22 there's air conditioning, there's protection.
09:24:54 23 Q. But let's drill down on the level of protection. So
09:24:58 24 for visiting other air conditioned places, I think we see
09:25:01 25 a similar finding to the Bouchama paper, .3 versus .2 when

09:25:07 1 you've got it at home. So that's the 10 percent more
09:25:09 2 death again?
09:25:09 3 A. Exactly.
09:25:11 4 Q. Visiting cooling shelter, is that, you know, when
09:25:15 5 you're attempting to put prisoners in respite areas in a
09:25:21 6 prison, is that sort of analogous to maybe visiting a
09:25:25 7 cooler center?
09:25:25 8 A. Well, it is in the sense there's somewhere in a
09:25:30 9 prison, there's air conditioning. But because they're
09:25:32 10 free to come and go in the free world, you could go to a
09:25:34 11 lobby or go to a cooling shelter of your own free will,
09:25:39 12 you're not dependent on a staffing, you're not dependent
09:25:41 13 on being allowed to go there. You're not dependent on
09:25:45 14 being - if there's a lockdown in your area, or a search,
09:25:49 15 or a shakedown, or if somebody just doesn't want you to go
09:25:52 16 then because it's going to interfere with other prison
09:25:55 17 functions.
09:25:55 18 Q. So one thing to understand is there are vastly more
09:25:58 19 challenges and problems to actually getting to cooling
09:26:01 20 shelter places in prison versus the free world.
09:26:03 21 A. That's right.
09:26:04 22 Q. But even when we look at the free world here, if we
09:26:06 23 sort of analogize it, respite areas in a prison to
09:26:12 24 visiting cooler shelter, the protective factor is .5 and
09:26:15 25 that's 30 percent more death than having an air

09:26:17 1 conditioner in your home?
09:26:19 2 A. Exactly. So there's nothing that approaches reducing
09:26:21 3 the temperature in the room.
09:26:24 4 Q. And, Paul, if you'd go down on this page to table 3,
09:26:28 5 this study, also, Doctor, looked at some risk factors for
09:26:32 6 various conditions, as well, for death?
09:26:35 7 A. Here, you see again, the heart condition is your odds
09:26:39 8 are -- if you have a heart condition, you have
09:26:42 9 two-and-a-half, 2.3 times the risk of dying. If you have
09:26:48 10 a pulmonary condition, again, you have 2.2 times the risk
09:26:52 11 of death from heat.
09:26:56 12 Q. We'll move to admit, your Honor, Plaintiffs' Exhibit
09:27:00 13 No. 6.
09:27:02 14 MS. CARTER: No objection.
09:27:03 15 THE COURT: So admitted.
09:27:04 16 Q. (BY MR. SINGLEY) All right, Doctor. I want to shift
09:27:07 17 gears briefly. You've had the chance to look at the
09:27:11 18 medical records for Mr. Tiede, is that correct, the
09:27:16 19 individual plaintiff here?
09:27:17 20 A. I did.
09:27:23 21 Q. You've had a chance to look at his medical records?
09:27:25 22 A. Yes, I did.
09:27:26 23 Q. And really, just have a very first simple question
09:27:28 24 for you. Does Mr. Tiede have conditions that render him
09:27:33 25 especially vulnerable to heat of any of the types that

09:27:36 1 we've discussed previously?
09:27:37 2 A. So Mr. Tiede is age 65, that puts him at risk. He
09:27:41 3 has diabetes. He has hypertension. He has COPD and he
09:27:48 4 has emphysema and it specifically said in his medical
09:27:52 5 records that his COPD was triggered by the heat. He's had
09:27:58 6 a heart attack as seen on the EKG and recorded
09:28:01 7 electrocardiogram. There's been a previous heart attack
09:28:04 8 and, in fact, he's had -- he had a recent MRI in April of
09:28:09 9 this year that demonstrated a chronic, meaning
09:28:13 10 longstanding that he's had a stroke.
09:28:15 11 And he has also subacute or acute stroke so it's
09:28:20 12 something fresher or newer that was seen on MRI. And not
09:28:23 13 only does he have these medical conditions, he is
09:28:27 14 overweight. His BMI is 30 so he's obese. And the
09:28:36 15 medications that he takes for the conditions to control
09:28:40 16 the conditions are also decreasing his ability to respond
09:28:43 17 to the heat. Those are particularly the calcium channel
09:28:47 18 blocker amlodipine. He's on a dieretic. I mentioned
09:28:51 19 furosemide, which is known as Lasix. He's on medications
09:28:56 20 to treat the diabetes. He's on losartan, which is a drug
09:29:00 21 also to treat -- changes the kidney, aldosterone
09:29:06 22 angiotensin system that also affects the -- your state of
09:29:12 23 hydration and your response and it is used as an
09:29:16 24 antihypertensive. And he's on metoprolol, which I had
09:29:19 25 mentioned also decreases the rate at which the heart can

09:29:23 1 beat so that it helps to treat -- prevent heart attacks
09:29:27 2 and prevent hypertension.
09:29:29 3 Q. So Mr. Tiede is just unbelievably heat sensitive with
09:29:33 4 all these conditions and medications?
09:29:34 5 A. Actually, his medical record, it actually says that
09:29:39 6 he's -- on August 17th, I wrote in my notes about him in
09:29:44 7 2016 work assignment, no work in direct sunlight and no
09:29:47 8 temperature extremes. So if he's held in the prison
09:29:50 9 system now not in air conditioning, obviously, that's a
09:29:52 10 temperature extreme.
09:29:53 11 Q. Right. That was a work classification, Doctor. I'll
09:29:57 12 ask you to assume Mr. Tiede is, in fact, currently being
09:30:00 13 held in air-conditioned housing and I have a question for
09:30:03 14 you. Doctor, if TDCJ were to place Mr. Tiede back in
09:30:07 15 un-air conditioned housing, in your opinion, would that
09:30:10 16 pose a substantial risk of death or serious harm to Mr.
09:30:13 17 Tiede?
09:30:13 18 A. Yes.
09:30:15 19 Q. And in the past, he's been in -- recent years at
09:30:20 20 times, he's been placed in un-air-conditioned housing.
09:30:23 21 Doctor, would any competent medical provider know that
09:30:27 22 doing so placed him at a substantial risk of death or
09:30:31 23 serious harm?
09:30:32 24 A. Yes.
09:30:34 25 Q. And finally, I'd like to shift gears again. Doctor,

09:30:38 1 you've had the chance to review the autopsies and other
09:30:43 2 death-related records from TDCJ prisoners who have died
09:30:53 3 and that you opine are heat-related deaths; is that
09:30:55 4 correct?
09:30:55 5 A. That's right.
09:30:56 6 Q. I want to go through those with you and talk about
09:30:58 7 why it is your opinion that those are heat-related deaths.
09:31:01 8 Are you ready to do that?
09:31:02 9 A. Yes.
09:31:03 10 Q. All right. Who's the first one that we're going to
09:31:07 11 talk about?
09:31:07 12 A. I have John Castillo.
09:31:09 13 Q. Paul, if you'd bring up Exhibit 161A. So you've
09:31:19 14 reviewed this full exhibit, I take it, but the key
09:31:28 15 document you want to refer to today is the autopsy?
09:31:30 16 A. That's right.
09:31:31 17 Q. Tell us a little bit about Mr. Castillo and what is
09:31:33 18 the basis for your opinion and your findings that indicate
09:31:36 19 to you that this is a heat-related death.
09:31:38 20 A. So this is --
09:31:39 21 MS. CARTER: Your Honor, I'm going to object to
09:31:42 22 this testimony. She's not qualified as a medical examiner
09:31:45 23 to interpret autopsies or any medical records to determine
09:31:48 24 cause of death.
09:31:49 25 MR. SINGLEY: She certainly is as a longtime

09:31:51 1 clinician and toxicologist, there's often toxicology
09:31:53 2 findings, clinical findings. She's an expert in heat
09:31:56 3 medicine. Just because she doesn't do autopsies doesn't
09:31:58 4 mean she can't look at them as a physician in her
09:32:00 5 expertise and draw conclusions about them.
09:32:02 6 MS. CARTER: My position is that she cannot
09:32:04 7 testify to a cause of his death and that is what they're
09:32:07 8 asking her about.
09:32:07 9 THE COURT: I'll overrule the objection.
09:32:10 10 Q. (BY MR. SINGLEY) All right, Doctor. Would you tell
09:32:11 11 us a little bit about the basis for your opinion that this
09:32:13 12 is a heat-related death?
09:32:14 13 A. So Mr. Young is 32 years old. He was held in an
09:32:18 14 un-air-conditioned cell. He had a sudden unexpected death
09:32:24 15 and his core body temperature was 107.5.
09:32:28 16 Q. And let me stop you right there. What is a core body
09:32:32 17 temperature and what is the importance in determining
09:32:34 18 whether a death is heat-related?
09:32:36 19 A. Well, I mean, when you have 107.5 -- the normal
09:32:40 20 attorney is 98.7 or so and now you have someone who has a
09:32:45 21 body temperature of 107.5, the brain cells, everything is
09:32:49 22 like a frying pan. It destroys the cells of the organs
09:32:54 23 and so -- and this man died of heat stroke. It was
09:32:59 24 August, it was hot, his core temperature was 107.5, it
09:33:03 25 meets every definition of heat stroke, and anything above

09:33:07 1 104 or 105.5 with an altered mental status is heat stroke
09:33:12 2 in every definition and this is 107.5.
09:33:15 3 Q. I want to make sure I pull out something you just
09:33:17 4 said when you're seeing a body temperature, I believe you
09:33:19 5 said, above 105.5, it's a neon flashing sign about heat
09:33:25 6 stroke?
09:33:25 7 A. With an altered mental status, yes.
09:33:28 8 Q. Okay. So that finding of the core body temperature
09:33:34 9 is very important in this analysis to you.
09:33:37 10 A. It's absolutely fundamental.
09:33:39 11 Q. Do you see any other apparent cause of death that
09:33:43 12 could even be plausible for Mr. Castillo other than heat
09:33:46 13 stroke?
09:33:46 14 A. So the medical examiner commented that he had a
09:33:53 15 seizure disorder. They said that he was supposed to be
09:33:58 16 taking phenytoin, which is Dilantin, but there was no
09:34:03 17 phenytoin level so he wasn't taking it. They also make
09:34:11 18 the clinical comment, which I agree with completely, if
09:34:14 19 you have a seizure, you cannot get yourself to 107.5
09:34:18 20 unless you're having them for a long time. I've seen a
09:34:21 21 lot of people in status epilepticus they don't get to
09:34:26 22 107.5. So heat stroke causes seizures.
09:34:31 23 Q. Not the other way around here?
09:34:33 24 A. Right. And if you have a seizure disorder and you
09:34:37 25 have a seizure, which I believe he did have based on what

09:34:40 1 I read of the medical examiner's findings, but we can't
09:34:44 2 say that the seizure and in this commentary, she or the
09:34:49 3 medical examiner says it would be very unusual for a
09:34:53 4 seizure to cause 107.5 and I say that the seizure that
09:34:59 5 this was a heat stroke death and that's all.
09:35:02 6 Q. All right. Thank you, Doctor. Your Honor, we move
09:35:05 7 to admit Plaintiffs' Exhibit 161A.
09:35:07 8 THE COURT: Any objection?
09:35:08 9 MS. CARTER: I'm going to object to this just
09:35:11 10 because she's not a qualified medical examiner.
09:35:13 11 THE COURT: Overruled. Admitted.
09:35:15 12 Q. (BY MR. SINGLEY) Who is the next heat-related death
09:35:17 13 you want to talk to us about?
09:35:18 14 A. Armando Gonzales.
09:35:21 15 Q. Paul, that's Exhibit 168. Doctor, would you tell us
09:35:27 16 again about your analysis of this death and the basis for
09:35:29 17 you opining that this is a heat death?
09:35:34 18 A. Armando Gonzales is a 42-year-old who was -- had a
09:35:40 19 rectal temperature of 109.4 and a pulse of 190.
09:35:45 20 Q. I'm sorry, this is the core body temperature -- you
09:35:47 21 said rectal. That's the core body temperature?
09:35:49 22 A. Yes.
09:35:50 23 Q. And the temperature was what?
09:35:51 24 A. 109.4.
09:35:53 25 Q. So well above that 105.5 level?

09:35:56 1 A. Oh, yes. That's a heat stroke.
09:35:58 2 Q. What else did you see here?
09:35:59 3 A. This was August. Actually, he was found unresponsive
09:36:03 4 on August 21st of last year, 2023, and he died actually in
09:36:08 5 the hospital 48 hours later on the 23rd. The temperature
09:36:14 6 was un-air conditioning because the air conditioning
09:36:18 7 wasn't functioning and the temperature in his -- was of 97
09:36:22 8 to a hundred degrees and he lived for 48 hours in the
09:36:28 9 hospital.
09:36:30 10 Q. And I think we have a trans woman here so perhaps
09:36:33 11 she?
09:36:34 12 A. Excuse me, that's correct.
09:36:35 13 Q. That's okay. I know the Armando name but --
09:36:37 14 A. Yes. Yeah, she lived for 48 hours.
09:36:41 15 Q. One followup on that. So it says here on the autopsy
09:36:44 16 report, in summary, I was going to ask you is there
09:36:47 17 another plausible cause of death and one thing I see is
09:36:50 18 that autopsy cause of death is stated to be toxicity due
09:36:55 19 to the opioid fentanyl?
09:36:58 20 A. So, you know, this just was shocking to me because --
09:37:01 21 Q. Why is that?
09:37:01 22 A. Fentanyl is an opiate. If there's one thing we know
09:37:04 23 is that opiates do not cause heat stroke. So opiates
09:37:09 24 cause stoppage of breathing, which is why we have so many
09:37:12 25 deaths in America today, lowers your blood pressure and it

09:37:16 1 lowers your temperature. As a matter of fact, I have
09:37:18 2 taken care of so many opiate overdoses, they all came in
09:37:23 3 hypothermic.
09:37:24 4 Q. Hypo meaning low temperature?
09:37:26 5 A. Low and I put them on a naloxone drip so that they're
09:37:30 6 no longer -- that they can be awake and breathing and
09:37:33 7 their body temperature comes right up. So they're no
09:37:37 8 longer hypothermic and then, in the transfer from the ER
09:37:41 9 to the intensive care unit, the naloxone drip is stopped
09:37:47 10 and they go right back down. That means my night is going
09:37:50 11 to be really long as the toxicology fellow. So fentanyl
09:37:53 12 does not cause heat stroke, period. And not only that,
09:37:58 13 what I -- was really surprising to me here is there was no
09:38:01 14 reference to the two days that were spent in the hospital.
09:38:04 15 If you're intubated in the ICU and taking 48
09:38:09 16 hours to die in the hospital, you are on sedation. That's
09:38:12 17 where the midazolam is Versed. We always use fentanyl and
09:38:19 18 Versed would be commonly used to keep somebody comfortable
09:38:22 19 and not in pain even though they're unresponsive and as
09:38:25 20 they're dying of heat stroke.
09:38:26 21 Q. That may be where it's coming from, but the
09:38:29 22 overriding point is fentanyl doesn't raise your body
09:38:32 23 temperature, it lowers it?
09:38:34 24 A. That's right. That's unquestionable.
09:38:36 25 Q. And so, it's your opinion that fentanyl can't be the

09:38:41 1 cause of that body temperature?
09:38:43 2 A. It absolutely cannot be.
09:38:45 3 Q. Do you see any other plausible cause other than heat
09:38:47 4 stroke for the death of Ms. Gonzales?
09:38:49 5 A. No, there's no other thought here.
09:38:52 6 Q. And let me flip this question around. In your
09:38:56 7 opinion, if Ms. Gonzales had been in air-conditioned
09:38:58 8 housing, if the air conditioning was working in her living
09:39:01 9 area, in your opinion, would she have died as she did
09:39:04 10 here?
09:39:04 11 A. No.
09:39:05 12 Q. Same question for Mr. Castillo, the first gentleman
09:39:08 13 we talked about. If he had been in air-conditioned
09:39:11 14 housing, in your opinion, would he have died as he did?
09:39:13 15 A. No.
09:39:15 16 Q. Your Honor, I will move to admit Plaintiffs' Exhibit
09:39:19 17 168.
09:39:20 18 MS. CARTER: I'm going to object that she's not a
09:39:23 19 medical examiner.
09:39:24 20 THE COURT: Overruled and admitted.
09:39:25 21 Q. (BY MR. SINGLEY) And who is the next patient that
09:39:27 22 we're going to talking about?
09:39:28 23 A. Elizabeth Hagerty.
09:39:34 24 Q. All right. Tell us about this and the basis for your
09:39:37 25 opinion that this is a heat-related death.

09:39:39 1 A. So Ms. Hagerty was a 37-year-old female who died on
09:39:44 2 June the 30th of last year. The ambient temperature was
09:39:49 3 -- the temperature in the cell was 95.7 at the time that
09:39:53 4 she died. They did not take a core temperature on her.
09:39:58 5 Q. Let me stop you right there. Does that strike you as
09:40:01 6 odd, Doctor?
09:40:02 7 A. Well, yes. I mean, vital signs, they're always the
09:40:05 8 temperature's included in the vital signs. I can't
09:40:08 9 imagine why they didn't take the patient's -- because of
09:40:11 10 the reason it's so important because if it's very low or
09:40:13 11 very high, you can act on that temperature. It's very
09:40:18 12 high, you cool with ice, fan, whatever you choose, you
09:40:22 13 cool rapidly, but ice is the fastest. If it's very low,
09:40:27 14 you warm them. And because you can't be dead and cold,
09:40:31 15 you have to be warmed and then, you can declare somebody
09:40:33 16 dead. So this is an actionable vital sign.
09:40:36 17 Q. As an ER clinician for decades, you've had to use
09:40:40 18 body temperatures to make exactly these decisions to treat
09:40:43 19 patients?
09:40:43 20 A. Everybody in emergency medicine gets a temperature.
09:40:46 21 Q. Is it fair to say that taking the core body
09:40:48 22 temperature in a case like we have with Ms. Hagerty, it
09:40:51 23 would be the standard of care to take that core
09:40:53 24 temperature?
09:40:53 25 A. Yes. It's interesting that you say that because on

09:40:56 1 the oral board exam, one of the oral board exam questions
09:41:02 2 leaves out the temperature. The key to the entire
09:41:05 3 temperature where you're not going to become board
09:41:07 4 certified is if you don't recognize that there's no
09:41:10 5 temperature. So yes, this is so fundamental to being a
09:41:15 6 doctor.
09:41:15 7 Q. All right. So it's puzzling that we don't have the
09:41:17 8 core temperature here, but nevertheless, tell us how you
09:41:21 9 were able to conclude that this is a heat-related death.
09:41:25 10 You talked about the ambient temperature in the cell.
09:41:28 11 What else are we seeing here, Doctor?
09:41:30 12 A. So she had obesity. She was a diabetic, she has
09:41:36 13 diabetes and she had asthma and she was found to have
09:41:41 14 COVID. She was found to be COVID positive.
09:41:46 15 Q. Okay.
09:41:47 16 A. And the previous couple of days and I'll just look at
09:41:49 17 this autopsy, she had nausea and vomiting for two days and
09:41:56 18 so, she actually came in on the 23rd, if you'll remember,
09:42:01 19 of August. Excuse me, she came in on the 6-23 so that's
09:42:07 20 June 23rd, seven days before her death, she came in asking
09:42:11 21 for heat precautions and saying that she thought she might
09:42:15 22 have a heat-related rash. And then, four days later on
09:42:22 23 6-27, she had developed nausea and vomiting and she was
09:42:27 24 told to -- what everybody's always told, drink more water
09:42:34 25 and stay hydrated and come back if you get worse, but she

09:42:38 1 died instead.

09:42:40 2 So what happens here -- and particularly, she was

09:42:43 3 found to have a low sodium. The medical examiner --

09:42:48 4 hyponitremia --

09:42:48 5 Q. Pardon me for interrupting but I want to kind of jump

09:42:51 6 on that. Paul, if you'd go to page 5. The final autopsy

09:43:00 7 diagnosis comment. This is a cause of death finding here.

09:43:08 8 It's our opinion that the cause of death is severe

09:43:10 9 hyponitremia due to a recent GI illness likely related to

09:43:16 10 COVID, elevated environmental temperatures, heat stress,

09:43:18 11 obesity and diabetes may be contributory factors.

09:43:23 12 So even the UTMB pathologist agrees that heat's a

09:43:30 13 factor in this death?

09:43:30 14 A. Yes.

09:43:31 15 Q. But now you're starting to tell us about

09:43:34 16 hyponitremia.

09:43:35 17 A. So how many people have I seen with COVID, how many

09:43:38 18 hundreds have I treated, hundreds, and you can get nausea

09:43:44 19 and vomiting and they do not present with a low sodium to

09:43:50 20 this degree of a hundred. She says it's a hundred. It's

09:43:54 21 about a hundred and so, you don't die of a low sodium.

09:43:59 22 You die of the condition that made your sodium low and it

09:44:03 23 doesn't happen in two days.

09:44:07 24 I see people all the time, elderly people, tea

09:44:12 25 and toast is what they call them, for weeks or days and

09:44:14 1 days, all they have is tea and toast. They drop their
09:44:17 2 sodium. The slower that you go down -- and you can still
09:44:20 3 be talking to me if it happens slowly.
09:44:22 4 Q. In other words, low salt didn't kill this woman.
09:44:25 5 A. No.
09:44:29 6 Q. We talked earlier about the two categories, direct
09:44:32 7 heat death -- heat stroke but you really wanted to
09:44:35 8 emphasize also -- don't stop there. Heat that exacerbates
09:44:39 9 underlying conditions, cardiovascular disease and such, is
09:44:43 10 that the kind of situation that we have here as even the
09:44:46 11 UTMB pathologist found, heat, obesity, diabetes? Is that
09:44:52 12 that kind of category of heat-related?
09:44:54 13 A. Yes, and COVID. So you already have an illness with
09:44:58 14 nausea and vomiting and this is well described in the '50s
09:45:01 15 with military recruits, the ones who died and got
09:45:04 16 autopsied, over a hundred of them, they had viral
09:45:08 17 illnesses, they had nausea and vomiting, and here, you
09:45:11 18 have that and you have obesity and diabetes and you have a
09:45:17 19 viral illness just like for the last 70 years. We've
09:45:21 20 known this.
09:45:22 21 And the ambient temperature that she was living
09:45:25 22 in a cell of 95.7 degrees and that's not even the heat
09:45:32 23 index. So yes, she died of -- whatever she died of it was
09:45:35 24 not low salt. Low salt was caused by whatever was going
09:45:39 25 on with her and there were other possibilities. She's on

09:45:42 1 carbamazepine, which can cause SIADH, which can lower your
09:45:47 2 sodium.
09:45:49 3 Q. Ultimately, Doctor, in your, opinion, was the cause
09:45:53 4 of Ms. Hagerty's death heat?
09:45:56 5 A. Yes, heat in the setting of underlying conditions.
09:45:59 6 Q. The heat that exacerbated those conditions; is that
09:46:02 7 right?
09:46:02 8 A. Correct.
09:46:03 9 Q. Flip it around. Ms. Hagerty had been in an
09:46:07 10 air-conditioned cell at the time or housing at the time,
09:46:11 11 in your opinion, would she have died as she did?
09:46:13 12 A. No.
09:46:14 13 Q. Your Honor, I will move to admit Plaintiffs' Exhibit
09:46:18 14 169.
09:46:19 15 MS. CARTER: Objection. As she's not a medical
09:46:21 16 examiner.
09:46:21 17 THE COURT: Overruled and admitted.
09:46:23 18 Q. (BY MR. SINGLEY) And I think we've got two more,
09:46:25 19 Doctor. Who is the fourth case that we're going to
09:46:28 20 discuss?
09:46:28 21 A. John Southards.
09:46:30 22 Q. All right, tell us about Mr. Southers. Exhibit 192.
09:46:41 23 In your opinion, this is a heat-related death?
09:46:42 24 A. So Mr. Southards is a 36-year-old who was being held
09:46:46 25 in a heat index of 96.2 degrees.

09:46:51 1 Q. Okay.
09:46:54 2 A. The medical examiner says -- has a synopsis of how he
09:47:00 3 presented. He presented hot to the touch and sweating and
09:47:08 4 inexplicably and unbelievably, they didn't do a core
09:47:13 5 temperature. How could you not get a temperature of
09:47:15 6 somebody who's hot to the touch in those environmental
09:47:18 7 temperatures? Why would that possibly happen?
09:47:22 8 Q. So in this case, as well, was that a violation of the
09:47:25 9 standard of care to not take that core temperature?
09:47:28 10 A. This is really a violation of the standard of care.
09:47:30 11 Q. And I think you'd mentioned before, one reason is as
09:47:33 12 you've seen in the emergency room, you may need to put him
09:47:36 13 in an ice bath to try and save him.
09:47:38 14 A. You have to act on the temperature.
09:47:39 15 Q. And act on it, you've gotta know what it is.
09:47:42 16 A. That's right. You have to do something so then
09:47:44 17 they --
09:47:45 18 Q. So we don't have that core temperature but we have
09:47:48 19 the ambient cell temperature. What else are you seeing?
09:47:51 20 A. So the toxicology here found a diphenhydramine level.
09:47:58 21 Q. Benadryl?
09:47:59 22 A. Benadryl, right, of 6,300 nanograms per mill, which
09:48:06 23 is 6.3 milligrams per liter. As a toxicologist, I'm used
09:48:12 24 to looking at these forensic numbers because I'm asked
09:48:15 25 many times to opine on these kinds of toxicological

09:48:19 1 levels.
09:48:20 2 Q. And in your clinical practice, Doctor, have you seen
09:48:24 3 many patients with Benadryl overdose?
09:48:26 4 A. Oh, my God, hundreds and hundreds. Maybe thousand.
09:48:30 5 Benadryl is over the counter so everybody can take it and
09:48:33 6 it's very easy to get and many, many, many and they are
09:48:37 7 never, ever sweating. You cannot sweat and be a Benadryl
09:48:42 8 overdose or intoxication.
09:48:43 9 Q. And let me stop you right there, Doctor, and that
09:48:46 10 seams important because -- Paul, if you'd go to page 5 at
09:48:50 11 the top. Final autopsy diagnosis comment so, again, cause
09:48:57 12 of death per the UTMB pathologist. It is our opinion that
09:49:00 13 the cause of death is diphenhydramine toxicity, in other
09:49:05 14 words, died of too much Benadryl?
09:49:07 15 A. Okay. So I respect medical examiners greatly but
09:49:10 16 they don't take care of people who are alive and that's
09:49:14 17 the difference here. They take care of dead people. And
09:49:16 18 this level in all of the literature could be lethal but
09:49:21 19 it's not even in the lethal range. So just -- and you
09:49:25 20 cannot be sweating and be a Benadryl -- Benadryl is
09:49:30 21 anticholinergic. It's hot as a hare, red as a beet, dry
09:49:35 22 as a bone. There are the -- it's a syndrome.
09:49:39 23 Q. Based on your clinical experience, in order to -- if
09:49:43 24 you see someone sweating, it can't be a death from an
09:49:47 25 overdose of Benadryl because the action of the Benadryl

09:49:50 1 would prevent that sweating.
09:49:51 2 A. That's correct.
09:49:52 3 Q. Do you see -- is there anything else that you see
09:49:58 4 that's inconsistent with a Benadryl overdose?
09:50:02 5 A. Yeah. So the other thing is, first of all, as is
09:50:05 6 mentioned in this, there was no talk of suicidality here.
09:50:10 7 There was on autopsy, never found any pills in the stomach
09:50:15 8 or remnant of pills or there's pills -- you know, he had
09:50:19 9 put pills on the bars. If you're suicidal, which he was
09:50:22 10 not according to the records, you don't put the pills on
09:50:26 11 the bars. The pills are in your system. You take the
09:50:29 12 pills. So this is not the kind of a scene that you expect
09:50:34 13 somebody to -- let me just mention, he was prescribed
09:50:39 14 Benadryl. In spite of knowing that Benadryl impairs heat
09:50:43 15 loss by working on the sweat glands, the physicians or
09:50:46 16 practitioners prescribe Benadryl. This was a prescribed
09:50:49 17 drug to him and this is not an overdose of Benadryl and
09:50:53 18 the level doesn't support it, and clinically, it's
09:50:57 19 absolutely unsupportable as Benadryl.
09:50:58 20 Q. In your opinion, is there any other plausible
09:51:01 21 alternative cause of death from heat?
09:51:03 22 A. No.
09:51:04 23 Q. Flip it around again, Doctor. If Mr. Southards had
09:51:08 24 been in air-conditioned housing, in your opinion, would he
09:51:12 25 have died as he did?

09:51:13 1 A. No.
09:51:13 2 Q. Your Honor, I move to admit Plaintiffs' Exhibit 192.
09:51:17 3 MS. CARTER: I'm going to object again. She's
09:51:19 4 not a medical examiner.
09:51:20 5 THE COURT: Overruled.
09:51:22 6 Q. (BY MR. SINGLEY) And let's move to our final death
09:51:23 7 case, Doctor.
09:51:24 8 A. This is Patrick.
09:51:25 9 Q. Exhibit 200, yes, Mr. Womack. Tell us about Mr.
09:51:32 10 Womack and the basis for your opinion that this is a
09:51:35 11 heat-related death, Doctor.
09:51:36 12 A. So Mr. Womack was a 50-year-old man. The heat index
09:51:42 13 was 113 and the body temperature, the rectal or the core
09:51:48 14 body temperature on this man was 106.9 and he was held in
09:51:52 15 a non-air-conditioned cell and the environmental
09:51:55 16 temperatures or index was -- according to the autopsy and
09:51:59 17 medical examiner's report was 113 degrees Farenheit.
09:52:02 18 Q. 113 heat index or ambient temperature?
09:52:06 19 A. Heat index was 113, the temperature was 104. The
09:52:12 20 heat index was 113 and it was un-air-conditioned.
09:52:16 21 Q. You had mentioned before, 105.5 is kind of the key
09:52:20 22 body temperature or above that?
09:52:24 23 A. Right. Correct.
09:52:24 24 Q. What else do we have going on here?
09:52:26 25 A. On the morning of his death, the pill call nurse came

09:52:31 1 by and administered his pills to him and one of those
09:52:34 2 pills was sertraline, but I think the other one was
09:52:38 3 benztropine, which is a powerful anticholinergic similar
09:52:42 4 to Benadryl. Cogentin is used for people who are taking
09:52:47 5 drugs that treat mental illness so that you don't get the
09:52:50 6 rigidity.
09:52:51 7 Q. I neglected to ask you before, you've used a phrase
09:52:56 8 "anticholinergic" a couple of times. Explain that to us
09:52:59 9 in kind of lay language.
09:53:01 10 A. So the sweat glands like every part of our body works
09:53:04 11 for a chemical that is acetylcholine. This blocks
09:53:08 12 acetylcholine, therefore, there's no -- the sweat glands
09:53:10 13 don't function.
09:53:12 14 Q. Sweating?
09:53:13 15 A. That's right.
09:53:13 16 Q. You also mentioned sertraline. What kind of drug is
09:53:17 17 that?
09:53:17 18 A. So sertraline is selective serotonin reuptake
09:53:22 19 inhibitor, SSRI, it's very common. It's the first one was
09:53:27 20 lake Prozac.
09:53:28 21 Q. Antidepressant?
09:53:29 22 A. Antidepressant, yes.
09:53:30 23 Q. And let me ask you a question following up on that.
09:53:33 24 If you'd go to the bottom of this page, Paul, please.
09:53:36 25 Final autopsy diagnosis comment. Once again, even the

09:53:41 1 pathologist here is agreeing that heat's a factor, but we
09:53:47 2 see before that, in summary, it is our opinion that the
09:53:48 3 cause of death is hyperthermia due to serotonin syndrome
09:53:54 4 from sertraline toxicity. Sertraline is the drug you just
09:53:59 5 mentioned, the SSRI, the antidepressant.
09:53:59 6 A. Right. That's what he's on. That' what he's
09:54:01 7 prescribed.
09:54:01 8 Q. Now, before the heat, what we see referenced is
09:54:05 9 hyperthermia, high temperature due to serotonin syndrome.
09:54:09 10 First of all, do you agree serotonin syndrome or serotonin
09:54:12 11 toxicity was the cause of this man's death?
09:54:15 12 A. No.
09:54:15 13 Q. Tell us why.
09:54:16 14 A. Well, when -- the reason I don't is because the level
09:54:20 15 here, which is 6,000 or 6.3 milligrams per liter -- let me
09:54:26 16 just double check my level. Excuse me, sertraline is
09:54:31 17 2,500. I was thinking of the previous case. 2,500
09:54:35 18 nanograms per mill or 2.5 milligrams per liter. That
09:54:41 19 level -- and they say this in their autopsy report. They
09:54:43 20 say that that could be a lethal level. It could also not
09:54:47 21 be a lethal level. In reviewing the lethal levels on
09:54:51 22 sertraline in the literature, one guy died of a gunshot
09:54:54 23 wound and he had a level of 1.1. This was 2.5 milligrams
09:54:59 24 per liter.
09:55:00 25 So on those nine cases, people had levels --

09:55:04 1 there's a lot of -- and there's a lot of overlap between
09:55:08 2 lethality and therapeutic and this is another example of
09:55:14 3 that. And they even say here that they didn't do
09:55:16 4 phenotype. So everybody treats a drug differently. They
09:55:19 5 say that they don't know what his genetics were because if
09:55:26 6 -- depending on your genetics is how you're going to
09:55:30 7 metabolize the drug.
09:55:31 8 And the other thing about this man is he had --
09:55:35 9 it was 10 days out, he had turned green and black. The
09:55:38 10 autopsy talks about the color of his body and the level of
09:55:40 11 decomposition. So I don't know why it took 10 days but
09:55:44 12 this man was green and black. They described autolysis
09:55:50 13 means self, lysis, breakdown. They were just
09:55:54 14 disintegrating. So this is a central blood level. I
09:55:59 15 don't know if it was taken from the heart, which was
09:56:02 16 eating itself, or from the vessel, the femoral blood. I
09:56:04 17 don't know, but let's just assume it's supposed to be both
09:56:07 18 to see and this is called post mortem where there's a
09:56:11 19 recalibration. So serotonin has what we call a large
09:56:15 20 volume of distribution. You take it and it goes to the
09:56:17 21 tissue. It's not -- it's all in the tissue after a few
09:56:22 22 hours and when you die, post mortem redistribution means
09:56:28 23 that it comes from that tissue, especially when that
09:56:31 24 tissue is dead and green and black and total rotted into
09:56:35 25 the bloodstream. So this level not only is the level

09:56:38 1 itself or, I should say, the concentration, it's a high
09:56:43 2 level. It doesn't mean it's a lethal level and 10 days
09:56:47 3 left, this is post mortem distribution and this does not
09:56:51 4 reflect what was -- what his anti-mortem level would have
09:56:55 5 been.
09:56:55 6 Q. So I hear a couple of things in there, Doctor. One,
09:56:58 7 because of the amount of time that passed between death
09:57:00 8 and autopsy, we can't know how reliable that level is in
09:57:05 9 his blood of the sertraline. But beyond that, even if we
09:57:08 10 assume that that level's accurate, in your opinion, would
09:57:11 11 that level of sertraline in his blood or serotonin
09:57:16 12 syndrome, would that have caused to high core body
09:57:19 13 temperature we see in the clinical presentation of this
09:57:21 14 patient?
09:57:21 15 A. No.
09:57:22 16 Q. In your opinion, is this a heat stroke death?
09:57:26 17 A. Yes. And one other thing I'd like to add is he was
09:57:29 18 walking, he was seen to be -- according to the autopsy
09:57:31 19 report, the medical examiner describes he was walking to
09:57:35 20 the water fountain at 9:20 a.m. and he was dead four hours
09:57:40 21 later at 1:34. Now, if this says the cause of death is
09:57:47 22 hyperthermia but due to serotonin syndrome, now I have
09:57:52 23 treated as a toxicologist, I have treated so many people
09:57:55 24 with serotonin syndrome and it's -- although high
09:57:59 25 temperature can result, it's uncommon.

09:58:06 1 So environmental health is a possible
09:58:08 2 contributory factor. The heat index was 113, that's the
09:58:14 3 cause of the death here.
09:58:15 4 Q. And again, flip the question around. Mr. Womack had
09:58:19 5 been in air-conditioned housing, in your opinion, would he
09:58:21 6 have died as he did?
09:58:22 7 A. No.
09:58:23 8 Q. Your Honor, I move to admit Plaintiffs' Exhibit 200.
09:58:26 9 MS. CARTER: I'm going to object.
09:58:29 10 THE COURT: Overruled and admitted.
09:58:31 11 Q. (BY MR. SINGLEY) Dr. Vassallo, some years ago, I
09:58:34 12 believe it was eight years ago in the Pack case, you
09:58:40 13 testified and you told TDCJ and Mr. Collier that the
09:58:43 14 un-air conditioned housing was posing a substantial risk
09:58:46 15 of death and serious injury inside the Pack Unit,
09:58:49 16 specifically, didn't you?
09:58:49 17 A. Yes.
09:58:51 18 Q. These five deaths that we have just looked at, these
09:58:55 19 were all from the summer of 2023, right?
09:58:58 20 A. Right.
09:59:01 21 Q. Mitigation measures, whatever they're doing, they are
09:59:04 22 not working to prevent death in un-air-conditioned housing
09:59:07 23 at TDCJ, are they?
09:59:09 24 A. Absolutely not.
09:59:10 25 Q. So eight years later, you're here again to tell them

09:59:15 1 there's only one way to solve this problem and what is
09:59:17 2 that, Doctor?
09:59:19 3 MS. CARTER: Your Honor, I'm going to object the
09:59:21 4 leading the witness.
09:59:21 5 A. The danger is the heat -- excuse me, your Honor.
09:59:26 6 THE COURT: Overruled.
09:59:28 7 Q. (BY MR. SINGLEY) Go ahead.
09:59:29 8 A. The danger is the heat. You cannot fix this danger
09:59:31 9 unless you cool this situation down and there are going to
09:59:37 10 be more deaths.
09:59:38 11 Q. And so, your opinion, Doctor, is putting everyone in
09:59:43 12 air-conditioned housing, the only way to eliminate the
09:59:45 13 heat risk and the deaths and illnesses?
09:59:47 14 A. Yes.
09:59:48 15 Q. Thank you very much, Doctor. Pass the witness, your
09:59:53 16 Honor.
09:59:53 17 THE COURT: Would you allow me to interject with
09:59:54 18 a couple of questions of this witness and it will give you
09:59:57 19 the opportunity to follow up on my questions, as well?
09:59:59 20 MS. CARTER: Okay.
09:59:59 21 THE COURT: All right. Doctor, there have been
10:00:02 22 -- there's been discussion in this hearing of two
10:00:04 23 categories of death. That one is category of deaths in
10:00:10 24 which heat has been found to be a, quote, contributing
10:00:12 25 cause. The other is, quote, heat-related death. Is there

10:00:17 1 a distinction medically between those two concepts? In
10:00:23 2 other words, if a death is found to have heat as a
10:00:27 3 contributing cause, would you as a medical professional
10:00:29 4 consider that to be a heat-related death?
10:00:32 5 THE WITNESS: Yes.
10:00:33 6 THE COURT: And another way of asking it is if
10:00:35 7 someone was tasked with documenting heat-related deaths
10:00:39 8 and they only considered deaths in which heat was found to
10:00:42 9 be the sole cause and did not consider causes where heat
10:00:49 10 was found to be a contributing factor, will they be
10:00:52 11 necessarily undercounting the heat-related deaths?
10:00:57 12 THE WITNESS: Yes. This is so solid, this is so
10:01:04 13 solidly understood that the heat is resulting in death
10:01:06 14 where it's contributing or -- heat is related to the death
10:01:10 15 or contributing to the cause of death and if there weren't
10:01:12 16 heat, they wouldn't have died.
10:01:15 17 THE COURT: There's no distinction medically
10:01:18 18 between heat as a contributing factor and a heat-related
10:01:21 19 death.
10:01:22 20 THE WITNESS: That's correct.
10:01:23 21 THE COURT: Thank you. Your witness.
10:01:25 22 CROSS-EXAMINATION
10:01:25 23 BY MS. CARTER:
10:01:40 24 Q. Thank you, your Honor.
10:01:42 25 Dr. Vassallo, I'm going to have us back up a

10:01:46 1 little bit because you've testified to quite a bit here
10:01:48 2 this morning. I believe your counsel or plaintiffs'
10:01:52 3 counsel mentioned the Pack Unit so I'm going to just ask
10:01:55 4 you so I can have the answer on the record. Have you ever
10:01:58 5 testified in heat litigation that was filed against TDCJ
10:02:01 6 before?
10:02:04 7 A. Well, I understand that the Pack Unit outside of
10:02:09 8 Dallas was a Texas Department of Correctional Justice unit
10:02:13 9 so the answer is I testified in that case.
10:02:15 10 Q. And when did that happen?
10:02:17 11 A. I think it was about 2014. I haven't reviewed that
10:02:20 12 testimony or those dates.
10:02:23 13 Q. Have you provided any testimony or issued a report
10:02:26 14 about TDCJ conditions since that time?
10:02:31 15 A. I don't believe so. Except for the one for this
10:02:34 16 case, of course.
10:02:35 17 Q. So this -- other than the Cole case at the Pack Unit
10:02:38 18 and this report, have you issued any other reports related
10:02:41 19 to conditions at Texas Department of Criminal Justice
10:02:45 20 facilities?
10:02:45 21 A. Since 2014, because we did other cases where people
10:02:48 22 died of death like the McAllen, that's the Webb case,
10:02:51 23 there are a lot of people who died of heat stroke before
10:02:56 24 2014. In 2012, there were a number of deaths. I
10:02:58 25 testified in some of those.

10:02:58 1 Q. But my question is have you testified in heat
10:03:02 2 litigation filed against TDCJ seeking institutional
10:03:04 3 reform?
10:03:05 4 A. The answer is yes because that was against TDCJ on
10:03:08 5 the Webb death from heat stroke, the McCollum, and
10:03:11 6 whatever else I did at that time so that's against -- so
10:03:13 7 if you're talking about ever, the answer is yes.
10:03:16 8 Q. My question is since the Pack Unit.
10:03:18 9 A. I don't believe I've testified in a heat case since
10:03:23 10 the Pack Unit case in Texas.
10:03:27 11 Q. Thank you. And do you know what the ultimate outcome
10:03:30 12 of the Pack Unit was?
10:03:32 13 A. I believe it was cooled with air conditioning.
10:03:35 14 Q. Do you know what else the terms of the settlement
10:03:37 15 were?
10:03:38 16 A. I don't.
10:03:39 17 Q. Are you aware that there's a current heat score
10:03:43 18 system in place at TDCJ?
10:03:45 19 A. A what?
10:03:46 20 Q. Have you heard of a heat score system?
10:03:48 21 A. I have.
10:03:49 22 Q. Are you familiar with TDCJ's version of it?
10:03:52 23 A. No.
10:03:54 24 Q. Plaintiff didn't tell you that TDCJ has a heat core
10:03:59 25 system in place?

10:03:59 1 A. They did tell me that. Yes, they did tell me that.
10:04:02 2 Q. Did you review any of the policies about the heat
10:04:04 3 score system?
10:04:05 4 A. I heard about the policy. I didn't see the policy.
10:04:08 5 Q. Did you ask to see the policy?
10:04:10 6 A. No. You know why? Because it makes no sense. You
10:04:15 7 are giving a score for an individual, that's my
10:04:19 8 understanding of this policy. You're welcome to show it
10:04:22 9 to me. There is no way to give an individual a score.
10:04:25 10 Obesity is how many points?
10:04:27 11 Q. I'm going to stop you right now, Dr. Vassallo. How
10:04:30 12 are you testifying about what the score is --
10:04:33 13 MR. SINGLEY: Your Honor, I object --
10:04:35 14 MS. CARTER: -- if you haven't reviewed it?
10:04:35 15 THE COURT: Just a minute. You can ask the
10:04:38 16 question again. If you'll just limit your answer to the
10:04:41 17 specific question.
10:04:41 18 THE WITNESS: Yes, your Honor.
10:04:42 19 Q. (BY MS. CARTER) I asked you if you've reviewed the
10:04:45 20 heat score system policy?
10:04:47 21 A. No.
10:04:47 22 Q. Okay. Thank you. Have you testified in heat
10:04:52 23 litigation against prisons other than TDCJ?
10:04:54 24 A. I have testified -- what was the question? Against,
10:04:59 25 did you say?

10:04:59 1 Q. Have you testified or offered any expert opinions in
10:05:03 2 heat litigation against prisons in other states?
10:05:06 3 A. I've been involved in conditions of confinement in
10:05:10 4 Louisiana so the answer would be yes for Louisiana. I
10:05:15 5 have been involved in the conditions of confinement with
10:05:18 6 respect to heat in New York state, which is a jail,
10:05:25 7 Rikers. I wrote -- I've written a report in the Wisconsin
10:05:29 8 case but I did not testify.
10:05:37 9 Q. Have you ever visited any prisons in Mississippi?
10:05:41 10 A. Yeah, I forgot, Mississippi, of course.
10:05:46 11 Q. Do you know if any of the states you just listed have
10:05:49 12 heat score systems?
10:05:51 13 A. I don't know.
10:05:55 14 Q. Do you know if those systems identify inmates most at
10:05:58 15 need based on their medical conditions for housing?
10:06:06 16 A. Most prisons have some kind of a policy that
10:06:12 17 addresses heat sensitivity. Does that answer your
10:06:16 18 question?
10:06:18 19 Q. But in your review of those policies at other prison
10:06:23 20 systems, you're not aware that any have a system that
10:06:25 21 assigns a score assessing their risk to heat, are you?
10:06:28 22 A. There's nothing in the literature. There's not one
10:06:31 23 study that's ever given anybody in the history of the
10:06:34 24 literature a score so that's why if somebody made up a
10:06:38 25 score, fine.

10:06:40 1 Q. My answer wasn't necessarily about literature. But
10:06:43 2 in your experience with other prisons where you have
10:06:46 3 assessed their systems for heat risk, have you seen that
10:06:49 4 in place before?
10:06:50 5 A. There's no heat scores.
10:06:52 6 Q. Thank you. Dr. Vassallo, what was the ultimate
10:07:05 7 conclusion of your declaration in this litigation?
10:07:08 8 A. Well, the conclusion is it's too hot in the prisons
10:07:11 9 and it's causing -- it's contributing to people's death
10:07:14 10 and there's still -- continue and will continue to die of
10:07:18 11 heat stroke. That's my conclusion.
10:07:21 12 Q. And I'll tell you I don't have any background in
10:07:25 13 science so I'm just going to -- I've read your declaration
10:07:27 14 and tried to do as much research as I could so correct me
10:07:31 15 if my understanding is incorrect.
10:07:32 16 But your declaration in this case, specifically,
10:07:35 17 paragraph 23 says that heat exhaustion can lead to stroke.
10:07:39 18 What is your basis for that opinion?
10:07:41 19 A. Well, a couple of things I say around that paragraph.
10:07:46 20 Heat exhaustion could be the first step towards somebody
10:07:50 21 who's decompensating and goes to heat stroke. I've also
10:07:54 22 said every time I've ever testified in the last 20 years
10:07:58 23 and in this declaration that heat stroke can be without
10:08:03 24 warning. We have a vast experience, myself and a vast
10:08:07 25 experience in the scientific literature. So heat

10:08:11 1 exhaustion can be if you don't get out of the heat and you
10:08:14 2 have heat exhaustion, could progress to heat stroke. On
10:08:20 3 the other hand, you could just have heat exhaustion and go
10:08:24 4 to the hospital and get some IV fluids and get cooled off.
10:08:27 5 Or you could have heat stroke and never having had any
10:08:31 6 other heat condition.
10:08:32 7 Q. My question's a little bit different because
10:08:35 8 paragraph 23 says that heat exhaustion can lead to a
10:08:39 9 stroke. So I'm guessing I'm asking whether you mean a
10:08:41 10 heat stroke, an ischemic stroke, or is there a medical
10:08:46 11 difference?
10:08:46 12 A. Can you show me that? I didn't use the word "heat
10:08:49 13 stroke"?
10:08:49 14 Q. I believe it's in -- is it Exhibit 45.
10:08:53 15 A. Well, heat exhaustion can lead to heat stroke. Heat
10:08:59 16 exhaustion does not lead to strokes. Heat can cause
10:09:02 17 strokes, can be a contributing factor for stroke. Heat
10:09:06 18 exhaustion doesn't cause stroke. Heat can cause stroke.
10:09:12 19 Q. So heat exhaustion doesn't --
10:09:14 20 A. I think if you want to read my paragraph but if I
10:09:15 21 just put stroke.
10:09:16 22 THE COURT: Counsel, if you're impeaching the
10:09:18 23 witness using a document, you need to present the witness
10:09:21 24 with the document.
10:09:24 25 MS. CARTER: I'm just getting clarity whether

10:09:25 1 it's a heat stroke or stroke.
10:09:49 2 Q. (BY MS. CARTER) Could you read that paragraph to me?
10:10:02 3 A. Heat exhaustion occurs when heat stress overwhelms
10:10:05 4 the body. The body's cooling mechanisms work maximally
10:10:09 5 but thermoregulation still fails. A person suffering from
10:10:15 6 heat exhaustion may feel chilled, light-headed, thirsty,
10:10:18 7 nauseous, weak, faint, dizzy, and/or have muscle aches and
10:10:24 8 headache. The heart beats more rapidly. If the person
10:10:27 9 does not get out of the heat, heat exhaustion can lead to
10:10:32 10 heat stroke.
10:10:33 11 Q. Okay.
10:10:34 12 A. Critically, heat stroke is frequently not preceded by
10:10:39 13 heat exhaustion or the other related heat-related illness
10:10:46 14 described above. There is no continuum of heat illnesses
10:10:49 15 such that heat stroke is predictable.
10:10:51 16 Q. Thank you for clarifying. I believe later on in the
10:10:54 17 report, you state that the medical statuses that can
10:11:01 18 result directly from heat that affect all people, even
10:11:03 19 young healthy people, include heat cramp, heat syncope and
10:11:08 20 heat exhaustion.
10:11:09 21 A. Show me that, please. So therefore, even young
10:11:21 22 healthy people are at substantial risk of suffering
10:11:23 23 serious medical disorders resulting directly from the
10:11:27 24 heat, including heat cramps, heat syncope, heat exhaustion
10:11:33 25 and heat stroke. This risk is well documented and well

10:11:37 1 established in the medical literature. What was your
10:11:40 2 question?
10:11:40 3 Q. Where do we assess substantial risk?
10:11:44 4 A. Well, substantial means it's measurable.
10:11:46 5 Statistically significant, impactful and meaningful and
10:11:51 6 it's when somebody dies or gets sick, that's impactful and
10:11:55 7 meaningfully and it's statistically, as we've been showing
10:11:58 8 you all morning, statistically and measurable. That's
10:12:02 9 what it means substantial risk.
10:12:04 10 Q. It's statistically measurable or immeasure --
10:12:08 11 A. It's statistically significant and measurable. In
10:12:12 12 order to have something be statistically significant, it
10:12:15 13 has to be measured, right? And more than all of that
10:12:19 14 maybe, there's an impact. That's what substantial risk of
10:12:24 15 serious, serious harm means. There's an impact. Somebody
10:12:28 16 dies because they are in the heat and they didn't have to
10:12:30 17 die. That's the impact. Somebody lost a family member,
10:12:33 18 that's impact.
10:12:34 19 Q. So how do we measure that risk if it's measurable and
10:12:39 20 statistically significant that affects all people?
10:12:42 21 A. Well, I've shown you a couple of papers here. I
10:12:45 22 probably have another 20 we could have reviewed in this
10:12:48 23 courtroom that show that if you are -- first of all, let
10:12:55 24 me -- just background. We have had how many deaths of
10:13:01 25 young healthy football players, how many deaths of

10:13:04 1 military recruits. I can tell you an autopsy study with
10:13:07 2 over a hundred young healthy military recruits that died
10:13:10 3 of heat stroke. That's why they were autopsied.
10:13:13 4 So we already know that young healthy people die.
10:13:18 5 These epidemiology show that many young people have died
10:13:23 6 and they were healthy. This was a population study. So
10:13:28 7 the strength of a population or epidemiological study is
10:13:32 8 that it takes the population and tells you that people do
10:13:35 9 or do not die and we've seen that they do and they do.
10:13:39 10 Q. So in the case you just described to me, we're
10:13:42 11 looking at autopsies of young healthy people that died
10:13:45 12 either as athletes or in the military; is that correct?
10:13:49 13 A. No. That misstates what I -- my testimony.
10:13:52 14 Q. What was your testimony?
10:13:53 15 A. Why don't you ask me the question again and I'll try
10:13:56 16 to restate my testimony.
10:13:57 17 Q. My question was how do we assess the statistical
10:14:02 18 significance that is measurable for a risk that you're
10:14:04 19 alleging affects all people?
10:14:06 20 A. Okay. What you do is you read the literature and you
10:14:10 21 look at the epidemiologists who did the study and you look
10:14:13 22 at the statistics and you see that was measured and that's
10:14:16 23 how you do it. You apply a set of statistical and
10:14:20 24 mathematical rules and you study it and then, you see that
10:14:27 25 young people died of heat, young people had worsening of

10:14:32 1 their asthma. They might have died of asthma because they
10:14:35 2 were in the heat. All of this has been measured and all
10:14:40 3 of this is measured by mathematical and statistical models
10:14:43 4 that apply to populations. That's all.
10:14:50 5 Q. Could we scroll to paragraph 28? I believe that's
10:14:53 6 what you were just testifying. What about sedentary
10:14:59 7 people or people that are engaged in non-strenuous
10:15:01 8 activity? Because there, you're talking about the young
10:15:03 9 healthy people that died of exercise-related heat stroke,
10:15:07 10 specifically, athletes and military.
10:15:10 11 A. What's your question?
10:15:11 12 Q. How do we assess this alleged substantial risk that
10:15:15 13 is measurable in affecting all people if we're considering
10:15:19 14 sedentary people or people that are not engaged in
10:15:22 15 strenuous activity?
10:15:23 16 A. When you look at a population study such as I've been
10:15:27 17 referring to, not all of those people were exercising.
10:15:29 18 Some of them were just sitting in their home, or in their
10:15:32 19 prison cell, or wherever they were sitting being sedentary
10:15:35 20 watching TV and they didn't have an air conditioner and
10:15:40 21 they were mentally ill, or whatever they were, they were
10:15:42 22 in the heat and they died. That's what these
10:15:45 23 epidemiological population studies demonstrate.
10:15:49 24 Q. And what population study are you describing right
10:15:51 25 now?

10:15:51 1 A. Well, Petitti showed it. I mean, I've gone through
10:15:55 2 several of them. Semenza showed it. Every time you look
10:16:00 3 at epidemiological or population study, some of the people
10:16:03 4 are young people and they're not all exercising.
10:16:12 5 Q. So when you say some of the people are young people,
10:16:14 6 how many?
10:16:16 7 A. Well, I mean, we could go through the entire
10:16:18 8 literature and start counting, but I can't give you a line
10:16:25 9 like two or four. What I can say is there is still a risk
10:16:31 10 in certain -- in certain environmental conditions where
10:16:35 11 even young people can die of the heat.
10:16:38 12 Q. So are even young people at the same level of
10:16:41 13 substantial risk of serious harm that you were telling
10:16:45 14 plaintiffs' counsel?
10:16:45 15 A. So this is a different question. Young healthy
10:16:48 16 people are at less of a risk than people who are old.
10:16:53 17 Young healthy people are less of a risk than people who
10:16:56 18 are old and sick. People who are young and sick who they
10:17:00 19 have an undiagnosed condition, those people are also at
10:17:05 20 risk. So this is a -- I'm not saying that young healthy
10:17:10 21 people who've had a medical investigation that don't have
10:17:14 22 diabetes, which many people don't have diabetes and are
10:17:17 23 asymptomatic, that those people, young healthy people with
10:17:20 24 no medical condition when -- they're at the same risk as
10:17:26 25 old sick people. I'm not saying that.

10:17:29 1 Q. Are they at a substantial risk of serious harm or
10:17:32 2 death?
10:17:34 3 A. It depends on temperature. You know, the Army
10:17:38 4 studies, we didn't go through, but you put a young healthy
10:17:40 5 people sitting in a heat chamber and the Army is very
10:17:44 6 interested in this because the Middle East is extremely
10:17:48 7 hot and back when it was called Mesopotamia, they had
10:17:54 8 6,000 deaths of people. They might have been exercising,
10:17:58 9 I don't know. Some were sitting under a tree. It is so
10:18:01 10 hot in some circumstances that young healthy people can
10:18:05 11 die.
10:18:05 12 And when you look at the Gold study of young
10:18:09 13 healthy people, they just put them in a heat chamber
10:18:11 14 sitting there, their temperatures go up, then they take
10:18:15 15 them out because they don't want the guy to die. So the
10:18:17 16 answer is some young healthy people held in the proper --
10:18:22 17 or not proper, extreme temperatures can die. Am I saying
10:18:30 18 they're at substantial risk of serious harm? You tell me
10:18:32 19 the temperature. I would say you put them in this kind of
10:18:35 20 a temperature with no relief and inability to get out,
10:18:39 21 maybe. It's probably measurable.
10:18:42 22 Q. So what temperature would you say that at?
10:18:44 23 A. Well, I have been saying for 20 years based on the
10:18:49 24 spiking and -- the spike of the curve, the J-shape curve
10:18:55 25 that a conservative number for the heat index is 88

10:18:59 1 degrees heat index.
10:19:01 2 Q. So at 89 degrees, a young healthy person is at
10:19:05 3 substantial risk of serious harm or death?
10:19:06 4 A. I'm talking about heat index, not degrees, and what
10:19:11 5 I'm saying is that there's a continuum here, right? So
10:19:16 6 I'm not going to give you a temperature. I've given you
10:19:18 7 the only temperature -- I should say heat index that I'm
10:19:21 8 able to give you. Some people will die when it's less
10:19:25 9 than that. Some people it's -- they'll die when it's
10:19:29 10 hotter than that. That goes for young healthy people. We
10:19:32 11 don't know their genetics. We don't know anything about
10:19:34 12 them. We don't know anything about them, actually. When
10:19:38 13 you say young and healthy, everybody has something, even
10:19:41 14 young and healthy. We don't know. So some of those
10:19:44 15 people are at substantial measurable risk of harm and
10:19:50 16 impactful.
10:19:51 17 Q. So in paragraph 29 of your declaration, you say young
10:19:54 18 and presumably healthy, what does presumably mean?
10:19:58 19 A. Well, it means that I look at -- well, what that
10:20:04 20 means is we really don't know, right? We really don't
10:20:09 21 know if you line up a hundred high schoolers in here, I
10:20:14 22 don't know who's -- you say they're healthy. I say maybe
10:20:17 23 they're healthy. Maybe one of them says no, I have asthma
10:20:21 24 when I'm in the heat. The other guy says no, I'm so fat,
10:20:25 25 I'm taking some diet pills and I'm not eating and I had

10:20:27 1 diarrhea last night because I am trying to lose weight. I
10:20:31 2 don't know. What is presume -- it means you're assuming.
10:20:34 3 It's a presumption is when you're thinking something is
10:20:37 4 the case.
10:20:45 5 Q. So we can't actually say that all people are at the
10:20:49 6 substantial risk of serious harm or death if we are
10:20:52 7 presuming something about an entire population of people.
10:20:55 8 And you've just testified that in the J graph, there is
10:20:58 9 some people that will die at lesser temperatures and there
10:21:02 10 is some people that will die at higher temperatures
10:21:05 11 because we don't know what conditions they had.
10:21:07 12 A. What is your question?
10:21:08 13 Q. Is it possible for you to medically say in good faith
10:21:11 14 that all people are at substantial risk of serious harm or
10:21:14 15 death in heat?
10:21:18 16 A. In good faith, all people at the right temperature
10:21:24 17 are at substantial risk of serious harm. What is that
10:21:27 18 temperature and who is that person? I'm only telling you
10:21:31 19 that the older you are, more conditions you have, the more
10:21:34 20 likely you are to succumb to the heat or to succumb to
10:21:38 21 that condition. That's all I can tell you. I can't draw
10:21:42 22 a line with a particular temperature or a particular
10:21:44 23 person. That's not what I'm trying to do here.
10:21:47 24 Q. Okay. So that was a no to my question then.
10:21:49 25 A. I don't -- was that interpreted by you as a no?

10:21:55 1 Q. That we can't predict a temperature or an age or how
10:21:58 2 many will die of a -- or have a substantial risk of
10:22:01 3 serious harm or death. You just told me you can't do
10:22:06 4 that. Can you do that?
10:22:07 5 MR. SINGLEY: I object to form. That misstates
10:22:09 6 her testimony.
10:22:09 7 THE COURT: You can rephrase the question.
10:22:15 8 Q. (BY MS. CARTER) In paragraph 32, you state that young
10:22:27 9 and healthy people without medical problems may tolerate
10:22:30 10 heat stress better than the sick or elderly. How much
10:22:33 11 better?
10:22:34 12 A. I can't give you a number for any particular -- all
10:22:38 13 we know, because it's common sense, anybody on the street
10:22:41 14 can tell you if you're old and sick, you're more likely to
10:22:45 15 be affected by the heat than if you're young and healthy.
10:22:48 16 It's common sense.
10:22:48 17 Q. So we don't actually know how much better they
10:22:51 18 tolerate heat stress?
10:22:56 19 A. Well, I mean, I think we have a lot of public health,
10:22:59 20 a lot of epidemiology that shows if you're over the age of
10:23:02 21 65, you're 12 times as likely -- more likely to die of the
10:23:06 22 heat than someone who doesn't have those conditions.
10:23:10 23 Q. And can you tell me a little bit about that? Because
10:23:13 24 I haven't been able to understand the difference between
10:23:16 25 64, or 65, or 66. Where do we get the 65 number?

10:23:22 1 A. Well, this is from the CDC, the MMWR. These are -- I
10:23:26 2 mean, I understand your being perplexed by that because I
10:23:31 3 agree if my birthday is tomorrow and I turn 65, I'm not at
10:23:36 4 different risk today at 64 than tomorrow at 65.
10:23:39 5 So this is -- at some point in order to do a
10:23:41 6 study, you have to have some kind of grouping. You have
10:23:46 7 to say okay -- and you should do it before you do the
10:23:48 8 study, right? In other words, you don't say -- you say
10:23:51 9 okay, I'm going to look at all -- look at 65, there's a
10:23:55 10 big spike in people who are dying. There's 12 times as
10:23:59 11 many people died at 65. And then, if you take age 10 to
10:24:04 12 20, that's a short -- you take 20 to 30 and you just are
10:24:07 13 lag at how many people are dying of heat-related morbidity
10:24:12 14 or mortality. So these are -- they look at their
10:24:15 15 statistical -- this is a statistical -- the statisticians
10:24:20 16 know how to do this.
10:24:22 17 Q. In this same paragraph 32, you state that the data
10:24:26 18 still shows that morbidity and mortality in this healthy
10:24:29 19 population still increases by heat stress. So even though
10:24:32 20 we may be able to tolerate heat stress better as a young
10:24:36 21 and healthy population, morbidity and mortality still
10:24:40 22 increased with heat stress.
10:24:41 23 A. Right. And I could turn to these articles and show
10:24:43 24 you that but we did show you that. We showed that there
10:24:46 25 are hundreds of people who died who are young and

10:24:52 1 presumably healthy.
10:24:52 2 Q. How much of this risk of morbidity and mortality
10:24:55 3 increase?
10:24:55 4 A. Well, if you want me to prefer to the literature to
10:24:58 5 answer your question.
10:24:59 6 Q. Yes.
10:24:59 7 A. So in the study by Jones, Morbidity and Mortality
10:25:53 8 Associated With July 1980 Heat Wave in St. Louis and
10:25:58 9 Kansas City, they have the ages broken out here, heat
10:26:02 10 stroke rates by age group of zero to 18, they didn't have
10:26:05 11 any deaths. From 19 to 44, they had 3.4 deaths per
10:26:11 12 100,000 persons. From 45 to 64, there's that age 64, they
10:26:17 13 had 28 deaths. Greater than 65, they had 121 deaths.
10:26:24 14 That was for St. Louis. Now I'll continue.
10:26:25 15 Q. Is your opinion that 28 to -- what was that number
10:26:28 16 for the 65 and above?
10:26:37 17 A. Rate per 100,000 persons for St. Louis at this time
10:26:41 18 with those temperatures was 121 people died in St. Louis
10:26:46 19 per 100,000 in 1980. In Kansas City, it was 102 people
10:26:53 20 above the rate of 65 died.
10:26:56 21 Q. And what was that number for the age group -- the
10:26:59 22 younger age group again? Was it 28?
10:27:01 23 A. No. From zero to 18, they didn't have any deaths in
10:27:04 24 the study. You know, if we go and look at how many total
10:27:16 25 -- we need to look at the total number of deaths. So in

10:27:32 1 this study, they said that the heat stroke rates were 10
10:27:34 2 to 12 times higher for persons age 65 years or older
10:27:40 3 versus those who are younger than the age of 65.
10:27:43 4 Q. Do you think that 10 to times 12 higher is
10:27:46 5 significant?
10:27:47 6 A. Yes. It's definitely measurable and impactful.
10:27:51 7 Q. So it's fair to say that the younger population is
10:27:54 8 significantly less at risk than morbidity and mortality
10:27:57 9 than the older population?
10:27:58 10 A. I think I have been saying that all morning. And
10:28:01 11 here, if you want me to continue on what you did, you said
10:28:05 12 you would like me to go to the literature and I'm going to
10:28:08 13 now show you the MMWR. Here, they had death -- this is
10:28:13 14 death. Here, their deaths are less than the age of one,
10:28:17 15 which I don't think pertains to the prison was 160 people
10:28:22 16 died of heat-related codes as the underlying cause that
10:28:27 17 heat caused the death. Let's put something that's more
10:28:31 18 reasonable. Fifteen to 24 years old, 234 people died.
10:28:36 19 Twenty-five to 34, 430 people died. That's measurable,
10:28:41 20 statistically significant and impactful because a lot of
10:28:45 21 people died. Once you got to 45 to 54 in this study,
10:28:52 22 1,090 people died and if you're going on to look at heat
10:28:57 23 as a contributing cause, there's just hundreds listed. I
10:29:01 24 don't need to read the whole table, hundreds of people
10:29:04 25 died and some of them are young, five to 14, 15 to 24, 25

10:29:09 1 to 34, 35 to 44.
10:29:11 2 So every study looks at this question that you're
10:29:14 3 asking me. Young people die, old people die more.
10:29:18 4 Q. Okay. Thank you. In paragraph 40 of your
10:29:23 5 declaration, you state that having AC is associated with
10:29:35 6 an 80 percent reduction in the risk of death due to heat
10:29:38 7 and cardiovascular disease. Were you -- I believe you saw
10:29:43 8 Dr. Zanobetti and Dr. Skarha's report earlier and I'm
10:29:48 9 going to put it up for you now because I want to ask you a
10:29:51 10 question about some of their results.
10:29:54 11 This is Defendants' Exhibit 45. Is there an
10:29:57 12 objection? It's already been admitted by y'all.
10:30:10 13 MR. EDWARDS: No objection.
10:30:11 14 MS. CARTER: Okay.
10:30:38 15 Q. (BY MS. CARTER) So your report says that having AC is
10:30:42 16 associated with an 80 percent reduction in the risk of
10:30:44 17 death due to heat and cardiovascular disease?
10:30:47 18 A. That's what the CDC says. That's right out of the
10:30:50 19 MMWR.
10:30:51 20 Q. But that's in your declaration, correct?
10:30:53 21 A. That's where I got it. The source of those numbers
10:30:56 22 was the MMWR.
10:30:58 23 Q. Now I'm going to ask you a question about the air
10:31:02 24 conditioning and heat related to mortality in prisons.
10:31:05 25 Here, the results -- and this is talking about population

10:31:07 1 characteristics of decedents in Texas state and private
10:31:10 2 prison facilities from 2001 to 2019, and it's broken down
10:31:15 3 by prisons with AC and prisons without AC and they're
10:31:20 4 measuring the mortality in prison. In males --
10:31:23 5 A. I'm sorry, are you on table 1?
10:31:25 6 Q. Yes.
10:31:25 7 A. Okay. I was looking here.
10:31:30 8 Q. I'm on table 1. I'm going to look at the male
10:31:32 9 numbers because TDCJ is overwhelmingly populated by male
10:31:37 10 inmates. We're looking at a thousand, 327 and the -- with
10:31:45 11 AC that P value or N value, the percentage is 96.1 of
10:31:52 12 mortality in prisons with AC. But I'm looking at the next
10:31:57 13 column and that percentage goes to 96.6. So that's only a
10:32:03 14 .7 percent increase where there was AC in terms of
10:32:09 15 morbidity and mortality. That's very different than your
10:32:12 16 80 percent reduction.
10:32:14 17 Is that because you considered or the CDC, these
10:32:17 18 numbers are considering the factors of heat and/or
10:32:20 19 cardiovascular disease?
10:32:23 20 A. I don't understand your question but what I do see
10:32:26 21 here is without AC, 2,012 men died.
10:32:32 22 Q. I'm asking you here 96.1 compared to 96 .6, what's
10:32:38 23 the difference in those two percentages?
10:32:40 24 A. Looks like approximately 700 people extra died
10:32:44 25 without AC. That's the difference. 700 people lost their

10:32:47 1 family members for no reason.
10:32:50 2 Q. I appreciate that, Dr. Vassallo, but I'm asking you
10:32:53 3 96.1 compared to 96.6, what is the percentage difference
10:32:57 4 in those two numbers?
10:32:59 5 A. The percentage difference is 700 people.
10:33:01 6 Q. Okay. In percentages?
10:33:04 7 A. Percentages. It says 0.5 difference and that's 700
10:33:14 8 people. You don't think that's impactful and important,
10:33:18 9 700 people died that shouldn't have died? It's very
10:33:20 10 important.
10:33:21 11 Q. I'm going to ask you a question now. That .5
10:33:25 12 percentage difference is much less than the 80 percent
10:33:29 13 reduction and risk of death due to heat and cardiovascular
10:33:33 14 disease. Is the difference here that this 80 percent
10:33:37 15 reduction factored in these individuals' health status?
10:33:43 16 A. No. The MMWR is a population-based study and they
10:33:50 17 didn't -- I don't think they went into prison whereas Dr.
10:33:55 18 Skarha went to prison and looked at it, this Texas prison.
10:33:59 19 So the CDC, the MMWR showed and other -- Rogot, which we
10:34:05 20 didn't -- R-O-G-O-T, we didn't -- many studies have shown
10:34:09 21 that when people are in hot weather and they're air
10:34:15 22 conditioned, the danger is gone, whereas when they're not
10:34:18 23 air conditioned, they still die of heat. So this -- and
10:34:23 24 I'm not exactly sure why you're just looking at males. I
10:34:27 25 think it matters when females die and, you know, maybe we

10:34:30 1 should be looking at the -- how many people greater than
10:34:33 2 the age of --
10:34:35 3 Q. Well, I'm glad you brought up females because we can
10:34:38 4 look at that percentage, too. It's 3.9 compared to only a
10:34:42 5 .5 percentage reduction here without AC. We're only
10:34:48 6 looking at a percentage difference and decrease in
10:34:50 7 mortality and morbidity when there is AC.
10:34:54 8 A. Yeah. So you know what matters to me, the 20 people
10:34:57 9 who didn't have to die.
10:34:58 10 Q. Okay.
10:34:59 11 A. I don't care about the percentage here. AC decreases
10:35:03 12 your risk of death from the heat. That's common sense.
10:35:08 13 It's proven hundreds of times in literature and I think 50
10:35:12 14 females or 200 males, it matters.
10:35:14 15 Q. Okay. And so, you don't consider the difference
10:35:17 16 between an 80 percent reduction and a .5 reduction -- you
10:35:21 17 don't care about that? Is that your testimony? I'm going
10:35:39 18 to publish two pages later of the same study. This is
10:35:44 19 that study's limitations and I've highlighted some things
10:35:48 20 that I'm going to ask you whether or not you would have
10:35:51 21 cared to learn about that when assessing the validity of
10:35:54 22 this study.
10:35:54 23 So Dr. Skarha and Dr. Zanobetti said this study
10:35:57 24 has limitations. Due to the limited sample size, we could
10:36:01 25 not look at effect modification by important

10:36:03 1 characteristics such as age and cause of mortality. You
10:36:08 2 just testified to me that all of these previous
10:36:10 3 literature, they break down the rate of morbidity and
10:36:13 4 mortality by age. Why?
10:36:16 5 MR. SINGLEY: Object to form. That misstates her
10:36:19 6 testimony.
10:36:21 7 Q. (BY MS. CARTER) Why do some of the literature --
10:36:22 8 THE COURT: You have to wait until I rule. You
10:36:25 9 want to rephrase the question?
10:36:26 10 Q. (BY MS. CARTER) Okay. Why does some of the
10:36:28 11 literature you've referenced break down the rates of
10:36:32 12 morbidity and mortality by age?
10:36:37 13 A. Well, because age is important. Like I've said, the
10:36:41 14 older you are, the sicker you are, the more people die.
10:36:45 15 It doesn't get -- nobody dies who's young.
10:36:52 16 Q. So is it significant to you that one of the
10:36:56 17 limitations of this study, they didn't consider age?
10:37:05 18 A. No. Every study has some limitations. Every study
10:37:10 19 cannot do everything. This study showed that when you
10:37:14 20 have air conditioning, the danger is gone. It showed
10:37:19 21 without air conditioning that 14 more people died a year
10:37:23 22 on average and we know that because we've seen the
10:37:26 23 numbers.
10:37:27 24 Q. Dr. Vassallo, I'm just going to ask because I thought
10:37:31 25 you said this. Did you just say that when there is AC,

10:37:36 1 the danger was gone?
10:37:37 2 A. When you have a working air conditioner and the
10:37:41 3 temperature is what the American Correctional Association
10:37:46 4 suggests it should be, or what the ASHA, the American
10:37:48 5 Society, or what anybody with any common sense knows is
10:37:53 6 reasonable, when the air conditioning is working, you
10:37:57 7 don't have the danger. If the air condition's not working
10:38:01 8 or you have no AC, it's the danger of dying of a heat
10:38:06 9 induced or heat associated or heat -- or directly heat
10:38:11 10 stroke like the ones we just showed you.
10:38:14 11 Q. But this study indicates the danger wasn't gone, does
10:38:18 12 it? It goes from 96.1 to 96.6. Does that eliminate the
10:38:24 13 danger of heat?
10:38:27 14 A. They didn't break this out into every individual who
10:38:32 15 died here. This is showing that when you get -- when you
10:38:37 16 go into a Texas prison without AC, more people die in the
10:38:43 17 hot months. With AC, they don't die at the same rate. So
10:38:49 18 some of those people died of cancer. They're more likely
10:38:54 19 -- some of those, we don't know what they died of. What
10:38:57 20 we're saying, all these authors did is look at the removal
10:39:07 21 of the extreme heat versus not removal of the extreme
10:39:10 22 heat. The presence of the danger or absence of the
10:39:12 23 danger.
10:39:12 24 Q. Is it possible that the people in this column also
10:39:15 25 died of how you said cancer?

10:39:20 1 A. Well, yes, and they just died -- they die without AC,
10:39:26 2 they die more than when they have air conditioning.
10:39:29 3 Q. And just to clarify, only .5 percent more.
10:39:35 4 MR. SINGLEY: Object to form, misstates both her
10:39:37 5 testimony and the study.
10:39:40 6 MS. CARTER: I'll withdraw that question. I'm
10:39:43 7 going to put the limitations back up.
10:39:45 8 Q. (BY MS. CARTER) We've kind of already touched on
10:39:46 9 this, but the next limitation they note is cause of death,
10:39:48 10 which we just talked about. There's no way of us knowing
10:39:52 11 whether they were in AC or outside of AC, whether or not
10:39:56 12 some of those people died of cancer. Does this study
10:39:59 13 indicate that?
10:40:01 14 A. What this study indicates is that if you have AC --
10:40:05 15 if you don't have AC, you're going to die more than those
10:40:09 16 that if you have AC. I don't understand your question
10:40:11 17 besides that. Outside of that, my answer.
10:40:15 18 Q. Would you have wanted to know the cause of mortality
10:40:18 19 when considering these numbers?
10:40:21 20 A. No. In general, the epidemiology does two things.
10:40:27 21 It looks at people where heat was a contributing cause and
10:40:33 22 where they just died of the heat. So I don't know all
10:40:37 23 those patients or all those individuals who presented to
10:40:40 24 the emergency department, got hospitalized and some of
10:40:45 25 them as morbidity and some of them died. All I know is

10:40:48 1 that they died at higher rates in the heat. If they had
10:40:53 2 any number of conditions, I don't know and it doesn't go
10:40:58 3 into, you know, the two-and-a-half-thousand people that
10:41:01 4 died last year of heat. We don't know every condition
10:41:06 5 that they had. That's not what an epidemiological or a
10:41:09 6 public health document does.
10:41:13 7 If we just want to look at patients with obesity
10:41:16 8 and put them in AC versus holding them in hot conditions,
10:41:20 9 then that's a totally different study than what this
10:41:22 10 author, these authors did.
10:41:42 11 Q. While we're talking about publications and
10:41:47 12 literature, were you an author of a report titled Ice
10:41:50 13 Water Submersion For Rapid Cooling and Severe Drug-Induced
10:41:55 14 Hyperthermia?
10:41:56 15 A. Yes.
10:41:57 16 Q. What was that study focused on?
10:41:59 17 A. Wasn't a study. I think it was -- can you show me
10:42:03 18 the study? It's been a long time since I did that.
10:42:07 19 Q. That's okay. If you don't remember, we can just move
10:42:09 20 on.
10:42:09 21 A. My point is when we're at Bellevue and other places
10:42:12 22 in the world like when the 14,000 people died in France of
10:42:15 23 heat stroke in 2003, what we talk about is how do you cool
10:42:21 24 somebody who's presenting with heat stroke? And what we
10:42:23 25 know at Bellevue is that when you dunk somebody in ice

10:42:28 1 water, icy bath like I described earlier today, it's
10:42:33 2 incredibly fast if you cool them, if they need to be
10:42:37 3 paralyzed because they're rigid, you do all those things.
10:42:40 4 But what we did there wasn't a -- it was more of a case
10:42:43 5 report. We don't compare, for example, people dunked in
10:42:47 6 ice water versus people that got no treatment or even just
10:42:51 7 fans because we don't use fans and cooling mists.
10:42:55 8 So what we described there was an individual who
10:42:57 9 presented with heat stroke and the rapidity with which we
10:43:03 10 cooled them. It wasn't a study, it was a report.
10:43:07 11 Q. What is drug-induced hyperthermia?
10:43:09 12 A. So there's a couple of reasons that drugs can cause
10:43:15 13 heat stroke or cause the temperature to go up. One is
10:43:20 14 because it increases the muscular activity of the person.
10:43:24 15 For example, cocaine, you might run around, you might be
10:43:31 16 much more active, the influence of cocaine. So there's
10:43:37 17 the activity piece. There's also the fact that cocaine
10:43:40 18 and amphetamine both are sympathomimetic, meaning it
10:43:46 19 causes the blood vessels to constrict. People have used
10:43:50 20 -- I talked about the nasal spray with that kind of like
10:43:55 21 pseudoephedrine, those cause the blood vessels to
10:43:58 22 constrict, so it could be it increases the motor activity
10:44:01 23 of the person and causes them to vaso constrict.
10:44:05 24 It could be like in the case of Benadryl where it
10:44:08 25 stops the sweating process and it increases their motor

10:44:12 1 activity. They're fidgeting, looking around, doing all
10:44:16 2 these things that you see clinically. So drug-induced
10:44:25 3 hyperthermia, there's a characteristic of that chemical
10:44:28 4 that affects the person's behavior, their motor movements,
10:44:31 5 or their ability to thermoregulate.
10:44:35 6 Q. Does meth affect your ability to thermal regulate?
10:44:40 7 A. Amphetamine does, yes.
10:44:42 8 Q. Okay. The next one I'm going to ask you about is
10:44:45 9 Stimulant-Induced Hyperthermia and Ice Water Submersion,
10:44:50 10 Practical Considerations. Were you also an author on
10:44:53 11 that?
10:44:53 12 A. I think I feel like I only wrote one article about
10:44:57 13 putting people in ice baths but if you told me I wrote
10:44:59 14 two, is it in my CV?
10:45:02 15 Q. I think it is. It's on your CV.
10:45:04 16 A. Well, if it's on my CV, I probably -- and I'm an
10:45:07 17 author that I wrote it.
10:45:09 18 Q. Well, I'll ask you this just because I'm trying to
10:45:12 19 understand for my benefit. Is drug-induced hyperthermia
10:45:16 20 different than stimulant-induced hyperthermia?
10:45:20 21 A. A stimulant is a type of a drug. Examples of
10:45:22 22 stimulants is anybody that's -- would be cocaine and
10:45:26 23 methamphetamine, those are stimulants. They stimulate
10:45:28 24 your mind, your motor activity, and they keep you awake,
10:45:34 25 they're stimulants.

10:45:35 1 THE COURT: Counsel, I'm sorry to interrupt
10:45:37 2 because we're going to have to take our first morning
10:45:39 3 break now. And so, we'll take a 15-minute break. Back at
10:45:44 4 11:00.
10:45:45 5 MS. CARTER: That's fine. Thank you.
10:45:45 6 (Recess.)
11:03:50 7 THE COURT: You may resume.
11:03:51 8 Q. (BY MS. CARTER) Dr. Vassallo, earlier, we talked
11:04:37 9 about an exhibit, I believe it was Plaintiffs' Exhibit 10,
11:04:40 10 Changing Heat-Related Mortality in the U.S. And the first
11:04:45 11 sentence of the Results was heat-related mortality has
11:04:49 12 consistently declined on a decadal basis. That study, I
11:04:54 13 believe, was published in 2003. So is it fair to say that
11:04:57 14 this risk has declined now over 20 years later?
11:05:00 15 A. Can you show me that?
11:05:27 16 Q. And I believe it's like the third or fourth page but
11:05:30 17 it's under Results. Does that say heat-related mortality
11:05:38 18 has consistently declined on a decadal basis?
11:05:42 19 A. Where are you reading?
11:05:43 20 Q. Under Results.
11:05:44 21 A. Oh, to the Results? Because the article does start
11:05:52 22 out with increasing heat and humidity suggests that a
11:05:59 23 long-term increase in heat-related mortality could occur.
11:06:05 24 That's the opening sentence.
11:06:07 25 Q. And when was this article published?

11:06:12 1 A. Twenty-one years ago. Did you want me to answer your
11:06:17 2 question?
11:06:18 3 Q. I was going to ask you if based on that, the results
11:06:22 4 of this article that they published, do you think it's
11:06:24 5 fair to say that the rates of mortality has consistently
11:06:27 6 declined in 21 years?
11:06:29 7 A. Well, I could tell you that any article that shows
11:06:32 8 that mortality and morbidity, it's because of air
11:06:36 9 conditioning -- penetration of air conditioning. It's
11:06:39 10 getting hotter and hotter and every article that speaks to
11:06:41 11 this is because of the penetration of air conditioning.
11:06:45 12 Air conditioning -- the more that a county, a state, a
11:06:51 13 jail, a prison is air conditioning, the mortality from
11:06:56 14 heat goes down.
11:06:58 15 Q. Dr. Vassallo, are you aware that more than 30 units
11:07:01 16 at TDCJ are fully air conditioned?
11:07:03 17 A. I know that there are air conditioned. I'm not
11:07:06 18 worried about the air-conditioned ones. I'm worried about
11:07:09 19 the un-air-conditioned ones.
11:07:10 20 Q. Are you aware that that number has increased since
11:07:12 21 the last time you were able to visit a TDCJ facility?
11:07:15 22 Were you able to visit one during the Pack litigation?
11:07:18 23 A. No. We went to Pack. I went there.
11:07:20 24 Q. And have you been to TDCJ facility since then?
11:07:26 25 A. No.

11:07:27 1 Q. Well, I'll represent to you that there have been
11:07:30 2 quite a few more air-conditioned beds. I believe the
11:07:34 3 current number's around 46,000 air-conditioned beds of
11:07:38 4 TDCJ. Would you say that that's consistent with this
11:07:41 5 article saying that the rates of mortality decrease over a
11:07:44 6 decadal period?
11:07:45 7 A. No.
11:07:46 8 Q. So you don't think that the risk of mortality has
11:07:49 9 decreased even though TDCJ's air-conditioned beds
11:07:52 10 increased?
11:07:52 11 A. Well, you know what, when everybody has a
11:07:56 12 air-conditioned bed, people will stop dying of heat stroke
11:07:59 13 and heat-related illnesses. So just air condition it,
11:08:03 14 decrease -- the problem is the danger is not the ones that
11:08:05 15 you did air condition. It's the ones that are un-air
11:08:09 16 conditioned. The deaths that we've showed you today with
11:08:12 17 people of core temperatures up to 109, those are
11:08:15 18 un-air-conditioned people.
11:08:18 19 Q. Dr. Vassallo, as a physician, is it your job to keep
11:08:22 20 people healthy as best as you can?
11:08:26 21 A. Yes.
11:08:29 22 Q. Is the ideal risk for any heat-related outcome zero?
11:08:37 23 MR. SINGLEY: I'll object to form. That's really
11:08:39 24 broad and ambiguous.
11:08:41 25 MS. CARTER: I believe we've been speaking about

11:08:43 1 risk all day, your Honor.
11:08:43 2 THE COURT: If you can answer it.
11:08:45 3 A. Could you ask it again?
11:08:47 4 Q. (BY MS. CARTER) Say you're treating someone for
11:08:49 5 cancer, is the ideal risk that the cancer will come back
11:08:54 6 zero percent? As a physician, is that your ideal risk?
11:08:59 7 A. Well, you know what, I don't think there's cancer --
11:09:12 8 the cancer here is the heat and there's -- whereas cancer
11:09:16 9 is different but heat is different. The cancer in this
11:09:20 10 jail is the heat and there's -- I can fix the heat by air
11:09:26 11 conditioning it. Cancer is a totally different -- we have
11:09:29 12 a cancer in this prison. It's people believe that 20, or
11:09:34 13 50, or 200 deaths, or 14 per year, the cancer is that they
11:09:39 14 believe that doesn't matter. That's the cancer. And I
11:09:40 15 would say that all we have to do is do away with the
11:09:43 16 danger.
11:09:44 17 So I'm glad you brought cancer because it's such
11:09:47 18 an excellent example of -- and my answer is cancer -- you
11:09:55 19 know, I don't even know what you're asking. Cancer,
11:09:59 20 sometimes it goes away. For example, if you cut out a
11:10:02 21 tiny skin cancer, a basal cell, it might go away and it
11:10:07 22 doesn't come back because I cut it out.
11:10:09 23 Q. Is the risk of that now zero?
11:10:13 24 A. When you cut the can -- very similar to air
11:10:16 25 conditioning. You get rid of the cancer, which is un-air

11:10:19 1 conditioned, you're not going to have any more cancer.
11:10:21 2 You're right, that's zero. Zero for heat stroke, zero for
11:10:25 3 heat. That's right. So zero would be the right number if
11:10:30 4 the cancer is un-air conditioned cells in the Texas prison
11:10:33 5 system.
11:10:33 6 Q. I'm glad you brought that up because I'm wondering if
11:10:36 7 you had a chance to review the 200-something autopsies
11:10:39 8 that plaintiffs requested in this case. Did you?
11:10:41 9 A. No. I reviewed some but not 200.
11:10:45 10 Q. Would you be surprised to learn that there were
11:10:48 11 inmates that died of hyperthermia, which you've already
11:10:51 12 testified as related to heat that died in AC conditions?
11:10:57 13 A. No. I mean, fever is fever. I mean, I could die
11:11:00 14 right now if I get meningitis. I have fever, that's
11:11:04 15 hyperthermia. Hyperthermia is not heat stroke. So they
11:11:08 16 may have had sepsis. They may have had a pontine stroke.
11:11:11 17 There are a lot of reasons to get fever, but fever usually
11:11:16 18 doesn't go above 105 and because, actually, there are
11:11:18 19 studies that show what is fever versus what is heat
11:11:20 20 stroke. What is complete loss of thermoregulatory
11:11:24 21 control. You cannot have fever at 109. That's not fever.
11:11:28 22 Q. What is that?
11:11:29 23 A. Heat stroke.
11:11:31 24 Q. And you're saying it's not possible to have heat
11:11:33 25 stroke in an air-conditioned bed?

11:11:37 1 A. It's not possible to die of heat stroke caused by the
11:11:44 2 environment if there's no heat in the place. If there's
11:11:47 3 no heat, you can't have heat stroke.
11:11:52 4 Q. Can inmates die of elevated body temperatures?
11:11:56 5 A. So excuse me for moderating that. If I let somebody
11:12:00 6 have seizures endlessly in front of me in this room, that
11:12:07 7 person can drive their temperature high. They'll be dying
11:12:11 8 and their brain will be dying because they're having
11:12:14 9 seizures and their temperature will go high. As it was
11:12:18 10 stated in the autopsy of the person who had a seizure who
11:12:22 11 was not taking the Dilantin prescribed, it was not found,
11:12:27 12 as the medical examiner said, it would be extremely
11:12:30 13 unlikely that seizure would cause this temperature. She
11:12:33 14 or he, the medical examiner said that.
11:12:40 15 Q. Are there other health conditions where the risk
11:12:44 16 cannot be eliminated to zero?
11:12:49 17 A. I don't understand that question.
11:12:51 18 Q. Do you assess every patient with a goal that might --
11:12:55 19 the risk of a negative outcome is zero or should be zero
11:13:01 20 percent?
11:13:03 21 A. Well, if you don't smoke, you can't die of a
11:13:09 22 smoking-related disease. If you don't drive drunk, you
11:13:11 23 can't die of drunk driving, your own drunk driving. So
11:13:17 24 those are examples of where if it doesn't exist, you can't
11:13:20 25 die of it. So I don't really know -- I don't understand

11:13:25 1 maybe because I'm a doctor and you're a lawyer, I don't
11:13:28 2 really understand this hypothetical question that you're
11:13:32 3 asking me.
11:13:32 4 Q. I'll ask a real question then. You've testified that
11:13:35 5 you reviewed Bernie Tiede's medical records; is that
11:13:40 6 correct?
11:13:40 7 A. I did.
11:13:41 8 Q. Are you aware that Mr. Tiede has diabetes?
11:13:44 9 A. I said I was.
11:13:45 10 Q. Are you aware that Mr. Tiede has only been treated
11:13:48 11 with insulin in the last, I'll say, 10 years?
11:13:53 12 A. I'm aware that Mr. Tiede's -- I'm pretty much sure
11:13:56 13 that he was the one who has the hemoglobin A1C of 5.7 is
11:14:00 14 no longer -- I think that -- what was your question? Has
11:14:04 15 he been treated for the last 10 years? No, I don't know.
11:14:09 16 I did review his medical record but I didn't take special
11:14:11 17 note of that. I saw insulin -- I saw metformin listed and
11:14:14 18 I saw insulin but I don't know what time periods those are
11:14:18 19 prescribed for him.
11:14:19 20 Q. Did you gather from Mr. Tiede's medical records that
11:14:22 21 his diabetes is still largely uncontrolled?
11:14:28 22 A. I'm going to look at my notes on Mr. Tiede.
11:14:31 23 Q. That's fine.
11:14:41 24 A. No, I did not gather that.
11:14:46 25 Q. Do you have any reason to dispute the medical

11:14:48 1 providers in those documents that note that his diabetes
11:14:51 2 has been uncontrolled with insulin?
11:14:53 3 A. I have no -- I have not examined him and I have no
11:14:57 4 reason to dispute the medical providers.
11:15:00 5 Q. Are you aware that Mr. Tiede also has high blood
11:15:04 6 pressure?
11:15:04 7 A. Yes.
11:15:04 8 Q. Are you aware that Mr. Tiede also has high
11:15:07 9 cholesterol?
11:15:09 10 A. I am aware that he has.
11:15:12 11 Q. Or hyperlipidemia?
11:15:14 12 A. Yeah, that's different but yes. Hyperlipidemia is
11:15:17 13 what he has.
11:15:18 14 Q. Okay. That's more of a I can't necessarily commit to
11:15:21 15 pronouncing that correctly every time. But you're aware
11:15:24 16 that he has diabetes, high blood pressure, and
11:15:27 17 hyperlipidemia, correct?
11:15:28 18 A. Yes.
11:15:29 19 Q. Have you heard of a triple threat when it comes to
11:15:34 20 your likelihood of suffering a stroke?
11:15:39 21 A. That's not a medical term that I know.
11:15:41 22 Q. Are people that have diabetes, high blood pressure
11:15:45 23 and hyperlipidemia, are they more at risk of stroke than,
11:15:49 24 say, a healthy able-bodied person?
11:15:52 25 A. Yes.

11:15:52 1 Q. Why is that?
11:15:53 2 A. Because they have hyperlipidemia, hypertension, and
11:15:57 3 what else you said, whatever you said, all those things
11:15:59 4 together make you more likely to have a stroke. The
11:16:02 5 things -- there are two kinds of strokes. Some are
11:16:06 6 breeding strokes that might be the fragility of the
11:16:09 7 vasculature. But the main thing is that strokes, most of
11:16:13 8 them are what are called ischemic, which there's a
11:16:16 9 blockage of the artery or a lack of blood flow. And if
11:16:20 10 you have high lipids uncontrolled, you may develop
11:16:24 11 atherosclerosis, which is fat lining the vessels so the
11:16:29 12 blood doesn't get through as well. If you have
11:16:32 13 hypertension, it may cause hardening of the arteries. And
11:16:36 14 so, all of those things -- and diabetes, I already said,
11:16:39 15 is a microvascular disease.
11:16:41 16 Q. If you had a patient in your clinic or at the
11:16:47 17 hospital now that came to you and presented with diabetes,
11:16:51 18 high blood pressure, and hyperlipidemia, would you advise
11:16:55 19 them that they are at risk of having a stroke?
11:16:59 20 A. Yes.
11:16:59 21 Q. Is their risk of having a stroke zero?
11:17:05 22 A. Is that patient you just talked about the risk of
11:17:08 23 having a stroke, no.
11:17:09 24 Q. Yes.
11:17:09 25 A. No. Nobody has zero risk of having a stroke unless

11:17:13 1 they're dead.
11:17:14 2 Q. No one is a zero risk of having a stroke?
11:17:17 3 A. What I'm saying is everybody could have a stroke. A
11:17:20 4 young healthy person could have a stroke. We see that.
11:17:23 5 Old obese people with hypertension could have a stroke.
11:17:28 6 Yeah.
11:17:28 7 Q. So what level of risk is acceptable to manage?
11:17:33 8 A. In what circumstances?
11:17:36 9 Q. What level of risk do you as a physician see as
11:17:39 10 acceptable if you have a patient that has high blood
11:17:43 11 pressure, diabetes and hyperlipidemia?
11:17:46 12 A. I mean, you know, I'm sorry, the question just
11:17:49 13 doesn't -- I can't answer your question. I guess I don't
11:17:52 14 understand what you're driving at. Maybe you could ask it
11:17:55 15 in a different way.
11:17:56 16 Q. You've testified that there's no way he could be at
11:17:58 17 zero percent risk of a stroke, but how do we ensure that
11:18:02 18 he's not at a hundred percent risk of stroke? At what
11:18:05 19 level of risk do you find acceptable?
11:18:07 20 A. I don't have -- I don't think like that. Nobody
11:18:09 21 thinks like that.
11:18:11 22 Q. So how do you treat Mr. Tiede if you were his
11:18:14 23 physician?
11:18:16 24 A. Well, the way that physicians treat people with
11:18:21 25 obesity is to recommend weight loss. These days, they

11:18:27 1 have a class of drugs that can specifically address
11:18:31 2 obesity to make it easier to lose weight. There are
11:18:36 3 operations that can help with -- operations like gastric
11:18:38 4 bypass, those kinds of things. We control diabetes with
11:18:43 5 medications. We control hypertension and we recommend
11:18:50 6 exercise. So these lifestyle modifications, as you can
11:18:53 7 see, looking around the room and looking at myself, they
11:18:55 8 don't always work so well, right?
11:18:58 9 And 50 percent of Americans, there's a lot of
11:19:02 10 obesity, a lot of diabetes, it's going up all the time.
11:19:06 11 So I would recommend lifestyle modifications. I would
11:19:11 12 help with medications that we know have or procedures that
11:19:15 13 we now have and that's what we do as physicians.
11:19:22 14 Q. And I think you brought up a good point. In America,
11:19:25 15 we face a lot of epidemics when it comes to health
11:19:28 16 statuses of individuals. So is it possible that we really
11:19:32 17 can't eliminate risk to zero percent of every health
11:19:37 18 concern?
11:19:38 19 A. You know, I think we're talking about air
11:19:40 20 conditioning in the prisons here, so the answer is you air
11:19:43 21 condition the prison and the risk of dying of heat stroke
11:19:46 22 due to environmental temperatures is eliminated.
11:19:49 23 Q. Does it eliminate the risk of stroke to zero percent?
11:19:54 24 A. Nothing. If you're alive, you could have a stroke.
11:19:59 25 If you're alive, you and I could have a stroke right now.

11:20:02 1 I could turn suddenly and have a stroke from turning my
11:20:06 2 carotid artery, I could bleed. We could all have a stroke
11:20:08 3 in this room right now. We don't know.
11:20:10 4 Q. I'm interpreting that answer as no. We cannot
11:20:12 5 eliminate the risk toe zero percent?
11:20:14 6 A. Of having a stroke?
11:20:15 7 Q. Uh-huh.
11:20:16 8 A. This has got nothing to do with heat stroke. You're
11:20:19 9 using heat stroke different than heat stroke, right?
11:20:22 10 Q. Did Mr. Tiede have a heat stroke in June of last
11:20:25 11 year?
11:20:26 12 A. No.
11:20:27 13 Q. Okay. Earlier, we talked about dunking people in an
11:20:33 14 ice bath. That's something y'all do at Bellevue. Is the
11:20:37 15 goal of that to lower the body temperature?
11:20:38 16 A. Yes.
11:20:40 17 Q. Does drinking ice water lower the body temperature?
11:20:44 18 A. Not predictably.
11:20:45 19 Q. But does it lower it at any point?
11:20:47 20 A. Remember those days where it doesn't -- where we used
11:20:51 21 to tell people not to drink cold water outside playing? I
11:20:55 22 played tennis for the University of Texas. Don't drink
11:20:58 23 cold water. But drinking cold water, one way that we can
11:21:01 24 bring the temperature down is to put liters and liters of
11:21:04 25 cold water into the stomach and then, pump it out, you

11:21:08 1 know, let it go in and out and we try to do a rewarming --
11:21:12 2 cooling in that way.
11:21:14 3 Q. Does a cold shower lower body temperatures?
11:21:17 4 A. No. The evaporative cooling does. So what happens
11:21:21 5 is -- well, I mean, it depends how cold it is, right? If
11:21:24 6 it's 55 degrees, 55 degrees is how some athletes will get
11:21:30 7 into an ice tub after working out because it decreases
11:21:34 8 their lactic acid and it cools them and is an
11:21:38 9 antiinflammatory.
11:21:39 10 So it depends in the shower, the conditions of
11:21:42 11 the pool, but the most important thing is that showers
11:21:46 12 work while you're wet and while you're evaporating. It's
11:21:51 13 like when you go swimming on a hot hundred-degree day,
11:21:54 14 when I first get out of the pool, I feel pretty good and
11:21:56 15 I'm ready to get back in the pool because it's getting hot
11:22:00 16 because of my evaporative cooling has already stopped.
11:22:03 17 I'm dry. That's how it works. As long as I have my wet
11:22:07 18 clothes on, I go in the air conditioning, I'm still cold.
11:22:09 19 But as soon as you're dry after that shower, you are no
11:22:13 20 longer being cooled by that shower.
11:22:22 21 Q. We talked earlier about your testimony in heat
11:22:26 22 litigation against other states, specifically,
11:22:27 23 Mississippi; is that correct?
11:22:29 24 A. You reminded me that I was in Mississippi.
11:22:34 25 Q. It was significant to me just because I'm born and

11:22:36 1 raised in Mississippi and I found it interesting. But I
11:22:42 2 wanted to talk to you about some of the opinions you may
11:22:44 3 have given then. I understand it was 2002; is that
11:22:48 4 correct?
11:22:48 5 A. I don't know what year but it was about in the last
11:22:51 6 20 years or so. Twenty-two years. If you told me that,
11:22:54 7 it's probably right.
11:22:55 8 Q. Do you remember your opinion in that case?
11:22:58 9 A. Yes. Somewhat. Well, one opinion -- I had several
11:23:11 10 opinions. Would you like to ask me about one of my
11:23:14 11 opinions?
11:23:14 12 Q. I believe one of them that I think echos kind of what
11:23:18 13 you're saying today is an individual free to respond to
11:23:21 14 the stress created by a hot environment would normally
11:23:24 15 take steps to cool his body. If no air conditioning were
11:23:27 16 available, he would at least respond by seeking a cooler
11:23:30 17 location, blocking out radiant heat from the sun by
11:23:33 18 positioning himself in the shade or screening him from the
11:23:36 19 sun. Maximizing evaporation by wetting his body and
11:23:40 20 clothes with water and using fans to create
11:23:43 21 cross-ventilation and moving away from physical structures
11:23:46 22 which absorb and radiate heat. Your next sentence was
11:23:50 23 none of these natural survival response to excessive heat
11:23:53 24 are available to death row prisoners.
11:23:56 25 Dr. Vassallo, my question for you is do you know

11:23:58 1 if these remedies are available to inmates at TDCJ?
11:24:00 2 A. I do know.
11:24:01 3 Q. You do know?
11:24:02 4 A. I do know. So let's go one-by-one. First of all,
11:24:06 5 they're not free so they are not free whereas what you
11:24:10 6 just talked about -- and I thought that was a pretty good
11:24:13 7 answer in Mississippi 21 years ago. So free people can
11:24:16 8 take certain actions. Free people that I was -- those
11:24:20 9 actions will make a difference. But now we have a prison
11:24:25 10 situation where they may or may not be able or be given
11:24:30 11 those options of going into the shade, getting around from
11:24:34 12 walls that are hot, and all the other things you just
11:24:38 13 listed which you can go through.
11:24:40 14 Q. Do you understand that your testimony in that case
11:24:42 15 was about death row prisoners?
11:24:48 16 A. If you're telling me that's the testimony I gave in
11:24:51 17 the death row at Parchman, then it was about the
11:24:54 18 conditions of confinement on death row in Parchman.
11:24:58 19 Q. And do you understand that this litigation is about
11:25:00 20 all inmates across the state of Texas, regardless of
11:25:03 21 custody level?
11:25:04 22 A. Yes.
11:25:05 23 Q. When you were at Pack, did you see inmates moving
11:25:10 24 freely?
11:25:11 25 A. Well, you know, they're in prison so the answer is I

11:25:15 1 saw inmates in prison. That was a prison.
11:25:17 2 Q. Well, I'm not asking you did you see inmates walking
11:25:20 3 to the gas station. Were they able to walk down the
11:25:23 4 hallway if they wanted to unsupervised, out of chains?
11:25:29 5 A. Sometimes. I'm sure that sometimes some of them
11:25:33 6 could do that and sometimes they can't.
11:25:38 7 Q. Another quote in your report from the Mississippi is
11:25:42 8 all inmates whose medical condition or age as discussed
11:25:45 9 above put them at especially high risk for heat-related
11:25:49 10 illness should be housed in a cool environment whenever
11:25:52 11 the ambient air temperature or heat index exceeds 88
11:25:56 12 degrees. During a heat wave, air conditioning is not a
11:25:59 13 luxury but a lifesaver, especially for individuals at
11:26:02 14 heightened risk for heat-related illness.
11:26:04 15 This is me asking you now. Why do you believe
11:26:07 16 now that all inmates, regardless of medical condition or
11:26:11 17 age, are at high risk for heat-related illness?
11:26:15 18 A. What did I say at that time?
11:26:19 19 Q. I'll read it again. You said all inmates whose
11:26:22 20 medical condition or age puts them at especially high-risk
11:26:27 21 or heat-related illness should be housed in a cool
11:26:30 22 environment whenever the ambient air temperature or the
11:26:33 23 heat index exceeds 88 degrees.
11:26:36 24 A. That's true. That's what I've been saying all day.
11:26:39 25 The sicker you are, the older you are, the more risk you

11:26:41 1 are and you should be housed in a cool environment. That
11:26:44 2 doesn't mean that I didn't speak to young people. Doc
11:26:50 3 Parchman really didn't have -- first of all, Parchman was
11:26:53 4 mostly old folks so I didn't speak specifically to the
11:26:57 5 young people. I wasn't asked -- that sentence is not
11:27:00 6 responding to young people.
11:27:03 7 Q. One of the next things you said is short of providing
11:27:07 8 air conditioning, which should be viewed as a medical
11:27:10 9 necessity for inmates at especially high risk for heat
11:27:13 10 stroke, all other inmates must be provided other means for
11:27:15 11 cooling their bodies whenever the temperature or heat
11:27:18 12 index exceeds 88 degrees. They must access showers at
11:27:22 13 least once a day. The CDC recommends frequent cool
11:27:28 14 showers if exposure to heat cannot be avoided. They must
11:27:30 15 be provided an ample supply of drinking water at all times
11:27:32 16 when the weather becomes extremely hot and humid. The
11:27:34 17 inmates should be provided ice several times a day.
11:27:38 18 Why is it your testimony now that that isn't
11:27:40 19 enough for other inmates who are not at a medical
11:27:43 20 condition or age that puts them at especially high risk?
11:27:45 21 A. You know, in the last 25 years or whatever number --
11:27:51 22 today's '24 so in last 24 or 23 years, my thinking on this
11:27:55 23 has evolved. One of the reasons it's evolved is because
11:27:58 24 we have more literature that shows that taking frequent
11:28:04 25 showers doesn't help. And that as a monitor of the New

11:28:10 1 Orleans jails, as the monitor in the Sacramento jails, as
11:28:14 2 the investigator physician for the LA Sheriff's Department
11:28:18 3 jails, Riverside County California, and the Charleston
11:28:21 4 Federal Department of Justice, what I also know is that
11:28:25 5 these things are not being done in those sites reliably,
11:28:31 6 the kind of reliability where somebody's life is on the
11:28:34 7 line.
11:28:34 8 So because we have custody shortages, because we
11:28:37 9 have lack of sufficient staffing, because we have -- and
11:28:45 10 because we have -- we can't rely on access to a shower, as
11:28:55 11 a matter of fact, as you know, on one of the cases we were
11:28:57 12 on earlier, somebody was told they didn't need a shower.
11:28:59 13 He asked for a shower, he didn't get a shower. So this --
11:29:03 14 we can't have -- over the last 20-something years, my
11:29:08 15 thinking about showers and the literature and certainly
11:29:11 16 fans is clearly the CDC is recommending against relying on
11:29:18 17 fans to save lives and that has also come out in the last
11:29:22 18 23 years. Was there another thing?
11:29:25 19 Q. I think you've covered them. So is it my
11:29:29 20 understanding if they were able to access these things,
11:29:31 21 that would be sufficient, but it's not insufficient that
11:29:36 22 some people are able to mitigate heat without.
11:29:40 23 A. I don't understand your question. However, the
11:29:47 24 danger is the heat. Until you get rid of the heat, people
11:29:50 25 are going to die and their conditions are going to get

11:29:53 1 worse. That's my answer to your question, although I
11:29:56 2 don't totally understand the question.
11:29:58 3 Q. Okay. I want to talk briefly about those autopsies
11:30:35 4 you discussed with plaintiffs' counsel, Dr. Vassallo. And
11:30:41 5 I know I've already mentioned that they received over 200
11:30:44 6 autopsies from us. Do you know why it is that you only
11:30:47 7 reviewed those -- I think was it eight? How many did you
11:30:50 8 review?
11:30:55 9 A. We presented five today.
11:30:59 10 Q. Do you know why you only reviewed five?
11:31:01 11 A. No. I know three of them had heat strokes so I
11:31:05 12 reviewed three of the heat strokes. And then, I reviewed
11:31:09 13 a couple that Ms. Hagerty, who was obese with diabetes and
11:31:16 14 asthma and didn't have a temperature taken and somebody
11:31:18 15 who was -- and Southards. I don't know.
11:31:25 16 Q. Are you a medical examiner, Dr. Vassallo?
11:31:27 17 A. No. I'm trying to stay away from that in my
11:31:31 18 profession.
11:31:31 19 Q. Me, too. That's my goal.
11:31:34 20 A. We're supposed to save lives, not to knock them off.
11:31:37 21 Q. Have you ever performed an autopsy?
11:31:40 22 A. No. I've only been in a room where autopsies -- we
11:31:43 23 have a close relationship with the medical examiner in New
11:31:46 24 York City as toxicologists. No. I have never performed
11:31:49 25 an autopsy and I hope I never do.

11:31:52 1 Q. In your review of the five autopsies, do you know who
11:31:55 2 was performing these autopsies for TDCJ?
11:31:58 3 A. Yes.
11:32:00 4 Q. Are they TDCJ employees?
11:32:02 5 A. The University of Texas Medical Branch at Galveston,
11:32:07 6 UTMB is Galveston.
11:32:09 7 Q. Do you have any reason to doubt their findings or
11:32:11 8 their professional accolades as certified medical
11:32:16 9 examiners?
11:32:17 10 A. It's two different things. I have no reason to doubt
11:32:20 11 that they're medical examiners certified, but the findings
11:32:28 12 when you talk to the physical, pathological, or even the
11:32:32 13 toxicology here, I have no reason to doubt. But how they
11:32:35 14 put a case together, how they put the clinical when the
11:32:41 15 patient was alive, what happened is more my purview.
11:32:48 16 Because they take care of dead people and I take care of
11:32:51 17 alive people. I have no reason to doubt their expertise
11:32:55 18 as with dead people.
11:32:57 19 Q. So when you're taking care of alive people and you're
11:33:00 20 seeing someone who may have a collection of diagnoses, are
11:33:05 21 you able to determine, oh, well, this is what's going to
11:33:08 22 kill them?
11:33:10 23 A. In some cases, yes. In some cases, no.
11:33:14 24 Q. Do you know what training medical examiners go
11:33:17 25 through?

11:33:18 1 A. Yes. I think these might be -- they went through
11:33:24 2 pathology and then, often they'll do a forensic
11:33:28 3 fellowship. That's what we do at NYU and New York City.
11:33:35 4 Q. I know you disagree with the findings, but would you
11:33:37 5 agree that the cause of death listed on those autopsies is
11:33:41 6 not caused by heat?
11:33:43 7 A. I do not agree with the statement you just made.
11:33:46 8 Q. Do the cause of death state heat?
11:33:49 9 A. Well, we need to go true each one individually, every
11:33:53 10 one of those, or we can go through them individually,
11:33:56 11 there was a heat as a contributing factor and if it wasn't
11:34:01 12 heat as a contributing factor in Benadryl, in the Benadryl
11:34:06 13 case where they had hot environmental temperatures, those
11:34:09 14 were mentioned, the fact that Benadryl is a -- makes sweat
11:34:19 15 glands not function, I don't remember that being
11:34:25 16 mentioned. The fact that he was hot to the touch and
11:34:27 17 sweating as -- sweating inconsistent with Benadryl, I know
11:34:32 18 that wasn't mentioned because they wouldn't know that or
11:34:35 19 necessarily consider that because they don't take care of
11:34:38 20 Benadryl overdoses until they're dead.
11:34:40 21 Q. I believe it was Ms. Hagerty's autopsy that stated
11:34:43 22 that was one of the three specifically pointed out by
11:34:47 23 plaintiffs' counsel. Did you review her medical record
11:34:50 24 and see that she had COVID?
11:34:52 25 A. I said she had COVID earlier today.

11:34:55 1 Q. If you were treating her as an alive patient and she
11:34:58 2 had COVID, you have said she's going to die of heat?
11:35:04 3 A. In these conditions? Look, what I know as a
11:35:08 4 physician, like a lot of physicians know this who take
11:35:10 5 care of real people, is that when you're sick and your
11:35:14 6 temperature maybe starts at 102 because you're sick and
11:35:17 7 you get out and exercise, you're that much closer to heat
11:35:20 8 stroke, right? So what we know from many studies is
11:35:25 9 people with viral illnesses who get themselves dehydrated
11:35:28 10 from nausea and vomiting and hyponitremia and all the
11:35:32 11 things that she has, you put her in a hot environment,
11:35:36 12 she's more likely to die.
11:35:37 13 Q. She's more likely to die.
11:35:38 14 A. Well, I mean, it's bad for you. Would you get COVID
11:35:42 15 with 102 fever or anything and go sit in the conditions
11:35:46 16 she was sitting in? She should be sent -- maybe she would
11:35:49 17 be sent to the infirmary. I don't really know what you're
11:35:54 18 asking. It's common sense that if you had COVID and you
11:35:57 19 have dehydration and nausea and vomiting for two days, you
11:36:01 20 don't stick yourself in a room where cell temperature is
11:36:11 21 95.7.
11:36:12 22 Q. And I think we've already covered this, but you were
11:36:15 23 not able to review, I think, about half of the 200-plus
11:36:19 24 autopsies they requested where the inmates died in AC
11:36:22 25 housing; is that correct?

11:36:25 1 A. That's true.
11:36:26 2 Q. Thank you.
11:36:34 3 MR. SINGLEY: Just a few additional questions.
11:36:35 4 THE COURT: I have a couple, if you don't mind.
11:36:36 5 MR. SINGLEY: I'm sorry. Of course, your Honor.
11:36:38 6 THE COURT: So, Dr. Vassallo, on the issue of
11:36:41 7 expertise, do pathologists and medical examiners ever
11:36:43 8 consult toxicologists in the performance of their duties?
11:36:48 9 THE WITNESS: Yes. Your Honor, two things
11:36:51 10 happen. I get calls from medical examiners sometimes
11:36:54 11 asking what happened clinically. And these medical
11:36:57 12 examiners did that, too. They went to the OIG or somebody
11:37:03 13 and looked at the reports, what were the circumstances of
11:37:05 14 the deaths. As you know, all that background information
11:37:08 15 was obtained from someone and they did on, for example,
11:37:13 16 Ms. Hagerty that she had two days of vomiting and so
11:37:16 17 forth. All that background information was obtained
11:37:18 18 outside of their autopsy room.
11:37:22 19 And as toxicologists, we will get calls of about
11:37:27 20 -- we will get calls about circumstances. We have monthly
11:37:31 21 meetings where the medical examiners will come to us and
11:37:35 22 usually they ask us about levels, toxicity, clinical
11:37:39 23 syndromes, and then, we ask them, as well. This is what
11:37:43 24 we think, what was the concentration of this drug in the
11:37:48 25 heart, in the femoral and the vitreous, and how could we

11:37:54 1 put this together clinically. So there's a good
11:37:58 2 conversation between the medical examiner on First Avenue
11:38:01 3 and Bellevue on First Avenue NYU.
11:38:05 4 THE COURT: Another question I have is that if
11:38:09 5 having reviewed one of the plaintiff's medical records
11:38:12 6 here, Mr. Tiede, if the application of a heat score, so
11:38:18 7 called, to him resulted in a determination that his
11:38:24 8 condition or combination of conditions did not warrant
11:38:28 9 housing him in an air-conditioned facility, would you have
11:38:34 10 any confidence in the legitimacy or the adequacy of such a
11:38:39 11 heat score?
11:38:41 12 THE WITNESS: No. I mean, that was one of the
11:38:45 13 points I was trying to make earlier, your Honor. I can
11:38:51 14 form a heat score. I can write one right now where nobody
11:38:55 15 will ever be at risk. So clearly, I would have no
11:39:03 16 confidence in a score that resulted in this obese,
11:39:08 17 diabetic, hypertensive on all those medications that he's
11:39:11 18 taking, including duloxetine, which is an SSRI for mental
11:39:17 19 illness would result in him not -- his score is such that
11:39:22 20 he should be in air conditioning. No confidence.
11:39:24 21 THE COURT: Okay.
11:39:28 22 RE-DIRECT EXAMINATION
11:39:28 23 BY MR. SINGLEY:
11:39:31 24 Q. Would you put up the Skarha study. Doctor, you
11:39:37 25 recall my opposing counsel discussing table 1 in the

11:39:40 1 Skarha study with you and there was the whole issue of
11:39:44 2 comparing some numbers?
11:39:45 3 A. Yes.
11:39:45 4 Q. With the suggestion that there was a difference of .5
11:39:48 5 percent in mortality rates between men. Do you recall
11:39:53 6 that?
11:39:53 7 A. Yes.
11:39:54 8 Q. Now, a lot of studies, one of the early tables
11:40:11 9 they'll do is just the demographics of the people involved
11:40:14 10 before they get to assessing risks, right?
11:40:15 11 A. Right.
11:40:16 12 Q. And so, we see that the title of table 1 is
11:40:20 13 Population Characteristics of Decedents in Texas State and
11:40:25 14 Private Prison Facilities From 2001 to 2019 During Warm
11:40:28 15 Months By AC Status of Prisons. So we're doing population
11:40:32 16 characteristics here, right?
11:40:33 17 A. Right.
11:40:33 18 Q. It's not a risk table, is it?
11:40:34 19 A. No.
11:40:35 20 Q. And let's look a little bit closer. There's two
11:40:38 21 columns. First of all, we're doing mortality in prisons,
11:40:41 22 the number of people and then, paren percent, right?
11:40:45 23 A. Correct.
11:40:46 24 Q. So the people in AC, the N is 1,381. So what this
11:40:52 25 tells you is in that period, that number of people died in

11:40:55 1 prisons with AC, 1,381, right?
11:40:59 2 A. I don't see that number.
11:41:00 3 Q. Do you see mortality in prisons?
11:41:03 4 A. Yes. Yes.
11:41:05 5 Q. And then, below it, they slice and dice different
11:41:10 6 characteristics, they got race, they got age, time served,
11:41:13 7 but the first one is sex, right?
11:41:15 8 A. Yes.
11:41:15 9 Q. Male and female, right?
11:41:17 10 A. Yes.
11:41:19 11 Q. And up above it says mortality in prisons, the number
11:41:23 12 and then percentage. So we see female, 54 people, 3.9
11:41:30 13 percent of the 1,381, right?
11:41:32 14 A. Right.
11:41:34 15 Q. And then, what the male percentage, 96.1 isn't some
11:41:39 16 sort of mortality rate or risk rate, is it? 1,327 is 96.1
11:41:45 17 percent of 1,381, right?
11:41:48 18 A. I should have spent more time on this table.
11:41:50 19 Q. I just want to make sure we cleared up any possible
11:41:53 20 misconception. And so, if you add 1327 to 54, we get
11:41:58 21 1,381, so we're just doing how many people and percentage
11:42:01 22 of male and female, right?
11:42:02 23 A. That's right.
11:42:03 24 Q. And really, when we look at what the risk factor is,
11:42:07 25 I think we discussed this earlier, but their conclusion

11:42:10 1 and relevance is no heat deaths in air-conditioned housing
11:42:14 2 and an average of 14 per year of heat deaths in
11:42:19 3 un-air-conditioned housing.
11:42:20 4 A. That's correct.
11:42:21 5 Q. There's the risk dimension, right?
11:42:24 6 A. Yes.
11:42:24 7 Q. Let me ask you, Doctor, are all inmates in TDCJ, all
11:42:30 8 of them young and healthy, vulnerable, anyone at a
11:42:34 9 substantial risk of serious harm due to the summer heat in
11:42:39 10 un-air-conditioned housing in TDCJ facilities?
11:42:42 11 A. Yes.
11:42:43 12 Q. Is there -- if TDCJ or Mr. Collier or their counsel
11:42:50 13 were to suggest that heat-scoring system can solve the
11:42:55 14 problem of those deaths, what would your response to that
11:42:57 15 be?
11:42:57 16 A. I think it's absurd.
11:43:05 17 Q. If all of the prisoners are not put in
11:43:09 18 air-conditioned housing, in your opinion, are the heat
11:43:11 19 deaths going to go on and on year by year?
11:43:14 20 A. Yes.
11:43:17 21 Q. Is the only way to stop the problem is to put every
11:43:20 22 single one of the TDCJ prisoners in air-conditioning
11:43:26 23 housing?
11:43:26 24 A. Yes.
11:43:27 25 Q. Housekeeping matters. My opposing counsel referred

11:43:27 1 to a couple of things during cross that I'd just like to
11:43:33 2 admit. On is Exhibit 3, which is one of the epidemiology
11:43:36 3 studies by Jones. I'd move to admit Plaintiffs' 3.
11:43:39 4 THE COURT: Any objection?
11:43:41 5 MS. CARTER: No objection.
11:43:41 6 THE COURT: So admitted.
11:43:42 7 MR. SINGLEY: And then, also, there was
11:43:44 8 substantial discussion with Dr. Vassallo of her
11:43:46 9 declaration so I'd move to admit her declaration,
11:43:49 10 Plaintiffs' Exhibit 113.
11:43:50 11 THE COURT: Objection?
11:43:52 12 MS. CARTER: No objection.
11:43:53 13 THE COURT: So admitted.
11:43:54 14 MR. SINGLEY: Thank you.
11:43:57 15 RE-CROSS EXAMINATION
11:43:57 16 BY MS. CARTER:
11:44:01 17 Q. Very briefly, your Honor. Dr. Vassallo, earlier when
11:44:05 18 we were talking before, I asked you if all inmates
11:44:09 19 suffered or were at risk of substantial risk of serious
11:44:12 20 harm or death due to heat and you were not able to tell me
11:44:16 21 yes. You just told your plaintiffs' counsel yes. What
11:44:21 22 was more clear about their question?
11:44:23 23 A. Well, he asked me --
11:44:25 24 MR. SINGLEY: I'll object to form that it
11:44:26 25 misstates her testimony --

11:44:27 1 A. He really asked the question clearly. Everybody's at
11:44:32 2 substantial risk of serious harm. Some people are at more
11:44:36 3 risk than others. The older and the sicker you are, if
11:44:40 4 you're young and you're very sick you could also be at
11:44:43 5 more substantial risk of serious harm than someone who's a
11:44:47 6 little older, 40. So where's the misunderstanding? I
11:44:53 7 think I've said the same thing. Honestly, you read me my
11:44:56 8 testimony from 21 years ago, it was almost word by word.
11:44:59 9 I almost didn't have to testify today. You could have
11:45:02 10 just read that. Nothing has changed in 20 years,
11:45:05 11 including my answer to him, this counselor, and to
11:45:10 12 yourself. Nothing has changed.
11:45:12 13 Q. (BY MS. CARTER) So what is a threshold for a
11:45:14 14 substantial risk then, Dr. Vassallo?
11:45:17 15 A. Well, it's a measurable and statistically and
11:45:22 16 impactful and meaningful because people die, so that's
11:45:27 17 substantial risk of serious harm. That's what it means
11:45:30 18 and that's what I can tell you.
11:45:32 19 Q. And where did you get that term of art "substantial
11:45:35 20 risk of serious harm"?
11:45:38 21 A. Is it a term of art? You're complimenting me?
11:45:42 22 Q. It's actually a legal term of art for the standard
11:45:44 23 deliberate difference. Did opposing counsel tell you that
11:45:47 24 term?
11:45:47 25 A. No. I've known what that is -- since my first case

11:45:51 1 ever when I knew nothing with the National Prison Project.
11:45:56 2 I was working in the emergency room and the doctors of the
11:45:58 3 world were giving a lecture when their residents were up
11:46:02 4 there, they came down and said, you know, we need somebody
11:46:05 5 to look at the conditions of confinement in Mississippi on
11:46:07 6 death row. Would you like to come? I said, I would like
11:46:10 7 that. I don't know anything about it. So I was working
11:46:13 8 with Margaret Winter, the associate director, and I
11:46:18 9 learned everything 21 years ago.
11:46:21 10 Q. So you learned that term through litigation; is that
11:46:24 11 correct?
11:46:24 12 A. No. I learned it because I was driving out from
11:46:30 13 wherever we landed to, Parchman, which you probably know
11:46:33 14 better than I do. It's hard to find, it's a long way out
11:46:34 15 like this big prison and she was -- I was like death row.
11:46:41 16 I mean, she said their sentence is death. Their sentence
11:46:45 17 is not unconstitutional heat or conditions. Their
11:46:53 18 sentence is death. Made a big impression on me because I
11:46:56 19 was from Texas and I didn't know about that stuff. And
11:47:00 20 so, the sentences -- and through those last 20-something
11:47:05 21 years since Mississippi when I went down there knowing
11:47:08 22 nothing, interacting with some of the smartest lawyers in
11:47:12 23 the country, I would say -- to me, they seemed smart -- I
11:47:18 24 learned and I like to read on those constitutional matters
11:47:21 25 myself.

11:47:22 1 So reading, being taught, learning and working, I
11:47:27 2 mean, it's like anything. Like I bet you, you know what
11:47:32 3 the difference between hyperthermia and heat stroke just
11:47:35 4 because you've been studying and we've talked about it so
11:47:38 5 much today.
11:47:39 6 Q. Did you testify in the Ball case, Dr. Vassallo?
11:47:42 7 A. Which one was that? I would think so.
11:47:43 8 Q. I believe it's a Louisiana case.
11:47:45 9 A. Yes. Louisiana I have testified.
11:47:47 10 Q. And what was your opinion in that case?
11:47:50 11 A. Which opinion are you asking about?
11:47:53 12 Q. About whether or not heat mitigations will mitigate
11:47:59 13 heat to a point where it's not a constitutional violation.
11:48:02 14 A. Well, what was my opinion? You want to read it to
11:48:05 15 me? If you have any opinion, you can read it to me and I
11:48:11 16 will tell you if I agree with my own opinion, which I
11:48:13 17 always do.
11:48:15 18 Q. I believe you were testifying about the heat
11:48:17 19 mitigation measures at the Louisiana Department of
11:48:19 20 Corrections Institute and I'll represent to you that a lot
11:48:23 21 of them mirror Texas Department of Criminal Justice.
11:48:25 22 A. Uh-huh, inadequate.
11:48:26 23 Q. It's inaccurate?
11:48:27 24 A. Inadequate. See, people are still dying. Fourteen a
11:48:33 25 year die or more and so, the problem is that over the time

11:48:38 1 -- what we know is we get smarter every year, right?
11:48:41 2 That's the essence of science that it develops and
11:48:47 3 science, and we get smarter every year if we keep trying
11:48:51 4 to get smarter. And what we know now is that people are
11:48:55 5 dying in the Texas prison system because of the heat. So
11:49:04 6 that's my question -- that's my answer.
11:49:07 7 Q. Dr. Vassallo, I feel like we've answered this
11:49:10 8 question already, but are all people dying because of the
11:49:13 9 Texas heat?
11:49:16 10 A. Now, you just asked me if all people are dying from
11:49:20 11 the Texas heat.
11:49:21 12 Q. The people at the instance of this suit, are all TDCJ
11:49:24 13 inmates dying due to heat?
11:49:30 14 A. No.
11:49:30 15 Q. Do you know how many in the last 10 years?
11:49:36 16 A. Nobody knows. Nobody knows. I know when I looked at
11:49:41 17 2012, I think that year were like, I believe, 11 died of
11:49:46 18 heat stroke and then, we don't have -- there were years
11:49:49 19 where I haven't looked at it and we know that we are
11:49:52 20 underestimating -- every study and every report shows that
11:49:56 21 we're underestimating the people who are dying.
11:49:59 22 Q. Who is underestimating, Dr. Vassallo?
11:50:02 23 A. The epidemiology, according to the CDC and the MMWR,
11:50:10 24 shows that when you look at these studies of who dies and
11:50:16 25 who's affected, it is that there are many more people

11:50:22 1 affected by the heat than the reports report on because
11:50:30 2 most studies that address heat are looking at only at heat
11:50:36 3 stroke and are not looking -- and death from heat stroke,
11:50:39 4 for example, and are not looking at the worsening of
11:50:42 5 underlying conditions and medical illnesses.
11:50:45 6 Q. Okay. I actually do have the Ball testimony, Dr.
11:50:50 7 Vassallo, if you'd like me to read it to you?
11:50:52 8 MR. SINGLEY: Your Honor, if we're to continue
11:50:53 9 with this, I'm going to object that all testimony's really
11:50:56 10 outside the scope that we're here.
11:50:58 11 THE COURT: I'll allow.
11:51:00 12 MS. CARTER: I'll respond, it's entirely within
11:51:02 13 the scope considering what we've considered today.
11:51:04 14 Q. (BY MS. CARTER) This is from your trial testimony.
11:51:11 15 The question to you was, what do you think is necessary to
11:51:15 16 mitigate that risk? And your answer was okay, well, let
11:51:21 17 me -- one of my recommendations is that there should be
11:51:23 18 free access to ice. There could be provided ice in their
11:51:26 19 cells as a cooling measure. They could have an Igloo of
11:51:29 20 ice right in their cells. They don't need to be dependent
11:51:31 21 on outside people. And sometimes the machine will run
11:51:34 22 out. There doesn't need to be a limitation on ice. That
11:51:37 23 would be a very simple measure to take. There should be
11:51:40 24 cold showers available a couple of times a day. There
11:51:42 25 should be -- the idea that someone who declares an

11:51:45 1 emergency where a physician doesn't think it's an
11:51:47 2 emergency is penalized should be done away with. I think
11:51:55 3 there should be fans, understanding that there is at least
11:51:58 4 five or six articles in literature and major peer
11:52:01 5 reference journals that don't talk about fans being a
11:52:04 6 comfort measure but not protective when the temperature's
11:52:06 7 above 90 degrees. That's based on looking up who has the
11:52:09 8 fans going and who died. I think that it would be more
11:52:12 9 cooling -- that more cooling might be possible given the
11:52:15 10 water that's in those cells. And then, the towels, there
11:52:17 11 might be a more possibility for people to cool themselves
11:52:20 12 if they have the possibility of a fan blowing directly on
11:52:23 13 them.
11:52:25 14 So do you understand that you were testifying
11:52:27 15 about mitigation measures at the Louisiana Department of
11:52:31 16 Corrections?
11:52:31 17 A. You know what, what I'm saying today is that if you
11:52:33 18 have to hold somebody in these conditions and you give
11:52:36 19 them some showers, have never been shown to be helpful,
11:52:40 20 you blow a fan on them, which we now know is not helpful
11:52:45 21 but it is more comfortable, and I said that in that
11:52:47 22 testimony. If you give somebody something to drink,
11:52:51 23 mitigation is helpful. However, the numbers of people who
11:52:55 24 continue to die because of the danger of the heat is
11:52:58 25 continuous.

11:53:00 1 So are we going to get air conditioning on death
11:53:05 2 row in -- this is the Parchman? Was that the -- which
11:53:10 3 case am I on right now?
11:53:12 4 Q. This is the Elzie vs. LeBlanc.
11:53:15 5 A. Yes, LeBlanc is the Louisiana case so we were not
11:53:18 6 going to get air conditioning in the -- but today, as I
11:53:24 7 sit here, if you want to try to give somebody extra shower
11:53:30 8 and hope that there's a corrections officer who wants that
11:53:33 9 guy to get back in that shower when he took two already
11:53:36 10 that day because he's sitting in 113 degrees and his life
11:53:42 11 depends on it, that shower is going to fix him for about
11:53:46 12 10 minutes until he dries off.
11:53:49 13 And so, mitigation doesn't mean removal of the
11:53:54 14 danger of the heat. You're trying to do something and
11:53:57 15 people are dying. They continue to die. Their conditions
11:54:00 16 continues to get worse. So nothing is different today
11:54:04 17 than it ever was for 20 years. You give a guy a shower,
11:54:11 18 that doesn't -- as long as you don't lower the
11:54:12 19 temperature, you have not fixed the problem or the risk or
11:54:18 20 the fact that there are people dying, their conditions are
11:54:20 21 getting worse.
11:54:21 22 So my testimony is exactly the same today as it
11:54:25 23 was then. And if I could have ordered air conditioning
11:54:29 24 for people so that they don't die of heat like I just
11:54:35 25 said, their sentence with death, not by heat, okay? These

11:54:41 1 people in these prisons even if they have a death
11:54:43 2 sentence, it's not -- as far as I know. I defer to his
11:54:48 3 Honor -- it is not by heat. We have laws in this country
11:54:51 4 and we have -- and one of the reasons we do is that people
11:54:54 5 are not -- even if they're on death row, they're not dying
11:54:58 6 because of the heat. That is not the law and that is not
11:55:01 7 the way they're supposed to die. And certainly people
11:55:05 8 without a death penalty should not be at the risk of death
11:55:08 9 because Texas will not air condition and fix this danger.
11:55:16 10 Q. Dr. Vassallo, do you know if Louisiana ultimately
11:55:19 11 ended up air conditioning their prisons?
11:55:24 12 A. You know, I was out there -- they did not. They did
11:55:29 13 not. I do know and they did not.
11:55:33 14 MR. SINGLEY: Nothing further, your Honor.
11:55:34 15 THE COURT: Thank you, Doctor. You may step
11:55:35 16 down.
11:55:35 17 THE WITNESS: Thank you, your Honor.
11:55:36 18 THE COURT: And may this witness be released?
11:55:38 19 MR. SINGLEY: Yes, your Honor.
11:55:40 20 THE COURT: You're free to go. Thank you very
11:55:42 21 much.
11:55:42 22 THE WITNESS: Thank you.
11:55:43 23 THE COURT: Next witness.
11:55:46 24 MR. OLSEN: Your Honor, plaintiffs call Michele
11:55:49 25 Deitch.

11:56:11 1 MS. WARREN: Your Honor, we had filed an
11:56:12 2 objection to the testimony of Ms. Deitch for it not being
11:56:17 3 helpful and relevant as an expert mainly.
11:56:19 4 THE COURT: Would you like to be heard on that
11:56:21 5 briefly?
11:56:21 6 MS. WARREN: Yes, your Honor. I think my
11:56:27 7 colleague might be arguing it.
11:56:32 8 THE COURT: Tell you what, I will acknowledge the
11:56:35 9 objection and carry the objection and we'll resolve that
11:56:39 10 before I make a ruling on the case.
11:56:42 11 MS. WARREN: Yes, your Honor.
11:56:43 12 THE COURT: Before you're seated, could you
11:56:46 13 please raise your right hand to be sworn.
11:56:47 14 THE CLERK: You do solemnly swear or affirm that
11:56:47 15 the testimony which you may give in the case now before
11:56:47 16 the Court shall be the truth, the whole truth, and nothing
11:56:50 17 but the truth?
11:56:50 18 THE WITNESS: I do.
11:56:52 19 THE COURT: Please be seated.
11:56:55 20 MS. WARREN: Your Honor, just to be clear, the
11:56:56 21 objection is under 702.
11:56:58 22 THE COURT: Thank you.
11:56:59 23 MICHELE DEITCH, called by the Plaintiff, duly sworn.
11:56:59 24 DIRECT EXAMINATION
11:57:01 25 BY MR. OLSEN:

11:57:01 1 Q. Good morning, Ms. Deitch. What is your educational
11:57:04 2 background?
11:57:04 3 A. I am a lawyer by training. I also have Master's in
11:57:08 4 Psychology. I did my undergraduate at Amherst College and
11:57:12 5 I got my Master's in Psychology and Criminology at Oxford
11:57:16 6 University and law degree at Harvard Law School.
11:57:19 7 Q. And you served as a monitor for the Office of the
11:57:23 8 Special Master in the Ruiz case from 1987 to 1990; is that
11:57:29 9 right?
11:57:29 10 A. Yes, I did.
11:57:29 11 Q. And what was the Ruiz case?
11:57:31 12 A. The Ruiz case was a class action litigation. It was
11:57:36 13 a landmark case handled by federal District Judge William
11:57:41 14 Wayne Justice. It involved every aspect of conditions in
11:57:46 15 the Texas prison system. Not every aspect but a great
11:57:48 16 deal of conditions in the Texas prison system known as the
11:57:52 17 totality of conditions lawsuit. And there was a consent
11:57:57 18 decree in the case. The federal court set up an office
11:58:02 19 called the Office of the Special master with several
11:58:07 20 full-time monitors, including myself, who monitored
11:58:11 21 conditions in the prisons and reported back to the court
11:58:15 22 on what was happening. We were basically the eyes and
11:58:18 23 ears of the court.
11:58:19 24 Q. Who appointed you as monitor?
11:58:23 25 A. Judge Justice.

11:58:25 1 Q. And describe the work you did as a monitor.
11:58:27 2 A. Pretty much on a several times a week, I was going
11:58:32 3 into the prisons of the Texas prison system talking to
11:58:37 4 incarcerated people, talking to staff, making
11:58:40 5 observations, reviewing logs, basically assessing whether
11:58:44 6 or not the prisons were complying with the court orders.
11:58:48 7 Q. And after that, you were general counsel for the
11:58:54 8 Texas Senate Committee on Criminal Justice from '91 to
11:58:58 9 '93; is that right?
11:58:59 10 A. That's correct.
11:58:59 11 Q. And describe the work you did there.
11:59:01 12 A. As general counsel, I was responsible for handing all
11:59:06 13 bills that came to our committee, anything dealing with
11:59:10 14 criminal justice issues. That was also a time period when
11:59:13 15 Texas' prisons and jails were in a great deal of crisis
11:59:17 16 and there was a lot of discussion and debate about
11:59:21 17 expanding the size of the prison system and I was involved
11:59:23 18 in all of those negotiations and debates.
11:59:28 19 Q. From 2004 to 2007, you served on the American Bar
11:59:35 20 Association Criminal Justice Standards Task Force on the
11:59:39 21 treatment of prisoners; is that right?
11:59:41 22 A. Yes.
11:59:42 23 Q. Tell us about the task force and what you did as a
11:59:44 24 member of it.
11:59:45 25 A. Yes. I was what was called the reporter for the

11:59:48 1 committee, which meant that I was the draftsperson of the
11:59:51 2 standards. The ABA, the American Bar Association, had
11:59:56 3 standards at the time that were about 30 years old and
11:59:59 4 very outdated with regard to prisoners' rights and the ABA
12:00:03 5 set up this task force to revise those standards to bring
12:00:07 6 them into the modern day to make sure that they were
12:00:14 7 consistent with legal rulings and best practices and other
12:00:18 8 standards that exist.
12:00:20 9 So I was the draftsperson for these standards. I
12:00:23 10 would negotiate -- or not negotiate. I would meet with
12:00:26 11 the task force on a regular basis, get feedback about
12:00:29 12 those proposed standards until we come up with a set of
12:00:34 13 standards that was proposed to the ABA.
12:00:37 14 Q. And what is generally the purpose of those standards?
12:00:43 15 Who's the intended audience?
12:00:45 16 A. The intended audience is courts and policy makers,
12:00:50 17 corrections officials, advocates, and others. They are
12:00:54 18 not mandatory or binding in any way but they are meant to
12:00:59 19 be both aspirational and achievable. They are meant to
12:01:02 20 reflect best practices about the laws that affect the
12:01:09 21 treatment of prisoners.
12:01:11 22 Q. And do the standards address the topic of temperature
12:01:14 23 in prisons?
12:01:15 24 A. To some degree, yes, they do.
12:01:17 25 Q. How so?

12:01:17 1 A. It talks about the importance of having adequate or
12:01:24 2 that the physical environment of the facilities has to be
12:01:27 3 adequate to ensure the health and safety of people who are
12:01:30 4 incarcerated; and it also talks about the need to have
12:01:33 5 appropriate heating and ventilation systems.
12:01:37 6 Q. Now, in the '90s and early 2000, you served as an
12:01:42 7 independent consultant; is that right?
12:01:43 8 A. Yes.
12:01:44 9 Q. And what was the focus of your work?
12:01:46 10 A. I've worked on a pretty eclectic mix of projects all
12:01:50 11 over the country, typically working with corrections
12:01:52 12 agencies or policy makers or county commissioners, for
12:01:58 13 example, but usually dealing with issues affecting
12:02:01 14 conditions of confinement in prisons and jails.
12:02:05 15 Q. And in the course of your work, did you advise prison
12:02:11 16 administrators about conditions of confinement, best
12:02:13 17 practices, things like that?
12:02:15 18 A. Prison administrators and jail administrators, yes.
12:02:20 19 Q. Have you testified as an expert on Texas prison
12:02:23 20 conditions before?
12:02:24 21 A. Yes, I have.
12:02:28 22 Q. And tell us about that.
12:02:29 23 A. A few years ago, there were a couple of extradition
12:02:32 24 cases arising in the United Kingdom, one from England, one
12:02:37 25 from Scotland, and the question was whether or not the

12:02:42 1 defendants who were at that time housed in the U.K. would
12:02:45 2 be extradited to Texas and that discussion turned on
12:02:52 3 conditions of confinement in the facilities.
12:02:55 4 Q. What is your current occupation?
12:02:57 5 A. I am a distinguished senior lecturer at the
12:03:01 6 University of Texas with joint appointments at the LBJ,
12:03:04 7 the Lyndon B. Johnson School of Public Affairs and at the
12:03:07 8 U.T. School of Law. I also direct the Prison and Jail
12:03:11 9 Innovation Lab at the University of Texas.
12:03:14 10 Q. What is the mission of the Prison and Jail Innovation
12:03:18 11 Lab, I'll call it PJIL?
12:03:20 12 A. Yes. PJIL is a national policy resource center that
12:03:25 13 is focused on conditions of confinement and trying to
12:03:29 14 ensure the safe and humane treatment of people in custody.
12:03:33 15 Q. Do you teach any courses at U.T. relevant to prison
12:03:37 16 conditions and heat in prisons, specifically?
12:03:40 17 A. Yes, I do. One class that I've been teaching for 21
12:03:45 18 years is criminal justice policy corrections and
12:03:47 19 sentencing in which we have a significant portion of the
12:03:51 20 course that's focused on conditions of confinement and
12:03:54 21 management of prisons and jails. And the other course
12:03:57 22 that I teach is prisons and the environment. Taught that
12:04:02 23 this past year. We have -- that course is focused on the
12:04:06 24 environmental harms that affect people who are confined in
12:04:11 25 prisons and jails and there's a segment of that course

12:04:13 1 that is specifically focused on extreme temperatures in
12:04:17 2 prisons.
12:04:17 3 Q. And have you read and analyzed academic and
12:04:20 4 scientific literature on the issue of heat in prisons?
12:04:23 5 A. Yes, I have. I've had to curate that for assigning
12:04:26 6 it to my class.
12:04:27 7 Q. In the various roles we've been talking about that
12:04:29 8 you served in from serving as the monitor for the special
12:04:36 9 master, now running PJIL, have you spoken to prisoners,
12:04:42 10 prison administrators about how heat affects the
12:04:45 11 conditions of confinement?
12:04:48 12 A. These issues come up routinely in my conversations
12:04:50 13 with both administrators, with staff, with incarcerated
12:04:55 14 people.
12:04:57 15 Q. I'd ask the Court recognize Ms. Deitch as an expert
12:05:00 16 on the topic of prison conditions and prison policy.
12:05:04 17 MS. WARREN: Your Honor, we have an additional
12:05:06 18 objection. In addition to the 702 objection, I would
12:05:10 19 remind the Court even a public policy opinion from this
12:05:12 20 witness on a legal conclusion would be inappropriate and
12:05:16 21 improper under Fifth Circuit precedent. And under Rule
12:05:22 22 704, Ms. Deitch cannot give a legal conclusion and advise
12:05:25 23 the Court as to what legal decision to make in this case.
12:05:29 24 MR. OLSEN: And I'm not asking her to do that,
12:05:31 25 your Honor.

12:05:31 1 THE COURT: Okay. I'll acknowledge your
12:05:32 2 objection and I will recognize Professor Deitch as an
12:05:36 3 expert in her field.
12:05:38 4 Q. (BY MR. OLSEN) I want to discuss staffing in Texas
12:05:41 5 prisons. Are you familiar through your work about
12:05:44 6 staffing levels in Texas prisons?
12:05:46 7 A. Yes, I am.
12:05:47 8 Q. And how would you characterize those staffing levels
12:05:51 9 over the past several years and continuing into today?
12:05:54 10 MS. WARREN: Objection, your Honor. Improper
12:05:56 11 foundation.
12:05:57 12 THE COURT: Overruled.
12:05:59 13 A. Especially since the pandemic, the agency has been
12:06:03 14 dangerously understaffed. It's a problem that's
12:06:09 15 acknowledged by the agency, by policy makers and, frankly,
12:06:13 16 it's a national issue. It's not unique to Texas.
12:06:17 17 Q. (BY MR. OLSEN) And so, as you mentioned, TDCJ has
12:06:21 18 acknowledged that staffing levels in its prisons are a
12:06:26 19 major issue, right?
12:06:26 20 A. Yes, they are.
12:06:28 21 Q. Could someone put up 266. And, your Honor, 266 is a
12:06:45 22 self-evaluation report prepared by TDCJ, submitted to the
12:06:49 23 Sunset Advisory Commission, and I'd ask that it be moved
12:06:53 24 into evidence.
12:06:54 25 THE COURT: Any objection?

12:06:55 1 MS. WARREN: No objection.
12:06:55 2 THE COURT: So admitted.
12:06:57 3 Q. (BY MR. OLSEN) Ms. Deitch, before I talk about this,
12:07:10 4 what is the Texas Sunset Commission and do you know why
12:07:14 5 TDCJ submits reports to the commission?
12:07:16 6 A. The Sunset Commission is a legislative agency that
12:07:19 7 reviews every state agency typically on a 12-year cycle to
12:07:24 8 assess any necessary changes and to reauthorize its
12:07:29 9 existence.
12:07:30 10 Q. Okay. And so, what we have on Exhibit page 303,
12:07:48 11 essentially TDCJ was prompted to identify to the Sunset
12:07:51 12 Commission major issues that the commission could help
12:07:55 13 address through statutory changes to improve TDCJ's
12:08:00 14 operations and service delivery. Do you see that?
12:08:05 15 A. Yes.
12:08:06 16 Q. Okay. Could you go to the next page, please. And
12:08:12 17 the number-one issue identified by TDCJ was staffing,
12:08:17 18 hiring and retention. They said correctional officers
12:08:21 19 staffing is the agency's top priority and most significant
12:08:24 20 major issue. Do you see that?
12:08:26 21 A. Yes, I do.
12:08:27 22 Q. Okay. Are you aware that in April 2022, leadership
12:08:35 23 approved a 15 percent pay increase for correctional
12:08:39 24 officers?
12:08:39 25 A. Yes, I am.

12:08:40 1 Q. Has that improved, to your knowledge, the staffing
12:08:43 2 issues that TDCJ has confronted?
12:08:45 3 A. I think it has made an improvement but it is not
12:08:49 4 nearly where it needs to be and it's still very
12:08:53 5 dangerously understaffed.
12:08:54 6 Q. And so, what does that tell you? By that, I mean pay
12:08:57 7 increases not translating to sufficient levels of
12:09:00 8 staffing.
12:09:01 9 A. It's not just --
12:09:02 10 MS. WARREN: Objection, your Honor. Speculation
12:09:03 11 that requires Ms. Deitch to render an opinion based on
12:09:08 12 evidence that we haven't heard.
12:09:12 13 MR. OLSEN: Okay. I'll re-ask the question.
12:09:14 14 Q. (BY MR. OLSEN) Have you spoken to prison staff about
12:09:19 15 the reasons why they perhaps have stopped -- or former
12:09:26 16 prison staff about why they haven't continued working at
12:09:29 17 TDCJ?
12:09:30 18 A. On some occasions, yes.
12:09:32 19 Q. Okay. And are you familiar with the conditions on
12:09:39 20 un-air-conditioned Texas prisons?
12:09:41 21 A. Yes, I am.
12:09:43 22 Q. Have you visited un-air-conditioned Texas prisons?
12:09:47 23 A. Yes, I have.
12:09:48 24 Q. Could you describe those conditions that you
12:09:52 25 personally observed?

12:09:52 1 A. It's unbearable. And of course, I'm coming in from
12:09:55 2 the outside and I can leave when I'm done with my visit,
12:09:59 3 but it's sweltering, it's really unbearable inside those
12:10:07 4 facilities.
12:10:07 5 Q. And do you believe the heat, based on your
12:10:11 6 conversations, your experiences, contributes to the
12:10:15 7 staffing shortages we're seeing?
12:10:18 8 A. Working conditions really affect someone's desires to
12:10:21 9 work inside these facilities. The heat is contributing to
12:10:25 10 that. The fact that the heat leads to a more tense
12:10:30 11 environment between incarcerated people and staff that
12:10:33 12 creates a more dangerous environment for them, as well.
12:10:38 13 And the understaffing also builds on itself because the
12:10:43 14 fewer staff there are, the more dangerous the environment
12:10:46 15 becomes. And so, I would say the working conditions writ
12:10:50 16 large are a very big factor and the discomfort that people
12:10:55 17 experience when they're working in these facilities
12:10:57 18 absolutely plays a role.
12:10:59 19 Q. And to your knowledge, have correct -- TDCJ
12:11:03 20 corrections officer filed workers' compensation claims
12:11:07 21 against TDCJ stemming from injuries they've suffered from
12:11:10 22 the extreme heat?
12:11:11 23 A. Yes, they have.
12:11:19 24 Q. Could someone pull up Exhibit 1, please. Defendants'
12:11:32 25 Exhibit 1. Sorry. I'd move to admit Exhibit 1, TDCJ

12:11:45 1 Administrative Directive 1064.
12:11:48 2 MS. CARTER: Can we just make sure this is the
12:11:50 3 full one. We filed an amended one --
12:11:52 4 MR. OLSEN: It is. Yes. Well, at least on our
12:11:53 5 system it is.
12:12:06 6 MS. WARREN: And so, are you going to be
12:12:06 7 referencing 11 as the most current revision? Your Honor,
12:12:31 8 I believe this was produced in response to a question all
12:12:34 9 revisions so it's no one's fault.
12:12:35 10 THE COURT: Oh, no. That's fine.
12:12:45 11 MR. OLSEN: There we go. May 1, 2024 version.
12:12:49 12 THE COURT: Any objection?
12:12:52 13 MS. WARREN: No.
12:12:53 14 THE COURT: So admitted.
12:12:54 15 Q. (BY MR. OLSEN) Ms. Deitch, what is Defendants'
12:12:57 16 Exhibit 1?
12:12:57 17 A. It is the administrative directive regarding
12:13:00 18 excessive heat and extreme temperatures.
12:13:04 19 Q. Have you reviewed this version of Administrative
12:13:06 20 Directive 1064?
12:13:08 21 A. I believe it was this version.
12:13:11 22 Q. And what generally does this administrative directive
12:13:15 23 address?
12:13:16 24 A. It provides for various mitigating protocols to take
12:13:21 25 in the case of extreme heat.

12:13:23 1 Q. Okay. And I want to walk through some of them.
12:13:27 2 Could you put up page 8 of this directive? Paragraph E
12:13:50 3 calls for inmates to have access to respite areas during
12:13:54 4 periods of excessive heat. Are you familiar with the term
12:13:57 5 "respite area" and what it is?
12:13:58 6 A. Yes, I am.
12:13:59 7 Q. In the prison context?
12:14:00 8 A. Yes, I am.
12:14:01 9 Q. And it's a respite from what?
12:14:03 10 A. A respite from the un-air-conditioned areas to allow
12:14:06 11 them to go into a space that is air conditioned.
12:14:09 12 Q. Okay. And in reviewing this paragraph, who is
12:14:14 13 responsible for implementing the directive that inmates
12:14:17 14 have access to these respite areas and generally managing
12:14:21 15 that process?
12:14:22 16 A. Staff would be.
12:14:25 17 Q. And to your knowledge, do you believe TDCJ
12:14:30 18 consistently complies with the directive that inmates be
12:14:33 19 given access to these respite areas?
12:14:35 20 A. That's not what I hear from people who are
12:14:37 21 incarcerated. Apparently, there are not sufficient staff
12:14:42 22 to take them to the respite areas and there's not enough
12:14:45 23 space in the respite areas to accommodate everyone who
12:14:48 24 would like to be there.
12:14:50 25 Q. Okay. Bottom paragraph 8H, paragraph H involves

12:15:14 1 steps to be employed when the heat index is above 90
12:15:17 2 degrees Farenheit and then, it continues on to the next
12:15:20 3 page. If you look at these measures we have providing
12:15:40 4 water and ice, transporting inmates at specific times of
12:15:44 5 day, implementing work orders for cooling equipment,
12:15:47 6 allowing inmates additional showers, same question, who's
12:15:52 7 responsible for implementing those measures?
12:15:54 8 A. Staff are.
12:15:56 9 Q. And based on the work you've done, the people you've
12:16:01 10 spoken to, do you believe TDCJ consistently provides
12:16:04 11 inmates these mitigation measures?
12:16:07 12 MS. WARREN: Objection, your Honor. Under 703, I
12:16:09 13 don't believe -- because we have not heard any of Ms.
12:16:13 14 Deitch's underlying facts and data, we have no way of
12:16:16 15 determining under Rule 703 whether or not this is
12:16:19 16 substantially more probative than it is prejudicial and it
12:16:22 17 doesn't allow the Court to make the determination under
12:16:25 18 104(a).
12:16:27 19 MR. OLSEN: Happy to ask questions about who
12:16:29 20 she's spoken to.
12:16:30 21 THE COURT: Sure.
12:16:31 22 Q. (BY MR. OLSEN) Ms. Deitch, have you spoken to
12:16:33 23 prisoners on the inside about how these mitigation
12:16:36 24 measures are handled?
12:16:37 25 A. I've spoken to people on the inside and people who

12:16:40 1 have formerly been incarcerated.
12:16:44 2 Q. And about how many?
12:16:45 3 A. I wouldn't know how to put a number on that, but I
12:16:49 4 receive many, many letters, phone calls, e-mails. I hear
12:16:53 5 from family members and I've talked to so many people who
12:16:57 6 have been previously incarcerated.
12:16:58 7 Q. And so, your view of the sufficiency of the
12:17:02 8 mitigation measures is based on those conversations you've
12:17:05 9 had?
12:17:06 10 A. Yes. And the materials I've read, as well.
12:17:08 11 Q. And administrators, as well?
12:17:11 12 A. I said and materials that I've read. Research that
12:17:14 13 I've read on that.
12:17:15 14 Q. And when someone is analyzing the issue of prison
12:17:19 15 conditions, do they normally talk to inmates, read
12:17:23 16 literature from people who have studied these issues? Is
12:17:26 17 that common?
12:17:27 18 A. Of course.
12:17:28 19 Q. Okay. And so, do you believe based on those
12:17:31 20 conversations that TDCJ consistently provides these
12:17:35 21 inmates sufficient mitigation measures consistent with
12:17:41 22 this policy directive?
12:17:42 23 A. I don't believe they're able to do that given they're
12:17:46 24 short-staffed.
12:17:48 25 Q. And as someone who has been a policy maker, would you

12:17:52 1 agree that a policy is only as good as it is implemented
12:17:55 2 in practice?
12:17:56 3 A. Absolutely. On paper, it could read one thing and
12:17:59 4 how it's implemented could be something entirely
12:18:02 5 different.
12:18:02 6 Q. And what effect, if any, do you believe the staffing
12:18:06 7 shortages TDCJ has been experiencing is having on the
12:18:12 8 implementation of these heat mitigation measures?
12:18:15 9 A. I think it's having an enormous impact. There are
12:18:18 10 not enough staff to be conducting their rounds on a
12:18:21 11 regular basis. They are not always able to escort people
12:18:25 12 to showers. They're not always able to bring them ice or
12:18:29 13 water or bring them to the ice machines. This is
12:18:32 14 especially a problem in the administrative segregation
12:18:36 15 areas where people can't leave their cells so they require
12:18:40 16 staff to escort them. So yes, I think staffing has
12:18:45 17 everything to do with whether or not these measures can be
12:18:48 18 implemented appropriately.
12:18:49 19 Q. And to your knowledge, is there a means of mitigating
12:18:53 20 the risks associated with extreme heat that doesn't
12:18:57 21 require day-to-day management by prison staff?
12:19:01 22 A. Implementing air conditioning throughout the
12:19:04 23 facility.
12:19:05 24 Q. On the topic of air conditioning, when you are
12:19:09 25 serving as general counsel for the Texas Senate Committee

12:19:13 1 On Criminal Justice in the early '90s, did the Texas
12:19:18 2 legislature appropriate moneys for the construction of new
12:19:22 3 prisons?
12:19:22 4 A. Yes. This was the time period where Texas tripled
12:19:24 5 the size of its prison system and added approximately a
12:19:28 6 hundred thousand new prison beds.
12:19:33 7 Q. Was there any discussion about for these 100,000 new
12:19:36 8 beds whether they would or would not be air conditioned?
12:19:40 9 A. It was not an explicit discussion in legislative
12:19:43 10 hearings.
12:19:44 11 Q. And what was the net result of the legislation? How
12:19:52 12 many prisons were built and were the new prisons air
12:19:55 13 conditioned or were they not?
12:19:56 14 A. So as I mentioned, a hundred thousand new prison beds
12:20:01 15 were built at that time. The vast majority of them were
12:20:05 16 not air conditioned in the inmate housing areas, although
12:20:07 17 many, if not all, of the administrative areas such as
12:20:10 18 where the warden's offices were going to be, those areas
12:20:14 19 were air conditioned.
12:20:15 20 Q. And is it true that around the same time, Texas
12:20:20 21 enacted a law requiring that jails maintain temperatures
12:20:24 22 at certain levels?
12:20:25 23 A. Yes. Texas jails are regulated by the Texas
12:20:29 24 Commission on Jail Standards, which passes minimum
12:20:33 25 standards, and in December of 1994, there was a standard

12:20:37 1 added that said that all jails have to be maintained
12:20:40 2 between 65 degrees and 85 degrees at all times.
12:20:46 3 Q. And as someone who lived in Texas in the early '90s,
12:20:49 4 was air conditioning installed in new buildings
12:20:52 5 constructed in the state?
12:20:52 6 A. Absolutely.
12:20:54 7 Q. And would you agree then that the legislature by not
12:20:58 8 requiring air conditioning in these units, most of these
12:21:03 9 new prisons actually made a choice to do that?
12:21:05 10 A. There was a choice. This was a time period when
12:21:10 11 there was so much hostility towards anyone involved in the
12:21:15 12 criminal justice system. There was debate about housing
12:21:18 13 inmates in tents and taking away televisions, taking away
12:21:26 14 gym equipment, weight equipment. So air conditioning is
12:21:29 15 just one of those things seen as a luxury that might make
12:21:32 16 their lives somehow more comfortable and that was not
12:21:35 17 something that anyone wanted to do.
12:21:38 18 Q. And in your opinion, was it the right choice or the
12:21:40 19 wrong choice?
12:21:41 20 A. It was absolutely the wrong choice.
12:21:44 21 Q. Thank you.
12:21:49 22 CROSS-EXAMINATION
12:21:49 23 BY MS. WARREN:
12:21:53 24 Q. Is it Dr. Deitch?
12:21:55 25 A. You could call me Professor Deitch.

12:21:57 1 Q. Professor Deitch. Okay. I'm Kelsey Warren. I
12:22:00 2 represent the Texas Department of Criminal Justice and Mr.
12:22:04 3 Bryan Collier in his official capacity.
12:22:06 4 I just want to ask you a few questions. I find
12:22:09 5 it fascinating that you're a Ruiz monitor. I've been
12:22:12 6 working, you know, in this area for a while and, you know,
12:22:16 7 that case is a big one.
12:22:17 8 A. It is.
12:22:19 9 Q. I understand the prison system was very different
12:22:22 10 during the -- pre-Ruiz than it is now.
12:22:25 11 A. It was much smaller.
12:22:26 12 Q. Much smaller and, I mean, conditions weren't good
12:22:30 13 back before Ruiz.
12:22:31 14 A. They were horrifying, yes.
12:22:35 15 Q. And you mentioned Judge Justice who wrote the opinion
12:22:38 16 in 1980 in Ruiz that laid out all of the improvements that
12:22:45 17 TDCJ needed to make, right?
12:22:47 18 A. The consent decree occurred later than that, the
12:22:50 19 original opinion was in '80. The consent, decree, I
12:22:53 20 believe, was '85.
12:22:54 21 Q. In 1985, was there any discussion of air conditioning
12:22:58 22 prisons?
12:23:00 23 A. In the Ruiz case?
12:23:01 24 Q. Yes.
12:23:02 25 A. I do not believe that was part of that in any way.

12:23:07 1 The issues were even more extreme than that. It's hard to
12:23:09 2 believe that they were.
12:23:10 3 Q. Understood. Understood those conditions were extreme
12:23:14 4 that we were trying to fix but one of those extreme
12:23:16 5 conditions was not heat.
12:23:19 6 A. That was not an explicit issue in the case.
12:23:22 7 Q. And I understand on the ABA standards that you spoke
12:23:26 8 about, they require proper heating and ventilation,
12:23:31 9 correct?
12:23:31 10 A. Correct.
12:23:31 11 Q. They do not mandate air conditioning?
12:23:33 12 A. That is correct.
12:23:34 13 Q. Okay. Have you visited any prisons lately?
12:23:41 14 A. Yes, I have.
12:23:42 15 Q. What was the most recent unit that you visited?
12:23:44 16 A. It was not in Texas. The most recent prison I
12:23:48 17 visited was actually in Norway last month.
12:23:49 18 Q. Okay. I should have been more clear. Have you
12:23:52 19 visited any Texas prisons lately?
12:23:54 20 A. Not since the pandemic.
12:23:56 21 Q. Okay. So the last time that you visited was pre,
12:24:00 22 we'll say, 2000?
12:24:03 23 A. Pre-2020.
12:24:05 24 Q. That's what I meant. I'm sorry. Pre-2020. Are you
12:24:12 25 aware that TDCJ has added over 46,000 air-conditioned

12:24:17 1 beds?

12:24:17 2 A. Yes, I am.

12:24:18 3 Q. And most of those have occurred under the leadership

12:24:22 4 of Mr. Collier?

12:24:23 5 A. Yes.

12:24:24 6 Q. Are you aware that Mr. Collier under his leadership,

12:24:27 7 TDCJ has air conditioned more beds than it ever has in its

12:24:30 8 history?

12:24:32 9 A. I was not aware of that but that makes sense because

12:24:35 10 there never had been 46,000 beds before.

12:24:38 11 Q. Did you know that there are plans to air condition

12:24:42 12 all of their facilities, eventually?

12:24:44 13 A. No. I'm not aware of that. I thought that's what

12:24:48 14 this case was about.

12:24:50 15 Q. Did you know by 2027, TDCJ plans to have over 60,000

12:24:54 16 beds air conditioned?

12:24:55 17 A. I think the issue is not really which beds will be

12:24:57 18 air conditioned. It's about all the beds that aren't air

12:24:59 19 conditioned.

12:24:59 20 Q. I understand. I'm just asking if you're aware that

12:25:02 21 TDCJ has plans to add at least 20,000 more air-conditioned

12:25:06 22 beds in the next year. Two years.

12:25:09 23 A. I am not aware of that but that's good news.

12:25:13 24 Q. And you spoke of the prisons that were built in the

12:25:16 25 '90s. Are you familiar with the term 2250?

12:25:19 1 A. Yes.
12:25:20 2 Q. Okay. And just for everybody in the court, 2250,
12:25:23 3 it's a prison unit that was built in the '90s and it holds
12:25:27 4 2,250 inmates, correct?
12:25:29 5 A. Most of them had been expanded beyond that but yes.
12:25:32 6 Q. That was the original, that's why we called them
12:25:35 7 2250s?
12:25:35 8 A. Correct.
12:25:35 9 Q. And there are approximately -- there actually are ten
12:25:39 10 2250s throughout the state?
12:25:42 11 A. I don't remember the exact number but that sounds
12:25:44 12 about right.
12:25:45 13 Q. And those were the buildings that were not built with
12:25:49 14 air conditioning in inmate housing areas.
12:25:51 15 A. Correct.
12:25:52 16 Q. Did you know that there are plans to create a
12:25:56 17 prototype air-conditioned unit at the McConnell Unit down
12:25:59 18 by Corpus Christi to make that an air-conditioned unit and
12:26:03 19 then, take those plans and air condition all of the 2250s?
12:26:06 20 A. I think that would be fantastic.
12:26:08 21 Q. Thank you. Nothing further.
12:26:14 22 RE-DIRECT EXAMINATION
12:26:14 23 BY MR. OLSEN:
12:26:15 24 Q. I have just one quick followup. Why didn't the ABA
12:26:18 25 standards you drafted prescribe AC, specifically?

12:26:22 1 A. Probably because across the country, the issues are
12:26:30 2 different and these are standards that have applied across
12:26:32 3 the country, not just in the hot -- in the particularly
12:26:35 4 hot states. So by talking about ensuring the health and
12:26:37 5 safety of people who are inside these physical spaces as
12:26:41 6 well as ensuring adequate or appropriate heating and
12:26:45 7 ventilation, it was getting at those same issues and it
12:26:48 8 could be applied both in southern states as well as in the
12:26:51 9 north.
12:26:52 10 Q. Thank you.
12:26:53 11 THE COURT: Anything further?
12:26:55 12 MS. WARREN: Nothing further. Thank you,
12:26:57 13 Professor Deitch.
12:26:57 14 THE COURT: You may step down. And may this
12:26:59 15 witness be released?
12:27:00 16 MS. WARREN: Yes. We have no plans to recall.
12:27:02 17 THE COURT: You're free to go. Next witness.
12:27:13 18 MR. HOMIAK: Your Honor, I think our next witness
12:27:14 19 is in the hallway.
12:28:34 20 MR. OLSEN: Plaintiffs would like to call Dr.
12:28:36 21 Biswas.
12:28:39 22 MS. ELLIS: I would like to note that we did
12:28:40 23 object to this witness testifying based on the fact
12:28:42 24 essentially our understanding is that Dr. Biswas is a
12:28:48 25 psychiatrist. To the extent she talks about mental

12:28:50 1 illness, that's not particularly relevant to these
12:28:53 2 proceedings. But to the extent she talks about heat
12:28:54 3 exposure in relation to mentally ill inmates, she has not
12:28:57 4 shown that she is qualified to talk about that. And we
12:29:00 5 would ask that if she is allowed to testify, she certainly
12:29:03 6 needs to lay that foundation. And additionally, the
12:29:06 7 testimony would be redundant. We've heard a lot of
12:29:09 8 testimony from Dr. Vassallo, who clearly is an expert on
12:29:12 9 thermoregulation and even talked about the effects on
12:29:16 10 individuals with mental disorders.
12:29:18 11 THE COURT: I'll acknowledge your objection and
12:29:20 12 I'll carry the objection and allow the testimony at this
12:29:23 13 time. Would you raise your right hand?
12:29:26 14 THE CLERK: You do solemnly swear or affirm that
12:29:26 15 the testimony which you may give in the case now before
12:29:26 16 the Court shall be the truth, the whole truth, and nothing
12:29:32 17 but the truth?
12:29:32 18 THE WITNESS: I do.
12:29:33 19 JHILAM BISWAS, called by the Plaintiff, duly sworn.
12:29:33 20 DIRECT EXAMINATION
12:29:40 21 BY MR. DUKE:
12:29:40 22 Q. Can you please state your name for the record?
12:29:43 23 A. My name is Jhilam Biswas. Last name spelled,
12:29:48 24 B-I-S-W-A-S.
12:29:48 25 Q. Thanks. Can you please tell me about your

12:29:51 1 educational background?
12:29:52 2 A. Yes. I went to college at Dartmouth College from
12:30:00 3 2001 to 2005. I then, a year later, went to medical
12:30:04 4 school at University of Massachusetts Medical School from
12:30:07 5 2006 to 2010, and then, I did a psychiatry residency at a
12:30:15 6 program through Harvard Medical School called the Harvard
12:30:19 7 Longwood Psychiatry Program from 2010 to 2014. And then,
12:30:22 8 I subspecialized in the psychiatry and law subspecialty or
12:30:27 9 forensic psychiatry, it's otherwise known, from 2014 to
12:30:33 10 2015 at the University of Massachusetts.
12:30:35 11 Q. Do you have any certifications?
12:30:38 12 A. I do. I am board certified in adult psychiatry and
12:30:42 13 forensic psychiatry.
12:30:43 14 Q. And then, you may have mentioned this but I apologize
12:30:48 15 if so. Did you have a postdoctoral fellowship, as well?
12:30:51 16 A. Yes. So forensic psychiatry is post residency and
12:30:56 17 it's considered our postdoctoral subspecialty fellowship.
12:31:02 18 Q. When you speak about psychiatry in law or forensic
12:31:11 19 psychology, what is that specialty or can you explain?
12:31:13 20 A. Absolutely. So basically my specialty is working and
12:31:17 21 understanding the correctional and prison system, how care
12:31:21 22 is delivered in those systems, and also, providing mental
12:31:28 23 health education outside of the hospital walls in social
12:31:30 24 systems like the courts, the prisons, employers, schools,
12:31:35 25 various areas, again, I am asked for consultation.

12:31:39 1 Q. And so, after your education and your fellowship,
12:31:45 2 what work did you do?
12:31:46 3 A. So after my fellowship, I worked at a medium security
12:31:50 4 prison and JCo-accredited hospital called Bridgewater
12:31:55 5 State Hospital. It's a forensic hospital in
12:31:58 6 Massachusetts. It's only -- there's only a few other
12:32:01 7 institutions like that and they are in Texas that are both
12:32:04 8 a DOC facility that's a medium security prison and, also,
12:32:09 9 a JCo-accredited hospital. And so, that's where I was for
12:32:13 10 six years working with inmates with mental illness and
12:32:17 11 treating them.
12:32:18 12 And then, I have moved into an academic center
12:32:23 13 called Brigham And Women's Hospital in Boston,
12:32:26 14 Massachusetts where I run the forensic psychiatry
12:32:30 15 fellowship as a codirector with another codirector as well
12:32:35 16 as treat patients in the emergency department and medical
12:32:38 17 floors and in the inpatient psyche units.
12:32:41 18 Q. And do you have any other appointments or
12:32:43 19 affiliations with medical institutions or hospitals?
12:32:46 20 A. I have an appointment as faculty at Harvard Medical
12:32:49 21 School.
12:32:50 22 Q. That may be overlapping, but do you have any
12:32:53 23 appointments or affiliation with academic institutions, as
12:32:57 24 well?
12:32:57 25 A. Right. So overlapping of the hospital is Brigham And

12:33:00 1 Women's Hospital that's affiliated with Harvard Medical
12:33:03 2 School.
12:33:04 3 Q. Okay. So you both teach and have a clinical practice
12:33:07 4 as a practicing psychiatrist?
12:33:09 5 A. That is correct. And I have a forensic practice
12:33:12 6 where I'm always going into jails and prisons to do
12:33:16 7 evaluations for criminal responsibility, competency to
12:33:19 8 stand trial, aid in sentencing, and various other types of
12:33:22 9 issues that come up.
12:33:24 10 Q. Okay. And so, I think that might have been that last
12:33:27 11 part. Is that part of private practice?
12:33:29 12 A. That is part of a private practice.
12:33:31 13 Q. Okay. That's clinical work with inmates in prisons.
12:33:34 14 A. So basically it is clinical in the sense that I'm
12:33:38 15 doing a psychiatric evaluation but it's for the court, so
12:33:41 16 it's called a forensic evaluation. It's not for
12:33:46 17 treatment, rather, it is to answer a legal question for
12:33:52 18 that individual. Is that person mentally -- too mentally
12:33:56 19 ill to actually proceed in court or is that individual --
12:34:01 20 was that individual so mentally ill that they were
12:34:07 21 irrational at the time of an incident or claim. So those
12:34:10 22 types of questions come up in the evaluation itself.
12:34:13 23 Q. So as part of that work, your clinical practice and
12:34:18 24 teaching, do you have experience with a broad range of
12:34:22 25 mental health disorders?

12:34:34 1 A. I do.
12:34:35 2 Q. Do you have a CV?
12:34:36 3 A. I do.
12:34:37 4 Q. And is this a copy of your CV?
12:34:54 5 A. It is.
12:35:01 6 Q. And then, I guess my last question is have you
12:35:03 7 testified previously as an expert witness?
12:35:05 8 A. I have.
12:35:05 9 Q. And has your testimony been admitted?
12:35:07 10 A. Yes, many, many times.
12:35:10 11 Q. And so, your Honor, I move to qualify Dr. Biswas as
12:35:13 12 an expert in psychiatry, forensic psychiatry in the
12:35:17 13 psychiatric treatment of individuals in the criminal
12:35:19 14 justice system.
12:35:21 15 MS. ELLIS: And, your Honor, I certainly don't
12:35:22 16 doubt she's qualified as a psychiatrist but being a
12:35:27 17 psychiatrist is not enough. Her testimony still needs to
12:35:29 18 be relevant to these proceedings. She's not shown that
12:35:32 19 her testimony as an expert in the field of psychology or
12:35:35 20 even forensic psychology is relevant. Forensic
12:35:39 21 psychology, she just testified that it relates to
12:35:42 22 sentencing, competency hearings. Again, none of that is
12:35:45 23 relevant to, you know, heat in prisons, heat mitigation in
12:35:51 24 prisons. So I don't understand how her testimony is
12:35:53 25 relevant so I would object.

12:35:55 1 MR. DUKE: Just one quick correction. Is it the
12:35:56 2 forensic psychiatry which is the medical treatment as
12:35:58 3 opposed to psychology?
12:36:00 4 MS. ELLIS: Yes. I misspoke. I'm sorry.
12:36:01 5 THE COURT: Would you like to clarify for the
12:36:04 6 record --
12:36:04 7 MR. DUKE: Yeah. So she intends to speak about
12:36:06 8 -- you know, we can continue on but she intends to testify
12:36:09 9 regarding both how mental health disorders are adversely
12:36:14 10 affected as a result of heat conditions in prisons based
12:36:17 11 off of her research and experience in this area, and then,
12:36:21 12 also, the effect of heat on individuals who are prescribed
12:36:29 13 psychotropic and other medications that are common among
12:36:34 14 inmates, which is also part of her practice.
12:36:36 15 MS. ELLIS: Your Honor, they have not laid that
12:36:37 16 foundation that she has expertise to talk about heat and
12:36:40 17 the effects on mentally ill individuals. She simply has
12:36:45 18 not talked any about -- I understand that's his intent but
12:36:48 19 he hasn't laid that foundation for that expert testimony.
12:36:50 20 Also, her practice is largely in the east coast. She has
12:36:53 21 not said that she's done any studies, any research, site
12:36:56 22 visits in the Texas prisons. She's not shown that her
12:36:59 23 testimony is helpful in this situation. She's not
12:37:01 24 qualified as an expert in this case.
12:37:04 25 THE COURT: All right. I'm going to acknowledge

12:37:06 1 your objection. I'll allow the testimony and subject to
12:37:10 2 later determination of her expertise but I'll allow it.
12:37:15 3 Q. (BY MR. DUKE) Have you reviewed the pleadings in this
12:37:21 4 case?
12:37:21 5 A. I have.
12:37:22 6 Q. What is your understanding of the temperature
12:37:24 7 conditions faced by TDCJ inmates in uncooled units during
12:37:28 8 summer months?
12:37:29 9 A. That it's above 88 degrees Celsius, can reach 110
12:37:36 10 degrees -- I'm sorry, Farenheit and it's within the May to
12:37:39 11 September months that we're looking at.
12:37:42 12 Q. And have you formed opinions or any conclusions
12:37:45 13 regarding those conditions?
12:37:48 14 A. That in high-heat situations, all kinds of medical
12:37:52 15 issues are exacerbated. I am a medical doctor. I went to
12:37:58 16 medical school. I prescribed psychotropic medications to
12:38:02 17 hundreds of patients who have psychiatric illness. I know
12:38:04 18 that psychotropic medications can cause issues around
12:38:08 19 sweating, which makes it very difficult to thermoregulate.
12:38:13 20 I also know that mental illness impacts the brain,
12:38:16 21 dis-regulates the brain.
12:38:19 22 The brain is the center area. The hypothalamus
12:38:23 23 is the central area that thermoregulates the entire body
12:38:26 24 and we're taught to -- we're not just taught but we see
12:38:31 25 clinically, the evidence of people having heat intolerance

12:38:34 1 when they are on the medications that we're prescribing.
12:38:37 2 And I've certainly prescribed hundreds of these
12:38:40 3 medications within the prison system.
12:38:41 4 Q. I'll take those opinions in turn. But first, in
12:38:50 5 forming your opinions, what work or analysis have you
12:38:55 6 relied on to establish your conclusions?
12:39:02 7 A. So my psychiatric training, my work within the
12:39:10 8 incarceral system, and treating hundreds of patients with
12:39:13 9 mental illness in all seasons.
12:39:15 10 Q. And you mentioned before that you treated patients at
12:39:18 11 the Bridgewater facility and that was similar to
12:39:23 12 facilities here in Texas?
12:39:24 13 MS. ELLIS: Objection, your Honor. Misstates her
12:39:26 14 testimony and, also, leading the witness.
12:39:28 15 THE COURT: Want to rephrase?
12:39:31 16 Q. (BY MR. DUKE) You mentioned your prior work
12:39:33 17 experience in prisons. Is there a difference between a
12:39:37 18 person on the east coast and a person in Texas?
12:39:40 19 A. Not biologically.
12:39:42 20 Q. Is there a medical difference between from -- like
12:39:46 21 from a mental health sort of perspective between inmates
12:39:49 22 on the east coast and inmates in Texas?
12:39:53 23 A. Not biologically.
12:39:57 24 Q. And with respect to your first opinion, can you
12:40:08 25 explain to me what your conclusion was with respect to

12:40:11 1 environmental temperatures in Texas prisons and their
12:40:15 2 effect on mental health conditions, specifically?
12:40:18 3 A. Well, my clinical opinion to a reasonable degree of
12:40:22 4 medical certainty is that high-heat situations exacerbate
12:40:27 5 mental illness across the world, in the United States, in
12:40:30 6 all parts of the United States. We do know that and the
12:40:33 7 literature shows it. So that's my first opinion that
12:40:38 8 these situations, high-heat situations will impact mental
12:40:42 9 illness and exacerbate them.
12:40:43 10 And that within the prison system in the United
12:40:47 11 States, which is about 1.9 million individuals in the
12:40:52 12 United States are in prison, which is about .5 to one
12:40:56 13 percent of the population, that one in three individuals
12:41:03 14 have a diagnosable mental illness at any given time, and
12:41:07 15 so therefore, those individuals exposed to heat wherever
12:41:12 16 they may be, in Massachusetts, Texas or California, have a
12:41:16 17 higher risk of their mental illness being exacerbated.
12:41:21 18 Q. So you mentioned one in three. How does that compare
12:41:24 19 to the general population if you take the prison
12:41:27 20 population versus people in general?
12:41:30 21 A. So 37 percent or one in three individuals is a
12:41:34 22 conservative estimate by SAMHSA, which is a governmental
12:41:38 23 agency that looks at mental illness and substance use.
12:41:42 24 And we -- a study that came up by the National Institute
12:41:47 25 of Mental Health, another governmental agency, said about

12:41:51 1 20 percent of the general population has a diagnosable and
12:41:55 2 mental illness at any given time. So we're talking about
12:41:57 3 one in five in the general population versus one in three
12:42:00 4 in the prison system. A little more than one in three.
12:42:02 5 Q. And so, in your medical judgment is that a
12:42:07 6 significant difference?
12:42:08 7 A. Yes.
12:42:08 8 Q. How does exposure -- in what ways does exposure to
12:42:13 9 extreme heat exacerbate mental health conditions among
12:42:18 10 inmate populations?
12:42:19 11 A. So what we know and what we see clinically as
12:42:23 12 psychiatrists who are treating people with serious mental
12:42:26 13 illness and all other types of mental illness is that
12:42:30 14 physiological symptoms of mental illness are exacerbated
12:42:33 15 in higher heat conditions. And so, for example, for
12:42:36 16 people with schizophrenia, we see paranoia,
12:42:40 17 hallucinations, agitation in general being exacerbated.
12:42:45 18 In bipolar conditions, bipolar disorder and depression, we
12:42:49 19 are see higher rates of suicidality. We will see
12:42:53 20 agitation, impulsivity and slowing of cognitive
12:42:57 21 processing.
12:42:57 22 And so, it becomes this patient population is
12:43:01 23 actually more vulnerable because of the fact that it's
12:43:04 24 harder for them to be able to think and get out of these
12:43:08 25 high-heat conditions, which impacts them more and makes it

12:43:12 1 more likely that they're going to suffer the consequences.
12:43:15 2 Q. You mentioned you relied on -- I'll ask this. Did
12:43:19 3 you rely on any studies or research in forming these
12:43:21 4 conclusions?
12:43:21 5 A. I did.
12:43:22 6 Q. You mentioned schizophrenia and what is this article
12:43:40 7 about?
12:43:41 8 A. So this article looks at the increase in risk of --
12:43:48 9 MS. ELLIS: Objection, your Honor. I'm going to
12:43:50 10 object to the relevancy of the article. This is something
12:43:53 11 we objected to in our bullet-point objection on their
12:43:57 12 exhibit list and I want to rephrase that.
12:43:58 13 THE COURT: I'll overrule that objection and
12:44:02 14 allow it at this time.
12:44:03 15 A. So this is an article that shows that people with
12:44:06 16 schizophrenia exposed to high heat had a 200 percent
12:44:13 17 higher risk of death. So they were twice as likely to die
12:44:19 18 due to a high-heat situation. So this was 37 people died,
12:44:25 19 more than 13 percent had schizophrenia in this particular
12:44:30 20 heat wave.
12:44:36 21 Q. (BY MR. DUKE) You mentioned it was related to a heat
12:44:39 22 wave. Just to be very specific if we look at the very
12:44:42 23 first paragraph, what was the event that this report
12:44:47 24 covered?
12:44:48 25 A. So this was a heat event in June of 2021 on the

12:44:53 1 Pacific northwest, British Columbia province and it looked
12:44:57 2 that -- it had at over 600 people who had died in
12:45:03 3 temperatures that topped 40 degrees Celsius.
12:45:05 4 Q. Forty degrees Celsius is around, do you know,
12:45:10 5 Farenheit?
12:45:11 6 A. A hundred.
12:45:13 7 Q. If it was 104 degrees, would that be close to
12:45:17 8 correct?
12:45:17 9 A. Yes.
12:45:17 10 Q. So if you look at the third paragraph in that first
12:45:22 11 column where it says -- can you read what it says
12:45:34 12 beginning with epidemiologists?
12:45:36 13 A. Epidemiologists combing through provincial health
12:45:42 14 records found that overall, those with mental health
12:45:45 15 conditions seemed to have an elevated risk of a
12:45:47 16 heat-related death. That was more severe for people with
12:45:50 17 schizophrenia, a 200 percent increase compared with
12:45:53 18 typical summers. Those are really large numbers and
12:45:58 19 alarming, says Peter Crank, the geographer at Oklahoma
12:46:02 20 State University.
12:46:02 21 Q. And so, this report focuses on schizophrenia, in
12:46:06 22 particular, correct?
12:46:06 23 A. That's correct.
12:46:07 24 Q. And you mentioned that before?
12:46:09 25 A. I did.

12:46:10 1 Q. How does schizophrenia make people more vulnerable to
12:46:15 2 heat?
12:46:16 3 A. So many reasons. There's the physiologic reasons of
12:46:20 4 people with schizophrenia or other related disorders.
12:46:24 5 I'll just add that there's schizoaffective disorder and
12:46:28 6 bipolar disorder with psychotic features with --
12:46:30 7 encompasses a larger percentage. These individuals, first
12:46:35 8 of all, physiologically will experience sleep disturbances
12:46:38 9 and appetite disturbances and agitation in higher heat
12:46:44 10 situations.
12:46:46 11 We often see more paranoia and hallucinations,
12:46:50 12 which we call positive symptoms in schizophrenia in this
12:46:53 13 population, which then also translates when you look at a
12:46:56 14 prison population, if you have people with their symptoms
12:46:59 15 of schizophrenia being exacerbated, that then causes a
12:47:03 16 very expensive issue of management of people with mental
12:47:07 17 illness within the prison system. Like I said, it was 37
12:47:11 18 percent, right? That's what SAMHSA is saying is the
12:47:14 19 percentage of people with mental illness.
12:47:15 20 So there's the physiological effects but, also,
12:47:18 21 the classes of medication what we use to treat people with
12:47:21 22 schizophrenia include antipsychotic medications, which
12:47:25 23 have antimuscarinic effects to the hypothalamus. So what
12:47:31 24 happens is that it dis-regulates the ability of the body's
12:47:36 25 thermostat to manage the core temperature.

12:47:39 1 And almost 100 percent of people with
12:47:41 2 schizophrenia who are experiencing symptoms will be on
12:47:44 3 this class of medications. So automatically, that's like
12:47:47 4 a hundred percent right there of people whose bodies will
12:47:54 5 be struggling not only because of their illness but, also,
12:47:57 6 because of the treatment that they're using to moderate
12:47:59 7 their body temperature and be able to sweat. And so, it
12:48:02 8 hinders our ability -- that individual's ability to sweat.
12:48:06 9 Q. So this isn't the only report you relied on, correct?
12:48:13 10 A. Correct.
12:48:13 11 Q. Is this the type of research and information that
12:48:17 12 medical professionals, forensic psychiatrists, practicing
12:48:22 13 psychiatrists rely on in forming medical opinions?
12:48:25 14 A. Yes. We often look at the literature so we can
12:48:28 15 provide the best quality of care to our patients.
12:48:32 16 Q. Is are there other literature consistent with this
12:48:34 17 report regarding schizophrenia?
12:48:38 18 A. There's a whole area called disaster psychiatry
12:48:41 19 that's looking at climate change and heat and the
12:48:44 20 exacerbation of mental illness. We've created an entire
12:48:48 21 segment in psychiatry to look at this issue because we can
12:48:50 22 see that mental illness is exacerbated within high-heat
12:48:56 23 situations.
12:48:56 24 Q. And you looked at similar studies and reports
12:48:59 25 regarding specific events in various populations

12:49:02 1 discussing increases in mental health. Did I get that
12:49:06 2 right?
12:49:06 3 A. I have, yes.
12:49:07 4 Q. Can we look at Exhibit 35, please? Can you briefly
12:49:21 5 describe this report and how you relied on it?
12:49:26 6 A. So in this study in China, they showed a lag effect,
12:49:30 7 if we could just scroll down. So what they found in
12:49:42 8 China, which, again, you know, mental illness is
12:49:45 9 biological illness, it happens around the world, it
12:49:47 10 happens everywhere, it happens in China, too, and this
12:49:51 11 study found, I think it was...
12:49:54 12 Q. So if we look at page the bottom of page 7 to 8.
12:50:17 13 A. Right. So the study has identified a lag effect of
12:50:21 14 heat waves on hospital visits in mental illness and this
12:50:24 15 is often the case. This is what we do see after heat
12:50:28 16 events. I work in the emergency department at the Brigham
12:50:31 17 And Women's Hospital in Boston. I've worked in prison
12:50:35 18 settings and forensic hospitals and in inpatient units and
12:50:39 19 we do see a lag effect because what happens is the
12:50:43 20 physiological disturbance that occurs takes more than --
12:50:47 21 you know, it takes a little bit of time. So sleepless
12:50:51 22 nights, loss of appetite, increase in paranoia, agitation,
12:50:56 23 impulsivity, as that gets worse over time, over the course
12:51:00 24 of a few days, it leads to the hospital visit.
12:51:04 25 So oftentimes, we see a lagged effect around the

12:51:08 1 exacerbation of mental illness or full-blown mental
12:51:12 2 illness in the hospital setting because it takes a while
12:51:15 3 to brew ultimately before it becomes an emergency.
12:51:18 4 Q. If we look at page 9, please. In their conclusions,
12:51:36 5 if you can read the conclusion about the setting?
12:51:38 6 A. Right. So in conclusion, this study confirmed that
12:51:42 7 heat waves are positively associated with the risk of
12:51:44 8 hospital visits for mental illness in this selected study
12:51:48 9 area with various lagged effects. The elderly, urban
12:51:52 10 residents, outdoor workers and singles may be more
12:51:55 11 vulnerable to developing heat wave-related mental illness.
12:51:59 12 Further research is necessary.
12:52:01 13 Q. And then, have there been additional studies among
12:52:05 14 additional populations?
12:52:06 15 A. There has and there has been a big metaanalysis
12:52:09 16 published in 2024 looking at that.
12:52:11 17 Q. Let's look at that then. Can you look --
12:52:15 18 MS. ELLIS: Did you mean to enter that in?
12:52:18 19 MR. DUKE: I did, in fact, mean to enter that in.
12:52:21 20 MS. ELLIS: I'm going to object to that this goes
12:52:23 21 to relevance.
12:52:23 22 THE COURT: Sure.
12:52:25 23 MR. DUKE: And to the extent I skimmed past my
12:52:26 24 notes, can I take a moment to offer into evidence Exhibit
12:52:32 25 11, if I didn't do that already?

12:52:35 1 MS. ELLIS: Yes. Noting my objection, thank you.
12:52:39 2 MR. DUKE: The same with respect to Exhibit 76.
12:52:41 3 MS. ELLIS: I don't know what that document is.
12:52:45 4 MR. DUKE: You objected to that one. Yes. And
12:52:47 5 then, most recently, Exhibit 35.
12:52:50 6 THE COURT: And those are admitted for purposes
12:52:52 7 of this hearing.
12:52:54 8 Q. (BY MR. DUKE) And then, so let's look at Exhibit 103,
12:52:58 9 as well. I believe you mentioned a metaanalysis. Is this
12:53:15 10 that metaanalysis?
12:53:16 11 A. Yes. The systematic review, yes.
12:53:20 12 Q. What did the systematic review look at?
12:53:22 13 A. So what the systematic reviews do is kind of gather
12:53:26 14 all of the data. So this one is 2002 to 2019, it looks at
12:53:33 15 all of the data, research articles that have come up
12:53:38 16 around mental illness exacerbation, increased
12:53:40 17 vulnerability, and negative health effects to those with
12:53:43 18 mental illness in high-heat events, and it kind of got all
12:53:49 19 of that data together and determined -- the conclusion was
12:53:53 20 that people who are diagnosed with mental illness need to
12:53:57 21 be targeted for better policies around lowering
12:54:04 22 temperatures on high-heat days due to the fact that their
12:54:08 23 disease process is exacerbated in heat.
12:54:12 24 Q. Can we look at page 13, please? Can you read the
12:54:28 25 first paragraph after -- No. 4?

12:54:31 1 A. Studies investigating transient heat exposure found
12:54:37 2 that individuals with mental illness were more likely to
12:54:40 3 die or experience worse morbidity than individuals without
12:54:45 4 mental illness.
12:54:45 5 Q. And then, was that a specific mental illness or is
12:54:49 6 that a range of mental illnesses?
12:54:51 7 A. It is a range of mental illness because what I would
12:54:55 8 say from a long history of clinical experience with so
12:54:59 9 many different types of mental illness is that they are
12:55:02 10 exacerbated in different ways that cause different
12:55:06 11 sequelae or consequences or adverse events.
12:55:10 12 Q. This metaanalysis is consistent with the research
12:55:13 13 that you've reviewed?
12:55:14 14 A. That is correct.
12:55:14 15 Q. And it's consistent with your clinical practice?
12:55:17 16 A. That is absolutely correct.
12:55:19 17 Q. So are there risks of physiological harm caused by
12:55:27 18 exposure to extreme heat or are we just talking about
12:55:30 19 psychological harms?
12:55:33 20 A. So what I want to say first is serious mental illness
12:55:36 21 and all types of mental illness are physiological disease
12:55:40 22 just like stroke, just like cardiovascular disease, just
12:55:43 23 like diabetes, right? It is an organ of the body that is
12:55:49 24 affected. So when high heat or high temperatures are
12:55:52 25 stressing the body, that disease process then gets worse

12:55:55 1 and how does that get worse? What does that look like?
12:55:58 2 It looks like, first of all, just say insomnia and sleep
12:56:02 3 issues. If someone with mental illness, whether it is
12:56:05 4 depression, bipolar disorder, schizophrenia, or ADHD,
12:56:12 5 those individuals if they're not sleeping at night, it
12:56:14 6 makes it very hard to control the disease. And so,
12:56:19 7 whatever the symptoms of those disease are then get worse.
12:56:22 8 So, for example, in depression, we will see
12:56:24 9 higher levels of suicidality in high-heat situations. And
12:56:28 10 so, what we see are physiological effects to the body in
12:56:33 11 high-heat conditions like sleeplessness, low appetite,
12:56:37 12 mood swing, agitation, impulsivity. And then, with people
12:56:43 13 who have schizophrenia, we do see an uptick of
12:56:46 14 hallucinations and paranoia.
12:56:49 15 Q. What about heat-related disease, as well?
12:56:56 16 A. And so, the other piece of this is people with mental
12:57:01 17 illness have a much higher risk of having medical illness
12:57:04 18 so they're very comorbid, particularly also -- and also,
12:57:08 19 because they may be much more likely to be using
12:57:12 20 substances like alcohol, cocaine, opiates, which then
12:57:17 21 result in medical disease as well as some of the
12:57:20 22 treatments for psychiatric illness result in medical
12:57:24 23 disease. So we will see cardiovascular disease, diabetes,
12:57:28 24 hyperlipidemia, strokes, much more often in those
12:57:33 25 individuals with mental illness, and so, that medical

12:57:36 1 illness will then also exacerbate their mental illness.
12:57:40 2 So the heat, again, I think the best way to think
12:57:43 3 about this is heat stresses the body. It stresses the
12:57:46 4 tissues. And so, if the body's already vulnerable to
12:57:49 5 illness, that illness becomes harder to control or to
12:57:54 6 fight off, and we see that much more obviously in mental
12:57:59 7 illness and we certainly see that within the prison system
12:58:02 8 where it becomes more difficult to manage these
12:58:04 9 individuals because they are more mentally ill.
12:58:10 10 Q. To the extent I didn't do so already, we'd like to
12:58:18 11 offer Exhibit 103 into evidence.
12:58:20 12 MS. ELLIS: Same --
12:58:20 13 THE COURT: Subject to the objections, admitted
12:58:22 14 for the purposes of this hearing.
12:58:28 15 Q. (BY MR. DUKE) Exhibit 33. So you were speaking about
12:58:32 16 the effects of a range of mental health disorders on
12:58:38 17 heat-related illness. Is this article consistent with
12:58:41 18 that testimony?
12:58:44 19 A. It is.
12:58:45 20 Q. What did this article discuss or the study explain?
12:58:50 21 A. So this article first said that there has already
12:58:53 22 been established -- the medical literature has established
12:58:56 23 that mental illness in general is exacerbated in high-heat
12:59:02 24 conditions. And what it also found was individuals with
12:59:09 25 dementia and with substance use disorder also ended up

12:59:13 1 being at a higher risk of morbidity and mortality in
12:59:18 2 high-heat conditions.
12:59:19 3 Q. On page 1, if you look at results, I think you just
12:59:26 4 explained that, but is that what that paragraph says?
12:59:29 5 A. Yes. These nondependent alcohol and drug use
12:59:34 6 addiction increases and exacerbates medical illness in
12:59:40 7 high-heat conditions and exacerbates mortality.
12:59:42 8 Q. This and the other studies are long pieces and
12:59:50 9 identifying parts for time, but if you look at page 9. So
13:00:03 10 the first paragraph talks about the results of their
13:00:06 11 review and their analysis and you can read it, but I think
13:00:11 12 my question is, is that the similar conclusion that you
13:00:17 13 explained before?
13:00:18 14 A. Absolutely, yes.
13:00:19 15 Q. If you could read at least, I have the first two
13:00:22 16 sentences marked.
13:00:23 17 A. Sure. Our results suggest that several mental
13:00:29 18 illness and behavorial disorder hospitalizations are
13:00:32 19 associated with concurrent diagnoses of hospitalizations
13:00:35 20 for heat-related illness. There is a significant
13:00:39 21 association among psychosis and psychoactive substance
13:00:42 22 abuse diagnoses with concurrent heat-related illness
13:00:47 23 diagnoses, particularly dementias and nondependent abuse
13:00:50 24 of drugs and alcohol compared to those hospitalized and
13:00:53 25 diagnosed with psychosis or psychoactive substance abuse

13:00:57 1 alone.

13:00:57 2 Q. So in addition to schizophrenia and dementia, there

13:01:02 3 are significant risk factors for heat-related illness and

13:01:07 4 hospitalization during heat-related events but, also, for

13:01:12 5 individuals with substance abuse disorder or other issues,

13:01:17 6 as well. Is that another way to say what you just said?

13:01:21 7 A. That is another way to say it and it is absolutely

13:01:24 8 important to articulate that substance use impacts the

13:01:27 9 body and the organs in so many different ways to make it

13:01:31 10 harder to tolerate heat. So alcohol dehydrates. Cocaine

13:01:35 11 heats up the body. Opiates also make it harder to

13:01:39 12 thermoregulate. And so, it's really important to

13:01:43 13 recognize when you're adding another substance into your

13:01:45 14 body, it then stresses the body on top of the heat and

13:01:48 15 makes it really hard to regulate your body.

13:01:53 16 Q. In your experience treating patients or doing

13:01:58 17 forensic analysis of individuals and either in prison or

13:02:04 18 in the criminal justice system, is substance abuse

13:02:07 19 disorder or substance abuse issues common among inmates?

13:02:11 20 A. They are common among inmates because so much of

13:02:14 21 substance use is around self-mediating trauma and so, many

13:02:18 22 individuals who are incarcerated have a high history of

13:02:22 23 trauma and difficult lives and they're often

13:02:25 24 self-medicating with substances to get out of, you know,

13:02:28 25 their reality. And that is so much where addiction starts

13:02:31 1 from.
13:02:32 2 Q. I'd like to offer Exhibit 33 into evidence.
13:02:38 3 MS. ELLIS: Same objection.
13:02:39 4 THE COURT: Admitted subject to the objection for
13:02:42 5 purposes of this hearing.
13:02:43 6 Q. (BY MR. DUKE) Next is Exhibit 91. So kind of a last
13:02:57 7 piece to some of the testimony that you've presented, you
13:03:00 8 spoke about suicidality. What does Exhibit 91 explain?
13:03:04 9 A. So this talks about there is a -- this is not as much
13:03:10 10 about the lag effect but the fact that in high-heat
13:03:13 11 situations, incarcerated men, there was a higher
13:03:17 12 percentage of suicide watch and it was dependent on
13:03:21 13 temperature. So between, I think it was, 88 to -- 80 to
13:03:27 14 90 degrees, the increase in suicide watch, which, again,
13:03:30 15 is very expensive for the prison systems to provide that
13:03:33 16 kind of suicide watch and so, the threshold tends to be
13:03:36 17 high -- increased by about 27 percent. I don't have it
13:03:51 18 memorized but I think --
13:03:54 19 Q. So the statistics are on the next page but the stats
13:04:24 20 you're relying on on the next line, if you want to read
13:04:27 21 where it says the incident rate.
13:04:29 22 A. The incident rate of suicide watches was 29 percent
13:04:39 23 greater on days when the maximum heat index reached 80 to
13:04:45 24 89 degrees and -- the suicide watch rate was 36 percent
13:04:50 25 greater on days climbing into the 90-to-103-degree

13:04:54 1 Farenheit range after controlling for relevant facility
13:04:58 2 level covariates and potential seasonality effects.
13:05:02 3 So suicide rates, depending on temperature,
13:05:05 4 increased. So 80 to 90 is something and then, 90 to 100
13:05:09 5 is something else so things get worse as the days get
13:05:13 6 hotter.
13:05:14 7 Q. Suicidality increases?
13:05:16 8 A. Right.
13:05:16 9 Q. Especially during -- increases by, would you say, a
13:05:19 10 significant amount?
13:05:21 11 A. Certainly a significant amount.
13:05:22 12 Q. When it is in the ranges of 90 to 103 degrees and I
13:05:27 13 think this is heat index; is that right?
13:05:29 14 A. That is correct.
13:05:29 15 Q. And then, do you remember what population was being
13:05:33 16 studied?
13:05:33 17 A. Incarcerated men.
13:05:35 18 Q. Do you know where?
13:05:50 19 A. Study in Texas prisons.
13:05:55 20 MS. ELLIS: Objection, your Honor. I'm going to
13:05:57 21 object to this line of testimony as leading the witness.
13:05:59 22 He's pulling out the article to show her where --
13:06:02 23 Q. (BY MR. DUKE) If you don't remember, that's fine. I
13:06:10 24 think you said it didn't matter where people were; is that
13:06:13 25 correct?

13:06:13 1 A. That's correct.
13:06:14 2 Q. Would inmates in a southern state be a good
13:06:18 3 representative of inmates in Texas?
13:06:20 4 MS. ELLIS: Objection. Lack of foundation.
13:06:24 5 MR. DUKE: I was asking in general.
13:06:25 6 THE COURT: I'll allow the question.
13:06:27 7 A. Yes. Yes. I think we're just talking about heat
13:06:32 8 ultimately, right? That heat can happen anywhere as we
13:06:36 9 know that the record temperatures are increasing
13:06:40 10 everywhere across the world each year and so, this can
13:06:43 11 happen everywhere.
13:06:47 12 Q. (BY MR. DUKE) In your medical judgment, is there a
13:06:48 13 difference between federal inmates versus state inmates?
13:06:51 14 A. Not biologically.
13:06:52 15 MS. ELLIS: Objection. Lack of foundation.
13:06:55 16 THE COURT: I'll allow the question.
13:06:58 17 A. No. Not as a human being, they're not different.
13:07:01 18 Q. (BY MR. DUKE) And then, between Louisiana and Texas
13:07:04 19 state inmates, any difference?
13:07:06 20 A. Not as human beings, no, they're not different.
13:07:10 21 Q. And would it be reasonable in your medical judgment
13:07:13 22 to review a study that viewed state populations in
13:07:19 23 Louisiana and their state prisons as a good piece of
13:07:21 24 evidence on how conditions might be similar in Texas state
13:07:25 25 prisons?

13:07:25 1 A. Yes. They are going to be similar. They're
13:07:28 2 bordering states.
13:07:30 3 Q. With regard to mental health.
13:07:32 4 A. Yes. And like I said earlier, you know, mental
13:07:36 5 illness is a biological disease. It happens in human
13:07:40 6 beings across the world universally at the same percentage
13:07:44 7 rates and what is happening -- I think it's particularly
13:07:49 8 important to say that this is a universal issue. It's
13:07:52 9 been established in the literature that people with mental
13:07:56 10 illness across the world are more vulnerable and dying
13:07:58 11 much -- in much higher, more frequent rates across the
13:08:02 12 world.
13:08:02 13 Q. So to a reasonable degree of medical certainty, does
13:08:06 14 exposure to periods of extreme heat cause a substantial
13:08:10 15 risk of serious harm due to mental health conditions?
13:08:15 16 A. Yes, and the literature articulates that.
13:08:17 17 Q. And that includes an increase and exacerbation of
13:08:23 18 mental health conditions themselves?
13:08:24 19 A. Yes, and I've clinically seen that and have seen that
13:08:26 20 as I've prescribed medications for it.
13:08:29 21 Q. And an increase in suicidality?
13:08:31 22 A. It increases suicidality.
13:08:33 23 Q. And it also -- those with mental health disorders
13:08:37 24 similarly face a significant risk of suffering from
13:08:40 25 heat-related illness?

13:08:41 1 MS. ELLIS: Objection, your Honor. Leading the
13:08:42 2 witness again.
13:08:44 3 Q. (BY MR. DUKE) I'm just trying to rehash so -- just to
13:08:47 4 be clear, does that also include effects on individuals
13:08:49 5 with heat-related illnesses? Does it make heat-related
13:08:55 6 illnesses worse?
13:08:56 7 A. Yes.
13:08:56 8 Q. Okay. If you're unclear about my question, I can --
13:09:00 9 A. Sorry. I think I don't know what you mean by
13:09:05 10 heat-related illnesses.
13:09:06 11 Q. We talked about before that individuals with mental
13:09:08 12 health disorders, their mental health disorders worsen.
13:09:15 13 A. Yes.
13:09:16 14 Q. But also, how they respond medically when -- they
13:09:20 15 have an increase in heat-related illness, as well. Did I
13:09:23 16 summarize your testimony correctly?
13:09:25 17 A. Yes. Their comorbid medical illnesses also get worse
13:09:30 18 which then exacerbate their mental health symptoms, also.
13:09:35 19 So people with mental illness are more likely to have
13:09:38 20 medical illness and both are more likely to be exacerbated
13:09:41 21 at high-heat situations given the fact that high heat
13:09:45 22 causes chronic stress to the tissues of the body.
13:09:48 23 Q. I'm glad I clarified. Thank you very much.
13:09:51 24 So then, you had a second opinion where you're
13:09:54 25 speaking specifically about psychotropic medications --

13:09:59 1 MS. ELLIS: Objection to leading. What is the
13:10:01 2 second opinion?
13:10:02 3 MR. DUKE: I believe I'm asking her.
13:10:04 4 Q. (BY MR. DUKE) Did you have a second opinion regarding
13:10:07 5 psychotropic medications?
13:10:08 6 A. I did.
13:10:09 7 MS. ELLIS: Objection.
13:10:10 8 THE COURT: Overruled.
13:10:12 9 Q. (BY MR. DUKE) So can you explain to me what that
13:10:15 10 second opinion was?
13:10:16 11 A. My opinion to a reasonable degree of medical
13:10:18 12 certainty is that psychotropic medications, which I
13:10:21 13 describe as a clinical doctor within the prison setting,
13:10:27 14 has risks in high-heat situations. They are medications
13:10:31 15 that are medically necessary to treat mental illness but
13:10:35 16 can impact the body's ability to regulate heat,
13:10:41 17 particularly at high-heat conditions.
13:10:43 18 Q. What are those medications?
13:10:45 19 A. So one of the medication classes that I was talking
13:10:48 20 about are antipsychotic medications. Let me just say
13:10:51 21 first overall in umbrella terms, anticholinergic
13:10:56 22 medications and antimuscarinic medications, they along
13:10:59 23 with many others that dehydrate -- and I'm not going to
13:11:02 24 get into that but just to kind of succinctly talk about
13:11:04 25 this. Anticholinergic medications and antimuscarinic

13:11:09 1 medications can make it harder to sweat. That's called
13:11:12 2 hypohidrosis. And so, what happens is they can impact the
13:11:18 3 small area of the brain called the hypothalamus and it's a
13:11:21 4 particular little area within the hypothalamus that's
13:11:25 5 basically the thermostat dial of the entire body and it
13:11:29 6 regulates the core body temperature within .5 degrees
13:11:34 7 Farenheit so that the tissues can remain robust and
13:11:38 8 supple. Anything above that starts to create tissue
13:11:42 9 stress and impacts the body's ability to regulate itself
13:11:46 10 in various other metabolic ways.
13:11:48 11 So that area of the brain regulates the
13:11:51 12 temperature. Anticholinergics like Benadryl, like
13:11:56 13 hydroxyzine, many other medications that we prescribe for
13:12:00 14 sleep in the prison system -- because we can't prescribe
13:12:04 15 many types of medications in the prison system, we're
13:12:07 16 stuck with Benadryl when it comes to insomnia. We're
13:12:10 17 stuck with co -- there's a small armamentarium of
13:12:14 18 medications we have and they tend to be these older
13:12:16 19 classes of medications that are anticholinergic. And so,
13:12:20 20 when we're treating insomnia on a high-heat day, we're
13:12:24 21 giving a medication like Benadryl that is making it harder
13:12:27 22 for that individual to sweat and cool down.
13:12:30 23 And so, that's a class of medications. And then,
13:12:34 24 anti muscarinic medications include antipsychotic
13:12:38 25 medications that we use almost a hundred percent of the

13:12:40 1 time for people with schizophrenia and other
13:12:43 2 psychotic-related illnesses as well as certain
13:12:46 3 antidepressants like tricyclic medications and MAOI
13:12:51 4 inhibitors that are used to treat depression and anxiety
13:12:55 5 and other types of illnesses. So that's one area in which
13:13:00 6 I think it's really important to talk about the fact that
13:13:02 7 our bodies have a harder time regulating themselves in
13:13:06 8 heat when we're prescribing those psychiatric medications,
13:13:10 9 which is why the literature has established that
13:13:12 10 psychotropic medications make it hard to regulate heat.
13:13:17 11 Q. You had mentioned a second category, the
13:13:21 12 antipsychotic or antimuscarinic category of medicines.
13:13:28 13 Without leading you, what other illnesses could those or
13:13:34 14 are those used to treat? I believe you mentioned
13:13:38 15 schizophrenia but any others?
13:13:40 16 A. Right. That class of medication manages agitation,
13:13:43 17 right? So we see that in patients with dementia. We see
13:13:46 18 agitation in patients with substance use that are
13:13:52 19 struggling with agitation due to the psychosis they're
13:13:57 20 experiencing during a substance use. Sometimes we see
13:13:59 21 agitation in alcohol withdrawal and we will use these
13:14:03 22 medications and we have to use these medications. They're
13:14:07 23 actually very effective and they work really well, but the
13:14:09 24 problem is there's side effects to these medications and
13:14:15 25 one of those that are hard to measure in kind of temperate

13:14:19 1 areas but very easy to see as problematic when
13:14:23 2 temperatures get above 88 degrees.
13:14:25 3 Q. Do you know how common it is for inmates to be taking
13:14:29 4 or be prescribed those medications?
13:14:31 5 A. It's very common. Like I said, in schizophrenia,
13:14:33 6 almost a hundred percent. And any other type of disease
13:14:37 7 process that causes agitation -- let me just, say, I
13:14:39 8 didn't even talk about traumatic brain injury, which is in
13:14:43 9 the purview of psychiatry. People with traumatic brain
13:14:46 10 injury, they're just much more likely to have mental
13:14:49 11 illness and people with mental illness are more likely to
13:14:51 12 have traumatic brain injury. That can cause problems in
13:14:54 13 the hypothalamus that make it harder to regulate
13:14:58 14 temperature. People with traumatic brain injury are much
13:15:00 15 more prevalent in the prison system. It's what causes
13:15:05 16 people to be a little bit more impulsively violent. So
13:15:10 17 traumatic brain injury is a big piece that we should be
13:15:12 18 talking about. And we use these antipsychotic medications
13:15:15 19 to treat impulsivity, agitation, and violent behaviors and
13:15:19 20 those with traumatic brain injury, dementias,
13:15:23 21 schizophrenia, and other illnesses that cause agitation.
13:15:28 22 Q. Just a couple more questions on that. I think you've
13:15:31 23 been saying we treat. You mentioned your clinical
13:15:34 24 experience. Is this, again, based off of research or your
13:15:39 25 clinical experience or something else?

13:15:42 1 A. It is based on both but particularly my clinical
13:15:46 2 experience of treating agitated men in the incarceral
13:15:52 3 system with mental illness.
13:15:54 4 Q. How does that clinical or how has that clinical
13:15:57 5 experience for treating inmates informed your opinions?
13:16:02 6 A. That I know that cooler air reduces mental illness
13:16:09 7 and high heat makes it harder to manage mental illness in
13:16:13 8 the prison setting and so, it makes me want to advocate
13:16:16 9 for air conditioning.
13:16:17 10 Q. With respect to the use of psychotropic medications,
13:16:22 11 in particular, how does that inform that opinion?
13:16:24 12 A. That, you know, these are medications we need to
13:16:28 13 prescribe to these patients, and unfortunately, the side
13:16:33 14 effect of prescribing those medications makes it harder
13:16:37 15 for them to fight off heat and makes it harder for them to
13:16:39 16 stay cool and then, is a snowballing effect of
13:16:43 17 exacerbating their mental illness and their medical
13:16:46 18 illness and making them much worse off.
13:16:48 19 Q. Thank you. For the interest of time, did you rely on
13:16:54 20 some studies or research, as well?
13:16:57 21 A. I did along along with my --
13:16:59 22 MS. ELLIS: Objection to leading.
13:17:00 23 THE COURT: You can ask.
13:17:03 24 A. My clinical opinions on heat exacerbating mental
13:17:07 25 illness and the treatments of mental illness making it

13:17:09 1 harder to fight off heat are based on my clinical
13:17:12 2 experience, my training experience, and all of the
13:17:15 3 literature that establishes this fact.
13:17:23 4 Q. (BY MR. DUKE) Okay. Could we look at Exhibit 50? Is
13:17:31 5 this one of the several studies that you looked at?
13:17:34 6 A. This is a case study.
13:17:35 7 Q. Okay. And could we look at Exhibit 43, please? Is
13:17:48 8 this also one of those studies that you looked at?
13:17:50 9 A. Yes.
13:17:50 10 Q. And then, lastly, Exhibit 44.
13:17:57 11 MS. ELLIS: I'll re-raise my objection, your
13:17:59 12 Honor.
13:17:59 13 THE COURT: Sure.
13:18:05 14 Q. (BY MR. DUKE) Exhibit 44, is this also one of the
13:18:07 15 studies that you relied on?
13:18:08 16 A. Yes.
13:18:08 17 Q. And then, is Exhibit 50, 43 and 44 the type of
13:18:15 18 research that is relied on by medical professionals doing
13:18:19 19 the type of psychiatric work that you do?
13:18:21 20 A. Psychiatrists in the prison system that are dealing
13:18:23 21 with mental illness and all the different environmental
13:18:27 22 factors that make mental illness worse are relying on
13:18:32 23 these studies and thinking about these issues.
13:18:34 24 Q. And generally, are they consistent with your opinions
13:18:37 25 that you presented today?

13:18:38 1 A. They are consistent with my opinion.
13:18:39 2 Q. I'd like to offer Exhibits 50 and 43 and 44 into
13:18:43 3 evidence.
13:18:43 4 MS. ELLIS: Same objection.
13:18:44 5 THE COURT: Admitted for purposes of this hearing
13:18:47 6 subject to the objections previously stated.
13:18:50 7 MR. DUKE: No further questions.
13:18:51 8 THE COURT: All right. We're going to go ahead
13:18:53 9 and take our long-awaited lunch break now. I'm sorry
13:18:56 10 about that. We will take a 45-minute lunch and be back at
13:19:02 11 2:05 and we will resume testimony then.
13:19:18 12 (Lunch recess.)
14:06:32 13 THE COURT: You remain under oath.
14:06:36 14 CROSS-EXAMINATION
14:06:37 15 BY MS. ELLIS:
14:06:37 16 Q. Go ahead and get situated, Doctor, and let me know
14:06:41 17 when you're ready.
14:06:53 18 A. I'm all set.
14:06:57 19 Q. Hi, Dr. Biswas. I'm probably just going to say
14:07:03 20 Doctor but I don't want to mispronounce and I'm always
14:07:05 21 doing that.
14:07:05 22 A. No problem. Thank you.
14:07:06 23 Q. My name is Marlayna Ellis and, obviously, I represent
14:07:09 24 the Defendant Collier. You understand who I am and who I
14:07:11 25 represent, right?

14:07:12 1 A. Yes.
14:07:12 2 Q. So I do want to say I recognize that you're a medical
14:07:16 3 professional. I know that you're a doctor. I know that
14:07:19 4 your background is in psychiatry, so by no means with my
14:07:24 5 questions am trying to trip you up or anything like that.
14:07:26 6 I just have to ask you questions to understand, you know,
14:07:30 7 where you're getting your opinions, where your
14:07:32 8 conversation's coming from. So if you'll just bear with
14:07:35 9 me.
14:07:35 10 A. Sure.
14:07:35 11 Q. Okay. Thank you. Would you mind walking me through
14:07:40 12 because I was a little confused on what exactly is
14:07:43 13 forensics in the law.
14:07:44 14 A. Okay. Sure. So forensics, that that's a term that's
14:07:51 15 often used in multiple different settings and it means
14:07:53 16 different things in different specialties. So I'm a
14:07:57 17 forensic psychiatrist. I'm board certified in that. And
14:08:01 18 another name for that subspecialty in psychiatric medicine
14:08:05 19 is called psychiatry in the law, which is oftentimes --
14:08:11 20 well, there's multiple sectors of what forensic
14:08:14 21 psychiatrists do. The best way to summarize it is I
14:08:18 22 consult to social systems outside of the hospital walls.
14:08:22 23 So ultimately, I consult in the courts. I
14:08:25 24 consult in correctional facilities. I consult in social
14:08:30 25 systems that have a mental healthcare question that needs

14:08:36 1 to be clinically evaluated and then, given a
14:08:38 2 recommendation; and so, that tends to look like for a lot
14:08:43 3 of forensic psychiatrists is working within the
14:08:45 4 correctional system and in the prison system. Because a
14:08:50 5 lot of individuals with mental illness in the correctional
14:08:52 6 system had been tangled up in the criminal justice system
14:08:56 7 because of their mental illness, psychiatrists are
14:09:00 8 particularly valuable in the court system to talk about
14:09:04 9 how this person's mental illness is playing a role in
14:09:07 10 whatever the question is, whether it's competency to stand
14:09:10 11 trial, whether it is criminal responsibility, or whether
14:09:14 12 the judge needs to know how to sentence this individual.
14:09:17 13 Is this person going to be on medications that will make
14:09:20 14 them intolerant to heat and will they need an
14:09:24 15 air-conditioned unit. That can be an aid at sentencing
14:09:28 16 question.
14:09:28 17 So forensic psychiatrists really think about, do
14:09:32 18 psychiatric evaluations that then lend themselves to
14:09:35 19 answering questions outside of treatment and for other
14:09:39 20 reasons. So they work in a correctional setting, in the
14:09:42 21 court setting. And then, I'm an adult psychiatrist so I
14:09:46 22 also work in the medical setting. I work in the emergency
14:09:48 23 department. I work on the clinical floors and I work at
14:09:51 24 inpatient psychiatric units, as well. As a doctor, you
14:09:54 25 can kind of do a lot of things at once so it sounds like a

14:09:58 1 lot to do at once, but it's doable because of the
14:10:01 2 specialty that I'm in.
14:10:02 3 Q. Okay. Thank you for that explanation. It was very
14:10:04 4 helpful.
14:10:05 5 When you're talking about, you know, going and
14:10:09 6 consulting, would you say that your primary, I guess,
14:10:12 7 method working within the correctional system is doing
14:10:17 8 sentencing hearings, providing information to the Court
14:10:20 9 about an individual's mental health status and whether you
14:10:23 10 know whether that should be considered in regards to their
14:10:25 11 sentencing?
14:10:29 12 A. No. So what I would say is I work clinically and
14:10:33 13 when I was at Bridgewater State Hospital, I was 100
14:10:37 14 percent clinical so I was treating patients, but also, for
14:10:42 15 six years while treating patients, I was also answering
14:10:44 16 forensic evaluation questions and doing forensic
14:10:46 17 evaluations. I have thus increased my role in the
14:10:50 18 forensic evaluation space because there's not enough of us
14:10:55 19 to be doing to all of that but I still work within a
14:10:58 20 hospital.
14:10:58 21 Q. Okay. So how long have you been doing the forensic
14:11:01 22 evaluation for?
14:11:02 23 A. Since I've been board certified in 2015.
14:11:05 24 Q. Okay. So nine years; is that fair?
14:11:08 25 A. Sure.

14:11:08 1 Q. Within those nine years, how many times have you gone
14:11:12 2 to a prison unit and given an opinion in court based off
14:11:17 3 of that visit?
14:11:19 4 A. Outside of my clinical work?
14:11:21 5 Q. Yes.
14:11:22 6 A. That's a hard question. At Bridgewater, we often had
14:11:26 7 to clinically treat but due to providing psychiatric
14:11:30 8 medications, sometimes almost weekly, we had to go to the
14:11:33 9 court to testify on why we needed to treat this individual
14:11:37 10 for their mental illness. So I had done that maybe 75
14:11:40 11 times.
14:11:40 12 Q. Okay. But the 75 times, that was only in regards to
14:11:43 13 advising the Court about the medications that would be
14:11:45 14 appropriate?
14:11:46 15 A. Correct. But outside of that, I've also testified in
14:11:49 16 other issues.
14:11:49 17 Q. What are those other issues?
14:11:52 18 A. So in the criminal setting when I'm doing evaluation
14:11:54 19 in a prison or a jail, it can be related to competency,
14:12:00 20 criminal responsibility, aid at sentencing, need for care
14:12:03 21 and treatment, those types of issues.
14:12:06 22 Q. I know that you said that, you know, giving an
14:12:09 23 opinion about heat and mental illness in prisons, that
14:12:12 24 kind of falls under this envelope, I guess?
14:12:14 25 A. Absolutely. There's no fellowship in heat psychiatry

14:12:18 1 so there is no subspecialty area where someone becomes a
14:12:23 2 specialist in heat. As a medical doctor, you need to be a
14:12:27 3 specialist at heat because heat plays a big role in
14:12:30 4 medical and mental illness. Particularly as a
14:12:32 5 psychiatrist, we think about this a lot because we know
14:12:35 6 the population we treat is particularly vulnerable when
14:12:39 7 they're in a more custodial setting like an inpatient unit
14:12:44 8 or correctional setting, heat matters more because they
14:12:47 9 can't make decisions for themselves. So in taking care of
14:12:50 10 this vulnerable population, we have to be experts in how
14:12:53 11 heat and other environmental conditions may impact
14:12:56 12 psychiatric care.
14:12:58 13 Q. Have you ever given an expert opinion about the
14:13:01 14 testimony you're giving here today prior to this?
14:13:08 15 A. You mean that mental illness is exacerbated by
14:13:11 16 environmental conditions?
14:13:12 17 Q. No. Specific to inmates exposed to heat and how
14:13:16 18 their risk is increased due to their mental illness.
14:13:19 19 A. I have not testified to this issue, but I've treated
14:13:21 20 patients for it.
14:13:25 21 Q. What patients have you treated for this?
14:13:26 22 A. Incarcerated patients.
14:13:30 23 Q. And that was at Bellevue?
14:13:31 24 A. Bridgewater.
14:13:31 25 Q. Bridgewater, I'm sorry. And where was Bridgewater

14:13:33 1 located?
14:13:33 2 A. Massachusetts.
14:13:34 3 Q. Okay. I know earlier, you testified that
14:13:38 4 physiologically -- physiologically, right, all people are
14:13:42 5 people, right?
14:13:43 6 A. That's right.
14:13:44 7 Q. So somebody who is in Massachusetts biologically
14:13:48 8 should be the same as somebody in Texas, right?
14:13:52 9 A. Yes.
14:13:53 10 Q. Okay. Assuming other things but just for all intents
14:13:57 11 and purposes --
14:13:57 12 A. Yes, they're human beings both in Texas and in
14:14:00 13 Massachusetts.
14:14:01 14 Q. But you would agree with me that temperatures are
14:14:03 15 hotter in Texas than they are in Massachusetts; is that
14:14:06 16 fair?
14:14:07 17 A. Some of the time, yes.
14:14:08 18 Q. Okay. Do you know what the average temperature is in
14:14:11 19 Massachusetts in July?
14:14:14 20 A. Well, this July was 90.
14:14:16 21 Q. Every single day?
14:14:18 22 A. I would say a large -- yes, we've had more heat waves
14:14:21 23 than normal in Massachusetts this year.
14:14:24 24 Q. Okay. What about last year?
14:14:25 25 A. I don't know for the record.

14:14:26 1 Q. Okay. Do you know what the current temperature is
14:14:29 2 typically in Texas?
14:14:31 3 A. Yes. It hits 90 to 100 pretty regularly and over a
14:14:37 4 hundred regularly in the summer.
14:14:39 5 Q. So would it be your testimony that Massachusetts and
14:14:42 6 Texas are the same temperature-wise?
14:14:46 7 A. No.
14:14:46 8 Q. Okay. And why not?
14:14:49 9 A. Because Texas has more hotter days than Massachusetts
14:14:54 10 does. Hotter meaning above 90 degrees. More
14:14:59 11 over-90-degree days.
14:15:00 12 Q. And I like that you said more because the frequency
14:15:02 13 probably matters too, right? In terms of exposure to
14:15:07 14 heat. I mean one day in a hot condition might not be as
14:15:10 15 detrimental as 10 days in a hot condition; is that fair?
14:15:13 16 A. Matters how. What are you speaking to when you say
14:15:15 17 it matters?
14:15:16 18 Q. Well, you're saying that you've treated people in
14:15:21 19 incarcerated systems who have been exposed to heat, right?
14:15:23 20 A. Yes.
14:15:24 21 Q. Okay. And that is solely limited to your experience
14:15:27 22 at Bridgewater in Massachusetts, right?
14:15:31 23 A. So in terms of my own treatment, yes.
14:15:34 24 Q. Your own treatment yes --
14:15:34 25 A. It happened in the facilities that I treat patients

14:15:36 1 in, yes.
14:15:38 2 Q. You have never treated a patient in a Texas prison,
14:15:41 3 have you?
14:15:42 4 A. I have not.
14:15:43 5 Q. Have you ever done a site visit to any of the Texas
14:15:47 6 prisons?
14:15:47 7 A. No.
14:15:48 8 Q. Do you know how Texas handles their mentally ill
14:15:54 9 population?
14:15:55 10 A. That's a broad question.
14:15:57 11 Q. Sure. And let me ask you this. So earlier, you
14:16:01 12 know, you did say that obviously, people with mental
14:16:06 13 illness, they probably would benefit from being in a
14:16:09 14 cooler temperature, right?
14:16:10 15 A. All human beings would. Yes.
14:16:12 16 Q. Okay. But let me make sure I understand the scope of
14:16:16 17 your testimony because you're here to talk about and
14:16:18 18 advocate for mentally ill inmates, specifically, right?
14:16:22 19 A. Correct.
14:16:23 20 Q. Because you say they're at a heightened risk compared
14:16:25 21 to those without mental illness.
14:16:26 22 A. That's correct.
14:16:27 23 Q. So I understand that your personal opinion might be
14:16:34 24 that that's a human interest, everybody should be in an
14:16:37 25 air-conditioned bed, but for purposes of this hearing, it

14:16:39 1 is particularly mentally ill incarcerated individuals.
14:16:42 2 A. I would say my subspecialty is mentally ill
14:16:46 3 incarcerated individuals, but what I would say is as a
14:16:50 4 medical doctor that it impacts all people.
14:16:52 5 Q. But certainly not at the same risk level?
14:16:56 6 A. Right. People with mental illness are more
14:16:57 7 vulnerable. They have a difficult time getting out of
14:17:01 8 those situations. They have a tougher time processing in
14:17:03 9 those situations.
14:17:04 10 Q. Okay. So do you know whether mentally ill
14:17:09 11 individuals in Texas are housed in cool beds?
14:17:14 12 A. Well, I know that not all people with mental illness
14:17:19 13 are diagnosed within the prison system as mentally ill as
14:17:24 14 it's 37 percent and that's a conservative estimate.
14:17:27 15 Q. For those that we would anticipate having a diagnosis
14:17:30 16 maybe something severe like schizophrenia, how frequently
14:17:34 17 does schizophrenia go undiagnosed?
14:17:38 18 A. It can go undiagnosed for long periods of time
14:17:41 19 because those individuals do not seek mental health
14:17:43 20 treatment. They often don't have insight into the fact
14:17:45 21 that they're getting ill.
14:17:47 22 Q. Well, let me ask you this. Obviously, in the free
14:17:49 23 world, there is some personal accountability to go out and
14:17:52 24 seek treatment from a medical professional, right?
14:17:56 25 A. Yes. But this is a huge problem with the mentally

14:17:59 1 ill population which makes them more vulnerable because
14:18:02 2 they don't seek treatment a lot of the time.
14:18:04 3 Q. I get what you're saying. But you recognize that the
14:18:07 4 correctional setting is different in that, obviously, free
14:18:11 5 choice is a lot more limited.
14:18:12 6 A. Yes.
14:18:12 7 Q. Would you agree with me that incarcerated individuals
14:18:15 8 are just evaluated more frequently almost by nature of
14:18:19 9 being forced into it, right?
14:18:21 10 A. I wouldn't agree with that.
14:18:23 11 Q. Well, do you know that that's not true in Texas?
14:18:27 12 A. I know nationwide, we have a dearth of psychiatrists
14:18:31 13 involved in correctional care, which is one of the reasons
14:18:33 14 why I direct a program in getting more psychiatrists
14:18:36 15 involved in correctional care because it's such a
14:18:40 16 scarcity, a rarity, and so, there aren't enough
14:18:45 17 psychiatrists to be doing this work in Massachusetts
14:18:47 18 prisons and where it's much smaller population than Texas
14:18:51 19 and have more psychiatrists per capita. So I would guess
14:18:54 20 that it's underdiagnosed and there's definitely a shortage
14:18:58 21 of psychiatrists in Texas prisons.
14:19:00 22 Q. But keyword, you're guessing that, you don't know
14:19:03 23 that to be true.
14:19:04 24 A. I know there's a shortage in every state.
14:19:06 25 Q. But you don't specifically know that in regards to

14:19:09 1 TDCJ.
14:19:10 2 A. I wouldn't say that I've looked at a document for
14:19:12 3 that, but I've thought about this in a nationwide setting.
14:19:15 4 Q. Okay. A nationwide setting.
14:19:21 5 A. Yes.
14:19:21 6 Q. So schizophrenia is something that you talked about
14:19:24 7 earlier just now. So that's one of the mental conditions
14:19:28 8 particularly where you would maybe be at like a heightened
14:19:31 9 risk of having difficulties thermoregulating; is that
14:19:35 10 correct?
14:19:35 11 A. That's correct.
14:19:36 12 Q. And is that because of the medication that you
14:19:39 13 prescribe to them for it?
14:19:41 14 A. It's a multifactorial problem. One is schizophrenia
14:19:45 15 itself, the disease itself may impact the hypothalamus,
14:19:50 16 make it harder to regulate body temperature. Number two,
14:19:53 17 people with schizophrenia almost always have more medical
14:19:57 18 illnesses than the general population, and so, their
14:20:00 19 medical illnesses may be causing more chronic stress
14:20:03 20 within their bodies with heat. And then, number three,
14:20:06 21 they are almost always prescribed antipsychotics if
14:20:10 22 they're having symptoms and their mental illness have been
14:20:13 23 diagnosed and that can impact their thermoregulatory
14:20:19 24 system.
14:20:22 25 Q. So going to the idea of this medication, if

14:20:25	1	somebody's prescribed a medication for schizophrenia, then
14:20:29	2	obviously, they're not undiagnosed, right?
14:20:31	3	A. That's true.
14:20:32	4	Q. That's because somebody has identified them as having
14:20:34	5	schizophrenia?
14:20:35	6	A. Sure.
14:20:36	7	Q. Okay.
14:20:39	8	A. I just want to add the caveat that schizophrenia
14:20:42	9	takes a very long time to diagnose because you can't look
14:20:46	10	at symptoms in a snapshot moment and make that diagnosis.
14:20:50	11	You need six months of seeing a decompensating disease
14:20:55	12	process in order to make that final diagnosis of
14:20:58	13	schizophrenia. So oftentimes, what we might see are
14:21:03	14	obvious symptoms that we need to treat with an
14:21:05	15	antipsychotic medication, but we won't go out and make
14:21:07	16	that diagnose right off the bat. It takes six months to
14:21:11	17	make that diagnosis.
14:21:14	18	Q. I would assume, though, that medication isn't
14:21:16	19	prescribed for whatever the reason may be, then that
14:21:19	20	concern goes down, right, for that potential impact of,
14:21:22	21	you know, not being able to thermoregulate as it relates
14:21:25	22	to the medication, right?
14:21:27	23	A. Sorry. I didn't understand the first part of your
14:21:29	24	question.
14:21:31	25	Q. Let me rephrase. So if you're saying that someone

14:21:36 1 with schizophrenia, you might take some time to diagnose
14:21:39 2 them so you ultimately might not prescribe them a
14:21:42 3 medication at first, right?
14:21:43 4 A. At first.
14:21:44 5 Q. So if they're not prescribed a medication, then the
14:21:47 6 risk of having any adverse consequence of being prescribed
14:21:51 7 that medication would go down.
14:21:54 8 A. Yes. But like I said, it's a threefold risk for
14:21:58 9 schizophrenia, the disease itself, the medical
14:22:00 10 comorbidities and then, the medication.
14:22:02 11 Q. And it sounds like it's an individualized assessment
14:22:05 12 to what that individual needs.
14:22:07 13 A. Exactly. Yes.
14:22:10 14 Q. But broadly speaking, I mean, mental illness, that
14:22:14 15 covers a wide range of folks, right?
14:22:15 16 A. That's correct.
14:22:17 17 Q. So in regards to the air conditioning, I do have a
14:22:22 18 question because I know you answered it briefly. You are
14:22:26 19 not aware about how TDCJ handles its mentally ill
14:22:33 20 population where they're housed, how they're treated.
14:22:36 21 A. I don't know the specifics.
14:22:37 22 Q. Okay. Do you know or can you explain for the Court
14:22:41 23 what the difference is between an inpatient psychiatric
14:22:46 24 person and somebody who is not in an inpatient
14:22:49 25 classification?

14:22:52 1 A. Are you talking about that kind of in terms of
14:22:55 2 inpatient psychiatry in the world or in what context are
14:23:01 3 you asking?
14:23:01 4 Q. When I say the word "inpatient," what does that mean
14:23:06 5 to you?
14:23:06 6 A. As a psychiatrist inpatient unit in any state in the
14:23:11 7 court means a locked unit where the individual is
14:23:14 8 receiving high levels of care because they've been
14:23:17 9 determined to have mental illness and have been determined
14:23:20 10 to be dangerous due to that mental illness.
14:23:24 11 Q. Okay. So is it fair to say that those individuals
14:23:26 12 are more high risk?
14:23:29 13 A. For what?
14:23:30 14 Q. For anything. Propensity for violence, self harm,
14:23:35 15 for whatever reason their mental illness is not well
14:23:37 16 controlled.
14:23:38 17 A. Yes.
14:23:39 18 Q. Okay. Would it surprise you to learn that all
14:23:44 19 inpatient psyche units in TDCJ are in air conditioning?
14:23:47 20 A. No.
14:23:48 21 Q. Why is that?
14:23:49 22 A. Because you would think that that would be a
14:23:52 23 population that you would put in air conditioning, but
14:23:55 24 problem is most of this goes undiagnosed because it's like
14:24:02 25 the estimates are one in three individuals in the

14:24:04 1 incarcerated population has a mental illness.
14:24:08 2 Q. But when you referred to mental illness, you're not
14:24:11 3 specifying a type of mental illness, that's broad, right?
14:24:13 4 A. I'm saying it probably lands on depression,
14:24:18 5 depression anxiety together. Schizophrenia, bipolar
14:24:25 6 disorder, ADHD. And let me just say, schizophrenia and
14:24:28 7 other related psychotic disorders and probably PTSD.
14:24:32 8 Q. Okay.
14:24:33 9 A. And all of those psychiatric illnesses require
14:24:37 10 psychotropic medications that could impact the
14:24:41 11 thermoregulatory system of the body.
14:24:42 12 Q. But again, that's only if you are diagnosed and are
14:24:45 13 being prescribed medication, right?
14:24:47 14 A. Right. And one in three individuals probably have
14:24:48 15 one of those diagnoses in the incarcerated setting and not
14:24:52 16 all of them are diagnosed.
14:24:54 17 Q. So then, that means to us that if they're not
14:24:57 18 diagnosed, they're not prescribed that psychotropic
14:25:00 19 medication.
14:25:00 20 A. Likely, but here's how it really goes down in the
14:25:03 21 prison setting. What happens --
14:25:05 22 Q. Well, I don't want to go too much into that --
14:25:07 23 THE COURT: She was answering your question.
14:25:09 24 A. Okay. So what actually happens when someone has
14:25:14 25 mental illness. First of all, it's just a lot. People in

14:25:17 1 the incarcerated system are -- probably more than one in
14:25:20 2 three have mental illness because they've gone through a
14:25:23 3 downward spiral in their life, for whatever reason, that
14:25:27 4 has landed them in that situation so it's a very highly
14:25:29 5 concentrated mentally ill population. There's not enough
14:25:34 6 psychiatrists or mental health workers to take care of
14:25:34 7 them anywhere in the country.
14:25:40 8 On top of that, how it normally presents, the
14:25:42 9 mental illness, wither it's PTSD, depression, anxiety,
14:25:44 10 maybe not florid psychosis and paranoia but every other
14:25:48 11 type of mental illness presents in a way of like I can't
14:25:50 12 sleep or my stomach hurts or my heart hurts. So it's very
14:25:55 13 hard to really pinpoint, oh, this person has PTSD and
14:25:59 14 that's why they're saying that.
14:26:01 15 So what ends up happening to a large portion of
14:26:04 16 the population that's possibly in these un-air conditioned
14:26:07 17 spaces is they're not sleeping so they get Benadryl, but
14:26:09 18 they're not diagnosed because their systems are too
14:26:13 19 limited and constricted to take on that level of a
14:26:16 20 population that's mentally ill. We're basically
14:26:19 21 concentrating mental illness in these small institutions
14:26:22 22 in high numbers and most of them are not ending up in the
14:26:27 23 inpatient psyche unit that you speak of.
14:26:29 24 Q. Well, not just the inpatient psyche unit. Are you
14:26:31 25 aware of any other facilities within TDCJ that house

14:26:35 1 mentally ill inmates?
14:26:36 2 A. I'm guessing solitary confinement.
14:26:39 3 Q. Some, sure, but specifically, I'll just go ahead and
14:26:42 4 represent to you that we have two additional units that
14:26:44 5 also house mentally ill inmates and you're not aware of
14:26:48 6 that, are you?
14:26:50 7 A. Aware of what?
14:26:51 8 Q. The fact that we do house those individuals in air
14:26:54 9 conditioning.
14:26:54 10 A. I'm aware that, I think, 70 percent of people in the
14:26:57 11 Texas prison system are in air-conditioned units. I think
14:27:01 12 I'm aware that air conditioning exists.
14:27:03 13 Q. Okay. So earlier, when you were talking about this
14:27:07 14 risk and, you know, heat exacerbating mental illness, is
14:27:12 15 the risk death?
14:27:16 16 A. The risk is more mental illness, more medical illness
14:27:20 17 and comorbidities that result in a shorter lifespan.
14:27:24 18 Q. Okay. So just so I understand your opinion, your
14:27:27 19 opinion is not that if mentally ill inmates are not given
14:27:32 20 air conditioning that they will die, they will just face
14:27:36 21 further difficulties with their diagnosis.
14:27:38 22 A. Not just that -- like we talked about the suicidal
14:27:41 23 watch increases, people become more suicidal. They
14:27:44 24 complete suicide. When the autopsy report is done, it
14:27:47 25 said suicide. It doesn't say due to heat, person became

14:27:51 1 suicidal and then, they kill themselves. So the issue is
14:27:55 2 the heat is exacerbating all of this stuff and then, other
14:27:59 3 things are being written on the death certificate.
14:28:01 4 But the heat is contributing to the exacerbation
14:28:06 5 of all of those symptoms, whether it's medical illness or
14:28:10 6 mental illness. And I would argue mental illness is
14:28:12 7 medical illness because it's illness of the brain.
14:28:15 8 Q. I do want to touch on it because you mentioned it in
14:28:17 9 terms of the death reports. You're not a medical examiner
14:28:21 10 in the sense that you don't conduct autopsy, right?
14:28:23 11 A. Correct.
14:28:24 12 Q. So you don't have any insight to what is actually
14:28:26 13 reported or listed as a cause of death in order to
14:28:30 14 question whether heat was a cause, do you?
14:28:35 15 A. Well, as a doctor, I --
14:28:37 16 Q. Well, not as a doctor. You've never done an autopsy,
14:28:40 17 have you?
14:28:40 18 A. I have never done an autopsy.
14:28:43 19 MR. DUKE: Objection. If you'll let her finish
14:28:46 20 her answer to the question.
14:28:47 21 THE COURT: Did you have anything more to say?
14:28:48 22 A. I think what I have to say about medical illness and
14:28:51 23 people who are alive is that we know heat makes things
14:28:55 24 more stressed and people with medical illnesses and mental
14:29:00 25 illnesses have inflammatory responses that in stress cause

14:29:03 1 more inflammation and the disease progresses. And then,
14:29:06 2 we do know as medical doctors that we often sign death
14:29:12 3 certificates. I've signed death certificates. You know,
14:29:16 4 we know that it's not just the disease that killed the
14:29:18 5 person, killed the person. It's all the things that
14:29:22 6 contributed to that disease becoming worse.
14:29:24 7 Q. (BY MS. ELLIS) Okay. But in that same vein, you
14:29:27 8 would have to take into consideration anything that would
14:29:28 9 have been potentially contributory to that person's death,
14:29:31 10 right? You can't just pick and choose.
14:29:36 11 A. No. I think we look at the literature and we say,
14:29:40 12 you know, this person's mental illness was exacerbated.
14:29:43 13 They went to the hospital two days after a heat wave and
14:29:47 14 then, that's when their mental illness got worse and then,
14:29:49 15 that episode progressed into multiple episodes that
14:29:53 16 resulted in suicidal completion. So we know what. Do we
14:30:00 17 write that down? No. But that's why I'm testifying today
14:30:02 18 to kind of explain the trajectory of what happens.
14:30:05 19 Q. No. I understand. But are you saying that your
14:30:10 20 signing on death certificates is the equivalent of
14:30:12 21 performing a medical autopsy?
14:30:13 22 A. No.
14:30:14 23 Q. Okay. In regard to the fact -- obviously, air
14:30:21 24 conditioning would help bring temperatures down for
14:30:24 25 mentally ill inmates. We agree on that.

14:30:28 1 A. We do.
14:30:30 2 Q. What about other heat mitigation measures?
14:30:33 3 A. I think the science is showing, you know, when I did
14:30:37 4 a deep dive into literature in every way, it's air
14:30:41 5 conditioning is the best method.
14:30:42 6 Q. Okay. So do you know that to be true or just that's
14:30:45 7 what you've researched and that's what the literature
14:30:48 8 says?
14:30:48 9 A. I know that to be true.
14:30:49 10 Q. Based on what?
14:30:50 11 A. Based on working with mentally ill populations,
14:30:55 12 knowing when they're homeless and out on the streets that
14:30:58 13 they're running to the EDs just because it's cooler and
14:31:01 14 they're trying to stabilize because they're so ill on the
14:31:06 15 streets because it's that hot.
14:31:08 16 Q. Do you mean emergency department?
14:31:10 17 A. Yes.
14:31:10 18 Q. Okay. I was like what's an ED.
14:31:14 19 A. So that's really where the rubber meets the road is
14:31:18 20 you can see homeless populations in the country across the
14:31:20 21 country, one-third of them suffer from very serious mental
14:31:24 22 illness and you can see going to shelters and EDs and
14:31:28 23 asking for air conditioning. So there's that clinical
14:31:32 24 observation in and of itself but literature reflects that,
14:31:36 25 as well.

14:31:37 1 Q. The equivalent, I guess in this situation, would be
14:31:39 2 accessing a respite area, would it not?
14:31:45 3 A. What do you mean by a respite area?
14:31:47 4 Q. You've been here for the entirety of the day, have
14:31:49 5 you not?
14:31:50 6 A. Yes.
14:31:50 7 Q. Okay. So have you heard testimony about what TDCJ
14:31:53 8 offers as a respite area?
14:31:55 9 A. Yes, but you might not always have the decision to
14:31:57 10 get there when you need it and the other thing is your
14:32:01 11 body is stressed. Anytime you're in a heat situation, I
14:32:07 12 don't know if you've ever noticed that sometimes people
14:32:10 13 say this: Oh, I catch colds when it's either too hot or
14:32:13 14 too cold. You know, when I'm going between a lot of
14:32:15 15 temperatures I can get stuffy and sniffily and catch a
14:32:19 16 cold. It's not that you're catching a cold because it's
14:32:21 17 too hot oro to cold, it's because your body is stressed in
14:32:25 18 trying to regulate the temperature inside that core
14:32:29 19 temperature that has to be within .5 degrees Farenheit and
14:32:34 20 because of that stress and that fluctuating temperature,
14:32:38 21 you can get sick. You're just more susceptible to viruses
14:32:41 22 in that fluctuating temperature.
14:32:43 23 And so, it's really important to think about the
14:32:46 24 fact that it's not just getting two hours in an
14:32:50 25 air-conditioned unit should do it. It's the fact that

14:32:52 1 you're fluctuating between those two things that can get
14:32:55 2 you -- that can also stress your body and the fact that
14:32:59 3 you're in a sustained period of time when it's high heat.
14:33:03 4 We know that high heat causes stress and maybe the five
14:33:08 5 hours of stress is a little bit better than 20 hours of
14:33:11 6 stress, but it still adds up over time.
14:33:15 7 Q. I see what you're saying. I like that you said that
14:33:17 8 it might be helpful and to me, that goes to it might not
14:33:22 9 cure it but it could maybe help mitigate it; is that fair?
14:33:24 10 A. I would say that but working in correctional
14:33:27 11 settings, you don't get to make decisions for yourself.
14:33:31 12 What happens is in high-eat situations, there are -- more
14:33:34 13 fights break out, more agitation happens, people get
14:33:38 14 angrier and so, more shutdowns and lockdowns happen in
14:33:41 15 high-heat days. And so, if you're in a lockdown and you
14:33:45 16 need air conditioning, it's even harder to get it on a hot
14:33:49 17 day than it would be on a regular temperature day where
14:33:53 18 everybody's feeling a little bit calmer.
14:33:55 19 Q. But again, you're not basing that off of your
14:33:58 20 experience in the Texas prison system so you don't know
14:34:00 21 that to be true.
14:34:01 22 A. I'm basing it off of mental illness is exacerbated
14:34:03 23 and so is violence and agitation and impulsivity in high
14:34:06 24 heat.
14:34:07 25 Q. You said that individuals in prison aren't able to

14:34:13 1 access these things themselves. That's one of the first
14:34:17 2 things I believe you said.
14:34:17 3 A. Yes. Particularly during lockdowns and other types
14:34:21 4 of, you know, custodial rules that occur around lunchtime
14:34:24 5 and visits and all of that.
14:34:27 6 Q. I guess that would be for the exception and not the
14:34:31 7 rule, right?
14:34:32 8 A. No. It's a very highly structured day within a
14:34:36 9 prison setting. You're not really allowed to mill about.
14:34:41 10 What I would say is you really don't have a lot of choice
14:34:44 11 around your times and what happens and when there's more
14:34:49 12 chaos on the units, you're just much more likely to have
14:34:53 13 no freedom at all during that day because there's just
14:34:56 14 going to be lockdown for hours at a time.
14:34:59 15 Q. And so, not all inmates are going to have the same
14:35:01 16 classification, though, right? You are aware that there
14:35:04 17 are different classifications.
14:35:06 18 A. I am aware.
14:35:07 19 Q. Somebody who was maybe in restrictive housing, that
14:35:10 20 might be true. They can't get themselves to respite, they
14:35:12 21 might rely on someone to take them.
14:35:14 22 A. Uh-huh.
14:35:15 23 Q. But somebody who is perhaps -- are you familiar with
14:35:18 24 the term "trustee"?
14:35:22 25 A. In what context?

14:35:23 1 Q. In the prison context.
14:35:25 2 A. No.
14:35:25 3 Q. Okay. So I'll just represent to you that it's a way
14:35:29 4 of classifying an individual who has been identified as
14:35:32 5 someone who is trustworthy, they're given a lot more
14:35:35 6 privileges. That is an example of an individual who would
14:35:38 7 have potentially more free choice.
14:35:42 8 A. And less likely to have mental illness.
14:35:44 9 Q. Perhaps.
14:35:44 10 A. No. For sure because what is happening is people
14:35:49 11 with mental illness are for vulnerable in high-heat
14:35:51 12 situations because it's harder for them to think. So they
14:35:55 13 may be overheating but they're not going to think to go to
14:35:58 14 the respite area. That's why all of the studies show that
14:36:02 15 people with schizophrenia and other types of cognitive
14:36:05 16 impairment type of illnesses will die much faster in high
14:36:09 17 heat because they can't assess or they can't assess
14:36:12 18 themselves the same way somebody without mental illness or
14:36:15 19 active symptoms of mental illness would. And so, what
14:36:18 20 happens is that individual has a lack of insight into
14:36:22 21 their own self-awareness and don't know their own needs to
14:36:26 22 go to the respite area whereas a trustee, somebody who's
14:36:30 23 cognitively thoughtful, put together, following the rules,
14:36:33 24 being a role model for everybody else is much less likely
14:36:36 25 to have active mental illness and be at higher risk for

14:36:40 1 heat.
14:36:41 2 Q. So can you put a specific number on individuals who
14:36:44 3 are at risk?
14:36:47 4 A. No.
14:36:48 5 Q. Can you quantify in any way the amount of risk these
14:36:53 6 individuals are facing?
14:36:56 7 A. No.
14:36:56 8 Q. And that probably is because you just don't have
14:36:59 9 enough information; is that fair?
14:37:00 10 A. We have a lot of data that they're at much higher
14:37:03 11 risk.
14:37:04 12 Q. How much risk?
14:37:05 13 A. The study we just talked about is 200 percent risk in
14:37:08 14 that study.
14:37:10 15 Q. But for what individuals?
14:37:11 16 A. People with schizophrenia are just 200 percent more
14:37:16 17 likely to die.
14:37:20 18 Q. People with schizophrenia would be like one subset,
14:37:24 19 right, of people?
14:37:25 20 A. Right.
14:37:26 21 Q. It might be 200 percent for schizophrenia but then,
14:37:29 22 we would have to account for that individual being
14:37:31 23 diagnosed, not being diagnosed, being treated, maybe not
14:37:34 24 being treated.
14:37:34 25 A. Right.

14:37:35 1 Q. So there's a lot of factors that it makes it hard to
14:37:38 2 limit or, I guess, hone in on what that risk actually
14:37:41 3 would be.
14:37:41 4 A. Exactly. Like if you wanted me to give you a number,
14:37:44 5 I'd say it's a lot more because they're more vulnerable.
14:37:48 6 Can I hone in on the number? I can tell you per
14:37:52 7 individual, this individual has these risks. Look, their
14:37:57 8 cognitive impairment is this much. They're not assessing
14:38:00 9 their own bodily functions very well. They're not
14:38:03 10 showering. They're not taking care of their hygiene.
14:38:05 11 They're not going to think to go to a respite area. So it
14:38:08 12 would be individualized when it came to risk assessments,
14:38:12 13 which as a forensic psychiatrist, I do all the time for
14:38:14 14 the courts. I give them a risk assessment of what this
14:38:16 15 individual may or may not need.
14:38:18 16 Q. So it is your testimony that it is an individualized
14:38:22 17 risk assessment even for mentally ill inmates?
14:38:26 18 A. It is so when you asked me about the --
14:38:30 19 MR. DUKE: Sorry. Misstates testimony.
14:38:33 20 MS. ELLIS: I don't think it does. She was
14:38:34 21 agreeing.
14:38:35 22 THE COURT: I'll let you respond.
14:38:37 23 A. So I guess to answer your question, I can tell you
14:38:40 24 each individual's risk of how heat might impact them, but
14:38:45 25 when it comes to the population, we know the risk is

14:38:48 1 higher due to their vulnerabilities. But because each
14:38:51 2 person has a different set of risks, I can't quantify it
14:38:56 3 in an honest way.
14:38:58 4 Q. (BY MS. ELLIS) Okay. I appreciate your candor. One
14:39:01 5 final quest. Were you here when Dr. Vassallo was
14:39:04 6 testifying?
14:39:04 7 A. I was.
14:39:05 8 Q. Okay. Dr. Vassallo testified that opioids and,
14:39:10 9 specifically, fentanyl actually decrease the core body
14:39:14 10 temperature. So you do agree with that statement?
14:39:16 11 A. I do.
14:39:17 12 Q. Earlier, it sounded like you said that that would
14:39:20 13 actually raise the core body temperature.
14:39:23 14 A. So sometimes what happens is they might be
14:39:27 15 withdrawing from opiates. They're not getting opiates in
14:39:30 16 the prison system and that withdrawal can last a long time
14:39:33 17 and so, that can impact thermoregulation, so they may
14:39:39 18 expose themselves longer to heat than they should because
14:39:44 19 their body temperature feels to them like it's lower so
14:39:47 20 you'll see shivering.
14:39:50 21 Basically the best way to explain it is when
14:39:52 22 you're coming off opiates, you have a lot of withdrawal
14:39:55 23 symptoms and those withdrawal can fluctuate, depending on
14:39:59 24 the person, and some of them will certainly be more
14:40:02 25 hypersensitive to heat at that point. Because they're not

14:40:06 1 getting the opiate, they're withdrawing from it and their
14:40:08 2 bodies are trying to regulate from not having the opiate.
14:40:11 3 Q. But opiates like on their own, they will decrease the
14:40:15 4 body temperature.
14:40:18 5 A. I heard the testimony and yes, I agree with that.
14:40:21 6 Q. Okay. Thank you. No further questions. I
14:40:23 7 appreciate your time.
14:40:29 8 MR. DUKE: No further questions.
14:40:30 9 THE COURT: Thank you. You can step down. Can
14:40:32 10 this witness be released?
14:40:35 11 MS. ELLIS: No objection.
14:40:36 12 THE COURT: You're free to go. Thank you very
14:40:38 13 much. Your next?
14:40:46 14 MS. GROSSMAN: Call Dean Williams, your Honor.
14:40:56 15 THE COURT: Before you take a seat, could you
14:40:59 16 please raise your right hand.
14:41:00 17 THE CLERK: You do solemnly swear or affirm that
14:41:00 18 the testimony which you may give in the case now before
14:41:00 19 the Court shall be the truth, the whole truth, and nothing
14:41:05 20 but the truth?
14:41:05 21 THE WITNESS: I do.
14:41:06 22 THE COURT: Please be seated.
14:41:06 23 DEAN WILLIAMS, called by the Plaintiff, duly sworn.
14:41:06 24
14:41:07 25

14:41:07	1	DIRECT EXAMINATION
14:41:09	2	BY MS. GROSSMAN:
14:41:09	3	Q. Good afternoon.
14:41:10	4	A. Hi. Good afternoon.
14:41:10	5	Q. Please state your name for the record.
14:41:12	6	A. Dean Williams.
14:41:15	7	Q. Mr. Williams, what is your field of occupation?
14:41:17	8	A. Well, currently, I'm in my semi-retirement phase.
14:41:21	9	I'm a consultant. I own my own little consulting company.
14:41:27	10	I'm the sole proprietor. That's what I'm doing now.
14:41:31	11	Q. How long have you worked in corrections?
14:41:33	12	A. Well, most of my career has been in juvenile
14:41:38	13	corrections and then, later on, in adult corrections. So
14:41:42	14	I started as a very young man in the juvenile facilities,
14:41:45	15	youth counselor. I worked my way up the chain.
14:41:50	16	Interspersed between there, I had other jobs. I worked as
14:41:53	17	a lowly paralegal in a DA's office for five years in rural
14:41:59	18	Alaska. But I really spent most part of my career moving
14:42:02	19	up and becoming a superintendent and leading juvenile
14:42:07	20	facilities throughout the state of Alaska. That was part
14:42:11	21	one.
14:42:11	22	Q. What was your most recent?
14:42:13	23	A. And most recently, that career led me on to -- maybe
14:42:21	24	I'll take it in chronological order if that's okay. I
14:42:24	25	went back to work in government as special assistant to

14:42:28 1 Governor Walker. In that capacity, I did an investigation
14:42:31 2 about why people were dying in the Alaska prison system.
14:42:37 3 That eventually led me to actually taking over that
14:42:39 4 commission as the commissioner of corrections and I led
14:42:41 5 that system for three years. After that stint, the
14:42:47 6 governor was not reelected, I was not retained by the new
14:42:50 7 governor. I then went on to lead the Colorado Department
14:42:53 8 of Corrections most recently for four years under Governor
14:42:58 9 Polis.
14:42:58 10 Q. What was your title under Governor Polis? What was
14:43:01 11 your title?
14:43:01 12 A. I was the Executive Director of Department of
14:43:04 13 Corrections in Colorado.
14:43:05 14 Q. How long were you Executive Director of the Colorado
14:43:08 15 Departments of Corrections?
14:43:09 16 A. Four years.
14:43:11 17 Q. Before that, you might have said that you were the
14:43:13 18 Commissioner of the Alaska Department of Corrections?
14:43:15 19 A. Correct, for approximately three years.
14:43:18 20 Q. In your role as Executive Director of the Colorado
14:43:21 21 Department of Corrections, did you receive any awards or
14:43:25 22 recognition for your work?
14:43:25 23 A. I won the Head of Service Award from the
14:43:29 24 International Correction and Prison Associations, an
14:43:32 25 international organization, and I won their Head of

14:43:36 1 Service Award. It's kind of in our field, it's sort of
14:43:39 2 the equivalent of winning an Oscar, if you will. So I was
14:43:41 3 very honored to win that award a couple of years ago,
14:43:45 4 right before I resigned, retired for the third, fourth
14:43:50 5 time in government.
14:43:52 6 Q. This point, I'd like to move to qualify Dean Williams
14:43:55 7 as an expert in corrections.
14:43:57 8 THE COURT: Objection?
14:43:58 9 MS. WARREN: Yes, your Honor. We object to Mr.
14:44:01 10 Williams' expertise in adult corrections as most of his
14:44:06 11 career was spent in juvenile corrections and his only time
14:44:10 12 spent in adult corrections was five years. And he never
14:44:14 13 worked has way up from the bottom to the top in adult
14:44:19 14 corrections. He hasn't seen the entire process.
14:44:20 15 THE COURT: So he was in charge of both the
14:44:22 16 Alaska and Colorado prison systems and he's not an expert?
14:44:27 17 MS. WARREN: Yes, your Honor.
14:44:27 18 THE COURT: Okay. Overruled and you're
14:44:29 19 designated as an expert.
14:44:31 20 Q. (BY MS. GROSSMAN) Now, Mr. Williams, have we ever met
14:44:36 21 before I retained you in this case?
14:44:38 22 A. Not in person. And so, we met regarding this case
14:44:45 23 but, as you know and I know, that our paths crossed
14:44:50 24 because one time you were responsible for suing me and
14:44:54 25 when I was executive director of corrections.

14:44:59 1 Q. Not necessarily in the habit of taking on cases for
14:45:03 2 plaintiffs' lawyers and suing departments of corrections.
14:45:05 3 A. No. Not at all. I would generally be sitting in the
14:45:10 4 seat that Mr. Collier is sitting in right now.
14:45:12 5 Q. What made you decide to take this case?
14:45:17 6 A. Let me start off this way. This has been a struggle
14:45:22 7 a bit for me to say yes to you and your team in this case
14:45:26 8 and I'll start off with my reservation and then, I'll say
14:45:30 9 why I got to yes. The first part -- that really, main
14:45:34 10 part of my reservation is Mr. Collier is a man that I've
14:45:36 11 known for a period of time. I consider him a friend.
14:45:42 12 I'll see how this friendship survives after this hearing.
14:45:47 13 But he's a man I have great respect for and he's been a
14:45:50 14 colleague and a friend. So it's difficult when you leave
14:45:56 15 a leadership position and running these systems, which are
14:45:59 16 very difficult and very complex, to say you're going to
14:46:03 17 speak into a difficult subject and topic like this but
14:46:07 18 here's why I said yes.
14:46:08 19 I said yes, one, because, quite frankly, this
14:46:12 20 entire matter that we're all here for shocks my
14:46:16 21 conscience. This has been an issue that's been building
14:46:19 22 in your state. This is not the only state but in
14:46:22 23 leadership positions, I have faced this very same thing
14:46:25 24 where you can't quite understand why there hasn't been an
14:46:30 25 aggressive attempt to fix what the underlying problem is.

14:46:33 1 So it shocks my conscience and that was one reason why I
14:46:38 2 agreed to be here today.
14:46:41 3 The second reason is there's a lot of litigation
14:46:44 4 in the corrections field. I have been subject to it. You
14:46:48 5 were the subject of one of those courses. I had over 200
14:46:51 6 cases filed against me when I was executive director in
14:46:54 7 Colorado around many topic areas and some of those topic
14:46:59 8 areas with all due respect to other advocacy groups like
14:47:03 9 transgender rights, what food should be -- prisoners
14:47:06 10 should be allowed to have, what -- should they be able to
14:47:08 11 receive hard mail or copies of mail. Those are litigation
14:47:11 12 issues that, quite frankly, I've never signed on to
14:47:14 13 because they're complex, they eat up a lot of time and are
14:47:18 14 not life-and-death issues. And quite frankly, this is one
14:47:21 15 that is. So I said yes for that second reason because I
14:47:24 16 think this is a life-and-death issue that's being -- that
14:47:29 17 you're all tackling here.
14:47:30 18 And the last reason I said yes was really this.
14:47:38 19 As a man of the Christian faith, when I took over the
14:47:42 20 Alaska DOC when the governor and I made a deal that I
14:47:45 21 would never take that system over -- by the way, it was
14:47:48 22 seven years I led both systems, not five. Sorry. But I
14:47:51 23 said yes to taking over that system when I swore I never
14:47:54 24 would because there were confounded issues in taking over
14:48:00 25 that department that were going to be very difficult to

14:48:02 1 deal with. We were killing people when we shouldn't have
14:48:04 2 been. There were some really terrible issues that I was
14:48:07 3 going to face as the commissioner of that system.
14:48:09 4 But I said yes because I thought I had an
14:48:13 5 opportunity to contribute to a fix and as a man of faith,
14:48:17 6 Christian faith, I felt convicted, to be quite frank, that
14:48:24 7 I had to step into what was a very difficult situation and
14:48:29 8 to try and make it better. And hopefully, in spite of all
14:48:33 9 this fervor around this issue, I'm here to be able to
14:48:37 10 speak into it, as well.
14:48:39 11 Q. And as executive director, what was your
14:48:48 12 responsibility in terms of dealing in terms of housing
14:48:51 13 people safely with environmental issues as to heat or
14:48:55 14 cold?
14:48:55 15 A. Well, it's the primary focus of anyone who is in --
14:49:00 16 leading in these very difficult positions, right, your
14:49:04 17 primary responsibility leading both -- for me, both
14:49:08 18 leading Colorado and Alaska is to keep people safe. It's
14:49:11 19 the core function. I'm not sure of the statutory scheme
14:49:14 20 that Director Collier's under but I would assume it's very
14:49:18 21 much the same as what most of us are under. One of the
14:49:22 22 core fundamental purposes is how do I protect the life and
14:49:26 23 safety of people who are now in my custody as well as my
14:49:29 24 staff. And so, it's the core primary function. Safety
14:49:33 25 and security is the core function that I took very

14:49:36 1 seriously and I'm sure most of -- all of my colleagues do.
14:49:42 2 Q. Is it the responsibility of the executive director to
14:49:45 3 ensure that inmates are being housed in safe conditions?
14:49:48 4 A. Correct.
14:49:50 5 Q. And what types of issues would you be worried about
14:49:54 6 as director if prisons were being run in hot temperatures
14:50:00 7 without air conditioning?
14:50:01 8 A. Well, it's interesting, I have talked to many of my
14:50:07 9 colleagues around the country around conditions of
14:50:12 10 confinement. Maybe this is an interesting observation for
14:50:15 11 me and not others, but what becomes normalized in these
14:50:20 12 systems, right, from state to state because states are
14:50:24 13 quite different, it's like you go to another state and
14:50:31 14 they're operating in a way that you really just quite
14:50:34 15 can't understand.
14:50:35 16 So for me, what sort of shocks my conscience
14:50:41 17 about what's happening here is that temperatures that I
14:50:47 18 know in some of the -- that I've screened of what's
14:50:51 19 happening inside the prison system here would send my
14:50:55 20 system when I led into a full crisis mode. We just would.
14:51:01 21 95 degree temperature, hundred-degree temperature,
14:51:04 22 recorded temperatures, 110-degree temperatures, ambient
14:51:08 23 temperatures, heat index temperatures would be a crisis
14:51:10 24 for me and I would expect my leadership -- I would put my
14:51:14 25 leadership together to respond to said crisis.

14:51:18 1 Q. It will be your job to fix that crisis?
14:51:21 2 A. Absolutely, or at least to do everything under my
14:51:24 3 complete capacity to do that and to raise the alarm. I'd
14:51:29 4 be raising alarm bells, I mean, to the maximum degree that
14:51:37 5 I could to address what I thought was a crisis.
14:51:39 6 Q. Part of that crisis would include deaths?
14:51:42 7 A. Absolutely.
14:51:44 8 Q. And illnesses?
14:51:45 9 A. Well, of course.
14:51:46 10 Q. And staff problems?
14:51:48 11 A. Staff problems, sure, I mean, because this issue is
14:51:53 12 not limited to the people who are in custody, right? We
14:51:57 13 faced this issue. These are difficult jobs so what's
14:52:00 14 impacting the incarcerated population is certainly
14:52:04 15 impacting your correctional officers, your workforce,
14:52:08 16 everyone. And so, there's pain across the board in
14:52:12 17 regards to this entire issue.
14:52:14 18 Q. And as executive director, what temperatures would
14:52:18 19 you consider to be humane and livable in prisons?
14:52:23 20 A. I mean, this has been a moving target across the
14:52:25 21 country and there's no real national standard that certain
14:52:30 22 people refer to it. I found it ironic that a really good
14:52:33 23 standard is you -- that Texas Jail Association or board,
14:52:37 24 or whatever it's called here, and their standards is 65 to
14:52:41 25 85 degrees. That is a very good place to start. And

14:52:45 1 while this is a bit loose in terms of how this is
14:52:49 2 interpreted across the country, that is certainly a great
14:52:54 3 place to start in terms of saying this is a standard that
14:52:57 4 makes sense and is a livable and is humane for both the
14:53:02 5 incarcerated men and women as well as the staff that have
14:53:05 6 to work in that environment.
14:53:11 7 Q. From your understanding, do other facilities in Texas
14:53:15 8 or places across the country require temperature ranges or
14:53:21 9 safe temperatures?
14:53:21 10 A. Well, as I said, it's a moving target. There's other
14:53:25 11 jurisdictions that -- or different states that have set
14:53:28 12 this. I think North Carolina. There's some other states
14:53:33 13 that have similar things. American Correctional
14:53:36 14 Association standards are more loose. It says
14:53:39 15 temperatures should be raised or lowered to appropriate --
14:53:43 16 at that time, related to a fine.
14:53:44 17 So I realize one of the -- I guess one of the
14:53:46 18 issues is what that should look like across the state.
14:53:50 19 I'll just state for me, if I had a temperature inside any
14:53:55 20 of the facilities I ever saw that was anything like 90
14:53:58 21 degrees or 95 degrees, as I said before, I would consider
14:54:01 22 that a full-on crisis. I mean, anything for more than a
14:54:05 23 sure -- if something is broken or something, I mean, I'd
14:54:07 24 give myself a day or two. But any long-term pervasive
14:54:11 25 temperature too high or too low, remember I'm in Alaska so

14:54:16 1 we had heating plan issues, right, being concerned and
14:54:19 2 making sure temperatures didn't go that long that weren't
14:54:23 3 habitable.
14:54:24 4 Q. When you say crisis, do you mean that it's very
14:54:26 5 dangerous for the people that are being housed in your
14:54:30 6 custody?
14:54:30 7 A. Well, of course. I mean, I've sat through listening
14:54:32 8 to the doctor's testimony and understand that those of us
14:54:35 9 in this position are very much generalists, right? Most
14:54:39 10 of the people who work for us, I'll say this from me,
14:54:44 11 you're in charge of overseeing a system where you have a
14:54:47 12 lot of people who are just smarter than you who have far
14:54:50 13 more training than what you have. But as the generals
14:54:52 14 who's the boss of the entire system, I listen very
14:54:57 15 carefully when someone says you have a problem, right?
14:55:00 16 Something's not going right here.
14:55:07 17 When it comes to like how to respond to just sort
14:55:12 18 of crisis or what I would -- if I was faced with the same
14:55:15 19 circumstances, I would make sure that I was bringing all
14:55:18 20 forces to bear to address it.
14:55:22 21 Q. I'd like to turn to what's happening here a little
14:55:25 22 more specifically. You've sat in the courtroom, you've
14:55:28 23 heard testimony today about some of the deaths in the TDCJ
14:55:32 24 prisons, right?
14:55:33 25 A. Right.

14:55:33 1 Q. Have you seen TDCJ's report to the Texas legislature
14:55:37 2 identifying some heat-related deaths and illnesses in the
14:55:41 3 facility from 2023?
14:55:42 4 A. I think I perused one of the documents. I think I
14:55:44 5 perused some time ago.
14:55:48 6 Q. Can we pull up Exhibit 102, please? I move to admit
14:56:07 7 Exhibit 102.
14:56:09 8 MS. WARREN: Your Honor, we haven't laid any
14:56:11 9 foundation. Objection. Lack of foundation.
14:56:17 10 Q. (BY MS. GROSSMAN) Go to the first page. This is the
14:56:21 11 Monitoring of Temperature and Temperature-Related Deaths
14:56:24 12 Fiscal Year 2023 Report by the TDCJ?
14:56:25 13 A. Correct.
14:56:26 14 Q. Okay. And did you review this?
14:56:31 15 A. I don't know what -- I perused this so I wouldn't
14:56:37 16 want to be tested on it, let me just say that, but I
14:56:40 17 perused it.
14:56:40 18 Q. We're not testing on it. Do you remember looking at
14:56:43 19 deaths, grievances and illnesses that were contained --
14:56:45 20 A. Yeah, I've reviewed, I think, those pages to sort of
14:56:50 21 find the meat of the report.
14:56:52 22 Q. I'll direct you to those pages but do you remember
14:56:54 23 reading about deaths, illnesses --
14:56:56 24 A. Yes.
14:56:57 25 Q. I'd like to move to admit 102.

14:57:00 1 MS. WARREN: No objection, your Honor.
14:57:01 2 THE COURT: So admitted.
14:57:03 3 Q. (BY MS. GROSSMAN) As we turn to page 5, we can see
14:57:12 4 that there, they're reporting three deaths as heat-related
14:57:19 5 in 2023. Do you see that?
14:57:21 6 A. I do.
14:57:23 7 Q. As executive director, what would your response be to
14:57:27 8 learning that there were three confirmed deaths on autopsy
14:57:34 9 in one summer from the heat?
14:57:39 10 A. Well, I would -- I mean, I'm not presuming what
14:57:44 11 others are thinking or I'd tell you what I would think. I
14:57:48 12 wouldn't need three. If I had one death of that were
14:57:54 13 summarized that -- I mean, I was sitting in, I was
14:57:56 14 listening to them. I remember reflecting on these cases
14:57:58 15 as I read them. If I had one death where I knew the core
14:58:03 16 body temperature was in range of 106 degrees, 107 degrees,
14:58:11 17 again, I would pull the fire alarm for our department. I
14:58:14 18 just would.
14:58:16 19 Q. What would the fire alarm entail?
14:58:19 20 A. Well, I would do everything possible to understand
14:58:25 21 how we allowed a person to die with a core body
14:58:31 22 temperature to get to 107 degrees, right? I mean, granted
14:58:36 23 there are different environmental issues in this state
14:58:39 24 than there are other places. I totally get that. I
14:58:41 25 totally get the circumstances and the challenges that

14:58:43 1 Director Collier faced, what I faced may be different, but
14:58:46 2 when you have someone die who you have a confirmed body
14:58:51 3 core temperature of 106, 107 degrees, right, it should be
14:58:54 4 cause for alarm across the system, not just in the
14:58:58 5 corrections system. I realize there's great debate in the
14:59:02 6 state about what to do with this issue.
14:59:04 7 So you have many people involved offering many
14:59:05 8 opinions, I get that, but as a former director, one of
14:59:09 9 those cases would send me into a full blitz of, one,
14:59:14 10 developing a team that was going to dig farther into what
14:59:17 11 happened in that case so it would not happen again. I
14:59:20 12 would probably issue some report to the governor
14:59:23 13 regardless. I mean, again these are political calls. But
14:59:26 14 I would make a report to say here's what I'm facing and I
14:59:29 15 would do something to make sure that we are raising the
14:59:33 16 alarm across the system. Not just across the system but
14:59:39 17 across the state that I was facing this kind of result,
14:59:42 18 totally unacceptable death.
14:59:46 19 Q. And if you had three deaths and you didn't respond,
14:59:52 20 would that indicate disregarding substantial risk of the
14:59:56 21 life and safety of people in your custody?
14:59:59 22 A. Well, for me. For me. Knowing that I had a legal
15:00:06 23 and moral obligation, for me, I would do everything to
15:00:16 24 reveal all of the facts about it to see if there was a
15:00:19 25 trend, to see if it was a one-off incident that somehow

15:00:23 1 something got away from us. I mean, this was the COVID
15:00:27 2 experience that myself and many of my colleagues went
15:00:29 3 through, right, is to try to unwind why things are
15:00:32 4 happening the way they are.
15:00:34 5 So I would -- for me, I would be -- I would look
15:00:37 6 at my own responsibility in terms of what I thought was
15:00:40 7 appropriate and/or negligent, right, and I would do all
15:00:44 8 those things so I wouldn't personally -- so I'd personally
15:00:48 9 be able to sleep at night. I mean, that would be why I do
15:00:51 10 it.
15:00:51 11 Q. You have that duty also as executive director, right?
15:00:55 12 Not just a moral or but as executive director --
15:00:57 13 A. No. I mean, the core purpose, as I said before, is
15:01:01 14 to protect life and safety of the people in my custody as
15:01:03 15 well as the people who work there. So yeah, it's a core
15:01:06 16 function to figure out why someone died.
15:01:10 17 Q. Okay. If you'd go to Exhibit -- if you look at
15:01:28 18 Exhibit 102, page 4, this talks about the grievances.
15:01:33 19 These are heat-related grievances in 2023. Do you see
15:01:39 20 those?
15:01:39 21 A. Yes, I do.
15:01:41 22 Q. You see the total being 5,202 related to heat in
15:01:48 23 2023?
15:01:48 24 A. I see that.
15:01:48 25 Q. Would that be acceptable to you as an executive

15:01:52 1 director whose job it was to keep people safe in your
15:01:54 2 custody?
15:01:55 3 A. Well, I don't -- I wouldn't know what the percentage
15:02:00 4 of these grievances were compared to the grievances of my
15:02:02 5 own system, right? I mean, like I wouldn't know if
15:02:04 6 grievances that we had proportionary in ratio. I would
15:02:10 7 just say this. This is another clue, another piece of
15:02:15 8 evidence, right, that this is more likely a problem than
15:02:21 9 not when you have this level of grievances from the inmate
15:02:26 10 population around -- specifically around heat, extreme
15:02:32 11 heat issues.
15:02:34 12 Q. Well, regardless of the deaths, regardless of the
15:02:36 13 illnesses, would you consider persistent temperatures in
15:02:40 14 the 90s and higher and heat indexes higher than that to be
15:02:44 15 livable and humane conditions?
15:02:46 16 A. I don't think those temperatures are humane. I've
15:02:50 17 thought about this a lot and I didn't want to come in here
15:02:54 18 and start telling other people how to run systems but I
15:02:56 19 mean, come on. These kind of conditions, pervasive
15:03:03 20 conditions, right? I mean, I'm not sure what cruel and
15:03:09 21 unusual is. As a director, I've thought a lot about this
15:03:12 22 because I've looked at what other state -- what's
15:03:14 23 happening in other states, right? So for me, I've had to
15:03:18 24 decide what I think that means. What that means to me,
15:03:21 25 right?

15:03:21 1 MS. WARREN: Objection, your Honor. I think
15:03:23 2 we're going to get into a legal conclusion here about what
15:03:26 3 is cruel and unusual punishment, which is something that
15:03:29 4 the Court has to determine under the Eight Amendment.
15:03:33 5 THE COURT: It is, but I'll let him answer and
15:03:37 6 make a determination as to not to take it into account.
15:03:39 7 MS. WARREN: I'd just like to note my objection
15:03:41 8 under 704.
15:03:43 9 THE COURT: Your objection is noted and
15:03:45 10 overruled.
15:03:47 11 A. I wasn't trying to opine about anything -- lord help
15:03:50 12 me in regards to legal issues. I'm just saying as a
15:03:53 13 director, I have thought a lot about what my legal and
15:03:56 14 moral responsibilities are when it comes to living
15:03:59 15 conditions. And granted, different directors and people
15:04:02 16 may have different opinions, but I think 90, 95 degree
15:04:07 17 temperatures, especially for prolonged periods of time,
15:04:10 18 would be cruel. And again, if I was faced with the kind
15:04:16 19 of temperatures that I've seen that have been displayed, I
15:04:19 20 assume they're accurate, I don't know, but if they are
15:04:21 21 accurate, having run two state systems, it would be the
15:04:25 22 same way if somebody said, well, hey, is 55 degrees or 50
15:04:29 23 degrees okay in prisons? Absolutely not, you know. There
15:04:32 24 has to be living conditions that we all enjoy, you know,
15:04:35 25 and how you can operate.

15:04:37 1 And so, for me, and running two state systems, I
15:04:41 2 would direct my entire executive team that we are not
15:04:44 3 going to allow or I'm going to do everything I can to
15:04:47 4 prevent those kind of temperatures from occurring at any
15:04:50 5 of the facilities that I ever saw as director in both
15:04:53 6 states.
15:04:53 7 Q. (BY MS. GROSSMAN) Have you reviewed a grievance in
15:05:02 8 this case in which an inmate was complaining about heat
15:05:05 9 temperatures of 136 degrees -- heat index. Sorry.
15:05:09 10 A. I think I saw something that was sent to me --
15:05:13 11 MS. WARREN: Objection, your Honor. Hearsay.
15:05:17 12 MS. GROSSMAN: It goes to the expert's notice and
15:05:19 13 what he would do as executive director if he were to see a
15:05:23 14 grievance with reported a heat index of 136. Not truth of
15:05:26 15 the matter.
15:05:27 16 MS. WARREN: Your Honor, plaintiffs have offered
15:05:30 17 evidence that units have gotten up into the 130s. So it
15:05:36 18 is offered for truth of the matter asserted. And even if
15:05:38 19 it is something Mr. Williams relied upon, it's
15:05:41 20 substantially more prejudicial than it is probative.
15:05:43 21 MS. GROSSMAN: I'd also like -- should have said
15:05:45 22 this. An expert can rely also on hearsay.
15:05:48 23 THE COURT: That's true. And you can cover it on
15:05:50 24 cross-examination. I'll overrule the objection. Go
15:05:56 25 ahead.

15:05:56 1 A. One more time, please.
15:05:57 2 Q. (BY MS. GROSSMAN) Pull up Exhibit 269, page 3. He
15:06:11 3 says on Tuesday -- this is from July 13 of 2022, right?
15:06:16 4 A. Right.
15:06:16 5 Q. And then, it says approximately 3:32 p.m., I heard a
15:06:21 6 female voice on the officer's radio announce that the
15:06:24 7 actual temperature of 103, the humidity index of 136.
15:06:30 8 Major Washington came on the radio and asked her to repeat
15:06:33 9 that traffic so she said it again. Major Washington asked
15:06:36 10 her if she was reading the gauge correctly. The female
15:06:38 11 voice came back on and said yes --
15:06:40 12 MS. WARREN: Objection, your Honor. Hearsay
15:06:41 13 within hearsay.
15:06:42 14 THE COURT: Overruled.
15:06:43 15 Q. (BY MS. GROSSMAN) I'm looking right at it and it says
15:06:47 16 136. Major Washington said nothing further.
15:06:56 17 Mr. Williams, what would you do as executive
15:06:59 18 director if you received a report that there was 136 heat
15:07:03 19 index occurring in your facilities?
15:07:06 20 A. Well, as I said before, I guess I would be shocked
15:07:12 21 and I would make sure that a thorough followup was, one,
15:07:20 22 to determine, in fact, if this was accurate, one. So I
15:07:25 23 mean, as the head of a correctional system, we face, you
15:07:28 24 know, accusations, things all the time. Many of them are
15:07:31 25 false, many of them are not true. So approach anything

15:07:33 1 with skepticism, I'd say as a director, but the reality is
15:07:38 2 I would expect our system to do a thorough followup to
15:07:42 3 make sure that we could determine whether or not this was
15:07:44 4 true or not.
15:07:44 5 Q. If there were heat indexes of 136 degrees and there
15:07:50 6 were consistent temperatures in the 90s and above, would
15:07:53 7 that disregard the life and safety of the people in your
15:07:56 8 custody to not do anything about it?
15:08:02 9 A. Well, yes.
15:08:05 10 Q. And then, you reviewed workers' compensation
15:08:10 11 complaints. I understand you haven't memorized the form,
15:08:14 12 but have you reviewed workers --
15:08:15 13 A. I saw the Excel-looking-type spreadsheet, I think,
15:08:18 14 that you all...
15:08:20 15 Q. Can you pull up Exhibit 207, please. I think there
15:08:36 16 are about 80 workers' compensation complaints over a
15:08:39 17 period of two years. Would that concern you as an
15:08:42 18 executive director related to heat?
15:08:45 19 A. Especially if they're related to heat. I mean, if
15:08:49 20 there was a theme, if there was that or something else and
15:08:52 21 there was a commonality, that kind of number would be very
15:08:58 22 concerning.
15:09:03 23 Q. Are you aware of Dr. Skarha's study concluded that
15:09:08 24 271 deaths of inmates of Texas prisons over 19 years were
15:09:11 25 likely heat-related?

15:09:12 1 A. I heard that.

15:09:15 2 Q. And you sat here and heard Dr. Vassallo's testimony

15:09:18 3 this morning about even additional deaths in Texas

15:09:23 4 prisons?

15:09:23 5 A. I heard that.

15:09:25 6 Q. And since you testified that one death would cause

15:09:28 7 for alarm, what about 271 over 19 years?

15:09:33 8 A. Well --

15:09:34 9 Q. From heat.

15:09:35 10 A. No. Of course. Of course it was -- as I said

15:09:38 11 before, would raise high alarms with me.

15:09:43 12 Q. Would you ever ignore such a study from a scientific

15:09:47 13 study?

15:09:49 14 A. Well, no, I wouldn't ignore nonscientific studies for

15:09:53 15 the sake of making an inquiry, but any study that had any

15:09:58 16 -- I guess any -- especially professional organization,

15:10:05 17 university, any of those things, right, I mean, raises the

15:10:09 18 specter that there, in fact, might be a problem here and

15:10:13 19 people may be dying related to a particular issue, in this

15:10:18 20 case, heat.

15:10:21 21 Q. You would never just treat it as a piece of paper to

15:10:25 22 ignore?

15:10:25 23 A. I would not treat a piece of paper like that to

15:10:29 24 ignore.

15:10:30 25 Q. What does not responding to studies and deaths and

15:10:34 1 illnesses, staff and inmates suggest to you?
15:10:42 2 A. Well, I don't know the circumstances here, but I know
15:10:47 3 what they would mean in my leadership, right, because I
15:10:52 4 faced this even as I took over Alaska when we were having
15:11:00 5 very unacceptable and cruel deaths when I took over that
15:11:03 6 system. There's a protective factor that I think plays
15:11:09 7 into psychology of correctional systems across the country
15:11:11 8 face about it. My colleagues and I who lead and have led
15:11:15 9 these systems, are leading these systems now talk about
15:11:17 10 it, right? That there's a tendency to ignore sometimes or
15:11:23 11 to try to tamp down when things are kind of unwinding and
15:11:28 12 when you have -- we all faced this during COVID. We had
15:11:32 13 deaths in our facility. We had deaths of our incarcerated
15:11:35 14 population. We had deaths of staff that was occurring.
15:11:37 15 It was a terrible crisis time even then, right?
15:11:42 16 And so, you want to learn as much as possible
15:11:47 17 from others and professionals who could help guide you
15:11:50 18 because as a generalist, you are not the expert in many of
15:11:54 19 these fields. And so, not doing those things, or not
15:12:02 20 having the backing to do those, things, or not having
15:12:05 21 support to do those things in leadership, right, it's
15:12:12 22 alarming.
15:12:13 23 Q. Does not responding to deaths and scientific studies
15:12:16 24 and staff illnesses and inmate illnesses put people's
15:12:20 25 health and safety at risk?

15:12:22 1 A. Not making serious inquiry into any of those things
15:12:26 2 puts both staff and puts inmate and staff at risk, yes.
15:12:32 3 Q. Your Honor, I don't think I moved to admit 269 into
15:12:36 4 evidence. This is already in evidence, but I think for
15:12:37 5 the last one, I wanted to move to admit that into
15:12:39 6 evidence.
15:12:40 7 MS. WARREN: Was that the workers' compensation?
15:12:42 8 MS. GROSSMAN: That was the grievance.
15:12:44 9 MS. WARREN: The grievance. I'd note my earlier
15:12:47 10 objections to grievance.
15:12:50 11 THE COURT: That it contains hearsay?
15:12:51 12 MS. WARREN: Hearsay. It is itself hearsay and
15:12:54 13 contains hearsay.
15:12:54 14 THE COURT: Overruled and admitted.
15:12:58 15 MS. WARREN: And the hearsay is substantially
15:13:00 16 more prejudicial than probative.
15:13:03 17 THE COURT: Well, yeah, that it was 136 degrees,
15:13:06 18 I would agree with you that that is significantly more
15:13:09 19 prejudicial.
15:13:11 20 MS. WARREN: Yes, your Honor.
15:13:11 21 THE COURT: Is it the state's position -- well,
15:13:14 22 let's go on.
15:13:17 23 MS. GROSSMAN: 207 also was -- I want to admit
15:13:20 24 that, as well, into evidence.
15:13:33 25 MR. HOMIAK: Sorry, 207 has not been admitted. I

15:13:35 1 want to make sure.
15:13:36 2 THE COURT: Which is 207?
15:13:39 3 MS. GROSSMAN: The workers' compensation
15:13:40 4 complaints.
15:13:41 5 MS. WARREN: I believe that we objected to that
15:13:42 6 prior to the hearing so whatever the objection --
15:13:44 7 THE COURT: Okay. Subject to your objection,
15:13:46 8 I'll admit.
15:13:48 9 Q. (BY MS. GROSSMAN) I want to talk a little more
15:13:53 10 specifically about death investigations and your job as
15:13:57 11 executive director. As part of your job duties, would you
15:14:00 12 review death investigations and related autopsies of
15:14:03 13 inmates?
15:14:04 14 A. In certain ones, I would that maybe I had concern
15:14:08 15 about. At the very least, I would --in both systems I set
15:14:14 16 up a review with -- I think, in Colorado, my inspector
15:14:17 17 general's office when we had deaths, I would have reviews
15:14:24 18 on a regular basis. More often if I thought I had --
15:14:27 19 like, for example, in Alaska because I took over a system
15:14:30 20 that had what no internal affairs, no inspector general's
15:14:36 21 office. We're the only office that didn't have an
15:14:40 22 internal affairs unit so every death involved there, I was
15:14:43 23 more personally involved because I was resetting course.
15:14:45 24 So those cases, I would review personally. I wanted
15:14:49 25 personal involvement in any of the deaths that occurred in

15:14:51 1 that system because I didn't trust what I had gotten in
15:14:54 2 the past. And I knew from even investigating the deaths
15:14:58 3 for the governor that we were having false reporting in
15:15:04 4 Alaska. And so, I had personal involvement when I was
15:15:08 5 suspect of information that was being, quote, unquote,
15:15:12 6 documented.
15:15:13 7 In Colorado, it was a much different circumstance
15:15:16 8 because that system was far more put together and had a
15:15:20 9 strong inspector general's office that I insisted always
15:15:24 10 told the truth, no matter how bad things might be and so,
15:15:28 11 I had strong confidence. So in that state, I generally
15:15:31 12 would rely upon monthly meetings to talk about who died.
15:15:36 13 There was also a death review panel that was set up within
15:15:40 14 that system so anytime an inmate died. We had use of
15:15:44 15 force, as well. I mean, things where we were very -- I
15:15:48 16 was assured of the process of careful scrutiny and my
15:15:52 17 leadership team being able to pull those ones out that
15:15:55 18 demanded my attention.
15:15:57 19 So it was a different process. So the answer to
15:15:59 20 your question -- that's a long answer, sorry. But in some
15:16:02 21 cases, I wanted personal knowledge and personal briefings
15:16:05 22 on deaths. At other times, I would accept a summary of
15:16:09 23 cases because I was assured that I was getting accurate
15:16:13 24 and reliable information.
15:16:14 25 Q. And certainly any thorough and accurate review would

15:16:17 1 include witness statements?
15:16:19 2 A. Of course.
15:16:19 3 Q. And autopsies?
15:16:20 4 A. Of course.
15:16:21 5 Q. And incident reports by your staff?
15:16:25 6 A. Of course.
15:16:26 7 Q. And what -- if it was a suspected heat-related death,
15:16:30 8 what would you -- or actually, just a death in summertime
15:16:33 9 in hot temperature, what would you expect a proper death
15:16:35 10 investigation to include?
15:16:36 11 A. Well, certainly ambient temperature that was there in
15:16:41 12 the cell or wherever they were located or living at the
15:16:44 13 time, the heat index temperature, which had been mentioned
15:16:47 14 before, and certainly as the doctor pointed out this
15:16:52 15 morning, I couldn't agree more, I'd want core body
15:16:55 16 temperatures or at least as soon as possible. Not even
15:16:59 17 just core body temperatures but just, you know, I mean,
15:17:04 18 take a temple temperature, right? Give us some idea. I
15:17:07 19 mean, there's -- you don't have to provide a medical
15:17:10 20 procedure. I've involved medical procedures to know where
15:17:15 21 someone is suffering in a prison. We all have to go to
15:17:18 22 the doctor. They sometimes get your temple, they have
15:17:20 23 your temperature in five seconds.
15:17:23 24 So if I was facing what you're all facing in the
15:17:28 25 state, I would demand that, at the very least, those

15:17:33 1 things were covered and, of course, all other things, too,
15:17:37 2 interviews and circumstances and were they on medications,
15:17:39 3 those things. But those are, I guess, what I would
15:17:44 4 absolutely want to know about.
15:17:46 5 Q. Is it the executive director's job to try to figure
15:17:57 6 out what happened in a death and review all relevant
15:18:00 7 records?
15:18:01 8 A. Well, again, I'm not like familiar with the Texas
15:18:05 9 code of statutes in regard with responsibilities for the
15:18:08 10 director here. As I said before, it was my responsibility
15:18:16 11 in both systems I ran to make sure that I had -- if I'm
15:18:22 12 going to protect life and property, I have to know what
15:18:24 13 goes on and what's going on, and if I'm not knowing, if I
15:18:28 14 don't know what's wrong and I'm not doing a thorough job
15:18:30 15 of figuring out what's wrong, then I'm failing at
15:18:33 16 protecting the people in my custody and my staff.
15:18:35 17 Q. Did you review any investigations in this case,
15:18:39 18 investigations into deaths of inmates in Texas?
15:18:42 19 A. I read -- I perused two or three of them.
15:18:47 20 Q. Was there any section that discussed investigations
15:18:51 21 that you needed to correct facts?
15:18:53 22 A. Well, on one of the cases, I think that the inspector
15:18:59 23 general office did mention that, oh, yeah, here was the
15:19:02 24 ambient temperature and there was a core body temperature
15:19:06 25 but yeah, so maybe -- I may be missing...

15:19:11 1 Q. Is there a duty to obtain all of the relevant facts
15:19:15 2 in death investigations?
15:19:16 3 A. Well, yeah. What's interesting is actually, in one
15:19:18 4 of the documents, there's actually a code. I think it's
15:19:20 5 either a regulation, either administrative code, I don't
15:19:22 6 know if it's a statute, but one of the obligations, I
15:19:25 7 think, in that regulation -- so now that I think about it,
15:19:29 8 I did read something about it, there's a requirement to
15:19:31 9 obtain all relevant facts and information. Now, maybe --
15:19:34 10 I think that code is in reference to anybody who has
15:19:37 11 jurisdiction of anybody in their custody, including jails.
15:19:40 12 I think that code covers blanket here in Texas. I think
15:19:44 13 so but I'm not the lawyer so I wouldn't swear to it, but I
15:19:49 14 noticed in that code that part of the requirements is to
15:19:52 15 obtain all relevant information and all relevant facts
15:19:56 16 around the death because it makes sense. You'd want to
15:19:58 17 know why so you can try to prevent it.
15:20:02 18 Q. And for deaths in summertime in hot temperatures,
15:20:07 19 would those relevant facts have included the heat index?
15:20:10 20 A. Correct.
15:20:10 21 Q. Core body temperature?
15:20:11 22 A. Correct.
15:20:12 23 Q. Ambient temperature?
15:20:13 24 A. Correct.
15:20:13 25 Q. And could you think of any reason not to take a core

15:20:18 1 body temperature death in the summertime in hot
15:20:22 2 temperatures as executive director?
15:20:26 3 A. Well, I could think of a reason but it's not a good
15:20:29 4 one. And no, because this is a struggle that I faced with
15:20:33 5 all -- no offense to any of the lawyers in the room,
15:20:37 6 right, but I faced this as a director and specifically
15:20:44 7 when I took over Alaska and we had some very wrong things
15:20:46 8 going on and I was in charge of reforming that system to
15:20:53 9 address what I thought were completely, wholly
15:20:57 10 unacceptable and wrong deaths in the old system I led.
15:21:03 11 And one of the reasons that I was struggling with
15:21:08 12 people who were providing legal counsel to me, same job,
15:21:14 13 different title, was it was gently implied to me -- again,
15:21:18 14 I'm not casting aspersions here, but I can tell you that
15:21:21 15 one of the psychology reasons when you take over these
15:21:24 16 systems is if we know too much, if we reveal too much, we
15:21:28 17 might be helping get all this these other people on the
15:21:31 18 other side to be more effective at actually suing us.
15:21:34 19 This is a debate I had with my own attorney
15:21:36 20 general's office when I took over Alaska DOC. And so,
15:21:41 21 it's a dynamic. It is. I'm not suggesting anything like
15:21:46 22 that here because I don't know. I was not in the room.
15:21:52 23 But I know what I faced and I know that in the crisis
15:21:57 24 mode, sometimes there's a protective psychology that
15:21:59 25 starts to take over systems. And with all due respect, I

15:22:05 1 think you're in a bit of a pickle here because that seems
15:22:09 2 to be what the struggle's about. I know the struggle very
15:22:12 3 well, by the way, but the struggling is are we going to
15:22:17 4 find out exactly what's happening and are we brave enough
15:22:19 5 to say, hey, people are dying when they shouldn't be dying
15:22:24 6 and air conditioning fixes it. It just does and that's a
15:22:29 7 tough, you know -- it may be tough to talk about but you
15:22:34 8 have to decide whether it's true or not.
15:22:39 9 Q. Fair to say there's not any legitimate reason in
15:22:44 10 terms of -- not to take core body temperatures upon death?
15:22:54 11 A. You could say part of legitimate reason is from
15:22:58 12 depending upon what seat you sit incident -- there might
15:23:03 13 be a legitimate reason depending upon what seat you're
15:23:06 14 sitting in. But that is, for me, as the director of a
15:23:08 15 correctional system, that would be an unacceptable reason
15:23:11 16 to say, well, we're not going to really dig hard. And I'm
15:23:15 17 not suggesting that here but I have faced it. That we're
15:23:17 18 not going to dig hard to find out all the facts and we're
15:23:21 19 not going to assume that it must be related to something
15:23:23 20 else when it's clear that you have a cell temperature of
15:23:27 21 over 100 degrees, you know.
15:23:29 22 Q. And because core body temperature is true and confirm
15:23:34 23 heat-related deaths, right?
15:23:34 24 A. Well, yes.
15:23:36 25 Q. And that's one of the main ways that those deaths are

15:23:40 1 true and confirmed.
15:23:41 2 A. I would assume any body core temperature of a system
15:23:45 3 I led in Colorado or Alaska that I had someone whose body
15:23:48 4 core temperature at the time of death was 106 degrees, 107
15:23:52 5 degrees, 109 degrees, I would not assume that it was
15:23:56 6 related to some other contributory factor. I would
15:23:59 7 assume, maybe rightly or wrongly till someone can talk me
15:24:03 8 off of it, but I would assume it's directly related to
15:24:06 9 overheating conditions that occurred inside that prison.
15:24:09 10 I just would because you have to stretch to find other
15:24:15 11 explanations right? And maybe someone could say, oh, no,
15:24:18 12 Former Director Williams, it really wasn't related to the
15:24:21 13 fact that the cell temperature was 120 degrees or 110
15:24:26 14 degrees. It was really related to the fact that he just
15:24:28 15 went out jogging or something and felt dead in his cell,
15:24:32 16 right? Okay. Maybe there's an exception. But those body
15:24:35 17 core temperatures should be a strong -- not just a clue
15:24:39 18 but a strong evidence that people are dying of heat
15:24:43 19 stroke. They just are.
15:24:45 20 Q. And as executive director, do you have the authority
15:24:47 21 and the ability to make sure all facts are gathered,
15:24:51 22 including gather ing core body temperatures and gathering
15:24:54 23 heat indexes and gathering ambient temperatures?
15:24:57 24 A. They certainly did in my states.
15:25:06 25 Q. Have you ever seen a cause of death autopsy when you

15:25:08 1 were executive director where heat was determined to be a
15:25:11 2 cause or contributory factor?
15:25:15 3 A. I've been thinking about this. I don't think I have.
15:25:19 4 Not in my own states. Certainly wouldn't be Alaska.
15:25:27 5 Q. Now, Mr. Collier's argued that this is really a
15:25:31 6 legislature issue. What is your response to that
15:25:34 7 position?
15:25:41 8 A. Well, again, Mr. Collier's my friend. These are
15:25:49 9 tough issues. These are really tough issues. I don't
15:25:57 10 miss being a director today. I can tell you that. I
15:26:05 11 don't like the hand that maybe Mr. Collier has been dealt.
15:26:09 12 I wouldn't like the hand if it was a hand I was dealt,
15:26:13 13 right? I just wouldn't. I have faced similar issues as a
15:26:17 14 director when I thought it was very important that I
15:26:20 15 receive funding on particular items, right? COVID issues.
15:26:26 16 I was worried about losing a heating plan at a large
15:26:30 17 facility in Colorado. If we lost it, I'd have to close
15:26:33 18 down the entire facility. 2,200 prisoners, we're going to
15:26:36 19 have to find room for 2,200 prisoners. I had the largest
15:26:39 20 system in Colorado as you do here in Texas. Talk about a
15:26:44 21 pickle, I'd have been in a terrible place but here's the
15:26:46 22 difficult truth when we take these jobs.
15:26:49 23 Mr. Collier, Director Collier knows I know that,
15:26:54 24 one, at the end of the day, there's someone held
15:26:56 25 accountable and it's us. It's the position. So I'm very

15:26:59 1 sympathetic about the hand that Mr. Collier had been dealt
15:27:04 2 in this, but the truth of the matter is that it's his
15:27:09 3 department, the same way it was my department, and so,
15:27:14 4 there's no getting around that. There's just no getting
15:27:19 5 around it and no matter how much I toil or it tears me up
15:27:26 6 but that's the truth of it. It is.
15:27:28 7 Q. And whose hands or whose responsibility ultimately is
15:27:31 8 it to ensure that inmates are housed in safe and livable
15:27:35 9 conditions?
15:27:35 10 A. Well, I assume it's the director's responsibility the
15:27:38 11 same way it was mine.
15:27:40 12 Q. If this was your situation, you were faced with heat
15:27:46 13 deaths and illness and injuries, what would you be telling
15:27:52 14 the legislature to get funding?
15:27:56 15 A. Well, to speak truth in these situations comes with
15:28:04 16 career risk, strong career risks, it does, but I don't
15:28:08 17 know how you get past the fact that you've had -- pardon
15:28:14 18 the pun, but you've had this issue cooking for a very long
15:28:18 19 time before Director Collier, now with Director Collier.
15:28:24 20 And there have been a lot of hand wringing and pointing
15:28:29 21 fingers of whose actual responsibility at the end of the
15:28:33 22 day about this particular issue. It's just a -- it's a
15:28:41 23 situation that you may not want to have inherited in the
15:28:45 24 job, but at the end of the day, he owns it.
15:28:48 25 So directors own it and I would make sure and I

15:28:54 1 have, you know, and sometimes against probably the
15:28:59 2 governor's desires and wishes in my own career, right to
15:29:03 3 make clear when asked under a hearing what happens if we
15:29:05 4 don't have this, what's going to happen, Director
15:29:09 5 Williams, if you don't get this taken care, if you don't
15:29:11 6 get this stuff. So one of the answers I gave was in
15:29:15 7 regards to a prison heating system, I just mentioned, and
15:29:18 8 the governor's office was not especially happy with me
15:29:21 9 answering by saying if we lose that system, we lose 2,200
15:29:24 10 beds and I don't have any place to put them.
15:29:27 11 Q. Would you be telling the legislature that people were
15:29:29 12 dying and staff were getting sick and that you needed --
15:29:33 13 and that it was an emergency and crisis and you needed the
15:29:36 14 funding right then?
15:29:37 15 A. I have been doing that, but I would hope that that
15:29:39 16 would be what I would be saying in the face of a headwind
15:29:45 17 perhaps that I think Director Collier, probably his
15:29:49 18 predecessor faced. But the truth of it is he weighs a
15:29:56 19 heavy burden of people's lives and the only way to fix
15:30:01 20 this issue, quite frankly, is to provide air conditioning
15:30:04 21 in these prisons. It just is. And trying to qualify that
15:30:09 22 with other things, good on the department for these other
15:30:13 23 mitigation measures, et cetera, but...
15:30:18 24 Q. Let's briefly talk about those mitigation measures.
15:30:21 25 Can you explain the difference between mitigation measures

15:30:25 1 -- can you explain why mitigation measures are not an
15:30:28 2 appropriate solution in this case?
15:30:30 3 A. Well, I mean, mitigation is meant to handle things
15:30:33 4 that can't be fixed by other means. I mean, COVID was a
15:30:39 5 great example of that, right? We had no cure for COVID,
15:30:45 6 so you try to mitigate by housing people, by providing
15:30:51 7 medical care as fast as possible, trying to keep people
15:30:55 8 separated so you don't have big waves of people with
15:30:59 9 COVID, people dying en mass, et cetera. So mitigation
15:31:05 10 measures was all you had, right?
15:31:06 11 And mitigation measures in this case in terms of
15:31:07 12 extreme heat inside the prison system, good for the
15:31:09 13 department for doing something. That's fine, but it does
15:31:13 14 not fix the issue. It just doesn't. And so, the
15:31:16 15 difference between mitigation and fixing the issue is
15:31:19 16 mitigation accepts the fact that you're going to never --
15:31:23 17 you're not going to get there and people are going to die
15:31:26 18 as a result of it. That's just what you're accepting,
15:31:28 19 right? I mean, that's just the hard truth of it.
15:31:32 20 Q. And what is the cure?
15:31:33 21 A. The cure is as every time a person has stood up here
15:31:38 22 who's tried to face this, gave the same bit of hard
15:31:42 23 medicine, if you will, the cure is to provide air
15:31:47 24 conditioning in environments you all live in, God bless
15:31:49 25 you, that's extremely hot that temperatures go up,

15:31:54 1 profound in prison, closed environments. So the only fix
15:32:00 2 is to provide -- to fully remediate hot temperatures and
15:32:07 3 you have the cure. It's not a technological problem.
15:32:13 4 It's there.
15:32:15 5 Q. Is there any other solution at all that will allow
15:32:18 6 people to be housed safely and in livable conditions
15:32:22 7 during the summer months other than cooling the units?
15:32:25 8 A. Not that I'm aware of other than air conditioning.
15:32:30 9 Q. Thank you.
15:32:33 10 CROSS-EXAMINATION
15:32:33 11 BY MS. WARREN:
15:32:53 12 Q. Good afternoon, Mr. Williams.
15:32:54 13 A. Good afternoon.
15:32:54 14 Q. My name is Kelly Warren and I represent the Texas
15:32:59 15 Department of Criminal Justice and Mr. Collier in his
15:33:01 16 official capacity as the executive director.
15:33:04 17 A. Sure.
15:33:04 18 Q. Do you understand that, too, I am --
15:33:06 19 A. Sure, Ms. Warren, I do.
15:33:08 20 Q. I want to talk about something that you brought up on
15:33:14 21 -- when you were talking to the plaintiffs' lawyers. You
15:33:18 22 said that before you got to Alaska that there was a series
15:33:22 23 of unacceptable and cruel deaths. Can you please
15:33:25 24 elaborate on that?
15:33:26 25 A. Sure. We had -- when I was special assistant to the

15:33:32 1 governor, we had people dying in Alaska DOC. The governor
15:33:35 2 asked me, along with a former FBI agent, to investigate
15:33:38 3 why people were dying in our system. I agreed to do the
15:33:41 4 investigation based upon my extensive experience. Not
15:33:45 5 while at corrections but I ran juvenile correctional
15:33:47 6 facilities, I understood policies, I understood use of
15:33:50 7 force, I understood root-cause analysis. And so, he
15:33:54 8 wanted someone he trusted so I investigated why people
15:33:58 9 were dying.
15:33:58 10 Q. Why were they dying?
15:34:00 11 A. Well, in one particular -- I documented several
15:34:03 12 cases. That document, by the way, is a public document
15:34:06 13 and we released video and everything with it. They were
15:34:12 14 dying for several different reasons. One case a gentleman
15:34:18 15 died, it was a straight George Freud case before there was
15:34:21 16 George Floyd. Officers were on a handcuffed individual's
15:34:24 17 back. He died of positional asphyxiation and I detailed
15:34:29 18 that. That case was all on video.
15:34:32 19 Q. And you published that video?
15:34:34 20 A. The governor published pieces of that video. I'm not
15:34:38 21 sure all of it but substantial portions of the video and
15:34:42 22 there were several other cases.
15:34:43 23 Q. That was a use-of-force situation death?
15:34:47 24 A. Yeah.
15:34:47 25 Q. What other kind of unacceptable and cruel deaths were

15:34:50 1 you talking about?
15:34:51 2 A. There was a case of an individual put in solitary
15:34:56 3 confinement coming to the jail, Alaska's unified systems,
15:34:59 4 so we oversaw the jail system. Not just the prison
15:35:04 5 sentence people but there's five states that are unified
15:35:07 6 systems. But one individual was put in solitary who is a
15:35:10 7 young African-American man who had perfect health ended
15:35:13 8 up, three four weeks later, died of a bleeding ulcer. And
15:35:17 9 a highly neglected medical care, that was another one.
15:35:21 10 Q. Insufficient medical care?
15:35:22 11 A. Insufficient medical care. Another case, a man died
15:35:26 12 of a heart attack in the jail cell banging on the door,
15:35:31 13 staff recognized he was medically distressed, someone
15:35:34 14 called 911. That was another case I documented. There
15:35:37 15 was another case out of Fairbanks, that individual came
15:35:40 16 and highly intoxicated. The report from the DOC as well
15:35:45 17 as the Alaska trooper said he --
15:35:46 18 Q. I just want to stop you. I have a question. The
15:35:48 19 person came in highly intoxicated to the prison?
15:35:51 20 A. To the jail, yes.
15:35:52 21 Q. Was it a jail or --
15:35:54 22 A. The jail. I'm sorry. That facility held both jail
15:36:00 23 and prison people.
15:36:00 24 Q. Sorry. I was a little bit confused. Were all these
15:36:02 25 prison deaths or were they jail deaths?

15:36:04 1 A. Those ones I documented initially were jail deaths.
15:36:08 2 There were other prison deaths that later on but they were
15:36:10 3 not -- I don't think we included them. There were
15:36:13 4 suicides, for example, that were prison deaths. Keep in
15:36:16 5 mind that some of these facilities house both jail people
15:36:19 6 and prison people, as well.
15:36:22 7 Q. Well, it's my understanding that the Federal Bureau
15:36:26 8 of Prisons Or the Bureau of, Statistics, the one that
15:36:31 9 counts how many prisoners in each state actually count
15:36:34 10 both jail inmates and prison inmates to account for
15:36:37 11 Alaska's prison population; is that true?
15:36:41 12 A. I think that data mostly deals with prison deaths,
15:36:46 13 not just deaths. So there's an asterisk, I think, on
15:36:50 14 Alaska and four more states on that data because we know
15:36:55 15 includes jail deaths.
15:36:56 16 Q. Not just deaths. I'm just saying when they count
15:36:58 17 populations of prisoners.
15:37:01 18 A. That I don't know.
15:37:05 19 Q. So all of these deaths that we talked about that were
15:37:08 20 unacceptable and cruel, these were before you took over
15:37:11 21 the Department of Corrections in Alaska?
15:37:13 22 A. Well, the ones I documented in that report were
15:37:17 23 before I took over.
15:37:18 24 Q. Did anyone die while you were the director of the
15:37:23 25 Alaska Department of Corrections?

15:37:24 1 A. Of course, yes.
15:37:25 2 Q. Did you think that any of those deaths were cruel?
15:37:34 3 A. Like we had suicides, we had -- I'm trying to think
15:37:37 4 of another case that we had where there was use-of-force
15:37:40 5 issues, which I'm not totally recalling. Let me just say
15:37:44 6 this. The deaths that occurred in Alaska DOC, there were
15:37:48 7 sound that I found unacceptable. I mean, I wouldn't be
15:37:50 8 surprised if I found some that were unacceptable.
15:37:53 9 Q. In your report to the governor prior to you taking
15:37:56 10 over, there was a suicide death that you reported, right,
15:38:03 11 in your report to the governor?
15:38:04 12 A. It wasn't one of the articulated ones but I did look
15:38:06 13 at suicides that were occurring in the department before I
15:38:09 14 took over. Yes.
15:38:09 15 Q. And after the governor appointed you the head of the
15:38:13 16 department of corrections, there were still suicides?
15:38:15 17 A. There were.
15:38:15 18 Q. Under your watch?
15:38:16 19 A. That's right.
15:38:17 20 Q. I want to talk a little bit about your background. I
15:38:20 21 did not mean any offense earlier. It's just --
15:38:23 22 A. I know, Ms. Warren. I'm sure you didn't.
15:38:26 23 Q. I want to go over your background. I'm not trying to
15:38:29 24 be demeaning. I just need to represent my client to the
15:38:31 25 best of my ability.

15:38:33 1 A. I understand.
15:38:33 2 Q. You started out in juvenile justice. That's what we
15:38:36 3 call it here in Texas.
15:38:37 4 A. Correct.
15:38:37 5 Q. And when did you start?
15:38:40 6 A. 1981.
15:38:43 7 Q. And where were you stationed?
15:38:45 8 A. I was at McLaughlin Youth Center in Anchorage,
15:38:50 9 Alaska.
15:38:51 10 Q. How large was that facility?
15:38:54 11 A. Approximately 200 juveniles in that facility.
15:38:58 12 Q. And then, after that, you went to another juvenile
15:39:02 13 facility, I think, in Nome?
15:39:05 14 A. I did.
15:39:05 15 Q. How many people were in that?
15:39:07 16 A. Very small facility, like 12 or 15, 15 juveniles in
15:39:10 17 that facility.
15:39:12 18 Q. And then, I think you had one more job before you
15:39:15 19 went into to public policy side. I think you had one
15:39:18 20 other job in juvenile justice?
15:39:20 21 A. Well, I ended up going back to being the
15:39:22 22 superintendent of the facility where I started at
15:39:26 23 McLaughlin Youth Center before I retired the first time in
15:39:30 24 2012.
15:39:31 25 Q. And did McLaughlin, did they still have about 200 --

15:39:35 1 A. Approximately, little less than that by the time.
15:39:40 2 Q. And then, after that, you started -- did you go into
15:39:44 3 you went into public policy?
15:39:45 4 A. I went into -- I did research for the legislature. I
15:39:48 5 mean, I did a small stint contracting, running a soup
15:39:52 6 kitchen in downtown Anchorage just to deal with the
15:39:55 7 homeless issue. But I went back to work as a researcher
15:39:59 8 for a period of time with the legislature, with a
15:40:03 9 legislator, and eventually got picked up to be special
15:40:08 10 assistant in public safety, which then led me to be
15:40:10 11 special assistant to Governor Walker.
15:40:12 12 Q. And the governor in Alaska is the person who appoints
15:40:16 13 the Director of the Department of Corrections.
15:40:18 14 A. That's correct.
15:40:22 15 Q. In Colorado -- can you see that?
15:40:46 16 A. I can.
15:40:48 17 Q. Okay. And do you recognize this as a table from the
15:40:52 18 federal government's report on prison populations?
15:40:54 19 A. I see that, yes.
15:40:55 20 Q. Okay. Your Honor, we offer Exhibit 51 into evidence.
15:41:00 21 THE COURT: Any objection? Without objection, so
15:41:04 22 admitted.
15:41:05 23 MS. GROSSMAN: Sorry. No objection.
15:41:08 24 Q. (BY MS. WARREN) Mr. Williams, can you tell me the
15:41:12 25 prison population of Alaska?

15:41:14 1 A. Well, at the time of this report, it looks like --
15:41:17 2 Q. As close in time to us as we can get.
15:41:19 3 A. Well yeah. I mean, I guess '22 then, right? So it
15:41:26 4 looks like it's 4,700 in '22.
15:41:34 5 Q. And can we zoom down to the footnote, please. I see
15:41:37 6 there's a footnote by Alaska. And I know it's tiny print.
15:41:48 7 What does footnote B say?
15:41:50 8 A. D, state does not include persons held in --
15:41:54 9 Q. Sorry B as in boy.
15:41:55 10 A. Prison and jails form one integrated system. Data
15:41:59 11 include total jail and prison populations.
15:42:02 12 Q. Okay. And then, you went to Colorado, correct?
15:42:07 13 A. Yes, after three years.
15:42:08 14 Q. How many prisoners are there in the department -- the
15:42:16 15 Colorado Department of Corrections?
15:42:17 16 A. Well, at the time in '22, yeah, there was 17 --
15:42:20 17 approximately 17,168.
15:42:26 18 Q. What is the Texas prison population in 2020?
15:42:32 19 A. Almost 139,000.
15:42:38 20 Q. The needs and the scale of the Texas system is very
15:42:43 21 different than Alaska and Colorado.
15:42:45 22 A. It's very safe to say that.
15:42:46 23 Q. And you've just said you wouldn't want Mr. Collier's
15:42:48 24 job.
15:42:49 25 A. I don't think I would today.

15:42:51 1 Q. I am sure he appreciates that.
15:42:54 2 A. Maybe he does.
15:42:57 3 Q. But it's fair to say that there are different
15:43:00 4 considerations when a state has that massive of an
15:43:05 5 incarcerated population.
15:43:07 6 A. I would say there are different -- there are
15:43:09 7 certainly different challenges, absolutely.
15:43:11 8 Q. We still need to look out for the health and safety
15:43:13 9 for the people in our custody.
15:43:14 10 A. Sure.
15:43:15 11 Q. But it's just it's a lot more to manage. It's a lot
15:43:18 12 more facilities to manage, right?
15:43:20 13 A. Certainly it's more facilities.
15:43:22 14 Q. Are you aware that TDCJ has 101 units in the state of
15:43:28 15 Texas?
15:43:28 16 A. I looked at the prison list a while ago, I knew it
15:43:32 17 was a large system that Director Collier oversaw, but even
15:43:37 18 then, I was like wow, that is -- there's a lot of prisons.
15:43:40 19 Q. Yeah. It's 101, I'll represent to you. Does that
15:43:43 20 sound right?
15:43:43 21 A. I believe you.
15:43:47 22 Q. Now, one last thing about your time in Alaska. After
15:44:00 23 you submitted the report to the governor and you were put
15:44:04 24 up for the position of being the Director of the
15:44:06 25 Department of Corrections, the Alaska Correctional

15:44:10 1 Officers Union opposed your confirmation; is that correct?
15:44:13 2 A. They sure did.
15:44:17 3 Q. Now, you are a proponent of the idea or the concept
15:44:22 4 philosophy of normalization when it comes to prisons; is
15:44:27 5 that correct?
15:44:27 6 A. That's correct.
15:44:28 7 Q. And you adopted that maybe before but definitely
15:44:35 8 after you went on a trip to Norway.
15:44:37 9 A. Well, I mean, we became -- I became more familiar
15:44:41 10 with the terminology of normalization and certainly it was
15:44:45 11 a drive by in what they've done in the prior 25 or 30
15:44:52 12 years.
15:44:52 13 Q. And did you go to the Halden prison in Norway?
15:44:57 14 A. Halden.
15:44:57 15 Q. Halden, excuse me.
15:44:58 16 A. Halden. I think, Halden prison, yes.
15:45:01 17 Q. And that's a maximum security facility?
15:45:03 18 A. It is.
15:45:04 19 Q. And their inmates are allowed to walk freely around,
15:45:11 20 right?
15:45:11 21 A. Quite a different system than most of the places in
15:45:16 22 our country.
15:45:17 23 Q. They get visitation every two weeks with as many
15:45:19 24 family members and friends as they want.
15:45:22 25 A. I'm not sure but I would -- I'll agree if that's what

15:45:27 1 you understand.

15:45:27 2 Q. And they even get 24-hour conjugal visits?

15:45:31 3 A. They have visitation. There's a house inside Holden

15:45:36 4 prison if you're doing well in that system, you can

15:45:38 5 actually have your family in for the weekend and so, you

15:45:40 6 have bonding time with your spouse as well as your

15:45:42 7 children.

15:45:43 8 Q. Officers are not allowed to use force at all.

15:45:48 9 A. I don't know that that's -- I'm not sure that's true.

15:45:52 10 Q. They're discouraged from using force.

15:45:56 11 A. Well, I would discourage all of our officers from

15:45:58 12 using force except when absolutely necessary.

15:46:01 13 Q. Of course.

15:46:03 14 A. Yes.

15:46:05 15 Q. And the officers in the Norwegian system are actually

15:46:10 16 encouraged to form relationships with prisoners, become

15:46:14 17 friends?

15:46:14 18 A. Appropriate relationships, yes, like you have with --

15:46:17 19 that's one of the principles of normalization is a concept

15:46:21 20 called dynamic security, which simply means I'm going to

15:46:24 21 get to know the people -- if you have the staffing to do

15:46:27 22 it, if you have the capability, it is to form normal human

15:46:35 23 relationships with the people who are incarcerated.

15:46:36 24 Q. And that is a very different philosophy than the

15:46:40 25 penal systems within the United States.

15:46:41 1 A. It's a different philosophy of some of the -- I'm not
15:46:45 2 sure how many but this concept of dynamic security is not
15:46:48 3 foreign to my colleagues around the country.
15:46:51 4 Q. Of course, it's not foreign, but it hasn't been the
15:46:54 5 standard practice in the United States.
15:46:58 6 A. I would say it has not been the standard of practice
15:47:02 7 of how we train our officers in the United States in many
15:47:05 8 jurisdictions.
15:47:06 9 Q. And historically, when we were building prisons, we
15:47:09 10 were building them not under a normalization theory of
15:47:15 11 corrections?
15:47:16 12 A. I think we were building them under punitive system
15:47:21 13 of -- send people to punish them there.
15:47:23 14 Q. And it's extremely expensive to build a prison,
15:47:26 15 right?
15:47:26 16 A. Certainly. It's certainly expensive to build a
15:47:30 17 prison.
15:47:31 18 Q. You know, it can cost millions of dollars.
15:47:35 19 A. Yes.
15:47:40 20 Q. It's also very expensive to renovate a prison, isn't
15:47:44 21 it?
15:47:44 22 A. It can be, yes.
15:47:45 23 Q. Have you been to any Texas prisons?
15:47:48 24 A. Have not had the invitation. Hope I get one. We'll
15:47:51 25 see how it goes.

15:47:53 1 Q. I will represent to you there were some prisons that
15:47:56 2 were built in the 1990s, about 10, they're called 2250s,
15:48:01 3 they hold 2,000.
15:48:03 4 A. 250, yeah. Okay.
15:48:05 5 Q. What you heard earlier, I'll represent to you that
15:48:08 6 there are also units, we call them red brick units or
15:48:12 7 system ones that were built in the 1800s. Do you think
15:48:17 8 that it would be difficult to renovate one of those
15:48:20 9 prisons that was built in the 1800s to modern standards?
15:48:24 10 A. I think it's difficult. I had one in Colorado
15:48:27 11 Centennials -- not Centennials. Colorado Territorial
15:48:32 12 Correctional facility, literally built during territorial
15:48:35 13 phasing in Colorado so I'm familiar with very old prisons.
15:48:39 14 Q. What did you do with that prison? Was it already
15:48:42 15 renovated?
15:48:42 16 A. There were renovations done before I got there.
15:48:50 17 Q. Now, you said on your direct examination that if you
15:48:55 18 just had one person die of heat, I would make sure, you
15:49:01 19 said I would bring all forces to bear to address it,
15:49:06 20 right? And then, your attorney or the attorney for
15:49:08 21 plaintiffs asked you what that means, you said you would
15:49:12 22 pull the fire alarm, right?
15:49:16 23 A. Yes. I mean, not literally but yes.
15:49:19 24 Q. You said you would figure out exactly what happened?
15:49:22 25 A. Correct.

15:49:24 1 Q. And you would make a report to the appropriate
15:49:27 2 people?
15:49:29 3 A. I would want full documentation who I sent it to or
15:49:32 4 whatever, but I'd want full documentation.
15:49:36 5 Q. Would you want, say, an emergency action committee
15:49:40 6 report?
15:49:40 7 A. Something perhaps like that.
15:49:44 8 Q. Would you want a family notification?
15:49:45 9 A. Sure.
15:49:47 10 Q. What about a body transfer certificate to make sure
15:49:50 11 that the person who died is actually transferred to the
15:49:54 12 right facility?
15:49:56 13 A. Sure, I'd want that, too.
15:49:57 14 Q. Would you like photos to document the death?
15:49:59 15 A. Sure, I'd want that.
15:50:02 16 Q. Would you like to have an administrative review of
15:50:06 17 that death?
15:50:07 18 A. I would like some sort of yes, independent review. I
15:50:13 19 mean, may be different to say I know what I would do in
15:50:16 20 Colorado. Some one would be appointed from my inspector
15:50:19 21 generals to make sure that document -- so yes, I'd want
15:50:23 22 some sort of --
15:50:24 23 Q. We call it an OIG, Office of Inspector General
15:50:28 24 custodial death report, you would want one of those.
15:50:31 25 A. Certainly.

15:50:33 1 Q. And you would like, you know, the superiors in the
15:50:38 2 prison system like Mr. Collier, like the regional
15:50:41 3 directors, like Mr. Lumpkin, who we're going to hear from
15:50:44 4 later, you would want them to review and do an
15:50:48 5 administrative review of those deaths.
15:50:49 6 A. Yes.
15:50:50 7 Q. You would want an autopsy done.
15:50:52 8 A. Sure.
15:50:53 9 Q. And a death certificate.
15:50:56 10 A. Yes.
15:51:00 11 Q. And you would want that autopsy to be done by
15:51:02 12 independent medical professionals.
15:51:04 13 A. Yes.
15:51:10 14 Q. What else would you do?
15:51:13 15 A. Well, as I said earlier, what I would really
15:51:15 16 absolutely make sure, which is a bit of a mystery a little
15:51:17 17 bit, is I'd want multiple measurement -- multiple readings
15:51:22 18 of body core temperatures upon death, I mean, to make sure
15:51:25 19 that, one, that not just core body temperatures but I
15:51:30 20 would insist upon taking immediate temperatures of
15:51:32 21 temples, for example, immediately upon death. So in
15:51:36 22 addition to responding to 911, we should be getting body
15:51:39 23 temperatures, even temporal body temperatures.
15:51:43 24 Q. When they're performing CPR --
15:51:45 25 A. Well, when they're done performing CPR, I mean, as

15:51:50 1 soon as practical. I mean, not as an emergency response
15:51:53 2 issue, but as soon as that person's declared deceased,
15:52:00 3 there knowing that this issue was front and center.
15:52:03 4 Q. Even if the person is taken to an outside hospital
15:52:07 5 and dies there?
15:52:08 6 A. Well, I'd want to know what the body temperature was
15:52:12 7 immediately upon death inside the cell when I was facing
15:52:15 8 potential litigation that you're all facing here, which is
15:52:18 9 unfortunate. I'd want to know it because the public
15:52:22 10 scrutiny, even outside people that don't live here like
15:52:24 11 me -- I hope I get welcomed back, but to say gee, people
15:52:29 12 are upset. So I'd want to do everything under the sun to
15:52:33 13 make sure that when someone died, I know exactly what
15:52:36 14 their temperature was, at least a temporal one.
15:52:39 15 Q. That wasn't really my question. My question was if
15:52:42 16 someone died in an outside hospital, would you want the
15:52:45 17 doctors there to report back with the temperature of the
15:52:48 18 body?
15:52:49 19 A. I mean, if they'd been there days, whether or not
15:52:52 20 their core body temperature -- I mean, you know, whether
15:52:55 21 or not I'm responsible as the director, right, for what
15:52:58 22 happened --
15:52:58 23 Q. Yeah. You're responsible for every --
15:53:00 24 THE COURT: Let him answer the question.
15:53:02 25 A. So I'm responsible, yes, for everybody who had been

15:53:06 1 in my custody. What I would demand of someone who's in a
15:53:10 2 hospital who's been there several days or what I want done
15:53:14 3 investigatively there, right, is quite different than
15:53:16 4 someone dying on scene inside a prison immediately there.
15:53:22 5 I would want to make sure all steps were taken to make
15:53:26 6 sure, especially on this issue, what the body temperature
15:53:30 7 was when they died.
15:53:33 8 Q. (BY MS. WARREN) And just to be clear, the executive
15:53:36 9 director or the Director of a Department of Corrections or
15:53:39 10 criminal justice as we have in Texas, they're responsible
15:53:42 11 for all custodial deaths ultimately?
15:53:44 12 A. I mean, that's my -- I guess I don't know your
15:53:48 13 statutory scheme but it's very similar across the country.
15:53:51 14 There's one person who's held responsible for that heavy
15:53:56 15 burden, it's the director.
15:53:57 16 Q. Okay. So you would want to know the core body
15:53:59 17 temperatures. What would you do?
15:54:01 18 A. If I found out?
15:54:03 19 Q. If you had one custodial death that was caused by
15:54:06 20 heat, what would you do?
15:54:07 21 A. I would make sure that not only we understood what
15:54:12 22 was going on and why that person died, you know, oh, guess
15:54:16 23 what, the cell temperature's 115 degrees or whatever it
15:54:20 24 was, right? But I would make sure that that information
15:54:23 25 was communicated very clearly to other entities, including

15:54:27 1 the governor's office.
15:54:30 2 I would hope that if I was asked during a
15:54:32 3 legislative hearing even though I realize the
15:54:35 4 vulnerability that might cost me professionally, right, to
15:54:39 5 say yeah, we had someone die in prison, I would tell the
15:54:42 6 family members, right, hey, your individual -- I had to
15:54:46 7 call people who died of COVID to say your family member
15:54:49 8 died of COVID. I don't like the fact that they died of
15:54:51 9 COVID. I'm so sorry but that's what happened, the hard
15:54:55 10 truth is. And so, I'd make sure from the get-go that I
15:55:00 11 told the painful truth, no matter how good or bad it might
15:55:05 12 be.
15:55:06 13 Q. But what would you do to prevent that death in the
15:55:09 14 future?
15:55:09 15 A. I would do everything I can do implore others to have
15:55:14 16 the same concern I have. I would talk to as many people.
15:55:18 17 I would do everything under the scope to make sure that we
15:55:20 18 had a fix that was put in place and maybe couldn't be
15:55:24 19 fixed by tomorrow, but there was a plan in place to fix it
15:55:27 20 and that I would do everything I could in the capacity
15:55:29 21 that I had to ensure that that was the trajectory.
15:55:34 22 Q. To ensure that that was the trajectory?
15:55:36 23 A. Correct.
15:55:37 24 Q. Before today, were you aware that there is a plan in
15:55:40 25 place that is being acted upon now to air condition every

15:55:46 1 single bed within TDCJ?
15:55:46 2 A. I heard that question earlier. I'm glad to hear that
15:55:51 3 there's a plan, that someone has formulated a plan.
15:55:56 4 Q. Did you know they're actually acting on that plan
15:55:59 5 that they've already built 46,000 cool beds under Mr.
15:56:02 6 Collier's direction?
15:56:03 7 A. Well, if you can build 46,000 beds under Director
15:56:07 8 Collier's action, good. Good for Director Collier. Good
15:56:10 9 for everybody, not just Director Collier. Good for
15:56:13 10 everybody --
15:56:15 11 Q. And of course --
15:56:16 12 MS. GROSSMAN: Please let me him finish his
15:56:18 13 answer.
15:56:21 14 Q. (BY MS. WARREN) Sorry. It was getting
15:56:21 15 confrontational. I apologize.
15:56:22 16 A. No. That's great. That's a great -- that's a good
15:56:26 17 step. It's a step.
15:56:28 18 Q. And there's a plan to have over 60,000, I think
15:56:33 19 63,000 air-conditioned beds by the end of 2025.
15:56:42 20 A. It's better than nothing. I agree.
15:56:44 21 Q. And they're building prototypes because we have those
15:56:46 22 different kinds of units in Texas. They're building
15:56:49 23 prototypes of how to air condition those buildings
15:56:53 24 structurally. Did you know that?
15:56:54 25 A. I didn't know that. That's good.

15:56:57 1 Q. So say for the ten 2250s in Texas, once they make the
15:57:02 2 prototype, those units are the same so they can go in and
15:57:06 3 they can make the -- put air conditioning in based on that
15:57:12 4 plan.
15:57:12 5 A. That's good.
15:57:13 6 Q. And did you know that they're working on that for
15:57:15 7 every type of unit that we have in Texas?
15:57:16 8 A. I think that's good. The issue is what's the
15:57:19 9 timeframe, though, and does that accomplish it or is that
15:57:22 10 still mitigation? What I understand now in regards to
15:57:26 11 this issue is you have 140,000 beds. You have 140,000,
15:57:31 12 that does not accomplish 140,000. That's all I'd say. It
15:57:34 13 just doesn't, right?
15:57:34 14 Q. Of course. But we're here to talk about deliberate
15:57:38 15 indifference and that's knowing of a serious risk to
15:57:41 16 health and safety and ignoring that risk. Knowing what
15:57:44 17 you know now, can you say that Mr. Collier and TDCJ is
15:57:47 18 ignoring that risk?
15:57:49 19 A. I'm not going to opine from the situation where I sit
15:57:55 20 about whether or not Director Collier's indifferent,
15:57:57 21 right? Here's what I know about what I would respond to
15:58:00 22 that. I would make sure that everybody in the state
15:58:02 23 understands that air conditioning is not a luxury. It's
15:58:07 24 not a nice thing, right? People are dying, will continue
15:58:10 25 to die in what I think is unacceptable terms until the

15:58:15 1 whole system is air conditioned, right? That's the issue.
15:58:18 2 And I would be screaming that from the mountaintop.
15:58:23 3 I realize that there are risks associated with my
15:58:27 4 friend doing that, but the reality is the mitigation is
15:58:33 5 not a fix. It's just not. And the sooner the air
15:58:37 6 conditioning could be employed for the entire system, then
15:58:39 7 all of this can go away, thankfully, right, and the system
15:58:43 8 will be fixed. It's not fixed today. That's the problem.
15:58:46 9 I think that's why we're all here.
15:58:47 10 Q. But TDCJ is working on fixing it, aren't they?
15:58:51 11 A. I'm glad there is movement. Movement is -- you know,
15:58:57 12 movement is good.
15:59:00 13 Q. Pass the witness.
15:59:05 14 RE-DIRECT EXAMINATION
15:59:06 15 BY MS. GROSSMAN:
15:59:06 16 Q. One question. Is a heat index of 136 degrees a
15:59:10 17 legitimate form of punishment?
15:59:11 18 A. No. Absolutely not. The problem is -- pardon. The
15:59:16 19 problem is whatever is in place now is not working, right?
15:59:23 20 It's just not working. I mean, you can't have people die
15:59:26 21 last year under this condition, say, well, we're getting
15:59:29 22 there. I just don't think that's -- it's just not enough.
15:59:35 23 Q. Thank you.
15:59:37 24 THE COURT: Anything further?
15:59:41 25

15:59:41 1 RE-CROSS EXAMINATION

15:59:41 2 BY MS. WARREN:

15:59:42 3 Q. Yes. Quickly, your Honor.

15:59:43 4 Mr. Williams, do you really think that the state

15:59:47 5 of Texas and its Department of Criminal Justice is using

15:59:49 6 heat as a punishment?

15:59:50 7 A. No. I don't think people sat around the room and

15:59:55 8 said we're going to use heat as a form of punishment. I

15:59:58 9 don't think people sat around a room and calculated in

16:00:04 10 terms of this department. But people did build prisons,

16:00:07 11 right? There was a purposeful decision to build prisons

16:00:10 12 without air conditioning and those decisions, at least

16:00:13 13 based upon what I read in the newspaper, just the

16:00:16 14 newspaper, those decisions were made because they didn't

16:00:19 15 think prisons deserved them to summarize. I'm

16:00:23 16 paraphrasing terribly.

16:00:24 17 Q. What about the prisons that were built before air

16:00:29 18 conditioning existed?

16:00:29 19 A. Well then, nobody had intentional -- nobody had

16:00:34 20 intentional, you know, cruelty and thought then, clearly,

16:00:38 21 right?

16:00:38 22 Q. What about when most houses were not air conditioned?

16:00:43 23 A. What about before there was clean water or what about

16:00:47 24 before there was adequate food or other things? I mean,

16:00:49 25 so I get the fact that some of the debate around this,

16:00:54 1 well, other people in the public don't have air
16:00:56 2 conditioning, I get that, but there's a real and moral
16:00:59 3 obligation to people in this system, right, to have
16:01:02 4 clean -- to have water for people, to have food for
16:01:04 5 people, to have healthcare for people, and to have
16:01:07 6 appropriate temperatures for people.
16:01:10 7 Q. The newspaper article that you read, was that in
16:01:13 8 reference to I think Senator Whitmire's comment that we're
16:01:19 9 not going to air condition Texas prisons because, you
16:01:23 10 know, because they're prisoners?
16:01:24 11 A. I wasn't referencing that. What I read was decisions
16:01:28 12 where -- I mean, there was some history about how prisons
16:01:30 13 were built here, right, and how there were decisions that
16:01:34 14 do we include air conditioning or not include air
16:01:37 15 conditioning in prison when air conditioning was
16:01:39 16 available, right? And a decision was made back in those
16:01:42 17 days that they weren't going to include them.
16:01:47 18 Q. But you recognize that Mr. Collier has to go and
16:01:50 19 testify in front of Senators, just like Whitmire, to try
16:01:53 20 to get the funding?
16:01:55 21 A. Of course I understand. I had to do the same thing.
16:01:59 22 Q. Thank you. Nothing further, your Honor.
16:02:03 23 MS. GROSSMAN: Nothing further.
16:02:03 24 THE COURT: Thank you, sir. You may step down.
16:02:05 25 Is this witness free to go?

16:02:09 1 MS. WARREN: No. Nothing further. And we don't
16:02:11 2 plan to recall him. Thank you so much, Mr. Williams.
16:02:18 3 THE COURT: All right. It's probably about time
16:02:20 4 for our next short break. We'll take just a 10-minute
16:02:23 5 break, come back at, let's call it, 4:15.
16:07:40 6 (Recess.)
16:17:36 7 THE COURT: Next witness.
16:17:43 8 MR. JAMES: Good afternoon. My name is David
16:17:45 9 James. I don't think I appeared formally. I represent
16:17:47 10 the plaintiffs and plaintiffs will call Dr. Paul Uribe.
16:17:51 11 THE COURT: Dr. Uribe, this is Judge Pitman. Can
16:17:52 12 you hear me?
16:17:55 13 THE WITNESS: Yes, your Honor.
16:17:56 14 THE COURT: Good afternoon. Thank you for
16:17:57 15 appearing remotely today. Our equipment is not working
16:18:00 16 particularly well and so, I would ask you, if you don't
16:18:03 17 mind, to speak as closely to your microphone as possible
16:18:06 18 and perhaps a little more loudly than normal so that our
16:18:09 19 court reporter can hear you. And if you have any trouble
16:18:12 20 hearing us, if you could just let us know, that would be
16:18:14 21 great, as well.
16:18:17 22 THE WITNESS: Of course. Thank you.
16:18:18 23 THE COURT: Before we begin, could I get you
16:18:20 24 please to raise your right hand to be sworn.
16:18:22 25 THE CLERK: You do solemnly swear or affirm that

16:18:22 1 the testimony which you may give in the case now before
16:18:22 2 the Court shall be the truth, the whole truth, and nothing
16:18:29 3 but the truth?
16:18:29 4 THE WITNESS: Yes, I do.
16:18:32 5 THE COURT: You may proceed.
16:18:32 6 PAUL S. URIBE, called by the Plaintiff, duly sworn via
16:18:34 7 videoconference.
16:18:34 8 DIRECT EXAMINATION
16:18:35 9 BY MR. JAMES:
16:18:35 10 Q. Good afternoon. Dr. Uribe, my name is David James.
16:18:39 11 We met over the phone; isn't that right?
16:18:41 12 A. Yes.
16:18:41 13 Q. Could you please state your full name for the record?
16:18:45 14 A. My full name is Paul Shane Uribe, spelled U-R-I-B-E.
16:18:52 15 Q. And could you tell the Court your current occupation?
16:18:55 16 A. My current occupation is as a forensic pathologist.
16:19:01 17 Q. Could you please briefly explain what a forensic
16:19:04 18 pathologist is?
16:19:05 19 A. A forensic pathologist is a medical doctor that
16:19:09 20 studies unnatural, unexpected and violent death.
16:19:13 21 Q. And where do you currently work, Doctor?
16:19:16 22 A. I currently am employed in a full-time position at
16:19:21 23 the Fort Bend County Medical Examiner's Office as the
16:19:24 24 Deputy Chief Medical Examiner.
16:19:27 25 Q. And do you have any other occupations?

16:19:31 1 A. Yes. I work as a part-time forensic pathologist in
16:19:37 2 several jurisdictions, namely, the state of Mississippi
16:19:39 3 and Clark County, Nevada, which constitutes Las Vegas.
16:19:45 4 Q. What training do you have in the field of forensic
16:19:48 5 pathology?
16:19:49 6 A. I have completed medical school, completed a one-year
16:19:56 7 transitional internship, completed training in anatomic
16:20:00 8 and clinical pathology and completed subspecialty training
16:20:03 9 in forensic pathology.
16:20:05 10 Q. And could you tell the Court where you received each
16:20:10 11 component of your training?
16:20:12 12 A. Of course. My medical school was Uniformed Services
16:20:18 13 University of the Health Sciences in Bethesda, Maryland.
16:20:22 14 My internship was at Madigan Army Medical Center in
16:20:27 15 Tacoma, Washington. My anatomic and clinical pathology
16:20:32 16 residency was at Walter Reed Army Medical Center and
16:20:36 17 National Naval Medical Center, Bethesda, in the Washington
16:20:41 18 D.C. area. And my forensic pathology fellowship was at
16:20:45 19 the Armed Forces Medical Examiner System, which at the
16:20:50 20 time was a joint program the Office of the Chief Medical
16:20:53 21 Examiner State of Maryland in Baltimore.
16:20:56 22 Q. How long have you been a doctor?
16:20:59 23 A. I graduated from med school in 2001; so over 23
16:21:04 24 years.
16:21:05 25 Q. And how long have you been a forensic pathologist?

16:21:08 1 A. I completed my forensic pathology training in 2010;
16:21:13 2 so approximately 14 years.
16:21:17 3 Q. Where have you worked as a forensic pathologist?
16:21:22 4 A. As a forensic pathologist, I've worked at the Office
16:21:27 5 of the Armed Forces Medical Examiner in Dover, Delaware.
16:21:31 6 I worked as a regional medical examiner for the U.S.
16:21:37 7 military when I was assigned to Fort Benning, Georgia as
16:21:42 8 the department chief, the Chief of the Department of
16:21:45 9 Pathology. I've worked in Clark County, Nevada for
16:21:50 10 approximately -- for over 10 years at this point. I have
16:21:54 11 had part-time positions at the Baltimore Office of the
16:22:00 12 Chief Medical Examiner's Office, the state of New Jersey
16:22:05 13 at their Regional Medical Examiner Offices. I've also
16:22:08 14 worked in Charleston South Carolina. And there's one
16:22:14 15 other place. Oh, DeKalb County, Georgia which is outside
16:22:18 16 of Atlanta.
16:22:19 17 Q. Do you have with you a copy of what we have marked as
16:22:22 18 Exhibit 251, your CV?
16:22:26 19 A. Yes.
16:22:27 20 Q. Your Honor, may I approach with a courtesy copy? And
16:22:40 21 is Exhibit 251 a true and correct copy of your CV?
16:22:45 22 A. Yes.
16:22:45 23 Q. And are the qualifications summarized on your CV
16:22:50 24 accurate?
16:22:51 25 A. Yes.

16:22:53 1 Q. Plaintiffs would respectfully offer Exhibit 251 into
16:22:57 2 evidence.
16:23:00 3 MS. MCGEE: No objection, your Honor.
16:23:01 4 THE COURT: So admitted.
16:23:02 5 Q. (BY MR. JAMES) Doctor, do you have any board
16:23:05 6 certifications?
16:23:05 7 A. Yes.
16:23:06 8 Q. Can you tell the Court what board certifications you
16:23:09 9 have?
16:23:09 10 A. I'm board certified in anatomic, clinical and
16:23:14 11 forensic pathology through the American Board of
16:23:17 12 Pathology.
16:23:17 13 Q. Do you have any active state medical licenses?
16:23:20 14 A. Yes.
16:23:20 15 Q. How many active licenses do you have?
16:23:23 16 A. Currently nine.
16:23:25 17 Q. Are you licensed to practice medicine in the state of
16:23:28 18 Texas?
16:23:28 19 A. Yes.
16:23:30 20 Q. Can you please estimate about how many autopsies
16:23:34 21 you've performed in your career?
16:23:38 22 A. Over 2,000.
16:23:40 23 Q. Have you authored any peer-reviewed publications in
16:23:44 24 your field?
16:23:44 25 A. Yes.

16:23:45 1 Q. Approximately how many?
16:23:48 2 A. In pathology, approximately five.
16:23:52 3 Q. Have you given any academic or professional
16:23:54 4 presentations to peers in your field?
16:23:57 5 A. Yes.
16:23:58 6 Q. Approximately how many?
16:24:00 7 A. Approximately 15 times.
16:24:03 8 Q. In your experience as a forensic pathologist, have
16:24:07 9 you evaluated whether environmental heat contributed to a
16:24:09 10 person's death?
16:24:11 11 A. Yes.
16:24:12 12 Q. And where have you made evaluations that you found
16:24:17 13 environmental heat was suspected in contributing to a
16:24:21 14 person's death?
16:24:22 15 A. In most of the jurisdictions that I've worked in,
16:24:26 16 it's always a question in the back of my mind, especially
16:24:30 17 during extremes of environmental temperature such as heat
16:24:34 18 waves and the like. It's a particular concern in Clark
16:24:38 19 County, Nevada, which is -- you know, constitutes Las
16:24:42 20 Vegas in the southern part of Nevada, which is notoriously
16:24:46 21 hot. There are -- I have evaluated heat-related deaths in
16:24:53 22 the state of Texas. I've also considered heat-related
16:24:57 23 deaths in New Jersey. I don't believe I had any in
16:25:01 24 Charleston. And in Georgia, it's always something that we
16:25:05 25 consider because it does get rather hot in Georgia.

16:25:09 1 MS. MCGEE: Your Honor, can I ask you to repeat
16:25:13 2 the last question? I'm sorry, I couldn't hear you. Can I
16:25:14 3 ask that counsel speak up a little bit so I could hear the
16:25:16 4 question?
16:25:18 5 Q. (BY MR. JAMES) Sure. So my question was in your
16:25:20 6 experience as a forensic pathologist, have you evaluated
16:25:24 7 any deaths where you suspected that environmental heat
16:25:28 8 contributed to the death of that person?
16:25:32 9 MS. MCGEE: And I heard his answer. I just
16:25:33 10 couldn't hear the question. I apologize. Thank you.
16:25:36 11 Q. (BY MR. JAMES) Doctor, during your experience as a
16:25:41 12 forensic pathology, just have you had occasion to evaluate
16:25:44 13 the appropriate medical response to a scene involving a
16:25:48 14 person suspected to have been affected by environmental
16:25:51 15 heat?
16:25:51 16 A. Yes.
16:25:53 17 Q. Could you briefly summarize some of that experience?
16:25:59 18 A. I was stationed in Fort Benning, Georgia, which is in
16:26:04 19 Columbus, Georgia, for six years as their department chief
16:26:08 20 for pathology. During the time, Fort Benning was known as
16:26:12 21 the heat casualty capital of the Army. We had more
16:26:15 22 reported heat casualties than any other duty station in
16:26:20 23 the Army. As part of my job and part of an
16:26:25 24 interdisciplinary team with other physicians at Martin
16:26:29 25 Army Community Hospital, which is the hospital at Fort

16:26:32 1 Benning, we approached the situation and figured out a way
16:26:37 2 to rapidly identify potential heat casualties, especially
16:26:43 3 in regards to physical training and military training and,
16:26:51 4 you know, basically Army training. And we relied on the
16:26:56 5 clinical features of altered mental status, rapid
16:27:01 6 deployment of laboratory testing and rapid assessment of
16:27:04 7 temperature.
16:27:08 8 Q. And in regards to this specific case, you've been
16:27:12 9 provided some autopsy reports and investigative reports.
16:27:15 10 Did you have an opportunities to review those documents in
16:27:18 11 preparation of your testimony today?
16:27:20 12 A. Yes.
16:27:23 13 Q. And in evaluating those records, have you held
16:27:29 14 yourself and the evidence to the same standards that you
16:27:30 15 use in the field of forensic pathology and medicine?
16:27:33 16 A. Yes.
16:27:35 17 Q. At this time, plaintiffs respectfully ask that the
16:27:38 18 Court recognize Dr. Uribe as an expert in the fields of
16:27:41 19 medicine and forensic pathology.
16:27:43 20 MS. MCGEE: No objections.
16:27:44 21 THE COURT: Without objection, he's so admitted.
16:27:51 22 Q. (BY MR. JAMES) I believe I have here some of the
16:27:54 23 exhibits that have been accepted, subject to objection,
16:27:59 24 and they are Exhibits 161, 168, 169, 192 and 200.
16:28:07 25 Dr. Uribe, do you have those death records with

16:28:16 1 you?
16:28:16 2 A. What was the third through fifth numbers that you
16:28:18 3 read off?
16:28:20 4 Q. 169, 192 and 200.
16:28:29 5 A. I do not have 106. I do not have 169. I do have 200
16:28:35 6 but I don't have 169 printed off.
16:28:39 7 Q. Do you recall the documents regarding Ms. Elizabeth
16:28:42 8 Hagerty?
16:28:45 9 A. Yes.
16:28:46 10 Q. Okay. Since we're going to be going through those,
16:28:51 11 may I approach to provide a courtesy copy for the Court?
16:28:55 12 THE COURT: Sure.
16:28:56 13 A. Actually, I do have 169.
16:29:00 14 Q. (BY MR. JAMES) Excellent. So I'd like to start with
16:29:10 15 Mr. John Castillo, Doctor. I know that you reviewed
16:29:17 16 Exhibits 161, 168 -- I'm sorry, 161, 161A and 161B. So do
16:29:28 17 you recall reviewing the autopsy report and the
16:29:33 18 investigation reports conducted by TDCJ and another agency
16:29:38 19 called the Office of Inspector General?
16:29:40 20 A. Yes.
16:29:41 21 Q. And were those categories of documents concerning Mr.
16:29:45 22 Castillo's death the types of records that are generally
16:29:51 23 relied upon in your field of forensic pathology?
16:29:55 24 A. Yes.
16:29:57 25 Q. And to the extent that there is still an objection,

16:30:01 1 plaintiffs would ask that Exhibits 161, 161A and 161B be
16:30:06 2 admitted into evidence.
16:30:08 3 MS. MCGEE: Subject to -- I think it was a
16:30:12 4 attorneys'-eyes protective order.
16:30:14 5 THE COURT: Subject to that objection, they're
16:30:16 6 admitted for purposes of this hearing.
16:30:19 7 Q. (BY MR. JAMES) And, Doctor, did you reach an opinion
16:30:22 8 as to whether environmental heat most likely contributed
16:30:25 9 to Mr. Castillo's death?
16:30:27 10 A. Yes.
16:30:31 11 Q. To a reasonable degree of certainty in your field, do
16:30:33 12 you have an opinion about whether Mr. Castillo probably
16:30:36 13 would have survived if he had not been housed in a hot
16:30:39 14 environment?
16:30:40 15 A. Yes.
16:30:40 16 Q. And can you explain your opinions about Mr.
16:30:45 17 Castillo's death for the Court?
16:30:47 18 A. Mr. Castillo is a 32-year-old male with a history of
16:30:52 19 epilepsy and seizure disorder. He was found with a core
16:30:58 20 temperature of over 107 degrees. An autopsy was performed
16:31:04 21 that demonstrated no anatomic or toxicologic cause of
16:31:08 22 death. I believe, upon my review, that heat played a
16:31:15 23 direct role in his death.
16:31:16 24 Q. Is it fair to say that if Mr. Castillo had not been
16:31:23 25 housed in a hot environment, he would not have died?

16:31:25 1 A. Yes.
16:31:26 2 Q. And did you happen to notice whether or not Mr.
16:31:31 3 Castillo was reportedly frequently drinking water on the
16:31:36 4 day that he died?
16:31:37 5 A. Yes.
16:31:38 6 Q. Do you recall that it was reportedly 23 times that
16:31:42 7 day?
16:31:42 8 A. Yes.
16:31:44 9 Q. Did you see in the materials whether the fans were
16:31:50 10 active in Mr. Castillo's housing area in prison where he
16:31:54 11 passed away?
16:31:54 12 A. I don't recall that specific detail.
16:31:57 13 Q. Okay. If you have that autopsy, you may want to turn
16:32:00 14 to page 14433 at the bottom to refresh your recollection.
16:32:18 15 A. The clinical pathological correlation demonstrates
16:32:22 16 was housed -- he was housed in an un-air conditioned unit
16:32:25 17 with fans on.
16:32:28 18 Q. An obviously, the fact that Mr. Castillo was drinking
16:32:32 19 water and had access to working fans did not prevent his
16:32:37 20 death from heat; is that correct?
16:32:39 21 A. Correct.
16:32:42 22 Q. And reading this autopsy report, would you consider
16:32:44 23 this death to be heat-related in ordinary or colloquial
16:32:50 24 language?
16:32:51 25 A. Yes.

16:32:59 1 Q. I'd like to turn to documents pertaining to Armando
16:33:04 2 Gonzales, that's Exhibit 168. Now, Armando Gonzales is
16:33:10 3 phenotypic male but identified as female. Do you recall
16:33:13 4 that?
16:33:13 5 A. Yes.
16:33:14 6 MS. MCGEE: I'm sorry, can you speak up just a
16:33:15 7 little bit?
16:33:16 8 MR. JAMES: I'm sorry. Facing away to look at
16:33:18 9 the screen.
16:33:19 10 Q. (BY MR. JAMES) I was saying, do you recall that
16:33:21 11 Armando Gonzales is a phenotypic male but identified as
16:33:26 12 female, and I asked is that correct and the witness said
16:33:31 13 yes.
16:33:35 14 Now, in your review of Mr. Gonzales' death, if
16:33:42 15 you look at Exhibit 168 and the other investigative
16:33:44 16 report, 168A, correct?
16:33:48 17 A. Yes.
16:33:48 18 Q. And do you recognize those kinds of reports as the
16:33:53 19 type of records that are generally relied upon in your
16:33:57 20 field of forensic pathology?
16:33:59 21 A. Yes.
16:34:01 22 Q. Plaintiffs again ask that Exhibit 168 as well as 168A
16:34:07 23 be admitted into evidence.
16:34:08 24 MS. MCGEE: Subject to the protective order, we
16:34:09 25 have no objections.

16:34:10 1 THE COURT: So noted.
16:34:13 2 Q. (BY MR. JAMES) Doctor, did you reach an opinion as to
16:34:16 3 whether environmental heat most likely contributed to Ms.
16:34:19 4 Gonzales' death?
16:34:20 5 A. Yes.
16:34:22 6 Q. And do you have an opinion about whether Ms. Gonzales
16:34:27 7 probably would have survived if she had not been housed in
16:34:30 8 a hot environment?
16:34:32 9 A. Yes.
16:34:33 10 Q. And what are those opinions?
16:34:36 11 A. The opinions were -- my opinions are that heat played
16:34:41 12 a direct role in the death of Ms. Gonzales.
16:34:45 13 Q. Can you briefly explain to the Court how you reached
16:34:48 14 that conclusion?
16:34:50 15 A. Ms. Gonzales was a 42-year-old phenotypic male,
16:34:55 16 identified as female, presented in distress. There was an
16:35:01 17 emergency room core temperature of over 109 degrees. An
16:35:07 18 autopsy was performed that demonstrated no anatomic cause
16:35:11 19 of death, and two drugs of note on postmortem toxicology,
16:35:16 20 which were fentanyl and midazolam. Midazolam is a
16:35:20 21 benzodiazepine. Sedative fentanyl is an opiate narcotic.
16:35:25 22 They both cause respiratory depression, but neither one of
16:35:30 23 those drugs either together or -- either separately or
16:35:34 24 together would cause the symptom of elevated temperature
16:35:38 25 or hyperthermia, so they do not explain why the

16:35:42 1 temperature -- why the core temperature was so high.
16:35:46 2 So therefore, although the drugs may have
16:35:49 3 contributed to a respiratory depression and, you know,
16:35:54 4 altered state of consciousness that they do not explain
16:35:57 5 elevated temperature, which is over 109 degrees, and is,
16:36:03 6 you know, catastrophic and usually fatal.
16:36:07 7 Q. Is it fair to say that if Ms. Gonzales had not been
16:36:10 8 housed in a hot environment, she would not have died?
16:36:13 9 A. Yes.
16:36:16 10 Q. Did you also notice that there's a period of time in
16:36:19 11 between Ms. Gonzales' declaration of death and the date of
16:36:24 12 her autopsy?
16:36:26 13 A. Yes.
16:36:28 14 Q. Do you have an opinion about whether or not an
16:36:32 15 autopsy on a person who was housed under observation or,
16:36:34 16 in this case, dies under the care of a doctor should be
16:36:41 17 conducted within a certain number of business days?
16:36:45 18 A. Yes.
16:36:46 19 Q. What is that opinion?
16:36:48 20 A. It's typically best practice to autopsy the decedent
16:36:55 21 within 24 to 48 hours after death. And I realize that
16:37:04 22 logistically, sometimes that's not possible not all
16:37:06 23 offices are open on a weekend and over extended weekends,
16:37:09 24 you know. The office will not be open to perform
16:37:14 25 autopsies in that timely a timeframe, but generally, 24 to

16:37:19 1 48 hours is a generally accepted standard.
16:37:23 2 Q. And then, as applied to the facts of Ms. Gonzales'
16:37:26 3 death, is the delay within or without standard of care for
16:37:34 4 conducting an autopsy in a timely fashion?
16:37:41 5 A. The delay in this case, if I may refer to the autopsy
16:37:45 6 report --
16:37:45 7 MS. MCGEE: I'm going to object to relevance
16:37:47 8 because TDCJ has nothing to do with performing the
16:37:49 9 autopsies. I'm just going to object to relevance since we
16:37:54 10 don't have any control over that.
16:37:56 11 MR. JAMES: Well, your Honor, I think that that's
16:37:58 12 incorrect because TDCJ has custody of the body and is in
16:38:02 13 charge of delivering it to the UTMB facility for
16:38:07 14 autopsies. And UTMB is a contractor of TDCJ. So it goes
16:38:10 15 to the relevance as well as the evidentiary value of not
16:38:15 16 only this autopsy but other autopsies where a delay in
16:38:20 17 diagnosis may lead to underreporting in heat-related
16:38:24 18 deaths.
16:38:24 19 THE COURT: Overrule the objection and allow.
16:38:29 20 Q. (BY MR. JAMES) And I apologize, Doctor, I'm going to
16:38:31 21 need to repeat my question for you because I think we're
16:38:33 22 in the middle of your answer. So I've lost my place but I
16:38:36 23 think my question was, does the delay in Ms. Gonzales'
16:38:40 24 case, does that seem deviate or not deviate from the
16:38:47 25 standard of practice that you would expect under the

16:38:51 1 circumstances of her particular death?
16:38:52 2 A. I mean, it deviates from that standard because the
16:38:55 3 death occurred on August 23rd and the autopsy occurred on
16:39:01 4 September 5th.
16:39:04 5 Q. And why is it the standard practice at least where
16:39:09 6 it's feasible like it was with Ms. Gonzales to conduct the
16:39:14 7 autopsy more quickly?
16:39:16 8 A. There are multiple reasons. The first is accuracy in
16:39:23 9 postmortem toxicology and postmortem laboratory values.
16:39:28 10 The postmortem toxicology is more accurate when it's drawn
16:39:32 11 closer to the time of death because you have phenomenon
16:39:37 12 called postmortem degradation where drugs break down over
16:39:42 13 time so they might not be detectable or detectable in
16:39:46 14 levels that accurately represent the anti-mortem levels.
16:39:51 15 You run into issues with vitreous chemistry
16:39:56 16 levels, which is testing the salt levels in the eye. The
16:40:02 17 testing of vitreous chemistry is something that we use
16:40:06 18 routinely to look for either dehydration or overhydration.
16:40:11 19 It can also be used for a number of different things, you
16:40:16 20 know, marking of kidney function and other conditions.
16:40:20 21 The further away you get from -- you know, the later you
16:40:27 22 get doing the autopsy from when the person died, the more
16:40:30 23 unreliable the vitreous chemistry are.
16:40:32 24 And then, you also have results of advancing
16:40:35 25 decomposition because even if the body is put in a

16:40:37 1 refrigerator after death, the body is still decomposing,
16:40:44 2 it just decomposes more slowly in a refrigerator. If
16:40:48 3 you're talking one to two days in the refrigerator, it's
16:40:51 4 probably not that big of a deal, but once you start
16:40:54 5 reaching one week, two weeks, you can start getting
16:40:57 6 significant changes which might involve injuries being
16:41:02 7 overinterpreted or missed or other findings that become
16:41:05 8 much harder to interpret because you have to look through
16:41:09 9 the levels of decomposition.
16:41:12 10 Q. Doctor, if there were a systemic pattern of delay of
16:41:20 11 autopsies at TDCJ inmates, is that risk that heat death
16:41:26 12 would be more likely to be underreported as a contributing
16:41:30 13 cause of death?
16:41:31 14 A. Heat deaths and other complications, as well, such as
16:41:38 15 dehydration, overhydration like water intoxication, those
16:41:46 16 which we rely on vitreous interpretation of vitreous
16:41:51 17 chemistry levels to adequately interpret, you lose the
16:41:57 18 ability to make those critical diagnoses when you do the
16:42:01 19 autopsy well after the date of death.
16:42:04 20 Q. I'd like to turn to the death of Mr. John Southards.
16:42:11 21 And there was also some testimony today about all these
16:42:15 22 deaths, but there was testimony from a toxicologist this
16:42:18 23 morning about Mr. Southards.
16:42:20 24 Did you review -- in addition to Exhibit 192, you
16:42:25 25 also reviewed the investigative reports, which are 192A

16:42:29 1 and 192B for Mr. Southards?
16:42:34 2 A. Yes.
16:42:34 3 Q. And are those documents the type of records that are
16:42:41 4 generally relied upon in your field of forensic pathology?
16:42:44 5 A. Yes.
16:42:45 6 Q. Plaintiffs again ask that Exhibit 192 as well as 192A
16:42:51 7 and 192B be admitted into evidence.
16:42:53 8 MS. MCGEE: No objection subject to the
16:42:54 9 protective order.
16:42:55 10 THE COURT: So admitted.
16:42:57 11 Q. (BY MR. JAMES) And did you reach an opinion as to
16:43:00 12 whether environmental heat most likely contributed to Mr.
16:43:05 13 Southards' death?
16:43:06 14 A. Yes.
16:43:06 15 Q. Did you reach an opinion whether to a reasonable
16:43:09 16 degree of certainty Mr. Southards probably would have
16:43:15 17 survived if he had not been housed in a hot environment?
16:43:17 18 A. Yes.
16:43:18 19 Q. And what were those opinions, Doctor?
16:43:22 20 A. My opinion on the death of Mr. Southards is that heat
16:43:28 21 directly contributed to his death.
16:43:32 22 Q. Can you explain briefly for the Court how you reached
16:43:35 23 that opinion based on those records?
16:43:38 24 A. Mr. Southards was a 36-year-old male who was found in
16:43:44 25 his cell, which had elevated environmental temperature.

16:43:50 1 He was found sweating and hot to the touch which is --
16:44:00 2 well, we'll got that post. Autopsy demonstrated a rash
16:44:04 3 that was consistent with a heat-type rash, but there was
16:44:09 4 no other anatomic cause of death identified. The
16:44:12 5 postmortem toxicology came back with an elevated level of
16:44:20 6 diphenhydramine. Diphenhydramine is an over-the-counter
16:44:23 7 medicine, an over the counter antihistamine known as
16:44:24 8 Benadryl. Although his Benadryl level was elevated, it
16:44:27 9 was not in the fatal range and there was a mismatch
16:44:35 10 between the Benadryl level and his clinical presentation
16:44:40 11 because he was found sweating and hot to the touch.
16:44:46 12 If he was having the characteristic findings of
16:44:50 13 Benadryl toxicity, he wouldn't be sweating so there's
16:44:53 14 something else. So I think there's something else going
16:44:56 15 on in this case and he ultimately died. The only finding
16:45:02 16 they found at autopsy was the elevated Benadryl level,
16:45:07 17 which is not enough to kill him on its own. So my opinion
16:45:10 18 is that there was another contributor and that contributor
16:45:13 19 was prolonged exposure to elevated temperatures.
16:45:17 20 Q. And just to make sure that the document is entered,
16:45:22 21 can you explain the medical term diaphoretic?
16:45:25 22 A. Diaphoretic means sweating.
16:45:32 23 Q. And so, is it fair to say that despite the fact that
16:45:36 24 he was taking Benadryl, if Mr. Southards had not been
16:45:41 25 housed in a hot environment, he would have most likely

16:45:44 1 survived?
16:45:44 2 A. Yes.
16:45:49 3 Q. I noticed that there wasn't a record of what's called
16:45:53 4 a core body temperature in Mr. Southards' autopsy report.
16:45:57 5 Do you see that?
16:45:58 6 A. Yes.
16:46:00 7 Q. Do you have an opinion about whether core body
16:46:06 8 temperature should be documented in a circumstance like
16:46:07 9 this?
16:46:07 10 A. Yes.
16:46:09 11 Q. Can you explain that opinion?
16:46:12 12 A. In any death where heat or any -- actually, any
16:46:21 13 environmental influence, whether it be extreme elements of
16:46:25 14 heat or extreme elements of cold, temperature should be
16:46:29 15 included in an initial vital sign assessment by the first
16:46:34 16 responders. First responders reply to a scene. What's
16:46:38 17 the first thing they do when they come up to a patient?
16:46:41 18 They get a set of vital signs that includes heart rate,
16:46:44 19 that includes pulse, that includes respiration and it
16:46:47 20 should include temperature, especially when you're in a
16:46:53 21 particularly hot or cold environment because that gives
16:46:55 22 you more data in terms of what's going on.
16:47:01 23 Q. Okay. From the perspective of the first responders,
16:47:06 24 in your experience, why is that data important to
16:47:09 25 document?

16:47:12 1 A. That data is important, if not essential, to document
16:47:16 2 because it is a very, very quick way to establish one or
16:47:21 3 more things that are possibly going wrong. One of the
16:47:25 4 things that we did at Fort Benning is we had casualties
16:47:29 5 all the time, almost anytime of year, even if it's 80
16:47:35 6 degrees outside, we would have, you know, platoons of
16:47:39 7 people coming in as heat casualties because it's hot in
16:47:42 8 Georgia and humid, and we established some initial
16:47:46 9 criteria for assessing these individuals and that included
16:47:50 10 a mental status check, an initial set of labs and a
16:47:57 11 temperature because that gives you a broad overview of
16:48:03 12 some of the things that you know this could be, and is it,
16:48:07 13 you know, that they're just tired because they've been
16:48:11 14 working really hard and doing physical training or are
16:48:15 15 they dehydrated because they have not drank enough water?
16:48:20 16 Are they overhydrated because they drank too much water?
16:48:23 17 And if you give someone who's overhydrated, if you pop an
16:48:27 18 IV in them and give them more fluid, you could kill them.
16:48:30 19 And then, also, the temperature to see, hey, are they
16:48:34 20 overheated? Do we need to put them in an ice bath?
16:48:36 21 So those three steps give you a ton of
16:48:43 22 information in terms of, hey, how can we rapidly treat
16:48:46 23 this person.
16:48:47 24 Q. And you may have touched on this earlier but, Doctor,
16:48:51 25 from the perspective as the pathologist at the back end,

16:48:56 1 why is the documentation of the core body temperature so
16:48:59 2 important?
16:49:01 3 A. The documentation of the core body temperature is
16:49:06 4 critically important from a postmortem perspective because
16:49:15 5 the core temperature makes the diagnosis of hyperthermia.
16:49:20 6 And then, once we have a diagnosis of hyperthermia, we
16:49:24 7 have to delve further in the case to try and figure out
16:49:28 8 okay, why does this person have such an elevated core
16:49:31 9 temperature and is it because they were exposed to heat
16:49:37 10 for a prolonged period of time? Were they, you know, on
16:49:41 11 certain drugs or medications? Is there something else
16:49:44 12 going on that could explain why their body temperature got
16:49:49 13 so high?
16:49:50 14 This is something that we always wrestle with in
16:49:52 15 a jurisdiction like Clark County in Las Vegas because they
16:49:57 16 have heat casualties all the time, especially when it's an
16:50:00 17 outdoor death and, you know, the outdoor temperature is
16:50:03 18 anywhere between 110 and 120 degrees.
16:50:11 19 Q. If there were evidence of a systemic failure to
16:50:16 20 measure body temperatures during death investigations of
16:50:19 21 TDCJ inmates, could that or would that lead to a risk of
16:50:24 22 heat being underreported and a contributing cause of
16:50:28 23 death?
16:50:29 24 A. Yes.
16:50:30 25 Q. And I think you touched on that but could you just

16:50:35 1 summarize again why that would lead to underreporting?
16:50:41 2 A. Because you wouldn't catch it. There's no diagnostic
16:50:46 3 finding at autopsy that is consistent with a heat casualty
16:50:51 4 or a heat-related death. There's no diagnostic finding
16:50:54 5 where you open up the body and you have a finding and you
16:50:58 6 go, that's it. That's diagnostic of a heat casualty. So
16:51:03 7 we have to rely on the death investigation and the medical
16:51:09 8 records to try and retrospectively try and find out what's
16:51:14 9 going on. We can do an autopsy and look for natural
16:51:17 10 disease. We can do postmortem testing to look for drugs
16:51:21 11 or medications that may have caused or contributed to the
16:51:24 12 death. But there's no postmortem test that we can do to
16:51:29 13 identify hyperthermia. The only way to diagnose
16:51:34 14 hyperthermia is from the EMS people or from the first
16:51:39 15 responders.
16:51:43 16 Q. So I want to turn to Ms. Elizabeth Hagerty's death.
16:51:49 17 We've marked the death report and autopsy as Exhibit 169
16:51:53 18 and then, a separate investigation report as 169A. Have
16:51:58 19 you reviewed those documents?
16:51:59 20 A. Yes.
16:52:00 21 Q. And were those the types of records that are
16:52:05 22 generally relied upon in your field of forensic pathology?
16:52:09 23 A. Yes.
16:52:10 24 Q. And plaintiffs again ask that Exhibit 169 as well as
16:52:15 25 169A be admitted into evidence.

16:52:18 1 MS. MCGEE: And no objections subject to the...
16:52:21 2 THE COURT: So admitted.
16:52:26 3 Q. (BY MR. JAMES) Did you reach an opinion whether
16:52:27 4 environmental heat most likely contributed to Ms.
16:52:31 5 Hagerty's death?
16:52:31 6 A. Yes.
16:52:32 7 Q. Did you reach an opinion about whether Ms. Hagerty
16:52:35 8 probably would have survived if she had not been housed in
16:52:39 9 a hot environment?
16:52:40 10 A. Yes.
16:52:41 11 Q. Can you explain those opinions for the Court?
16:52:45 12 A. Those opinions are that heat played a direct role in
16:52:50 13 the death of Ms. Hagerty.
16:52:53 14 Q. How did you come to that conclusion based on the
16:52:56 15 documents you were able to review?
16:52:59 16 A. Ms. Hagerty was a 37-year-old female who had the
16:53:04 17 comorbidities of being obese and diabetes and, also,
16:53:12 18 history of asthma. She had a recent gastrointestinal
16:53:17 19 illness with nausea and vomiting and she was also positive
16:53:22 20 for -- she also tested positive for COVID. She
16:53:28 21 unfortunately died and the autopsy demonstrated no
16:53:32 22 significant anatomic findings consistent with her death.
16:53:38 23 The postmortem findings from toxicology and testing of the
16:53:46 24 vitreous electrolytes demonstrated a state of
16:53:50 25 hyponatremia, which is a state of low sodium, and they

16:53:56 1 signed out the case as hyponitremia due to recent
16:54:00 2 intestinal illness likely related to COVID; and they did
16:54:05 3 opine in their opinion that they believed that
16:54:07 4 environmental heat stress was a contributing factor in her
16:54:11 5 death.
16:54:12 6 Q. Is it fair to say that if Ms. Hager -- if Ms. Hagerty
16:54:19 7 had not been housed in a hot environment, she most likely
16:54:21 8 would have survived?
16:54:22 9 A. Yes.
16:54:25 10 Q. And do you believe that Ms. Hagerty's death to be
16:54:31 11 considered a heat-related death in ordinary or colloquial
16:54:35 12 language?
16:54:35 13 A. Yes.
16:54:39 14 Q. Regarding Patrick Womack's death, we've marked his
16:54:46 15 death report and autopsy as Exhibit 200 and then, there's
16:54:48 16 two other investigative files, Exhibit 200A and 200B. Did
16:54:54 17 you review those documents?
16:54:56 18 A. Yes.
16:54:57 19 Q. And did those documents appear to be the types of
16:55:00 20 records that are generally relied upon in your field of
16:55:03 21 forensic pathology?
16:55:10 22 A. Yes.
16:55:12 23 Q. And plaintiffs ask that Exhibit 200 as well as 200A
16:55:17 24 and 200B be admitted into evidence.
16:55:20 25 MS. MCGEE: No objection subject to the

16:55:22 1 protective order.

16:55:22 2 THE COURT: So admitted.

16:55:24 3 Q. (BY MR. JAMES) Based on your review, Doctor, did you

16:55:27 4 reach an opinion as to whether environmental heat most

16:55:30 5 likely contributed to Mr. Womack's death?

16:55:32 6 A. Yes.

16:55:34 7 Q. Do you have an opinion about whether Mr. Womack

16:55:36 8 probably would have survived if he had not been housed in

16:55:38 9 a hot environment?

16:55:40 10 A. Yes.

16:55:40 11 Q. And what are those opinions, Doctor?

16:55:44 12 A. Those opinions are that heat played a direct role in

16:55:50 13 the death of Mr. Womack.

16:55:53 14 Q. Can you explain how you reached that characterization

16:55:55 15 for the Court?

16:55:56 16 A. Yes. Mr. Womack was a 50-year-old male with a

16:56:00 17 history of multiple behavorial disorders. He was found in

16:56:09 18 distress in his cell during a period of elevated

16:56:12 19 environmental temperatures. His initial rectal

16:56:16 20 temperature meaning core body temperature was 106 degrees.

16:56:21 21 He died as a result of this. An autopsy was performed

16:56:27 22 that demonstrated no anatomic cause of death. Postmortem

16:56:32 23 toxicology returned with a high level of sertraline, which

16:56:37 24 is a psychiatric medication. However, the level of

16:56:42 25 sertraline was not enough to be fatal by itself and the

16:56:52 1 level of sertraline was not able to explain the
16:57:00 2 hyperthermia, the degree of hyperthermia by itself.
16:57:06 3 There is a complication of high levels of
16:57:09 4 sertraline called serotonin syndrome of which one of these
16:57:14 5 symptoms is hyperthermia or elevated temperature, along
16:57:18 6 with multiple other symptoms such as muscle rigidity and
16:57:25 7 muscle twitching. There's no documentation in the hours
16:57:29 8 before his unresponsive that he was demonstrating any of
16:57:36 9 these symptoms and it's difficult for me to believe that
16:57:40 10 the sertraline by itself would lead to a core body
16:57:45 11 temperature of over 106 degrees. And since there was an
16:57:49 12 elevated heat index at the time of 113 degrees, I believe
16:57:55 13 that heat was a significantly contributing, if not
16:58:02 14 causative, factor to his death.
16:58:04 15 Q. Is it fair to say that if Mr. Womack had not been
16:58:07 16 housed in a hot environment, he would have survived?
16:58:10 17 A. Yes.
16:58:13 18 Q. Do you think Mr. Womack's death should be fairly
16:58:17 19 considered heat-related to just use that word as it's
16:58:23 20 ordinarily or colloquially used?
16:58:25 21 A. Yes.
16:58:31 22 Q. And generally, on an autopsy report, heat can be
16:58:37 23 listed maybe -- or heat or hyperthermia may be a
16:58:40 24 contributing cause, or an underlying cause, or a direct
16:58:42 25 cause, or other medical terms of art, correct?

16:58:45 1 A. Yes.

16:58:48 2 Q. Is there any specificity to the term "heat-related"

16:58:54 3 if you're just using that in conversation that would only

16:58:59 4 include some of those medical terms or would you include

16:59:03 5 all of them?

16:59:06 6 A. Can you repeat or rephrase the question?

16:59:09 7 Q. Yeah. So my question is -- I'll back up a little

16:59:16 8 bit. So there's different ways to characterize causes of

16:59:21 9 death on an autopsy report, correct?

16:59:23 10 A. Yes.

16:59:25 11 Q. One of those terms that is used is a contributory or

16:59:29 12 contributing cause of death, right?

16:59:30 13 A. Yes.

16:59:31 14 Q. And we've seen in some of these autopsies that

16:59:34 15 there's heat as a contributing cause for some of them,

16:59:39 16 correct?

16:59:39 17 A. Yes.

16:59:39 18 Q. Now, they could have, instead -- you know, you could

16:59:44 19 also write on an autopsy report that environmental

16:59:47 20 hyperthermia is the immediate cause of death. That would

16:59:51 21 be another possible way to write a different autopsy,

16:59:54 22 correct?

16:59:55 23 A. Yes.

16:59:55 24 Q. But if you were to just used the common term

17:00:02 25 "heat-related," would you make a distinction in terms of

17:00:05 1 one of those types of characterizations on an autopsy
17:00:09 2 report heat-related versus the other is not?
17:00:15 3 A. I believe so and a lot of it has to do with the
17:00:20 4 preferred terminology of the autopsy pathologist. Like,
17:00:26 5 for example, the two terms that I use and my specific
17:00:29 6 reasons why I use it this way is -- the first is
17:00:34 7 environmental heat stress and the second is hyperthermia.
17:00:38 8 So hyperthermia as an actual diagnosis where you have an
17:00:43 9 elevated core body temperature. So when you have a case,
17:00:46 10 someone found unresponsive outside in the heat, you do the
17:00:51 11 autopsy, do the investigation, you know you have no other
17:00:54 12 reason for why they have such an elevated core body
17:00:57 13 temperature other than you know the prolonged exposure to
17:01:00 14 elevated environmental temperatures. I can sign that case
17:01:04 15 out as a hyperthermia.
17:01:06 16 If there is clinical suspicion that heat was a
17:01:13 17 causative factor such as you find someone outside on the
17:01:17 18 street in Las Vegas but you don't have a core body
17:01:19 19 temperature but the circumstantial evidence is consistent
17:01:22 20 with heat contributing to it, then the terminology that I
17:01:26 21 use is environmental heat stress, and it's basically the
17:01:31 22 same thing as hyperthermia but without core body
17:01:35 23 temperature reading. So that's the terminology that I
17:01:36 24 use.
17:01:37 25 Q. So I think that you just explained sort of the reason

17:01:42 1 why there's more specific narrow medical terms to
17:01:47 2 distinguish between those different clinical or pathologic
17:01:53 3 presentations, correct?
17:01:53 4 A. Yes.
17:01:53 5 Q. And if you're switching back to just talking to a
17:01:57 6 layperson about whether heat was involved in the death and
17:02:02 7 they ask you, well, is the person who died without a
17:02:07 8 formal diagnosis of hyperthermia outside in Las Vegas, is
17:02:10 9 that related to the heat or is that heat-related? What
17:02:13 10 would you tell a layperson about that?
17:02:15 11 A. I would tell them that even without a core body
17:02:20 12 temperature, with an investigation and autopsy, we can
17:02:26 13 usually render an opinion as to whether or not we think
17:02:29 14 that heat contributed to the death and then, we would
17:02:33 15 phrase it as environmental heat stress, which is a result
17:02:36 16 of prolonged exposure to elevated environmental
17:02:41 17 temperatures.
17:02:41 18 Q. So another way of saying to say that is that both
17:02:44 19 things are related to the heat but there are medical
17:02:48 20 distinctions in how you characterize that in your formal
17:02:51 21 autopsy report, correct?
17:02:52 22 A. Yes, and different autopsy pathologists. Different
17:02:56 23 pathologists are trained different ways and they may use
17:02:58 24 different terminology.
17:03:02 25 Q. If TDCJ chose to pick only one sort of category of

17:03:11 1 medical descriptions and say it's not heat-related unless
17:03:17 2 heat was the sole direct cause of death, if that were
17:03:20 3 their practice, would that lead to sort of an
17:03:24 4 underreporting of what is -- will be understood to an
17:03:28 5 ordinary person as related to the heat?
17:03:30 6 A. Yes.
17:03:32 7 Q. And we talked about the five different deaths this
17:03:36 8 afternoon. Can you agree that for each of the five
17:03:40 9 people, based on your medical opinion, more likely than
17:03:44 10 not, they would have survived if they had lived in
17:03:47 11 air-conditioned housing?
17:03:48 12 A. Yes.
17:03:56 13 Q. In your medical opinion in general, does exposing a
17:04:04 14 person with common chronic illnesses to long-term high
17:04:07 15 environmental temperatures often pose a significant risk
17:04:10 16 of aggravating common chronic illnesses to cause of death?
17:04:15 17 A. Yes.
17:04:17 18 Q. Can you briefly explain that principle to the Court?
17:04:22 19 A. Yes. I view exposure to environmental extremes
17:04:32 20 whether that be elevated heat in this context or even
17:04:36 21 elevated cold as a stressor. So say you have a -- and I
17:04:43 22 don't want to go down too many hypothetical roads, but,
17:04:48 23 you know, you have someone with preexisting heart disease,
17:04:54 24 prolonged exposure to elevated environmental temperatures
17:04:59 25 does put a stress on the heart because your heart has to

17:05:03 1 work harder and it has to work harder to circulate more
17:05:07 2 blood to get more blood to the skin so that it can
17:05:11 3 dissipate the heat and cool the body off. It puts more
17:05:15 4 stress on your kidneys because you're drinking water,
17:05:20 5 you're wasting salt, number of things. So it puts -- it
17:05:24 6 does put stress on the body. So if you have preexisting
17:05:29 7 heart disease, preexisting lung disease, you know,
17:05:31 8 something like asthma, heat can definitely make those --
17:05:36 9 can definitely worsen those symptoms.
17:05:44 10 Q. We've talked about the -- we went a little bit in
17:05:47 11 depth into the toxicology for one of these deaths. In
17:05:51 12 your work as a medical examiner, do you routinely work
17:05:53 13 with physicians specializing in toxicology?
17:06:00 14 A. Yes.
17:06:03 15 Q. Do you have an opinion about whether heat is
17:06:06 16 generally underreported as a contributing cause of death?
17:06:10 17 A. Yes.
17:06:11 18 Q. And can you explain that to the Court?
17:06:14 19 A. Yes. I believe that heat is -- heat-related
17:06:20 20 casualties are genuinely underreported. We're doing our
17:06:26 21 best in the medical legal death investigative community to
17:06:29 22 improve that and a lot of that comes with educating first
17:06:34 23 responders, teaching first responders, teaching our death
17:06:39 24 investigators, which are the forensic pathologist, the
17:06:41 25 eyes and ears at a particular scene to be aware for signs

17:06:45 1 of heat or cold-related deaths. Especially like if you're
17:06:51 2 responding to an outside death during a heat wave or even
17:06:53 3 an indoor death during the heat wave, you know, note the
17:06:56 4 ambient temperature inside, note the ambient temperature
17:06:59 5 inside, note if the residence has fans, note if it has
17:07:04 6 functioning air conditioning or things like that. I've
17:07:07 7 had a number of cases where air conditioning in an indoor
17:07:09 8 residence is nonfunctional and the inside of the residence
17:07:13 9 is over 105 degrees. That definitely puts stress on a
17:07:19 10 person. So a lot of it is through education of both first
17:07:23 11 responders and medical legal death investigators.
17:07:27 12 Q. And then, in addition to the difficulty of
17:07:31 13 investigating, there's also even if you have perfect
17:07:34 14 information, can be harder to diagnose death or heat as a
17:07:41 15 contributing factor to death. Is that fair?
17:07:44 16 A. Can you repeat the question?
17:07:45 17 Q. Yes. I was asking if in addition to the difficulties
17:07:52 18 of making sure you have the right information whether
17:07:55 19 there are ways that heat can contribute to a death that
17:07:58 20 are more difficult to detect even when you have fully
17:08:03 21 documented investigation.
17:08:08 22 A. It can be tricky because there's not a -- there's
17:08:12 23 never a definite cutoff where we can say, oh, below this
17:08:20 24 temperature, heat didn't contribute above this
17:08:23 25 temperature. It did. There's no arbitrary cutoff where

17:08:25 1 we say, well, if the environmental temperature is greater
17:08:27 2 than 93 degrees, then we think it's heat-related. If it's
17:08:32 3 less than that, we don't. So we always have to look at
17:08:35 4 each case on an individual basis. Look at the
17:08:39 5 circumstances surrounding each case. Sometimes we've had
17:08:43 6 a number of heat-related casualties in the military
17:08:46 7 related to something that we call acclimatization, meaning
17:08:51 8 someone from Alaska who reports to Fort Benning, Georgia
17:08:56 9 for training and it's their first time being in 80-degree
17:09:00 10 humid weather and they haven't been acclimatized to it,
17:09:06 11 and so, you know, they fall out as a heat casualty fairly
17:09:09 12 rapidly because they haven't been acclimatized to it.
17:09:12 13 Most of the time in that temperature, we wouldn't
17:09:14 14 look at something like that, but that's part of why we do
17:09:18 15 the investigation and try and figure out okay, what are
17:09:22 16 the circumstances of what happened here.
17:09:24 17 Q. Do you have an opinion on whether long-term exposure
17:09:27 18 to high environmental temperatures poses a significant
17:09:33 19 risk of harm even in otherwise healthy adults?
17:09:36 20 A. Yes.
17:09:37 21 Q. Can you briefly explain that opinion?
17:09:40 22 A. Long-term exposure to elevated environmental
17:09:43 23 temperatures, it is a heat risk or it is a systemic risk
17:09:50 24 to multiple body subpoenas, namely, it puts stress on the
17:09:55 25 heart, it puts stress on the kidneys. And yeah, I mean,

17:10:04 1 once again, younger, healthier people are better able to
17:10:07 2 tolerate it, but it still pits stress on their body.
17:10:12 3 Q. Doctor, has all of your testimony this afternoon been
17:10:16 4 based on a reasonable degree of medical probability in
17:10:20 5 your field of forensic pathology?
17:10:22 6 A. Yes.
17:10:23 7 Q. Have your opinions been made to a reasonable degree
17:10:27 8 of certainty on that basis?
17:10:29 9 A. Yes.
17:10:30 10 Q. Pass the witness.
17:10:41 11 CROSS-EXAMINATION
17:10:41 12 BY MS. MCGEE:
17:10:47 13 Q. Dr. Uribe, my name is Lauren McGee. I'm with the
17:10:52 14 Attorney General's Office. I represent Mr. Collier. Are
17:10:54 15 you able to see and hear me okay?
17:10:55 16 A. Yes.
17:10:56 17 Q. Okay. Excellent. Thank you for your time today.
17:10:59 18 A. Thank you, ma'am.
17:11:01 19 Q. So have you had a lot of experience working with the
17:11:09 20 prison or criminal justice systems in, I believe you said,
17:11:12 21 Nevada. Is that where you're primarily located?
17:11:15 22 A. Right now, I'm primarily located in Texas. We do --
17:11:23 23 I do have -- we do investigate inmate deaths in both
17:11:29 24 Nevada and Mississippi and Texas. That's primarily where
17:11:31 25 I'm working right now.

17:11:32 1 Q. Okay. Are you being paid to provide testimony here
17:11:44 2 today?
17:11:46 3 A. I'm being paid for my time. Yes.
17:11:48 4 Q. And were you approached by plaintiffs' counsel to
17:11:54 5 provide testimony today?
17:11:56 6 A. Yes.
17:11:56 7 Q. Okay. You didn't approach them, they approached you.
17:12:00 8 A. Yes.
17:12:00 9 Q. Okay. When they approached you, did they tell you
17:12:04 10 generally what this case was about?
17:12:06 11 A. Yes.
17:12:07 12 Q. Did they tell you their theory of the case how the
17:12:14 13 prisoners were so hot, they believed people were dying
17:12:17 14 because of that?
17:12:18 15 A. Maybe not specifically that way but that was gist of
17:12:23 16 the conversation, yes.
17:12:24 17 Q. Paraphrasing in some language.
17:12:27 18 A. Yes.
17:12:28 19 Q. Was that before or after you had actually become a
17:12:31 20 contracted expert?
17:12:33 21 A. That was before.
17:12:34 22 Q. Okay. Was that before you saw the autopsy reports?
17:12:37 23 A. Yes.
17:12:38 24 Q. Are you familiar with something called confirmation
17:12:42 25 bias?

17:12:42 1 A. Yes.

17:12:43 2 Q. Where you have an idea and then, when you analyze

17:12:46 3 something, your general tendency is to find what it is

17:12:49 4 your brain already thinks you're supposed to be looking

17:12:52 5 for?

17:12:52 6 A. Yes.

17:12:52 7 Q. Okay. Did you physically examine any of the bodies

17:12:58 8 that we've just --

17:12:59 9 A. No.

17:12:59 10 Q. The bodies of the inmates that we discussed.

17:13:02 11 A. No.

17:13:02 12 Q. Okay. So you're basing your decisions and your

17:13:08 13 opinion here today strictly off the documentation that was

17:13:10 14 provided to you by counsel.

17:13:14 15 A. Yes.

17:13:19 16 Q. And maybe you could answer a question for me. Is

17:13:21 17 there a difference between forensic pathology and being a

17:13:25 18 medical examiner? And I'm sorry, I'm not in sciences or

17:13:30 19 medicine.

17:13:33 20 A. A medical examiner is generally a forensic

17:13:39 21 pathologist, meaning a anatomic pathologist who has

17:13:45 22 received subspecialty training in forensic pathology.

17:13:49 23 Now, I don't want to get too much into the weeds, but

17:13:51 24 there are some states, like Oregon in particular, where

17:13:57 25 they call their death investigators medical examiners. So

17:14:01 1 it's a little bit confusing in that jurisdiction, but
17:14:05 2 generally, a medical examiner is a forensic pathologist
17:14:09 3 who investigates, how I like to phrase, it as unexpected,
17:14:15 4 unnatural, or violent deaths.
17:14:17 5 Now, in that, you also investigate a lot of
17:14:20 6 natural deaths, as well, but you're sort of ruling out to
17:14:25 7 make sure that they are natural, that they're not
17:14:27 8 something else.
17:14:27 9 Q. Is it sometimes happen where maybe you do the autopsy
17:14:30 10 and you're not sure if it's natural our unnatural until
17:14:34 11 you actually perform the autopsy?
17:14:35 12 A. Absolutely.
17:14:36 13 Q. So I want to go back and take a look at the exhibits
17:14:49 14 that you looked at with plaintiffs' counsel, if you don't
17:14:55 15 mind. Starting with Exhibit 161. And 161 should be that
17:15:10 16 of Mr. Castillo.
17:15:11 17 A. Yes.
17:15:12 18 Q. Okay. So I believe you just testified that this
17:15:19 19 cause of death was heat. Was that your medical opinion
17:15:25 20 was that the cause of death was heat?
17:15:26 21 A. Heat played a critical role in his death.
17:15:31 22 Q. Okay. Now, let's talk about some terminology real
17:15:35 23 quick before we go any further and that terminology is the
17:15:38 24 distinction between the cause of death and the -- -- so
17:16:00 25 the cause of death versus a contributing factor. Can you

17:16:02 1 explain the difference between those things?
17:16:06 2 A. So a cause of death is regarded as the physical or
17:16:17 3 the derangement that actually results in death so it --
17:16:22 4 basically, the underlying cause, why did the person die.
17:16:26 5 A contributing factor is something that either it could
17:16:35 6 amplify the cause of death, it could make it more severe.
17:16:38 7 It could be something that contributed to the cause of
17:16:41 8 death, even indirectly, that another way I view it and the
17:16:49 9 way that I teach it in my lectures is it's other things,
17:16:55 10 either situationally or autopsy findings or disease
17:16:59 11 processes or other factors that didn't help the situation
17:17:03 12 and didn't make it better. They amplified the situation
17:17:07 13 and made it worse.
17:17:08 14 Q. Okay. And then, so how is that different from risk
17:17:11 15 factors?
17:17:21 16 A. I can think of contexts where there would be
17:17:25 17 significant overlap between contributing factors and risk
17:17:28 18 factors.
17:17:29 19 Q. I could rephrase my question to try and be more
17:17:31 20 clear. Are all risk factors necessarily contributing?
17:17:41 21 A. Not necessarily.
17:17:45 22 Q. Now, also, just to be clear, I think we talked about
17:17:49 23 how three of the deaths that we discussed were
17:17:53 24 heat-related and just to settle your mind, three of those
17:17:55 25 were actually reported in 2023.

17:17:58 1 MR. JAMES: I just want to object that the
17:18:01 2 question was compound, confusing, and seems to misstate
17:18:03 3 evidence.
17:18:05 4 MS. MCGEE: Which -- are you confused that there
17:18:08 5 are three deaths reported in 2023?
17:18:09 6 MR. JAMES: I'm confused by what you're
17:18:12 7 representing to the witness versus who is the subject of
17:18:15 8 your question and then, the representation. And then,
17:18:17 9 you're also compounding your representation with the
17:18:19 10 question in a way that's confusing.
17:18:21 11 MS. MCGEE: Okay. Well, I'll ask him and see --
17:18:23 12 he seems to be able to answer so far, but we'll try and
17:18:26 13 make that a little more clear for him.
17:18:28 14 MR. JAMES: I would ask that you rephrase.
17:18:30 15 Q. (BY MS. MCGEE) Okay. So are you looking at Mr. John
17:18:33 16 Castillo's death records?
17:18:36 17 A. Yes.
17:18:37 18 Q. Okay. Thank you. So if you wouldn't mind taking a
17:18:43 19 look at page 6 and on the top left, a couple of lines
17:18:46 20 down, it's clinical summary?
17:18:59 21 A. Yes.
17:18:59 22 Q. Okay. And if you look at the fourth line down, do
17:19:06 23 you see at what time he was notified or officers were
17:19:09 24 notified that Mr. Castillo was down in his cell?
17:19:17 25 A. For the clinical summary on page 6, as described at

17:19:22 1 approximately 22:42 hours.
17:19:26 2 Q. And I am not -- I was never in the military but I
17:19:29 3 believe that to be 10:42, for those of us not in the
17:19:33 4 military, 10:42 p.m.; is that correct?
17:19:36 5 A. Yes.
17:19:36 6 Q. So typically, the sun is down at that time, right?
17:19:41 7 A. Yes, usually. I mean, given if you're not in
17:19:48 8 Antarctica or some place, generally the sun is down.
17:19:48 9 Q. So generally, the hottest part of the day is over by
17:19:51 10 10:42.
17:19:52 11 A. Yes.
17:19:53 12 Q. And his body temperature was 107.5, correct?
17:19:59 13 A. Yes.
17:20:00 14 Q. Okay. So go ahead and flip, if you wouldn't mind, to
17:20:02 15 page 12 and the top left, it starts with stomach lesions.
17:20:07 16 And we're not going to talk about that. That's just what
17:20:10 17 it starts with.
17:20:23 18 A. Yes.
17:20:24 19 Q. Okay. So if we take a look at the second full
17:20:37 20 paragraph down starts with the complete autopsy and it's
17:20:40 21 the fourth sentence it says in addition, toxicology showed
17:20:48 22 did not detect.
17:20:58 23 A. Yes.
17:21:00 24 Q. And based on this, isn't it true that Mr. Castillo
17:21:05 25 was not taking his antiepileptic seizure medicine. It

17:21:10 1 wasn't found in his -- isn't it true that he wasn't taking
17:21:13 2 his epileptic seizure medicine?
17:21:17 3 A. It's consistent with that, yes.
17:21:19 4 Q. Now, is it your experience that seizures, to some
17:21:22 5 extent, can increase body temperature?
17:21:25 6 A. Yes.
17:21:29 7 Q. Now, previously, when you were talking to counsel,
17:21:32 8 you said that it's important to look at the environment in
17:21:36 9 which someone passes away, correct?
17:21:41 10 A. Yes.
17:21:42 11 Q. Okay. And one of the things you mentioned is
17:21:45 12 important to note is if a fan's blowing?
17:21:50 13 A. Yes.
17:21:51 14 Q. In this particular case, were there fans blowing?
17:21:58 15 A. Yes.
17:21:59 16 Q. And why is that something to note in making a
17:22:04 17 determination of death?
17:22:06 18 A. It's a pertinent scene finding.
17:22:13 19 Q. Why?
17:22:17 20 A. As it better describes the scene in which someone was
17:22:23 21 found. Are they found in an area where there's air
17:22:26 22 circulation, where there's not? Is the room well
17:22:28 23 ventilated, is it not well ventilated? What's the ambient
17:22:32 24 temperature in the room? Is there significant airflow?
17:22:34 25 Number of different things. So it helps paint a better

17:22:38 1 picture of the scene.
17:22:40 2 Q. Does it have anything to do with their body
17:22:42 3 temperature? Would it help you make a determination as to
17:22:46 4 why their body temperature was what it was?
17:22:52 5 A. Are you talking about this specific finding? Or I
17:22:57 6 apologize for asking that question. I'm trying to
17:23:00 7 understanding what you're asking.
17:23:01 8 Q. Let me rephrase for you. If someone was in the
17:23:04 9 presence of a fan, would you expect their body temperature
17:23:06 10 to be lower than someone who is not in the fan and was in
17:23:11 11 a stagnant room?
17:23:12 12 A. Not necessarily.
17:23:12 13 Q. So then, why is the fan important?
17:23:16 14 A. Because it's a detail that paints an overall picture
17:23:21 15 of the scene. I don't know if that particular detail is
17:23:29 16 particularly relevant to an investigation during the
17:23:32 17 period of time of the investigation.
17:23:36 18 Q. So it could be irrelevant just like saying somebody
17:23:39 19 had red shag carpet. It could just be a painting of the
17:23:42 20 scene and it may not actually have anything to do with the
17:23:45 21 death.
17:23:45 22 A. Yes. It may be relevant or it may not be.
17:23:47 23 Q. Okay. If we take -- and go back to the next
17:23:52 24 paragraph and you look at the third sentence, it says
17:23:56 25 generalized tonic-clonic seizure activity.

17:24:02 1 A. Yes.
17:24:02 2 Q. It says generalized tonic-clonic seizure activity can
17:24:06 3 cause hyperthermia. Is that a true statement? Granted,
17:24:10 4 maybe not to this extent but is that a true statement?
17:24:12 5 A. Yes.
17:24:13 6 Q. Okay. Now, if you had somebody who had a seizure
17:24:20 7 disorder, was not taking their medication, are they more
17:24:26 8 likely to have a seizure because they're not taking their
17:24:28 9 medication?
17:24:32 10 A. Yes.
17:24:33 11 Q. And that is more likely to increase their body
17:24:35 12 temperature if they have a seizure?
17:24:38 13 A. Yes. Their body temperature can elevate. I don't
17:24:41 14 believe it would elevate to a degree of 100 and over 107
17:24:45 15 degrees.
17:24:46 16 Q. If somebody has a seizure, what is the effect? How
17:24:50 17 are they when they come out of that seizure? What is
17:24:52 18 their kind of frame of mind?
17:24:56 19 A. They may or may not be conscious: it's called a
17:24:59 20 post-ictal state. I know a little bit about it but
17:25:06 21 definitely not an expert in seizures.
17:25:09 22 Q. Okay. No. I'm not asking you to be an expert in
17:25:10 23 seizures. What I'm trying to get here is if somebody had
17:25:12 24 a generalized tonic-clonic seizure to the point where they
17:25:16 25 were falling down on the floor, is it possible that they

17:25:20 1 maybe didn't have the wherewithal to removal themselves to
17:25:24 2 air conditioning or ask for respite? Maybe their mental
17:25:27 3 faculties were a little bit blurred?
17:25:29 4 A. Sure.
17:25:32 5 Q. Let's go on to the next, which is 168, Armando
17:25:52 6 Gonzales. If you'll flip to page 6, please, for me. And
17:26:23 7 the top left corner starts with ORIF. So if you'll look
17:26:51 8 at the last sentence of that top paragraph and it lists
17:26:55 9 this individual's medications, beginning with
17:27:01 10 aripiprazole. I'm probably not saying that right.
17:27:05 11 A. Yes, I see it.
17:27:06 12 Q. Okay. Aripiprazole, citalopram, estradiol,
17:27:13 13 spironolactone and buspirone; is that correct?
17:27:17 14 A. Yes.
17:27:18 15 Q. Now, citalopram, is that an SSRI?
17:27:27 16 A. Citalopram, I don't believe it is.
17:27:32 17 Q. Citalopram?
17:27:36 18 A. Citalopram that's...
17:27:39 19 Q. And I'm asking because in your previous statement to
17:27:42 20 plaintiffs' counsel, you said that this wouldn't actually,
17:27:44 21 you know, contribute to the point of increasing his
17:27:46 22 temperature that much. I'm wondering how you knew that if
17:27:49 23 you're not sure if it's an SSRI.
17:27:53 24 A. You're asking about citalopram.
17:27:55 25 Q. Right.

17:27:56 1 A. I thought this case was sertraline.
17:27:58 2 Q. Right. He has citalopram, which is an SSRI, and this
17:28:08 3 particular case right here that we're looking at --
17:28:10 4 A. Okay. I see it.
17:28:12 5 Q. Yeah, that's a different case, I think.
17:28:15 6 A. Okay. My apologies. I got confused. So...
17:28:20 7 Q. Yeah. That's a different one a little further down.
17:28:28 8 This one is the one where I believe they ended up finding
17:28:31 9 that he had toxic levels of fentanyl in his blood.
17:28:40 10 A. There was fentanyl levels and there was fentanyl in
17:28:42 11 his blood, yes.
17:28:43 12 Q. Okay. Toxic levels of fentanyl?
17:28:49 13 A. There's no definite cutoff for what a toxic level of
17:28:53 14 fentanyl is.
17:28:53 15 Q. Well, that's right because we have, you know, the
17:28:56 16 opioid epidemic and people can take very little and still
17:28:59 17 die, right?
17:29:00 18 A. Yes. And people can take lot and, you know, still be
17:29:03 19 walking and talking and functioning.
17:29:06 20 Q. Right. And this wasn't a prescribed medication for
17:29:08 21 this individual.
17:29:09 22 A. Correct.
17:29:10 23 Q. So it's possible that they did die of fentanyl
17:29:19 24 toxicity because we don't know what the cutoff is for each
17:29:23 25 individual person.

17:29:24 1 A. Fentanyl could also be a causative or contributing
17:29:30 2 factor to his death. However, in this particular context,
17:29:34 3 fentanyl and midazolam together, they don't explain why
17:29:43 4 her core temperature was as high as it was. We see cases
17:29:49 5 like this a lot in Vegas where you have drug intoxications
17:29:52 6 in a -- what I would call a hostile environment, which is
17:29:58 7 elevated, prolonged environment temperatures, whether it
17:30:02 8 be someone who takes medications, passes out on the street
17:30:05 9 and then, gets hyperthermic as a result of that, that's
17:30:09 10 usually what ends up happening.
17:30:11 11 So yes, in this particular case, I can't separate
17:30:16 12 out the effects of fentanyl and midazolam versus the
17:30:22 13 elevated temperature, but I can say that the fentanyl and
17:30:25 14 midazolam did not cause the elevated temperature.
17:30:29 15 Q. You're saying that the midazolam and the fentanyl and
17:30:34 16 the citalopram cannot actually cause an elevated
17:30:37 17 temperature. That's what you're saying?
17:30:43 18 MR. JAMES: Sorry. I just wanted to object that
17:30:46 19 the question throws in a third medication different than
17:30:50 20 his previous answer so it misstates his testimony.
17:30:53 21 MS. MCGEE: But we just asked about citalopram
17:30:55 22 but that's fine. I could break it apart if you'd like.
17:31:00 23 Q. (BY MS. MCGEE) So can the synergistic effects
17:31:04 24 fentanyl, midazolam and citalopram cause an increase in
17:31:08 25 body temperature, hyperthermia? Is that a possible

17:31:11 1 outcome?
17:31:13 2 A. The citalopram in high enough levels might be able to
17:31:18 3 contribute to the serotonin syndrome of which hyperthermia
17:31:25 4 is a known complication of it. But if the citalopram
17:31:35 5 levels are high and there's a symptomatology consistent
17:31:40 6 with the other findings of serotonin syndrome, then yes,
17:31:44 7 that is conceivable, that is plausible.
17:31:47 8 Q. Okay. Let's go on to the next one. The next one was
17:31:53 9 169. Do you also treat living patients?
17:32:09 10 A. No.
17:32:10 11 Q. Okay. Did you at all follow along in the coronavirus
17:32:10 12 pandemic with the different symptoms and some of the
17:32:23 13 different medical treatments that were being used to treat
17:32:26 14 patients with coronavirus?
17:32:28 15 A. Yes.
17:32:28 16 Q. Okay. So if someone had COVID and had stomach issues
17:32:41 17 because of that, vomiting, diarrhea, what have you, would
17:32:46 18 they run the risk of becoming dehydrated?
17:32:51 19 A. Yes.
17:32:52 20 Q. And would that be true whether they were free world
17:32:57 21 or incarcerated?
17:33:00 22 A. Yes.
17:33:02 23 Q. Can you become dehydrated from stomach problems --
17:33:12 24 we'll say, stomach problems from COVID even in air
17:33:21 25 conditioning?

17:33:21 1 A. You can become dehydrated from stomach problems with
17:33:25 2 or without COVID.
17:33:26 3 Q. Okay.
17:33:27 4 A. And with or without air conditioning.
17:33:51 5 Q. And I will purport to you that this is one of the
17:33:54 6 three deaths that were recorded by TDCJ for 2023 -- or the
17:33:59 7 heat-related deaths. We'll flip to 192, John Southards.
17:34:49 8 So this is the individual that died because of
17:34:56 9 diet and hygiene toxicity. Do you recall?
17:34:57 10 A. Yes.
17:34:57 11 Q. So I want you to take a look, if you would, please,
17:35:10 12 on page 11 of that report and the top left quarter of that
17:35:27 13 page starts with the word "prostate."
17:35:34 14 A. Yes.
17:35:36 15 Q. So Mr. Southards when he was found, his core body
17:35:43 16 temperature was elevated, correct?
17:36:04 17 A. We have no reading on his core body temperature.
17:36:07 18 Q. Okay. Now, his medications consisted of
17:36:12 19 diphenhydramine and Haldol. Does Haldol increase
17:36:16 20 someone's susceptibility to heat?
17:36:25 21 A. That I don't know.
17:36:26 22 Q. Okay. Now, here's my question for you. What is the
17:36:30 23 standard normal human body temperature for an average
17:36:34 24 healthy person?
17:36:39 25 A. The average body temperature is 98.6 degrees. That's

17:36:47 1 the average.
17:36:50 2 Q. I understand some people may be a little above or
17:36:52 3 below so that's the average. So your testimony was this
17:36:57 4 individual died because of the heat; is that correct?
17:37:00 5 A. Yes.
17:37:02 6 Q. His cell was at 85.7. That's cooler than average
17:37:08 7 body temperature.
17:37:10 8 A. Yes.
17:37:11 9 Q. So how would his body temperature increase to the
17:37:14 10 point of hyperthermia if his surrounding environment is
17:37:18 11 just over 10 degrees below the average body temperature
17:37:23 12 without some kind of pharmacokinetic intervention causing
17:37:29 13 it?
17:37:31 14 A. So you have to look at other factors other than just
17:37:35 15 ambient temperature in the cell. You have to also look at
17:37:39 16 the relative humidity, which would include the heat index.
17:37:43 17 You would have to look at, you know, what type of clothing
17:37:46 18 were they wearing? Are they able to dissipate their heat?
17:37:50 19 One of the things that we saw quite a bit was when the
17:37:54 20 temperature was between 80 and 85 degrees, people were
17:37:58 21 huge risk factors for heat casualties, even at that lower
17:38:02 22 temperature, because of the relative humidity, because of
17:38:06 23 their inability to dissipate heat, for a number of
17:38:11 24 different reasons.
17:38:12 25 So just because a ambient material is below, you

17:38:17 1 know, 98.6 degrees, that doesn't mean that someone's
17:38:21 2 immune from becoming a heat casualty or becoming affected
17:38:25 3 by the heat and developing hyperthermia as a result.
17:38:28 4 Q. Well, let's explore that a little bit further. So it
17:38:31 5 says in that same sentence we were looking at where it
17:38:34 6 says the cell was at 85.7. It says the heat index was
17:38:40 7 96.2. That's still below average human body temperature,
17:38:43 8 correct?
17:38:43 9 A. Yes.
17:38:44 10 Q. You said that someone could still suffer a heat death
17:38:48 11 at that temperature if they weren't able to dissipate
17:38:52 12 their heat, correct?
17:38:53 13 A. Correct.
17:38:54 14 Q. Now, we heard earlier from Dr. Vassallo that
17:38:58 15 diphenhydramine is actually antimuscarinic and so it would
17:39:00 16 prohibit sweating; is that correct?
17:39:03 17 A. I don't know what the other doctor testified to.
17:39:06 18 Q. Does Benadryl or diphenhydramine interfere with your
17:39:13 19 ability to sweat?
17:39:13 20 A. Yes, I believe it does.
17:39:14 21 Q. And sweat is one of the main ways that we dissipate
17:39:17 22 heat, correct?
17:39:17 23 A. Yes.
17:39:18 24 Q. So you could be in a temperature lower than normal
17:39:21 25 human body temperature, but if you have taken too much

17:39:23 1 Benadryl, you're not able to dissipate heat because you
17:39:27 2 could not sweat, correct?
17:39:29 3 A. Yes, that makes sense.
17:39:30 4 Q. Okay. Let's go on to 192, please. We are on 192.
17:39:52 5 If you wouldn't mind following up to 200 for me, please.
17:40:02 6 A. I got it.
17:40:02 7 Q. Okay. In 200, we should be looking at Mr. Patrick
17:40:06 8 Womack. Is that who you have, Mr. Patrick Womack?
17:40:23 9 A. Yes.
17:40:24 10 Q. If we take a look at this one, if you look on page 4,
17:40:27 11 looks like the first page of the autopsy report, there's a
17:40:38 12 section titled Final Autopsy Diagnosis. Do you see that?
17:40:42 13 A. Yes.
17:40:43 14 Q. Okay. And it says, body as a whole found
17:40:47 15 unresponsive in cell, core body temperature at 106 degrees
17:40:51 16 Farenheit. Did I read that correctly?
17:40:54 17 A. Yes.
17:40:55 18 Q. Now, if we take a look on page 6, please, and we're
17:41:05 19 going to look at the third paragraph down at the list of
17:41:08 20 medications that Mr. Womack was described to be on.
17:41:16 21 A. Yes.
17:41:16 22 Q. Okay. So those medications included benztropine,
17:41:23 23 haloperidol, sertraline and terazosin. Did I read that
17:41:26 24 correctly?
17:41:27 25 A. Yes.

17:41:28 1 Q. And we already discussed, I believe -- and please
17:41:30 2 correct me if I'm wrong -- the sertraline increases
17:41:35 3 serotonin; is that correct?
17:41:37 4 A. Yes.
17:41:37 5 Q. The diagnosis on this autopsy was hyperthermia due to
17:41:50 6 serotonin syndrome from sertraline toxicity, correct?
17:41:57 7 That was the autopsy diagnosis? Okay. Sertraline can
17:42:03 8 increase the body temperature, correct?
17:42:05 9 A. Yes.
17:42:06 10 Q. Okay. But it was your testimony earlier that it
17:42:23 11 couldn't increase the body temperature as much as you see
17:42:25 12 here where the record temperature's 106. Was that your
17:42:29 13 testimony earlier?
17:42:31 14 A. Yes. I don't believe it would. It would elevate it
17:42:34 15 that high, particularly in a setting of elevated
17:42:37 16 environmental temperature.
17:42:38 17 Q. Okay. So I want to go ahead and take a look and this
17:42:40 18 is going to be just for impeachment evidence. If you
17:42:44 19 could please -- I'll read this to you. I guess your
17:43:26 20 counsel can hold me accountable for reading this
17:43:28 21 correctly. I would like to show this to you and as soon
17:43:30 22 as our -- I'm sorry, Dr. Uribe, we'll be with you in just
17:44:17 23 a moment.
17:47:54 24 So this is the death and custody report for
17:48:00 25 another inmate who was housed in air conditioning and I'm

17:48:05 1 going to ask you to go ahead and flip to the page with --
17:48:13 2 scroll to page 3, please. And I believe you testified
17:48:16 3 earlier to plaintiffs' counsel that Mr. Womack would not
17:48:21 4 have died had he been in air conditioning, correct?
17:48:24 5 A. Yes.
17:48:25 6 Q. Okay. So let's take a look here at this other
17:48:28 7 individual and if we look at page 3, it's basically the
17:48:34 8 third paragraph down. It starts with on 7-28-22 at 2:07
17:48:39 9 and we're going to have to make that a lot bigger. So
17:49:03 10 starts with on 7-28-22 at 2:07. Do you see that?
17:49:10 11 A. Yes.
17:49:11 12 Q. So if you read that paragraph, I want you to look and
17:49:14 13 see what the core body temperature was of this individual.
17:49:27 14 A. Rectal temperature of 107.6.
17:49:30 15 Q. Correct. If you'll go to the last page, please. Are
17:50:44 16 you able to see what the cause of death is listed on this
17:50:46 17 death report?
17:50:50 18 A. Yes.
17:50:51 19 Q. Is it sertraline toxicity?
17:50:55 20 A. Yes.
17:50:56 21 Q. Sertraline toxicity, can, in fact, cause a core body
17:51:01 22 temperature of over 106 based on this death report; is
17:51:05 23 that correct?
17:51:05 24 A. I can't render an opinion on that because I don't
17:51:11 25 know the full investigation. I know you had me read one

17:51:15 1 line of the autopsy report and one line of the death
17:51:17 2 certificate.
17:51:18 3 Q. Well, you just said that someone who had serotonin
17:51:21 4 syndrome, sertraline toxicity wouldn't be expected to have
17:51:25 5 a core body temperature of 106. That's what you just said
17:51:29 6 with Mr. Womack, correct?
17:51:31 7 A. Yes.
17:51:31 8 Q. And now you have someone who's also diagnosed with
17:51:34 9 sertraline toxicity and yet, their body temperature is
17:51:39 10 over 107, correct?
17:51:40 11 A. I don't know that. All I know is the temperature
17:51:46 12 that you had, you had me read one line of an autopsy
17:51:48 13 report and then, the cause of death on a death
17:51:51 14 certificate. I don't know anything else about this case.
17:51:55 15 Q. Right. You're reading the information from the
17:51:57 16 autopsy report. Isn't that how you formed your opinions
17:51:59 17 in all the other cases?
17:52:00 18 A. Yes, but I also read the entire autopsy report. I
17:52:04 19 read through the investigative documents. I read through
17:52:10 20 the case materials available to me. Not just
17:52:14 21 cherry-picked a two lines from it.
17:52:16 22 Q. Okay. But you're saying that you would expect
17:52:17 23 someone who's in air conditioning to have 107 rectal
17:52:20 24 temperature?
17:52:24 25 A. There are ways in which people in air conditioning

17:52:28 1 develop hyperthermia. Yes, there are.
17:52:30 2 Q. And medications are one of those ways, correct?
17:52:33 3 A. Yes.
17:52:33 4 Q. Such as sertraline?
17:52:35 5 A. Yes, sertraline can.
17:52:38 6 Q. Okay. I have no further questions, your Honor.
17:53:15 7 MR. JAMES: Thank you. No further questions.
17:53:17 8 Your Honor, may we release the witness?
17:53:18 9 THE COURT: Yes. Thank you, Doctor. You are
17:53:22 10 dismissed and subject to recall; is that correct?
17:53:25 11 MS. MCGEE: No, sir, your Honor.
17:53:26 12 THE COURT: Thank you, Dr. Uribe. Thank you very
17:53:30 13 much for your time.
17:53:31 14 THE WITNESS: All right. Thank you, your Honor.
17:53:32 15 THE COURT: Where are we in our --
17:53:38 16 MR. HOMIAK: We only have two more witnesses and
17:53:40 17 they are very short so I expected each one to take at
17:53:42 18 least on direct examination 10 to 15 minutes each.
17:53:42 19 THE COURT: Let's press on.
17:53:47 20 MR. HOMIAK: I will certainly do everything I can
17:53:49 21 to keep that promise.
17:53:52 22 MS. CARTER: Your Honor, just for housekeeping,
17:53:54 23 there's two more and then, you're resting or you're
17:53:57 24 closing?
17:53:58 25 MR. HOMIAK: We're resting, yes, it's my

17:54:00 1 understanding.
17:54:00 2 MS. CARTER: So you're not calling more people
17:54:02 3 tomorrow?
17:54:03 4 MR. HOMIAK: We promised to be done today and
17:54:07 5 that's what we're going to do.
17:54:08 6 THE COURT: Thank you.
17:54:20 7 MR. HOMIAK: Plaintiffs, your Honor, call Dr.
17:54:42 8 Dominick to the stand.
17:54:45 9 THE COURT: Before you take a seat, could you
17:54:47 10 raise your right hand to be sworn, please.
17:54:48 11 THE CLERK: You do solemnly swear or affirm that
17:54:48 12 the testimony which you may give in the case now before
17:54:48 13 the Court shall be the truth, the whole truth, and nothing
17:54:54 14 but the truth?
17:54:54 15 THE WITNESS: Yes, I do.
17:54:55 16 THE COURT: Thank you. Please be seated.
17:54:57 17 AMITE DOMINICK, called by the Plaintiff, duly sworn.
17:54:57 18 DIRECT EXAMINATION
17:54:58 19 BY MR. HOMIAK:
17:54:58 20 Q. Can you please state your name for the record?
17:55:01 21 A. Dr. Amite Dominick.
17:55:03 22 Q. And, Dr. Dominick, as I just mentioned, I'm going to
17:55:06 23 do my best to keep this brief so we'll go through this
17:55:09 24 relatively quickly.
17:55:10 25 Can you tell us what organization you're

17:55:12 1 testifying on behalf of today?
17:55:13 2 A. Texas Prisons Community Advocates.
17:55:15 3 Q. Is that organization also known as TPCA?
17:55:19 4 A. Yes.
17:55:19 5 Q. What's your title with TPCA?
17:55:21 6 A. Founder and President.
17:55:22 7 Q. Before we talk any more about your work with TPCA,
17:55:26 8 can you tell me about your education after high school?
17:55:29 9 A. So after high school, I attended San Jose State
17:55:33 10 University where I received a Bachelor's Degree in
17:55:36 11 Clinical and Counseling Psychology. I then went on to
17:55:41 12 receive a Master's Degree in Psychology with an emphasis
17:55:43 13 in experimental psychology. And then, I furthered my
17:55:47 14 career at Loma Linda University where I received a Ph.D.
17:55:50 15 in Psychology with an emphasis on social psychology and
17:55:53 16 experimental psychology.
17:55:54 17 Q. Do you have any experience teaching?
17:55:56 18 A. Yes.
17:55:57 19 Q. Tell me about that.
17:55:58 20 A. I started teaching as early as 1995. I did TA work
17:56:06 21 in a neuroanatomy and physiology lab at San Jose State. I
17:56:10 22 then went on to do adjunct work at a variety of community
17:56:15 23 colleges and then, University of Wisconsin at Parkside.
17:56:20 24 And then, after my Ph.D., I taught at Argosy University in
17:56:24 25 the Dallas area.

17:56:26 1 Q. How many years in total did you spend teaching in
17:56:28 2 some capacity?
17:56:29 3 A. Almost 20 years.
17:56:31 4 Q. And, Dr. Dominick, have you ever been incarcerated in
17:56:34 5 the TDCJ system?
17:56:35 6 A. No.
17:56:36 7 Q. Have you ever had a loved one incarcerated in the
17:56:39 8 TDCJ system?
17:56:39 9 A. Yes.
17:56:41 10 Q. Tell us about that.
17:56:42 11 A. So my ex-husband entered the TDCJ system in 2015.
17:56:48 12 Q. And during what period of time was he incarcerated in
17:56:50 13 the TDCJ system?
17:56:51 14 A. He's still currently incarcerated.
17:56:53 15 Q. While he was still your husband, how did his
17:56:56 16 incarceration affect your relationship with him?
17:56:59 17 A. I would say it had a negative impact. Many of the
17:57:03 18 things that people experience as being married in the free
17:57:06 19 world, you no longer have the majority of those privileges
17:57:10 20 when you have a spouse who's incarcerated.
17:57:13 21 Q. Can you tell us when you first realized that heat was
17:57:15 22 an issue in Texas prisons?
17:57:17 23 A. When he was brought to the Gurney Unit.
17:57:24 24 Q. Was that an air conditioned unit?
17:57:28 25 A. No.

17:57:29 1 Q. Did you ever visit your ex-husband when he was housed
17:57:32 2 in that unit?
17:57:33 3 A. Yes.
17:57:34 4 Q. Was that visitation area air conditioned?
17:57:36 5 A. The majority of the time.
17:57:39 6 Q. But his living area was not?
17:57:40 7 A. No.
17:57:41 8 Q. How did the fact that your ex-husband was living
17:57:45 9 without air conditioning affect your visits with him?
17:57:49 10 A. I had to strategically plan when I was going to make
17:57:54 11 the long trek out to the Gurney Unit to coincide with
17:57:58 12 times of the day where the heat would be the highest,
17:58:02 13 which oftentimes meant that I was out in the sun for
17:58:05 14 several hours waiting for the visiting to take place.
17:58:09 15 Q. What do you recall about how your ex-husband appeared
17:58:13 16 and acted when he came into the visitation room with you?
17:58:16 17 A. My ex-husband also has severe allergies and not
17:58:20 18 having filtered air exacerbates those allergies. So when
17:58:25 19 he walked into to visitation room, he would be hot, he
17:58:28 20 would be sweaty, his face was beet red, his eyes were
17:58:33 21 swollen to the point where they were almost shut. And I
17:58:36 22 would literally sit there over that two-hour period and
17:58:39 23 watch the swelling decrease to the point where I could
17:58:42 24 actually see his pupils.
17:58:46 25 Q. When did you first get involved in advocating on the

17:58:49 1 issues of extreme heat and lack of air conditioning in
17:58:52 2 Texas prisons?
17:58:53 3 A. In 2015.
17:58:55 4 Q. Why did you get involved in that work?
17:58:59 5 A. I started hearing the stories from my ex-husband as
17:59:05 6 well as spending time in places like hospitality houses
17:59:08 7 and carpooling with other family members and I started to
17:59:11 8 get an understanding of the fullness of the situation, so
17:59:16 9 that propelled me to become activated in this activism
17:59:20 10 work.
17:59:21 11 Q. Can you just briefly tell us what a hospitality house
17:59:23 12 is?
17:59:23 13 A. So hospitality house is typically a ministry. It's
17:59:27 14 located around certain clusters of prisons and it allows
17:59:32 15 an impacted family member to spend the night there while
17:59:35 16 they visit their incarcerated loved ones that day or the
17:59:40 17 following day.
17:59:41 18 Q. So without getting into the details in these
17:59:43 19 conversations, is it fair to say that, generally, the
17:59:46 20 issue of extreme heat and lack of air conditioning would
17:59:47 21 come up in conversations with family members and loved
17:59:50 22 ones and with folks who are incarcerated while you were at
17:59:53 23 these houses?
17:59:53 24 MR. RHINES: Objection, your Honor. Leading.
17:59:55 25 THE COURT: Overruled.

17:59:56 1 A. Yes. Absolutely, multiple times.
17:59:59 2 Q. (BY MR. HOMIAK) Fair to say that since 2015, your
18:00:03 3 advocacy work has been focused primarily on this issue,
18:00:07 4 the issue of extreme heat and lack of air conditioning in
18:00:09 5 Texas prisons?
18:00:10 6 A. Yes.
18:00:10 7 Q. What advocacy work have you done on this issue since
18:00:14 8 2015?
18:00:16 9 A. Oh, my goodness, there's been so much. I started
18:00:22 10 with going to support groups and I created a letter and a
18:00:26 11 list of political officials so that family members could
18:00:30 12 sign that letter and I would tell them, hey, if you sign
18:00:33 13 it, I will mail it. I'll help you mail to it your
18:00:36 14 political officials. And then, I moved on to actually
18:00:41 15 working with Senator Menendez and Representative Canales
18:00:44 16 on the first historical bill surrounding air conditioning.
18:00:49 17 I started trying to train family members, empowering them,
18:00:55 18 teaching them about advocacy work. I moved on to working
18:00:57 19 with formerly incarcerated individuals, incarcerated --
18:01:02 20 currently incarcerated individuals and trying to empower
18:01:04 21 them and educate them in regards to how to advocate for
18:01:08 22 either themselves or their incarcerated loved ones, just
18:01:11 23 to name a few.
18:01:12 24 Q. Have you testified to the Texas legislature about
18:01:14 25 these issues?

18:01:15 1 A. Multiple times.
18:01:16 2 Q. Have you spoken -- and I think you just said you've
18:01:18 3 spoken to a number of Texas state legislators about these
18:01:23 4 issues, as well?
18:01:23 5 A. Yes.
18:01:23 6 Q. And you've communicated with Mr. Collier even
18:01:27 7 directly about these issues?
18:01:28 8 A. Yes.
18:01:31 9 Q. What year did you found TPCA?
18:01:34 10 A. 2021.
18:01:36 11 Q. And why did you found TPCA?
18:01:39 12 A. The organization that I was previously
18:01:42 13 vice-president, founding member and, at some point,
18:01:46 14 president of, the person we had appointed as president,
18:01:51 15 she stepped down. We decided to dissolve that
18:01:54 16 organization and I created Texas Prisons Community
18:01:58 17 Advocacy.
18:01:59 18 Q. What is TPCA's mission?
18:02:01 19 A. Our mission is to serve incarcerated individuals and
18:02:05 20 their family members who work with -- we also work with
18:02:11 21 formerly incarcerated individuals on educating,
18:02:16 22 empowering, teaching them about advocacy work and bringing
18:02:19 23 awareness in general.
18:02:21 24 Q. And from the beginning, has TPCA been focused on
18:02:23 25 these issues, extreme heat, lack of air conditioning in

18:02:26 1 Texas prisons?
18:02:26 2 A. Absolutely.
18:02:27 3 Q. And this has already been entered as an exhibit and
18:02:58 4 so, I'm not going to rehash what's already been discussed,
18:03:01 5 but do you recognize this report, Doctor?
18:03:04 6 A. Yes.
18:03:05 7 Q. And you were a coauthor of it with Dr. Purdum and Dr.
18:03:12 8 Dixon; is that right?
18:03:13 9 A. Yes.
18:03:13 10 Q. What was your roll in preparing this report?
18:03:17 11 A. I assisted in the development of the surveys
18:03:20 12 themselves and then, helped to bring the surveys to Dr.
18:03:25 13 Purdum. I did some evaluation of the document.
18:03:31 14 Q. As far as assisting with the writing itself; is that
18:03:34 15 fair?
18:03:34 16 A. Yes.
18:03:35 17 Q. When you say surveys, you're referring to surveys of
18:03:37 18 folks incarcerated in Texas prisons that were used for
18:03:40 19 this report?
18:03:40 20 A. Yes.
18:03:40 21 Q. And to your knowledge, were the results of this
18:03:46 22 report shared with Mr. Collier?
18:03:48 23 A. Yes.
18:03:49 24 Q. Dr. Dominick, actually, let me take one step back.
18:04:01 25 How did you know the results of this report were shared

18:04:04 1 with Mr. Collier?
18:04:05 2 A. For that report, Dr. J. Carlee Purdum testified
18:04:09 3 during one of the interim hearings and Mr. Collier was
18:04:13 4 present at that hearing.
18:04:14 5 Q. So Mr. Collier was present at the hearing in which
18:04:20 6 Dr. Purdum testified about the results of report.
18:04:23 7 A. Correct.
18:04:24 8 Q. And you were just referring to or I was actually
18:04:26 9 referring to the next study that you were a coauthor of,
18:04:30 10 which is a study we've also heard about from Dr. Skarha
18:04:33 11 and Dr. Zanobetti; is that right?
18:04:34 12 A. Yes.
18:04:35 13 Q. And that was about heat-related mortality in Texas
18:04:38 14 prisons?
18:04:39 15 A. Yes.
18:04:39 16 Q. What was your role in that report?
18:04:42 17 A. So my role was providing some of the information I
18:04:46 18 received from the information request, which were just
18:04:49 19 basically which units had air conditioning and which
18:04:51 20 didn't, and then, also, just providing consultation and
18:04:56 21 the anecdotal information that Dr. Skarha requested.
18:05:01 22 Q. Were you here in the courtroom yesterday for the
18:05:03 23 testimony of Dr. Skarha and Zanobetti?
18:05:06 24 A. Yes.
18:05:07 25 Q. Is there anything that you would add to their

18:05:09 1 comprehensive testimony about that report?
18:05:11 2 A. I think that the study is a great baseline study. My
18:05:17 3 expectations of the heat-related deaths was that they
18:05:20 4 would be a bit higher given the anecdotal information that
18:05:23 5 we received.
18:05:24 6 Q. Based on your conversations, your communications with
18:05:27 7 folks inside, you actually thought that report provided
18:05:30 8 essentially a floor.
18:05:33 9 A. Yes.
18:05:34 10 Q. And was that study shared with Mr. Collier?
18:05:36 11 A. Yes.
18:05:38 12 Q. And how do you know that?
18:05:40 13 A. Because one of our family members sent it to Mr.
18:05:45 14 Collier and she CC-ed me on the e-mail.
18:05:48 15 Q. Do you have Exhibit 272 in front of you, Dr.
18:05:51 16 Dominick?
18:05:52 17 A. Yes.
18:05:52 18 Q. Is this the e-mail that you were referring to?
18:05:54 19 A. Yes.
18:05:54 20 Q. Is it a fair and accurate copy of that e-mail?
18:05:58 21 A. Yes.
18:05:58 22 Q. And which of those -- looks like there are three
18:06:02 23 people CC-ed, the author of the e-mail and two other
18:06:06 24 addresses. Was one of those addresses yours?
18:06:08 25 A. Yes.

18:06:09 1 Q. Which one?
18:06:10 2 A. Tpcadvocates@gmail.com.
18:06:15 3 Q. Plaintiffs move to admit 272 into evidence.
18:06:18 4 MR. RHINES: We would object, your Honor. I do
18:06:19 5 not believe this was on their original exhibit list or
18:06:22 6 their amended one Friday, as well.
18:06:25 7 MR. HOMIAK: That is true, your Honor. It was my
18:06:27 8 fault for not putting it on the exhibit list. I think the
18:06:30 9 issue -- so we did receive it this weekend. We should
18:06:32 10 provided it over the wound weekend, so I will take the
18:06:36 11 blame for that. My position would be that because this
18:06:39 12 was e-mailed to Mr. Collier, it's certainly something
18:06:41 13 within his possession. I was thinking about the report
18:06:43 14 itself and so, I don't think there's an issue of unfair
18:06:46 15 surprise here. They're entitled to cross Dr. Dominick.
18:06:49 16 THE COURT: Have they gotten it already today?
18:06:51 17 MR. HOMIAK: They got it earlier today.
18:06:57 18 THE COURT: Have you had the opportunity to
18:06:59 19 review it?
18:07:01 20 MR. RHINES: No extensively, no, your Honor.
18:07:03 21 MR. HOMIAK: And, your Honor, just to be clear,
18:07:04 22 the e-mail is this e-mail and the study that we've been
18:07:06 23 talking about for the last 24, 36 hours.
18:07:10 24 THE COURT: I'll overrule the objection.
18:07:15 25 Q. (BY MR. HOMIAK) So, Dr. Dominick, and I guess just to

18:07:22 1 scroll down to the next page to confirm that the
18:07:24 2 attachment's actually the report that we were talking
18:07:27 3 about by Dr. Skarha, Dr. Zanobetti, yourself, a number of
18:07:32 4 or folks were listed as coauthors?
18:07:35 5 A. Yes.
18:07:35 6 Q. Going back to your work at TPCA, can you tell us who
18:07:41 7 TPCA's constituents are?
18:07:44 8 A. Our constituents are everyone that is currently
18:07:50 9 incarcerated, which, I believe, is over 133,000
18:07:53 10 individuals at this point. Members of the public,
18:07:56 11 formerly incarcerated individuals, impacted family
18:08:01 12 members.
18:08:01 13 Q. Who sits on TPCA's board?
18:08:04 14 A. Myself, Jessica Dickerson, Jane Corley, Shameka Gray,
18:08:14 15 Andrea Cedillo.
18:08:22 16 Q. The question I was going to ask you is whether your
18:08:24 17 board includes any formerly incarcerated individuals.
18:08:27 18 A. That's Andrea Cedillo.
18:08:29 19 Q. Was Ms. Cedillo formerly incarcerated in the TDCJ
18:08:32 20 system?
18:08:32 21 A. Yes. Oh, and I forgot Dawn Freeman.
18:08:39 22 Q. How does TPCA advocate for its constituents
18:08:43 23 incarcerated in the TDCJ system?
18:08:44 24 A. So we do a number of ways. We receive mail from
18:08:50 25 incarcerated individuals and comments from family members

18:08:52 1 and we amplify their voice through social media means. We
18:08:57 2 have a support department and that support department is
18:09:00 3 divided into two separate teams or areas. One area is our
18:09:06 4 incarcerated support area. And I want to mention, also,
18:09:09 5 we're all volunteer-based. So we have volunteer
18:09:14 6 incarcerated mediators that receive the mail and then,
18:09:16 7 they sometimes act as liaisons between those who are
18:09:19 8 incarcerated in TDCJ. Then we have our family support
18:09:24 9 area and those family mediators interact with family
18:09:28 10 members and sometimes they act as liaisons between the
18:09:31 11 family members and TDCJ and sometimes we simply provide
18:09:34 12 guidance.
18:09:36 13 So we also provide curriculum training. We go
18:09:40 14 over TDCJ's protocols, policies. We also help give them
18:09:46 15 legislation information. And if I can go back to the
18:09:50 16 incarcerated side of support, we also have incarcerated
18:09:55 17 team members, voluntary team members.
18:09:58 18 Q. And again, fair to say that most of that advocacy and
18:10:02 19 education work is around these issues, extreme heat, lack
18:10:05 20 of air conditioning, heat mitigation measures?
18:10:08 21 A. Yes.
18:10:09 22 Q. How does TPCA communicate with its constituents?
18:10:14 23 A. A number of ways. We receive mail, we receive
18:10:19 24 information from e-mails, from people reach out to us
18:10:26 25 through social media. I've even had impacted family

18:10:29 1 members drop into my DMs or my personal Facebook page.
18:10:34 2 Q. Does TPCA have a mailing list?
18:10:37 3 A. Yes.
18:10:38 4 Q. Dr. Dominick, do you recognize this document?
18:10:46 5 A. Yes.
18:10:46 6 Q. Is this a fair and accurate copy of the exhibit list
18:10:49 7 you produced to us that we provided to you and Mr.
18:10:52 8 Collier's counsel?
18:10:52 9 A. Yes.
18:10:53 10 Q. Your Honor, I'd move to admit Exhibit 146 into
18:10:57 11 evidence.
18:10:58 12 MR. RHINES: No objection.
18:10:59 13 THE COURT: So admitted.
18:11:01 14 Q. (BY MR. HOMIAK) You mentioned earlier that TPCA has
18:11:04 15 volunteers. Are all of those volunteers incarcerated or
18:11:08 16 some portion of them?
18:11:09 17 A. No, not all of them. Some portion of them are.
18:11:12 18 Q. But TPCA does have volunteers who are currently
18:11:15 19 incarcerated in TDCJ's facilities?
18:11:17 20 A. Correct.
18:11:19 21 Q. And, Dr. Dominick, do you recognize Exhibit 147?
18:11:30 22 A. Yes.
18:11:30 23 Q. Is this a list of TPCA volunteers at least as of the
18:11:37 24 time you provided the list?
18:11:38 25 A. Yes.

18:11:39 1 Q. Is it a fair and accurate copy of that list?
18:11:42 2 A. Yes.
18:11:43 3 Q. Your Honor, I'd move to admit Exhibit 147.
18:11:46 4 MR. RHINES: No objection.
18:11:47 5 THE COURT: So admitted.
18:11:48 6 Q. (BY MR. HOMIAK) So, Dr. Dominick, I think you touched
18:11:52 7 on this a little bit earlier but I want to make sure I
18:11:54 8 understand exactly how your organization's incarcerated
18:12:00 9 constituents and volunteers guide the work you do in the
18:12:02 10 advocacy work.
18:12:03 11 A. Basically, they inform us on what's taking place
18:12:06 12 within the units regarding specifically the heat issue.
18:12:12 13 Q. So they're educating essentially at all times about
18:12:15 14 what's going on with the heat, lack of air conditioning,
18:12:18 15 heat mitigation measures?
18:12:19 16 A. Yes.
18:12:19 17 Q. Fair to say at all times, TPCA's work is guided by
18:12:23 18 its constituents who are incarcerated in the TDCJ system
18:12:26 19 and their loved ones?
18:12:27 20 A. Yes, and our impacted family members.
18:12:32 21 Q. Have any of TPCA's volunteers who are incarcerated
18:12:35 22 passed away recently?
18:12:36 23 A. Yes.
18:12:37 24 Q. How recently?
18:12:38 25 A. Approximately, three weeks ago.

18:12:40 1 Q. This was somebody who passed away in a TDCJ facility?
18:12:44 2 A. Yes.
18:12:46 3 Q. How long have you been working to get air
18:12:48 4 conditioning in Texas prisons?
18:12:50 5 A. Since 2015.
18:12:53 6 Q. Why did TPCA decide to join this lawsuit as an
18:12:56 7 organization?
18:13:04 8 A. I'm sorry. I'm trying not to be emotional about
18:13:09 9 that. We've seen so much suffering over the years and the
18:13:13 10 time is now. We need something done now for these
18:13:16 11 individuals who are suffering and they're dying behind
18:13:20 12 those walls. We need someone who hears their cries
18:13:25 13 immediately.
18:13:27 14 Q. Is it fair to say that decision was motivated by what
18:13:30 15 you heard from volunteers, constituents, and your own
18:13:33 16 experience with your ex-husband?
18:13:35 17 A. Yes.
18:13:35 18 Q. No further questions, your Honor. Thank you.
18:13:52 19 CROSS-EXAMINATION
18:13:56 20 BY MR. RHINES:
18:13:56 21 Q. Good evening, your Honor.
18:13:59 22 Good evening Dr. Dominick. My name is Zach
18:14:03 23 Rhines and I represent Mr. Collier at the end of the
18:14:06 24 table. I want to first turn to the Texas A & M study that
18:14:12 25 your counsel brought up. The study entitled Extreme

18:14:16 1 Temperatures And COVID 19 In the Texas Prisons. We've
18:14:20 2 actually had that as our Exhibit 44 so that's how I'm
18:14:27 3 going to reference it for our legal assistant. But we're
18:14:29 4 going to bring it up briefly.
18:14:31 5 Dr. Dominick, you were involved in the -- in
18:15:09 6 conducting the study, right?
18:15:10 7 A. Correct.
18:15:11 8 Q. And as part of this study, you sent out surveys?
18:15:15 9 A. Yes.
18:15:16 10 Q. How many surveys were answered?
18:15:19 11 A. There were 309 surveys that were analyzed. I believe
18:15:25 12 there were more surveys that were actually answered but
18:15:28 13 were not included in the final report, and that was a
18:15:33 14 choice that -- based on scientific methods that Dr. Purdum
18:15:39 15 did.
18:15:40 16 Q. Are you aware of any those scientific methods?
18:15:43 17 A. Yes, I actually -- I mentioned before that my
18:15:47 18 master's degree and Ph.D. were in experimental psych with
18:15:50 19 the emphasis on experimental psychology, so I actually
18:15:54 20 taught statistics and psychometrics, which is the
18:15:57 21 development of these type of measures.
18:15:59 22 Q. Wonderful. Would you be able to explain to me why
18:16:01 23 the other surveys were not included?
18:16:03 24 A. I don't recall.
18:16:14 25 Q. Dr. Dominick, the bottom of page 10, do you see what

18:16:44 1 appears to be a chart with a bunch of quotations?
18:16:47 2 A. Yes.
18:16:49 3 Q. And if I go on to page 11, that chart continues?
18:16:53 4 A. Yes.
18:16:53 5 Q. Are those quotations from the surveys that you
18:16:56 6 analyzed?
18:16:57 7 A. Some of them are from the surveys and some of them
18:17:00 8 are from letters, I believe.
18:17:05 9 Q. And in fact, this document has a fair number of
18:17:09 10 charts such as that, correct?
18:17:11 11 A. Yes.
18:17:12 12 Q. Directing to, for example, page 14, I believe there's
18:17:18 13 something similar.
18:17:20 14 A. Yes.
18:17:22 15 Q. Dr. Dominick, given your background in experimental
18:17:26 16 psychology, you are aware that anecdotal evidence is not
18:17:30 17 necessarily -- the plural of anecdote is not data, right?
18:17:36 18 A. Can you restate that question?
18:17:37 19 Q. Yes. You're aware that the plural form of the word
18:17:41 20 "anecdote" is not necessarily data.
18:17:44 21 A. I viewed this as qualitative research, which is an
18:17:48 22 acceptable standard. So direct quotes from individuals,
18:17:52 23 direct verbal reports from individuals are considered
18:17:56 24 qualitative data and sometimes termed as anecdotal
18:18:00 25 responses.

18:18:04 1 Q. In each of these anecdotal responses that you noted
18:18:07 2 during this study, you don't have to think about every
18:18:10 3 single one, obviously, I'm sure. Nobody could recall
18:18:14 4 every single one. But in each of those, how could you
18:18:21 5 determine whether an individual was telling the truth?
18:18:31 6 A. The standard research is not necessarily that you
18:18:36 7 determine whether or not someone is telling the truth.
18:18:41 8 When you're seeing comments multiple times, that's an
18:18:46 9 indication that your data is vital.
18:18:48 10 So, for example, how do we all know that the sky
18:18:50 11 is blue today? Because several people will report and say
18:18:53 12 that the sky is blue today. That's the same situation
18:18:57 13 we're seeing here that we're seeing these comments
18:18:59 14 happening over and over and over again. When those
18:19:02 15 comments tend to line up with one another, then we start
18:19:07 16 leaning towards this being an issue of provable statements
18:19:11 17 or truthful statements. But without actually, you know --
18:19:19 18 even in terms of a lie detector test, that's not even -- I
18:19:22 19 want to say that that's a provable method but it's not.
18:19:28 20 Q. But looking at this survey today, looking at, let's
18:19:31 21 say, the top quote on the graph -- or on the chart on page
18:19:35 22 14, you do not have personal knowledge about whether that
18:19:37 23 is true or not, right?
18:19:40 24 A. I have never been personally incarcerated, although I
18:19:43 25 do have some personal knowledge of some of the things that

18:19:46 1 are indicated in here. I have a mock sell (phonetic) that
18:19:51 2 I bring around the state and I've experienced that. I've
18:19:54 3 actually tested out heat on myself. Every summer that
18:19:58 4 I've done this, I've had either my air conditioning in my
18:20:01 5 car or my home go out, most recently, last weak. So what
18:20:06 6 they're telling me given that I'm hearing the same reports
18:20:10 7 consistently after doing this for almost 10 years, if it
18:20:16 8 looks like a duck, it quacks like a duck, it's a duck.
18:20:19 9 Q. Dr. Dominick, I'll ask the question again and I'll
18:20:22 10 ask you to answer me directly, if you can. Can you tell
18:20:25 11 me with definitive personal knowledge whether the top
18:20:30 12 quote on that chart is true?
18:20:38 13 A. I cannot speak to whether or not this individual had
18:20:41 14 a heat stroke.
18:20:44 15 Q. And is it true in this report that sometimes inmates
18:20:49 16 or respondents or individuals who have written letters
18:20:53 17 have put forth opinions as to why an individual was --
18:21:03 18 either died or was carried out of the unit?
18:21:07 19 A. Yes.
18:21:10 20 Q. Are you aware that any of those individuals had a
18:21:14 21 medical background?
18:21:15 22 A. No.
18:21:18 23 Q. If they didn't have a medical background, how would
18:21:21 24 they have any reason to know why an individual would be,
18:21:25 25 for example, brought to medical?

18:21:30 1 A. You would have to ask that individual to the
18:21:33 2 specifics surrounding that incident.
18:21:50 3 Q. Now, Dr. Dominick, you testified you were the Founder
18:21:52 4 and President of the Texas Community Prison Advocate,
18:21:55 5 correct?
18:21:55 6 A. Texas Prisons Community Advocates, yes.
18:21:57 7 Q. I apologize. I misspoke. Now, that's a nonprofit
18:22:05 8 organization?
18:22:06 9 A. Correct.
18:22:06 10 Q. Organized under the Internal Revenue Code Section
18:22:12 11 501(c)?
18:22:12 12 A. 501(3)(c).
18:22:19 13 Q. And you serve on the board of directors, right?
18:22:22 14 A. Correct.
18:22:22 15 Q. And because you were its founder and you serve on its
18:22:25 16 board of directors, you should be familiar with corporate
18:22:28 17 filings and the corporate documents, right?
18:22:30 18 A. Yes.
18:22:32 19 Q. Your Honor, I'd like to bring up what we have marked
18:22:59 20 as Defendants' Exhibit No. 33. And if I may approach,
18:23:05 21 your Honor?
18:23:06 22 THE COURT: You may.
18:23:08 23 Q. (BY MR. RHINES) Dr. Dominick, looking at the first
18:23:32 24 page, I'll represent to you that this is a certified copy
18:23:37 25 from the Secretary of State of Texas. I pulled it myself.

18:23:41 1 Do you have any reason to doubt that?
18:23:45 2 A. No. But I will state that this document has been
18:23:48 3 revised since 2021.
18:23:52 4 Q. I'll get to that. And looking at the document, do
18:24:01 5 you recognize it?
18:24:02 6 A. Yes.
18:24:07 7 Q. And this document, what is it?
18:24:12 8 A. It's our certificate of formation.
18:24:18 9 Q. And does it contain your signature?
18:24:30 10 A. No, this one doesn't.
18:24:32 11 Q. But you're well aware of what this is, right?
18:24:35 12 A. Uh-huh. Yes.
18:24:36 13 Q. And you're aware that the provisions in this govern
18:24:39 14 the general business of your organization TPCA, right?
18:24:46 15 A. Yes.
18:24:47 16 Q. Your Honor, given the witness' personal knowledge,
18:24:50 17 I'd move to enter this into evidence.
18:24:53 18 THE COURT: Objection?
18:24:54 19 MR. HOMIAK: No objection, your Honor.
18:24:55 20 THE COURT: So admitted.
18:24:57 21 Q. (BY MR. RHINES) And, Dr. Dominick, you said that you
18:25:05 22 had amended these articles of incorporation, right?
18:25:07 23 A. Yes.
18:25:08 24 Q. Or certificate of formation, I apologize. That is
18:25:26 25 marked as Defendants' Exhibit No. 34.

18:25:30 1 And, Dr. Dominick, do you have any -- I'll give
18:25:35 2 you a chance to look over it but I'll represent that it
18:25:37 3 was provided by your counsel. Do you have any reason to
18:25:40 4 doubt the truth of this document?
18:25:43 5 A. No.
18:25:45 6 Q. Could you tell the Court what it is?
18:25:47 7 A. It's a certificate of amendment.
18:26:06 8 Q. Is this the amendment that you spoke about beforehand
18:26:10 9 to the certificate of incorporation?
18:26:16 10 A. This is one of them.
18:26:19 11 Q. This is one of them. Are there others?
18:26:22 12 A. Yes.
18:26:22 13 Q. Were they provided to us in discovery?
18:26:30 14 A. I don't recall. The most recent amendments were --
18:26:37 15 anytime you add board members, you have to amend online.
18:26:46 16 Q. And last, Dr. Dominick, I would ask Mr. Rheams to
18:26:55 17 pull up Defendants' Exhibit No. 148. I'm sorry,
18:27:00 18 Plaintiffs' Exhibit No. 148. We had previously looked at
18:27:03 19 it when counsel was on direct examination with you.
18:27:20 20 MR. HOMIAK: Do you mean 147?
18:27:22 21 MR. RHINES: 146. I can't read. I'm sorry.
18:27:45 22 Q. (BY MR. RHINES) Dr. Dominick, do you recognize this
18:27:53 23 document?
18:27:53 24 A. Yes.
18:27:54 25 Q. And earlier, you had testified that this is, in fact,

18:27:59 1 TPCA's member list.
18:28:01 2 A. I believe I testified that it is TPCA's mailing list.
18:28:05 3 Q. It is TPCA's mailing list.
18:28:07 4 A. Yes.
18:28:08 5 Q. So let's talk about membership in TPCA. Who can
18:28:12 6 become a member of TPCA?
18:28:15 7 A. So we treat our membership much like a church would
18:28:21 8 treat their membership. If someone wants to be a member,
18:28:24 9 they want to be on our mailing list, we put them on our
18:28:27 10 mailing list.
18:28:27 11 Q. So does being on the mailing list equate to being a
18:28:31 12 member?
18:28:31 13 A. We consider them members.
18:28:32 14 Q. You consider them members?
18:28:35 15 A. Yes.
18:28:35 16 Q. Do you issue any certificate or card to members for
18:28:43 17 them to identify themselves as members?
18:28:45 18 A. No. Like I mentioned before, we operate much like a
18:28:49 19 church would. They're participating, they want to be
18:28:55 20 involved on any level. If they no longer want to be,
18:28:58 21 participating, then we can remove them from the mailing
18:29:00 22 list, as well.
18:29:03 23 Q. Dr. Dominick, I'd ask you to look at Exhibit 33,
18:29:06 24 those are TPCA's original certificate of formation. Does
18:29:15 25 that document, to the best of your knowledge, have any

18:29:24 1 provision for determining membership?
18:29:47 2 A. No.
18:29:48 3 Q. What about Defendants' Exhibit No. 34, the amendment?
18:30:00 4 A. No.
18:30:02 5 Q. Is there anything in either of those documents that
18:30:07 6 explains the rights or responsibilities of any members?
18:30:10 7 A. No.
18:30:15 8 Q. Your Honor, if I may approach, I'd like to show the
18:30:17 9 witness what we have marked as Defendants' Exhibit No. 35.
18:30:20 10 THE COURT: Yes.
18:30:21 11 Q. (BY MR. RHINES) Do you recognize this document?
18:30:46 12 A. Yes.
18:30:46 13 Q. What is it?
18:30:48 14 A. It's the bylaws.
18:30:51 15 Q. To the best of your knowledge, is it the most current
18:30:54 16 and accurate version of TPCA's bylaws?
18:31:12 17 A. Yes.
18:31:15 18 Q. If you scroll to page, what looks like, 11, your
18:31:19 19 exhibit is -- maybe it's four. The numbering is messed
18:31:24 20 up. I apologize. The second to last page, you'll see
18:31:27 21 your signature on it, right?
18:31:28 22 A. Yes.
18:31:31 23 Q. How familiar are you with the bylaws?
18:31:34 24 A. Fairly familiar. I've had -- I went through an
18:31:39 25 attorney to have them evaluate the bylaws.

18:31:43 1 Q. Do these bylaws provide how an individual can be --
18:31:47 2 provide for how an individual can become a member of TPCA?
18:31:50 3 A. No.
18:31:52 4 Q. I'm sorry, I didn't finish my question. Did these
18:31:55 5 bylaws provide for how an individual can become a member
18:31:58 6 of TPCA?
18:32:28 7 A. No.
18:32:30 8 Q. Did these bylaws provide any rights or qualifications
18:32:37 9 or responsibilities for members of TPCA?
18:32:39 10 A. No.
18:32:46 11 Q. You were the President of TPCA, right?
18:32:50 12 A. Correct.
18:32:53 13 Q. And that is an executive leadership position elected
18:32:58 14 by the board, right, or chosen by the board?
18:33:08 15 A. It can be. It was not a chosen position of the board
18:33:15 16 during our original formation.
18:33:19 17 Q. When were the last board of director elections?
18:33:28 18 A. TPCA is three years old and we have not had -- I
18:33:43 19 don't recall the exact date. It was at some point last
18:33:47 20 year, we brought on board members.
18:33:49 21 Q. You don't need an exact date. About a year ago?
18:33:52 22 Could we guess that?
18:33:53 23 A. I don't recall.
18:33:53 24 Q. Okay. Were you present?
18:33:55 25 A. Yes.

18:33:57 1 Q. Can you recall approximately how many other people
18:33:59 2 were present?
18:34:03 3 A. We established a quorum so majority was present.
18:34:10 4 Q. A majority of the board?
18:34:11 5 A. Yes.
18:34:14 6 Q. Was anybody else present outside of the board?
18:34:18 7 A. No.
18:34:20 8 Q. Were elections held for board members then?
18:34:23 9 A. Yes.
18:34:25 10 Q. And so, did the board ostensibly vote for themselves?
18:34:34 11 A. Last year, no. We reached a quorum, we presented a
18:34:39 12 potential new board member. That board member was then
18:34:42 13 voted on.
18:34:45 14 Q. Who can vote for board members in TPCA?
18:34:52 15 A. Other existing board members.
18:34:56 16 Q. No further questions, your Honor. Thank you, Dr.
18:35:00 17 Dominick.
18:35:01 18 MR. HOMIAK: No redirect, your Honor. I ask that
18:35:03 19 Dr. Dominick be excused.
18:35:04 20 THE COURT: Okay. Thank you. You may step down.
18:35:17 21 The court reporter needs a short break. Let's take a
18:35:19 22 break and we have one more brief witness?
18:35:21 23 MR. HOMIAK: Yes, your Honor.
18:35:22 24 THE COURT: Very good. We'll take a brief break
18:35:24 25 at 10 minutes.

18:44:21 1 (Recess.)

18:46:00 2 THE COURT: Next witness.

18:46:04 3 MS. GROSSMAN: Plaintiffs call Brittany

18:46:16 4 Robertson.

18:46:22 5 THE COURT: Before you take a seat, if you could

18:46:25 6 raise your right hand to be sworn, please.

18:46:27 7 THE CLERK: You do solemnly swear or affirm that

18:46:27 8 the testimony which you may give in the case now before

18:46:27 9 the Court shall be the truth, the whole truth, and nothing

18:46:32 10 but the truth?

18:46:32 11 THE WITNESS: I do.

18:46:33 12 THE COURT: Please be seated.

18:46:35 13 BRITTANY ROBERTSON, called by the Plaintiff, duly sworn.

18:46:35 14 DIRECT EXAMINATION

18:46:37 15 BY MS. GROSSMAN:

18:46:37 16 Q. Good evening. Please state your name for the record.

18:46:42 17 A. Brittany Robertson.

18:46:44 18 Q. Thank you for flying in today. Do you currently work

18:46:46 19 with Texas Prison Community Advocates?

18:46:49 20 A. Yes.

18:46:49 21 Q. Can you describe your role there, please?

18:46:51 22 A. Director of incarcerated individuals and the task

18:46:55 23 chair for Texans Against Solitary Confinement.

18:46:58 24 Q. Can you briefly tell us what you do in your role as

18:47:01 25 director of incarcerated individuals?

18:47:03 1 A. I help advise incarcerated individuals on different
18:47:06 2 avenues they can take for internal activism such as
18:47:11 3 policies, providing resources, helping to submit
18:47:15 4 complaints, and gathering different documentation to
18:47:18 5 assist them in their efforts.
18:47:20 6 Q. And do you communicate with people inside prisons?
18:47:22 7 A. Daily.
18:47:23 8 Q. Daily?
18:47:24 9 A. Yes, ma'am.
18:47:25 10 Q. Do you communicate with any today?
18:47:29 11 A. Yes, ma'am. I have missed messages and calls today.
18:47:32 12 Q. And what are TPCA team members?
18:47:35 13 A. Team members are incarcerated individuals who reside
18:47:40 14 inside of a unit, in various places within units, general
18:47:44 15 population and restricted or solitary. Those individuals
18:47:48 16 help to identify breaks in policy. They also help assist
18:47:54 17 in gathering different documentation such as amount of
18:48:03 18 time let out of a cell.
18:48:04 19 Q. Approximately, how many TPCA members are currently
18:48:08 20 incarcerated in TDCJ facilities?
18:48:10 21 A. Roughly 50.
18:48:11 22 Q. And how do you communicate with people inside
18:48:13 23 prisons?
18:48:14 24 A. Tablets, phone calls, e-messaging and paper, ma'am.
18:48:19 25 Q. And based on those communications, do you have any

18:48:21 1 concerns about heat in Texas prison?
18:48:23 2 A. Daily.
18:48:25 3 Q. Did you say daily?
18:48:26 4 A. Yes, ma'am.
18:48:27 5 Q. Do you receive daily complaints about heat in Texas
18:48:32 6 prisons?
18:48:32 7 A. Yes, ma'am.
18:48:33 8 Q. Do you receive complaints from certain facilities
18:48:36 9 more than others?
18:48:37 10 A. Yes.
18:48:37 11 Q. And which ones are those?
18:48:39 12 A. Coffield Unit, Michaels Unit, Ferguson Unit,
18:48:43 13 Wainwright Unit are primarily the worst.
18:48:47 14 Q. What's your understanding of why they're the worst?
18:48:50 15 A. They're built out of red bricks.
18:48:53 16 Q. And what type of unit is Coffield?
18:48:56 17 A. Coffield is a red brick prison unit.
18:48:58 18 Q. Is it restricted housing?
18:48:59 19 A. Yes, ma'am, partially. Solitary confinement or
18:49:05 20 formerly known as ad seg within the TDCJ.
18:49:10 21 Q. This summer, did you receive communications about
18:49:14 22 heat from people in prisons that particularly disturbed
18:49:18 23 you?
18:49:19 24 A. Yes.
18:49:21 25 Q. Was there a particular person that you receive

18:49:26 1 e-mails about that are particularly disturbing?
18:49:28 2 A. Yes, Jason Wilson.
18:49:31 3 Q. Who is Jason Wilson?
18:49:32 4 A. He was a team member who was incarcerated on Coffield
18:49:36 5 Unit.
18:49:36 6 Q. And how long have you known him?
18:49:38 7 A. Two years.
18:49:38 8 Q. How long has he been a team member?
18:49:40 9 A. One year with TPCA.
18:49:46 10 Q. You might have already said this. Is he incarcerated
18:49:49 11 at Coffield?
18:49:50 12 A. Yes.
18:49:51 13 Q. When did you start receiving disturbing e-mails from
18:49:55 14 Mr. Wilson about heat conditions this year?
18:49:58 15 A. It was roughly May but they escalated.
18:50:02 16 Q. And how was he communicating with you?
18:50:05 17 A. Through e-messaging primarily.
18:50:07 18 Q. Would you recognize a copy of those e-messaging?
18:50:10 19 A. Yes.
18:50:11 20 Q. I'd like to open up Exhibit 137 and move to admit
18:50:15 21 that. They're e-mails from Jason Wilson to Brittany
18:50:18 22 Robertson of this year.
18:50:20 23 MR. RHINES: We'll object, your Honor, it's all
18:50:22 24 hearsay.
18:50:25 25 MS. GROSSMAN: Few things. One, it's not truth

18:50:28 1 of the matter. It will go to show notice. And it's also
18:50:30 2 Rule 804, the declarant is unavailable as a witness
18:50:33 3 because he's dead.
18:50:34 4 MR. RHINES: If I may respond, your Honor.
18:50:36 5 THE COURT: Sure.
18:50:37 6 MR. RHINES: Notice to TDCJ or notice to Ms.
18:50:42 7 Robertson?
18:50:43 8 MS. GROSSMAN: Shows why she acted and what she
18:50:47 9 did next to communicate with him. But I would also note
18:50:49 10 that he is dead and unavailable to testify.
18:50:53 11 THE COURT: I'll admit it for purposes of this
18:50:54 12 hearing.
18:50:55 13 MR. RHINES: Thank you, your Honor.
18:50:57 14 Q. (BY MS. GROSSMAN) Is this a fair and accurate copy of
18:51:02 15 the e-mails that you received from Jason Wilson?
18:51:03 16 A. Yes.
18:51:04 17 Q. Let's go over a few of them. Can you go to page 4,
18:51:16 18 please, Kevin. You see in the middle, so the day room
18:51:27 19 doesn't even have a faucet now much less any water. Most
18:51:30 20 days, these guys walk around with backpacks with ice water
18:51:33 21 in them. They came by three times today. Do you see
18:51:39 22 that?
18:51:39 23 A. Yes.
18:51:43 24 Q. If you go to page 5. Mr. Wilson e-mailed you on June
18:51:57 25 25th of this year; is that right?

18:51:58 1 A. Yes.

18:51:59 2 Q. And he told you, I can withstand the heat even though
18:52:02 3 it's a change from the AC, but this not passing water out
18:52:08 4 but once a day as it gets hotter isn't cool. They come
18:52:11 5 early in the morning when it's still cool, but then, from
18:52:14 6 three to nine in the afternoon when it's the hottest,
18:52:15 7 there's nobody around. This place is actually a big mess.

18:52:23 8 A. Yes.

18:52:26 9 Q. Did the water -- did he tell you the water shortage
18:52:30 10 was continuing?

18:52:31 11 A. Yes.

18:52:31 12 Q. Let's go to June 26, the next day, of 2024. He said,
18:52:40 13 I thought yesterday was bad when I sent you that message.
18:52:42 14 It's 5:53 p.m. and we still haven't eaten lunch. They
18:52:47 15 haven't passed out any cold water today at all. Temps are
18:52:50 16 a hundred for the high and 80 for the low for the next
18:52:52 17 seven days so I guess it will probably feel like 115 in
18:52:56 18 here.

18:52:56 19 A. Yes.

18:52:58 20 Q. Did he continue to communicate with you about heat
18:53:03 21 conditions, not getting water at Coffield Unit of this
18:53:07 22 year?

18:53:07 23 A. Yes.

18:53:08 24 Q. Can you go to page 7, please, Kevin. Says hope
18:53:14 25 you're doing good. They might need to get coolers for

18:53:17 1 each one wing and have these SSIs that pass out the food
18:53:20 2 pass out the cold water, also. Those with the backpacks
18:53:23 3 are bucking because it's hot. So we aren't getting cold
18:53:26 4 water. There's not enough staff to do it, though,
18:53:33 5 Brittany. Can you tell us what SSIs are?
18:53:39 6 A. Essentially they're incarcerated individuals who's
18:53:42 7 given a little bit more freedom.
18:53:44 8 Q. So do they often pass out water?
18:53:46 9 A. Yes.
18:53:47 10 Q. And do they often pass out water instead of officers?
18:53:53 11 A. Yes.
18:53:55 12 Q. And did these complaints from Jason Wilson continue
18:53:59 13 into July of this year?
18:54:00 14 A. Yes.
18:54:01 15 Q. Can you go to page 8, please, Kevin. So July 1st,
18:54:07 16 Jason Wilson said that it was pretty warm today. No cold
18:54:10 17 water at all. It's 5:45 p.m. the step one is turned in
18:54:14 18 but we need cold water like now. Do you see that?
18:54:16 19 A. Yes.
18:54:18 20 Q. Do you know what a step one is?
18:54:19 21 A. Yes.
18:54:20 22 Q. What is that?
18:54:20 23 A. They're the only available avenue to seek help.
18:54:23 24 Q. And I know you know a lot of different phrases. Is
18:54:27 25 step one a grievance?

18:54:28 1 A. Yes, ma'am.
18:54:29 2 Q. How many grievance steps are there?
18:54:33 3 A. Two before the ombudsman.
18:54:38 4 Q. Okay. And did the complaints from Jason Wilson
18:54:42 5 continue?
18:54:42 6 A. Yes.
18:54:45 7 Q. If you look at July 3rd of this year. It says wonder
18:55:12 8 how long -- I'd be happy to talk to Sherman. Don't know
18:55:15 9 if I would be eligible but he was on forgiven felons and
18:55:19 10 seems pretty down to earth and like he's for reform. I
18:55:21 11 know he's all about us getting AC here in TDCJ. Do you
18:55:26 12 know who he's referring to when he says Sherman?
18:55:28 13 A. State House Representative Sherman.
18:55:32 14 Q. And what was that? Do you know what he's talking
18:55:36 15 about when he's saying he'd be happy to talk to him about
18:55:38 16 Sherman -- or talk to Sherman; is that right?
18:55:41 17 A. Sherman sits on the Corrections Committee who we
18:55:44 18 often seek when administrative remedies don't work.
18:55:47 19 Q. Has he been pretty vocal about getting air
18:55:50 20 conditioning in the Texas prisons?
18:55:51 21 A. Yes.
18:55:52 22 Q. Okay. The officers yesterday had to get on the radio
18:56:02 23 and ask for water on this wing. The SSIs said they
18:56:05 24 weren't coming over here till the boss called on the
18:56:10 25 radio. I don't know what that was all about but there

18:56:13 1 needs to be some type of change on how they distribute the
18:56:15 2 water. I mean, once a day is better than not coming but
18:56:18 3 it needs to be more than once a day. The issue with the
18:56:20 4 SSI is that it's too hot to be walking around on all four
18:56:23 5 rows passing water out. See that?
18:56:25 6 A. Uh-huh.
18:56:25 7 Q. That's on July 3 of 2024?
18:56:29 8 A. Yes.
18:56:30 9 Q. Was that the last communication you received from Mr.
18:56:35 10 Wilson?
18:56:35 11 A. Yes.
18:56:36 12 Q. You ended up calling Coffield Unit for wellness
18:56:41 13 checks; is that right?
18:56:41 14 A. Yes.
18:56:42 15 Q. And why did you end up calling?
18:56:44 16 A. I was sent an additional message that notified me I
18:56:48 17 needed to check on him immediately and it was not good.
18:56:51 18 Q. And when did you receive -- how many messages did you
18:56:54 19 receive about problems that made you call Jason Wilson?
18:56:59 20 A. Three.
18:57:01 21 Q. How many e-mails did you receive before you called
18:57:08 22 about Jason Wilson?
18:57:09 23 A. Oh, I woke up to four messages total.
18:57:13 24 Q. Let's look at those. That's Exhibit 264, I'd like to
18:57:18 25 move to admit that.

18:57:20 1 MR. RHINES: Same objection, your Honor.
18:57:21 2 Hearsay.
18:57:22 3 THE COURT: Overruled and admitted.
18:57:25 4 Q. (BY MS. GROSSMAN) If you go to page 6, please. This
18:57:54 5 is July 6, 2024 and it said, today and yesterday 7-4-24
18:58:02 6 and 7-5-25 as camera showed two people passed out due to
18:58:06 7 heat exhaustion on Coffield left wing, third row along
18:58:09 8 with no officers to help as inmates banged and had to
18:58:12 9 start fires to get attention over a period of hours.
18:58:15 10 Inmates left in day room for eight to nine hours at a time
18:58:17 11 with no water and not changing out inmates only two shots
18:58:21 12 all day on one wing. Both days, leaving the rest out, no
18:58:25 13 with showers or day room as policy states. Do you see
18:58:28 14 that?
18:58:29 15 A. Yes.
18:58:30 16 Q. And then, you received another message specifically
18:58:32 17 about Jason Wilson mentioning his name; is that right?
18:58:34 18 A. Yes.
18:58:34 19 Q. That's page 6.
18:58:38 20 A. Yes.
18:58:38 21 Q. July 7, 2024, it says hello, Brittany. Need to check
18:58:42 22 on Jason Wilson immediately. I don't think it's good.
18:58:46 23 What did you do after that?
18:58:47 24 A. I immediately called for a wellness check.
18:58:50 25 Q. And how many times did you end up calling?

18:58:53 1 A. To the -- into that unit three days -- or that day,
18:58:57 2 three times total.
18:58:58 3 Q. Did you record each call?
18:59:00 4 A. Yes.
18:59:00 5 Q. What were you told on the final call?
18:59:04 6 MR. RHINES: Objection. Hearsay, your Honor.
18:59:06 7 MS. GROSSMAN: Statement of a party opponent.
18:59:08 8 THE COURT: For a variety of reasons, that's
18:59:10 9 admissible. Overruled. Go ahead.
18:59:13 10 Q. (BY MS. GROSSMAN) What were you told about Jason
18:59:15 11 Wilson's well-being on that final call?
18:59:17 12 A. On the final call, he was alive and well.
18:59:20 13 Q. That was on what date?
18:59:21 14 A. Two days postmortem.
18:59:23 15 Q. Was it July 7, 2024?
18:59:26 16 A. Yes, ma'am.
18:59:26 17 Q. I'd like to play a recording of that call and it's
18:59:29 18 Exhibit 214. It's about three minutes long, your Honor,
18:59:36 19 so I think for completeness, we should play the whole call
18:59:38 20 but there is a lot of space.
18:59:40 21 THE COURT: Fine.
18:59:41 22 MS. GROSSMAN: Okay. Thank you.
18:59:43 23 MR. RHINES: Sorry, before the call, I'd like to
18:59:47 24 object to the call. This is completely unverified and
18:59:52 25 whether it relates to the death of Jason Wilson, we're not

18:59:55 1 even sure how Jason Wilson died. The autopsy reports
18:59:59 2 aren't been back yet so this is completely irrelevant so
19:00:02 3 for as Mr. Collier's concerned.
19:00:05 4 THE COURT: A response as far as unverified.
19:00:14 5 MS. GROSSMAN: It's unverified. It's her call.
19:00:15 6 It's a call with this witness and it's a statement by one
19:00:18 7 of your employees and he did die out of custodial death.
19:00:23 8 I have the report here. I'm not putting in evidence of
19:00:25 9 how he died. In fact, the autopsy doesn't seem to be that
19:00:30 10 -- so I'm not -- I'm just showing that he did die and that
19:00:33 11 she was told -- what she was told two days after he died.
19:00:40 12 THE WITNESS: Also that --
19:00:42 13 THE COURT: Sorry.
19:00:44 14 MR. RHINES: If I may respond.
19:00:45 15 THE COURT: Sure.
19:00:46 16 MR. RHINES: They're putting on evidence about an
19:00:48 17 inmate that died and they don't pertain to show how he
19:00:52 18 died, or anything else, that is not relevant to this
19:00:55 19 proceeding.
19:00:55 20 THE COURT: Well, I think you're forgetting the
19:00:57 21 series of e-mails where he's talking about heat and water
19:01:00 22 distribution. I mean, this isn't in a vacuum, right?
19:01:04 23 MR. RHINES: I agree, your Honor, in that sense.
19:01:07 24 THE COURT: Yeah, in that sense, it's overruled.
19:01:09 25 Go ahead.

19:01:09 1 MR. RHINES: Thank you, your Honor.
19:01:13 2 (Audio file played.)
19:05:15 3 Q. (BY MS. GROSSMAN) Was everything okay?
19:05:17 4 A. No. He was already dead.
19:05:20 5 Q. Copy of the death report for Jason Wilson?
19:05:25 6 A. Uh-huh.
19:05:26 7 Q. Pull up 152, please, the custodial death report from
19:05:31 8 the Attorney General's Office. I'd like to move to admit
19:05:35 9 it.
19:05:36 10 MR. RHINES: I would like to see counsel lay a
19:05:44 11 foundation for this.
19:05:45 12 THE COURT: Okay.
19:05:47 13 Q. (BY MS. GROSSMAN) After Mr. Wilson died, did you
19:05:50 14 review the custodial death report?
19:05:53 15 A. Immediately.
19:05:53 16 Q. And are you familiar, do you routinely view custodial
19:05:58 17 death reports of inmates who die?
19:05:59 18 A. Absolutely.
19:06:01 19 Q. Would that be one of the first things that you do
19:06:04 20 when someone dies?
19:06:05 21 A. Instantly.
19:06:05 22 Q. And do you wait looking for the autopsy -- or looking
19:06:07 23 for the cause of death?
19:06:08 24 A. I track it, set a reminder when it's done.
19:06:15 25 Q. I'd like to move to admit it.

19:06:19 1 THE COURT: So admitted.

19:06:20 2 MR. RHINES: No objection.

19:06:21 3 Q. (BY MS. GROSSMAN) And as you can see on page 2, Jason
19:06:28 4 Wilson has died. They're reporting him dying on July 5th,
19:06:32 5 2024, right?

19:06:33 6 A. Yes.

19:06:33 7 Q. And just to clarify the phone call in which they said
19:06:35 8 he was okay when you called for wellness checks was two
19:06:39 9 days after that?

19:06:39 10 A. Yes.

19:06:39 11 Q. Thank you.

19:06:48 12 CROSS-EXAMINATION

19:06:48 13 BY MR. RHINES:

19:07:00 14 Q. Good afternoon again, your Honor.

19:07:01 15 Good afternoon, Ms. Robertson.

19:07:03 16 A. Afternoon.

19:07:03 17 Q. My name is Zac Rhines. I represent Mr. Collier.

19:07:09 18 One of the messages -- the e-mail messages that
19:07:12 19 was shown to you earlier, somebody messaged you from
19:07:15 20 Jason's account, right?

19:07:16 21 A. Yes.

19:07:16 22 Q. Somebody who is not Jason Wilson.

19:07:18 23 A. Yes.

19:07:19 24 Q. Do you know who that was?

19:07:20 25 A. No.

19:07:22 1 Q. Do you personally know any of the other individuals
19:07:24 2 who messaged you about Mr. Wilson?
19:07:26 3 A. About him specifically, no.
19:07:29 4 Q. You don't know any of them?
19:07:32 5 A. Can you rephrase?
19:07:33 6 Q. Yes. You said you woke up to four messages about Mr.
19:07:38 7 Wilson, right?
19:07:39 8 A. Yes.
19:07:40 9 Q. Do you personally know any of the individuals who
19:07:43 10 messaged you about Mr. Wilson?
19:07:46 11 A. So one individual was another person on that unit and
19:07:51 12 three other messages came from Jason Wilson's tablet.
19:07:56 13 They weren't reviewed until that morning from the unit.
19:08:00 14 Q. Okay. So the three messages from Jason Wilson's
19:08:03 15 tablet, you don't know who sent those, right?
19:08:06 16 A. No. We've been trying to find out.
19:08:08 17 Q. And the one message from the person in Mr. Wilson's
19:08:12 18 unit.
19:08:12 19 A. Yes.
19:08:13 20 Q. Do you know that individual?
19:08:14 21 A. Not closely, no.
19:08:19 22 Q. And as a result of these messages, you made a phone
19:08:22 23 call to TDCJ, right?
19:08:23 24 A. Yes.
19:08:24 25 Q. And you have a telephone record showing you made this

19:08:28 1 phone call?
19:08:29 2 A. Yes. The ombudsman also reviewed it and he has
19:08:32 3 verified.
19:08:33 4 Q. Okay. Do you know who you spoke to at TDCJ?
19:08:36 5 A. The woman who answered the phone, no, she didn't
19:08:41 6 identify herself.
19:08:41 7 Q. And in fact, you spoke to -- did you speak to
19:08:44 8 multiple people?
19:08:45 9 A. They didn't identify themselves.
19:08:48 10 Q. Could you identify by their voice whether they were
19:08:50 11 different people?
19:08:51 12 A. No, sir, not on their phone system.
19:08:56 13 Q. Do you know why Mr. Wilson passed away?
19:09:02 14 A. No. The autopsy results haven't come back yet, but I
19:09:06 15 suspect it has to do with the day room water that's not
19:09:09 16 working still today.
19:09:16 17 Q. Did Mr. Wilson ever sign a release giving you access
19:09:19 18 to his medical records?
19:09:20 19 A. Yes.
19:09:22 20 Q. With TDCJ?
19:09:23 21 A. Yes. His prior unit on McConnell, we were helping
19:09:29 22 get him some medical care.
19:09:35 23 Q. No further questions, your Honor. Thank you, Ms.
19:09:38 24 Robertson.
19:09:39 25 A. You're welcome.

19:09:39 1 THE COURT: Anything further?
19:09:41 2 MS. GROSSMAN: Just one.
19:09:42 3 RE-DIRECT EXAMINATION
19:09:42 4 BY MS. GROSSMAN:
19:09:43 5 Q. Did you try using that medical release to get a copy
19:09:46 6 of Mr. Wilson's medical records to find out what happened
19:09:48 7 to him?
19:09:48 8 A. Yes.
19:09:50 9 Q. Did you get that right after he died?
19:09:51 10 A. Yes.
19:09:52 11 Q. Have you received those medical records from TDCJ?
19:09:55 12 A. No.
19:09:55 13 Q. Thank you.
19:09:57 14 THE COURT: Any followup?
19:10:02 15 MR. RHINES: No more, your Honor.
19:10:03 16 THE COURT: Okay. Thank you. Any further
19:10:07 17 witnesses?
19:10:08 18 MR. HOMIAK: Your Honor, no with one caveat,
19:10:11 19 which is Mr. Collier's counsel has represented that he
19:10:14 20 will be testifying in their case-in-chief. So with that
19:10:18 21 representation, we will not be calling any further
19:10:21 22 witnesses and plaintiffs rest.
19:10:23 23 THE COURT: I understand. Okay. Thank you all
19:10:25 24 for bearing up after a very long day. Appreciate
19:10:33 25 everyone's cooperation in getting this done. We will

19:10:35 1 break for the day and we will start tomorrow with the
19:10:38 2 defendants' case. Anything we need to take up,
19:10:41 3 housekeeping-wise, before we end?
19:10:44 4 Let me -- and I'm not holding you to it but given
19:10:48 5 what you know about our timing and the fact that we have a
19:10:51 6 hard stop at 4:00 on Friday, do we want to start early
19:10:55 7 tomorrow, as well?
19:11:01 8 MS. CARTER: I think if we're starting at 9:00,
19:11:04 9 we have all our witnesses.
19:11:05 10 THE COURT: And again, if that doesn't end up
19:11:06 11 that way, that's fine. We'll start at 9:00 then. I'm
19:11:10 12 sorry.
19:11:11 13 MR. RHINES: Oh, I didn't mean to interrupt, your
19:11:13 14 Honor. Housekeeping issues separate from that.
19:11:15 15 THE COURT: Sure. That's fine.
19:11:16 16 MR. RHINES: I believe when I cross-examined Dr.
19:11:19 17 Dominick that two witnesses ago, I believe I forgot to
19:11:22 18 request admission of Exhibit 35. We would like to move to
19:11:27 19 have that admitted.
19:11:28 20 THE COURT: Okay. Was that --
19:11:30 21 MR. RHINES: That was the bylaws.
19:11:32 22 THE COURT: Bylaws. Any objection?
19:11:35 23 MR. HOMIAK: No objection, your Honor.
19:11:36 24 THE COURT: Without objection, so admitted.
19:11:39 25 MS. ELLIS: One more housekeeping matter. When

19:11:42 1 would be your Honor's preference on our timeline of filing
19:11:46 2 our optional completeness designations for Mr. Sweetin's
19:11:50 3 deposition?
19:11:50 4 THE COURT: Yeah, that's pretty important so I'm
19:11:52 5 going to give you the opportunity. I see somebody hopping
19:11:56 6 up over there. Can't miss it when he hops up. So I'll
19:12:05 7 give you the time you need. What would you suggest?
19:12:08 8 MS. ELLIS: I think no sooner than probably
19:12:11 9 Monday. I mean, that way, we can get through the hearing
19:12:15 10 and focus on the hearing but...
19:12:16 11 THE COURT: And that raises a good point. I'm
19:12:18 12 certainly going to give you an opportunity to file
19:12:21 13 post-hearing briefings and that could be a part of that.
19:12:24 14 We're not in a hurry about that because I know that things
19:12:27 15 happen very quickly, especially with depositions and
19:12:29 16 things. And so, I want to give you the full opportunity
19:12:32 17 to respond and sort of be content with what the record is
19:12:39 18 in that regard.
19:12:41 19 Mr. Edwards.
19:12:43 20 MR. EDWARDS: I just wanted to kind of get the
19:12:46 21 deadline because depending on what they designate. If
19:12:48 22 we're only talking about optional completeness, it's not a
19:12:50 23 huge deal, but I just want to kind of know as we may
19:12:54 24 redesignate in light of that. But I don't anticipate that
19:12:57 25 but I was hoping that would be during the days of trial in

19:13:02 1 case we had to do something and not --
19:13:05 2 THE COURT: I understand. It's not ideal and it
19:13:08 3 never is. And so, what I would hope you would do is
19:13:11 4 perhaps engage in some discussions about sort of back and
19:13:14 5 forth what you can do to accommodate each other. And
19:13:19 6 given that when we finish on Friday, if you want to have
19:13:25 7 some discussions about what would you propose in terms of
19:13:29 8 a post-hearing briefing schedule for providing proposed
19:13:34 9 findings of fact and conclusions of law. I understand,
19:13:38 10 you know, from the plaintiffs' perspective, as always,
19:13:42 11 time is of the essence, but we also want to be very
19:13:45 12 careful in giving everyone the opportunity to make sure
19:13:49 13 that we have a full and complete and accurate record.
19:13:53 14 So let me start with suggesting that you engage
19:13:57 15 in some dialogue about how we do that and what you would
19:13:59 16 suggest to me would be a reasonable post-hearing schedule
19:14:04 17 and we'll go from there.
19:14:07 18 MS. ELLIS: Just for clarification. So Monday is
19:14:09 19 fine for us to get the optional completeness designations.
19:14:12 20 THE COURT: Yes. And to the extent that that
19:14:14 21 raises issues for you, Mr. Edwards, we'll give you the
19:14:17 22 opportunity to respond to that. I'm not going to get
19:14:20 23 anything out next week on this.
19:14:24 24 MR. EDWARDS: I think that counsel for both sides
19:14:26 25 can confer on this tonight so that if we have a

19:14:28 1 disagreement, we can raise it tomorrow.
19:14:29 2 THE COURT: That'd be great.
19:14:31 3 MS. ELLIS: Absolutely. Thank you, your Honor.
19:14:32 4 THE COURT: Anything else?
19:14:33 5 MS. ELLIS: No, your Honor.
19:14:33 6 THE COURT: Okay.
19:14:35 7 MR. HOMIAK: Nothing for the plaintiffs. Thank
19:14:37 8 you, your Honor.
19:14:37 9 THE COURT: Again, thank you very much for
19:14:38 10 hanging in there and we will see you at 9:00 tomorrow
19:14:41 11 morning.
12 (Proceedings adjourned.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1 * * * * * *

2

3 UNITED STATES DISTRICT COURT)

4 WESTERN DISTRICT OF TEXAS)

5

6 I, LILY I. REZNIK, Certified Realtime Reporter,

7 Registered Merit Reporter, in my capacity as Official

8 Court Reporter of the United States District Court,

9 Western District of Texas, do certify that the foregoing

10 is a correct transcript from the record of proceedings in

11 the above-entitled matter.

12 I certify that the transcript fees and format comply

13 with those prescribed by the Court and Judicial Conference

14 of the United States.

15 WITNESS MY OFFICIAL HAND this the 14th day of August,

16 2024.

17 Lily Iva Reznik

18 ~~~~~~~~~~~~~~~~~~~~~~~

LILY I. REZNIK, CRR, RMR

19 *Official Court Reporter*

United States District Court

20 *Austin Division*

501 West 5th Street,

21 *Suite 4153*

Austin, Texas 78701

22 *(512)391-8792*

SOT Certification No. 4481

23 *Expires: 1-31-25*

24

25