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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BERNHARDT TIEDE, II,) Docket No. A 23-CA-1004 RP
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)
)
vs.) Austin, Texas
)
BRYAN COLLIER, IN HIS)
OFFICIAL CAPACITY AS)
EXECUTIVE DIRECTOR OF)
TEXAS DEPARTMENT OF)
CRIMINAL JUSTICE, ET AL) August 1, 2024

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ROBERT L. PITMAN
Volume 3 of 4

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I N D E X

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08:59:57 1 THE COURT: And good morning.

08:59:59 2 MR. HOMIAK: Good morning.

09:00:00 3 THE COURT: Anything we need to cover before we

09:00:02 4 begin today? Any housekeeping issues?

09:00:08 5 MS. ELLIS: No, your Honor.

09:00:09 6 THE COURT: Okay.

09:00:10 7 MR. HOMIAK: Nothing for the plaintiffs. We have

09:00:13 8 some exhibits to admit, though. We're good, your Honor.

09:00:20 9 Thank you.

09:00:20 10 THE COURT: All right.

09:00:24 11 MR. RHINES: Your Honor, I don't see her here in

09:00:27 12 the courtroom today, but we would like to attempt to call

09:00:30 13 Ms. Jennifer Toon as our first witness. She was here

09:00:37 14 yesterday and the day before. She is a member of the

09:00:40 15 plaintiff organization Lioness.

09:00:43 16 THE COURT: Is she here?

09:00:47 17 MR. HOMIAK: Not to our knowledge, your Honor.

09:00:55 18 MR. RHINES: In that case, your Honor, I have two

09:00:56 19 matters. I'd like to first move to offer into evidence

09:00:59 20 what we had marked as Plaintiffs' Exhibit No. 69. This is

09:01:06 21 a certified copy from the New Jersey -- I believe it's

09:01:13 22 secretary of state -- state treasurer, your Honor, with

09:01:19 23 Lioness' -- or rather, Plaintiff Build Up, Inc.'s first --

09:01:25 24 their articles of incorporation.

09:01:29 25 THE COURT: Any objection?

09:01:31 1 MR. HOMIAK: Your Honor, I don't think the
09:01:33 2 foundation has been laid. If I recall correctly, I think
09:01:35 3 they tried to introduce a similar document during Ms.
09:01:40 4 Simmons' testimony and she said that she didn't recognize
09:01:43 5 it and had no role in preparing it. So I don't know what
09:01:47 6 the difference is now as compared to when Ms. Simmons was
09:01:50 7 asked about this document.

09:01:52 8 MR. RHINES: Because this is a certified
09:01:53 9 document, I believe it qualifies under Rule 902 as
09:01:58 10 self-authenticating. It's from the New Jersey -- it's
09:02:00 11 from the New Jersey treasurer, who is responsible for the
09:02:05 12 corporate filings of any corporation incorporated in the
09:02:08 13 state of New Jersey, and I think it's perfectly
09:02:11 14 appropriate for the Court to take judicial notice of that,
09:02:13 15 admit it as a self-authenticating document.

09:02:16 16 THE COURT: Do you have any dispute as to whether
09:02:18 17 or not this is an authentic document?

09:02:20 18 MR. HOMIAK: No, your Honor.

09:02:20 19 THE COURT: Okay. So admitted.

09:02:22 20 MR. RHINES: Thank you, your Honor. And second,
09:02:24 21 Mr. Collier would like to make an offer of proof, if the
09:02:28 22 Court would so allow, with regard to the bylaws of the
09:02:35 23 Plaintiff Build Up, Inc. which we have listed as Exhibit
09:02:41 24 35.

09:02:46 25 THE COURT: Do you know what he's offering?

09:02:49 1 MR. HOMIAK: No, your Honor. This is the first
09:02:50 2 time I'm hearing about this.

09:02:51 3 THE COURT: Would you like to disclose that to
09:02:54 4 the plaintiff?

09:02:55 5 MR. RHINES: I'm sorry, not Plaintiffs' Exhibit
09:02:58 6 35, your Honor. Defendants' Exhibit 35, your Honor. It
09:03:00 7 is a collection of Lioness' bylaws that plaintiffs
09:03:09 8 disclosed to us prior to this trial. I believe my
09:03:13 9 colleague attempted to have this document also introduced
09:03:17 10 before Ms. Simmons, the first witness that appeared today,
09:03:19 11 your Honor -- or that appeared on Monday. Tuesday. The
09:03:23 12 first witness that appeared in this hearing. And we would
09:03:27 13 simply like to make an offer of proof showing what we
09:03:30 14 intended to prove with this document.

09:03:32 15 THE COURT: Okay. Just as an offer of proof, do
09:03:34 16 you have any objection?

09:03:35 17 MR. HOMIAK: You just to relevance, your Honor,
09:03:37 18 but that's it.

09:03:38 19 THE COURT: Okay. I'll accept your offer of
09:03:40 20 proof then. It's again, Defendants' 36, did you say, I'm
09:03:46 21 sorry?

09:03:46 22 MR. RHINES: I believe Defendants' 35.

09:03:48 23 THE COURT: Thirty-five. We show it as having
09:03:57 24 been admitted already.

09:04:02 25 MR. RHINES: Defendants' 35, the bylaws? Oh,

09:04:13 1 that's TPCA. I'm sorry, your Honor, 31. I'm sorry, your
09:04:16 2 Honor.

09:04:17 3 THE COURT: Okay.

09:04:18 4 MR. RHINES: Got the wires crossed.

09:04:20 5 THE COURT: That's fine. Thirty-one will be
09:04:22 6 admitted as an offer of proof.

09:04:24 7 MR. RHINES: Thank you, your Honor if I may
09:04:25 8 briefly.

09:04:26 9 MR. DUKE: Sorry. Just for the record, can we
09:04:27 10 note our objection on relevance to that?

09:04:29 11 THE COURT: Sure. Objection noted.

09:04:31 12 MR. RHINES: And briefly, your Honor, if I may
09:04:34 13 provide a narrative to the Court as to what this document
09:04:37 14 intends to prove.

09:04:37 15 THE COURT: Sure.

09:04:38 16 MR. RHINES: This document, if you look at page
09:04:43 17 2, Section 1.04 membership, it states -- should I come up
09:04:51 18 to the podium?

09:04:52 19 THE COURT: Probably be better if you don't mind.

09:04:54 20 MR. RHINES: Yes, your Honor.

09:04:55 21 THE COURT: Thank you.

09:05:02 22 MR. RHINES: So as I said, your Honor, this is
09:05:08 23 Defendants' Exhibit No. 31, it is the bylaws of Plaintiff
09:05:13 24 Build Up, Inc., and if you'll look at the Defendants'
09:05:19 25 Exhibit 69, which we admitted, it states on page 2 that

09:05:22 1 membership will be determined by the bylaws for Build Up,
09:05:26 2 Inc. and the bylaws for Build Up, Inc. show, again, page 2
09:05:32 3 of the bylaws, Section 1.04 membership, the sole member of
09:05:37 4 the corporation shall be A. Nicole Campbell, the member.
09:05:44 5 And I believe that is all that we intend to prove with
09:05:47 6 this document, your Honor.

09:05:47 7 THE COURT: Thank you very much.

09:05:49 8 MR. RHINES: Thank you.

09:05:54 9 MR. HOMIAK: Your Honor, if I may very briefly be
09:05:56 10 heard. I think we covered this briefly with Ms. Simmons
09:05:59 11 and I don't think it's necessary for us to bring a
09:06:02 12 corporate law expert in here. But obviously, there's a
09:06:03 13 difference between a corporate member for purposes of
09:06:06 14 incorporation and a member for purposes of an
09:06:09 15 organization. So that's the only point I wanted to make
09:06:11 16 for the record and Mr. --

09:06:13 17 MR. DUKE: Sorry, I just wanted to make one other
09:06:15 18 -- only to the legal point of the basis for the relevance
09:06:17 19 objection. The Supreme Court has made clear that when an
09:06:20 20 organization presents their members in good faith and
09:06:23 21 represents them that, there's no further inquiry into the
09:06:26 22 corporate workings of the organization. So that's the
09:06:29 23 basis of the relevance. That's SSFA vs. Harvard.

09:06:33 24 THE COURT: Thank you very much. All right.

09:06:35 25 Next witness.

09:06:38 1 MS. ELLIS: Absolutely, your Honor. Defendant
09:06:39 2 would like to call Bobby Lumpkin to the stand.

09:06:46 3 THE COURT: Mr. Lumpkin. Good morning. Raise
09:07:11 4 your right hand to be sworn.

09:07:12 5 THE CLERK: You do solemnly swear or affirm that
09:07:12 6 the testimony which you may give in the case now before
09:07:12 7 the Court shall be the truth, the whole truth, and nothing
09:07:19 8 but the truth?

09:07:19 9 THE WITNESS: Yes.

09:07:20 10 THE COURT: Please be seated.

09:07:31 11 BOBBY LUMPKIN, called by the Defendant, duly sworn.

09:07:31 12 DIRECT EXAMINATION

09:08:21 13 BY MS. ELLIS:

09:08:21 14 Q. Good morning. Will you please state your name for
09:08:26 15 the record?

09:08:26 16 A. Yes. Bobby Lumpkin.

09:08:27 17 Q. Mr. Lumpkin, where do you currently work?

09:08:30 18 A. Texas Department of Criminal Justice.

09:08:32 19 Q. And how long have you worked there?

09:08:34 20 A. Thirty-three-and-a-half years.

09:08:35 21 Q. That's a long time.

09:08:37 22 A. Yes, ma'am.

09:08:37 23 Q. Can you please just briefly tell the Court the
09:08:40 24 positions you've held over the course of these 30-plus
09:08:43 25 years?

09:08:43 1 A. Sure. I'll start with just current and then, I'll
09:08:46 2 start from the beginning. So currently, I've served as
09:08:48 3 the correctional institution division director since
09:08:52 4 August 15th of 2020. Started my career with the agency in
09:08:56 5 November of 1990 as a correctional officer. I worked up
09:08:59 6 through the ranks and then, in early 2000s, went to
09:09:03 7 administrative duties such as overseeing the correctional
09:09:09 8 association, accreditation process, monitoring of
09:09:12 9 standards, oversight of our facilities. In late 2007,
09:09:18 10 promoted to deputy director of property facilities,
09:09:22 11 contract monitor and oversight division overseeing our
09:09:25 12 privately operated secure facilities. In 2013, promoted
09:09:30 13 to division director of manufacturing, agribusiness and
09:09:33 14 logistics overseeing our industry warehouse logistics.
09:09:37 15 And then, August 2020, returned to correctional
09:09:40 16 institutions division as the division director.

09:09:42 17 Q. Okay. And what is the correctional institutions
09:09:45 18 division?

09:09:45 19 A. It oversees the 93 state-operated facilities to
09:09:50 20 include laundry, food service and supply department,
09:09:54 21 classification of records. I'm overseeing 134,000
09:09:59 22 inmates. The operations, carrying out certainly public
09:10:03 23 safety but the safety and security of those incarcerated
09:10:05 24 and the men and women that work on those facilities.

09:10:08 25 Q. So TDCJ's a large agency. Is CID the only division

09:10:12 1 within TDCJ?

09:10:13 2 A. No, it's not.

09:10:14 3 Q. Okay. How many other divisions are there?

09:10:16 4 A. There's 16 divisions total.

09:10:18 5 Q. And CID and as the director, what are some of your
09:10:25 6 main responsibilities?

09:10:26 7 A. Main responsibilities is to ensure day-to-day
09:10:29 8 operations are being carried out per our policies, per our
09:10:33 9 procedures to the best of our ability; ensuring that we
09:10:37 10 are protecting, A, number one, public safety but also
09:10:40 11 ensuring that the men and women under our charge that are
09:10:43 12 incarcerated in our facilities are getting the
09:10:47 13 requirements that are needed for day-to-day living but
09:10:49 14 also to include programming, working with our
09:10:52 15 stakeholders, whether it be in our educational, vocation
09:10:56 16 departments, ensuring that all things and programming is
09:10:59 17 being carried out, hopefully preparing them for successful
09:11:03 18 reentry back into society for those going home. For those
09:11:07 19 not going home, still ensure day-to-day operations are
09:11:09 20 being met.

09:11:10 21 Q. So how many people do you have oversight over?

09:11:13 22 A. Roughly 24,000.

09:11:16 23 Q. Okay. When it comes to heat mitigation, do you have
09:11:21 24 any specific responsibilities or is it just more of a
09:11:25 25 general role?

09:11:25 1 A. Specific responsibilities.

09:11:27 2 Q. Can you tell the Court about that?

09:11:28 3 A. Yes. So specific responsibilities is year round such
09:11:34 4 as preparedness of the summer months. Seasonal
09:11:38 5 preparedness directive is sent out from my office to --
09:11:41 6 from myself to the 93 facilities, stakeholders, anybody
09:11:45 7 that has a large footprint, anything to do with the
09:11:50 8 day-to-day operations on a facility on heat mitigation,
09:11:55 9 anything we can do to prevent serious injury during heat,
09:12:00 10 but also during the winter months, also ensuring
09:12:04 11 everything is done in the winter months, as well.

09:12:06 12 Q. You mentioned the summer months. What months are
09:12:08 13 those?

09:12:08 14 A. April 15th into October and, of course, those can
09:12:13 15 extend, depending on the climate. If there's still high
09:12:18 16 temperatures, we can extend that period. So it's just not
09:12:20 17 a set period that it has to be. It certainly could be
09:12:24 18 extended.

09:12:25 19 Q. I definitely want to talk about that more but before
09:12:28 20 we do, how many units are there within TDCJ?

09:12:33 21 A. 101.

09:12:34 22 Q. And of those 101, how many are fully air conditioned?

09:12:39 23 A. Thirty-two.

09:12:40 24 Q. How many are partially air conditioned?

09:12:42 25 A. Fifty-five.

09:12:43 1 Q. Are these recent changes to the units or are these
09:12:48 2 units that have always had partial or full AC?
09:12:50 3 A. Some have had partial or fully but we certainly have
09:12:53 4 added to that through the years.
09:12:54 5 Q. Why have you had to add AC to some of these units?
09:12:58 6 A. As moneys have become available. Certainly we've
09:13:02 7 heard this week, the air conditioning on the Pack Unit.
09:13:05 8 But as more moneys have become available, we have
09:13:07 9 continued to grow the footprint of air-conditioned beds
09:13:10 10 across the state so that operationally, we have those beds
09:13:14 11 and as a resource to put men and women that have a heat
09:13:19 12 score needing that type of bed. That we would just
09:13:21 13 continue to expand the number of air-conditioned beds
09:13:23 14 statewide.
09:13:24 15 Q. So you're telling me that there are plans to expand
09:13:27 16 the number that TDCJ currently has?
09:13:30 17 A. Yes.
09:13:31 18 Q. Do you know some specifics about that?
09:13:33 19 A. Sure.
09:13:33 20 Q. Okay.
09:13:34 21 A. I could tell you first today, that we have 46,000
09:13:37 22 air-conditioned beds. We have over a thousand beds that
09:13:40 23 are -- will be in construction. It's not a new bed, it's
09:13:44 24 a bed being converted to air conditioning and over 14,000
09:13:48 25 beds in design. Of course, next year, another legislative

09:13:53 1 session, we will -- we have already started a discussion
09:13:57 2 internally where we would want to continue to design
09:13:59 3 additional beds if moneys are received to continue to
09:14:04 4 expand above -- think about the 46,000 plus the thousand,
09:14:08 5 plus the construction to 14,000 in design, over 55,000
09:14:12 6 beds. That's 60,000 that moneys are received again next
09:14:17 7 year, we would expand additional beds and those
09:14:21 8 discussions have already started.

09:14:22 9 Q. That's great. And in terms of, you know, making that
09:14:29 10 progress, when you say as money becomes available, what
09:14:33 11 does that mean?

09:14:34 12 A. It means as the legislative process provides funding
09:14:40 13 for us to continue to expand those number of beds.

09:14:43 14 Q. Okay. And so, I want to go back to the idea of April
09:14:48 15 through October. Those are the summer months, right?

09:14:51 16 A. Yes.

09:14:52 17 Q. So does TDCJ do anything to prepare prior to these
09:14:55 18 summer months?

09:14:56 19 A. Yes.

09:14:57 20 Q. What?

09:14:58 21 A. In weeks before, certainly we do. For example, this
09:15:01 22 year, March 14th of this year, holding a statewide call
09:15:06 23 with all unit wardens, both state operated and privately
09:15:10 24 operated, to include stakeholders such as administrative
09:15:13 25 review risk management, facilities division,

09:15:17 1 manufacturing, agribusiness logistics division, emergency
09:15:18 2 management, ensuring that, one, everybody is up to speed
09:15:23 3 on the directive.

09:15:25 4 From year to year, the directive may have minor
09:15:28 5 changes to it for necessary changes. Ensure they have the
09:15:32 6 newest directive in hand and that they are already doing
09:15:36 7 things in preparation. So I mentioned we had the March
09:15:39 8 14th call that they're doing items in preparation before
09:15:41 9 April 15th, such as auditing the processes such as
09:15:47 10 respite, cold showers, buckets for water, ice water,
09:15:54 11 inmates have a cup to drink from. All those items are
09:15:59 12 already being audited. And so, one, the call is covering
09:16:03 13 the entire directive and the points of the directive but,
09:16:07 14 also, a physical audit of it with our stakeholders at each
09:16:13 15 of our facilities.

09:16:15 16 Q. Mr. Lumpkin, is this a document that reflects the
09:17:01 17 teleconference that you were just telling us about?

09:17:05 18 A. It is.

09:17:05 19 Q. That's from March 14th of this year?

09:17:07 20 A. It is.

09:17:08 21 Q. I'd like to now move this in as Defendants' Exhibit
09:17:11 22 53.

09:17:13 23 THE COURT: Any objection?

09:17:14 24 MR. DUKE: No objection.

09:17:15 25 THE COURT: So admitted.

09:17:17 1 Q. (BY MS. ELLIS) Mr. Lumpkin, can you walk me through
09:17:20 2 kind of how -- you know, obviously this is an agenda. How
09:17:24 3 do you lead the call?

09:17:26 4 A. So I'm certainly involved. As you can see on the
09:17:29 5 agenda, I opened up the call ensuring everyone
09:17:32 6 understands, continues to understand the importance -- it
09:17:37 7 is imperative that we follow not only the seasonal
09:17:41 8 preparedness directive but Administrative Directive 1064,
09:17:44 9 which covers excessive and extreme temperature conditions
09:17:46 10 in the agency, correctional managed healthcare policy when
09:17:51 11 we talk about heat stress and taking precautions to
09:17:53 12 prevent or reduce.

09:17:55 13 Also included on the call, I have three deputy
09:17:57 14 division directors that oversee the operations of the --
09:18:02 15 assist in overseeing the operations across the state.
09:18:06 16 Also on the call are regional directors but going through
09:18:09 17 each aspect of the directive ensuring that, one, everyone
09:18:14 18 understands, continues to understand the directive, but
09:18:18 19 also, it allows time for questions, clarification to be
09:18:22 20 asked, too.

09:18:23 21 Q. Tell me about the individuals who are present during
09:18:26 22 this call.

09:18:27 23 A. The individuals during this call are all senior
09:18:30 24 wardens and their staff on the 93 state-operated
09:18:34 25 facilities and eight facilities that are privately

09:18:36 1 operated and their staff to include the deputy director,
09:18:40 2 director from the private facilities division, the
09:18:43 3 director and his staff in manufacturing logistics, same
09:18:47 4 thing with administrative review risk management,
09:18:49 5 facilities division, which oversees our maintenance
09:18:51 6 departments on the units. Before, I mentioned three
09:18:57 7 deputy division directors, the director of laundry and
09:19:00 8 food service, the director of classification, the regional
09:19:03 9 directors, and the office of emergency management.

09:19:05 10 Q. Okay. In here, it says that it is imperative that
09:19:10 11 everyone be familiar with procedures found in AD 1064.

09:19:14 12 What is AD 1064?

09:19:17 13 A. Our agency has a number of administrative directives
09:19:20 14 that provide us policies and procedures carrying out
09:19:23 15 operations within the agency. Administrative Directive,
09:19:27 16 1064, as it's titled, excessive and extreme heat
09:19:32 17 temperature conditions, provides direction to the
09:19:36 18 employees of the agency on how to ensure that we're
09:19:39 19 mitigating extreme temperatures.

09:19:41 20 Q. Okay. Can you pull up Exhibit 1, Defendants' Exhibit
09:19:46 21 1. Mr. Lumpkin, this is, I think, the very first page but
09:19:58 22 can we scroll down? Is this Administrative Directive
09:20:04 23 1061?

09:20:05 24 A. 1064.

09:20:06 25 Q. Sorry. 1064?

09:20:08 1 A. Yes, it is.

09:20:09 2 Q. Okay. It says the date on it, May 1st, 2024; is that

09:20:13 3 right?

09:20:13 4 A. That's right.

09:20:13 5 Q. Does that mean it's the most recent version?

09:20:15 6 A. It does.

09:20:16 7 Q. Okay. Walk me through the relevancy of this policy,

09:20:21 8 how does it play out.

09:20:24 9 A. So the relevancy is that every day, it is utilized to

09:20:31 10 ensure that when we have extreme temperatures or a heat

09:20:37 11 wave even, there's protocols in place on how we escalate

09:20:41 12 heat mitigation practices to ensure that we're looking out

09:20:46 13 for best interest of both the men and women incarcerated

09:20:50 14 within the agency and those that work inside our

09:20:53 15 facilities, as well. It also -- the administrative

09:20:58 16 directive, our healthcare partners have a responsibility,

09:21:02 17 too. They have the opportunity to help make any revisions

09:21:06 18 to this policy as it pertains to the treatment of those

09:21:14 19 exposed to heat and the heat injury incident, the heat

09:21:17 20 score process. We do actually lean on our two university

09:21:22 21 -- teaching university partners in the development of

09:21:26 22 this.

09:21:26 23 Q. What is the heat score process you're talking about?

09:21:28 24 A. The heat score process is a process where an inmate

09:21:33 25 is assigned the heat score through an algorithm based on a

09:21:37 1 physician making a diagnosis, prescribing certain
09:21:41 2 medications, providing certain medical facts --

09:21:45 3 MR. DUKE: Your Honor, objection. This goes to
09:21:47 4 the issue that Mr. Edwards mentioned before about
09:21:50 5 introducing evidence regarding the heat score and the
09:21:52 6 process. We ask for -- this is part of our 30(b)(6)
09:21:55 7 deposition and the witness at the time was fully
09:21:58 8 unprepared and unable to answer these questions. And so,
09:22:00 9 we ask for this testimony to be excluded.

09:22:04 10 MS. ELLIS: Your Honor, this testimony should not
09:22:05 11 be excluded. He hasn't said anything that has
09:22:07 12 contradicted Mr. Sweetin. I understand that they contend
09:22:11 13 Mr. Sweetin was not prepared, but he has not said anything
09:22:13 14 that contradicts what Mr. Sweetin has said. The heat
09:22:16 15 score policy is certainly very important. It goes to show
09:22:20 16 how TDCJ categorizes, individuals, what information they
09:22:23 17 rely on. And we certainly disagree that Mr. Sweetin was
09:22:27 18 unprepared by any means and we have a witness here who's
09:22:30 19 willing to explain to the Court some more specifics.

09:22:33 20 MR. DUKE: And, your Honor, if I may, TDCJ has
09:22:39 21 said that they don't have any knowledge about how those
09:22:43 22 scores are prepared and that they have fully relied on
09:22:49 23 UTMB to do that. So even if it was properly disclosed and
09:22:51 24 the evidence -- the testimony was presented, which it
09:22:53 25 wasn't, he wouldn't be an appropriate witness to testify

09:22:56 1 regarding those issues based off of their assertions to
09:22:59 2 the Court.

09:23:01 3 MS. ELLIS: He's made no such assertion. He has
09:23:04 4 said that the partners create the score. That is what Mr.
09:23:08 5 Sweetin testified to in his deposition and what opposing
09:23:10 6 counsel was not pleased with was that Mr. Sweetin was very
09:23:14 7 transparent that TDCJ does not control this policy in the
09:23:18 8 sense of implementing it, deciding who gets a heat score,
09:23:21 9 but obviously they are intimately involved in how the heat
09:23:24 10 score affects their operations and that's what the Court's
09:23:27 11 going to hear about, what TDCJ does when they get that
09:23:29 12 information.

09:23:30 13 So one of the objections that we raised to, I
09:23:33 14 guess, their objection was that that wasn't a designated
09:23:35 15 topic, but the heat score system is not something that
09:23:39 16 TDCJ is out here saying, oh, I'm not a medical
09:23:43 17 professional but I'm going to give you a heat score.
09:23:45 18 They're not saying that. The medical professionals who
09:23:48 19 Mr. Lumpkin just mentioned are medical partners, are
09:23:51 20 giving them that heat score.

09:23:52 21 THE COURT: So I haven't had the benefit of
09:23:54 22 seeing Mr. Sweetin's full deposition. I've only seen
09:23:58 23 excerpts so I'm not in a position to make a decision about
09:24:01 24 what was -- what he said and what his preparation or lack
09:24:06 25 thereof was. And so, for purposes of this hearing, I'll

09:24:09 1 allow the testimony and I'll make a determination later as
09:24:11 2 to whether or not any or all of the evidence that's
09:24:15 3 submitted should be disallowed for any failure to have
09:24:19 4 disclosed or any other reason.

09:24:22 5 MS. ELLIS: Thank you, your Honor. May I make
09:24:23 6 one comment to that?

09:24:24 7 THE COURT: Sure.

09:24:24 8 MS. ELLIS: I will say that plaintiffs picked all
09:24:27 9 the excerpts that they thought were incriminating or were
09:24:31 10 not helpful to them. So the Court already heard the
09:24:33 11 testimony that plaintiffs believe was inaccurate, or not
09:24:36 12 helpful, or unknowledgeable on Mr. Sweetin's part. So I
09:24:39 13 just wanted to remind the Court of that. So anything that
09:24:42 14 would be missing would be probably things that we would
09:24:44 15 find helpful for the Court's analysis.

09:24:46 16 THE COURT: Right. But you haven't given me --
09:24:49 17 you haven't had the opportunity to show me that.

09:24:52 18 MR. DUKE: Your Honor, to clarify, we submitted
09:24:55 19 separately not as part of the proffer to the Court here,
09:24:58 20 we submitted as part of our motion to exclude the relevant
09:25:01 21 excerpt on this issue for that deposition that show his
09:25:04 22 lack of preparedness on these topics, which was a
09:25:08 23 designated topic, and that's ECF 158.

09:25:13 24 THE COURT: Okay. Thank you.

09:25:14 25 Q. (BY MS. ELLIS) Mr. Lumpkin, please go back to telling

09:25:16 1 us about the heat score system.

09:25:18 2 A. So as mentioned, the heat score system inmates that
09:25:22 3 are diagnosed by a doctor, prescribed certain medications,
09:25:26 4 certain medical facts a doctor may enter into the health
09:25:30 5 record, again, as mentioned, the teaching universities
09:25:36 6 build a -- with, also, the assistance of outside entity
09:25:43 7 build a algorithm that based on those facts entered by the
09:25:47 8 doctor would assign a certain heat score, which means when
09:25:50 9 an inmate receives a heat score of a P1 or above, it goes
09:25:55 10 P1 through P9, that that individual would be placed into
09:25:58 11 an air-conditioned bed.

09:25:59 12 Q. So am I hearing you correctly in that TDCJ does not
09:26:03 13 assign a heat score?

09:26:04 14 A. TDCJ does not.

09:26:06 15 Q. Okay. Can TDCJ alter an individual's heat score?

09:26:09 16 A. No, we cannot.

09:26:11 17 Q. Who has the authority, in theory, I guess, to make
09:26:14 18 any changes to a heat score?

09:26:15 19 A. The university partners.

09:26:17 20 Q. Okay. But again, that is an algorithm, correct? So
09:26:22 21 some numbers are being spit out based on information that
09:26:25 22 they put into this electronic health record?

09:26:28 23 A. Yes. That's correct.

09:26:30 24 Q. Thank you for that clarification. And you mentioned
09:26:33 25 that every individual who gets a heat score is placed in a

09:26:36 1 cool bed?

09:26:36 2 A. Yes.

09:26:36 3 Q. How many individuals are you aware of who have heat

09:26:40 4 scores?

09:26:40 5 A. Around 12,289.

09:26:44 6 Q. And I think you told us this earlier but how many

09:26:46 7 cool beds does TDCJ have right now?

09:26:48 8 A. 46,000.

09:26:49 9 Q. So that means roughly 30,000 cool beds are available

09:26:52 10 for inmates who don't have heat scores?

09:26:54 11 A. That's correct.

09:26:55 12 Q. Okay. Thank you. Let's go back to the memo for the

09:27:05 13 pre-season call, please. Can you tell the Court, who is

09:27:34 14 Richard Babcock?

09:27:36 15 A. Is one of three deputy division directors in CID,

09:27:40 16 Correctional Institutions Division.

09:27:42 17 Q. So what is his role, I guess, in the seasonal

09:27:44 18 preparedness call?

09:27:45 19 A. His role is, at that time, he oversaw two of the six

09:27:50 20 geographic regions and he also oversaw the laundry and

09:27:54 21 food service supply. He currently oversees three

09:27:57 22 geographic regions. But his role was to cover aspects of

09:28:01 23 the seasonal preparedness directive to include anything

09:28:05 24 within Administrative Directive 1064 to the -- everyone

09:28:10 25 that was on the call.

09:28:11 1 Q. And what about Miguel Martinez? Who is that?

09:28:13 2 A. Miguel Martinez is a deputy divisional director

09:28:17 3 within the Correctional Institutions Division at the time.

09:28:20 4 He oversaw two geographic regions and our state prisons

09:28:24 5 operation. He now oversees three geographic regions.

09:28:28 6 Q. And you mentioned the seasonal preparedness

09:28:32 7 directive. What is this directive?

09:28:34 8 A. So it's a directive that is sent out by the

09:28:36 9 Correctional Institution Division Director's Office each

09:28:39 10 year in advance of the heat season, the seven months of

09:28:45 11 April 15 through October 15.

09:28:47 12 Q. So this is something sent out by your office?

09:28:49 13 A. Yes.

09:28:50 14 Q. Can you go ahead and pull up the Exhibit 54, please?

09:28:56 15 Or actually, I'm sorry, Exhibit 8. Mr. Lumpkin, is that

09:29:11 16 seasonal preparedness directive you were just talking

09:29:13 17 about?

09:29:13 18 A. It is.

09:29:14 19 Q. Defendant would like to now move this in as

09:29:17 20 Defendants' Exhibit 3. Or, I'm sorry, Exhibit 8.

09:29:21 21 MR. DUKE: No objection.

09:29:21 22 THE COURT: So admitted.

09:29:23 23 Q. (BY MS. ELLIS) Mr. Lumpkin, what does this seasonal

09:29:28 24 preparedness directive address?

09:29:30 25 A. It addresses all items, certain items within 1064 --

09:29:36 1 Administrative Directive 1064 but all efforts that need to
09:29:42 2 be carried out to ensure that we are addressing or trying
09:29:45 3 to prevent injuries during excessive or extreme
09:29:47 4 temperatures, heat mitigation practices. It goes into
09:29:52 5 detail to talk about respite, cool water, access to
09:29:58 6 respite areas, the transportation, the housing of those
09:30:01 7 inmates, the maintenance for facilities division, the
09:30:05 8 maintenance and PMS of HVAC systems where we do have
09:30:09 9 air-conditioned beds. So all things of the operations
09:30:13 10 day-to-day to mitigate the heat.

09:30:16 11 Q. Let's start with some of those mitigation measures.
09:30:19 12 You mentioned respite. What is that?

09:30:22 13 A. Correct one thing, I said October 15th and earlier, I
09:30:27 14 said through October. It is actually through October 31.

09:30:31 15 Q. That's okay. We'll note that. Can you tell us about
09:30:33 16 what the respite areas are?

09:30:35 17 A. The respite areas are identified areas on our
09:30:37 18 facilities that are air conditioned, may be a chapel,
09:30:42 19 medical department, administrative department, an office,
09:30:47 20 an education department, on the facility where an inmate
09:30:52 21 may go to with certain items if they request to go to an
09:30:59 22 area to cool down.

09:31:00 23 Q. And how do they request to go to these areas?

09:31:02 24 A. They could request it from anybody verbally. They
09:31:06 25 don't have to send in a written response or anything such

09:31:08 1 as that. They could verbally tell the correction officer
09:31:11 2 working in the area they live or in a hallway if they are
09:31:14 3 going from one point to another point, a supervisor, they
09:31:17 4 could tell anybody that they need to go to respite.

09:31:20 5 Q. Mr. Lumpkin, were you in court throughout this week?

09:31:22 6 A. I was.

09:31:24 7 Q. Did you hear some discussion about the freedom that
09:31:30 8 certain inmates may or may not have to go to these respite
09:31:32 9 areas?

09:31:32 10 A. I did.

09:31:33 11 Q. Okay. Will every single inmate have the same
09:31:37 12 accessibility to these respite areas?

09:31:39 13 A. To the best of our ability, yes.

09:31:42 14 Q. And is it fair to say that some inmates might have
09:31:45 15 classifications that allow them to move more freely?

09:31:48 16 A. That's correct.

09:31:49 17 Q. And of course, some inmates might be in
09:31:53 18 administrative housing or more restrictive housing, right?

09:31:57 19 A. Yes.

09:31:57 20 Q. In those cases, are they in an air-conditioned area
09:32:01 21 already or do they have to go get somebody to walk them
09:32:04 22 down to escort them to respite?

09:32:07 23 A. They'll have to be escorted to that area.

09:32:12 24 Q. What is the expectation for individuals when they're
09:32:14 25 asking to go to respite?

09:32:16 1 A. The actual -- when inmate asks, their expectation?

09:32:21 2 Q. Sure. Should they be allowed to go? Are they often

09:32:27 3 told no? What is the information communicated to them

09:32:30 4 about their ability to go to respite?

09:32:33 5 A. That they be allowed to go and that in those cases

09:32:37 6 where there's a high number of those asking to go to

09:32:40 7 respite that they have patience with unit administration

09:32:43 8 as they try to meet that need and get that individual to

09:32:47 9 that respite area.

09:32:48 10 Q. Okay. Besides respite, are there any other areas

09:32:52 11 within the prison units that are air conditioned?

09:32:54 12 A. Yes.

09:32:55 13 Q. What areas?

09:32:56 14 A. Our education departments, some vocation departments,

09:33:01 15 medical departments where they may go to a classification

09:33:05 16 committee, where they may go to a disciplinary hearing

09:33:10 17 process, law library, the general library, majority of

09:33:14 18 those areas are air conditioned.

09:33:15 19 Q. So there's certainly other areas besides the respite

09:33:18 20 area that are air conditioned that inmates have access to?

09:33:20 21 A. Yes. And some of their work areas would be air

09:33:23 22 conditioned, also.

09:33:24 23 Q. What types of work areas?

09:33:26 24 A. They serve as a clerk in a certain department, some

09:33:30 25 of our industries are climate controlled. Of course, if

09:33:38 1 they work as a janitor, some of those departments
09:33:40 2 mentioned before that are air conditioned, they will work
09:33:44 3 in air-conditioned environments in some cases.

09:33:46 4 Q. What other heat mitigation measure besides respite
09:33:49 5 does TDCJ have available?

09:33:51 6 A. So we provide every inmate upon intake, we also
09:33:55 7 ensure there's an inventory in each facility of a drinking
09:33:59 8 cup. It's black in color, plastic cup. If the inmate
09:34:05 9 loses one, they can be provided with another cup. Make
09:34:09 10 sure we have chilled water in living and working areas and
09:34:12 11 recreation areas, allow inmates to take cold showers.

09:34:17 12 We'll work with our facilities maintenance department to
09:34:21 13 adjust the temperature in the showers in the area,
09:34:24 14 depending on number of showers, to at least one to a cool
09:34:27 15 temperature. Allow inmates, of course, fans. And when
09:34:31 16 they transport from one facility to another to take their
09:34:34 17 fan with them regardless of what custody they are.

09:34:38 18 Q. Why do you say regardless of what custody they are?

09:34:41 19 A. Because at one time, our administrative -- or, sorry,
09:34:45 20 restrictive housing population, we may have prohibited the
09:34:49 21 taking a fan or having a fan. Unfortunately, at times,
09:34:52 22 the fans are busted. They were taking the motor out of a
09:34:56 23 fan and using it as an assault weapon. We have had those
09:34:59 24 assaults even up to a couple of days ago. However, in
09:35:03 25 order to mitigate the heat, we have taken that risk and

09:35:07 1 let them have that fan and also transport from unit
09:35:12 2 assignment to unit assignment with that fan.

09:35:13 3 Q. The ice water that you mentioned, that is in the
09:35:19 4 living and work areas?

09:35:20 5 A. Yes.

09:35:21 6 Q. Okay. Do inmates have access to that?

09:35:24 7 A. They do. They have some that are in more restrictive
09:35:28 8 custody do not and I could speak about of how -- the
09:35:34 9 carrying out of restricted water in those areas.

09:35:36 10 Q. Yes, please.

09:35:37 11 A. Sure. So units employ a number of different tactics.
09:35:41 12 Some use a backpack, what looks like a pump sprayer but is
09:35:46 13 a sanitized method to -- with a nozzle that can go cell to
09:35:52 14 cell and place water into a container or the cup that was
09:35:56 15 mentioned before. Also, we have ice crews that
09:36:00 16 continuously in a 24-hour period are making rounds either
09:36:04 17 refilling those ice containers, water containers, or
09:36:08 18 refreshing the water in the ice in those areas.

09:36:12 19 Q. So staff is certainly going around making sure that
09:36:14 20 these are refilled and refreshed.

09:36:16 21 A. Yes. In addition, I would like to add that even our
09:36:18 22 food service departments go through every means possible
09:36:22 23 to store ice, to make ice in a number of different
09:36:26 24 fashions, whether it's the huge blocks that could be
09:36:29 25 busted up into chips or we receive crushed ice also from

09:36:33 1 different entities.

09:36:34 2 MR. DUKE: Objection, your Honor. Lack of
09:36:36 3 foundation for this testimony. He's talking about what
09:36:38 4 others certainly are doing and they've laid no foundation
09:36:41 5 for that.

09:36:43 6 MS. ELLIS: Your Honor, Mr. Lumpkin is the head
09:36:45 7 of this department so he oversees all these individuals.
09:36:49 8 He oversees food and laundry. He absolutely has
09:36:53 9 foundation for this and he already just testified that he,
09:36:57 10 one, is a proponent of this directive and that he oversees
09:37:01 11 how it's implemented on the unit. So it's certainly fair
09:37:03 12 for him to talk about what is available to inmates, what
09:37:06 13 the expectation is, what they're providing.

09:37:08 14 MR. DUKE: If I may.

09:37:10 15 THE COURT: I think one thing you probably should
09:37:13 16 explore is his personal knowledge of any of these things.
09:37:17 17 It's one thing to be several levels above the people who
09:37:20 18 are doing these things, but that doesn't suggest you
09:37:23 19 actually know what's being done, right?

09:37:25 20 MS. ELLIS: I think he's talking about that he
09:37:26 21 does know that it's being done. Is he the one handing out
09:37:30 22 ice? Probably not. But we can go into that.

09:37:33 23 MR. DUKE: We would like a foundation laid for
09:37:35 24 that because right now, we've heard what he's asked people
09:37:38 25 to do and informed them of what their obligations are, not

09:37:41 1 what he's aware of.

09:37:43 2 MS. ELLIS: Obviously, what he's asking people to
09:37:45 3 do and what they're actually doing is different. We will
09:37:47 4 certainly get to that. But right now, the topic is what
09:37:51 5 are the directives so he's able to talk about what he does
09:37:54 6 direct his employees to do.

09:37:56 7 THE COURT: Sure, but that's not what he's
09:37:58 8 talking about. He's talking about what actually has
09:37:59 9 happened with the confidence that those things are
09:38:01 10 actually being done and I don't know that you've let us
09:38:04 11 know what his source of that knowledge is, right? I mean,
09:38:09 12 certainly he can testify to what they're supposed to be
09:38:12 13 doing, but what he's been testifying to is what actually
09:38:15 14 is being done and I'm not sure that -- maybe he does know
09:38:19 15 what's being done, but you haven't connected that yet.

09:38:23 16 Q. (BY MS. ELLIS) Okay. Mr. Lumpkin, how do you know
09:38:24 17 that these methods are being employed at units?

09:38:27 18 A. I've certainly witnessed these processes at the unit.
09:38:32 19 I've been on all of our facilities across the state. Come
09:38:35 20 to the job in August of '20, which, of course, was coming
09:38:38 21 out of the summer months, I visited all 93 state-operated
09:38:43 22 facilities in the first six months and continue to be --
09:38:47 23 have a presence on those facilities with the four
09:38:51 24 mentioned deputy division directors at times, regional
09:38:54 25 directors, walking with the unit administration, walking

09:38:55 1 with correction officers, walking with inmates, seeing the
09:38:58 2 ice process and the food service department, seeing the
09:39:01 3 supplies and the supply department whether it be the black
09:39:04 4 cups or additional water containers, being in and out of
09:39:09 5 our unit commissaries, seeing the cool towels that are
09:39:12 6 available or electrolytes being on the units, and actually
09:39:16 7 being in the day room, being on the rec yard and day area
09:39:20 8 myself, and myself physically taking the top off the water
09:39:22 9 container and visually inspecting that it's fresh water,
09:39:25 10 that there's no particles or trash in it, that it has ice
09:39:27 11 in it or whether it needs to be swapped out, fans are
09:39:32 12 operational, the air conditions where we have HVAC systems
09:39:36 13 in place are operational.

09:39:37 14 Q. And earlier, you mentioned that your division has,
09:39:39 15 what, 22 or 2,400 employees within it?

09:39:42 16 A. 24,000.

09:39:44 17 Q. 24,000. Thank you. And when you were talking about
09:39:46 18 the people on this call, some of those individuals are
09:39:50 19 senior wardens and their staff, right?

09:39:53 20 A. That's correct.

09:39:53 21 Q. Are you having these conversations about whether
09:39:56 22 these methods are actually taking place with these
09:39:59 23 individuals who would maybe have more personal knowledge
09:40:01 24 than you?

09:40:01 25 A. Yes, day-to-day, every day.

09:40:05 1 Q. Like you mentioned, there are 101 units, right, so
09:40:10 2 it's physically not possible maybe for you to go to every
09:40:13 3 single unit every single day to ensure this is happening?

09:40:16 4 A. Correct. It's not possible.

09:40:17 5 Q. But you have a line of communication with your staff
09:40:19 6 who is able to communicate this to you?

09:40:21 7 A. Yes. And --

09:40:22 8 MR. DUKE: Objection, your Honor. To the extent
09:40:24 9 that the testimony is then going to be this is what my
09:40:28 10 subordinates are telling me what's going on, we believe
09:40:30 11 that would be hearsay.

09:40:32 12 MS. ELLIS: I think he's able to tell because
09:40:34 13 he's relying on this information so it goes to his notice
09:40:36 14 of whether or not the mitigation measures are being taking
09:40:40 15 place or not.

09:40:41 16 MR. DUKE: But what you mean, in other words, the
09:40:43 17 truth of whether or not what they're telling him is
09:40:46 18 accurate and so, I think that would be hearsay.

09:40:49 19 MS. ELLIS: Well, we've allowed a lot of hearsay
09:40:51 20 in this hearing so I think it's only fair.

09:40:54 21 MR. DUKE: I've made this one objection about
09:40:55 22 this evidence.

09:40:56 23 MS. ELLIS: That's fine. But he is relying on
09:40:57 24 this information as notice to whether or not it is taking
09:41:00 25 place.

09:41:01 1 MR. DUKE: I'd like a ruling.

09:41:03 2 THE COURT: Yeah. I mean, I'm not aware of an
09:41:07 3 exception so I'll have to sustain -- to the extent he's
09:41:09 4 just going to talk about what someone else told him for
09:41:11 5 the truth to suggest that that is being done, then that's
09:41:16 6 pretty plain hearsay, I think.

09:41:17 7 MS. ELLIS: It does not go to his notice about
09:41:19 8 whether or not because would he not need to be able to
09:41:21 9 talk action if these things weren't taking place?

09:41:25 10 THE COURT: Right, but that's not a hearsay
09:41:27 11 exception, is it? I mean...

09:41:30 12 MS. ELLIS: It is when it goes to his notice of
09:41:34 13 deliberate indifference.

09:41:35 14 THE COURT: But it would depend on whether or not
09:41:36 15 what people are telling him is true or not and that begs
09:41:39 16 the question that's what hearsay is, right? Saying we
09:41:41 17 can't rely on the truth of what's being told to him so
09:41:46 18 it's kind of a circular problem, right? There's no way
09:41:54 19 you can get around the fact that it's being offered for
09:41:57 20 the truth of the matter asserted, right?

09:41:58 21 MS. ELLIS: It would go to his subsequent
09:42:00 22 actions, as well, because if he had notice that these
09:42:02 23 individuals were not complying with these mitigation
09:42:04 24 measures, then that would go to any efforts that he took
09:42:07 25 after the fact and he's going to tell you whether or not

09:42:10 1 he took those efforts.

09:42:12 2 THE COURT: Were you --

09:42:14 3 MR. DUKE: If his testimony was I was told
09:42:16 4 everything was going on and that was it, that's not --
09:42:19 5 that may be what -- I could see her argument. But his
09:42:22 6 testimony is I gave these policies out, these are being
09:42:26 7 followed these ways, and I think where he was going to go
09:42:29 8 is I was told that this is how they were being followed.
09:42:31 9 And so, the fact they're offering it to say we're doing a
09:42:36 10 good job and complying with our policies and that is for
09:42:38 11 the truth of the matter.

09:42:39 12 MS. ELLIS: Your Honor, how are we supposed to
09:42:41 13 get to that testimony if we don't lay these foundation
09:42:43 14 questions because then I'm going to get an objection to
09:42:45 15 foundation.

09:42:46 16 THE COURT: Well, I don't know about that because
09:42:49 17 I know where you're headed. But I'll allow the testimony
09:42:51 18 but as I go back and determine what I'm going to be using,
09:42:54 19 I will be determining what is inadmissible hearsay.

09:42:58 20 MS. ELLIS: Okay. That's fine.

09:43:00 21 MR. DUKE: Thank you, your Honor.

09:43:02 22 Q. (BY MS. ELLIS) Mr. Lumpkin, how are you having these
09:43:06 23 conversations with your staff?

09:43:09 24 A. Of course, as the Court mentioned, the first seasonal
09:43:14 25 call but it doesn't stop there. It doesn't take a

09:43:17 1 conference call for a question to be posed in the field
09:43:20 2 for clarification. Or if we receive an allegation that
09:43:24 3 respite's not being carried out that we were doing an
09:43:26 4 investigation into that. That we work with our
09:43:30 5 stakeholders such as administrative review risk management
09:43:32 6 and that they do -- even do strike team audits on those
09:43:36 7 facilities. So that's also a resource to the CID
09:43:42 8 director's position and the executive director's position
09:43:45 9 to ensure those heat mitigation procedures are, in fact,
09:43:48 10 being carried out.

09:43:49 11 Q. What is a strike team?

09:43:50 12 A. A strike team is a team that Mr. Collier has directed
09:43:55 13 the administrative review risk management division to put
09:43:58 14 together and to go to facilities based on -- there's been
09:44:03 15 an influx of grievances related to heat mitigation
09:44:07 16 processes not being characterized out. There's been
09:44:10 17 allegations from one's loved ones through e-mail or phone
09:44:16 18 calls and also in areas where maybe there's been a spike
09:44:20 19 in temperature in part of Texas. Administrative review
09:44:25 20 risk management is one of the 16 divisions within TDCJ
09:44:28 21 that report to the executive director's office and they
09:44:32 22 will do an unannounced visit. They will not tell myself
09:44:34 23 or the warden where they're going and they will go out and
09:44:37 24 see for their self if those items are being carried out,
09:44:40 25 not being carried out. It does produce communication back

09:44:46 1 to myself and we take corrective action if they do, in
09:44:51 2 fact, find where respite wasn't being carried out, where
09:44:53 3 water wasn't being passed out in a timely manner as an
09:44:56 4 example.

09:44:56 5 Q. So one of the ways in which you know that what you're
09:44:58 6 saying is true, right, what's being communicated to you at
09:45:01 7 the unit level is the heat strike teams.

09:45:04 8 A. Is one way.

09:45:06 9 Q. Are there other ways?

09:45:07 10 A. There is.

09:45:08 11 Q. Okay. Tell us about that.

09:45:10 12 A. We have a seasonal preparedness call in March.

09:45:13 13 There's an audit tool with 13 questions pertaining to the

09:45:16 14 seasonal directive -- preparedness directive or the

09:45:20 15 Administrative Directive 1064 to be -- it's a yes-no and

09:45:25 16 it has a methodology such as does every employee have

09:45:29 17 their heat -- or their heat card that shows how to watch

09:45:34 18 for heat exhaustion, heat illness. Does -- are we doing

09:45:40 19 chilled water and respite and so forth. That is done

09:45:43 20 before the season but it's also done periodically, if not

09:45:46 21 weekly, on a number -- across the state. It's not only

09:45:50 22 with the correctional institution but, also, risk managers

09:45:53 23 that work on the facility that are part of administrative

09:45:56 24 review and risk management that those processes within AD

09:46:01 25 64 -- 1064, I'm sorry, and within the seasonal

09:46:05 1 preparedness that are actually being carried out. So an
09:46:08 2 actual audit tool to check those practices.

09:46:11 3 Q. Can you go ahead and pull up Exhibit 9, please? Mr.
09:46:24 4 Lumpkin, this says Subject 2024 Seasonal Preparedness
09:46:29 5 Check, right?

09:46:29 6 A. Yes.

09:46:30 7 Q. Okay. Mr. Lumpkin, is this the checklist that you're
09:46:59 8 just discussing with us?

09:47:00 9 A. It is.

09:47:01 10 Q. And is this something that is sent out to all the
09:47:05 11 wardens like you just said?

09:47:06 12 A. Yes.

09:47:06 13 Q. And this is a fair and accurate copy of that
09:47:08 14 checklist?

09:47:09 15 A. Yes.

09:47:11 16 Q. Okay. Defendant would now like to move this in as
09:47:13 17 Exhibit 9.

09:47:15 18 THE COURT: Any objection?

09:47:16 19 MR. DUKE: No objection.

09:47:18 20 THE COURT: So admitted.

09:47:19 21 Q. (BY MS. ELLIS) Mr. Lumpkin, will you please walk us
09:47:22 22 through this checklist?

09:47:24 23 A. Yes. So it, again, is a checklist that is used in
09:47:29 24 advance of the summer season but also used during that
09:47:35 25 period and, again, it's checking everything from as you

09:47:38 1 see on the first question, we have certain posters posted
09:47:41 2 throughout a facility, through the living areas
09:47:45 3 encouraging the intake of water.

09:47:47 4 We also have a poster that depicts the color of
09:47:54 5 urination and how someone can look at a chart and make a
09:47:57 6 quick determination they need the intake more water. That
09:48:01 7 those posters are -- they're evident inside the
09:48:07 8 facilities. If they're weathered through year because
09:48:10 9 somebody has torn off a piece of it or used it as scratch
09:48:14 10 paper or graffiti that we're replacing those. Those are
09:48:17 11 produced within the agency and we have plenty to refresh
09:48:20 12 those posters across. But that is one of the ways --
09:48:22 13 again, it's a yes-no.

09:48:23 14 But there's also a methodology and as you see,
09:48:26 15 this one at the Bell Unit, common at the time was the
09:48:30 16 posters for the following areas that needed additional
09:48:34 17 posters. But it goes on to talk about even the I-204
09:48:38 18 flier, which is a document provided -- or a flier provided
09:48:41 19 to the inmate as he or she is assigned to a unit that
09:48:45 20 discusses heat, cold and suicide prevention. Of course,
09:48:51 21 our partnership with our medical partners include the
09:48:55 22 medical heat restriction list, which is officers working
09:49:00 23 in a living area provide a list of inmates that have a
09:49:06 24 heat score or has some type of work restriction pertaining
09:49:10 25 to heat in that they do wellness checks on those inmates

09:49:14 1 during their duty hours. It goes on to talk about the
09:49:20 2 card that I mentioned earlier, that each officer, each
09:49:23 3 employee has a card that could help them determine heat
09:49:27 4 exhaustion, heat illness.

09:49:28 5 Q. Okay. Can you scroll to the next page, please. Six,
09:49:38 6 it says regarding training, AD 1064 seasonal preparedness
09:49:43 7 directive. It says are staff trained and complaint with
09:49:46 8 heat precaution procedures including knowledge of respite
09:49:50 9 area locations and inmate access. Do you see that?

09:49:52 10 A. I do.

09:49:52 11 Q. And the box is checked yes, right?

09:49:54 12 A. Yes.

09:49:55 13 Q. Okay. And then, B is employee training documented in
09:49:59 14 the TDCJ training database for all staff members. Do you
09:50:02 15 see that?

09:50:04 16 A. Yes.

09:50:04 17 Q. And the box is checked yes?

09:50:06 18 A. Yes.

09:50:08 19 Q. Do all staff have their employee information card on
09:50:11 20 their person while on duty? Do you see that?

09:50:14 21 A. I do.

09:50:15 22 Q. What is that employee information card?

09:50:17 23 A. That's the card that I display.

09:50:19 24 Q. The pocket card?

09:50:21 25 A. The pocket card, you see on the checklist, too, it's

09:50:25 1 referred to as an FN 1181 card, and it's also an item that
09:50:31 2 the strike team also checks as they go out to ensure that
09:50:34 3 employees have that and helps them identify any heat
09:50:38 4 illness or heat exhaustion, and so forth.

09:50:41 5 Q. Okay. Mr. Lumpkin, what is this document?

09:50:53 6 A. That is the card, the pocket card that our staff
09:50:56 7 carry.

09:50:56 8 Q. Okay. This is an accurate version of what that looks
09:51:01 9 like?

09:51:01 10 A. It is, yes.

09:51:02 11 Q. Okay. Defendant would now like to move this in as
09:51:06 12 Exhibit 12.

09:51:07 13 THE COURT: Any objection?

09:51:09 14 MR. DUKE: No objection.

09:51:10 15 THE COURT: So admitted.

09:51:11 16 Q. (BY MS. ELLIS) Mr. Lumpkin, will you read off the top
09:51:17 17 left portion of this card?

09:51:20 18 A. Recognition of heat illness and it -- want me to read
09:51:25 19 each line?

09:51:26 20 Q. Yeah. Will you go ahead for us?

09:51:27 21 A. Yes. Heat cramps. The first bullet, involuntary
09:51:32 22 muscle spasms following hard physical work in hot
09:51:36 23 environment. Next bullet, heavy perspiration, cramping in
09:51:40 24 the abdomen, arms and calves. Next, heat exhaustion,
09:51:44 25 weaknesses, anxiety, fatigue, dizziness, headache, nausea,

09:51:49 1 profuse perspiration, rapid pulse, rapid breathing,
09:51:55 2 possible confusion or loss of coordination, may lead to
09:51:58 3 heat stroke if not treated. Heat stroke emergency death
09:52:02 4 is imminent. Diminished or absent perspiration. Hot, dry
09:52:07 5 and flushed skin. Increased body temperatures, delirium,
09:52:11 6 convulsions, seizures, possible death, rapid pulse
09:52:14 7 weakness, headache, mental confusion, dizziness, extreme
09:52:19 8 fatigue, nausea, vomiting, incoherent speech progressing
09:52:25 9 to coma, medical care is urgently needed.

09:52:28 10 Q. Okay. What is the purpose of providing this
09:52:31 11 information to the staff?

09:52:34 12 A. That if a staff member either during a wellness check
09:52:38 13 or during their duties whether they're carrying a work
09:52:41 14 squad in a living area, on the rec yard can quickly
09:52:44 15 identify if an inmate is experiencing one of these
09:52:48 16 categories. Even though the card is carried on them, the
09:52:51 17 staff is also trained on these categories not just with a
09:52:55 18 card but also during our shift turnout or during our
09:52:59 19 pre-service and inservice times, too.

09:53:01 20 Q. The next section that's titled Treatment and
09:53:04 21 Prevention of Heat Illness, will you please read through
09:53:07 22 that for me?

09:53:08 23 A. Yes. So treatment and prevention of heat illness,
09:53:11 24 treatment of heat illness, all types: Move person out of
09:53:16 25 direct sun light into air-conditioned environment, if

09:53:18 1 possible. Remove clothing maintaining modesty, having
09:53:23 2 them drink water if conscious, sprinkle water on them, fan
09:53:27 3 them if there is no breeze, get medical attention ASAP.
09:53:32 4 Higher risk for heat illness: Newly assigned to job, on
09:53:38 5 psychiatric medications and certain other medications,
09:53:40 6 elderly, high temperature and humidity conditions, no
09:53:45 7 breeze. Prevention of heat illness: Increase frequency
09:53:49 8 of fluid intake with work in hot environments, taking a
09:53:52 9 break every 30 to 60 minutes, decrease intensity of work
09:53:58 10 under extreme conditions.

09:53:59 11 Q. And, Mr. Lumpkin, you said that you were in court
09:54:03 12 throughout this week, right?

09:54:04 13 A. Yes.

09:54:05 14 Q. Did you hear testimony from Dr. Vassallo talking
09:54:08 15 about individuals who might have a heightened risk to the
09:54:11 16 heat?

09:54:11 17 A. Yes.

09:54:12 18 Q. Okay. And this is a section right here that says
09:54:15 19 higher risk for heat illness and on there, it lists
09:54:18 20 individuals who are on psychiatric medications and other
09:54:22 21 medication, right?

09:54:22 22 A. Yes.

09:54:23 23 Q. And it also notes that the elderly might be at higher
09:54:26 24 risk?

09:54:26 25 A. Yes.

09:54:27 1 Q. And again, what is the purpose of this pocket card
09:54:33 2 for staff?

09:54:34 3 A. Again, that staff were not only cognizant of the
09:54:39 4 recognition of a heat illness but also, the treatment and
09:54:42 5 also, what demographic of an inmate may be of a higher
09:54:49 6 risk for heat illness.

09:54:52 7 Q. The next section is talking about regarding
09:55:07 8 transports. What does this section speak to?

09:55:11 9 A. So it speaks to when we're transporting an individual
09:55:18 10 from one facility to another that we try to do that in the
09:55:22 11 coolest hours of the day and that our psychiatric
09:55:25 12 inpatient inmates are transported to air-conditioned
09:55:28 13 transport vehicles. And that transportation officers
09:55:32 14 provide a list of inmates with heat sensitivity. Inmates
09:55:37 15 again are permitted to take fans and the back aid officer,
09:55:41 16 which is the ingress-egress into this facility, makes
09:55:45 17 every reasonable effort to ensure the vehicles get in and
09:55:49 18 out.

09:55:50 19 I do want to point out that when this checklist
09:55:53 20 item was put together, not all of our transportation
09:55:56 21 vehicles were air conditioned and they are today. All of
09:56:00 22 our buses are air conditioned. All of our unit
09:56:02 23 transportation vans, the transportation vans have already
09:56:05 24 been air conditioned. Majority of our buses were at the
09:56:08 25 time, but now we for several months now, I believe, well

09:56:12 1 over a year, all of our bus fleet are air conditioned.

09:56:16 2 Q. Okay. Earlier, you mentioned the methodology

09:56:23 3 section. For example, here it says interview staff,

09:56:28 4 observe procedures. What's the purpose of this section?

09:56:31 5 A. That we actually see -- that what we're saying within

09:56:34 6 our policies is actually being done. That we were

09:56:38 7 actually being successful in whatever part of the day that

09:56:41 8 is not on the cadence, if it happens the same time each

09:56:44 9 week that we are continuously checking, observing,

09:56:50 10 interviewing staff and at times, even inmates that it is

09:56:54 11 actually occurring.

09:56:55 12 We also have a comprehensive video system on a

09:56:58 13 number of our facilities that we're able to look at video

09:57:01 14 footage. Not actually during the audit itself. In real

09:57:04 15 time and look at the footage and see if it's being done.

09:57:07 16 Q. You don't just take your staff's word for it that

09:57:09 17 policies are being followed?

09:57:10 18 A. No. Not just the staff's word.

09:57:12 19 Q. Okay. And if we can scroll back up, I think on the

09:57:16 20 first page for that first section, the box is checked no;

09:57:26 21 is that right?

09:57:27 22 A. It is.

09:57:28 23 Q. Okay. And will you read the comment section again

09:57:33 24 for me?

09:57:34 25 A. Yes. It states needs posters for following PEP

09:57:39 1 classroom, which PEP is a prisoner entrepreneurship
09:57:44 2 program at the Bell Unit, classroom and lab N pod, N pod
09:57:49 3 and law library.

09:57:50 4 Q. So the fact that somebody checked the box no here and
09:57:53 5 then, gave some information about why maybe that policy is
09:57:57 6 not talking place, what does that convey to you?

09:58:01 7 A. It conveys to me that we're actually using the
09:58:03 8 checklist identifying where we need to make -- take
09:58:08 9 corrective action and getting the posters put up. That
09:58:11 10 we're actually verifying it's not just a rubber stamp,
09:58:16 11 pencil whip process of just going out and checking yes.
09:58:21 12 That we actually physically are observing that the posters
09:58:23 13 need to be refreshed.

09:58:24 14 Q. Okay. And let's just use this as an example because
09:58:28 15 it's up there. If you saw the box checked no, how quickly
09:58:34 16 would you expect the situation to be rectified?

09:58:37 17 A. That day.

09:58:39 18 Q. And how do you ensure that?

09:58:42 19 A. Followup such as the checklist items are completed
09:58:48 20 and submitted to the regional directors and to the
09:58:51 21 respective deputy division directors and myself that at
09:58:53 22 the unit level that those supplies are in the supply
09:58:57 23 department, those posters, and that they are being
09:58:58 24 retrieved, they're being replaced in those areas.

09:59:02 25 Q. Besides the checklist and the strike teams that you

09:59:05 1 mentioned, are there any other ways that you ensure the
09:59:09 2 information being conveyed to you is accurate?

09:59:10 3 A. Yes. Site visits, again, from our administration --
09:59:14 4 the correctional intuitions division whether it's myself,
09:59:17 5 one of the three deputies, the director of laundry, food
09:59:22 6 service, supply, the director of classification, the
09:59:24 7 regional directors. There's other stakeholders within the
09:59:28 8 Texas Department of Criminal Justice such as the
09:59:30 9 independent ombudsman who may go out and do unannounced
09:59:34 10 visits, as well, based on whether there's a concern,
09:59:37 11 there's an allegation. So there's several different means
09:59:41 12 to that.

09:59:42 13 Q. What is the independent ombudsman?

09:59:44 14 A. The independent ombudsman is a division within the
09:59:50 15 Texas Board of Criminal Justice that reports directly to
09:59:53 16 the board and they investigate any allegations or concerns
10:00:01 17 from loved one or constituents, legislators, inquiries,
10:00:04 18 even inmate inquiries. They have full access to all 101
10:00:10 19 of our facilities 24 hours a day. They could come
10:00:13 20 unannounced. They could make any type of visit. They
10:00:16 21 could see any type of facility operation that they desire
10:00:18 22 to do.

10:00:18 23 Q. And do they do that?

10:00:20 24 A. Yes. Oh, yes.

10:00:20 25 Q. Have they done that recently?

10:00:21 1 A. Yes. They were at the Ramsey Unit last couple of
10:00:25 2 days.

10:00:25 3 Q. Do you know what they were looking into?

10:00:28 4 A. Heat mitigation. Brian Patrick, who's the director
10:00:31 5 of that, does communicate after they do make a visit and
10:00:36 6 we do take corrective action if we have missed on one of
10:00:41 7 those heat mitigation efforts.

10:00:41 8 Q. You say corrective action, what does that mean?

10:00:44 9 A. It could be similar to the posters needing to be
10:00:47 10 replaced, not all officers have a card. But it also could
10:00:50 11 mean that respite maybe in some areas was not being
10:00:55 12 carried out fully. We ensure we address that. That water
10:01:01 13 circulation as far as the ice crews, water crews
10:01:05 14 refreshing water. That yes, it did happen -- or it did
10:01:09 15 happen on every single living area but one and that we
10:01:11 16 ensure that that was taken care of.

10:01:13 17 Q. How could an inmate communicate with staff,
10:01:17 18 essentially with yourself, that these measures are not
10:01:20 19 being or not occurring, for example, if someone is denied
10:01:24 20 access to respite?

10:01:25 21 A. Right. They could send a correspondence. Of course,
10:01:30 22 I would say before 2023 and '24, there was maybe snail
10:01:35 23 mail. But in today's world, inmates have tablets and
10:01:38 24 often, I will get e-mails from even their loved ones where
10:01:42 25 they've let their loved ones know to send the

10:01:45 1 correspondence, e-message to myself through e-mail. They
10:01:51 2 can also, of course, go through the grievance process is
10:01:54 3 another means. But certainly, 24/7 receive correspondence
10:02:00 4 either written or through a loved one if there's a
10:02:05 5 complaint.

10:02:05 6 Q. Tell us more about this grievance process.

10:02:08 7 A. The grievance process is a process for an inmate to
10:02:13 8 submit a written record of a grievance of something that
10:02:22 9 they have concern with a facility operation, whether it be
10:02:24 10 access to healthcare, whether it be something on heat
10:02:29 11 mitigation, complaints about food or about staff. The
10:02:34 12 grievance process is overseen by the Administrative Review
10:02:36 13 Risk Management Department Division. That is separate
10:02:40 14 from CID. It is independent from the Correctional
10:02:43 15 Institutions Division.

10:02:45 16 Inmates may file a step one, which entails that
10:02:49 17 process is completed at the unit level to the unit warden
10:02:53 18 that has rendered a response back to the inmate that has
10:02:58 19 grieved. They also have a appeal process, could file a
10:03:03 20 step two that goes off the unit into the risk management
10:03:07 21 division that would process that appeal.

10:03:09 22 Q. And I know the grievance department isn't within your
10:03:12 23 purview, but do you happen to know what a grievance
10:03:15 24 department does when they receive a grievance?

10:03:17 25 A. They investigate the grievance. Investigate whether

10:03:21 1 they gather statements from those that have knowledge or
10:03:24 2 have allegations against them or even investigate the
10:03:28 3 processes whether it be the aforementioned heat mitigation
10:03:34 4 processes or whatever the allegation may be.

10:03:37 5 MR. DUKE: Your Honor, I was waiting for him to
10:03:39 6 answer to see. Objection to hearsay and lack of facts.
10:03:45 7 He's testifying about what he's told the grievance process
10:03:47 8 was. She has to lay the foundation for objection.

10:03:51 9 MS. ELLIS: I laid that foundation to say if he
10:03:53 10 knows, which he testified that he started out as a
10:03:55 11 corrections officer. He's worked his way up all the way
10:03:58 12 throughout the agency. We acknowledge that that's not
10:04:02 13 within his purview --

10:04:03 14 THE COURT: Overrule the objection.

10:04:04 15 MS. ELLIS: Thank you, your Honor.

10:04:05 16 Q. (BY MS. ELLIS) Mr. Lumpkin, let's go back to -- we
10:04:13 17 discussed respite, we discussed ice, the checklist system,
10:04:21 18 cool showers. Tell me how that process works.

10:04:23 19 A. Yes. So at least one shower is -- temperature is
10:04:28 20 adjusted to the cool temperature and inmates may have
10:04:32 21 access to that and more frequent if they live in a
10:04:34 22 dormitory situation, a general population. But even in
10:04:38 23 our more restricted populations, custodies, those showers
10:04:43 24 are adjusted also that either during the normal
10:04:47 25 operations, they have access to it or through request that

10:04:49 1 they may take a cool shower.

10:04:52 2 Q. What is the general population? What does that mean?

10:04:55 3 A. Sure. General population is out of our 134,500

10:05:00 4 population a day, majority of those are in a general

10:05:03 5 population and that they are in a custody level that

10:05:06 6 allows them to be able to walk the hallways without escort

10:05:13 7 if they're traveling from one area to another going to

10:05:16 8 work, to education, to an appointment, to a medical

10:05:22 9 appointment, they have no disciplinary record --

10:05:29 10 institutional record, or they have a recent improved

10:05:30 11 disciplinary, or they've had some disciplinaries that are

10:05:32 12 minor in nature that still allow them to remain in the

10:05:35 13 general population.

10:05:36 14 Q. And you said the majority of the 134,000 are in

10:05:39 15 general population?

10:05:41 16 A. Okay.

10:05:41 17 Q. And so, they have more freedom to access respite,

10:05:45 18 access the cool showers, go where they want to essentially

10:05:49 19 within reason, I'm guessing?

10:05:50 20 A. Yes.

10:05:51 21 Q. Okay. Bullet five. Do you see where bullet five

10:06:22 22 starts off with TDCJ staff?

10:06:25 23 A. Yes.

10:06:26 24 Q. Can you please read that bullet for me?

10:06:29 25 A. Yes. TDCJ staff and medical providers must continue

10:06:33 1 to work closely together to identify each inmate who may
10:06:37 2 be susceptible to heat-related issues due to the inmate's
10:06:42 3 current medical condition. School district staff,
10:06:46 4 contractors and volunteers who work with inmates must work
10:06:50 5 closely together to communicate regarding the inmates who
10:06:53 6 may be more susceptible to heat-related illnesses?

10:06:57 7 Q. Okay. Medical providers, who is that referring to?

10:07:01 8 A. That's referring to the University of Texas Medical
10:07:04 9 Branch and the Texas Tech Health Science Center.

10:07:07 10 Q. And who is the University of Texas Medical Branch and
10:07:10 11 the Texas Tech Health Science Center?

10:07:12 12 A. They're the two medical partners, teaching
10:07:14 13 universities that we contract our medical services with.

10:07:20 14 Q. Working closely together, what does that mean to you?

10:07:24 15 A. That means ongoing dialogue with not only the unit
10:07:31 16 staff and unit medical providers but also, with myself.
10:07:35 17 The Health Services Division within TDCJ is one of the 16
10:07:39 18 divisions. They have Division Ed, Dr. Linthicum, that her
10:07:44 19 and I as well as the units continue to communicate
10:07:48 20 throughout each month, each day on anything as far as
10:07:56 21 delivery of services and, in this case, certainly anything
10:07:59 22 as far as heat-related issues, day-to-day operations.

10:08:06 23 Q. Okay. And earlier, I think you said that TDCJ uses
10:08:13 24 the heat score to identify individuals at risk; is that
10:08:16 25 right?

10:08:16 1 A. Yes.

10:08:17 2 Q. And how many people again have a heat score
10:08:21 3 currently?

10:08:21 4 A. Over 12,000.

10:08:22 5 Q. And how many actual beds does TDCJ currently have?

10:08:25 6 A. 46,000.

10:08:26 7 Q. So for the roughly 30,000 beds that are still
10:08:30 8 available, how does TDCJ make decisions about who gets to
10:08:33 9 go into those beds?

10:08:35 10 A. The decision is a multitude of things. One,
10:08:40 11 depending on the facility, the inmate's custody could be a
10:08:46 12 jail population area that, as mentioned earlier, that
10:08:52 13 qualify that live in that area. It could be for a
10:08:54 14 multitude of reasons. Also could be a unit warden or
10:08:58 15 classification department working with our medical
10:09:01 16 partners, we could see someone that we think needs to be
10:09:04 17 in an air-conditioned bed versus a non-air-conditioned
10:09:07 18 bed.

10:09:08 19 We also -- every day, inmates change on who has a
10:09:13 20 heat score and who does not and just because someone loses
10:09:17 21 a heat score, they go to a zero, it's not necessarily they
10:09:22 22 may be moved out of the bed. They could remain in that
10:09:24 23 bed for an undetermined amount of time. So there's a
10:09:26 24 number of reasons why you would assign one to that type of
10:09:30 25 bed.

10:09:30 1 Q. So having a heat score, that guarantees you a cool
10:09:34 2 bed, right?

10:09:35 3 A. Yes.

10:09:35 4 Q. But it's not a requirement for a cool bed
10:09:38 5 necessarily?

10:09:38 6 A. That's correct.

10:09:39 7 Q. Okay. Thank you for making that distinction. Will
10:09:52 8 you pull up Exhibit 54, please.

10:10:10 9 So earlier, Mr. Lumpkin, you said that TDCJ
10:10:13 10 always has preparedness directives. You do it every year
10:10:18 11 and we looked at the most recent one, right?

10:10:19 12 A. Right.

10:10:20 13 Q. Okay. What does this document say?

10:10:23 14 A. It says Seasonal Preparedness Directive March 2019.

10:10:26 15 Q. Okay. And so, this is essentially the same
10:10:31 16 directive, it was just issued a different year.

10:10:33 17 A. Correct.

10:10:35 18 Q. I'd like to now enter this in as Defendants' Exhibit
10:10:39 19 54.

10:10:41 20 MR. DUKE: No objection.

10:10:43 21 THE COURT: So admitted.

10:10:44 22 Q. (BY MS. ELLIS) And will you scroll throughout to the
10:10:47 23 next year and what is this document entitled?

10:10:56 24 A. Seasonal Preparedness Directive May 2020.

10:11:00 25 Q. Okay. Scroll to the next, please. And what is this

10:11:06 1 one called?

10:11:06 2 A. Seasonal Preparedness Directive March 2021.

10:11:10 3 Q. Okay. And the next one, please read it for me, Mr.

10:11:16 4 Lumpkin.

10:11:17 5 A. Seasonal Preparedness Directive March 2022.

10:11:21 6 Q. And read the last one for me, please.

10:11:28 7 A. Seasonal Preparedness Directive March 2023.

10:11:32 8 Q. Over the past years, how has the seasonal directive

10:11:38 9 changed, if at all?

10:11:39 10 A. It has changed, maybe terminology some point. I

10:11:44 11 believe, 2020, 2021 we went from offender to inmate.

10:11:48 12 Q. Okay.

10:11:48 13 A. During COVID, we put COVID -- reminded folks,

10:11:53 14 reminded staff of COVID protocols during COVID and then,

10:11:57 15 after the pandemic, removed that language as an example.

10:12:02 16 Q. Okay. Do you have any specific changes to the heat

10:12:07 17 mitigation policy or ways that you've changed how you

10:12:11 18 implement these policies that are contained in the

10:12:13 19 directives?

10:12:15 20 A. Ask me that again.

10:12:16 21 Q. Sure. Are there any substantive changes over the

10:12:20 22 past couple of years to the seasonal preparedness

10:12:22 23 directive as it relates to heat mitigation?

10:12:31 24 A. There has been some revised areas, but overall, as

10:12:36 25 far as how we carry out the heat mitigation or taking away

10:12:40 1 practice, no.

10:12:41 2 Q. Okay. Why would you make changes each year?

10:12:45 3 A. Some is just grammar. Just grammar. Such as

10:12:51 4 mentioned, going from offender to inmate. Of course,

10:12:54 5 COVID, I just mentioned that again. I believe two years

10:13:01 6 ago, may have added a sentence -- additional sentence for

10:13:06 7 staff working that are exposed in direct sunlight areas

10:13:09 8 for their eight-hour shift, protocols of ensuring that

10:13:13 9 heat mitigation efforts for them are being carried out.

10:13:16 10 Q. Okay. So you're changing it each year based off of

10:13:19 11 what you've observed, what you think the needs are going

10:13:22 12 to be?

10:13:22 13 A. Exactly.

10:13:23 14 Q. And lastly, I think you mentioned an I-204 flier; is

10:13:34 15 that right?

10:13:34 16 A. It is. That's right, yes.

10:13:37 17 Q. Will you go ahead and pull that up. It's Exhibit 56.

10:13:47 18 Mr. Lumpkin, what is this flier?

10:13:50 19 A. So that is a flier that is -- that covers heat, cold

10:13:55 20 weather, safe prisons PREA information, suicide

10:13:59 21 prevention.

10:14:01 22 Q. I'd like now to enter this is as Exhibit 56.

10:14:06 23 MR. DUKE: No objection.

10:14:06 24 THE COURT: So admitted.

10:14:08 25 Q. (BY MS. ELLIS) Mr. Lumpkin, this looks very similar

10:14:11 1 to me as the pocket card.

10:14:14 2 A. Yes. It looks similar, yes.

10:14:17 3 Q. What is the purpose of this flier?

10:14:19 4 A. When an individual is assigned to one of our

10:14:24 5 facilities, even they're moving from one unit to another

10:14:27 6 that they are provided this upon their assignment to the

10:14:29 7 facility.

10:14:30 8 Q. Okay. So it differs from the pocket card in that

10:14:34 9 this is given to the inmate.

10:14:35 10 A. Correct.

10:14:36 11 Q. Okay. But it contains a lot of the same information?

10:14:39 12 A. That's correct.

10:14:40 13 Q. So how to beat the heat, how to prevent it, some

10:14:45 14 signs of identifying it.

10:14:47 15 A. Yes.

10:14:47 16 Q. Okay. Thank you. And, Mr. Lumpkin, I know that

10:14:57 17 you've said it several times but you were in court

10:15:00 18 throughout this week during all the testimony?

10:15:02 19 A. Correct.

10:15:03 20 Q. Have you sat in on every witness?

10:15:06 21 A. Except step out to go to the restroom, yes.

10:15:10 22 Q. Do you remember testimony about, you know, what

10:15:15 23 happens when an inmate dies and how their body is then

10:15:19 24 eventually transported for purposes of an autopsy, that

10:15:23 25 line of questioning?

10:15:24 1 A. Yes.

10:15:24 2 Q. Okay. So when an inmate passes away, what happens

10:15:29 3 from TDCJ's perspective?

10:15:31 4 A. Number of things that happen. We certainly notify

10:15:36 5 next of kin. Certainly notify our Office of Inspector

10:15:40 6 General. We have a report process, emergency action

10:15:44 7 center that report that. And we contract with Carnes

10:15:52 8 Funeral Home for the pickup of the body and the transport

10:15:54 9 of the body to the medical provider.

10:15:57 10 Q. Who is Carnes Funeral Home?

10:15:59 11 A. Carnes Funeral Home is based out of, I believe,

10:16:03 12 League City. We contract with them for our funeral

10:16:05 13 services.

10:16:08 14 Q. And so, they are responsible for ultimately picking

10:16:10 15 up the body and transporting it to the medical examiner's?

10:16:13 16 A. That's correct.

10:16:13 17 Q. Okay. When do they pick up the body?

10:16:18 18 A. My contract to pick up the body within four hours of

10:16:22 19 the individual being pronounced.

10:16:24 20 Q. Okay. Why do you want the body to be picked up

10:16:28 21 within four hours? Is there a reason for that timeline?

10:16:31 22 A. Sure. We want the body -- decomposition of the body

10:16:35 23 to occur for the route of the medical examiner for autopsy

10:16:41 24 in that we are -- all due respect to the deceased and the

10:16:47 25 process is being carried out as required.

10:16:50 1 Q. Have there been instances when the funeral home has
10:16:53 2 not picked up the body within four hours as they're
10:16:55 3 required to do so?

10:16:56 4 A. Unfortunately, there has been.

10:16:58 5 Q. And what happens then? Do you have a conversation
10:17:01 6 with them? Is there a disciplinary action?

10:17:03 7 A. We have a conversation with them but we also have an
10:17:07 8 opportunity to do a contract -- a contract performance
10:17:20 9 entry against that provider if they do not carry out
10:17:22 10 what's within the contract.

10:17:24 11 Q. Okay. And Carnes Funeral Home, they do not do the
10:17:28 12 autopsy themselves. They're just responsible for the
10:17:30 13 transport.

10:17:31 14 A. Right. For transport, yes, and then, ultimately,
10:17:35 15 burial services.

10:17:36 16 Q. Who does the autopsy?

10:17:39 17 A. Medical examiner can do one if it is a death that is
10:17:47 18 per se a homicide or possible foul play as determined by
10:17:51 19 the Office of Inspector General's Office. But otherwise,
10:17:56 20 most of the autopsies are done through UTMB.

10:17:59 21 Q. Thank you. No further questions.

10:18:29 22 CROSS-EXAMINATION

10:19:01 23 BY MR. DUKE:

10:19:01 24 Q. Hi, Mr. Lumpkin. Brandon Duke for the plaintiffs.

10:19:07 25 You're not a medical doctor, correct?

10:19:08 1 A. That's correct.

10:19:09 2 Q. And you never went to medical school?

10:19:11 3 A. I did not.

10:19:12 4 Q. And you don't have any background or training in the

10:19:18 5 diagnosis of patients?

10:19:19 6 A. I do not.

10:19:20 7 Q. Or the treatment of people?

10:19:22 8 A. Correct. I do not.

10:19:26 9 Q. Do you have any experience with public health?

10:19:30 10 A. By experience.

10:19:31 11 Q. Training or experience in the area of public health?

10:19:33 12 A. No.

10:19:34 13 Q. And then, you don't have any background or training

10:19:36 14 in epidemiology.

10:19:38 15 A. I do not.

10:19:38 16 Q. No training or background in psychiatry?

10:19:41 17 A. I do not.

10:19:42 18 Q. So when it comes to the effects of heat on the human

10:19:46 19 body and the human brain, you would defer to judgment of

10:19:51 20 medical experts, correct?

10:19:52 21 A. Of our medical providers, yes.

10:19:54 22 Q. No. Just medical experts in general.

10:19:56 23 A. Yes.

10:19:57 24 Q. More so than you.

10:19:59 25 A. Yes.

10:20:01 1 Q. You testified -- and I may have written the number
10:20:11 2 down wrong -- how many inmates are currently in TDCJ's --
10:20:16 3 what's the population of TDCJ's inmate population?
10:20:18 4 A. Approximately 134,500.
10:20:21 5 Q. And you said there is roughly 46,000 beds that are
10:20:26 6 available, actual beds that are available today?
10:20:28 7 A. That's correct.
10:20:30 8 Q. And so, that's over 80 -- much more than 80,000 beds
10:20:35 9 of uncooled beds, correct?
10:20:37 10 A. Yes.
10:20:39 11 Q. I can do the math but I haven't done it.
10:20:42 12 A. Well, if I could correct, I mean, there's -- 134,500
10:20:49 13 was our count and with the 46,000 so yeah, 80,000.
10:20:56 14 Q. So at least 80,000 inmates are currently housed in
10:21:00 15 uncooled beds, correct?
10:21:01 16 A. Yes.
10:21:03 17 Q. You mentioned partially air-conditioned facilities.
10:21:06 18 Is that right? You have some fully air conditioned, some
10:21:09 19 partially air conditioned facilities?
10:21:11 20 A. That's correct.
10:21:12 21 Q. Do you remember the numbers?
10:21:13 22 A. Fifty-five that are partially air conditioned.
10:21:15 23 Q. And how many are full?
10:21:18 24 A. Thirty-two.
10:21:19 25 Q. And then, how many units does TDCJ operate?

10:21:23 1 A. Total 101, both state operated and privately
10:21:27 2 operated.
10:21:28 3 Q. 101 total. Okay. Some of those facilities, though,
10:21:34 4 have as few as three beds, correct, that are cool beds?
10:21:37 5 A. I don't know. I don't have the stats right in front
10:21:41 6 of me, but there are some that may have a limited number.
10:21:44 7 I don't know the exact number to be three.
10:21:46 8 Q. So if I told you that the Goodman Unit had three cool
10:21:50 9 beds, does that sound correct?
10:21:51 10 A. That is correct.
10:21:52 11 Q. And then, if the Hobby Unit has seven AC beds, is
10:21:58 12 that correct?
10:21:58 13 A. That's correct.
10:21:58 14 Q. But you include that in the partially cooled beds?
10:22:02 15 A. Yes.
10:22:03 16 Q. And just to confirm, do you know how many inmates the
10:22:09 17 Goodman Unit houses or could house?
10:22:13 18 A. 600 -- approximately 600, 612.
10:22:18 19 Q. But only three cooled beds, right?
10:22:20 20 A. Yes.
10:22:21 21 Q. Okay. And the Hobby Unit, is it approximately like
10:22:24 22 1,300?
10:22:24 23 A. 1,300 -- 13 approximately.
10:22:29 24 Q. But seven cool beds?
10:22:30 25 A. Yes.

10:22:30 1 Q. But that counts as a partially cooled unit, correct?

10:22:33 2 A. Yes.

10:22:34 3 Q. Okay. Just to stay on this a little bit further, you

10:22:42 4 mentioned the heat score and that you can correct me if

10:22:46 5 I'm wrong. I wrote it down quickly. You said that there

10:22:49 6 were about 30,000 cooled beds that are available to

10:22:53 7 inmates without a heat score?

10:22:54 8 A. Yes.

10:22:55 9 Q. Is that right?

10:22:56 10 A. Yes, 30,000 plus.

10:22:58 11 Q. Are all 30,000 beds being occupied today?

10:23:03 12 A. Are all 30,000 beds being occupied?

10:23:06 13 Q. You heard testimony about cool beds that were

10:23:15 14 available for use recently. I'm asking today, are there

10:23:20 15 cool beds available for use not being occupied by an

10:23:23 16 inmate?

10:23:24 17 A. Could be every day because an inmate may go home, may

10:23:26 18 be released that was in a cool bed. So to answer your

10:23:31 19 question, there may be some inventory of beds today that

10:23:33 20 do not have anybody in there right now that will later on

10:23:36 21 today or tomorrow.

10:23:37 22 Q. Right. I'm not just talking about like daily

10:23:41 23 transitory use. I'm saying like are there periods of

10:23:43 24 time, including today, where there are an amount of beds

10:23:45 25 that are not being occupied by inmates?

10:23:47 1 A. Only because of day-to-day operations.

10:23:50 2 Q. Do you know how many cool beds that are available
10:23:52 3 today that aren't being used?

10:23:53 4 A. I know 30,000 plus.

10:23:55 5 Q. No, no. I'm saying cool bed -- I don't think I was
10:23:58 6 accurate so I'll restate my question. How many cool beds
10:24:02 7 are available today that are not being used by any
10:24:05 8 inmates?

10:24:06 9 A. I don't have that number.

10:24:08 10 Q. But there are some.

10:24:11 11 A. For day-to-day operations, there could be some that
10:24:16 12 are available. Not with somebody in it yet.

10:24:20 13 Q. On the heat score, you testified that heat
10:24:36 14 sensitivities -- that heat score, that heat sensitivity
10:24:40 15 score was created by UTMB; is that right?

10:24:42 16 A. It was created by the medical partners and by a third
10:24:48 17 party.

10:24:48 18 Q. Who is the medical partners and the third party?

10:24:52 19 A. Well, the medical party is University of Texas
10:24:56 20 Medical Branch and Texas Tech Health Science Center. I
10:25:00 21 don't recall the name of the third party, but I imagine we
10:25:04 22 could make that readily available.

10:25:06 23 Q. Is it your testimony that whoever -- that whatever
10:25:10 24 medical conditions or medications are part of that heat
10:25:16 25 sensitivity score, that's included in the algorithm? Did

10:25:21 1 I understand your testimony correctly?

10:25:22 2 A. Can you ask me that again? I'm sorry.

10:25:28 3 Q. Is it correct from your testimony before that what

10:25:32 4 medical conditions or what medications are included in the

10:25:36 5 algorithm to create that heat score, that that's part of

10:25:44 6 the heat sensitivity score -- that's part of the creation

10:25:46 7 of the heat sensitivity score?

10:25:48 8 MS. ELLIS: Objection. Misstates testimony.

10:25:52 9 Q. (BY MR. DUKE) Is the medication or medical condition

10:25:55 10 included as part of the heat sensitivity score?

10:25:59 11 A. My knowledge, could be part, yes.

10:26:01 12 Q. Who told you that?

10:26:02 13 A. Who told me that? I don't have a specific.

10:26:05 14 Q. Well, or how do you know that?

10:26:07 15 A. Know that just from the day-to-day interactions with

10:26:10 16 our medical partners and having a working knowledge of the

10:26:18 17 algorithm itself. But per se what medications drive what

10:26:24 18 algorithm score, I do not have that knowledge, no.

10:26:27 19 Q. Do you have any other factual basis for your

10:26:30 20 assertion? Just what you've learned over time?

10:26:33 21 A. Can you define any other factual basis?

10:26:36 22 Q. I think you just said you gained the knowledge of it.

10:26:39 23 I'm just wondering if -- how you gained that knowledge and

10:26:42 24 specifically.

10:26:45 25 A. I'm in direct communication with our University of

10:26:48 1 Texas Medical Branch, with Texas Tech Health Science
10:26:51 2 Center, with our health service medical director. So
10:26:57 3 through those means, having an understanding of the
10:26:59 4 algorithm but, again, not in a way that a medical doctor
10:27:04 5 that knows what medications drives what algorithm score.

10:27:08 6 Q. Okay. But you aren't personally involved in
10:27:11 7 establishing the algorithm?

10:27:12 8 A. I was not.

10:27:13 9 Q. You said a working knowledge. What do you mean by a
10:27:16 10 working knowledge of the algorithm?

10:27:17 11 A. That I'm aware of the algorithm, aware that it is
10:27:22 12 something our teaching universities carry out that process
10:27:27 13 and just on a broad term of medical facts, certain
10:27:33 14 medications, diagnosis could impact that score.

10:27:37 15 Q. Was TDCJ, did it decide which conditions were part of
10:27:42 16 the heat sensitivity score?

10:27:44 17 A. Not to my knowledge, no.

10:27:50 18 Q. Who's Dr. Jane Leonardson?

10:27:53 19 A. She's with the University of Texas Medical Branch.

10:28:00 20 Q. Dr. Leonardson has testified that she was personally
10:28:05 21 involved in creating the heat sensitivity score. So would
10:28:09 22 you defer to her explanation of how the algorithm was
10:28:13 23 created?

10:28:14 24 A. Yes.

10:28:21 25 MS. ELLIS: Your Honor, I'm going to object to

10:28:23 1 whatever he's going to pull up related to Dr. Leonardson
10:28:26 2 as facts not in evidence. Dr. Leonardson has not
10:28:30 3 testified. Simply no foundation for this witness what her
10:28:33 4 testimony is or even how it would be relevant.

10:28:37 5 MR. DUKE: I'm using it for impeachment purposes.
10:28:39 6 He has said that she would have the information on how the
10:28:42 7 algorithm was established. He's asserted something about
10:28:44 8 how the algorithm was established, I'd like to show
10:28:48 9 testimony about how the algorithm was established that
10:28:49 10 contradicts this testimony.

10:28:50 11 MS. ELLIS: That's not proper impeachment. He's
10:28:53 12 going to impeach Mr. Lumpkin with testimony of a different
10:28:57 13 individual, although he's made very clear that he's not a
10:29:00 14 medical promotional. He had no insight or production of
10:29:03 15 this heat score algorithm. He's made that very clear. So
10:29:07 16 to impeach him with someone else's testimony who he has
10:29:09 17 said has the knowledge about the heat score system would
10:29:11 18 certainly be improper.

10:29:16 19 THE COURT: I just want to make sure you were
10:29:17 20 done before he started talking.

10:29:20 21 MS. ELLIS: Yes, I'm done.

10:29:23 22 MR. DUKE: I asked him did TDCJ decide which
10:29:26 23 conditions required the score, he testified that he did
10:29:27 24 not. And --

10:29:29 25 MS. ELLIS: He testified not to his knowledge.

10:29:31 1 MR. DUKE: Yeah, not to his knowledge and I think
10:29:32 2 that that will be contradicted by what is shown by the
10:29:37 3 testimony.

10:29:37 4 MS. ELLIS: But that's Dr. Leonardson's
10:29:40 5 testimony. Not his.

10:29:41 6 THE COURT: Sustain the objection.

10:29:44 7 MS. ELLIS: Thank you, your Honor.

10:30:22 8 Q. (BY MR. DUKE) You testified regarding the
10:30:26 9 preparedness checklist previously, just now, correct?

10:30:29 10 A. Correct.

10:30:30 11 Q. Can we show Defendants' Exhibit 9? You testified
10:31:03 12 about this checklist. Is it correct that this list is
10:31:09 13 used to see if the TDCJ policy is being followed?

10:31:14 14 A. Yes.

10:31:15 15 Q. But does it determine if the -- this checklist isn't
10:31:22 16 a gauge of the effectiveness or adequacy of the policy,
10:31:25 17 correct?

10:31:26 18 MS. ELLIS: Objection. Misstates testimony.

10:31:29 19 MR. DUKE: I'm not asking him his testimony. I'm
10:31:31 20 asking a question.

10:31:32 21 THE COURT: You can ask the question.

10:31:33 22 Q. (BY MR. DUKE) So my question is this document doesn't
10:31:36 23 determine if the measures that TDCJ has adopted are
10:31:44 24 adequate or effective, correct?

10:31:46 25 A. Can you ask that again?

10:31:49 1 Q. This is a checklist simply to determine if the policy
10:31:53 2 is being followed, correct?

10:31:54 3 A. It's a audit -- the outcome of the audit. It's a
10:31:59 4 summary of the findings.

10:32:00 5 Q. Right. And the purpose of the checklist is to
10:32:02 6 determine if the policy is being followed, correct?

10:32:04 7 A. Yes.

10:32:05 8 Q. It does not determine if the policy or the measures
10:32:09 9 or mitigation efforts are effective, correct?

10:32:12 10 A. No. It determines whether the items being carried
10:32:16 11 out that mitigated heat are being -- in place.

10:32:20 12 Q. And last year, in 2023, there were five inmates who
10:32:26 13 died in TDCJ units due to heat or heat-related causes,
10:32:31 14 correct?

10:32:32 15 A. No.

10:32:33 16 Q. Well, there was at least three that your counsel and
10:32:36 17 other witnesses have admitted to, correct?

10:32:38 18 A. Three that had possible contributing factors that
10:32:42 19 heat was a possible contributing factor.

10:32:44 20 Q. You testified earlier that you sat here for most of
10:32:47 21 the testimony the last two days, correct?

10:32:49 22 A. I did.

10:32:49 23 Q. And did you also --

10:32:50 24 MS. ELLIS: Objection. Misstates his -- like the
10:32:53 25 testimony, you're assuming facts that he doesn't agree

10:32:55 1 with, while that might be your contention that those were
10:32:59 2 heat-related deaths, he's allowed to answer the question.

10:33:03 3 Q. (BY MR. DUKE) My question was did your counsel admit
10:33:05 4 that there was three heat-related deaths at TDCJ units
10:33:09 5 last year --

10:33:10 6 MS. ELLIS: He's not a lawyer.

10:33:10 7 THE COURT: Overruled. You can answer the
10:33:11 8 question.

10:33:12 9 A. I have knowledge that in listening that there are
10:33:15 10 three that have possible contributing factors that heat
10:33:18 11 was a possible contributing factor to their death.

10:33:22 12 Q. (BY MR. DUKE) Okay. You'd agree then that if three
10:33:26 13 people died while these measures were in place, they would
10:33:31 14 be ineffective, correct?

10:33:33 15 A. No.

10:33:34 16 Q. Why not?

10:33:35 17 A. Ask me that question again, please.

10:33:38 18 Q. If three people died while heat mitigation measures
10:33:42 19 were in place, that will be a measure of their
10:33:44 20 ineffectiveness, correct?

10:33:45 21 A. But I don't know that they died because of heat.

10:33:48 22 Q. I didn't ask you if they died because of heat. I
10:33:50 23 asked you if three people died because of heat, then while
10:33:57 24 these measures were in place, that would show that the
10:34:00 25 measures are ineffective, correct?

10:34:02 1 A. No. I don't agree with what.

10:34:05 2 Q. What measure would be effective? How many deaths is
10:34:07 3 it necessary to show a measure is ineffective?

10:34:10 4 A. I would say those three deaths, I don't know that
10:34:14 5 they were contributed to any of those measures not being
10:34:17 6 carried out.

10:34:18 7 Q. You're not answering my question. My question is if
10:34:20 8 three people died --

10:34:22 9 MS. ELLIS: Objection, your Honor. He is trying
10:34:24 10 to answer the question.

10:34:26 11 THE COURT: Okay. He could answer the way he
10:34:27 12 wants.

10:34:30 13 MR. DUKE: I think he's misunderstanding the
10:34:32 14 question.

10:34:32 15 THE COURT: The answer is what it is.

10:34:33 16 Q. (BY MR. DUKE) So I'll ask it one more time. If three
10:34:35 17 people died because of the heat, would that be an
10:34:39 18 indication that the policy is ineffective?

10:34:42 19 A. No.

10:34:43 20 Q. Why not?

10:34:45 21 A. Because, one, I'm not a medical doctor, I'm not a
10:34:49 22 medical examiner. Again, those three all point towards
10:34:55 23 heat as a possible contributing factor. To say that
10:34:59 24 either these protocols were an impact of that, I can't sit
10:35:04 25 here and tell you that.

10:35:05 1 Q. Okay. You mentioned how inmate populations are able
10:35:10 2 to access certain measures, correct?

10:35:13 3 A. Yes.

10:35:14 4 Q. Okay. Inmates in general population are generally
10:35:17 5 either in a cell block or a dormitory housing, correct?

10:35:21 6 A. Correct.

10:35:21 7 Q. And so, for an inmate in a cell block housing, their
10:35:25 8 cell is typically locked unless an officer opens the door,
10:35:31 9 right?

10:35:31 10 A. Yes.

10:35:31 11 Q. And for both types of housing at dormitory housing
10:35:34 12 and the cell block, there's is a locked door in between
10:35:38 13 the housing area and the rest of the facility, correct?

10:35:42 14 A. Yes.

10:35:43 15 Q. So for an inmate in the general population, an
10:35:47 16 officer must open the locked door for them to leave the
10:35:52 17 housing area, correct?

10:35:54 18 A. To clarify, you're talking about their assigned cell
10:35:57 19 where they're living or their housing?

10:35:58 20 Q. No, no. Their housing area.

10:36:00 21 A. Again, some have showers in the housing area.

10:36:05 22 Q. I was asking to leave the housing area.

10:36:09 23 A. Yes, it's confined area.

10:36:11 24 Q. So except for scheduled movements, inmates will need
10:36:15 25 permission to leave the housing area, correct?

10:36:18 1 A. Yes.

10:36:18 2 Q. So inmates need permission to use respite areas,
10:36:22 3 correct?

10:36:24 4 A. They need permission to be able to access it, yes.

10:36:35 5 Q. You had mentioned that there are 93 units.

10:36:48 6 A. State operated.

10:36:49 7 Q. And then, a few private units, as well?

10:36:52 8 A. Eight.

10:36:53 9 Q. And I think you said there was 24,000 employees?

10:36:56 10 A. In Correctional Institutions Division for those 93
10:36:59 11 facilities operations, yes.

10:37:01 12 Q. How often do you visit each unit?

10:37:03 13 A. How often I visit each unit?

10:37:07 14 Q. Yeah.

10:37:08 15 A. I can't tell you how often I go to each particular
10:37:10 16 unit. I go every single month.

10:37:14 17 Q. That was what I was getting to. You testified you
10:37:17 18 were in units every single month and that's one measure of
10:37:20 19 how you know, you could speak to the things going on
10:37:22 20 there. I was just wondering how often you are -- say
10:37:25 21 there's 93 units that aren't -- that are state operated,
10:37:29 22 how often do you get to every unit?

10:37:33 23 A. In a year's time, I would that a majority of every
10:37:40 24 unit at least once.

10:37:41 25 Q. Just to pin that down, a majority would mean you're

10:37:46 1 in roughly 41 units each year?

10:37:49 2 A. I don't have those stats to show. That is a

10:37:54 3 guesstimation.

10:37:54 4 Q. But there's years where you don't visit a unit

10:37:57 5 throughout the entire year.

10:37:58 6 A. There could be.

10:38:00 7 Q. There could be summers where you don't know what's

10:38:02 8 going on in any particular unit like just personal

10:38:06 9 knowledge?

10:38:07 10 A. To answer your question, no.

10:38:09 11 Q. Okay. Let me just state it this way. There are

10:38:12 12 summers where you do not visit the units, all 93 unit,

10:38:16 13 correct?

10:38:16 14 A. I may not make it to one of the unit, that's correct.

10:38:24 15 Q. Thank you. No further questions.

10:38:33 16 MS. ELLIS: Just a few from me.

10:38:35 17 RE-DIRECT EXAMINATION

10:38:35 18 BY MS. ELLIS:

10:38:48 19 Q. Mr. Lumpkin, how many facilities does TDCJ have

10:38:53 20 again?

10:38:53 21 A. 101.

10:38:55 22 Q. And how many of those are privately owned?

10:38:58 23 A. They're privately operated.

10:38:59 24 Q. Operated?

10:39:00 25 A. Eight.

10:39:01 1 Q. Ought. Okay. Those privately operated facilities,
10:39:04 2 do they have air conditioning or do they not have air
10:39:07 3 conditioning?

10:39:07 4 A. They just about every one of them has air
10:39:10 5 conditioning, has had air conditioning for a while.

10:39:12 6 Q. Okay. Thank you. Now, opposing counsel was just
10:39:15 7 asking you a lot of questions about heat score system. Do
10:39:18 8 you remember that line of questioning?

10:39:19 9 A. Yes.

10:39:19 10 Q. Okay. You are not a medical professional, right?

10:39:22 11 A. Right.

10:39:23 12 Q. You don't represent to be a medical professional.

10:39:25 13 A. No, I do not.

10:39:26 14 Q. Okay. You don't need to have medical knowledge in
10:39:32 15 your role, do you?

10:39:33 16 A. No, I do not.

10:39:34 17 Q. Because you're not giving a heat score, are you?

10:39:37 18 A. I am not.

10:39:38 19 Q. You're not changing their heat score in any way?

10:39:40 20 A. No way.

10:39:41 21 Q. So you rely on medical professionals who have that
10:39:44 22 knowledge to give heat scores or this algorithm will, but
10:39:48 23 it all comes from medical professionals essentially?

10:39:51 24 A. That's correct.

10:39:51 25 Q. Okay. And when TDCJ becomes aware that an individual

10:39:56 1 has a heat score, what do they do?

10:39:59 2 A. They move that individual into a air-conditioned bed.

10:40:03 3 Or if they're on a facility that does not have one

10:40:06 4 available, transport them to a facility that does.

10:40:08 5 Q. Okay. Were you here yesterday when Dr. Uribe

10:40:13 6 testified?

10:40:13 7 A. Yes.

10:40:14 8 Q. Okay. Do you recall that he conceded that some of

10:40:19 9 the conditions that led to death would have happened

10:40:24 10 regardless of heat?

10:40:25 11 A. Yes.

10:40:25 12 Q. Thank you. No further questions.

10:40:30 13 THE COURT: Anything further?

10:40:34 14 MR. DUKE: No further questions.

10:40:35 15 THE COURT: Thank you, Mr. Lumpkin. You may step

10:40:39 16 down.

10:40:39 17 THE WITNESS: Thank you.

10:40:40 18 THE COURT: Your next witness.

10:40:42 19 MS. CARTER: Mr. Collier calls Dr. Jane

10:40:45 20 Leonardson to testify. She'll appear via Zoom.

10:41:48 21 THE COURT: Good morning, Doctor. This is Judge

10:41:50 22 Pitman. Can you hear me okay? Good morning, Doctor.

10:42:05 23 This is Judge Pitman. Can you hear me?

10:42:07 24 THE WITNESS: I can. Thank you. Can you hear

10:42:09 25 me?

10:42:10 1 THE COURT: Yes, we can. We just ask you if you
10:42:12 2 wouldn't mind speaking as closely as you can to the
10:42:16 3 microphone. And if you have any difficulty hearing anyone
10:42:20 4 on this end, if you could just let us know, that would be
10:42:23 5 great.

10:42:23 6 THE WITNESS: All right. Thank you.

10:42:24 7 THE COURT: And before we begin, could I get you
10:42:26 8 to raise your right hand and be sworn, please.

10:42:29 9 THE CLERK: You do solemnly swear or affirm that
10:42:29 10 the testimony which you may give in the case now before
10:42:29 11 the Court shall be the truth, the whole truth, and nothing
10:42:37 12 but the truth?

10:42:37 13 THE WITNESS: I had a hard time hearing that.

10:42:45 14 THE CLERK: You do solemnly swear or affirm that
10:42:45 15 the testimony which you may give in the case now before
10:42:45 16 the Court shall be the truth, the whole truth, and nothing
10:42:50 17 but the truth?

10:42:50 18 THE WITNESS: Yes.

10:42:51 19 THE COURT: Thank you.

10:42:51 20 JANE LEONARDSON, called by the Defendant, duly sworn via
10:43:40 21 videoconference.

10:43:40 22 DIRECT EXAMINATION

10:43:41 23 BY MS. CARTER:

10:43:41 24 Q. Dr. Leonardson, good morning. Can you hear me?

10:43:44 25 A. Yes, I can.

10:43:45 1 Q. My name is Abigail Carter and I represent Mr.
10:43:48 2 Collier. I'm going to ask you a couple of questions if
10:43:51 3 that's okay.

10:43:52 4 A. Okay.

10:43:54 5 Q. Can you please state your name for the record?

10:43:57 6 A. My name is Jane Leonardson.

10:44:01 7 Q. Are you a medical doctor, Dr. Leonardson?

10:44:03 8 A. I am.

10:44:05 9 Q. What's your educational background?

10:44:10 10 A. I have an M.D. from Northwestern University. I did
10:44:13 11 my residency in internal medicine at Northwestern and I
10:44:20 12 later got board certified in internal medicine from then
10:44:24 13 till now and I later became board certified in clinical
10:44:29 14 informatics.

10:44:29 15 Q. At this time, I'd like to move to designate Dr.
10:44:32 16 Leonardson as an expert in internal medicine and clinical
10:44:35 17 informatics.

10:44:36 18 THE COURT: Any objection to the designation?

10:44:39 19 MR. EDWARDS: I'd like some foundation as to what
10:44:41 20 infomatics is so that I know whether or not -- I'm
10:44:45 21 inclined to say no objection but I just simply don't know
10:44:48 22 what that is and I don't think a foundation's been laid
10:44:50 23 for that.

10:44:51 24 Q. (BY MS. CARTER) Dr. Leonardson, I'll ask you to
10:44:53 25 explain what clinical informatics is and how you were

10:44:56 1 trained in that.

10:44:57 2 A. Yes. It's informatics, not infomatics, and clinical
10:45:03 3 informatics is, I guess, a new-ish specialty recognized by
10:45:07 4 the American Board of Specialties and it's related to the
10:45:14 5 management and understanding of clinical technical assets.
10:45:21 6 Data going in and out of an electronic health record, for
10:45:25 7 instance, for accuracy in reporting and those kinds of
10:45:29 8 things.

10:45:31 9 MR. EDWARDS: If I could take the witness on a
10:45:33 10 brief voir dire, your Honor.

10:45:34 11 THE COURT: Sure.

10:45:36 12 VOIR DIRE EXAMINATION

10:45:37 13 BY MR. EDWARDS:

10:45:37 14 Q. Is it Dr. Leonardson?

10:45:39 15 A. Yes.

10:45:39 16 Q. Dr. Leonardson, do you personally create algorithms
10:45:43 17 as a part of your job in informatics?

10:45:50 18 A. I assist in it for sure. I don't like -- I didn't
10:45:54 19 decide to make an algorithm of my own but I assist. Well,
10:45:54 20 my assistant.

10:46:05 21 Q. Did you personally with regards to the algorithm of
10:46:08 22 heat sensitivity in this case create the algorithm and do
10:46:11 23 the math behind the algorithm?

10:46:13 24 MS. CARTER: Your Honor, I believe we're getting
10:46:14 25 into testimony question. This goes beyond the scope of

10:46:16 1 designating her as an expert. She's already explained
10:46:19 2 what clinical informatics is. If Mr. Edwards has a
10:46:23 3 problem with that, we can get into the testimony later and
10:46:25 4 he can make his objections then. But this is about her
10:46:28 5 background and her specialty in these regions. In these
10:46:31 6 areas.

10:46:32 7 MR. EDWARDS: May I inquire as to her ability to
10:46:36 8 do that? And I was doing that through this particular
10:46:40 9 algorithm.

10:46:40 10 THE COURT: Okay. You could continue. I'll let
10:46:40 11 you ask.

10:46:44 12 Q. (BY MR. EDWARDS) Dr. Leonardson, did you personally
10:46:46 13 create the math behind the algorithm at issue in this
10:46:50 14 case?

10:46:50 15 A. No.

10:46:51 16 Q. Have you in your experience created algorithms in
10:46:56 17 order to determine particular vulnerabilities of any
10:46:59 18 medical condition for TDCJ?

10:47:03 19 A. I have a hard time with the word "created." I
10:47:06 20 assisted in the translation of a court settlement and
10:47:14 21 getting the information that we need out of our electronic
10:47:19 22 record. I didn't create, you know.

10:47:24 23 Q. Have you ever created an algorithm for use of a
10:47:29 24 medical organization or a prison organization?

10:47:32 25 A. I didn't personally create it.

10:47:36 1 Q. Do you have the ability to evaluate whether or not an
10:47:38 2 algorithm is effective?

10:47:43 3 A. I have the ability to evaluate whether an algorithm
10:47:47 4 is doing what it is supposed to do.

10:47:52 5 Q. How would you determine the effectiveness of an
10:47:54 6 algorithm doing what it's supposed to do?

10:47:57 7 A. I have technical people that can tell me is this
10:48:01 8 identifying the people it's designed to identify.

10:48:04 9 Q. But in terms of your personal expertise and
10:48:07 10 knowledge, you can't personally do that, you have to ask
10:48:10 11 other people if it's working; is that fair?

10:48:14 12 A. Yes.

10:48:19 13 MR. EDWARDS: I have no objection to her
10:48:21 14 testifying as an expert in informatics and internal
10:48:24 15 medicine. When we get to the algorithm, it seems that she
10:48:28 16 -- well, we can address that at that time.

10:48:30 17 THE COURT: All right. Very good. I will
10:48:33 18 recognize her as an expert in this field.

10:48:36 19 DIRECT EXAMINATION (Resumed)

10:48:38 20 BY MS. CARTER:

10:48:38 21 Q. Thank you for that explanation, Dr. Leonardson. Who
10:48:40 22 is your employer, Dr. Leonardson?

10:48:42 23 A. It is currently, I work half time for University of
10:48:47 24 Texas Medical Branch for the last year and a half. And
10:48:51 25 for about 26 years -- yeah, 26, 27 years, before 2022, I

10:49:01 1 worked for University of Texas Medical Branch correctional
10:49:05 2 managed care full time.

10:49:06 3 Q. And if I refer to University of Texas Medical Branch
10:49:09 4 as UTMB, is that fair?

10:49:11 5 A. Yes.

10:49:13 6 Q. You mentioned UTMB CMC. Can you explain to me what
10:49:18 7 CMC is?

10:49:19 8 A. Correctional managed care is a branch or a
10:49:23 9 creation -- it's like a branch of the University of Texas
10:49:27 10 Medical Branch that was designed to contract the care for
10:49:33 11 the eastern two-thirds of the Texas prison system. And
10:49:37 12 UTMB CMC also oversees the electronic health record that
10:49:44 13 is owned by TDCJ.

10:49:50 14 Q. You mentioned that it manages the eastern two-thirds.
10:49:54 15 Do you know who manages the western one-third?

10:49:57 16 A. Yes, Texas Tech University healthcare.

10:50:03 17 Q. What is UTMB CMC's role in working inside TDCJ
10:50:12 18 facilities?

10:50:14 19 A. We are contracted to provide medical care to the
10:50:18 20 people who are incarcerated with the Texas prison system
10:50:23 21 and we're heavily involved in quality endeavors, auditing,
10:50:33 22 making sure that we're providing the level of care that
10:50:36 23 we're contracted to provide.

10:50:39 24 Q. Do you work for TDCJ?

10:50:41 25 A. No.

10:50:42 1 Q. Have you ever worked for TDCJ?

10:50:45 2 A. No.

10:50:48 3 Q. You mentioned earlier that you'd been with UTMB, was
10:50:52 4 it, 26 years?

10:50:54 5 A. Before I retired and came back a year later, yes.

10:50:58 6 Q. How many of those years were spent as a
10:51:02 7 patient-facing physician?

10:51:07 8 A. About 15, 16.

10:51:12 9 Q. Just briefly, can you walk the Court through the
10:51:14 10 different positions you've held at UTMB?

10:51:17 11 A. Yes. I was a staff physician for a period of time.
10:51:23 12 Then I became the medical director for Pam Lychner state
10:51:27 13 jail and the Joe Kegans state jail and I was that for
10:51:33 14 quite a while. And then, I became a regional medical
10:51:36 15 director for the 25 prisons in the Houston region. And
10:51:40 16 then, I became the chief medical information officer for
10:51:44 17 the UTMB CMC. They created this position because it was
10:51:49 18 recognized. They needed a clinical voice in their IT
10:51:56 19 department.

10:51:56 20 Q. And you mentioned that you served as a regional
10:51:58 21 director. Can you tell me again how many units you
10:52:01 22 oversaw?

10:52:02 23 A. Twenty-five.

10:52:05 24 Q. Did all 25 of those units have medical partners in
10:52:12 25 them?

10:52:12 1 A. Yes.

10:52:13 2 Q. What was your role as a regional director?

10:52:17 3 A. I went to every unit quarterly and oversaw how things
10:52:22 4 were running. I knew where the problem points were in
10:52:28 5 various places. Some of my heart was in the usage of the
10:52:32 6 electronic health record to streamline processes and make
10:52:38 7 our data as valid as possible. So I often looked at how
10:52:42 8 providers were using the electronic health record and
10:52:47 9 tried to make improvements to some of that.

10:52:50 10 Q. Were you managing physicians at these units or were
10:52:54 11 you overseeing their duties in patient-facing roles?

10:52:58 12 A. I was overseeing their duties in patient-facing
10:53:01 13 roles.

10:53:02 14 Q. When you were a physician in these units, I know that
10:53:08 15 you can't really present a single day, but what would be
10:53:13 16 your duties if you were an assistant physician on the unit
10:53:15 17 you were at when you first started? What would you expect
10:53:18 18 to do during the day?

10:53:19 19 A. Well, because I'm an internist and we tend to do
10:53:23 20 complicated adult medicine, I had two PAs that worked on
10:53:28 21 the unit. So I assigned them mostly to do the intake
10:53:35 22 processing and I did the chronic clinic patients for that
10:53:41 23 unit pretty much exclusively. I did it. And instead of
10:53:45 24 having it done by some of the PAs, I also saw patients for
10:53:50 25 sick call and as the medical director. I also made

10:53:53 1 schedules for call and I reviewed all of the intake
10:53:59 2 paperwork from what we call the back door and wrote orders
10:54:03 3 for patients arriving at the units. Kind of address snags
10:54:09 4 if someone needed to get moved off and I needed to make a
10:54:12 5 phone call to make that happen or arranging specialty
10:54:16 6 care. You know, things like that come up, I did that,
10:54:20 7 also.

10:54:23 8 Q. Does the only time an inmate sees a medical provider,
10:54:26 9 is that only when they come to medical?

10:54:32 10 A. I'm not sure I understood the question completely.

10:54:36 11 Q. I'm sorry. I can rephrase. Do the medical providers
10:54:40 12 only work inside the medical department or can they visit
10:54:43 13 patients throughout the unit?

10:54:45 14 A. They can move and visit patients throughout the unit.
10:54:50 15 That happens often on lockdown or patients, of course, are
10:54:55 16 seen by nursing or what we call the back door on intake.
10:55:02 17 They get a pretty prompt medical evaluation there, as
10:55:05 18 well, but usually it's nursing, not the doctor. But if I
10:55:09 19 had to go to the back door, I could, or restrictive
10:55:16 20 housing.

10:55:17 21 Q. Is there a chain of command for if an inmate shows up
10:55:20 22 to medical -- and I think you mentioned there's a PA that
10:55:26 23 might do intake. Does that PA's orders, are those
10:55:28 24 reviewed by a doctor or a supervisor?

10:55:33 25 A. Not always. But PAs are trained to go ask questions

10:55:37 1 when they have something unusual. And I actually had two
10:55:41 2 PAs that I worked with very closely and communicated that
10:55:46 3 I wanted questions if they had any doubts and they were
10:55:49 4 good at coming to me if they had. Even if I said, yeah,
10:55:53 5 that's the right thing, I told them please just ask. And
10:55:56 6 so, when in question, they would ask me if there were
10:56:01 7 doubts about anything.

10:56:04 8 Q. And you mentioned sick calls. Can you explain what
10:56:07 9 the sick call process is for the Court?

10:56:10 10 A. Sick call, I think it's a military term, but it's
10:56:15 11 used in prison a lot. It's the request for healthcare
10:56:18 12 that is put in by an incarcerated person who -- like I
10:56:24 13 would call a doctor's office and say I'd like an
10:56:28 14 appointment. They have the ability to submit on paper, or
10:56:34 15 in person, or verbally to somebody who can write it down
10:56:40 16 that they need medical care for something. Or also, they
10:56:45 17 can communicate -- I need to know if I have an appointment
10:56:49 18 or I need to know how do I get my records. Or it's a
10:56:54 19 communication system and if they need an appointment, it's
10:56:56 20 triaged. Those requests are triaged. It's supposed to be
10:57:02 21 within 24 hours, but it's usually much faster than that
10:57:06 22 and it's determine do they need a dentist? Do they need a
10:57:10 23 doctor? Can they come in and get seen by the nurse? Is
10:57:13 24 it an administrative question? And it's then scheduled
10:57:16 25 and forwarded in the correct manner.

10:57:19 1 Q. Who is doing that triaging in terms of assessing
10:57:23 2 whether the need for the sick call is responded to and
10:57:26 3 what time it's responded to?

10:57:28 4 A. There's a nurse assigned to do the triage.

10:57:32 5 Q. So it's not a correctional officer determining what
10:57:35 6 sick calls are responded to?

10:57:37 7 A. Correct.

10:57:42 8 Q. And can you remind me when you moved into a
10:57:48 9 leadership role away from patient facing?

10:57:50 10 A. 2014. Well, became CMIO. I did not see as many
10:57:57 11 patients as regional but I did sometimes. So 2014, I
10:58:03 12 became the CMIO.

10:58:05 13 Q. And how long is -- are you still in that office?

10:58:09 14 A. Now my title is Director of Clinical Informatics
10:58:15 15 since I returned half time.

10:58:17 16 Q. What is the role of a CMIO?

10:58:21 17 A. The CMIO is a physician by definition and we are the
10:58:31 18 people that are able to say this is what people who are
10:58:33 19 using our electronic health record or any of our IT assets
10:58:38 20 need as clinical people. You may have heard that
10:58:43 21 electronic health records are sometimes considered
10:58:46 22 burdensome and when IT people create these sorts of
10:58:55 23 things, I mean, sometimes they really don't know how
10:58:59 24 providers or nurses think, and I'm sort of a consultant to
10:59:05 25 how do we design this for what everybody needs to see in a

10:59:09 1 patient's chart, how we get people to put accurate
10:59:12 2 information in, and also, for designing reports and
10:59:17 3 pulling the desired results out of the electronic health
10:59:21 4 record.

10:59:26 5 I used to also attend a lot of meetings and hear
10:59:32 6 where there were ping points from a business standpoint
10:59:33 7 and figure out ways that we could maybe solve those and
10:59:38 8 keep patients safer in error proofing our care.

10:59:43 9 Q. So your office is managing how things are put into
10:59:47 10 the electronic health record while they're managed in the
10:59:50 11 electronic health record and their output of the
10:59:54 12 electronic health record; is that accurate?

10:59:56 13 MR. EDWARDS: Objection. Leading.

10:59:57 14 THE COURT: I'll allow it. Go ahead.

10:59:59 15 A. Yes.

11:00:03 16 Q. (BY MS. CARTER) Does your office manage the input of
11:00:04 17 data into the electronic health record?

11:00:07 18 A. Not directly. We design interfaces so that it leads
11:00:15 19 the user in the right direction to put in what we're
11:00:18 20 looking for them to do, or to help them remember to do
11:00:20 21 what we want them to do, or to push them toward following
11:00:27 22 policy. You know, doctors forget things, too, so if we
11:00:31 23 have something right in front of them where it's harder to
11:00:34 24 forget or miss things, that's part of what we try to do,
11:00:39 25 also.

11:00:40 1 Q. So in your 26 years of experience at UTMB, who is
11:00:44 2 responsible for inputting data into the health record?

11:00:50 3 A. The person that's seeing the patient or working with
11:00:54 4 anything involving the patients, the doctors on the unit,
11:00:58 5 the nurses on the unit, schedulers enter scheduling into
11:01:03 6 it, the people on the front line.

11:01:08 7 Q. Does, say, a warden at TDCJ, do they have any control
11:01:12 8 over the electronic health record?

11:01:15 9 A. No.

11:01:17 10 Q. And Mr. Edwards kind of teed this up here but I guess
11:01:21 11 we'll start talking about it now. Do you know what is
11:01:24 12 commonly referred to as the heat score system, Dr.
11:01:30 13 Robertson?

11:01:30 14 A. I'm Leonardson.

11:01:31 15 Q. Dr. Leonardson.

11:01:33 16 A. Yes, I do.

11:01:36 17 Q. What is heat score?

11:01:40 18 A. The heat score was developed in response to a
11:01:44 19 settlement. I don't even really know which legal
11:01:48 20 settlement it was. Back in 2018, there was a legal
11:01:51 21 settlement between TDCJ and whoever was the plaintiff
11:01:59 22 stating that they would put people with certain risk
11:02:02 23 levels or risk conditions into beds that were -- we call
11:02:09 24 them cool beds so they're in air conditioning or cooler
11:02:13 25 temperatures.

11:02:15 1 And so, originally, we had this settlement in
11:02:19 2 front of us and TDCJ was very interested in complying with
11:02:25 3 the settlement but they don't have access to the
11:02:29 4 information because they don't even really have access to
11:02:32 5 the electronic health record for the most part. The
11:02:35 6 security side doesn't. And so, they were asking us to
11:02:41 7 figure out how we could privately communicate which
11:02:47 8 patients were at increased risk.

11:02:49 9 And, of course, we need to avoid, you know, HIPAA
11:02:55 10 disclosures and PHI and we also needed to -- you know,
11:03:01 11 compliance to that settlement was not so simple because it
11:03:05 12 was written by people that maybe don't understand. There
11:03:09 13 are 72,000 diagnosis codes in ICD 10 and things like that.
11:03:15 14 So when you say people with heart disease need to be
11:03:19 15 housed in a cool bed, well, there might be thousands of
11:03:24 16 codes for heart disease.

11:03:25 17 So we had to sit down and figure out how we could
11:03:28 18 pull that information out of the electronic health record
11:03:31 19 while letting people see patients and do their own thing,
11:03:35 20 just doing a good job for the patient and entering it and
11:03:39 21 then, give the information to TDCJ without disclosing
11:03:44 22 private information but to help them make accurate
11:03:46 23 decisions about housing.

11:03:49 24 Q. Can I ask you to explain to me what a diagnosis code
11:03:52 25 is?

11:03:54 1 A. Yeah. The most common one that's used is called ICD
11:04:01 2 and the most recent version of ICD is ICD 10, and no
11:04:07 3 exaggeration, there are 72,000 codes in ICD 10. And so,
11:04:12 4 when I as a physician enter my patient has diabetes, we
11:04:19 5 have it already programmed in that if I go to the problem
11:04:22 6 list and add diabetes, it has a code behind it and it
11:04:26 7 allows us to pull reports based on codes. It allows us to
11:04:33 8 compare our results to some free-world databases like
11:04:42 9 HEDIS. I don't know if you know about HEDIS, but that's a
11:04:45 10 free-world database data information set and prior to ICD
11:04:51 11 10, there was ICD 9 but that's the main diagnosis code
11:04:56 12 database and I hope that's clear.

11:05:02 13 Q. And when you say these codes are being compared to
11:05:06 14 outside databases, what are they being compared for?
11:05:10 15 What's the purpose?

11:05:11 16 A. Well, we do self-quality exams. We look at, you
11:05:16 17 know, how do our outcomes compared to free-world HEDIS
11:05:23 18 outcomes. And it's nice to have an apples-to-apples
11:05:28 19 comparator. So. You know. We look at our asthma
11:05:32 20 outcomes as good as the free world or our diabetes
11:05:38 21 outcomes as good as the free world.

11:05:48 22 Q. And that would be the medical providers or is that
11:05:50 23 your office that's doing this comparison?

11:05:53 24 A. There's a quality department that that's their -- a
11:05:59 25 big assignment for them is to make sure that we are

11:06:07 1 meeting free-world expectations. And that's, you know,
11:06:11 2 basically the majority of what they do.

11:06:13 3 Q. And Mr. Edwards asked you about have you ever
11:06:17 4 designed an algorithm before and I guess I'll ask you kind
11:06:21 5 of step-by-step. What is the role of a diagnosis code in
11:06:26 6 the heat score system?

11:06:30 7 A. Well, for instance, I'll use heart disease because
11:06:35 8 the settlement that we originally saw way back when said a
11:06:39 9 patient who has heart disease -- actually, what it said is
11:06:43 10 a patient who has heart disease should be -- should get a
11:06:49 11 point. Somebody who has coronary artery disease should
11:06:51 12 get a point. Somebody who has atherosclerotic disease
11:06:56 13 should get a point. And, you know, we read this and we're
11:06:58 14 like but those are all the same thing. They really are.

11:07:02 15 So we had to take that requirement and clearly,
11:07:06 16 you know, having heart disease was a -- was something that
11:07:10 17 they expressed in several different ways is wanting a cool
11:07:14 18 bed. So we had to go into the diagnose code list and pull
11:07:18 19 up all the different codes that qualified for this
11:07:22 20 diagnosis so that if I, as a provider, enter the patient
11:07:28 21 as coronary artery disease or the patient has had an MI or
11:07:34 22 something, that indirectly means they have coronary artery
11:07:40 23 disease that will trigger that algorithm point.

11:07:51 24 Q. Dr. Leonardson, can you see --

11:08:28 25 MR. EDWARDS: Your Honor I understand that you're

11:08:29 1 probably going to carry this until the motion, but just
11:08:32 2 for the record, this is the aspect of what was not
11:08:34 3 provided to us at the deposition and what should have been
11:08:37 4 provided and discussed at the deposition. And I just want
11:08:41 5 for the record to lodge that objection. Thank you, your
11:08:43 6 Honor.

11:08:43 7 THE COURT: Thank you.

11:08:44 8 MS. CARTER: And, Judge Pitman, if I may briefly
11:08:46 9 respond to the objection, the deposition notice was for a
11:08:48 10 TDCJ corporate representative and Dr. Leonardson is a UTMB
11:08:54 11 employee and she has clearly expressed that she has the
11:08:57 12 most knowledge that her office manages the heat core
11:09:01 13 system. So she has the full faith and confidence to speak
11:09:04 14 to this document.

11:09:06 15 Mr. Sweetin can testify to what -- and he did
11:09:09 16 testify to TDCJ's role in that. But Dr. Leonardson is
11:09:12 17 here to explain what I believe plaintiffs' counsel wants
11:09:15 18 to know about and how these things are considered and how
11:09:17 19 the score is generated and that's up to her to determine.
11:09:20 20 Not Mr. Sweetin or not TDCJ.

11:09:23 21 MR. EDWARDS: My only point, your Honor, is that
11:09:25 22 UTMB is a contractor that gets paid by TDCJ. It's well
11:09:29 23 recognized in the corporate deposition context that if
11:09:33 24 they're getting their information from a contractor that
11:09:35 25 during the corporate deposition, they're obligated to

11:09:38 1 provide that information. Nothing prevented them from
11:09:41 2 putting Dr. Leonardson up for that category. Nothing
11:09:44 3 prevented Mr. Sweetin from discussing this with Dr.
11:09:48 4 Leonardson. In fact, that was their obligation to do.

11:09:50 5 Our complaint and hence, our objection is that
11:09:53 6 they didn't do that; instead, they said, I have no idea or
11:09:58 7 words to that effect, your Honor.

11:10:00 8 THE COURT: Thank you. Continue.

11:10:04 9 Q. (BY MS. CARTER) Dr. Leonardson, do you recognize the
11:10:06 10 chart in front of you?

11:10:07 11 A. Yes.

11:10:08 12 Q. Can you tell me what this chart is?

11:10:13 13 A. This is the what we call the at-hand heat score. So
11:10:19 14 this is the algorithm that's used once a patient has been
11:10:25 15 -- has had their intake processed by medical when it
11:10:31 16 usually occurs. It can happen anytime but as soon as they
11:10:35 17 have a physical, this will start looking for these
11:10:38 18 criteria to add points to a heat score.

11:10:43 19 Q. And when you say intake, are you referring to when
11:10:47 20 inmates are brought into TDCJ for the first time?

11:10:50 21 A. Yes, usually from a county.

11:10:55 22 Q. Is the electronic health record regularly spitting
11:11:00 23 things into the algorithm?

11:11:01 24 A. It scans for algorithm changes several times a day.

11:11:06 25 Q. So we're not relaying just on the inmate's intake in

11:11:11 1 the first time they enter TDCJ; is that correct?

11:11:14 2 A. That's correct.

11:11:16 3 Q. Is someone sitting with a pencil in this chart
11:11:21 4 printed out in front of them, are they filling in the
11:11:24 5 score column?

11:11:26 6 A. No.

11:11:28 7 Q. Is this just a paper version of what the algorithm
11:11:32 8 actually is?

11:11:34 9 A. Yes.

11:11:43 10 Q. When a treating physician is treating a patient or
11:11:47 11 they're looking at their electronic health record, are
11:11:51 12 they going to see this chart?

11:11:52 13 A. No.

11:11:53 14 Q. Why don't the treating physicians see this chart?

11:12:10 15 A. Well, we don't really want physicians -- I mean, this
11:12:17 16 is the result of a settlement between TDCJ and the
11:12:21 17 plaintiff at that time and we want the physicians to enter
11:12:27 18 the data and the information about the patient just like
11:12:31 19 they always would with proper documentation and proper
11:12:36 20 decisionmaking about what the patient needs. And then, we
11:12:40 21 pull this out the back end so if you ask for providers to
11:12:45 22 add it up or try to -- well, first of all, it's incredibly
11:12:51 23 time consuming for every patient to have a provider add it
11:12:56 24 up.

11:12:56 25 Secondly, there are changes what might happen

11:12:58 1 that the provider isn't aware of like somebody becomes 65
11:13:05 2 and they might not be sitting in the doctor's office, but
11:13:09 3 also because you have a whole lot of people who are acting
11:13:13 4 as providers or nurses or, you know, entering information
11:13:15 5 into a patient health record, there is a lot of variation
11:13:19 6 in, you know, decisionmaking about, you know, who gets a
11:13:27 7 point, who doesn't.

11:13:27 8 If you are asking all of those people to be on
11:13:29 9 the same page and what we've arranged is everybody should
11:13:35 10 see the patient properly, do the documentation in a
11:13:40 11 specified way and then, we can pull all that out of the
11:13:43 12 electronic health record without, you know, bogging down a
11:13:48 13 provider or a nurse and also with, you know, getting the
11:13:54 14 correct information to TDCJ for housing.

11:14:02 15 Q. So how does the algorithm get the information to TDCJ
11:14:05 16 for housing?

11:14:08 17 A. Well, it's what we call back-end process. If I put
11:14:13 18 in -- if I'm seeing a patient and I have diabetes or
11:14:17 19 asthma -- I'm looking at the chart here -- and I put that
11:14:22 20 in the problem list, we have technical people that can
11:14:26 21 look at the database and the tables where all of that is
11:14:30 22 stored and scan for these various codes or diagnoses or
11:14:36 23 medications are common on here. They know, the technical
11:14:42 24 people know how to ask the computer system to go in and
11:14:48 25 look at these tables, sort of like big spreadsheets, to go

11:14:51 1 look for changes that would change the score.

11:15:00 2 Q. I believe you touched on this when you were talking
11:15:02 3 about an inmate's birthday that they may not be able to
11:15:06 4 see a provider. Does the system assess like demographic
11:15:11 5 and characteristic data points besides what a provider
11:15:17 6 would say is a diagnosis code?

11:15:21 7 A. Well, yeah, it assesses age. As far as other
11:15:25 8 demographics, I don't think any others are on here. Are
11:15:31 9 there other demographics? I think age is kind of it.
11:15:35 10 Yeah, that helps.

11:15:37 11 Q. This is probably just me being a lawyer but is
11:15:41 12 someone's weight considered? Is that their demographic?

11:15:44 13 A. Well, I would call that a clinical input, not a
11:15:48 14 demographic, you know, like their age and their, you know,
11:15:53 15 maybe their race and their -- that's a demographic. I
11:15:58 16 would call weight and BMI clinical, clinical input, but it
11:16:04 17 does set that.

11:16:05 18 Q. Dr. Leonardson, can a warden at TDCJ go to your
11:16:18 19 office or a provider on the unit and say, hey, we're out
11:16:22 20 of cool beds, I need you to take this score off?

11:16:25 21 A. No.

11:16:30 22 Q. We've talked about some of the characteristics on the
11:16:32 23 list but can you tell me about the score? Are we saying
11:16:37 24 one maybe gets a bed but six definitely gets a bed? What
11:16:41 25 does a score mean?

11:16:43 1 A. Well, originally when there were not enough beds, it
11:16:49 2 was to do -- this was developed to show who has the most
11:16:53 3 points so that we can know who needs a cool bed first.
11:16:57 4 But TDCJ has added consistently a lot of cool beds over
11:17:02 5 the last -- I guess it's been five years or so to the
11:17:09 6 point where if you had any positive heat score, that
11:17:12 7 patient will go to a cool bed.

11:17:19 8 Q. Do you know if there's a policy for TDCJ to move
11:17:24 9 inmates into air conditioning housing if they have a
11:17:27 10 score?

11:17:27 11 A. I know that there's an administrative directive which
11:17:29 12 is sort of like policy for TDCJ in which -- I've read that
11:17:35 13 one but I haven't read most of the correctional policies.
11:17:39 14 I've read the medical policies, all of them.

11:17:43 15 Q. This has already been admitted, your Honor. It's the
11:17:52 16 administrative directive.

11:18:20 17 THE COURT: We're due for a break. Can we take a
11:18:23 18 break at this time?

11:18:24 19 MS. CARTER: Of course.

11:18:25 20 THE COURT: Let's take a 10-minute break.

11:18:27 21 Doctor, if you could take a break with us and we will be
11:18:31 22 back in 10 minutes to resume testimony.

11:18:38 23 (Recess.)

11:31:08 24 Q. (BY MS. CARTER) Dr. Leonardson, can you hear me?

11:31:10 25 A. Yes.

11:31:11 1 Q. Okay. We're just waiting on the exhibit to be pulled
11:31:18 2 back up. And again, Judge Pitman, this is Defendants'
11:31:53 3 Exhibit 1. It's already been admitted.

11:31:55 4 THE COURT: Thank you.

11:31:56 5 Q. (BY MS. CARTER) Dr. Leonardson, is this the AD 1064
11:32:00 6 that you said you are familiar with?

11:32:01 7 A. Yes.

11:32:02 8 Q. And do you see Section 5 where it says inmates with
11:32:07 9 heat sensitivity score?

11:32:10 10 A. Yes.

11:32:11 11 Q. Is this the policy you're familiar with?

11:32:15 12 A. Yes.

11:32:16 13 Q. Could you read this policy, please?

11:32:20 14 A. Inmates with heat sensitivity scores. The TDCJ
11:32:24 15 recognizes some inmates are potentially at a heightened
11:32:27 16 risk of heat-related illnesses because of their age,
11:32:31 17 health conditions, or medications. These inmates are
11:32:34 18 identified through an automated heat sensitivity score
11:32:39 19 that uses information from the inmate's electronic health
11:32:44 20 record.

11:32:45 21 Q. Can you read the first sentence of Section A?

11:32:49 22 A. Yes. Heat sensitivity scores are updated daily with
11:32:53 23 changes to the electronic health record. For newly
11:32:57 24 received inmates, health services staff use an intake heat
11:33:00 25 sensitivity form to screen inmates as soon as they arrive.

11:33:06 1 Q. Is that accurate to your understanding of how inmates
11:33:09 2 are housed with their heat sensitivity score?

11:33:13 3 A. Yes.

11:33:14 4 Q. Dr. Leonardson, are there more ways inmates can be
11:33:28 5 housed in air conditioned housing without a heat
11:33:34 6 sensitivity score?

11:33:34 7 A. Yes.

11:33:35 8 Q. If a patient comes to a provider and says, hey, you
11:33:39 9 know, I suffer from all of this, I'm not in AC housing, is
11:33:42 10 there anything that the provider has discretion to do?

11:33:47 11 A. If a provider thinks that a patient's health might be
11:33:52 12 affected negatively by living in a non-air-conditioned
11:33:56 13 environment, they can call health services liaison and ask
11:34:01 14 HSL, we call it, to evaluate the patient for a cool bed.
11:34:07 15 Or there's also a mechanism when a patient is sent out to
11:34:14 16 an ER, sometimes medical doesn't always know right away
11:34:19 17 that that's what -- if they were sent out for something
11:34:23 18 related to heat; or when they return, sometimes the
11:34:26 19 hospital records don't say heat illness, they'll say, you
11:34:31 20 know, dehydration or something.

11:34:33 21 So if our utilization review division determines
11:34:37 22 that heat had something to do with reasons for an ER visit
11:34:43 23 or hospitalization, those patients are reported on and
11:34:47 24 sent to a cool bed, also.

11:34:49 25 Q. I'm going to ask you a couple of questions about HSL

11:34:52 1 and the second group you mentioned. Who does health
11:34:56 2 services liaison work for?

11:34:58 3 A. TDCJ.

11:35:00 4 Q. And that's how UTMB communicates with how inmates
11:35:04 5 should be assigned if they believe they should be in AC
11:35:07 6 without a heat score?

11:35:09 7 A. Yes.

11:35:11 8 Q. What is health services liaison made up of? Who are
11:35:15 9 those individuals?

11:35:16 10 A. Nurses.

11:35:20 11 Q. Are UTMB providers or Texas Tech providers, are they
11:35:24 12 informed that they can reach out to HSL?

11:35:27 13 A. Yes.

11:35:29 14 Q. Aside from reaching out to HSL, can providers input
11:35:36 15 like notes into an inmate's health record if they're
11:35:40 16 concerned about heat?

11:35:42 17 A. Well, providers can enter anything in an inmate's
11:35:50 18 health record, you know, that's their prerogative. So
11:35:53 19 they can write whatever they want.

11:35:57 20 Q. What is the utilization review?

11:36:00 21 A. Utilization review, it's just a prison thing. It's
11:36:03 22 what hospitals and other healthcare companies use to look
11:36:08 23 at who's in the hospital, how long are they in the
11:36:12 24 hospital, when will they come back, how long are they
11:36:14 25 going to stay in the hospital, if they come out of the

11:36:17 1 hospital, what bed are we going to put them in so they get
11:36:20 2 the nursing care they need on discharge. Those kinds of
11:36:24 3 decisions.

11:36:35 4 Q. Dr. Leonardson, have you, or any other UTMB provider,
11:36:40 5 or TDCJ, to your knowledge, ever disputed that heat can
11:36:43 6 have a negative impact on health?

11:36:46 7 A. No.

11:36:49 8 Q. Are you involved in any conversation to determine
11:36:53 9 what is and what's not going to be on the consideration in
11:36:58 10 the heat score algorithm?

11:37:02 11 A. Over the years, I guess I've been part of those
11:37:04 12 conversations, yes. It's not quite what you said. It's
11:37:10 13 more like how do we represent the settlement and how
11:37:14 14 having some medical background, we can best identify the
11:37:20 15 people that TDCJ wants to identify.

11:37:24 16 Q. Has the algorithm changed in that it considers more
11:37:27 17 than what the original settlement determined needed to be
11:37:31 18 in the algorithm?

11:37:32 19 A. Yes.

11:37:33 20 Q. So the algorithm has changed over the years.

11:37:35 21 A. Yes.

11:37:36 22 Q. I'm going to put the algorithm back in front of you,
11:37:59 23 Dr. Leonardson. Just one moment. And if we could zoom
11:38:03 24 in, please, James.

11:38:16 25 Dr. Leonardson, are medical professionals

11:38:18 1 involved in determining what health conditions will
11:38:20 2 trigger a point?

11:38:24 3 A. For some of these, yes. That's just sort of a broad
11:38:30 4 question. Some of this is based on that original
11:38:34 5 settlement and reflects that. And then, for instance,
11:38:43 6 myasthenia gravis and MS are two of the diagnoses that you
11:38:47 7 actually learn in medical school and residency that these
11:38:51 8 things don't do as well in heat. So we added those to the
11:38:54 9 heat score, I think, a year ago or something.

11:38:58 10 Q. So medical providers determine based on their
11:39:01 11 training and literature they review that I'm not even
11:39:05 12 going to try to describe the first one, but multiple
11:39:09 13 sclerosis was one of the ones that was added; is that
11:39:12 14 correct?

11:39:12 15 A. Yes.

11:39:13 16 Q. And I'm just going to go through a couple. Why is
11:39:20 17 heart failure given a point?

11:39:22 18 A. Well, it was in the settlement, heart failure was.
11:39:26 19 And a heart failure -- I went to medical school and
11:39:32 20 residency, there was never a time someone said people who
11:39:35 21 have heart failure should never live in non-air
11:39:39 22 conditioning or a hot environment, but this was in the
11:39:42 23 settlement and it was clear that heart disease and heart
11:39:47 24 failure and people with stints and all that were high
11:39:50 25 priority for a cool bed. So these were all added.

11:39:54 1 Q. So even though you in your medical opinion don't
11:39:56 2 believe that that may make them particularly heat
11:39:59 3 sensitive, that's still being considered in this
11:40:02 4 algorithm; is that correct?

11:40:03 5 MR. EDWARDS: Your Honor, I object to the leading
11:40:05 6 form of the question.

11:40:06 7 THE COURT: I think she was just repeating what
11:40:09 8 you effectively said. You can ask her.

11:40:12 9 Q. (BY MS. CARTER) Doctor, you could go ahead.

11:40:17 10 A. I was going to say it's not really my opinion that
11:40:20 11 it's not effective. I have never seen data that -- I
11:40:26 12 mean, I guess I could go all right, well, maybe they have
11:40:29 13 problems with swelling that might be worse than heat. But
11:40:32 14 it's not like the New England Journal or JAMA or, you
11:40:37 15 know, even anecdotal evidence that I have ever seen or
11:40:42 16 anyone else who is an internist or family medicine doctor,
11:40:48 17 Ph.D. in pharmacy has ever brought up as seeing in the
11:40:53 18 literature, but it was added because it was in the
11:40:58 19 original settlement.

11:41:03 20 Q. Dr. Leonardson, do you know why inmates with
11:41:07 21 psychosis who might be prescribed anticholinergic
11:41:12 22 medications are given a point?

11:41:14 23 A. Well, that is exactly why because commonly, those are
11:41:17 24 the biggest group that are on anticholinergic. And this
11:41:22 25 is what's known as a proxy for being on anticholinergics.

11:41:28 1 And so, the people who have psychosis, schizophrenia,
11:41:33 2 schizoaffective disorder and bipolar were originally put
11:41:38 3 on without the requirement of being on anticholinergic
11:41:43 4 meds. So all of them got cool beds if they had these
11:41:47 5 diagnoses on their problem list.

11:41:50 6 Q. Can you explain to me what anticholinergic -- why
11:41:53 7 does that make you particularly heat sensitive?

11:41:56 8 A. They're drying. They're very drying medications and
11:42:00 9 they decrease your ability to sweat and cool yourself.

11:42:06 10 Q. If we can scroll down, please, James. This next
11:42:15 11 section that's broken up where it says only if over the
11:42:19 12 age of 65, why is the age significant?

11:42:24 13 A. These are also -- let's see, how do I explain it.
11:42:31 14 These, I think, are also largely proxies for bad disease.
11:42:35 15 For instance, if somebody has asthma and they're not on an
11:42:40 16 inhaled steroid or an oral steroid, their asthma is likely
11:42:44 17 to be mild and same for if you're over 65, it's just one
11:42:51 18 added complication of all of these diseases that we're
11:42:56 19 using proxies for, bad COPD or bad cirrhosis. And also,
11:43:03 20 using an age criteria to say this person has yet one more
11:43:08 21 like sort of risk with their, you know, disease being
11:43:14 22 making it so, it's probably a more severe form of that
11:43:18 23 disease.

11:43:21 24 Q. Why, for example, is COPD when prescribed with
11:43:28 25 inhaled or oral steroids and a long-acting beta agonist

11:43:33 1 inhaler, why does that have a point and not just COPD?

11:43:36 2 A. Because when you add the criteria of the inhaled or

11:43:40 3 oral steroid and the long-acting beta agonist, what you're

11:43:46 4 saying is this person has severe enough COPD that they

11:43:49 5 require these medications.

11:43:52 6 Q. And why do these --

11:43:54 7 A. For severe disease.

11:43:57 8 Q. Why do these medications require AC housing?

11:44:01 9 A. I don't think it's the medications that do. I think

11:44:04 10 that the fact that the patient is on these medications

11:44:09 11 means their COPD is not just mild.

11:44:13 12 Q. So they would be at increased risk?

11:44:17 13 A. If they have more severe COPD, they may be. This is

11:44:24 14 another one where, okay, in my internal medicine training,

11:44:28 15 I've never learned people with COPD need to live in air

11:44:34 16 conditioning. But this was on settlements that people

11:44:36 17 with many of those severe chronic diseases need to be

11:44:40 18 given AC housing.

11:44:53 19 Q. Dr. Leonardson, yesterday, we heard from plaintiffs'

11:44:56 20 expert, I believe she's a psychiatrist, Dr. Biswas, and we

11:44:59 21 talked a lot about mental health. Can you tell me about

11:45:03 22 the conditions under psychiatric and mental that would

11:45:07 23 trigger a point?

11:45:11 24 A. Well, under the psychiatric tab, those are in here

11:45:14 25 because they are commonly treated with medications that

11:45:18 1 are anticholinergic and it may also be that they're not --
11:45:23 2 well, if they're not completely stable and they're
11:45:26 3 psychotic, it's likely they're going to be in a cool bed,
11:45:30 4 anyway, because they'll maybe be observed and that's
11:45:34 5 usually in a cool bed.

11:45:35 6 The mental tab dementia, Alzheimer's disease and
11:45:39 7 suspected intellectually impaired, those are there to
11:45:43 8 protect people that may not be adept at advocating for
11:45:51 9 themselves: I need water, I need to go to a respite area.
11:45:56 10 So, you know, we account for -- we don't want them lost to
11:46:03 11 staying cool if they need to and if they're unable to
11:46:06 12 really request it or know they need to request it.

11:46:13 13 Q. Okay. So every condition that's on this chart, if an
11:46:20 14 inmate has one of these, they are housed in AC housing; is
11:46:26 15 that correct?

11:46:26 16 A. That is my understanding. Everyone with a point now
11:46:29 17 has a cool bed.

11:46:33 18 Q. And, Dr. Leonardson, why do we care about these
11:46:36 19 distinguishments?

11:46:38 20 A. I don't know if I understand your question.

11:46:42 21 Q. I believe you answered specifically about COPD, if
11:46:45 22 they're treated with this certain medication. Why do
11:46:49 23 these distinguishments between the disease and what
11:46:52 24 they're treated with, why does that matter?

11:46:55 25 A. Well, because if I'm a provider seeing a patient and

11:47:00 1 I have a patient who has exercise-induced asthma, I might
11:47:05 2 just enter asthma on the problem list. If there's not the
11:47:08 3 level of granularity or precision across all of the
11:47:12 4 providers and what we really need to pull out of the EHR
11:47:17 5 are the people with a more severe form of that disease, we
11:47:21 6 don't have a way to just go, well, show me the code for
11:47:23 7 the more severe one. We have to take the people who have
11:47:27 8 that code and are on the medications, for instance, that
11:47:31 9 might lead one to go, all right, the person has more
11:47:34 10 severe disease and requires a higher level of medication.
11:47:40 11 Does that make sense?

11:47:42 12 Q. It does. Dr. Leonardson, yesterday, plaintiffs'
11:47:46 13 expert, Dr. Biswas, testified that in order to assess
11:47:49 14 risk, it requires an individual assessment. Do you agree?

11:47:56 15 MR. EDWARDS: Objection. Misstates testimony.

11:47:59 16 MS. CARTER: Can we pull the transcript?

11:48:04 17 THE COURT: Want to rephrase the question?

11:48:06 18 Sorry.

11:48:06 19 Q. (BY MS. CARTER) I can just ask you, Dr. Leonardson,
11:48:10 20 does assessing each individual's risk of heat or need to
11:48:13 21 be in AC, does that require an individual assessment of
11:48:15 22 their health status?

11:48:19 23 A. Well, that's an unusual question. Everyone gets
11:48:22 24 their health status looked at and we're not asking the
11:48:27 25 provider to say, does this person need a cool bed. We're

11:48:32 1 asking them to document the patient's health status
11:48:34 2 properly and treat them properly, as we're all trying to
11:48:39 3 do, and then, those decisions result in a heat score.

11:48:46 4 Q. So the heat score isn't taking big groups of people
11:48:51 5 and assigning scores, is it?

11:48:57 6 A. Well, no. It looks at every single person who's
11:49:01 7 incarcerated and their medical record to look for any of
11:49:06 8 these criteria that gives them a point. Each and every
11:49:11 9 one, several time times a day.

11:49:15 10 Q. Thank you, Dr. Leonardson. Nothing further right
11:49:19 11 now.

11:49:22 12 MR. EDWARDS: May I inquire, your Honor?

11:49:23 13 THE COURT: You may.

11:49:25 14 CROSS-EXAMINATION

11:49:26 15 BY MR. EDWARDS:

11:49:26 16 Q. Good morning, Dr. Leonardson. My name is Jeff
11:49:32 17 Edwards. I'm a lawyer --

11:49:33 18 THE COURT: If you could get near a microphone.

11:49:39 19 MR. EDWARDS: Your Honor, if I could just have a
11:49:41 20 minute for my colleague to log on.

11:49:43 21 THE COURT: Sure. If you were at the podium, she
11:49:47 22 could see you. That might be --

11:53:26 23 Q. (BY MR. EDWARDS) Did I understand you correctly, Dr.
11:53:30 24 Leonardson, this heat sensitivity score was designed by
11:53:37 25 TDCJ as part of a settlement agreement with some prisoners

11:53:42 1 and some lawyers?

11:53:44 2 MS. CARTER: Objection, your Honor. That
11:53:45 3 misstates her testimony.

11:53:45 4 THE COURT: He's asking her.

11:53:49 5 Q. (BY MR. EDWARDS) Did I understand you correctly,
11:53:51 6 Doctor?

11:53:52 7 A. Could you say that again, please?

11:53:55 8 Q. Sure. Do I understand you correctly that the TDCJ
11:54:03 9 heat sensitivity score was designed by the Texas
11:54:06 10 Department of Criminal Justice facing a class action
11:54:09 11 lawsuit, some prisoners who were the plaintiffs in that
11:54:12 12 case and some lawyers?

11:54:16 13 A. I don't think it's accurate to say it was designed by
11:54:19 14 TDCJ. TDCJ -- it was there was a settlement and I
11:54:24 15 honestly can't tell you who the other side of the
11:54:28 16 settlement was. TDCJ asked us, the people that understand
11:54:34 17 the electronic health record, how they could comply with
11:54:39 18 the settlement, needing the information that we had to
11:54:43 19 comply, and asked us for help in interpreting that
11:54:49 20 settlement so that we could get that information out of
11:54:52 21 the electronic health record, which is managed by UTMB but
11:54:57 22 owned by TDCJ.

11:54:58 23 Q. Sure. They gave you categories and you used your
11:55:03 24 expertise to design a method, an algorithm, if you will,
11:55:08 25 to get that information out to give people heat scores,

11:55:13 1 right?

11:55:14 2 A. They didn't give us the categories. They handed us
11:55:18 3 the settlement.

11:55:19 4 Q. The settlement had categories in it. I thought that
11:55:23 5 was your testimony, right?

11:55:25 6 A. Right. They didn't give us the categories, they gave
11:55:29 7 us the settlement.

11:55:30 8 Q. You'd acknowledge that the TDCJ people that gave you
11:55:34 9 the categories in the settlement are not doctors, right?

11:55:39 10 A. I don't know how the settlement was arrived at.
11:55:43 11 There was a finalized settlement and it had a lot of
11:55:47 12 information about who they thought needed a cool bed and
11:55:51 13 that's what we got, and TDCJ said help us to know who
11:55:55 14 these people are. I don't know how the settlement came to
11:56:02 15 be.

11:56:02 16 Q. That's one of the two of us but that's neither here
11:56:05 17 nor there. TDCJ gave you the categories to use, correct?

11:56:11 18 MS. CARTER: Objection. She's already said
11:56:12 19 that's not what she said. That misstates her testimony.

11:56:16 20 THE COURT: She can clarify if she needs to.

11:56:19 21 A. They handed us the settlement document and asked us
11:56:24 22 to help. They did not make a list of categories and
11:56:29 23 diseases and drugs and things like that and hand it to us.

11:56:32 24 Q. (BY MR. EDWARDS) The parameters for the algorithm
11:56:36 25 that we've been talking about, that came directly out of a

11:56:38 1 settlement, right, a piece of paper, a settlement?

11:56:42 2 A. They did.

11:56:43 3 Q. Okay. And the people that sent you that settlement,
11:56:47 4 was it Texas Department of Criminal Justice, Mr. Collier,
11:56:50 5 in particular, right?

11:56:54 6 A. You know, I don't know.

11:56:57 7 Q. Okay.

11:56:58 8 A. I'm quite certain I'd never received an e-mail from
11:57:02 9 Mr. Collier. But, you know, it came from someone over
11:57:08 10 that direction and it was handed to me to say please help
11:57:11 11 us, you know, take care of this.

11:57:18 12 Q. Would you agree that non-doctors shouldn't be
11:57:21 13 designing systems, you know, that can protect people from
11:57:30 14 dangerous conditions, medical issues?

11:57:32 15 A. Yes.

11:57:37 16 Q. Now, I have to say I'm a little confused. Not the
11:57:41 17 first time. But are you telling me in no uncertain terms
11:57:51 18 that a 90-year-old doesn't get a heat sensitivity score if
11:57:58 19 he's just 90 with hypertension?

11:58:07 20 A. Let me look at the protocol about hypertension.
11:58:08 21 Hypertension plus diagnosed resultant target organ damage.
11:58:12 22 If he has resultant target organ damage, he or she would
11:58:17 23 get a point but without -- with just hypertension and no
11:58:22 24 target organ damage, that's correct, unless the provider
11:58:26 25 thought that the patient was at increased risk and

11:58:30 1 notified health services liaison.

11:58:33 2 Q. We'll get to that part but I just want to be clear so
11:58:36 3 that Judge Pitman understands. Under this system, a
11:58:41 4 90-year-old hypertension gets no heat sensitivity score,
11:58:45 5 right?

11:58:45 6 A. If that's all they have, yes.

11:58:49 7 Q. And are you aware that all of the medical literature
11:58:59 8 states that you are vulnerable to exposure to heat that
11:59:03 9 you have a high risk if you're over 65?

11:59:08 10 A. I have never seen studies on that and by definition
11:59:12 11 can't really do a double blind.

11:59:14 12 Q. Well, again, there has been testimony and the
11:59:19 13 literature is fairly solid on this that once you're over
11:59:25 14 65, from an epidemiological standpoint, you're at greater
11:59:29 15 risk to the heat. Is this the first you're learning about
11:59:34 16 this, Dr. Leonardson?

11:59:38 17 A. I know it's anecdotal. I've never seen it, I've
11:59:42 18 never learned it in medical school or in residency, and
11:59:45 19 none of the other people who are board certified with many
11:59:49 20 years of experience who've been on these groups that have
11:59:54 21 looked at how are we going to capture these people at
11:59:58 22 highest risk haven't seen that either. I'm always
12:00:06 23 learning. I'd love to see the study.

12:00:13 24 Q. Are you really not opposed to learning? You're
12:00:16 25 willing to learn and change if the science says you

12:00:20 1 should?

12:00:20 2 A. I am totally willing.

12:00:22 3 Q. So if the overwhelming body of scientific literature
12:00:28 4 said that once you're over 65, you're at greater exposure
12:00:33 5 and risk of dying from heat, you would be willing to
12:00:37 6 accept that provided the overwhelming literature said
12:00:40 7 that?

12:00:41 8 A. Yes.

12:00:43 9 Q. And you would tell Director Collier, you know, we
12:00:47 10 need to change our heat scoring system, correct?

12:00:53 11 A. I don't do this in -- you know, by myself. I would
12:00:58 12 discuss it with a group of people that have been looking
12:01:01 13 at this algorithm to see how we can make it better and
12:01:05 14 safer. And when we have made recommendations to TDCJ,
12:01:09 15 they have promptly enacted them.

12:01:17 16 Q. I'm sorry, Doctor. Have you made -- you've made
12:01:23 17 recommendations to TDCJ to change this policy? I think
12:01:25 18 that's how you said MS got on?

12:01:29 19 A. Yep.

12:01:33 20 Q. There's been testimony in this courtroom that one of
12:01:37 21 the people suffers from -- he's 65 years old, suffers from
12:01:42 22 COPD, obesity, emphysema and diabetes. That person
12:01:50 23 doesn't have a heat score and TDCJ has represented that he
12:01:55 24 is appropriately housed in non-air-conditioning housing.
12:01:59 25 You think that that's just fine that he's in non-air

12:02:03 1 conditioning housing, correct?

12:02:05 2 A. I think that's a personal statement and I would

12:02:08 3 say --

12:02:09 4 Q. Okay.

12:02:10 5 A. -- you know, that's how this algorithm would work it

12:02:15 6 out if he doesn't have severe enough disease to be on the

12:02:21 7 added meds that represent severe disease.

12:02:24 8 Q. This algorithm that TDCJ's using -- well, would you

12:02:28 9 agree that this algorithm, the point of it -- is the point

12:02:33 10 of it to comply with some settlement or is the point of it

12:02:36 11 to protect the human beings in the care and custody of

12:02:40 12 TDCJ from the dangers of extreme heat?

12:02:44 13 A. I would say it's both.

12:02:46 14 Q. Well, would you say that it's more the latter but it

12:02:52 15 ought to be protecting -- well, how about this. However

12:02:56 16 it was designed, shouldn't a policy be designed in order

12:03:02 17 to protect the people who are vulnerable to the dangers of

12:03:07 18 extreme heat?

12:03:09 19 A. Yes, and we have one.

12:03:11 20 Q. I'm sorry. Who is "we"?

12:03:15 21 A. There's a policy that a provider with a patient that

12:03:22 22 they know on a personal level, if it is thought by that

12:03:25 23 provider that this patient may benefit from being in a

12:03:30 24 cool bed, that they can request a review from health

12:03:36 25 services liaison.

12:03:37 1 Q. Isn't it true that every single person in custody of
12:03:40 2 TDCJ would benefit from being in a cool bed?

12:03:45 3 A. I can't say that medically.

12:03:47 4 Q. You disagree with Dr. Vassallo, a board-certified
12:03:52 5 internal medicine -- I'm sorry, emergency room physician
12:03:55 6 in toxicology, you just disagree with her?

12:03:57 7 MS. CARTER: Objection, your Honor. She hasn't
12:03:59 8 testified that she knows what Dr. Vassallo testified to.
12:04:03 9 Just assuming facts not in evidence.

12:04:06 10 THE COURT: You want to --

12:04:07 11 Q. (BY MR. EDWARDS) That's fine. You're saying, look --
12:04:12 12 I'll withdraw that. I want to be clear. Is your
12:04:18 13 testimony that doctors can recommend air-conditioned
12:04:21 14 housing at any point and obtain it for their patients in
12:04:25 15 the TDCJ system?

12:04:27 16 A. They recommend a review of the patient situation.

12:04:31 17 Q. That's different than actually recommending and it
12:04:34 18 happening, isn't it?

12:04:35 19 A. It is.

12:04:37 20 Q. The process that you've described is that they -- the
12:04:43 21 doctor makes a recommendation to, I believe, the health
12:04:47 22 services liaison for TDCJ; is that correct?

12:04:50 23 A. They make a recommendation that this patient be
12:04:54 24 reviewed.

12:04:56 25 Q. By nurses, right?

12:04:58 1 A. That's correct.

12:05:01 2 Q. Again, in the pecking order, who oughta be making
12:05:05 3 that call, a doctor or some nurses?

12:05:08 4 A. The person who's trained in who benefits from cool
12:05:11 5 housing.

12:05:15 6 Q. Again --

12:05:15 7 A. It's not normally taught in med school, all these
12:05:20 8 people should live in air conditioning or not, so it's
12:05:25 9 really a niche, you know, knowledge of the body of
12:05:30 10 literature and coming from an internal medicine program
12:05:37 11 that's well regarded and being board certified and being
12:05:42 12 with other people who are the same, it is not taught to us
12:05:46 13 that at a certain age, everyone should have air
12:05:52 14 conditioning.

12:05:54 15 And so, the health services liaison reviewers
12:05:57 16 have some knowledge of the risk factors that are at least
12:06:02 17 anecdotal and make decisions based on that.

12:06:09 18 Q. Do you really think that the risk from extreme heat
12:06:13 19 in the Texas prison system is anecdotal?

12:06:17 20 A. I think that the literature cannot be double blind
12:06:24 21 studies because you can't say we're going to take half
12:06:27 22 these patients and put them in high heat and the other
12:06:31 23 half, we're going to put in air conditioning and we're
12:06:33 24 going to see how that comes out. You can't do that in a
12:06:37 25 study about this so that the literature is somewhat

12:06:42 1 anecdotal. It has to be. It can't be double blinded.

12:06:46 2 Q. You're right. It's not Nazi Germany and we can't run

12:06:50 3 studies like that.

12:06:51 4 A. And I'm not suggesting that we do.

12:06:53 5 Q. But ironically, just by operating a prison system the

12:06:56 6 way TDCJ does, they kind of did that, didn't they?

12:07:01 7 A. No.

12:07:01 8 Q. Well --

12:07:03 9 A. I don't know what you mean by that.

12:07:05 10 Q. I'll explain what I mean by that. More than 20

12:07:08 11 people have died of hyperthermia due to exposure to

12:07:11 12 extreme heat in Texas prison systems. Are you aware of

12:07:14 13 that?

12:07:16 14 A. I know before the measures were taken there were

12:07:20 15 deaths.

12:07:20 16 Q. Listen to my question. You are aware that people who

12:07:24 17 died from hyperthermia or because of the high heat inside

12:07:29 18 that more than 20 people in Texas prison system have died;

12:07:34 19 isn't that correct?

12:07:34 20 MS. CARTER: Objection, your Honor. This assumes

12:07:35 21 facts not in evidence.

12:07:36 22 THE COURT: You can ask whether she knows.

12:07:39 23 A. In the entire history of TDCJ?

12:07:52 24 Q. (BY MR. EDWARDS) Yes.

12:07:54 25 A. In the entire history of TDCJ, I know that there were

12:07:57 1 deaths from the heat and that measures have been taken to
12:08:02 2 prevent that going forward.

12:08:04 3 Q. And I guess you're telling me one of the measures
12:08:07 4 that's been taken is this heat sensitivity scoring system,
12:08:11 5 right?

12:08:13 6 A. Well, it's not the actual system. It's the
12:08:16 7 identification of the conditions that are represented in
12:08:21 8 the system.

12:08:22 9 Q. Yesterday, the Court heard testimony of five deaths
12:08:27 10 that were caused by heat -- by exposure to heat while they
12:08:32 11 were housed at Texas prisons. Five people died and they
12:08:39 12 were all in un-air conditioned housing or with a
12:08:44 13 non-working air conditioner in 2023. Is this the first
12:08:51 14 you're learning of that, Doctor?

12:08:53 15 A. Yes.

12:08:54 16 Q. Would five deaths caused by exposure to heat in 2023
12:09:01 17 cause you grave concern as someone with some involvement
12:09:05 18 in the system?

12:09:09 19 MS. CARTER: Objection, your Honor. I'm going to
12:09:11 20 object as that misstates the evidence. That's what
12:09:13 21 plaintiffs have proposed, not what's in the evidence.

12:09:18 22 THE COURT: You can ask the question.

12:09:24 23 Q. (BY MR. EDWARDS) There has been evidence in this
12:09:26 24 courtroom that five people died because of the heat. The
12:09:30 25 Court heard that yesterday. Would that cause -- you just

12:09:37 1 learned about that from me. Would that cause you any
12:09:40 2 concern as a UTMB administrator working on behalf of TDCJ?
12:09:45 3 A. Yes.
12:09:47 4 Q. Why?
12:09:50 5 A. Because my goal is to keep people who are
12:09:54 6 incarcerated with the TDCJ system as safe and healthy as
12:09:58 7 possible and to identify the people that are at high risk
12:10:04 8 of having a problem with heat.
12:10:06 9 Q. And that oughta be TDCJ's goal, too, right?
12:10:11 10 A. Yes.
12:10:12 11 Q. And if you know about a dangerous condition that is
12:10:17 12 killing people and you have the ability and the
12:10:20 13 wherewithal to solve that, you oughta do that, right?
12:10:24 14 MS. CARTER: Objection, your Honor. This is a
12:10:26 15 compound question and it's calling for a legal conclusion.
12:10:30 16 THE COURT: Rephrase the question.
12:10:33 17 Q. (BY MR. EDWARDS) Sure. If you know about a dangerous
12:10:38 18 condition in the Texas prison system, you oughta try to
12:10:41 19 fix it, right?
12:10:43 20 A. Well, I think that's sort of broad. If you have a
12:10:50 21 patient who's at a high risk of heat injury, you should
12:10:53 22 try to protect them from heat.
12:10:56 23 Q. And if you have someone who's at risk of heat -- from
12:11:00 24 the heat, you oughta do what you can to protect them,
12:11:03 25 right?

12:11:03 1 A. If they are at risk for heat injury, yes.

12:11:08 2 Q. Is there a policy at TDCJ that requires TDCJ to
12:11:22 3 implement a doctor's recommendation to place someone in
12:11:28 4 air conditioning housing?

12:11:28 5 A. I'm not familiar with all of their policies. I don't
12:11:32 6 read the ADs. I read medical policies for the most part.

12:11:36 7 Q. You don't know if there's -- you're not aware of any
12:11:40 8 policy which would require the health services liaison to
12:11:43 9 follow the recommendation of a doctor?

12:11:47 10 A. I am not. I am not aware of any policy about -- it's
12:11:51 11 an AD. If it is.

12:11:57 12 Q. And just so we're clear, the health services liaison
12:12:01 13 is employed by the Texas Department of Criminal Justice,
12:12:04 14 correct?

12:12:05 15 A. Yes.

12:12:06 16 Q. And that employee, that group of employees, that
12:12:18 17 health services liaison is not required, at least as far
12:12:20 18 as you know, to follow the recommendation of a trained
12:12:23 19 doctor, correct?

12:12:25 20 A. No. They review each of the patients that are
12:12:29 21 referred to them for consideration.

12:12:34 22 Q. I believe you testified, you personally don't believe
12:12:38 23 that COPD or obesity or diabetes place you in an elevated
12:12:46 24 risk from exposure to the heat; is that correct?

12:12:50 25 A. No. That's not what I said.

12:12:52 1 Q. Okay. Let me do it this way. Of course, you know as
12:12:55 2 a doctor that diabetes increases the risk you have from
12:13:00 3 exposure to high heat, correct?

12:13:03 4 A. Repeat that. I'm sorry.

12:13:04 5 Q. Do you know that diabetes is a medical condition that
12:13:10 6 increases the risk of harm to you from exposure to high
12:13:14 7 heat?

12:13:16 8 A. No, I do not know that. I have not seen that in any
12:13:20 9 of the New England Journal, JAMA, Popular Internal
12:13:24 10 Medicine, the literature.

12:13:25 11 Q. If there was literature that supported that, of
12:13:29 12 course, TDCJ should be implementing protections for people
12:13:31 13 with diabetes, correct?

12:13:34 14 A. Yes.

12:13:34 15 Q. Okay. Are you aware of literature that suggests that
12:13:39 16 people with COPD are at elevated risk of serious harm when
12:13:46 17 they're exposed to high heat?

12:13:48 18 A. No. Same thing. Not in the literature, not well
12:13:55 19 studied.

12:13:55 20 Q. That's fine.

12:13:56 21 A. It's anecdotally noticed.

12:13:59 22 Q. If the mainstream lit -- if the Court determines that
12:14:02 23 the mainstream literature does, in fact, show that COPD
12:14:08 24 leads to an elevated risk of harm from exposure to high
12:14:11 25 heat, of course, TDCJ should take steps to protect the

12:14:16 1 people who suffer from COPD, correct?

12:14:19 2 A. Yes, if it's a good study.

12:14:36 3 Q. Have you ever tried to do like a literature search to
12:14:43 4 determine what the comorbidities are that TDCJ considers
12:14:48 5 that might affect your heat tolerance or your ability to
12:14:52 6 withstand exposure to high heat?

12:14:57 7 A. I have done an up-to-date search. That's the main
12:15:03 8 database that is used by most doctors, internists, in
12:15:08 9 particular.

12:15:10 10 Q. Could I pull up Exhibit 274 for Dr. Leonardson,
12:15:32 11 please. Could you pull up tab 8 on our thing so that I
12:16:11 12 can show to defendant.

12:16:11 13 MS. CARTER: Has this not been previously
12:16:13 14 provided to counsel, Mr. Edwards?

12:16:14 15 MR. EDWARDS: I would hope you have it. It's
12:16:17 16 your common comorbidities that may affect heat tolerance.
12:16:23 17 It's out of TDCJ's documents.

12:16:24 18 MS. CARTER: Was it on your exhibit list is what
12:16:25 19 I'm asking you?

12:16:26 20 MR. EDWARDS: No.

12:16:27 21 MS. CARTER: We're going to object to this
12:16:29 22 exhibit as untimely and Dr. Leonardson's already testified
12:16:32 23 she works for UTMB and not TDCJ and that she's not
12:16:35 24 familiar with TDCJ's policies. And they haven't shown a
12:16:39 25 foundation for this exhibit to be admitted against this

12:16:40 1 witness.

12:16:41 2 MR. EDWARDS: She testified she's unaware of
12:16:44 3 literature and comorbidities that may affect heat
12:16:52 4 tolerance. Or she disagrees that some of these are.

12:16:54 5 MS. CARTER: This document is a policy. It's not
12:16:57 6 literature.

12:16:58 7 MR. EDWARDS: It's actually UTMB policy. I
12:17:02 8 apologize, your Honor.

12:17:02 9 MS. CARTER: Can I ask if Dr. Leonardson has
12:17:05 10 viewed this before then?

12:17:05 11 THE WITNESS: Yes.

12:17:06 12 MS. CARTER: Okay.

12:17:10 13 MR. EDWARDS: We'd move to admit this as
12:17:12 14 Plaintiffs' Exhibit 274.

12:17:14 15 THE COURT: So admitted.

12:17:15 16 Q. (BY MR. EDWARDS) Doctor, do you see this list?

12:17:17 17 A. I do.

12:17:18 18 Q. This is a UTMB document, right?

12:17:22 19 A. It is policy.

12:17:23 20 Q. It's a UTMB policy, okay. Would you read the common
12:17:32 21 comorbidities that may affect heat tolerance according to
12:17:36 22 your employer, the University of Texas Medical Branch,
12:17:39 23 please?

12:17:39 24 A. Yes. Cardiovascular disease, cirrhosis of the liver,
12:17:43 25 chronic obstructive pulmonary disease or asthma, cystic

12:17:47 1 fibrosis, diabetes, psychiatric conditions, seizure
12:17:52 2 disorder, Sjogren's syndrome, sweat gland dysfunction,
12:17:56 3 thyroid dysfunction, or age over 65. And this is not all
12:18:05 4 inclusive.

12:18:06 5 Q. You're right. It's not all inclusive but for
12:18:12 6 purposes today, it's a lot more inclusive than your heat
12:18:15 7 score, isn't it?

12:18:17 8 A. Yes, if you include it -- everybody who carried these
12:18:23 9 diagnoses, it would.

12:18:25 10 Q. And do you still contend despite your employer's
12:18:36 11 contention that greater than 65 is a comorbidity that
12:18:39 12 affects heat tol -- you still disagree with that, right?

12:18:41 13 A. I don't think that I ever said that, that I disagree.
12:18:46 14 I think the key word here is "may." These are not all or
12:18:50 15 none when you turn 65, you're not all of a sudden more
12:18:55 16 prone to heat illness than the day before. These are all
12:18:58 17 factors to be considered. And, you know, someone who's 65
12:19:04 18 is -- there's a lot of variation in 65 and there's also a
12:19:09 19 lot of variation in people who have cirrhosis, or COPD, or
12:19:13 20 asthma, or any of these disorders, and I think that some
12:19:20 21 of it is the key is to find out who has them to a level.
12:19:25 22 And what the heat score has done is to look for people who
12:19:29 23 have a more serious version of these problems.

12:19:38 24 Q. Okay, Doctor. What, just so we're clear on this,
12:19:42 25 just so you understand, the heat score was developed

12:19:46 1 because TDCJ had a limited amount of beds and they wanted
12:19:50 2 to craft some policies --

12:19:53 3 MS. CARTER: Your Honor, I'm going to object to
12:19:55 4 counsel testifying --

12:19:58 5 MR. EDWARDS: Are you aware of that?

12:19:58 6 THE COURT: Where there's an objection, you have
12:20:00 7 got to stop.

12:20:01 8 MR. EDWARDS: Oh, I'm sorry, your Honor.

12:20:03 9 MS. CARTER: I'm going to object to counsel
12:20:05 10 testifying. He was not predicating any question. He's
12:20:07 11 informing her what he believes the system was based after.

12:20:09 12 THE COURT: Would you like to put it in the form
12:20:12 13 of a question?

12:20:13 14 Q. (BY MR. EDWARDS) Sure. Do you believe that the fact
12:20:14 15 that the heat score was developed and when it was was
12:20:18 16 impacted by the amount of beds available to put people in
12:20:22 17 air conditioning?

12:20:27 18 A. Sort of. I mean, a lot of the questions you ask are
12:20:31 19 sort of a like there's no right answer. If they had a --

12:20:36 20 Q. I'm doing my job right.

12:20:38 21 MS. CARTER: Object, your Honor. Can she please
12:20:40 22 finish the answer?

12:20:41 23 MR. EDWARDS: I apologize.

12:20:42 24 A. Right. I think the reality when that settlement
12:20:45 25 occurred was they had a limited number and knew they were

12:20:49 1 going to need more and had plans for putting in more cool
12:20:52 2 beds. So they immediately needed some guidance on how to
12:20:57 3 decide who needed the limited number of beds and then,
12:21:01 4 they have continuously added beds and have plans to
12:21:05 5 continuously add in more.

12:21:08 6 Q. (BY MR. EDWARDS) Right. And they should air
12:21:12 7 condition the system, shouldn't they?

12:21:16 8 MS. CARTER: I'm going to object to sidebar, your
12:21:18 9 Honor.

12:21:21 10 THE COURT: I don't think that was a sidebar. It
12:21:23 11 was a question.

12:21:26 12 A. I think the people that have medical conditions that
12:21:30 13 put them at a significantly higher risk of living in a hot
12:21:36 14 environment should be moved to a cooler environment.

12:21:44 15 Q. (BY MR. EDWARDS) I'm sorry, Doctor. I certainly
12:21:47 16 didn't mean to cut you off. Do you have more to say?

12:21:49 17 A. And I believe that is what the goal has been and what
12:21:53 18 TDCJ has asked for and perfectly willing to do.

12:22:08 19 Q. Coming back to the manner in which doctors at UTMB
12:22:15 20 help assist TDCJ with restrictions, you're aware that
12:22:20 21 doctors at UTMB are empowered to place numerous
12:22:24 22 restrictions that TDCJ's obligated to follow that relate
12:22:27 23 to the heat. For instance, no working in heat, not being
12:22:33 24 at a top bunk because it may be hotter, no temperature
12:22:37 25 extremes things like that, you're aware of that, right?

12:22:39 1 A. I'm aware that providers order restrictions, yes. I
12:22:47 2 disagree with the bunk statement you just made.

12:22:51 3 Q. For example, they have a restriction that a person be
12:22:55 4 transported in a wheelchair bed, correct?

12:22:59 5 A. That's one of the restrictions.

12:23:00 6 Q. Or that they consult a mental health professional
12:23:02 7 before disciplining, right?

12:23:05 8 A. Yes.

12:23:06 9 Q. Or that there's no work requiring safety boots,
12:23:09 10 right?

12:23:10 11 A. That's correct.

12:23:10 12 Q. Or that they're housed at a facility without stairs,
12:23:14 13 right?

12:23:14 14 A. Correct.

12:23:15 15 Q. Or that they're housed in a single cell, right?

12:23:19 16 A. Correct.

12:23:19 17 Q. Or as we talked about just a second ago, that they're
12:23:23 18 not allowed to work in temperature extremes, right?

12:23:25 19 A. That's right.

12:23:26 20 Q. And each of these restrictions requires the provider
12:23:30 21 to issue a specific order, correct?

12:23:34 22 A. Right.

12:23:36 23 Q. And the provider has to individually review the
12:23:40 24 patient and then, make the determination as to whether or
12:23:43 25 not he or she is going to issue that order, correct?

12:23:46 1 A. Correct.

12:23:50 2 Q. It's a totally different policy with regards to
12:23:55 3 placement in air conditioning housing, isn't it?

12:23:58 4 A. It is.

12:23:59 5 Q. Now, do you think that could possibly be because if
12:24:07 6 competent medical providers were given the option of
12:24:11 7 recommending air-conditioned housing or not
12:24:14 8 air-conditioned housing for 65-year-olds that people with
12:24:17 9 diabetes, or people with COPD, or people with other
12:24:20 10 pulmonary diseases or hypertension, that they would, of
12:24:25 11 course, as competent doctors say he or she ought to be in
12:24:30 12 air conditioning?

12:24:31 13 MS. CARTER: I'm going to object to speculation,
12:24:33 14 your Honor.

12:24:34 15 THE COURT: I'll allow the question.

12:24:35 16 A. Well, I would say that's speculation on why also and
12:24:38 17 I would also speak to the fact that ordering restrictions
12:24:43 18 is for work. And that I can speak as a prior
12:24:48 19 patient-facing provider on a unit that the restrictions
12:24:53 20 were not always used to represent a risk for heat as much
12:24:58 21 as for a way for me to control what job they got.

12:25:03 22 And I can give you an example, if you want, using
12:25:08 23 the no exposure to high heat in the workplace. I used to
12:25:15 24 use that for brittle diabetics because I didn't want them
12:25:18 25 going out in the fields and having an issue with a low

12:25:22 1 blood sugar far away from me. So I think that those
12:25:26 2 restrictions are kind of an entirely different animal.

12:25:38 3 Q. (BY MR. EDWARDS) I mean, there are housing
12:25:40 4 restrictions, right?

12:25:41 5 A. Well, some of them are single cell and low bunk and
12:25:44 6 there's really not a big temperature difference between a
12:25:47 7 low bunk and a top bunk, but the working restrictions
12:25:51 8 about heat are often used for reasons other than the
12:25:55 9 patient is at risk for heat illness.

12:26:00 10 Q. Well, look, my only point is TDCJ gives medical
12:26:08 11 providers discretion to make housing recommendations
12:26:12 12 except for placement in air conditioning, right?

12:26:18 13 A. I don't know if that's the only thing but...

12:26:20 14 Q. Fair. It's one exception.

12:26:22 15 A. Work restrictions. It's a different issue.

12:26:32 16 Q. Do you know if there is a health service liaison
12:26:35 17 policy which prohibits them from requesting that an inmate
12:26:41 18 be moved into air conditioning?

12:26:43 19 A. I don't know anything about health services liaison
12:26:46 20 policy.

12:26:47 21 Q. Do you know if there's ever been a policy that
12:26:51 22 prevented the health service liaison from -- that
12:26:56 23 prevented them from requesting that an inmate be moved
12:26:59 24 into air conditioned housing?

12:27:02 25 MS. CARTER: I'm going to object as asked and

12:27:05 1 answered, your Honor.

12:27:05 2 THE COURT: Overruled.

12:27:07 3 A. My experience with health services liaison is that
12:27:11 4 they review patients and generally err on the side of
12:27:18 5 caution and move them to air conditioning and that they
12:27:21 6 have the ability to tell TDCJ this person needs to be
12:27:24 7 moved.

12:27:32 8 MS. CARTER: Can I ask what exhibit this is?

12:27:37 9 MR. EDWARDS: Plaintiffs' 31.

12:27:50 10 Q. (BY MR. EDWARDS) Doctor --

12:28:00 11 MS. CARTER: I'm going to object to this document
12:28:03 12 as Dr. Leonardson has already testified she doesn't know
12:28:05 13 anything about health services liaison policy and I
12:28:09 14 believe that's what this is about based on the title of
12:28:12 15 the document. She's already testified she doesn't know
12:28:13 16 about it.

12:28:15 17 MR. EDWARDS: I'm about to show her what it says.
12:28:17 18 She just testified that she believed that health services
12:28:21 19 liaison err on the side of caution and recommend placement
12:28:24 20 in air conditioning and I'm going to show her a TDCJ
12:28:27 21 policy on that front.

12:28:29 22 THE COURT: I'll allow it.

12:28:31 23 MR. EDWARDS: And I'd ask that it be admitted
12:28:34 24 into evidence, your Honor.

12:28:34 25 MS. CARTER: I'm going to renew my objection,

12:28:36 1 your Honor.

12:28:36 2 THE COURT: Overruled and admitted.

12:28:39 3 Q. (BY MR. EDWARDS) This is a health services liaison
12:28:41 4 facility types and then, do you see where it says air
12:28:53 5 conditioning, climate-controlled facilities?

12:28:55 6 A. Yes.

12:28:57 7 Q. Would you read that portion of the -- would you read
12:29:01 8 that to the Court, please?

12:29:03 9 A. Some facilities have some housing areas with air
12:29:07 10 conditioning, tempered air or climate controlled. Not all
12:29:11 11 offenders meet the security criteria to be in the
12:29:15 12 climate-controlled cells/dorms on the facility. HSL
12:29:20 13 cannot request assignment of an offender to an
12:29:24 14 air-conditioned or climate-controlled facility.

12:29:29 15 Q. Now, that's directly contrary to what your
12:29:32 16 expectation would be in health services liaison, correct?

12:29:37 17 A. I think that it was the last line was kind of written
12:29:41 18 poorly.

12:29:42 19 MS. CARTER: Your Honor, I'd ask that plaintiffs
12:29:44 20 put the exhibit back up so that Dr. Leonardson can see the
12:29:48 21 date of this policy and determine if she believes this is
12:29:50 22 the most current version of this policy.

12:29:52 23 THE COURT: You'll have the opportunity to do a
12:29:54 24 lot of what you're talking about.

12:29:56 25 Q. (BY MR. EDWARDS) And again, I was asking you about

12:29:58 1 any policies. But, Doctor, do you believe that at one
12:30:04 2 point, health services liaison was prevented from ever
12:30:08 3 accepting placement in air conditioning and it's changed?
12:30:12 4 A. I have no idea.
12:30:14 5 Q. All right.
12:30:15 6 A. I don't.
12:30:16 7 Q. Okay. Do you agree at least that that never should
12:30:21 8 have been the policy of TDCJ?
12:30:23 9 A. I think if health services liaison says to TDCJ, this
12:30:29 10 patient needs to be in a cool environment and they can't
12:30:34 11 be transferred to a mainstream unit because of their
12:30:37 12 security level, that they need to find a different
12:30:41 13 solution.
12:30:42 14 Q. To put it lightly, that would be your testimony,
12:30:45 15 right?
12:30:46 16 A. To put what?
12:30:47 17 Q. That's okay. The heat score system that we looked at
12:30:59 18 earlier with counsel for TDCJ, I believe it's tab 8, your
12:31:19 19 Honor, I just want to -- and I just want to be clear,
12:32:05 20 Doctor. Many of the comorbidities we just looked that may
12:32:12 21 affect heat tolerance are not on this heat score sensitive
12:32:17 22 policy, right?
12:32:20 23 A. Some of them aren't.
12:32:22 24 Q. For instance, seizure disorder, it's nowhere to be
12:32:28 25 found on this current policy.

12:32:30 1 A. Which disorder?

12:32:32 2 Q. Seizure disorder.

12:32:33 3 A. Oh, that's correct.

12:32:34 4 Q. And diabetes, if you're under 65 without organ damage

12:32:42 5 -- and organ damage, you don't get the protection of air

12:32:45 6 conditioning, correct?

12:32:46 7 A. That's correct.

12:32:48 8 Q. And if you have cirrhosis of the liver and you're

12:32:53 9 under 65 and not taking certain medications, you don't

12:32:55 10 get the protection of air conditioning, correct?

12:32:59 11 A. Not unless somebody specifically asks for an

12:33:03 12 exception.

12:33:06 13 Q. That's fine. It's not the rule that you get the

12:33:09 14 protective -- the protection of air conditioning, correct?

12:33:12 15 A. Correct.

12:33:13 16 Q. And if you have asthma or COPD and you're under 65

12:33:20 17 and not taking steroids or beta agonists, you do not get

12:33:24 18 the protection of air conditioning, correct?

12:33:26 19 A. That is correct.

12:33:28 20 Q. And that's despite the fact that UTMB lists them as

12:33:34 21 comorbidities that may affect heat tolerance, correct?

12:33:38 22 A. May, yes.

12:33:40 23 Q. Now, the heat sensitivity -- now, the heat

12:33:58 24 sensitivity score that you got there also will not protect

12:34:02 25 you with air conditioning if you're taking anticonvulsants

12:34:07 1 like zonisamide and topiramate?

12:34:13 2 A. Right. Not unless -- I don't think so. Topiramate

12:34:18 3 is on the list of anticholinergic drugs but...

12:34:22 4 Q. And antihistamines like Benadryl, hydroxyzine and

12:34:29 5 promethazine, you don't get the protection?

12:34:30 6 A. They're anticholinergic.

12:34:33 7 Q. And antipsychotics like haloperidol or olanzapine and

12:34:37 8 risperidone and aripiprazole, they don't get you the

12:34:42 9 protections of air conditioning as a matter of course?

12:34:46 10 A. Yes. They're used for psychosis and schizophrenia,

12:34:51 11 which gets you air conditioning.

12:34:52 12 Q. But if you don't have schizophrenia and you're taking

12:34:56 13 a drug like that, just that, you don't receive the

12:35:00 14 protection of air conditioning?

12:35:02 15 A. Well, I would question why you're on, you know,

12:35:06 16 antipsychotic drugs if you don't have psychosis.

12:35:13 17 Q. Regardless, those are all drugs that are associated

12:35:16 18 with heat stress, correct?

12:35:19 19 A. They are and that's why we cover them.

12:35:31 20 Q. What's the point of having two points on there?

12:35:36 21 A. Because at the beginning when we had this score and

12:35:41 22 they were starting from a lower number of beds than they

12:35:44 23 have now, we had to find out which patients had the

12:35:51 24 highest risk for assigning these beds that were in limited

12:35:56 25 numbers. And since then, they've implemented enough cool

12:35:59 1 beds that they can give a score or give a bed to everyone
12:36:05 2 with a positive score. It just wasn't that way then and
12:36:08 3 we haven't gone in and changed it.

12:36:10 4 But right now, if you have one or greater, you're
12:36:13 5 getting a cool bed.

12:36:14 6 Q. Well, why have points at all then if it's still
12:36:19 7 necessary?

12:36:19 8 A. Well, beds are necessary. It's just that they aren't
12:36:23 9 stratified like they need to be. The need for the
12:36:27 10 stratification has changed.

12:36:29 11 Q. What evidence are you aware of that a 75-year-old
12:36:31 12 with asthma who's been prescribed an inhaler is at more or
12:36:36 13 less risk than a 64-year-old with hypertension?

12:36:41 14 A. I have no measure for that. I have no education in
12:36:46 15 my extensive internal medicine career that suggests it.
12:36:51 16 And in fact, cold air is usually a harder thing to
12:36:56 17 tolerate when you have asthma than hot air. But...

12:37:01 18 Q. Okay. That's fine. Now, earlier, we talked about
12:37:08 19 people dying in the Texas prison system and you seem to be
12:37:12 20 generally aware that people have died from hyperthermia or
12:37:16 21 heat stroke or that the heat had contributed to their
12:37:19 22 death, but you weren't aware of specifics, right?

12:37:23 23 A. I'm not aware of specifics and I'm not aware of
12:37:26 24 recent history after all the measures have been taken.

12:37:30 25 Q. Well, regardless of whether or not it's recent

12:37:32 1 history or not, would you agree that you oughta factor
12:37:38 2 into your whatever system you set up to protect people,
12:37:43 3 you know, the people that have died previously to see if
12:37:46 4 your system would actually protect them?

12:37:51 5 A. I agree and I think that's what the purpose is of
12:37:54 6 this.

12:37:54 7 Q. Well, you don't know who Archie White is, do you?

12:37:57 8 A. I do not.

12:38:00 9 Q. Would you put up Plaintiffs' Exhibit 28, tab 16.
12:38:31 10 Without boring in too much, Mr. White -- you could see
12:38:39 11 from this, Mr. White is 48 years old, five nine, 220
12:38:43 12 pounds and his BMI was 33. He died of heat stroke, okay,
12:38:50 13 and he -- those conditions would not have given him a heat
12:38:58 14 score in the Texas prison system currently, correct?

12:39:03 15 A. He was on tricyclic and that is a highly
12:39:09 16 anticholinergic drug that would have been taken off
12:39:14 17 formulary because it is highly anticholinergic for the
12:39:18 18 very reason that it was dangerous for people and heat. So
12:39:22 19 this was 1998 and --

12:39:35 20 Q. So clearly, this man should have been in air
12:39:38 21 conditioning housing, correct?

12:39:40 22 A. I think it would have been prudent, yes.

12:39:42 23 Q. Okay. And let's move to -- let me talk to you about
12:39:48 24 another person who died. His name was Anselma Lopez.

12:39:57 25 Forty-one-year-old with no conditions on the list. If you

12:40:04 1 don't have a condition on that -- let's go back to the
12:40:08 2 heat score policy. If you don't have one of those
12:40:10 3 conditions, you don't get a score, you don't get put in
12:40:12 4 air conditioning housing, that's the current policy of
12:40:14 5 TDCJ, correct?

12:40:16 6 A. Unless you get a requested review for specific
12:40:23 7 concern or you have any kind of heat illness that takes
12:40:30 8 you into the hospital or an ER.

12:40:38 9 Q. Do you know who Marvin Wyatt is?

12:40:45 10 A. No.

12:40:46 11 Q. He's one of the people identified by TDCJ as having
12:40:51 12 died in an un-air-conditioned TDCJ cell on August 1, 2023.
12:40:58 13 Now, his conditions, I'll represent to you, were
12:41:03 14 hypertension, he had a bilateral below-the-knee amputation
12:41:06 15 due to diabetic gangrene, he had diabetes, peripheral
12:41:09 16 vascular disease, obesity and asthma. Now, his cause of
12:41:14 17 death was a bilateral pulmonary embolism.

12:41:19 18 Now, that person under this current structure
12:41:24 19 doesn't get air conditioned housing, correct?

12:41:28 20 A. How old was he?

12:41:31 21 Q. Forty-eight.

12:41:37 22 A. Not based on what you've just told me. But you also
12:41:49 23 told me that he died of heat illness and it sounds like he
12:41:53 24 died of a pulmonary embolus.

12:41:58 25 Q. Would you read the title for the Court's benefit,

12:44:19 1 Doctor?

12:44:20 2 A. Severe nonexertional hyperthermia, classic heat
12:44:27 3 stroke in adults.

12:44:28 4 Q. Up-to-date article based on a literature review
12:44:31 5 current through June of 2024. That's what this says,
12:44:35 6 correct?

12:44:35 7 A. Correct.

12:44:37 8 Q. Would you kindly read the factors that this
12:44:48 9 up-to-date article based on the literature you were
12:44:51 10 talking about earlier say are associated with increased
12:44:55 11 risk?

12:44:57 12 A. Extremes of age, pregnancy, obesity, poor physical
12:45:02 13 condition, lack of about acclimatization, lack of air
12:45:07 14 conditioning and social isolation.

12:45:13 15 Q. Would you now agree with me, Doctor, that the lack of
12:45:16 16 air conditioning is a factor that increases the risk of
12:45:21 17 heat stroke?

12:45:25 18 A. The what is?

12:45:28 19 Q. Is lack of air conditioning a factor associated with
12:45:31 20 increased risk of heat stroke according to the literature?

12:45:37 21 A. Well, what you're saying is if it's cool, does that
12:45:42 22 prevent heat stroke? Is that what you're saying.

12:45:47 23 Q. Well, is that true?

12:45:50 24 A. Well, if there's no heat, there will not be heat
12:45:53 25 stroke, yes.

12:45:55 1 Q. Let's go to another highlighted portion under
12:46:07 2 diagnosis. Would you read the next highlighted paragraph
12:46:12 3 or sentence?

12:46:13 4 A. Diagnosis of nonexertional or classic heat stroke is
12:46:18 5 made clinically based upon an elevated core body
12:46:22 6 temperature generally greater than 40.5 centigrade or 105
12:46:27 7 Farenheit central nervous system dysfunction, for
12:46:32 8 instance, altered mental status and exposure to severe
12:46:35 9 environmental heat.

12:46:37 10 Q. And would you agree that everyone who experiences the
12:46:41 11 summers in the Texas prison system is exposed to severe
12:46:45 12 environmental heat?

12:46:48 13 A. I'm not an expert on Texas summer or what the free
12:46:53 14 world has to endure if they don't have air. I think that
12:47:00 15 it can be said that if it's cool outside, it's unlikely to
12:47:04 16 have, you know, heat injury.

12:47:10 17 Q. You really don't think that temperatures in the 90s
12:47:13 18 and hundreds in cells in the Texas prison system would put
12:47:19 19 you to exposure to severe environmental heat or do you?

12:47:23 20 A. Are you asking me whether I think it's hot in prison?

12:47:29 21 Q. Let me tell you why I'm asking you, Dr. Leonardson.
12:47:32 22 I mean, we are here in a very serious case --

12:47:34 23 MS. CARTER: Your Honor, I'm going to object to
12:47:36 24 sidebar and testifying from counsel right now.

12:47:40 25 THE COURT: Overruled. Ask the question.

12:47:42 1 Q. (BY MR. EDWARDS) I want to tell you why I'm asking
12:47:43 2 you. One is because Judge Pitman, who's here watching,
12:47:47 3 has to decide whether or not to issue an injunction in
12:47:51 4 this case. But the other reason is Bryan Collier's
12:47:54 5 sitting right here and he runs the Texas prison system.
12:47:58 6 You may not be able to see him, but I'll represent to you
12:48:01 7 that Bryan Collier's sitting right here, okay?

12:48:05 8 I understand that you are a person that might be
12:48:09 9 consulted to determine something about the prison system.
12:48:13 10 Do I understand that correctly?

12:48:16 11 A. About the healthcare in the prison system, yes.

12:48:18 12 Q. Okay. Is it really your testimony that you don't
12:48:23 13 know whether or not people who live in 90, 95, hundred,
12:48:29 14 105 degrees of heat and heat indexes are exposed to severe
12:48:34 15 environmental heat which can endanger their life?

12:48:38 16 A. No. I would say that's true and policy address that.

12:48:43 17 Q. Well, policies address it for 12,000 people that you
12:48:47 18 guys have identified as having heat scores, correct?

12:48:52 19 A. It also identifies it for the mitigation measures
12:48:59 20 that are --

12:49:00 21 Q. Before I continue with this, just to be clear,
12:49:02 22 mitigation measures do nothing to eliminate the danger,
12:49:06 23 correct?

12:49:10 24 A. I don't think that's true. I think they address the
12:49:13 25 need for hydration and cooling.

12:49:17 1 Q. But the heat is the condition that's dangerous,
12:49:22 2 correct?

12:49:22 3 A. I think it's the body's response to the heat that can
12:49:26 4 be dangerous.

12:49:27 5 Q. Very. And if you remove the heat, you remove the
12:49:30 6 danger to the body, right?

12:49:35 7 A. I guess so. In the winter, we don't have heat, you
12:49:39 8 know, so we don't implement the mitigation measures.

12:49:43 9 Q. Would you read the next highlighted portion, please?

12:50:01 10 A. A rectal temperature should be obtained in all
12:50:04 11 patients suspected of heat stroke.

12:50:07 12 Q. That basically means that you should be taking core
12:50:09 13 body temperatures of people that die of unexplained
12:50:13 14 reasons in hot environments inside the Texas prison,
12:50:18 15 right?

12:50:18 16 A. It means that if you suspect somebody has a heat
12:50:21 17 illness, you should take a rectal temperature.

12:50:32 18 Q. Now, yesterday, we heard testimony that a woman named
12:50:36 19 Elizabeth Hagerty died of -- from the heat or at least
12:50:43 20 partly in the heat. Let me read to you some of her
12:50:46 21 medical conditions. She was morbidly --

12:50:49 22 MS. CARTER: Your Honor, I'm going to object to
12:50:51 23 this as testifying. If he wants to ask Dr. Leonardson if
12:50:55 24 she's familiar with Elizabeth Hagerty, he can.

12:50:57 25 THE COURT: Overruled. Go ahead.

12:50:59 1 Q. (BY MR. EDWARDS) Again, we're talking about a young
12:51:01 2 woman, talking about a woman under 65, morbidly obese with
12:51:08 3 type 2 diabetes, with hyperlipidemia, asthma and
12:51:14 4 unspecified mood disorder, who was prescribed albuterol,
12:51:20 5 citalopram, carbamazepine, and she had heat sensitivity
12:51:26 6 score of zero. Should she have had heat sensitivity score
12:51:29 7 of zero?

12:51:32 8 A. No -- I mean, yes, according to the heat score and if
12:51:36 9 she were a person who was deemed especially high-risk
12:51:41 10 despite that, she should be sent for review, which with
12:51:48 11 HSL --

12:51:48 12 Q. Doctor, the point of this case -- one of the points
12:51:50 13 of this case that I went through is to try to protect
12:51:53 14 people and try to stop the deaths from occurring. Doesn't
12:51:58 15 the system that is in place that Director Collier knows
12:52:02 16 about expose people like Elizabeth Hagerty, again, morbid
12:52:08 17 obesity, type 2 diabetes, asthma, a mood disorder and
12:52:14 18 hyperlipidemia to exposure to these elevated conditions in
12:52:18 19 a lack of air-conditioned environment?

12:52:22 20 A. Well, if there's heat or if there's no heat, there's
12:52:29 21 no risk of heat exposure and our goal has been to identify
12:52:33 22 people that are at increased heat risk. And if somebody
12:52:40 23 had looked at the case and decided she would have not had
12:52:44 24 problem -- I'm not familiar with her case at all.

12:52:47 25 Q. No. I understand.

12:52:49 1 A. And if there is identification of people at specific
12:52:54 2 increased risk, then we can add that to the heat score.

12:52:58 3 Q. Well, here's my ask --

12:53:01 4 A. Identifiable.

12:53:04 5 Q. There has been testimony in this case that everyone
12:53:07 6 is at elevated risk of serious and substantial --
12:53:11 7 everyone's at a substantial risk of harm from exposure to
12:53:15 8 these conditions. Now, if that's -- if the Court finds
12:53:20 9 that credible, then that means everyone should get the
12:53:25 10 protection of air conditioning, right? If that's a
12:53:29 11 truthful, correct interpretation of scientific evidence,
12:53:33 12 right?

12:53:34 13 A. Well, I don't know. That just went on too long, I
12:53:37 14 really had a hard time figuring out what you're asking me
12:53:46 15 if they need it and the Judge decides that they need it.
12:53:47 16 But I guess my question is I did not train in Texas. I
12:53:53 17 trained in Chicago where it does get hot in the summer,
12:53:58 18 but I never read in literature nor learned that if we have
12:54:03 19 patients who have complex problems, we should be
12:54:10 20 recommending they all have air conditioning. It's just
12:54:12 21 not medical training.

12:54:13 22 Q. Well, I appreciate that you haven't learned it, but
12:54:15 23 would you agree with me that everyone is capable of
12:54:19 24 learning something new?

12:54:21 25 A. Yes. And I don't think this is a me being alone.

12:54:27 1 Lack of learner. I follow the literature. It is not --
12:54:31 2 it is not out there, for the most part, that if you have a
12:54:36 3 patient who's got hypertension over a certain age, you'd
12:54:40 4 better make sure that they have air conditioning.

12:54:43 5 Q. Again, I'm just -- I don't suspect that I can change
12:54:48 6 your mind in two minutes with, you know, my headless
12:54:51 7 version up here, but, Doctor, you would tell Judge Pitman
12:54:57 8 that if he believes the evidence that has been presented
12:54:58 9 to this court shows that everyone is at an elevated risk
12:55:03 10 of harm, of substantial harm from the heat, then the order
12:55:09 11 should be get air conditioning or some sort of protection
12:55:14 12 that cools the prisons to TDCJ, correct?

12:55:18 13 MS. CARTER: Your Honor, I'm going to object as
12:55:21 14 calling for a legal conclusion.

12:55:24 15 THE COURT: Sustain that objection.

12:55:25 16 Q. (BY MR. EDWARDS) It was sustained, Dr. Leonardson, so
12:55:28 17 you don't need to answer that question.

12:55:29 18 As you testified here today, you're just unaware
12:55:31 19 of literature of what Dr. Biswas testified yesterday that
12:55:38 20 everyone is at elevated risk of harm from exposure to the
12:55:41 21 heat. You just don't know, you're unaware of that, right?

12:55:44 22 A. I'm not aware of her testimony, first of all.

12:55:48 23 Q. More importantly --

12:55:49 24 A. And I just don't think it's as cut and dry as you
12:55:52 25 want to make it. And I am up on, you know, mainstream

12:55:57 1 medical literature and I think if it came out that
12:56:00 2 everyone with hypertension needs to live in air
12:56:03 3 conditioning, it would be the lead New England Journal
12:56:06 4 article because it's half of the United States. So the
12:56:12 5 key is to figuring out who does need it and who is okay
12:56:16 6 without it.

12:56:19 7 Q. That's the very question that TDCJ ought to be
12:56:24 8 asking, right?

12:56:26 9 A. And I think they have asked that.

12:56:27 10 Q. No. What they did was provide you with a list of
12:56:33 11 conditions for you to devise an algorithm to design a heat
12:56:37 12 score, that's different, isn't it?

12:56:38 13 MS. CARTER: Your Honor, I'm going to object as
12:56:41 14 argumentative and testifying from counsel.

12:56:43 15 THE COURT: He ended up with a question. You can
12:56:45 16 answer that.

12:56:47 17 A. All right. Could you tell me the question?

12:56:49 18 Q. (BY MR. EDWARDS) I said that's not what you did.
12:56:51 19 What TDCJ did was self-identify several conditions and
12:56:58 20 then, send them to you to design an algorithm to extract
12:57:02 21 them from the electronic medical record, correct?

12:57:05 22 A. That is not correct.

12:57:07 23 Q. They didn't include the --

12:57:09 24 A. I mean, TDCJ didn't make up the settlement. The
12:57:12 25 settlement was between TDCJ and whoever the plaintiff was

12:57:17 1 and both sides had medical experts who helped my --

12:57:21 2 Q. How do you know that --

12:57:22 3 A. -- my understanding in designing this settlement.

12:57:25 4 And I think it's very simplistic to say TDCJ handed us a

12:57:31 5 list. We don't know what TDCJ's feelings were about the

12:57:37 6 settlement. We got the settlement and helped them know

12:57:42 7 who those patients were.

12:57:43 8 Q. Doctor, true or false, isn't it true that TDCJ

12:57:46 9 provided you a list of conditions and asked for an

12:57:49 10 algorithm to be designed?

12:57:53 11 A. I don't know who gave it to us. I honestly don't. I

12:57:57 12 don't know who sent it to us. We were tasked with, you

12:58:02 13 know, helping them know who these people were because the

12:58:09 14 EHR has the information.

12:58:10 15 Q. As you testifying here today you don't know whether

12:58:14 16 or not TDCJ sent you the list, prisoners sent you the

12:58:17 17 list, attorneys sent you the list? Is that really your

12:58:20 18 testimony?

12:58:21 19 A. I don't really know where we got the list.

12:58:24 20 Q. Fair enough. You just know you got a list of

12:58:26 21 conditions?

12:58:27 22 A. It's a settlement. It was the settlement document.

12:58:33 23 Q. Okay. In any event, you don't know where you got

12:58:36 24 that list. You just know that you got a list of

12:58:38 25 conditions, fair?

12:58:40 1 A. I got the settlement and so did the rest of the group
12:58:45 2 that was, you know, at the beginning of this. I mean,
12:58:51 3 it's not like they parsed out the settlement and said,
12:58:54 4 here's the list we want. Without the settlement document
12:58:59 5 and we were asked to help identify them.

12:59:05 6 Q. Well, Doctor, did you independently identify
12:59:08 7 conditions that made people vulnerable to exposure to high
12:59:12 8 heat? Or did you receive conditions in a settlement, like
12:59:15 9 you testified earlier to, and then, design an algorithm?

12:59:20 10 A. We received that, we designed an algorithm for that
12:59:24 11 and we have added conditions that are universally
12:59:28 12 considered to be risky that weren't in the settlement.

12:59:35 13 Q. I may have heard you incorrectly so I want to be
12:59:37 14 career. Did you testify you're not aware of literature
12:59:40 15 that topiramate, T-O-P-I-R-A-M-A-T-E, is a drug associated
12:59:46 16 with heat stress?

12:59:48 17 A. No, I am not aware of it. And I'll tell you the
12:59:52 18 drugs that are involved in algorithm were reviewed by a
12:59:58 19 Pharm.D. So I request, you know, the medical people on
13:00:03 20 this group that looks at this have acknowledged that we
13:00:07 21 have some people that have expertise in which of the drugs
13:00:11 22 is considered anticholinergic and which are not, and so,
13:00:18 23 we followed their --

13:00:19 24 Q. You referred to the toxicologist, fair?

13:00:22 25 A. To the Pharm.D.s who are the experts on that.

13:00:25 1 Q. Again, you've testified --

13:00:27 2 A. Yeah, on the list. I don't know.

13:00:30 3 Q. Well, despite being up-to-date, I thought you said
13:00:33 4 you're up-to-date on the literature. Did I hear you
13:00:36 5 wrong?

13:00:37 6 A. I follow the mainstream literature. There is a New
13:00:41 7 England Journal, JAMA.

13:00:44 8 Q. I just want to be clear and give you a chance to take
13:00:47 9 it back if you want to, but you testified that you're not
13:00:51 10 aware of literature that topiramate, T-O-P-I-R-A-M-A-T-E,
13:00:55 11 is a drug associated with heat stress, correct?

13:00:59 12 A. I am not aware of it and it's not my area. I ask the
13:01:04 13 people whose area it is.

13:01:06 14 Q. Isn't it true that UTMB policy says the exact
13:01:09 15 opposite that it is, in fact, a drug associated with heat
13:01:13 16 stress?

13:01:15 17 A. And it may be. It may be in the list. I'm just --
13:01:20 18 there's hundreds of drugs on the list and I'm not aware of
13:01:25 19 topiramate being on it, but it may be. If it's considered
13:01:28 20 high risk, I would, you know, think it's very probable
13:01:32 21 that the Pharm.D.s tagged it and it's on the list.

13:01:39 22 THE COURT: We're a little overdue for our lunch.
13:01:41 23 Are you about to wrap up?

13:01:42 24 MR. EDWARDS: I think I have no more than two or
13:01:44 25 three minutes, at most.

13:01:45 1 THE COURT: Okay. Great.

13:01:47 2 Q. (BY MR. EDWARDS) Would you pull up tab 7, please.

13:02:07 3 Doctor, this is the drugs associated with heat stress that

13:02:12 4 UTMB puts out. What's the first one under the

13:02:15 5 anticonvulsants?

13:02:16 6 A. It's topiramate.

13:02:19 7 Q. It is, in fact, a drug associated with heat stress,

13:02:24 8 correct?

13:02:24 9 A. Yes. Heat stress, yes. Yeah, it might be on our

13:02:30 10 list. I don't know.

13:02:30 11 Q. Well, it is on your list, isn't it?

13:02:32 12 A. No. I mean, in the background of the heat score,

13:02:37 13 that's the list I'm talking about where we asked Pharm.D.

13:02:42 14 to identify which drugs are considered anticholinergic.

13:02:49 15 MR. EDWARDS: Plaintiffs asks that be admitted

13:02:50 16 into evidence as Plaintiffs' Exhibit 275.

13:02:54 17 THE COURT: Any objection? We already have a

13:03:19 18 275.

13:03:21 19 MR. EDWARDS: I meant to say 276.

13:03:55 20 MR. JAMES: That's Plaintiffs' 36 is CMAC 2722 of

13:04:02 21 D-2722.

13:04:07 22 MR. EDWARDS: We'd ask that the entire policy

13:04:09 23 Plaintiffs' 36 also be admitted as -- I mean, I'm sorry,

13:04:13 24 that Plaintiffs' 36 be admitted, as well.

13:04:17 25 MS. CARTER: No objection, your Honor.

13:04:18 1 THE COURT: So admitted.

13:04:20 2 MR. EDWARDS: And just so the record's clear, 276

13:04:23 3 was admitted, your Honor.

13:04:23 4 THE COURT: Yes.

13:04:24 5 MR. EDWARDS: Thank you, Doctor, very much.

13:04:26 6 Appreciate your time.

13:04:26 7 THE COURT: Okay.

13:04:31 8 MR. HOMIAK: I think we need to introduce the

13:04:33 9 articles, the up-to-date articles for record purposes.

13:04:38 10 MR. EDWARDS: We would ask that the article that

13:04:40 11 I discussed with the Doctor be admitted as Plaintiffs'

13:04:43 12 277, your Honor.

13:04:45 13 THE COURT: So admitted. Doctor, I'm sorry to

13:04:55 14 have to do this to you but we are way overdue for our

13:04:59 15 lunch and so, I'm afraid we're going to have to take a

13:05:01 16 lunch and reconvene at 2:00. We will -- you're free to go

13:05:07 17 as long as you're back on Zoom at 2:00 to recommence. So

13:05:12 18 thank you very much and we're in recess until 2:00.

13:05:46 19 (Lunch recess.)

14:01:54 20 THE COURT: All right. Doctor, are you back?

14:01:56 21 Can you hear us okay?

14:01:58 22 THE WITNESS: Yes.

14:01:58 23 THE COURT: Have any redirect?

14:02:01 24 MS. CARTER: No redirect, your Honor.

14:02:03 25 THE COURT: Okay. I'm sorry, Doctor. I'm so

14:02:05 1 sorry. I assumed they would have questions for you so
14:02:07 2 thank you for your time and you will be excused and thank
14:02:12 3 you very much.

14:02:13 4 THE WITNESS: Thanks so much.

14:02:17 5 THE COURT: Your next witness.

14:02:18 6 MS. ELLIS: I would like to call Tim Fitzpatrick
14:02:32 7 to the stand.

14:02:40 8 THE COURT: Raise your right hand to be sworn.

14:02:49 9 THE CLERK: You do solemnly swear or affirm that
14:02:49 10 the testimony which you may give in the case now before
14:02:49 11 the Court shall be the truth, the whole truth, and nothing
14:02:49 12 but the truth?

14:02:49 13 THE WITNESS: I do.

14:02:50 14 THE COURT: Please be seated.

14:02:50 15 TIMOTHY R. FITZPATRICK, called by the Defendant, duly
14:02:51 16 sworn.

14:02:51 17 DIRECT EXAMINATION

14:02:51 18 BY MS. ELLIS:

14:03:07 19 Q. Good afternoon.

14:03:07 20 A. Good afternoon.

14:03:08 21 Q. Can you please state your full name for the record?

14:03:11 22 A. It is Timothy Ryan Fitzpatrick.

14:03:13 23 Q. Mr. Fitzpatrick, where are you employed?

14:03:15 24 A. Texas Department of Criminal Justice.

14:03:17 25 Q. And what is your current title?

14:03:19 1 A. My current title is the Director of Classification
14:03:21 2 and Records.

14:03:22 3 Q. How long have you worked for TDCJ?

14:03:24 4 A. This is my 19th year with the agency.

14:03:27 5 Q. That's a long time. Have you had a lot of different
14:03:30 6 positions there?

14:03:30 7 A. Yes, ma'am, I have.

14:03:31 8 Q. Can you please walk the Court through those
14:03:33 9 positions?

14:03:33 10 A. Sure. I started with the agency when I was 18 years
14:03:36 11 old in 2005. I started as a correctional officer going to
14:03:41 12 San Houston State, did get a college job and hired on with
14:03:44 13 the agency. I was a correctional officer at the Ferguson
14:03:47 14 Unit for about three years. I then moved to the Goree
14:03:51 15 Unit in Huntsville, Texas as a sergeant. I was a
14:03:54 16 lieutenant at the Byrd Unit, also in Huntsville, Texas. I
14:03:57 17 was promoted to captain at the Polunsky Unit in
14:04:02 18 Livingston, Texas. I was promoted to the major correction
14:04:04 19 officer's position at the Michael Unit in Tennessee
14:04:08 20 Colony. From there, I became the assistant warden of the
14:04:11 21 Penwister (phonetic) state jail in Itasca, Cita, Texas. I
14:04:15 22 then was lateral to the Estelle facility as assistant
14:04:19 23 warden. My first position as senior warden was at the
14:04:22 24 Rudd Unit in west Texas in Brownfield. I was then the
14:04:26 25 senior warden of the Pack Unit in Navasota, Texas. And

14:04:29 1 there, I -- most recent position in November of 2021, I
14:04:34 2 was appointed as the director of classification and
14:04:37 3 records.

14:04:37 4 Q. Thank you, Mr. Fitzpatrick. You mentioned a college
14:04:41 5 job is something that you did?

14:04:42 6 A. Yes, ma'am.

14:04:42 7 Q. Does that mean that you went to college?

14:04:44 8 A. Yes, ma'am. I went to Sam Houston State University.

14:04:46 9 Q. For what?

14:04:47 10 A. I received a Bachelor's in Criminal Justice.

14:04:50 11 Q. Okay. Do you have any more educational background?

14:04:53 12 A. Yes, ma'am. I went back and received a Master's in
14:04:56 13 Criminal Justice Leadership and Management also from Sam
14:05:00 14 Houston State.

14:05:00 15 Q. Okay. Do you have any specific training that you had
14:05:04 16 over the course of your 19-year career at TDCJ?

14:05:07 17 A. Yes, ma'am. Extensive training starting -- beginning
14:05:10 18 with pre-service trainings, hundreds, if not thousands, of
14:05:13 19 hours of training throughout those 19 years, midlevel
14:05:18 20 managers trainings when I was around the lieutenant
14:05:20 21 captain level, many trainings as we -- as I progressed to
14:05:24 22 the agency, many senior leadership training courses and,
14:05:28 23 most recently, the ability to attend our focus leadership
14:05:32 24 training with our agency, and then, also some national
14:05:36 25 level trainings at the National Institute of Corrections

14:05:39 1 in Colorado. I've attended two separate trainings, one of
14:05:43 2 those being a yearlong essentially training titled
14:05:46 3 Executive Excellence. So I had the opportunity to attend
14:05:50 4 some phenomenal trainings throughout my career.

14:05:52 5 Q. Have you received any awards or recognitions?

14:05:55 6 A. A few throughout my career. One that stands out, I
14:05:57 7 was the Administrator of the Year. It's a governor's
14:06:01 8 award that's given during my last assignment as senior
14:06:04 9 warden.

14:06:04 10 Q. Defendant would now like to move to have Mr.
14:06:08 11 Fitzpatrick recognized as a correctional expert.

14:06:12 12 THE COURT: Any objection?

14:06:14 13 MR. JAMES: No objection.

14:06:17 14 THE COURT: So recognized.

14:06:18 15 Q. (BY MS. ELLIS) So, Mr. Fitzpatrick, you mentioned
14:06:21 16 that currently, you are in a director role.

14:06:24 17 A. Yes, ma'am.

14:06:24 18 Q. And remind the Court, what is that role?

14:06:27 19 A. The Director of Classification and Records.

14:06:29 20 Q. And what does the Director of Classification and
14:06:32 21 Records do?

14:06:33 22 A. So I oversee a lot of our administrative
14:06:37 23 behind-the-scenes processes within our agency. Some of
14:06:43 24 those significant processes include the -- at the
14:06:46 25 beginning, we're coordinating with all 254 counties in the

14:06:50 1 state of Texas for the admission of individuals that are
14:06:53 2 sentenced to the custody of TDCJ. So we're receiving that
14:06:56 3 documentation from the counties, we are reviewing and
14:07:00 4 certifying that documentation. And then, we're
14:07:01 5 responsible for scheduling the intake of those individuals
14:07:05 6 into our custody.

14:07:07 7 Once we -- prior to them arriving, we're
14:07:10 8 calculating all the inmate time, making sure that the
14:07:13 9 intent of the court and the sentence that was imposed is
14:07:16 10 upheld, again, pursuant to the intent of the court. Once
14:07:20 11 we receive those individuals, I'm responsible for staff
14:07:23 12 that conduct the physical intake processing on the
14:07:27 13 facilities. We are responsible for assigning custody and
14:07:33 14 unit of assignments to all hundred and approximately
14:07:39 15 34,000 inmates within the agency so where they live and
14:07:42 16 what custody they are. We're responsible for adding any
14:07:44 17 detainers and addressing warrants from counties or outside
14:07:48 18 agencies. We're responsible for all the transfers of
14:07:50 19 inmates in between our facilities around the state. We
14:07:54 20 process all releases. We are responsible for the
14:07:57 21 consolidated records of all inmates within our custody.
14:08:01 22 And finally, the mailroom operations of the agency also
14:08:07 23 fall under my purview.

14:08:08 24 Q. Okay. It sounds like you do a lot.

14:08:09 25 A. Yes, ma'am.

14:08:10 1 Q. Let's start with intake. If an individual comes into
14:08:16 2 TDCJ, how are they evaluated for classification decisions,
14:08:19 3 housing assignments, that sort of thing?

14:08:22 4 A. Yeah. So from day one, when they arrive from the
14:08:25 5 county jails or if it's another jurisdiction, when they
14:08:28 6 come into our agency, the first thing that's happening is
14:08:31 7 they are being seen by medical staff. So those are
14:08:35 8 usually nurses in what we call a initial examination at
14:08:39 9 the back door. So while they are getting their new
14:08:41 10 clothing. They're getting their haircuts. They're seeing
14:08:45 11 medical. We're then getting their photographs, their iris
14:08:49 12 scans, their fingerprints, and we are then beginning the
14:08:52 13 process of building what we call the classification
14:08:55 14 profile. So that is all possible information that we can
14:08:59 15 gather about this individual to build that profile for the
14:09:02 16 rest of their incarceration. We want to give the best
14:09:06 17 picture that we can to the field and the operators in the
14:09:08 18 field to know the most about that individual that they can
14:09:12 19 so that's all -- any kind of medical background that's put
14:09:15 20 onto the screens by our medical providers, that is
14:09:18 21 security concerns, criminogenic backgrounds, demographics,
14:09:23 22 things of that nature. Also includes all their family
14:09:25 23 history.

14:09:26 24 So this is a 30-day process. This is not
14:09:28 25 happening in one day. They see different sociologists.

14:09:32 1 They do different testing. We do IQ testing. We do
14:09:35 2 adverse childhood effects. We do the Texas University
14:09:39 3 drug screening. So there's a lot of different testing
14:09:42 4 that goes into building this profile of the individual and
14:09:46 5 so that's intake in a nutshell.

14:09:48 6 Q. Okay. So when you're evaluating their medical needs,
14:09:53 7 does an intake individual get a heat score? Is that
14:09:55 8 deferred until once they're permanently signed?

14:09:59 9 A. On day one, they receive a preliminary heat score is
14:10:02 10 what we call it.

14:10:03 11 Q. Okay. How does that differ from the heat score
14:10:06 12 you've been talking about all week?

14:10:07 13 A. So the preliminary heat score is given by nursing
14:10:10 14 staff at the facilities. This is not a provider that is
14:10:16 15 going to give -- enter the information that is producing
14:10:20 16 the final heat score. So this initial heat score is a
14:10:25 17 nursing staff, a member of UTMB or Texas Tech, is using a
14:10:28 18 screening mechanism and they go through those steps with
14:10:33 19 the inmate when they come in. They are evaluating their
14:10:37 20 county information so what was happening with that
14:10:40 21 individual in the county. The county has to provide that
14:10:44 22 information to us and those staff are evaluating that and
14:10:48 23 they are given a preliminary heat score.

14:10:51 24 It is then operationally the same as the heat
14:10:53 25 score that we've been discussing all week. If they get

14:10:55 1 any score of one or higher, they are immediately that day,
14:11:00 2 day one of intake, housed in a cool bed at an intake
14:11:04 3 facility and they stay in there until they get their final
14:11:09 4 exam -- their physical exam. Their initial physical exam
14:11:13 5 from a medical provider. That medical provider will
14:11:15 6 conduct the exam, enter the information into the
14:11:18 7 electronic health record, and then, from there, the heat
14:11:21 8 score -- what we call the actual heat score generates and
14:11:25 9 then, we use that operationally to house them.

14:11:28 10 Q. What is the purpose of giving an individual who's
14:11:31 11 gone through intake a preliminary heat score?

14:11:35 12 A. Day one, we want to know who is potentially at the
14:11:38 13 highest risk. They are coming in from county jails, we
14:11:42 14 want to know immediately who do we need to provide a cool
14:11:46 15 bed housing environment for those that could be at risk.

14:11:50 16 Q. So somebody who gets a preliminary heat score might
14:11:53 17 not ultimately get a heat score once they're evaluated
14:11:56 18 after those 30 days?

14:11:57 19 A. That's correct. It could change.

14:11:59 20 Q. Okay. And while we're on the topic of the heat
14:12:03 21 score, I understand you're not a medical professional,
14:12:05 22 right?

14:12:06 23 A. No, ma'am.

14:12:06 24 Q. So you've never given a heat score to any individual
14:12:09 25 person or anything like that.

14:12:11 1 A. I have not, no.

14:12:12 2 Q. Do you have the ability to alter someone's heat
14:12:17 3 score?

14:12:17 4 A. I do not.

14:12:18 5 Q. What do you do with the information that you receive
14:12:21 6 showing that somebody has a heat score outside of intake?

14:12:25 7 A. So outside of intake, the heat score is one of the,
14:12:31 8 if not the main driving factor for housing purposes. So
14:12:35 9 in our responsibility as classification deciding where
14:12:39 10 this individual is going to live based on a vast array of
14:12:43 11 demographics history, and so on, their medical needs take
14:12:49 12 precedent over everything else. And so, the heat score is
14:12:53 13 a medical need. It points to a medical need for a certain
14:12:58 14 house and so, that heat score is evaluated above all else
14:13:01 15 when we are looking at a facility or a housing area within
14:13:05 16 a facility to house that individual.

14:13:08 17 Q. So I understand that heat score would certainly be
14:13:10 18 relevant to their medical needs, but are there other
14:13:13 19 medical needs that you do have to take into consideration
14:13:16 20 in placing someone in their housing?

14:13:17 21 A. Yes. So we have to look at all of their medical
14:13:21 22 needs. When I say look at, that is not us reviewing
14:13:24 23 health records. There's screens that are populated in our
14:13:28 24 classification system that are called the health summary
14:13:31 25 for classification. In those screens, some of them were

14:13:36 1 mentioned earlier during Dr. Leonardson's testimony, but
14:13:39 2 that is where we see all of our housing restrictions and
14:13:42 3 work restrictions that are given by our medical providers.
14:13:46 4 So that screen is what's driving the type of bed that we
14:13:50 5 are looking for in classification to move and assign that
14:13:54 6 individual.

14:13:54 7 Q. Can you give us some examples of the housing
14:13:57 8 restrictions in terms of codes that you might see?

14:14:02 9 A. Some of them could be a unit cold. For instance, it
14:14:05 10 could be they have to be housed at a type one chronic care
14:14:09 11 facility. That means that that facility has 24-hour
14:14:12 12 medical staff there around the clock. That's for a lot of
14:14:16 13 diabetics that need constant-- if they need to go to
14:14:19 14 insulin or if they have other medical needs that require
14:14:24 15 around-the-clock, potentially, medical care. So that is
14:14:26 16 one that we look at. It's called type one chronic care.
14:14:29 17 That's a unit-level decision that we have to make. We
14:14:33 18 can't send that individual to a facility that does not
14:14:36 19 provide type one chronic care.

14:14:37 20 Once inside the correct facility, then we have to
14:14:41 21 look at things like cell or row restriction so they could
14:14:44 22 have a bottom row restriction. Maybe they are -- a doctor
14:14:50 23 has determined they can't go upstairs very well. If
14:14:52 24 they're a bottom bunk restriction, the doctors have
14:14:55 25 determined, for whatever medical reason, they cannot get

14:14:58 1 up the ladder into the top bunk.

14:15:00 2 So once the select -- the correct unit is
14:15:03 3 identified, then within the unit, we have to identify the
14:15:06 4 correct cell or dorm where that individual was best
14:15:10 5 housed.

14:15:11 6 Q. Is it fair to say that not every cell or not every
14:15:15 7 dorm is created equal in terms of whether an inmate is
14:15:18 8 eligible to go there or not?

14:15:20 9 A. That is correct.

14:15:21 10 Q. Okay. So you mentioned, you know, medical obviously
14:15:28 11 being an important consideration for classification
14:15:30 12 outside of medical. What other things are you looking at?

14:15:32 13 A. So after medical, we are looking at all security
14:15:35 14 needs. So we're looking at demographics, their custody,
14:15:38 15 what sentences they have, which can sometimes determine
14:15:42 16 custody. We're looking at if they have any enemies on
14:15:47 17 those facilities. We're looking at if they're confirmed
14:15:50 18 gang members. We're looking at are they in a program
14:15:52 19 through our rehabilitation division that -- and we need to
14:15:55 20 assign them to a facility that provides that type of
14:15:58 21 programming. We're looking at parole-voted decisions that
14:16:02 22 might guide a placement based on a parole program that is
14:16:06 23 needed for that individual.

14:16:07 24 So there's numerous things that have to be looked
14:16:10 25 at for every placement of all 134,000 individuals.

14:16:15 1 Q. Okay. Earlier, you mentioned that an inmate's heat
14:16:24 2 score is -- potentially, it could change.

14:16:26 3 A. Yes.

14:16:27 4 Q. So if somebody has a heat score, say they're already
14:16:32 5 in a cool bed, that heat score drops off, for whatever
14:16:35 6 reason, the next day, are they taken out of that cool bed?
14:16:39 7 What happens from your perspective?

14:16:41 8 A. So yes. Heat scores are fluid. Like we've talked
14:16:45 9 about through the week during testimonies, heat scores
14:16:49 10 change based on things that are inputted, whether that's a
14:16:52 11 diagnosis or medication into the EHR, which then, like Dr.
14:16:56 12 Leonardson says, updates their heat score throughout the
14:16:59 13 day.

14:16:59 14 So when they change, for instance, an inmate
14:17:02 15 could be in a cool bed right now with a heat score of one
14:17:06 16 and something about that individual's diagnosis or
14:17:10 17 medication has changed right now. We are not going and
14:17:14 18 immediately moving them out of a cool bed. You've heard
14:17:17 19 throughout the week that we have more cool beds than we
14:17:20 20 have inmates that have a heat score requiring the cool
14:17:23 21 bed. So no, they are not moved out of a cool bed. If
14:17:26 22 they remain in a cool bed and down the road, we need that
14:17:30 23 cool bed for someone else that shows to be a higher risk,
14:17:33 24 then those could be done in what we call a swap. So we
14:17:36 25 could move inmates around throughout the state, which is

14:17:39 1 something we do every day, all day.

14:17:41 2 Q. Okay. Is there any for reason why somebody besides
14:17:45 3 having a heat score obviously would be in a cool bed?

14:17:49 4 A. Yes. So again, there's in excess of about 33,000
14:17:53 5 cool beds above the individuals that have a designated
14:17:56 6 heat score. They could be in that bed for many, many,
14:17:59 7 many reasons. Some of the reasons could be that facility
14:18:02 8 was built with all air conditioning and they fit at that
14:18:06 9 facility but might not fit at other facilities. It might
14:18:10 10 be because they're in a designated parole-voted program
14:18:13 11 that are at a facility that has cool beds and so, they
14:18:17 12 might not have a heat score, but we need to get them into
14:18:20 13 that parole-voted program. So they would go to that
14:18:24 14 facility that provides programming for them to be
14:18:26 15 successfully released to society.

14:18:28 16 So there are many reasons why those other beds
14:18:31 17 are filled with inmates that do not have a heat score.

14:18:37 18 Q. Okay. What sort of information do you receive from
14:18:41 19 the contracted medical partners in terms of access to
14:18:45 20 information about inmates' medical history, what they're
14:18:49 21 dealing with?

14:18:50 22 A. The extent of what we receive is on that health
14:18:54 23 summary for clarification so we don't receive any
14:18:56 24 additional information based on their specifics for their
14:19:02 25 medical needs essentially. They're telling us through

14:19:05 1 that system what type of housing they need.

14:19:09 2 Q. And this system that you've identified is it coded?

14:19:14 3 Like what's the process of alerting y'all?

14:19:16 4 A. Right. So yes, it's different codes. So, for
14:19:21 5 instance, earlier, the type one chronic care facility that
14:19:23 6 I mentioned, that's a code that we use. The heat score is
14:19:26 7 essentially a code that we use. So there's numerous codes
14:19:30 8 that within our database or in our system is telling us
14:19:35 9 the needs of that individual.

14:19:37 10 Q. Let me ask you this. Somebody might not have a heat
14:19:41 11 score but they have suffered heat-related illness. Is
14:19:44 12 that something that you ever take into consideration or
14:19:47 13 would ever be made aware of?

14:19:48 14 A. Yes. So in a situation like that, an individual that
14:19:52 15 may not have a heat score but has suffered some type of
14:19:56 16 heat-related illness, that would be pushed up through the
14:19:59 17 medical provider side who will then -- I think, Dr.
14:20:03 18 Leonardson spoke to some of this throughout her testimony
14:20:06 19 that would then be sent to the health services liaison,
14:20:10 20 who would notify myself and my team and classification
14:20:12 21 that this individual suffered some type of a heat-related
14:20:15 22 illness and that will trigger us to place a code that's --
14:20:19 23 that code is ACHRI, which is short for AC high-risk. So
14:20:25 24 even though that individual does not have a heat score
14:20:29 25 based on the algorithm, for whatever reason, they may have

14:20:32 1 suffered a heat-related illness, we are going to add that
14:20:36 2 code to them and for the rest of their incarceration, they
14:20:39 3 are housed in a cool bed.

14:20:41 4 Q. So even if the rest of their incarceration is 20 more
14:20:44 5 years, they'll be in a cool bed?

14:20:46 6 A. Yes.

14:20:46 7 Q. Okay. And, Mr. Fitzpatrick, how -- like mechanically
14:21:03 8 speaking and procedurally, how do you become aware of
14:21:06 9 individuals who have a heat score?

14:21:08 10 A. So there's a couple of ways. On a daily basis, we
14:21:14 11 can review the health summary screen. The way that we are
14:21:18 12 notified every day, there's two different reports that
14:21:21 13 generate daily, every day at 10:00 p.m. one of those
14:21:25 14 reports is the heat score all list. Another report is the
14:21:30 15 heat score change list. So those are two reports that are
14:21:35 16 generated daily, every day at 10:00 p.m. I could speak to
14:21:38 17 the 10:00 p.m. framework if would like.

14:21:41 18 Q. Sure.

14:21:42 19 A. So every day all around the states, there's inmates
14:21:45 20 that are going and seeing providers for any amount of
14:21:47 21 reasons. Things are happening with their age. Inmates
14:21:51 22 have birthdays today where their age changes. Medications
14:21:56 23 come on or fall off based on medical provider's issuance
14:22:00 24 of a medication. So once all of those appointments for
14:22:05 25 the day are done, which sometimes could go up into the

14:22:08 1 evening, those providers are entering that information
14:22:11 2 into the electronic health record, and once all that is
14:22:17 3 updated into the health record, the system runs that
14:22:20 4 algorithm at 10:00 p.m. every night and it shoots out the
14:22:23 5 reports to a large amount of individuals in the agency
14:22:28 6 that get these reports, including all of our wardens,
14:22:31 7 myself and my team, to be able to evaluate and see real
14:22:34 8 time who has a score and, more importantly, whose score
14:22:38 9 has changed.

14:22:39 10 Q. Okay. Mr. Fitzpatrick, do you recognize what this
14:22:51 11 document is?

14:22:52 12 A. Yes, ma'am.

14:22:52 13 Q. Can you tell the Court what this is?

14:22:54 14 A. This is the health -- heat sensitivity score all
14:23:02 15 report essentially. So this is every single inmate within
14:23:05 16 the agency and this should -- yeah, okay, so it's 237
14:23:09 17 pages. This is every single inmate in the agency that has
14:23:12 18 a heat score so it's going to reference their unit, their
14:23:15 19 region, who they are, their name, and in the middle there,
14:23:18 20 which is column G, is their current heat score and then,
14:23:23 21 other demographics, custody, living location, so on. And
14:23:27 22 so, this is showing us where all of these inmates are
14:23:30 23 housed, all 12,200 whatever that number is for the day,
14:23:36 24 again, it's fluid and it does change daily.

14:23:40 25 Q. Okay. So I've got that you said that it changes and

14:23:44 1 first, I guess, I'd like to now enter this in as
14:23:48 2 Defendants' Exhibit 30.

14:23:50 3 MR. JAMES: No objection.

14:23:50 4 THE COURT: So admitted.

14:23:51 5 Q. (BY MS. ELLIS) What is the date listed on this
14:23:56 6 particular report if you can see it? It's kind of small.

14:24:00 7 A. I can't. Oh, I see it now. It's 7-23-24.

14:24:05 8 Q. Okay. So obviously, that's not the report from today
14:24:07 9 or yesterday. You didn't get this up to me --

14:24:10 10 A. No, ma'am.

14:24:11 11 Q. But is this representative of the document you
14:24:14 12 receive every night at 10:00 p.m.?

14:24:17 13 A. Yes.

14:24:17 14 Q. So you mentioned you receive this document and then,
14:24:21 15 wardens receive this document, right?

14:24:23 16 A. Correct.

14:24:23 17 Q. Any other individuals who receive this document?

14:24:26 18 A. Chiefs of classification that are assigned to all of
14:24:29 19 our prisons throughout the agency. There are folks within
14:24:32 20 the classification at headquarters that receive this
14:24:35 21 document, as well.

14:24:36 22 Q. When you receive this document 10:00 p.m. at night,
14:24:39 23 what do you do with it?

14:24:40 24 A. This one, I am looking at to see if there's any beds
14:24:45 25 that are not air conditioned. However, like I mentioned

14:24:47 1 before, the change report, which I believe we're speaking
14:24:51 2 about next, is the more important report because this is a
14:24:55 3 list of every inmate. The change report is telling me who
14:24:57 4 has had a change in their heat score that day.

14:25:01 5 Q. Okay, Mr. Fitzpatrick. Can you see this?

14:25:17 6 A. Yes.

14:25:18 7 Q. Is this that change report that you're talking about?

14:25:20 8 A. That's correct.

14:25:21 9 Q. I'd like to enter this in as Defendants' Exhibit 4,
14:25:25 10 please.

14:25:26 11 THE COURT: Objection?

14:25:28 12 MR. JAMES: Sorry. No objection.

14:25:29 13 THE COURT: So admitted.

14:25:32 14 Q. (BY MS. ELLIS) Mr. Fitzpatrick, please explain to me,
14:25:34 15 you know, how this differs from the overall report and why
14:25:37 16 this document's important.

14:25:38 17 A. Yes, ma'am. So this one is important because it is
14:25:41 18 showing out of all 12,000 or some that were not on the
14:25:46 19 12,000-plus list the day prior, who has a change in their
14:25:50 20 heat score. So we are looking first primarily at columns
14:25:54 21 G and H and you'll see where it says old and new. The old
14:25:58 22 is obviously their heat score prior to the day this was
14:26:02 23 reported. Their new score is on the report.

14:26:06 24 So we then take this report and we act. This is
14:26:11 25 a report that we act off of daily for appropriate

14:26:14 1 assignment into a cool bed. So if somebody had no score
14:26:19 2 the day prior and they now have a P1, that is triggering
14:26:23 3 an action. That action is that unit is going to move them
14:26:28 4 into a cool bed if they have one available, or the state
14:26:31 5 classification is going to schedule them to be moved into
14:26:34 6 a cool bed at another prison where they have a cool bed.

14:26:39 7 Q. This is a much smaller list than the overall list we
14:26:43 8 looked at, isn't it?

14:26:44 9 A. Yes.

14:26:47 10 Q. Is this typically the volume of individuals you see
14:26:50 11 that change or does it vary?

14:26:52 12 A. It does vary. Again, it could be something like how
14:26:56 13 many inmates came in the week -- that week from county
14:26:59 14 jails that are now receiving a new heat score. It could
14:27:03 15 vary based on how many appointments are held the day prior
14:27:06 16 around the agency by different medical providers. So
14:27:09 17 there's a lot of things that play into it. As you could
14:27:12 18 see like there's some on here that their old score was a
14:27:17 19 three. I'm looking at line -- their score was a three and
14:27:21 20 now they're a five, right? However, I'm looking at line
14:27:29 21 16, however, I know that at the Powledge Unit, hospital
14:27:33 22 bed No. 3, that's an air-conditioned bed and so, there's
14:27:36 23 no action needed for that individual because that
14:27:39 24 individual's already in the cool bed and has been in a
14:27:43 25 cool bed, but the report still tells me that he had an

14:27:47 1 increase for whatever reason, so he would just remain
14:27:50 2 where he is. He's already appropriately assigned.

14:27:53 3 So even though this list is one page long -- I
14:27:55 4 don't know exactly how many are on here -- there's many
14:27:57 5 that not actionable because they're already in an
14:27:59 6 appropriate cool bed.

14:28:01 7 Q. Yeah. There's no trigger on your end?

14:28:04 8 A. There's no trigger to have to do an action because
14:28:07 9 they're already appropriately placed.

14:28:10 10 Q. What about that first individual, I guess it's
14:28:13 11 technically line 3, Anthony Paz, it says old score
14:28:21 12 nothing's listed and then, new it says P1. Do I read that
14:28:24 13 correctly?

14:28:24 14 A. Correct.

14:28:26 15 Q. So what does -- is that telling us?

14:28:29 16 A. So that's telling us that he had no score and now he
14:28:32 17 has a one and if you want me to dive further into that
14:28:35 18 example, he is at the Alfred Hughes Unit or was on this
14:28:40 19 date and at the time, he was living in four building F
14:28:43 20 pod, which I know is un-air conditioned living area. So
14:28:46 21 that would trigger the Hughes Unit along with their
14:28:49 22 internal classification department and state
14:28:52 23 classification to then move this individual to an
14:28:55 24 air-conditioned bed at the Hughes Unit because they have a
14:28:59 25 large portion of air-conditioned beds at the Hughes Unit,

14:29:03 1 as well.

14:29:05 2 So he would be immediately moved internally
14:29:07 3 inside the unit to a cool bed. And then, if they did not
14:29:10 4 have the appropriate housing for him at the Hughes Unit --
14:29:14 5 when I say appropriate, not based on the cool bed but
14:29:16 6 based on custody and programming because he could have
14:29:19 7 been in a program in that bed. Now he needs a cool bed
14:29:22 8 with that same program, but they might not have it there
14:29:25 9 at the Hughes Unit. That makes sense.

14:29:27 10 Q. Can you give an example of the types of programming
14:29:29 11 maybe you're referring to?

14:29:30 12 A. Sure. So we have like the Changes Program or maybe
14:29:34 13 it's a vocational program that he's going through, or a
14:29:38 14 college program. So it could be anything from the Windham
14:29:44 15 School District programming, college-level courses,
14:29:46 16 rehabilitative programs, religious programs, he could be a
14:29:50 17 Native American and can only be housed at a Native
14:29:54 18 American-designated facility. So if they don't have the
14:29:57 19 appropriate, in that instance, religious and cool bed
14:30:01 20 placement, we would then have to move him off the unit to
14:30:03 21 that appropriate facility.

14:30:04 22 Q. Okay. How quickly would that move happen if you did
14:30:10 23 need to move somebody because, for whatever reason, you
14:30:13 24 didn't have the correct cool bed that met all their other
14:30:16 25 needs?

14:30:17 1 A. That very day. So we would then schedule it for him
14:30:20 2 to leave either that day or the next day. In this
14:30:23 3 instance, he would be in the cool bed that day at that
14:30:26 4 facility. If he then had to move to another facility for
14:30:30 5 all those other reasons we just discussed, we would
14:30:33 6 schedule him that day, he's in a cool bed, he's
14:30:36 7 appropriately placed for medical purposes, he might leave
14:30:38 8 on the bus or what we call on the chain the next day, the
14:30:41 9 day after that when a bed becomes available, knowing that
14:30:44 10 he's currently in a cool bed that he needs.

14:30:47 11 Q. What about if that unit didn't have a cool bed that
14:30:51 12 fit his needs and you did need to transfer him? What if
14:30:56 13 you can't transfer him till a day or the next day? What
14:30:59 14 does that mean?

14:30:59 15 A. They are scheduled for the very next chain to leave.

14:31:01 16 Q. Okay. So realistically, could be a matter of a day
14:31:05 17 or if so maximum that they just might not be in a cool
14:31:08 18 bed.

14:31:08 19 A. Correct.

14:31:09 20 Q. Okay. For somebody who might need to go from, say,
14:31:13 21 Houston to Lubbock, that's far. Texas is a big state,
14:31:17 22 right?

14:31:17 23 A. Correct. Yes.

14:31:18 24 Q. So how would you accomplish getting that individual
14:31:20 25 from Houston to Lubbock?

14:31:23 1 A. So our agency uses with coordination from a
14:31:27 2 Correctional Institutions Division but also our
14:31:30 3 manufacturing, agribusiness and logistics division, we
14:31:33 4 have a transportation department. They are internal means
14:31:36 5 of moving inmates around the agency and that
14:31:39 6 transportation department uses different stopping points,
14:31:42 7 what we call hubs around the agency that we move inmates
14:31:46 8 through.

14:31:46 9 Again, you can't put an individual on a bus and
14:31:49 10 drive them from Houston to Lubbock in one shot. So we
14:31:53 11 have certain routes that are built into our system and
14:31:57 12 into our process where we move inmates throughout the
14:32:00 13 agency so it might take them a day or two stop to get to
14:32:04 14 where they need to go.

14:32:06 15 Q. Can you tell me what this document is?

14:32:22 16 A. This one's a lot of fun. It looks like it's been a
14:32:27 17 little jumbled in the transfer.

14:32:30 18 Q. A little, yeah. It looks a little funky.

14:32:35 19 A. This is our essentially our transportation map.

14:32:40 20 MR. JAMES: Your Honor, I would object that this
14:32:43 21 exhibit is incomprehensible to plaintiffs and it appears
14:32:49 22 to have been altered in the transmission to the Court and
14:32:53 23 the plaintiffs so I can't understand what it is.

14:32:56 24 THE COURT: Do you have a cleaner copy of that?

14:33:27 25 Q. (BY MS. ELLIS) Mr. Fitzpatrick, while we're waiting,

14:34:03 1 we can go ahead and talk about some other stuff and see if
14:34:05 2 we could get it pulled up. If not, we'll come back and
14:34:07 3 we'll just talk about the complexities.

14:34:12 4 So while an inmate is in transport, how are they
14:34:17 5 transported?

14:34:18 6 A. So we have certain methods that we could transport an
14:34:22 7 inmate. Again, this is also driven by medical, as well,
14:34:27 8 so medical -- our medical providers have the ability to
14:34:30 9 place different transportation restrictions on inmates.
14:34:34 10 So our main mode of transportation is by bus. Our buses
14:34:39 11 can hold either 40 or 44 inmates, depending on the design
14:34:43 12 where we can move inmates around the agency. However, if
14:34:46 13 they have certain medical conditions, of course, if
14:34:48 14 they're in a wheelchair, then we have wheelchair vans.
14:34:52 15 They might have a van restriction only if they -- if the
14:34:56 16 provider feels like they cannot successfully get into the
14:34:58 17 bus as easily as somebody else so we might have to take
14:35:02 18 them by normal transport van.

14:35:05 19 We also have -- there's some inmates out there
14:35:08 20 that are only ambulance-only. So for whatever medical
14:35:13 21 reason, they could only be transported between facilities
14:35:15 22 in a contracted ambulance. So many, many methods. I
14:35:20 23 believe Mr. Lumpkin spoke to it this morning but all of
14:35:23 24 those modes of transportation are air conditioned.

14:35:25 25 Q. Okay. What about a situation where it's just

14:35:29 1 impossible to drive the entire route and you have to make
14:35:33 2 a stop somewhere? Could you give us some examples of what
14:35:36 3 happens in those instances?

14:35:38 4 A. So are you talking about the hub transports from
14:35:41 5 point A to point B? So again, the example earlier, if an
14:35:45 6 inmate has to go from Houston to Lubbock, they're not
14:35:48 7 going to go all the way. There are going to be stops
14:35:51 8 along the way where they would leave Houston on day one
14:35:54 9 and go into the Huntsville area. From Huntsville, they
14:35:57 10 would stay overnight and, again, that stay in the hub that
14:36:00 11 is programmed for that inmate to go through is also
14:36:04 12 dependent on their heat score. So if they do not have a
14:36:07 13 heat score, they could go through a normal hub that has
14:36:10 14 un-air conditioned beds. If they have a heat score, they
14:36:14 15 could only go through a cool bed hub is what it's called.
14:36:18 16 So those routes are different. The unit stops are
14:36:21 17 different along the way based on their needs.

14:36:24 18 So on day two, they would go from Huntsville to
14:36:28 19 the Abilene area, stay over night in Abilene and then, on
14:36:31 20 day three, from Abilene into Lubbock, for an example.

14:36:35 21 Q. Okay. So at any point when someone has a heat score,
14:36:42 22 they will full stop be in a cool bed?

14:36:44 23 A. Yes.

14:36:45 24 Q. Okay. And how many people roughly are in cool beds
14:36:49 25 right now without a heat score?

14:36:52 1 A. Little over 12,200.

14:36:56 2 Q. I think we heard testimony earlier about how many
14:36:58 3 cool beds we have available. What is that number?

14:37:00 4 A. It's 45,689 cool beds.

14:37:03 5 Q. Okay. So there's an excess of cool beds compared to
14:37:06 6 the amount of inmates with heat scores; is that fair?

14:37:09 7 A. Yes, compared to the amount that have a heat score.

14:37:12 8 Q. What do you do with those excess beds, if you will?

14:37:16 9 A. We use those beds so they are -- again, that goes
14:37:21 10 back to what I had discussed earlier. So depending on the
14:37:24 11 unit and the mission of that unit, those beds could be
14:37:26 12 programming beds. Those beds could be sheltered housing
14:37:29 13 medical beds. Those could be a wide range -- different
14:37:34 14 gender so there's female prisons that have cool beds, male
14:37:38 15 prisons, and then, different on the spectrum either it's a
14:37:43 16 lower-custody-type facility where you might house
14:37:46 17 probationers or parolees that are returning for an
14:37:51 18 intermittent sanction facility stay all way up to our
14:37:54 19 higher-level-custody facility.

14:37:57 20 So the amount of beds that we have has to be able
14:38:00 21 to accommodate all of those different custodies and
14:38:04 22 levels. And sometimes even sentences -- again, if it's
14:38:07 23 just a probationer, we can't house a probationer in a
14:38:11 24 institutional division facility. So there needs to be
14:38:14 25 beds at all of those locations.

14:38:19 1 Q. Okay. You said earlier that you were a senior warden
14:38:23 2 at multiple times; is that correct?

14:38:25 3 A. Yes, ma'am, two different facilities.

14:38:26 4 Q. What facilities were those?

14:38:28 5 A. The Rudd Unit in Brownfield, Texas and then the
14:38:32 6 Wallace Pack Unit in Navasota.

14:38:34 7 Q. In your role as a warden, did you deal with the heat
14:38:38 8 score system? Did TDCJ have cool beds available at that
14:38:42 9 point?

14:38:42 10 A. TDCJ had cool beds available and that was right at
14:38:47 11 the onset of heat scores coming into existence and being
14:38:51 12 applied and inmates being housed appropriately based on
14:38:54 13 the heat scoring system.

14:38:56 14 Q. Based on your experience as a warden or even in your
14:39:01 15 current role, are you aware of any ways in which wardens
14:39:03 16 can influence putting people in cool beds who might not
14:39:08 17 have a heat score if they can or cannot do so?

14:39:10 18 A. Yes. I mean, we do instruct our wardens at our
14:39:15 19 intake facilities and every facility that there is that
14:39:18 20 discretion that lies with them, as well. If they have
14:39:21 21 cool beds in their facilities and they see inmates that
14:39:23 22 might not have a heat score but, for whatever reason, are
14:39:28 23 struggling, they're having a hard time moving around,
14:39:31 24 maybe they're having a rough time getting from point A to
14:39:33 25 point B, whatever the case is, they have that discretion

14:39:36 1 as a warden to use the beds within their purview at that
14:39:40 2 facility as long as they're housing them within the
14:39:42 3 correct custody and programming needs and all those
14:39:45 4 things, as well. So yes, as a warden, you do have some
14:39:47 5 discretion.

14:39:48 6 Q. Okay. Mr. Fitzpatrick, were you here during Dr.
14:40:24 7 Leonardson's testimony?

14:40:25 8 A. Yes, ma'am, the majority of it.

14:40:28 9 Q. Did you hear Dr. Leonardson talk about the health
14:40:33 10 services liaison role?

14:40:33 11 A. Yes, I did.

14:40:34 12 Q. Can you explain that role, I guess, from the
14:40:36 13 perspective of TDCJ?

14:40:38 14 A. Sure. So from the perspective of TDCJ and even more
14:40:42 15 pointed, the prospective of classification, we are in
14:40:45 16 constant communication with health services. They are the
14:40:47 17 ones that are talking with us about different appointment
14:40:50 18 needs. They are communicating with us about different
14:40:53 19 transfers that are needed based on providers'
14:40:55 20 recommendations. So if an inmate is needing to be placed
14:40:59 21 into an infirmary bed or needing to be placed into a
14:41:02 22 sheltered housing facility, those communications between
14:41:08 23 transportation, classification and health services are
14:41:11 24 very, very, very frequent, every day, all day.

14:41:15 25 Q. Okay. Do you recognize what this document is?

14:41:20 1 A. Yes, I do.

14:41:22 2 Q. What is it?

14:41:22 3 A. This is the Health Services Liaison Facility Types
14:41:28 4 list.

14:41:28 5 Q. What does this document do? What purpose does it
14:41:31 6 serve?

14:41:31 7 A. So this is an extremely important document that we
14:41:37 8 use every day in classification. So first, knowing the
14:41:40 9 facility type based on security purposes is --

14:41:44 10 MR. JAMES: Sorry to interrupt. I was just
14:41:46 11 trying to confirm, we only received this document today so
14:41:49 12 I just want to renew our objection that we asked the
14:41:54 13 question to the 30(b)(6) witness on the topic of the
14:41:58 14 manner in which the agency determines -- well, who to put
14:42:06 15 in an air-conditioned bed and the response was, I have no
14:42:09 16 idea other than to just generally say we look at the heat
14:42:13 17 score. There was also a subpoena duces tecum for all
14:42:18 18 documents about the topics. We did not receive this
14:42:21 19 document until, I believe, today. So I just would object
14:42:24 20 it's untimely and we haven't had the opportunity to
14:42:26 21 conduct proper, you know, vetting and prepare our case.

14:42:31 22 MS. ELLIS: So I'm happy to provide the Court
14:42:34 23 with some briefing. We did file a reply in response to
14:42:38 24 their objections, but the law's very clear that a 30(b)(6)
14:42:43 25 or anyone who's speaking on behalf of the agency is

14:42:45 1 certainly welcome to supplement their testimony, provide
14:42:48 2 more information. That's what Mr. Fitzpatrick is doing
14:42:52 3 here. This particular document was not something I
14:42:55 4 intended to use with Mr. Fitzpatrick until it came up in
14:42:58 5 Dr. Leonardson's testimony; so that's why we produced it
14:43:01 6 just now. I'm just going to ask him one quick question
14:43:05 7 about it because it came up in Dr. Leonardson's testimony
14:43:07 8 and she didn't know the answer, but Mr. Fitzpatrick does.

14:43:09 9 THE COURT: Okay. Your objection's duly noted.
14:43:12 10 Thank you.

14:43:12 11 Q. (BY MS. ELLIS) Mr. Fitzpatrick, the second definition
14:43:29 12 up there, what is that?

14:43:32 13 A. That is the air conditioned/climate-controlled
14:43:36 14 facilities.

14:43:37 15 Q. And what is this section speaking to?

14:43:41 16 A. So this is a health services liaison document and
14:43:46 17 it's telling them -- do you want me to read it?

14:43:48 18 Q. Sure.

14:43:48 19 A. It says some facilities have some housing areas with
14:43:53 20 air conditioning, temperate air, or climate controlled.
14:43:57 21 Not all inmates meet the security criteria to be in the
14:44:00 22 climate-controlled cells or dorms on the facility. Health
14:44:05 23 services liaison cannot request reassignment of an inmate
14:44:08 24 to an air-conditioned or climate-controlled facility.

14:44:11 25 Q. Okay. So that right there, that kind of conflicts

14:44:14 1 with what Dr. Leonardson was saying in the sense that Dr.
14:44:18 2 Leonardson told us that health services can recommend
14:44:21 3 reassignment, right?

14:44:23 4 MR. JAMES: Excuse me, I'd like to object that it
14:44:25 5 misstates the prior witness' testimony and it's leading a
14:44:29 6 friendly witness.

14:44:30 7 MS. ELLIS: It doesn't misstate her testimony and
14:44:32 8 he was here during court.

14:44:33 9 MR. JAMES: The opposite of what she said so it
14:44:35 10 does misstate.

14:44:36 11 THE COURT: You can talk him on
14:44:38 12 cross-examination. I'll let you ask the question --
14:44:42 13 re-ask.

14:44:43 14 Q. (BY MS. ELLIS) Thank you. Well, first, I'm sorry, I
14:44:44 15 got ahead of myself with the objection. May I move to
14:44:48 16 enter this in as a Defendants' Exhibit 72.

14:44:50 17 THE COURT: Subject to the objection, I'll enter
14:44:52 18 it.

14:44:53 19 Q. (BY MS. ELLIS) Thank you. You heard that testimony
14:44:57 20 from Dr. Leonardson about the health services liaison
14:45:01 21 role?

14:45:01 22 A. I did.

14:45:01 23 Q. And did Dr. Leonardson say that -- actually, just
14:45:04 24 tell me. What do you remember Dr. Leonardson say about
14:45:07 25 the health services liaison role?

14:45:09 1 A. I believe in this instance, she said that they
14:45:12 2 couldn't request -- I believe she just read it and then,
14:45:16 3 she just didn't know what the health services liaison
14:45:17 4 could do. I can't remember verbatim what she said.

14:45:20 5 Q. Okay. But Dr. Leonardson, she, herself, is not a
14:45:25 6 health services liaison, right?

14:45:26 7 A. No.

14:45:26 8 Q. She's a part of UTMB?

14:45:28 9 A. Correct.

14:45:29 10 Q. Okay. This document is a TDCJ document or is it a
14:45:37 11 UTMB document?

14:45:37 12 A. I believe it is a TDCJ document.

14:45:40 13 Q. Okay. This document says that they cannot request
14:45:46 14 reassignment. Why not?

14:45:50 15 A. So the way that this reads is HSL cannot request
14:45:56 16 reassignment of an inmate to an air-conditioned or
14:45:59 17 climate-controlled facility. Prior to that, it talks
14:46:01 18 about some facilities have certain air conditioning. Not
14:46:04 19 all inmates meet the criteria for certain security
14:46:08 20 criteria. So health services can surely tell
14:46:12 21 classification that an inmate needs a certain placement in
14:46:16 22 a cool bed. What health services can't do is say they
14:46:19 23 must go to facility A because the security criteria, which
14:46:25 24 is what's listed. So if they tell us in classification
14:46:29 25 this inmate needs this type of bed for medical reasons,

14:46:31 1 it's then incumbent upon me and my staff to select the
14:46:36 2 correct air-conditioned facility, the correct
14:46:40 3 air-conditioned bed within that facility where we would
14:46:42 4 reassign that inmate to. So I don't know if that just
14:46:46 5 confused Dr. Leonardson but that's the way that that's
14:46:50 6 operationalized.

14:46:52 7 Q. Okay. So does health services liaisons, do they
14:46:57 8 reach out to y'all about reassigning someone to not a
14:47:00 9 specific unit but a cool bed?

14:47:02 10 A. Yes.

14:47:02 11 Q. And what do you do when you receive that
14:47:05 12 communication?

14:47:05 13 A. So we then go through that entire list of --
14:47:08 14 essentially a checklist of based on the medical
14:47:11 15 requirements, the treatment, then based on security
14:47:15 16 programming and all other needs of that individual, if
14:47:19 17 there's any enemies, what their custody is, and so on,
14:47:22 18 where is the best placement and then, we schedule that
14:47:25 19 movement.

14:47:26 20 Q. This is the change report that we were looking at
14:47:49 21 earlier, right?

14:47:50 22 A. Yes, ma'am.

14:47:50 23 Q. If you look at line 33 and then, go over to the
14:48:03 24 columns, there is a number that I don't know what it
14:48:06 25 means, DDP. What does that mean?

14:48:09 1 A. DDP stands for developmentally disabled program.

14:48:15 2 Q. What does that mean when you have somebody who has
14:48:18 3 been assigned that classification, or code, or what have
14:48:20 4 you?

14:48:20 5 A. Sure. So the DDP is a mental health program, it is
14:48:24 6 for male inmates. It is conducted at the Hodge Unit. So
14:48:29 7 if you see over here on the third column, it says Hodge so
14:48:34 8 that's where that program is conducted. They are screened
14:48:37 9 by mental health professionals for admittance into that
14:48:42 10 program. The difference and why you might not have ever
14:48:45 11 seen that because it is more of a rare code for cool bed
14:48:48 12 is that regardless of any other criteria, medical
14:48:54 13 criteria, if they are in that program because they have
14:48:57 14 been deemed developmentally disabled, they are
14:49:01 15 automatically in a cool bed. So the DDP replaces the heat
14:49:06 16 score because they are developmentally disabled.

14:49:10 17 Q. So that individual did not have a heat score?

14:49:14 18 A. I believe he did. He had a P2 and so, essentially
14:49:16 19 what that's telling me is that individual must have just
14:49:19 20 arrived at Hodge Unit for what they call that diagnosis --
14:49:24 21 diagnosing and evaluation to be placed in the program. On
14:49:27 22 this day, they must have accepted him into the program so
14:49:31 23 his score is changing from a P2 a DDP.

14:49:36 24 Q. Okay. And you said this individual was going to be
14:49:40 25 at the Hodge Unit?

14:49:41 1 A. Yes. They stay there for the duration of that
14:49:43 2 program until it's deemed by mental health professionals
14:49:47 3 that they are stable enough, I'll use that phrase, to be
14:49:52 4 able to be assigned somewhere else.

14:49:53 5 Q. Okay. Is the Hodge Unit specifically for mentally
14:49:57 6 ill inmates?

14:49:58 7 A. Yes.

14:49:58 8 Q. Is every bed at the Hodge Unit AC or is it just --

14:50:04 9 A. Yes. It is a full air-conditioned facility.

14:50:07 10 Q. Are there any other cool air facilities for mentally
14:50:11 11 ill inmates or do they go to this facility?

14:50:13 12 A. This is one. We have the Skyview Unit next door. We
14:50:18 13 have the Wayne Scott Unit in the Houston area and we have
14:50:22 14 the Montford Unit in west Texas.

14:50:24 15 Q. Okay. Those units, do they also have -- oh, I guess
14:50:29 16 you already said they do have air conditioning?

14:50:31 17 A. Yes, they do.

14:50:32 18 Q. Yes. Mr. Fitzpatrick, are you aware of TDCJ's goals
14:50:41 19 to implement more cool beds?

14:50:45 20 A. Yes.

14:50:45 21 Q. And what does that goal look like? Do you have any
14:50:49 22 insight into that?

14:50:50 23 A. I have a high-level insight into the fact that the
14:50:56 24 agency is working towards, as aggressively as we can,
14:51:04 25 getting the funding and the resources to move forward with

14:51:08 1 a phased plan to continue the addition of cool beds around
14:51:13 2 the agency to the point of completion and complete cool
14:51:18 3 bed installation statewide.

14:51:20 4 Q. Okay. Thank you. So, Mr. Fitzpatrick, you said that
14:51:24 5 you have been in court throughout this week?

14:51:26 6 A. Yes.

14:51:26 7 Q. Were you here when Mr. Charlie Malouff was
14:51:29 8 testifying?

14:51:30 9 A. I was, yes.

14:51:31 10 Q. Who was Charlie Malouff?

14:51:33 11 A. I believe he is a -- he's a inmate advocacy group
14:51:38 12 leader.

14:51:38 13 Q. Do you know what inmate advocacy group?

14:51:41 14 A. TX C.U.R.E.

14:51:43 15 Q. Okay. Have you spoken with Mr. Malouff before or
14:51:47 16 just know who he is?

14:51:49 17 A. I have spoken with him a few times, some in person
14:51:53 18 and some via e-mail. I believe he may have called me
14:51:55 19 once. I can't remember specifically.

14:51:58 20 Q. When you've spoken with him in person, I guess, when
14:52:01 21 did you most recently speak with him, if at all?

14:52:03 22 A. The last time I spoke to him was at our TDCJ summit,
14:52:07 23 actually here in Austin. It's that community outreach
14:52:11 24 event where we essentially open our doors, if you will, to
14:52:14 25 anyone from the general public, advocacy groups, anyone

14:52:18 1 that is interested in coming and asking questions,
14:52:21 2 learning more about the agency. It's an issue that our
14:52:26 3 executive director has set up in all the different
14:52:28 4 divisions bring -- set up a table essentially and are
14:52:32 5 there to just help the public be more educated and answer
14:52:37 6 their questions about the agency. Mr. Malouff was there
14:52:39 7 and we did speak.

14:52:42 8 Q. What did you speak about?

14:52:43 9 A. He essentially approached me and made an allegation
14:52:47 10 that since he filed suit in this lawsuit that we have been
14:52:53 11 -- that he has not received mail from his constituents,
14:52:57 12 that he has not received any mail at TX C.U.R.E. from his
14:53:01 13 constituents. And so, I told him, first of all, there has
14:53:05 14 been no change in any of our mail processes whatsoever
14:53:09 15 based on him or his organization and that if he had any
14:53:12 16 kind of examples of what he was speaking to, to please
14:53:17 17 send it to me and we would investigate it immediately.

14:53:22 18 Q. And during that in-person conversation, he couldn't
14:53:24 19 give you any examples?

14:53:26 20 A. No, ma'am.

14:53:26 21 Q. Since that conversation, has Mr. Malouff ever reached
14:53:38 22 out to you to contact you about an issue?

14:53:40 23 A. He sent myself and a bunch of other, I believe,
14:53:44 24 agency leaders and legislative leaders an e-mail last
14:53:49 25 Wednesday.

14:53:49 1 Q. Okay. What was the context of this e-mail?

14:53:52 2 A. The context of the e-mail was an allegation about a

14:54:00 3 piece of mail that was being delivered to an inmate.

14:54:02 4 Q. Okay. Will you scroll down to the bottom, please.

14:54:13 5 Right there is Charlie Malouff's name. Mr. Fitzpatrick,

14:54:34 6 is this that e-mail that you're talking about?

14:54:36 7 A. Yes, ma'am.

14:54:37 8 Q. Okay. Defendant would now like to move to admit this

14:54:41 9 exhibit as Defendants' Exhibit 72.

14:54:44 10 MR. JAMES: No objection, your Honor.

14:54:45 11 THE COURT: So admitted.

14:54:46 12 Q. (BY MS. ELLIS) Mr. Fitzpatrick, this was sent to you?

14:54:53 13 A. Yes.

14:54:54 14 Q. Okay. On July 24th?

14:54:56 15 A. Yes.

14:54:58 16 Q. What is this e-mail saying?

14:55:04 17 A. So I can read it if you'd like or I can just give you

14:55:07 18 a -- it says, please consider this a formal complaint

14:55:09 19 regarding the violation of the TDCJ mail policy regarding

14:55:12 20 letters from organizations and businesses, Mr. Billy

14:55:15 21 Mitchell, his TDCJ number, as a constituent of TX C.U.R.E.

14:55:19 22 and inquired about his former status as a protected

14:55:22 23 litigant in the Pack AC Cole vs. Collier lawsuit and we

14:55:27 24 respond to him. This is an obstruction of the U.S. mail

14:55:32 25 and violation of the TDCJ mail policy and unacceptable.

14:55:36 1 Please get your mail policy straight with your mailroom
14:55:39 2 staff and this situation corrected as soon as possible.

14:55:42 3 Q. Okay. So do you know who Billy Mitchell is?

14:55:46 4 A. I looked him up the day that I received this.

14:55:49 5 Q. Okay. So when you got this e-mail from Mr. Malouff,
14:55:54 6 essentially giving you a specific example of what he
14:55:56 7 believed to be retaliation?

14:55:58 8 A. Correct.

14:55:59 9 Q. What did you then do?

14:56:01 10 A. So I immediately forwarded it to our manager that's
14:56:04 11 over our mailrooms around the agency and instructed her to
14:56:08 12 conduct an investigation with the unit-based mailroom
14:56:11 13 staff.

14:56:12 14 Q. What came out of that investigation?

14:56:14 15 A. So what came of this was a letter was received from
14:56:17 16 TX C.U.R.E. for the inmate that was listed. The letter
14:56:20 17 came in, it was processed. We know that it was received
14:56:24 18 and processed because of our -- we did a whole punch in
14:56:27 19 the stamp and then, we put a housing on it so where that
14:56:32 20 inmate was supposed to be housed in the system. What we
14:56:35 21 found out was the letter was never delivered to the inmate
14:56:38 22 so there's a couple of different reasons that could have
14:56:41 23 been. If the inmate was not on the facility and he was in
14:56:43 24 a free-world hospital, or if the inmate was not in the
14:56:46 25 correct cell, or he was being transferred to another unit

14:56:49 1 and he had already left on the chain that day. So he
14:56:53 2 could have already been on the bus that morning when the
14:56:56 3 mail arrived. So the mail was sent back to the mailroom,
14:57:00 4 the mail was then tagged for return to sender and it was
14:57:04 5 returned to Mr. Malouff.

14:57:05 6 Q. Is this a copy of that letter?

14:57:15 7 A. Yes, it is.

14:57:16 8 Q. Okay. And it is addressed to Billy Mitchell?

14:57:18 9 A. Yes.

14:57:19 10 Q. Okay. And it's kind of cut off there at the top left
14:57:23 11 but who sent this piece of mail?

14:57:25 12 A. It was from TX C.U.R.E.

14:57:26 13 Q. Okay. And then, yeah, I see there how it says return
14:57:29 14 to sender?

14:57:30 15 A. Right.

14:57:31 16 Q. That's what you're describing likely happened?

14:57:34 17 A. Yes. And that's what Mr. Malouff was showing me was
14:57:38 18 this example and how -- and wanted us to look into the
14:57:43 19 matter.

14:57:43 20 Q. Okay. Other than this specific example, has he
14:57:47 21 brought any other allegations to your attention?

14:57:49 22 A. Not to my attention.

14:57:51 23 Q. So yesterday, when we heard testimony about this, you
14:57:55 24 know, alleged retaliation, have you instructed the
14:57:59 25 mailroom to not allow inmates who are constituents of this

14:58:03 1 organization to send out mail?

14:58:05 2 A. No.

14:58:06 3 Q. If that were the case, if you found out that that was

14:58:13 4 happening, what would that mean?

14:58:17 5 A. That would be -- they would be disciplined and

14:58:19 6 probably essentially fired. We receive millions of pieces

14:58:24 7 of mail every year even with our new digitalization

14:58:28 8 platform for mail from families, this is an example of

14:58:31 9 business mail. We consider TX C.U.R.E. a business in our

14:58:36 10 board policy so they are still allowed to send hard mail,

14:58:40 11 what we call it, to the facilities and, of course, anyone

14:58:44 12 can receive hard mail from the facilities.

14:58:47 13 There has been no such directive to not allow TX

14:58:52 14 C.U.R.E. to send and receive anything from inmates and I

14:58:55 15 think the fact that we immediately did the investigation

14:59:00 16 and found that it was received and then, returned to

14:59:03 17 sender shows we're going to investigate everything

14:59:06 18 immediately, period.

14:59:06 19 Q. Okay. Yeah. And that e-mail was sent on 7-24?

14:59:10 20 A. Correct.

14:59:10 21 Q. Okay. What's the date today?

14:59:13 22 A. The 1st.

14:59:15 23 Q. Can you read out the rest of the people who were --

14:59:29 24 this e-mail was addressed to?

14:59:30 25 A. Yes, ma'am. Tammy Shelby, again, I mentioned she

14:59:35 1 works for TDCJ, manager over our mailroom system
14:59:39 2 coordinators panel. Brian Patrick is our agency
14:59:42 3 independent ombudsman so he works for the Board of
14:59:45 4 Criminal Justice. And then, there is Abel Herrera, Ray
14:59:52 5 Lopez, Vernon Jones, Valoree Swanson, Carl Sherman, Kyle
14:59:56 6 Kacal, Alma Allen, Andrew Murr, and Brant Bingamon.
15:00:02 7 Harris Cross, I don't know who those folks are, Barajas,
15:00:06 8 mary@txcure, Eric Grossman.
15:00:11 9 Q. And Kevin Homiak.
15:00:14 10 A. And Kevin Homiak.
15:00:15 11 Q. Are those plaintiffs' lawyers who are in the
15:00:17 12 courtroom today?
15:00:17 13 A. I don't know.
15:00:18 14 Q. Okay. I have no further questions. I appreciate
15:00:21 15 your time, Mr. Fitzpatrick.
15:00:23 16 A. Yes, ma'am.
15:00:29 17 CROSS-EXAMINATION
15:00:29 18 BY MR. JAMES:
15:00:36 19 Q. Good afternoon, Mr. Fitzpatrick.
15:00:37 20 A. Good afternoon.
15:00:38 21 Q. Did you become Director of Classification in 2021?
15:00:42 22 A. I did.
15:00:43 23 Q. I think I heard you testify that TDCJ relies on the
15:00:51 24 presence of empty air-conditioned beds or available
15:00:54 25 air-conditioned beds where you can swap out somebody who

15:00:58 1 doesn't have a heat score to put an inmate if they receive
15:01:02 2 a heat score above zero; is that correct?

15:01:04 3 A. That is one of the strategies.

15:01:06 4 Q. And I think you also testified, correct me if I'm
15:01:08 5 wrong, that you believe a higher heat sensitivity score
15:01:13 6 means that inmate has a medical need for air-conditioned
15:01:16 7 housing based on their medically documented, higher risk
15:01:23 8 of heat-related illness; is that fair?

15:01:25 9 MS. ELLIS: Objection. That misstates testimony.

15:01:27 10 THE COURT: He's about to tell us whether that
15:01:28 11 was or not.

15:01:29 12 A. Any heat score from one or above requires a cool bed
15:01:33 13 because they are potentially at risk for heat sensitivity.

15:01:37 14 Q. (BY MR. JAMES) Okay. So you agree then that the heat
15:01:43 15 sensitivity score means that the inmate needs to have
15:01:47 16 air-conditioned housing due to their medical risk of heat
15:01:51 17 illness?

15:01:52 18 A. Yes, I agree.

15:01:52 19 Q. And do you know approximately how many
15:01:56 20 air-conditioned beds are currently idle in case the change
15:02:02 21 this evening comes up with new inmates with a heat score
15:02:05 22 of one or more?

15:02:06 23 A. I don't know off the top exactly how many beds are
15:02:09 24 idled. That's a very fluid thing, literally from minute
15:02:13 25 to minute. So at any given time, we move 1,500 to 2,000

15:02:19 1 inmates a day around the agency. So if that map had
15:02:25 2 worked earlier, you know, it would have shown -- so
15:02:28 3 there's that many inmates in buses, vans, so on, moving
15:02:30 4 all around the state so as the bus shows up, inmates are
15:02:34 5 loaded, potentially taken out of cool beds, loaded onto
15:02:37 6 that bus and moved to another facility while another bus
15:02:40 7 could be coming in right behind it.

15:02:43 8 There's inmates at free-world hospitals so if
15:02:45 9 that inmate departed from a cool bed and had to go to the
15:02:48 10 hospital for a medical emergency, that bed would remain
15:02:52 11 vacant awaiting the return of that inmate from a hospital.
15:02:56 12 There's inmates that release, hundreds of inmates that
15:02:59 13 release every day around the whole agency so if they were
15:03:02 14 a cool bed inmate, then releasing to the public that day,
15:03:06 15 that bed would be vacant until we refilled it.

15:03:10 16 So literally, minute by minute, hour by minute,
15:03:13 17 things are changing, it's fluid and we're constantly
15:03:16 18 filling and moving inmates through cool beds best we can.

15:03:19 19 Q. Do you know on average how many, what you're calling,
15:03:24 20 cool beds are available in TDCJ's custody -- I'm sorry, in
15:03:28 21 TDCJ's control where you could house somebody tonight if
15:03:33 22 there was a new heat score -- I'm sorry, a new heat
15:03:38 23 sensitivity score one or above?

15:03:39 24 A. Are you asking how many are idle?

15:03:41 25 Q. Yeah. Do you know how many are idle, approximately?

15:03:48 1 A. I do not approximately know. This is what I could
15:03:51 2 tell you. The agency has 140,000 beds that are currently
15:03:56 3 operational. We have 134,500 inmates in the agency, which
15:04:02 4 means that our operational capacity today is about 95.6
15:04:07 5 percent, which means we are using, actively using 95.6
15:04:13 6 percent of all available beds without -- throughout the
15:04:18 7 entire agency. So any given point, there's only four
15:04:21 8 percent, 4.3, 4. -- four percent of beds air conditioned
15:04:27 9 and un-air conditioned around the agency that are vacant.
15:04:29 10 Four percent. That's what we have to use and move around
15:04:31 11 inmates.

15:04:32 12 However, to your question, if an inmate comes out
15:04:35 13 tonight on the change list, there's going to be 30,000
15:04:39 14 beds where there's not a cool bed inmate. And that change
15:04:43 15 list you saw, we have more than enough opportunity and
15:04:47 16 options to move an inmate into a cool bed via swap if it's
15:04:53 17 at that facility or move them somewhere else for
15:04:56 18 programming or medical needs.

15:04:58 19 Q. So if you were to estimate on average how many cool
15:05:00 20 beds are completely unused, you would say on average, it's
15:05:05 21 around five percent?

15:05:06 22 A. As an agency, we are 4.3 percent vacant. You've
15:05:10 23 gotta remember that that includes female bed space, which
15:05:13 24 the female count is not as high as the male count. We
15:05:16 25 have male and female inmates -- excuse me, male and female

15:05:19 1 exclusive locations. We have psychiatric beds that we
15:05:23 2 only put in crisis management inmates into those beds once
15:05:28 3 ordered by a mental health provider. There are infirmary
15:05:31 4 beds, wheelchair beds, sheltered housing beds that are all
15:05:35 5 driven by medical needs that are all air conditioned, as
15:05:35 6 well.

15:05:38 7 So there's a lot of variables. I think it would
15:05:40 8 be -- I don't think it would be a good answer to tell you
15:05:44 9 yes, four percent of all cool beds are vacant. I could
15:05:48 10 tell you four percent of all beds around the agency are
15:05:51 11 currently vacant because we're operating at that facility.

15:05:53 12 Q. So you do not know on average the vacancy rate for
15:05:58 13 cool beds?

15:05:58 14 A. No, I do not.

15:05:59 15 Q. Do you have a system in place that monitors vacancy
15:06:03 16 rate of cool beds?

15:06:04 17 A. I have a system in place that monitors every bed and
15:06:06 18 we use those beds as we need them every single day.

15:06:10 19 Q. So does that allow you to determine the vacancy rate
15:06:15 20 of cool beds?

15:06:17 21 A. Yes, it could, yes, if we needed -- if I had an
15:06:21 22 inmate that I needed to place into a cool bed, I could use
15:06:24 23 that system to identify which facilities have an available
15:06:28 24 cool bed where he or she fits and then, use that system to
15:06:32 25 place the inmate appropriately.

15:06:33 1 Q. Do you use that system to identify the number of cool
15:06:36 2 beds where the current occupant is eligible for when
15:06:42 3 you're determining a swap because they don't need to be in
15:06:45 4 a facility that is air conditioned for any of the variety
15:06:49 5 of reasons that you've gone through today?

15:06:50 6 A. Yes. Our classification system would tell us what
15:06:53 7 inmates do or do not have a heat score. So all of those
15:06:57 8 30,000-plus that are in a cool bed that do not have a heat
15:07:00 9 score, we would be able to see that.

15:07:02 10 Q. In this case, Mr. David Sweetin testified on behalf
15:07:06 11 of the agency, TDCJ, that one of the plaintiffs in this
15:07:10 12 case, Mr. Bernie Tiede, was correctly housed at all times
15:07:13 13 during his custody --

15:07:16 14 MS. ELLIS: Objection. Outside the scope of my
15:07:18 15 direct. I did not ask him any questions about that.

15:07:19 16 THE COURT: I don't follow that rule.

15:07:23 17 MS. ELLIS: Okay. Thank you.

15:07:24 18 Q. (BY MR. JAMES) I'm sorry, sir. I don't think that I
15:07:26 19 finished my question. So that question was, in this case,
15:07:30 20 Mr. David Sweetin testified on behalf of the agency, TDCJ,
15:07:34 21 that one of the plaintiffs in this case, Bernie Tiede, was
15:07:37 22 correctly housed at all times. Do you know disagree with
15:07:40 23 that testimony for any reason?

15:07:42 24 A. I do not. I did review those records.

15:07:46 25 Q. And he also -- Mr. Sweetin also testified on behalf

15:07:51 1 of the agency that Bernhardt Tiede is not currently
15:07:56 2 required by policy to be housed in air conditioning or
15:08:00 3 cool bed. Do you agree with that?

15:08:03 4 A. He is not currently required to be in a cool bed
15:08:06 5 based on a positive heat score of one or above. I do
15:08:12 6 agree with that.

15:08:12 7 Q. Okay. Is he required to be in there based on TDCJ
15:08:16 8 policy?

15:08:16 9 A. Not based on policy. Based on discretion, some of
15:08:21 10 that discretion I spoke to earlier. So he is
15:08:22 11 appropriately assigned based on his custody, programming
15:08:26 12 needs, and facility security medical needs. He is
15:08:30 13 appropriately assigned in a cool bed currently, however,
15:08:33 14 without a heat score.

15:08:34 15 Q. Is Mr. Tiede one of the persons that would be
15:08:39 16 eligible for a swap if there were a need to swap him for
15:08:43 17 somebody who had a heat score of one or above?

15:08:46 18 A. Not currently at this time, no.

15:08:55 19 Q. And do you know -- I believe that you or your office
15:09:01 20 verified a document in this case saying that he was
15:09:03 21 appropriately housed without air conditioning from -- I'm
15:09:08 22 sorry, Mr. Tiede was appropriately housed without air
15:09:11 23 conditioning from February 1, 2022 through August 9, 2023;
15:09:16 24 is that correct?

15:09:17 25 A. Forgive me on the exact dates but that sounds

15:09:19 1 correct. That's in 2022 was when we moved some of the
15:09:23 2 safekeeping population from one facility to the Estelle
15:09:26 3 Unit, and yes, he was appropriately assigned when he
15:09:29 4 arrived at the Estelle Unit.

15:09:32 5 Q. And there is other safekeeping housing that's not air
15:09:37 6 conditioned in the system where Mr. Tiede's custody status
15:09:42 7 would allow him to be transferred, correct?

15:09:44 8 A. Yes, currently. There are both air-conditioned and
15:09:46 9 un-air conditioned beds of that custody, yes.

15:09:49 10 Q. So it would not be in conflict with his custody level
15:09:55 11 or safekeeping needs from the agency's perspective to move
15:09:58 12 him out of air conditioning; is that correct?

15:10:01 13 A. If that decision was made in the future and there was
15:10:07 14 other holds essentially removed, then yes, he could be
15:10:12 15 moved because he does not have -- currently today, I have
15:10:15 16 not seen the change report today but the last time I
15:10:17 17 checked, he was still a P0, correct.

15:10:23 18 Q. Your testimony is also that Mr. Tiede was
15:10:27 19 appropriately housed without air conditioning from August
15:10:30 20 17, 2023 through August 13, 2023; is that correct?

15:10:35 21 A. Can you say those dates one more time? You said
15:10:38 22 August 17 to August 13, I think.

15:10:40 23 Q. I'm sorry if I said that, I misspoke. I meant to say
15:10:44 24 August 17 through September 13.

15:10:45 25 A. Right. Yes. So that was after the stint when he was

15:10:51 1 assigned -- forgive me, I can't remember the certain
15:10:53 2 medication because he was assigned a medication in early
15:10:57 3 August that triggered a heat score, he was immediately
15:11:00 4 moved into a cool bed at the Estelle Unit. When that
15:11:03 5 medication ceased to be active per the doctor's orders,
15:11:08 6 that heat score fell off and then, he was moved back to
15:11:11 7 his prior housing at the Estelle Unit.

15:11:14 8 Q. And then, on September 13, 2023, there was a
15:11:17 9 temporary restraining order requiring him to be moved in
15:11:20 10 air conditioning, correct?

15:11:21 11 A. To my knowledge, that date's correct. I know that
15:11:24 12 that is the date that I did process the move for him into
15:11:27 13 air conditioning.

15:11:28 14 Q. And that was the reason you processed the move was
15:11:30 15 the order?

15:11:31 16 A. I received a call from general counsel and we were
15:11:34 17 instructed to place him into a cool bed. As far as the
15:11:38 18 background, I can't speak to that.

15:11:39 19 Q. And is that the hold that's still in place for Mr.
15:11:43 20 Tiede?

15:11:43 21 A. Yes.

15:11:44 22 Q. There's not another hold in place for Mr. Tiede?

15:11:47 23 A. Not a heat score hold.

15:11:50 24 Q. If there's not, that's the only hold that is keeping
15:11:54 25 him in air conditioning; is that correct?

15:11:55 1 A. We have other discretionary holds that we can use.
15:11:59 2 So similar to the ACHRI, we have other codes in our system
15:12:02 3 that instructs staff to not move or reassign anyone unless
15:12:07 4 it's an emergency without certain levels of authorization.
15:12:11 5 So he has a hold on him, if you want to call it that it's
15:12:15 6 based on that, but no -- there's other holds that are on
15:12:17 7 him.
15:12:18 8 Q. Okay. Are you familiar with the Correctional Managed
15:12:27 9 Care Policy Manual?
15:12:28 10 A. I'm familiar with the manual but if you're going to
15:12:32 11 test me on it, probably not every line, no, sir.
15:12:35 12 Q. Did you see we were discussing certain comorbidities
15:12:41 13 associated with heat stress earlier today?
15:12:43 14 A. In that attachment?
15:12:44 15 Q. Yes, sir.
15:12:45 16 A. Yes, sir, I did see that.
15:12:47 17 Q. Do you know any information about how many TDCJ
15:12:52 18 inmates have diagnosed seizure disorders in custody?
15:12:57 19 A. I do not.
15:12:58 20 Q. Is that something that you've ever asked UTMB or the
15:13:02 21 medical contractors for information about in your role as
15:13:08 22 director?
15:13:08 23 A. No, sir.
15:13:09 24 Q. Is that something that they do keep track of to your
15:13:12 25 knowledge?

15:13:12 1 A. I believe if you were to ask the medical providers
15:13:15 2 how many have that diagnosis, kind of speaking to what Dr.
15:13:19 3 Leonardson said about those 7,200 -- or 72,000 codes, they
15:13:23 4 would be able to pull those different diagnosis codes and
15:13:25 5 give you that number of how many individuals were
15:13:28 6 diagnosed with that.

15:13:29 7 Q. Do you have the same understanding about diagnosis of
15:13:32 8 diabetes, for example?

15:13:33 9 A. Yes. That's what I would expect.

15:13:35 10 Q. But you also don't -- as the classification office,
15:13:38 11 you don't keep track of that?

15:13:39 12 A. No, sir.

15:13:41 13 Q. And cirrhosis of the liver, you would also expect
15:13:44 14 that the medical contractors could tell you the prevalence
15:13:48 15 of that disease in your custody, but you don't keep track
15:13:51 16 of that?

15:13:51 17 A. That's correct.

15:13:52 18 Q. What about chronic obstructive pulmonary disease, is
15:13:56 19 that the same answer for that?

15:13:57 20 A. Same answer, yes.

15:13:59 21 Q. Do you do anything to keep track of any kind of
15:14:02 22 medication prescriptions across the population?

15:14:04 23 A. No, sir.

15:14:04 24 Q. Is it your understanding the medical contractors
15:14:07 25 could provide you that demographic information to identify

15:14:10 1 a list of inmates?

15:14:11 2 A. That is my understanding.

15:14:13 3 Q. But there's not any kind of class of medications that
15:14:15 4 you as the office for classification keep track of using
15:14:20 5 that kind of a system; is that correct?

15:14:23 6 A. We do not keep track of a class of medications of
15:14:25 7 what inmates take what medications, no, sir. I'll add one
15:14:36 8 sentence to that. There is a classification code called
15:14:39 9 type four chronic care. These are for significantly --
15:14:45 10 these are for HIV patients that need a high level of
15:14:50 11 medication and so, there's only certain facilities as an
15:14:52 12 example. So I don't know what medications they take but I
15:14:56 13 do know that they have to be on certain facilities to
15:14:59 14 receive those specialized HIV medications. So to that
15:15:03 15 point, I would know an inmate and where they have to be to
15:15:07 16 receive a medication. As far as what medicate it is and
15:15:09 17 why and their background, I wouldn't know that.

15:15:12 18 Q. So it would be feasible to craft a new one based on a
15:15:16 19 different set of medications, but you don't have any kind
15:15:19 20 of tracking system that pertains to medications associated
15:15:23 21 with heat stress; is that correct?

15:15:25 22 A. I don't.

15:15:26 23 Q. So that's correct?

15:15:27 24 A. That's correct.

15:15:28 25 Q. Do you know that UTMB has given the TDCJ Office of

15:15:37 1 Health Services access to the electronic health record of
15:15:42 2 inmates in TDCJ custody?

15:15:45 3 A. Yes. I understand that there's certain individuals
15:15:48 4 within the agency that are able to, in coordination with
15:15:52 5 our medical providers, have access to health records, yes.

15:15:58 6 Q. Do you recall the testimony in this hearing regarding
15:16:02 7 Armando Gonzalez at TDCJ, a TDCJ inmate who died on August
15:16:07 8 23rd, 2023?

15:16:08 9 A. I do remember the name, yes.

15:16:11 10 Q. And that was a phenotypic male who identified as
15:16:16 11 female who died. Do you know if she had a heat
15:16:26 12 sensitivity score above zero?

15:16:28 13 A. I do not know off the top of my head.

15:16:32 14 Q. So recalling your -- what you heard from Dr.
15:16:37 15 Leonardson --

15:16:37 16 A. Let me amend that answer. I actually do remember
15:16:40 17 that I had up a list of inmates that was provided by
15:16:45 18 counsel and that inmate did not have a heat score at the
15:16:47 19 time of death.

15:16:49 20 Q. Okay. So do you recall the testimony that that
15:16:57 21 inmates prescribed an anticholinergic medication for
15:17:02 22 certain psychiatric diseases should be given heat score
15:17:05 23 points from Dr. Leonardson?

15:17:09 24 A. I don't recall that specifically. Could you repeat
15:17:12 25 that? Do I recall her saying that?

15:17:14 1 Q. Well, do you know that one of the reasons that an
15:17:17 2 inmate should be awarded points on the heat score system
15:17:21 3 is if they are prescribed anticholinergic medication for
15:17:26 4 particular psychiatric conditions?

15:17:28 5 MS. ELLIS: Objection. I would just like to note
15:17:30 6 that this line of questioning -- Mr. Fitzpatrick's made it
15:17:33 7 very clear that he doesn't know the heat score policy of
15:17:36 8 what qualifies, he's not a medical doctor. He just knows
15:17:38 9 what to do when he finds out that someone has a heat
15:17:41 10 score.

15:17:42 11 MR. JAMES: Well, with all the suggestive
15:17:45 12 objections, maybe he doesn't, but I did wanted to ask if
15:17:47 13 he did know.

15:17:48 14 THE COURT: I'll allow the question.

15:17:50 15 Q. (BY MR. JAMES) So again, do you recall Dr. Leonardson
15:17:55 16 testifying that one of the reasons that heat score points
15:18:02 17 should be awarded based on the algorithm is if the patient
15:18:06 18 is prescribed anticholinergic medications and has a
15:18:11 19 certain psychiatric diagnosis?

15:18:13 20 A. Without seeing that in front of, me, again, I can't
15:18:15 21 say that's exactly how it's worded. I do know that that
15:18:18 22 type of medication, I believe, is on the algorithm as
15:18:22 23 something that is considered and giving a point in certain
15:18:25 24 circumstances.

15:18:26 25 Q. Considered by the algorithm, you mean?

15:18:29 1 A. Correct. It is programmed into the algorithm to
15:18:34 2 extract that information from the health record and then,
15:18:39 3 produce a point as a result of that information.

15:18:42 4 Q. So you looked into Ms. Gonzales' heat score before
15:18:51 5 her death?

15:18:53 6 A. I did.

15:18:53 7 Q. And how did you do that?

15:18:55 8 A. On our classification system.

15:18:57 9 Q. And what, I guess, day were you looking back on the
15:19:04 10 heat core record to look at?

15:19:06 11 A. The way that our system is set up is you can see
15:19:09 12 every single time that the record was updated. So every
15:19:15 13 time that they had a medical appointment or was prescribed
15:19:18 14 something new and there was a change in their heat score,
15:19:23 15 you can see that through history. And so, what I did was
15:19:26 16 I reviewed that history screen and reviewed the last entry
15:19:30 17 and it was a P00 score, which means that the individual
15:19:34 18 did not have a heat score.

15:19:36 19 Q. And was that -- that was from before her death?

15:19:40 20 A. Correct.

15:19:41 21 Q. So at the time of her death, did not have a heat
15:19:45 22 sensitivity score?

15:19:45 23 A. That's correct.

15:19:54 24 Q. Do inmates know their own heat sensitivity scores?

15:20:00 25 A. Not as a general rule. I am sure if an inmate asked

15:20:04 1 somebody in the medical department or asked somebody
15:20:08 2 that's working, you know, a wing because they do get heat
15:20:13 3 restriction lists, they could come upon that information,
15:20:16 4 or maybe writing their medical provider and asking why am
15:20:20 5 I in a cool bed and then, the medical provider responding,
15:20:25 6 well, you have a P2 score. So yes, they can have access
15:20:30 7 to that information surely, but we don't pass something
15:20:33 8 out to them that tells them, hey, your score is this or
15:20:36 9 that.

15:20:36 10 Q. And I just want to make sure the record is clear, you
15:20:38 11 mentioned a heat restriction list. That is different than
15:20:41 12 a heat sensitivity score list, correct?

15:20:45 13 A. It encompasses the heat sensitivity scores on it but
15:20:49 14 it is different than the ones we showed up there, correct.
15:20:53 15 Yes.

15:20:54 16 Q. Okay. So it is your understanding that at the unit,
15:20:57 17 the heat restriction list that's passed out to
15:21:01 18 security-level staff is populated with heat sensitivity
15:21:05 19 scores as well as work restrictions?

15:21:06 20 A. That's correct.

15:21:08 21 Q. And you mentioned during your testimony that you have
15:21:11 22 a high-level understanding of TDCJ's plan to install more
15:21:15 23 cool beds; is that correct?

15:21:17 24 A. Yes. I have a very firsthand understanding of what
15:21:22 25 we're doing today because it completely impacts everything

15:21:24 1 I do every day. So as the facilities division and that
15:21:29 2 team are installing and essentially turning on new beds
15:21:33 3 that have air conditioning, that impacts, you know, our
15:21:36 4 operations significantly in classification because we can
15:21:40 5 then use those beds for that purpose.

15:21:42 6 Long-term was more of an overarching
15:21:45 7 understanding of the phased plan that Mr. Collier has
15:21:49 8 presented to our state leadership and our state
15:21:54 9 legislature about our goals and objectives to accomplish
15:21:59 10 this with the appropriate resources going forward. So yes
15:22:04 11 I do have an understanding of that.

15:22:05 12 Q. You would say your detailed understanding is kind of
15:22:08 13 limited to the immediate future, not, you know, beyond a
15:22:11 14 few months that you need to prepare as the clarification
15:22:15 15 department?

15:22:15 16 A. You could say. We would defer that to our facilities
15:22:18 17 director and our executive leadership, yes.

15:22:21 18 Q. Do you know how many more cool beds are going to be
15:22:26 19 coming online before the end of this summer?

15:22:29 20 A. Not before the end of this summer. I don't have
15:22:32 21 those details. I know that there's, I believe, 1,700 or
15:22:36 22 1,800 currently under construction today at some point in
15:22:38 23 that scope from start to finish. That I know that there's
15:22:43 24 14,000 or so more that are in construction or planning to
15:22:49 25 be in construction, I believe it's called, so those will

15:22:51 1 be coming in the future.

15:22:55 2 Q. And to be clear, you have heard from somebody those
15:22:57 3 numbers, correct?

15:22:57 4 A. A couple of different places, yes. The main one is
15:23:01 5 -- I believe it's already been an exhibit but we have a
15:23:03 6 dashboard that shows realtime progression.

15:23:06 7 Q. And are you aware that Mr. Davis said he had no idea
15:23:10 8 if that dashboard was correct or not?

15:23:12 9 A. I am not aware he said that.

15:23:14 10 Q. Do you have any idea whether that dashboard is
15:23:15 11 correct or not in its projections of the future?

15:23:19 12 A. To the best of my knowledge, that dashboard is
15:23:21 13 updated.

15:23:21 14 Q. And your knowledge is you don't know, correct?

15:23:26 15 A. My knowledge is I have asked certain individuals
15:23:29 16 within the agency that have direct knowledge of ensuring
15:23:33 17 that those numbers are updated on the website and they
15:23:36 18 assured me that those were up-to-date so that's the extent
15:23:39 19 of my knowledge. I didn't enter them myself surely and I
15:23:44 20 did not go and check the numbers against, you know, the
15:23:47 21 facilities division and so on.

15:23:48 22 Q. And who are the people who told you that the website
15:23:51 23 was right?

15:23:52 24 A. Our executive services department is the one that I
15:23:55 25 speak to about the website.

15:23:57 1 Q. And who in the executive services department told you
15:23:59 2 the website was correct?

15:24:00 3 A. His name is Justin Brock.

15:24:04 4 Q. Justin Brock or Block?

15:24:06 5 A. Brock, B-R-O-C-K.

15:24:09 6 Q. And I think I heard you testify that you or your
15:24:14 7 department has final say on whether an inmate is
15:24:16 8 ultimately placed in air conditioning; is that correct?

15:24:20 9 A. No, we do not have final say.

15:24:22 10 Q. Who has final say?

15:24:24 11 A. We use the heat sensitivity score as a controlling --
15:24:31 12 as a controlling method of the final say of who is in a
15:24:36 13 cool bed.

15:24:38 14 Q. In the absence of a heat sensitivity score, you say
15:24:42 15 that at that point, your office is making the final
15:24:44 16 decision?

15:24:45 17 A. We are one of those proponents. We have
15:24:47 18 discretionary, of course, assignment of inmates throughout
15:24:50 19 the rest of those 33,000 beds. So yes, my department's
15:24:53 20 highly involved along with unit discretion and agency
15:24:57 21 discretion.

15:24:58 22 Q. Okay. So who else in the agency is making the final
15:25:03 23 decision about whether an inmate is placed in air
15:25:06 24 conditioning in the absence of a heat sensitivity score?

15:25:10 25 A. Thousands and thousands of those decisions are made

15:25:12 1 every day in every count room around the state. A count
15:25:17 2 room is essentially the controlling nervous system of a
15:25:19 3 facility that tracks all inmate movement and assignment.
15:25:23 4 And so, that's from line-level count room staff that is
15:25:27 5 making determinations. You've gotta think about if
15:25:30 6 they're on a facility that's completely air conditioned,
15:25:33 7 to your question who's making the final, if they make one
15:25:36 8 move inside a fully air-conditioned prison, they're making
15:25:38 9 a final decision about a placement in a cool bed. So
15:25:41 10 that's from the ground level all the way up throughout our
15:25:44 11 agency.

15:25:44 12 Q. And to be clear, the count room is a part of the unit
15:25:49 13 classification committee, right?

15:25:50 14 A. Correct. Not a part of the committee, they're a part
15:25:53 15 of classification.

15:25:53 16 Q. And you're the director of classification?

15:25:55 17 A. Yes.

15:25:55 18 Q. So you are -- I understand that you are not on the
15:26:00 19 unit making the decisions every night but those are your
15:26:03 20 people making the decision every night, correct?

15:26:05 21 A. They have a play in that decision along with the unit
15:26:08 22 administration, yes.

15:26:09 23 Q. Right. Obviously, you know, the warden may be asking
15:26:12 24 them, the captains, whoever, but they're the ones who are
15:26:15 25 putting together all the requests and making a decision on

15:26:18 1 how to make it work, correct?

15:26:20 2 A. That's correct.

15:26:21 3 Q. Do you agree -- you know, ignoring the heat

15:26:29 4 sensitivity score, would you agree whether or not everyone

15:26:33 5 whose condition, medication, or age places them in an

15:26:36 6 elevated risk of harm, serious injury needs to be placed

15:26:40 7 in air-conditioned housing?

15:26:45 8 A. Could you repeat that?

15:26:47 9 Q. Yeah. So just without talking about the heat

15:26:54 10 sensitivity score, can you agree that everyone whose

15:26:56 11 condition, medications, and age place them at an elevated

15:27:00 12 risk of serious harm needs to be placed in air-conditioned

15:27:05 13 housing?

15:27:06 14 A. That's exactly what I rely on our medical providers,

15:27:13 15 University of Texas Medical Branch and Texas Tech to

15:27:15 16 inform myself and the agency on who is at those risks and

15:27:18 17 the highest risks and then, we use those resources to make

15:27:22 18 the correct decisions on placement.

15:27:32 19 Q. So can you agree that they should ultimately -- you

15:27:38 20 should ultimately lead to the result that everyone whose

15:27:43 21 condition, medication, or age places them in an elevated

15:27:46 22 risk of harm of serious injury due to the heat needs to be

15:27:51 23 placed in air-conditioned housing?

15:27:55 24 A. I believe that's the exact guiding principle of the

15:27:59 25 folks that designed -- the medical professionals that

15:28:01 1 designed our heat score is to have that outcome and that's
15:28:04 2 why we strive every day, literally 24-7, to ensure that
15:28:09 3 those individuals are appropriately placed. Yes.

15:28:12 4 Q. All right. Thank you for your answer, sir, but my
15:28:17 5 question is whether or not it is what that does, shouldn't
15:28:19 6 that be what it does?

15:28:22 7 A. I don't understand your question.

15:28:23 8 Q. My question is shouldn't the system, heat sensitivity
15:28:29 9 score system, shouldn't it accomplish the goal of
15:28:32 10 identifying everyone whose condition, medication, or age
15:28:36 11 places them at an elevated risk of harm of serious injury
15:28:42 12 from the heat be identified so that you can place them in
15:28:46 13 air-conditioned housing?

15:28:50 14 A. I guess the only thing I can say to that is based on
15:28:52 15 the medical expertise of the individuals that designed the
15:28:56 16 heat score, that is exactly what it's designed to do is to
15:29:00 17 capture everyone that is at an elevated risk, then give
15:29:04 18 us, TDCJ, that information quickly, that's what a heat
15:29:08 19 score is. You don't have to read anything elaborate. It
15:29:10 20 is a quick red-flag identifier this individual's at risk
15:29:14 21 and then, we act and place them.

15:29:16 22 Q. And I understand that you've been told that that's
15:29:19 23 what it's designed to do. My question is --

15:29:23 24 MS. ELLIS: Objection --

15:29:23 25 THE COURT: I think you've asked as many times as

15:29:25 1 you can and that's the answer you're going to get.

15:29:28 2 MR. JAMES: I eo want to ask him one more time in
15:29:31 3 case he really did misunderstand.

15:29:32 4 MS. ELLIS: I object to that. He has asked and
15:29:34 5 answered this.

15:29:34 6 MR. JAMES: He has asked and not answered this.

15:29:36 7 MS. ELLIS: He has not given an answer you want.

15:29:39 8 MR. JAMES: No. He hasn't not given an answer --

15:29:40 9 THE COURT: Hey, hey, hey, it's okay. Move on.

15:29:42 10 MR. JAMES: Thank you, your Honor.

15:29:43 11 Q. (BY MR. JAMES) Okay. I think you testified something
15:29:45 12 about insulin dependency. Is it your testimony that all
15:29:49 13 insulin-dependent diabetics are in type one care facility
15:29:57 14 or do you know?

15:29:58 15 A. I do not know. I believe that is one of the guiding
15:30:02 16 factors for why our medical professionals would designate
15:30:05 17 them as type one chronic care, needing that type. Now, I
15:30:09 18 don't know if there's -- again, this is getting into the
15:30:11 19 medical side. I don't know if there's folks that only
15:30:14 20 take insulin once a day versus three times a day or more
15:30:18 21 often. I don't know exactly how that plays out whether
15:30:21 22 they're on the lower spectrum or higher spectrum of risk
15:30:24 23 for diabetes or insulin. I know that once that code is
15:30:28 24 placed by medical needing 24-hour care, then we move them
15:30:32 25 and place them in a facility that has that.

15:30:34 1 Q. Okay. So you don't actually know whether all
15:30:37 2 insulin-dependent diabetics are assigned type one chronic
15:30:41 3 care?

15:30:41 4 A. No, I don't. I was using that as an example earlier
15:30:45 5 of some individuals that could have that are folks that
15:30:48 6 are insulin diabetic -- or insulin-dependent, excuse me.

15:30:52 7 Q. I think I heard you testify earlier about the Hughes
15:30:56 8 Unit, the assignment -- I think you were able to rattle
15:30:58 9 off that the assignment 4F32 is not an air-conditioned
15:31:02 10 housing assignment. Do you recall that?

15:31:03 11 A. Yes.

15:31:04 12 Q. Did I hear you correctly?

15:31:06 13 A. You did.

15:31:07 14 Q. Do you know if the Hughes assignment 4E2 is air
15:31:11 15 conditioned or not?

15:31:11 16 A. It is not.

15:31:12 17 Q. What do you do if more inmates have a heat score of
15:31:18 18 one or above than there are available air-conditioned beds
15:31:23 19 with available swap candidates?

15:31:29 20 A. So dependent on the unit and depending, again, to
15:31:34 21 your point how many beds there are available or swap
15:31:37 22 candidates available, if there is not available space on
15:31:40 23 that unit, then we're going to act and get them moved to
15:31:44 24 the appropriate facility. So move them to a cool bed
15:31:47 25 facility that has an open bed.

15:31:49 1 Q. Right. And my question was intended to be
15:31:52 2 system-wide so let me just clarify. If as a system, the
15:31:55 3 whole classification department, if there are more inmates
15:31:59 4 with a heat score of one or above than there are vacancies
15:32:05 5 and in cool beds with a swap candidate, what do you as a
15:32:12 6 department do?

15:32:14 7 A. So you're asking me if there was more than 45,689
15:32:20 8 inmates that had a heat score.

15:32:22 9 Q. Well, I think you testified that there are also
15:32:25 10 inmates who are in cool beds for other reasons that make
15:32:28 11 them -- either it's a temporary hold or a permanent hold
15:32:32 12 and like they can't be moved out, right?

15:32:35 13 A. Yes.

15:32:35 14 Q. So I'm trying to encompass both categories of people.
15:32:39 15 Is it people that you are not free to move, for whatever
15:32:42 16 reason, and then, you have a change come in and now there
15:32:47 17 are more heat-sensitive score -- sorry. More inmates with
15:32:52 18 a heat sensitivity score of one or above than you can fit
15:32:56 19 without, I guess, in the existing capacity, what do you
15:33:01 20 do?

15:33:01 21 A. So in that hypothetical, that would be a agency-wide
15:33:06 22 decision on how are we going to move and prioritize the
15:33:09 23 ones that are most at risk. Obviously, the risk would
15:33:12 24 take precedent over programming placement or other things
15:33:16 25 of that nature where there might be a facility that

15:33:18 1 currently has a religious program or whatever the case is
15:33:21 2 that have cool beds, again, in a hypothetical question
15:33:24 3 like that, that would have to be a agency decision amongst
15:33:28 4 leaders where we decide how are we going to accomplish
15:33:31 5 assigning that many inmates to the beds and the resources
15:33:34 6 that we have available in that moment.

15:33:36 7 Q. Okay. So is it fair to say that there is not a
15:33:39 8 specific policy or plan about what to do if there is not
15:33:43 9 space in that kind of situation?

15:33:45 10 A. I don't believe there's a specific plan that speaks
15:33:47 11 to that outside of our AD 1064 which speaks to the
15:33:52 12 prioritization.

15:33:56 13 Q. During the portions of Dr. Leonardson's testimony
15:33:59 14 that you were here listening to, did you disagree with
15:34:02 15 anything that she testified to regarding the determination
15:34:07 16 of the heat sensitivity score or its use in TDCJ?

15:34:12 17 A. Not that I particularly recall, no.

15:34:18 18 Q. All right. Pass witness. Thank you, sir.

15:34:20 19 A. Yes, sir. Thank you.

15:34:22 20 MS. ELLIS: No further questions. May he step
15:34:24 21 down?

15:34:24 22 THE COURT: Yes. Thank you. You may step down.

15:34:25 23 THE WITNESS: Thank you, your Honor.

15:34:27 24 THE COURT: Your next witness.

15:34:30 25 MS. MCGEE: Yes, your Honor. The Court calls Mr.

15:34:34 1 Cody Ginsel to the stand.

15:35:10 2 THE COURT: Raise your right hand to be sworn.

15:35:36 3 THE CLERK: You do solemnly swear or affirm that
15:35:36 4 the testimony which you may give in the case now before
15:35:36 5 the Court shall be the truth, the whole truth, and nothing
15:35:41 6 but the truth?

15:35:41 7 THE WITNESS: I do.

15:35:44 8 CODY W. GINSEL, called by the Plaintiff, duly sworn.

15:35:44 9 DIRECT EXAMINATION

15:35:44 10 BY MS. MCGEE:

15:35:49 11 Q. Good afternoon, Mr. Ginsel. Thank you for being
15:35:56 12 here. Could you please state your name for the record?

15:35:59 13 A. Cody Wayne Ginsel.

15:36:01 14 Q. Ginsel. And I apologize. I know we've been over
15:36:03 15 this many times before and I keep switching it.

15:36:06 16 You currently work for Texas Department of
15:36:10 17 Criminal Justice; is that correct?

15:36:11 18 A. Yes.

15:36:12 19 Q. How long have you worked in corrections?

15:36:15 20 A. This is my 35th year this month.

15:36:18 21 Q. This will be your 35th year this month.

15:36:24 22 A. Thirty-five years this month.

15:36:26 23 Q. Do you have any formal education pertaining to
15:36:31 24 corrections? Do you have any formal education in criminal
15:36:37 25 justice or pertaining to justice?

15:36:38 1 A. Yes. I have a Bachelor's Degree in Criminal Justice
15:36:42 2 from Lamar University.

15:36:43 3 Q. And do you have any other degrees?

15:36:45 4 A. I have a associate degree from Lamar State University
15:36:47 5 or Lamar, Port Arthur.

15:36:49 6 Q. And what is that in?

15:36:50 7 A. Criminal justice.

15:36:51 8 Q. Okay. And have you done any other sort of trainings
15:36:54 9 or programs in criminal justice?

15:36:57 10 A. Yes, I have. So transformative leadership in
15:37:02 11 Australia as part of the University of Texas public policy
15:37:06 12 group. I was in a two-week course that lasted in
15:37:12 13 Australia, two weeks here in Austin, lasted roughly about
15:37:17 14 six months. Also numerous other trainings with the
15:37:22 15 governor's executive development program, leadership
15:37:27 16 programs in Aurora, Colorado as part of National Institute
15:37:32 17 of Corrections. Yes.

15:37:34 18 Q. Okay. Thank you. I understand. You don't have to
15:37:37 19 list every single one of them. I'm sure there's many
15:37:40 20 more. How long have you worked with TDCJ? I think you
15:37:44 21 just answered that.

15:37:44 22 A. Yes, 35 years in corrections, 33 with TDCJ and then,
15:37:47 23 a couple of years with Wyndham School District from 1988
15:37:51 24 to 1990 at the Wynne Unit.

15:37:55 25 Q. What positions have you held with TDCJ?

15:37:58 1 A. I began as a correctional officer at the Ellis Unit
15:38:01 2 in 1990. From there, I moved over to the Huntsville Walls
15:38:05 3 Unit in 1990 as a correction officer, 1992 as a sergeant
15:38:10 4 in Tulia, Texas the Mechler Unit now, lieutenant in 1993
15:38:15 5 at the Middleton Unit. 1993, transferred to the Larry
15:38:21 6 Gist state jail and then, promoted to captain in 1995 at
15:38:25 7 the Larry Gist state jail. Became a major at the Larry
15:38:29 8 Gist state jail in 1997, assistant warden at the Lopez
15:38:34 9 state jail in late 1999, I think it was mid-December.

15:38:39 10 From there, assistant warden at LeBlanc Unit.
15:38:42 11 From 2001 to 2003, assistant warden at the Ellis Unit.
15:38:47 12 From 2003 to mid 2006, from there, senior warden here in
15:38:54 13 Austin at the Travis state jail. From there, senior
15:38:58 14 warden at the Byrd Unit in 2008 to 2009, senior warden at
15:39:04 15 the Gib Lewis Unit from 2009 to 2012. From there, senior
15:39:12 16 warden at the Estelle Unit from 2012 to 2013. Regional
15:39:20 17 director for region four overseeing 16 facilities from
15:39:25 18 2013 to 2014.

15:39:28 19 2014, became the training director for the Texas
15:39:33 20 Department of Criminal Justice in the Correctional
15:39:34 21 Institutions Division at that time. 2015, promoted to
15:39:39 22 deputy director for Correctional Institutions Division.
15:39:43 23 2016, promoted to private facility contract monitoring
15:39:49 24 oversight division as a division director. Stayed there
15:39:53 25 until 2020, I think it was end of January 2020, promoted

15:39:59 1 to facilities division director until August 31st of 2022,
15:40:06 2 I retired at that time and then, I've come back to my new
15:40:09 3 role July of 2023, which is the director of correctional
15:40:15 4 professional and development for the training and
15:40:18 5 leadership development division.

15:40:19 6 Q. Thank you. Your memory is much better than mine.

15:40:23 7 What are your responsibilities as director of
15:40:26 8 correctional development?

15:40:27 9 A. I oversee six regional academies. That's where we
15:40:32 10 train all of our brand-new correctional officers that are
15:40:35 11 coming into our employment. I oversee the inservice for
15:40:41 12 those individuals as they come for their annual inservice.
15:40:45 13 Also, the 31 -- or, excuse me, 29 unit-based pre-service
15:40:50 14 and inhouse sites throughout the state that are
15:40:54 15 unit-based. I oversee the leadership development academy
15:40:57 16 there and criminal justice center there at Sam Houston
15:40:59 17 State University where we provide leadership development
15:41:02 18 for our agency for correctional staff, uniformed staff,
15:41:07 19 oversee all of the ranges for the agency, correctional and
15:41:10 20 professional development within the agency for all of our
15:41:13 21 uniformed staff.

15:41:15 22 Q. Thank you. In your current role, do you review and
15:41:24 23 write curriculum for all this training and oversight that
15:41:27 24 you do?

15:41:27 25 A. I assist in that we have individuals who write that

15:41:30 1 curriculum, but I also review that curriculum and approve
15:41:32 2 that curriculum. I just approved the new fiscal year --
15:41:37 3 last year, that curriculum was already approved prior to
15:41:40 4 my employment back with agency. But for this fiscal year
15:41:45 5 coming up, September 1st, I'm in the process of approving
15:41:48 6 all the new curriculum and helping to rewrite that.

15:41:52 7 Q. And, your Honor, at this time, I move to designate
15:41:55 8 Mr. Ginsel as an expert in the area of correctional
15:41:59 9 professional development.

15:42:01 10 MR. HOMIAK: No objection, your Honor.

15:42:03 11 THE COURT: So designated.

15:42:06 12 Q. (BY MS. MCGEE) Just to be clear, in your current role
15:42:09 13 as director of correctional development, do you still have
15:42:12 14 any of the responsibilities that you had before you
15:42:14 15 retired?

15:42:16 16 A. I do not, no. As far as assisting in those areas, I
15:42:23 17 get called because of my experience to assist in those
15:42:26 18 areas but those fall under other individuals.

15:42:30 19 Q. Okay. Thank you very much. So just to be clear, you
15:42:38 20 said that one of the areas that you train are cadets. Did
15:42:43 21 you say that?

15:42:43 22 A. That is correct.

15:42:44 23 Q. Okay. And are cadets like incoming individuals who
15:42:47 24 want to be officers with TDCJ?

15:42:49 25 A. Yes, ma'am.

15:42:50 1 Q. Okay. Do they have usually any law enforcement
15:42:55 2 experience prior when they come in as a cadet?
15:42:57 3 A. Very possible they could.
15:43:00 4 Q. But they still have to go through this training in
15:43:04 5 order to work in the TDCJ system?
15:43:06 6 A. That is correct. They must go through your
15:43:08 7 pre-service training program unless those individuals are
15:43:12 8 returning employees within the last three years and had
15:43:15 9 already been through that training curriculum and program.
15:43:19 10 Q. Are those cadets -- and I refer to them as cadets,
15:43:24 11 you understand I mean individuals coming in to be trained?
15:43:27 12 A. Yes. We call them cadets.
15:43:29 13 Q. Okay. Are those individuals trained in heat
15:43:34 14 preparedness?
15:43:34 15 A. Yes, they are.
15:43:36 16 Q. Now, I want to talk about this heat preparedness
15:43:39 17 training. Do you have any idea how many hours of heat
15:43:42 18 training cadets receive?
15:43:45 19 A. Yes. For base training, we provide roughly two to
15:43:51 20 five hours for base training for those cadets. However,
15:43:56 21 they receive an hour to two hours a day, every day during
15:44:01 22 their employment -- while they're employed during the
15:44:05 23 academy. So our academy is 264 hours. Our on-the-job
15:44:11 24 training is 144 hours. So while they're in the academy
15:44:14 25 that 264 hours, they're receiving one to two hours of heat

15:44:18 1 awareness or cold awareness training each day for safety
15:44:22 2 briefings prior to any activity that we conduct.

15:44:28 3 Q. Is it fair to say that the heat preparedness training
15:44:32 4 is repetitive and regular?

15:44:36 5 A. Very much so.

15:44:39 6 Q. And why is that?

15:44:40 7 A. Well, for the importance to make sure that these
15:44:42 8 individuals understand the importance of what we're
15:44:45 9 teaching them, the awareness of their responsibilities on
15:44:49 10 the facilities, how to learn to recognize the signs and
15:44:55 11 symptoms of those that may be experiencing heat-related
15:44:58 12 illnesses not only in themselves but those individuals
15:45:00 13 that they work with and how to properly take care of
15:45:03 14 themselves so that they're prepared to come to work each
15:45:05 15 day hydrated, ready to work.

15:45:07 16 Q. Could you please put up Exhibit 13C. This is going
15:45:21 17 to be Plaintiffs' Exhibit 13C. I'm sorry, Defendants'
15:45:45 18 Exhibit 13C. I'm sorry. And are you able to see that on
15:46:30 19 your screen okay, Mr. Ginsel?

15:46:32 20 A. Yes, ma'am.

15:46:32 21 Q. Okay. And do you recognize this document?

15:46:36 22 A. I do. It's one of our lesson plans on Infection
15:46:39 23 Control, First Aid, Family and Friends.

15:46:42 24 Q. And is this something that is routinely taught in the
15:46:45 25 correctional professional development?

15:46:48 1 A. Yes, ma'am.

15:46:48 2 Q. At this time, I move to admit Defendants' Exhibit 13C
15:46:53 3 into evidence.

15:46:56 4 MR. HOMIAK: No objection, your Honor.

15:46:56 5 THE COURT: So admitted.

15:46:59 6 Q. (BY MS. MCGEE) So I understand, first aid would cover
15:47:17 7 a lot of things; is that correct?

15:47:19 8 A. That's correct. We put a lot of emphasis on first
15:47:23 9 aid to make sure that our staff understand and have the
15:47:26 10 skills and knowledge to deal with those individuals to get
15:47:30 11 them the medical who may be experiencing heavy bleeding
15:47:33 12 and things of that nature, you know, from an assault maybe
15:47:35 13 or for self-inflicted harm. We want to make sure that
15:47:41 14 they're prepared to deal with those individuals who may
15:47:44 15 have altered mental status, getting those to medical as
15:47:47 16 soon as possible, getting them to the provider, and then,
15:47:51 17 recognizing those individuals it's either cool, pale or
15:47:57 18 clammy skin as we go into heat exhaustion and heat cramps
15:48:01 19 and eventually, heat stroke.

15:48:02 20 Q. It covers many things and if you wouldn't mind
15:48:05 21 scrolling down, please, towards the bottom, there's a
15:48:07 22 section that we're looking for. So is this part of the
15:48:13 23 training that cadets would receive on temperature
15:48:16 24 condition that cause life-threatening illnesses or
15:48:20 25 injuries?

15:48:20 1 A. Yes, ma'am.

15:48:21 2 Q. Okay. And this is a written document that cadets
15:48:24 3 receive; is that correct? Well, nowadays, it might be
15:48:27 4 digital.

15:48:28 5 A. We go through the training with them. It's on
15:48:32 6 PowerPoint. We do not give each one of them a document,
15:48:35 7 no, because the training manuals are this thick and even
15:48:39 8 if it was DVD, it's pretty thick.

15:48:43 9 Q. But they receive a PowerPoint on this information?

15:48:45 10 A. They receive a PowerPoint plus they have it on the
15:48:48 11 employee information card.

15:48:49 12 Q. And what is the employee information card?

15:48:52 13 A. Employee information card is a card that every single
15:48:55 14 employee gets who comes to our academies, every single
15:48:58 15 cadet, and also, every single individual that's in
15:49:01 16 inservice and it provides the information on dealing with
15:49:05 17 those that would -- may be experiencing heat-related
15:49:08 18 illnesses and/or cold weather awareness.

15:49:13 19 Q. And are cadets trained on AD 1064 and the
15:49:22 20 expectations?

15:49:24 21 A. They are.

15:49:24 22 Q. On the seasonal preparedness directive?

15:49:27 23 A. That's correct, they are, and that is posted in every
15:49:31 24 classroom that we have and then, the common areas of all
15:49:34 25 of our academies so they see it not only as part of the

15:49:38 1 PowerPoint, they also have the ability to read that
15:49:42 2 directly in that poster.

15:49:47 3 Q. And we've heard a lot -- you've been in the courtroom
15:49:50 4 past couple of days, correct?

15:49:51 5 A. That's correct.

15:49:51 6 Q. And we heard a lot about how some of the officers
15:49:54 7 unfortunately on unit have had some struggles with the
15:49:57 8 heat. Can you tell us about what kind of training they
15:50:00 9 receive to deal with heat themselves?

15:50:02 10 A. Yes. So we teach those individuals to take
15:50:07 11 precautions, self ownership, take precautions, drink
15:50:10 12 plenty of fluids prior to coming to work. That's prior to
15:50:14 13 the academy. Then once they get on the unit, we teach
15:50:18 14 them their responsibilities when they get on unit to
15:50:19 15 drink, prior to their shift, enough water to be prepared.
15:50:22 16 And then, continuous fluid intake during excessive
15:50:26 17 temperatures or very high-level temperatures so that
15:50:28 18 they're prepared to continue to work.

15:50:31 19 We do safety briefings each day on each activity
15:50:35 20 and during those safety briefings, we're covering all of
15:50:39 21 this information day after day after day so that it's
15:50:43 22 ingrained into them. We make sure, like I said, that they
15:50:46 23 have their heat awareness card, their employee information
15:50:50 24 card with them at all times and so that they understand
15:50:54 25 the responsibilities of self ownership when it comes to

15:50:57 1 taking care of themselves. We provide those individuals
15:50:59 2 with, of course, just ice water, cooling towels.

15:51:03 3 We make sure that they're prepared and we do a
15:51:08 4 lot of our exercises, tactical team training, defensive
15:51:13 5 tactics all in early morning hours when possible. And we
15:51:19 6 prepare them for those temperature days that when we're
15:51:25 7 out, we make sure we go over relative humidity with them,
15:51:29 8 air apparent temperature, what the heat index so that they
15:51:34 9 begin to understand when they get on the unit and they
15:51:34 10 hear it across the radio, the temperature heat index is
15:51:37 11 this, the temperature is this, what are the steps that
15:51:41 12 they need to take on the unit to take care of themselves?
15:51:43 13 What are the steps they need to take care of the inmate
15:51:46 14 population? And they can have that core knowledge of what
15:51:49 15 to do on those days.

15:51:50 16 Q. And are officers trained to identify the beginnings
15:52:07 17 of heat illness and the risks in other officers?

15:52:09 18 A. They are.

15:52:12 19 Q. And are they trained to identify possible heat
15:52:16 20 symptoms when they get on the unit in inmates?

15:52:18 21 A. They are. I can go into those.

15:52:23 22 Q. Yeah, if you can.

15:52:25 23 A. So obviously, the first signs and symptoms of those
15:52:29 24 individuals that may be experiencing the heat cramps, we
15:52:32 25 train our staff to recognize for themselves personally

15:52:35 1 when they start feeling heat cramps, they need to do more
15:52:39 2 water intake. They need to take a break five minutes once
15:52:42 3 an hour. They need to ensure that they're putting some
15:52:46 4 kind of cooling towel on them when available, something to
15:52:49 5 cool down and, once again, drinking more water.

15:52:53 6 For the next phase, it could be the heat syncope
15:52:57 7 with, you know, they're starting to feel dizzy, you know,
15:53:00 8 to the point of maybe even fainting. We have them
15:53:04 9 recognize the signs and symptoms of that not only for
15:53:07 10 themselves but for fellow officers, for their staff to
15:53:11 11 drink more water, excessive sweating, cool, clammy, pasty
15:53:20 12 skin, recognizing those symptoms and those individuals who
15:53:22 13 may be showing those signs and symptoms and getting them
15:53:25 14 to medical not only for themselves but for their coworkers
15:53:29 15 and the inmate population.

15:53:31 16 And then, moving on, those individuals who are no
15:53:34 17 longer sweating and are red, hot-looking skin, it's red to
15:53:39 18 the color, that is an emergent need, that individual needs
15:53:44 19 to get to medical as soon as possible because they may be
15:53:47 20 in the point of having a heat stroke and not only
15:53:51 21 themselves but, also, the coworkers in the inmate
15:53:54 22 population.

15:53:55 23 Our training is based on three-part training. We
15:53:59 24 provide the education piece of training. We do the three
15:54:03 25 E method: Experience, education experience and

15:54:07 1 evaluation. Education experience is providing them with
15:54:11 2 the core knowledge of all of our correctional policies
15:54:14 3 while we do what we do. Information such as this is the
15:54:18 4 education piece. The experience piece is we daily put
15:54:22 5 them through what we call performance-oriented training so
15:54:26 6 we run scenarios. We run scenarios of individuals that
15:54:29 7 may be suffering a heat cramp, maybe suffering heat
15:54:34 8 exhaustion, maybe suffering a heat stroke. What is your
15:54:36 9 responsibility as a correctional officer to take that
15:54:38 10 individual to medical, get them assisted, make sure they
15:54:41 11 drink water. Do the things that we need to do for
15:54:44 12 mitigation purposes.

15:54:46 13 And then, for the evaluation phase, we break that
15:54:50 14 down into three parts: What happened, what happened in
15:54:55 15 this scenario or what happened in this drill that we were
15:54:59 16 in. What should have happened according to our policies
15:55:02 17 and according to our training. And then, how can we be
15:55:05 18 better the next time. So how can we improve upon what you
15:55:08 19 did. And we do that daily, every day, in just about every
15:55:14 20 one of our education models so that we build in the
15:55:17 21 experiences for those staff prior to them going on the
15:55:20 22 facility. This teaches us -- the evaluation piece is
15:55:27 23 really extremely important for the instructors to make
15:55:29 24 sure that they know that those cadets actually got what we
15:55:34 25 taught them to do. Did they understand it? Can they

15:55:37 1 comprehend it and can they apply it?

15:55:42 2 The first three weeks of our academy, it's a six
15:55:46 3 -week, three-day academy. 264 hours the first three weeks
15:55:49 4 of those are the education piece where we're doing a lot
15:55:51 5 of that performance-oriented training, providing them the
15:55:54 6 education. And then, the experience piece again continues
15:55:58 7 on that final three weeks where we're taking them to an
15:56:01 8 actual facility and we're putting them in positions
15:56:05 9 working with the training instructor under direct
15:56:10 10 observation of that training instructor where we're
15:56:13 11 performing duties that a normal correctional officer would
15:56:15 12 perform.

15:56:15 13 So the correctional officer may be turning the
15:56:17 14 keys at a gate, may be watching the pill window, may be
15:56:22 15 working a recreation post with a supervisor, may be
15:56:26 16 working the hallways, and during that process, we put them
15:56:29 17 through core competency evaluations. We put them through
15:56:34 18 recognizing the signs and symptoms of those individuals
15:56:38 19 who may be experiencing heat, heat illnesses. We put them
15:56:41 20 through searches, we put them through pat searches,
15:56:45 21 classroom searches in the common areas, work area
15:56:50 22 searches, cell searches, radio traffic procedures how to
15:56:54 23 call for help, where's the medical department, what's the
15:56:57 24 respite area, why do we have the water coolers, where
15:57:00 25 they're at, because we provide it and we talk to them

15:57:03 1 about it during the education piece. Now we can go show
15:57:07 2 them on the unit, here's the water cooler, here's the
15:57:09 3 requirement, here's what you need to do and check these on
15:57:11 4 a regular basis to make sure that water stays full and
15:57:15 5 there's ice in there and where there's, not let's get it
15:57:17 6 filled back up. We walk through all of those things
15:57:20 7 during that final piece of the training to make sure that
15:57:22 8 they understand their responsibilities.

15:57:25 9 Q. Now, you said that you go through -- in the last
15:57:28 10 stages of evaluation where you go through what should have
15:57:31 11 happened and then, how can we be better the next time; is
15:57:34 12 that right?

15:57:34 13 A. That's correct. What happened, what should have
15:57:37 14 happened according to what we've taught them in our policy
15:57:40 15 and then, what we can do better next time if it didn't go
15:57:43 16 the way we want it to. It's a safe space to fill in our
15:57:46 17 training.

15:57:46 18 Q. And what happens if it doesn't go very well and looks
15:57:49 19 like somebody is not grasping some of these principles
15:57:53 20 that you're trying to teach them, they're not
15:57:55 21 understanding the seriousness of the heat, is there
15:57:57 22 something you guys could do about it or do they just have
15:57:59 23 to learn, okay, next time I'll do this?

15:58:01 24 A. Oh, absolutely. If it's a continued observation from
15:58:04 25 the instructor that this individual's not grasping what

15:58:07 1 we're teaching, we're not going to hold the whole class
15:58:11 2 back up for those individuals who cannot perform their
15:58:14 3 essential functions. So those individuals would be
15:58:16 4 rotated and recycled back to a class that's maybe in their
15:58:21 5 second week and the class that they're currently in may be
15:58:24 6 in their fourth week. We recycle them back and then, they
15:58:27 7 start with that class at that week and if they continue to
15:58:31 8 have those difficulties, then at some point, we're going
15:58:33 9 to separate those individuals.

15:58:35 10 So for fiscal year 2023, we had little over 7,000
15:58:41 11 people, new cadets that have come in our training. We
15:58:44 12 graduated about 5,500. So we recycle and if those
15:58:47 13 individuals that cannot perform their central functions
15:58:52 14 and go through the training and be effective, then we'll
15:58:55 15 cycle those individuals out of our academies permanently.

15:58:59 16 Q. So all cadets that pass through the academy, they
15:59:02 17 have to be successful in order to actually pass through to
15:59:05 18 become officers?

15:59:06 19 A. That is correct. If they cannot perform their
15:59:08 20 essential functions or perform what we've asked them based
15:59:11 21 on numerous training hours with that individual, they do
15:59:14 22 not graduate.

15:59:19 23 Q. Now, you've been at TDCJ for many, many years. Have
15:59:26 24 you noticed any kind of change in culture regarding heat
15:59:28 25 in the time that you've been there?

15:59:29 1 A. Yes.

15:59:30 2 Q. Can you explain that?

15:59:32 3 A. Well, our mitigation efforts are nothing like they
15:59:36 4 were.

15:59:37 5 MR. HOMIAK: Objection, your Honor. Lack of
15:59:38 6 foundation.

15:59:39 7 THE COURT: Overruled. Go ahead.

15:59:42 8 A. Our mitigation efforts today and things that we're
15:59:45 9 doing today to mitigate extreme temperatures is nothing
15:59:48 10 like it was even 10 years ago or 15 years ago. When you
15:59:54 11 go into the number of effective measures that we've put in
15:59:58 12 place between, just start with respite area, the number of
16:00:05 13 air-conditioned beds that we've added in TDCJ, the cooling
16:00:09 14 towels, the water and the ice water, and all the housing
16:00:13 15 areas common areas, work areas, the cool showers, the cold
16:00:18 16 water showers for those individuals, air conditioning of
16:00:21 17 all of our transport vehicles to include vans and buses so
16:00:23 18 the inmates are transported in those cooler vehicles
16:00:28 19 versus back then when we didn't have that in our areas and
16:00:32 20 our buses.

16:00:34 21 The seasonal preparedness checklist that comes
16:00:38 22 out annually now, routine updating of 1064, it's every
16:00:47 23 evolving and we learn more and more each year and we
16:00:49 24 continue to add where we need to and make adjustments to
16:00:52 25 those things that we need to add to and make adjustments

16:00:55 1 to. Of course, you've heard a lot testimony about heat
16:01:00 2 score system that was not in place then. Cool beds that
16:01:05 3 are in place now, checking of temperatures where we need
16:01:09 4 to in those areas or those cool beds are at, where we go
16:01:15 5 and check temperatures in non-air-conditioned cells. So
16:01:19 6 there's a lot of things that have been put in place today
16:01:22 7 and ongoing. It's ever evolving that were not necessarily
16:01:27 8 in place 10, 15 years ago.

16:01:30 9 Q. Do you understand -- is TDCJ done as far as their
16:01:35 10 heat mitigation efforts or do those continue?

16:01:38 11 A. Oh, it's never done. It's ongoing.

16:01:40 12 Q. Thank you very much. Pass the witness at this time.

16:01:44 13 THE COURT: This will be a good time for our
16:01:46 14 afternoon break. Let's take a break and be ready to pick
16:01:50 15 up testimony at 4:15.

16:02:06 16 (Recess.)

16:17:41 17 THE COURT: Your witness, Mr. Homiak.

16:17:46 18 CROSS-EXAMINATION

16:17:47 19 BY MR. HOMIAK:

16:17:47 20 Q. Is it Director Ginsel?

16:17:50 21 A. Cody Ginsel.

16:17:51 22 Q. I will not refer to you by your first name in this
16:17:54 23 courtroom but I will go with Mr. Ginsel. How about that?

16:17:57 24 A. Yes, sir.

16:17:57 25 Q. So, Mr. Ginsel, my name is Kevin Homiak. I'm one of

16:18:01 1 the attorney that represent the plaintiffs in this case.

16:18:03 2 If I understood your testimony earlier correctly,

16:18:05 3 you became the director of correctional development for

16:18:10 4 TDCJ in July of 2023; is that right?

16:18:14 5 A. That's correct.

16:18:14 6 Q. And you served in that capacity since that time; is

16:18:17 7 that true?

16:18:18 8 A. That is correct.

16:18:18 9 Q. And in that capacity, I think you said that you

16:18:22 10 oversee six regional academies for TDCJ; is that right?

16:18:26 11 A. That would be correct.

16:18:27 12 Q. And is it fair to say that in that role, you either

16:18:31 13 personally train corrections officers or, at a minimum,

16:18:34 14 develop or approve the modules that are used to train

16:18:40 15 them?

16:18:40 16 A. Well, as I previously mentioned, I do oversee the

16:18:42 17 correctional training. The modules that were approved for

16:18:45 18 the training had already been approved prior to my coming

16:18:49 19 back to the state in July of 2023 so for the ones for this

16:18:54 20 fiscal year, yes, I have approved those.

16:18:58 21 Q. So fair to say that any training, let's say, with an

16:19:02 22 effective date of September 1st, 2023 is something you

16:19:05 23 would have reviewed and approved?

16:19:06 24 A. Those were already in place and approved, however, I

16:19:11 25 did review them. If there is changes that would be

16:19:13 1 needed, then obviously, we would make those changes.

16:19:15 2 Q. And I think the other part of my question was whether

16:19:18 3 I should ask it a little bit clearer is whether you

16:19:21 4 personally train corrections officers or it's just that

16:19:23 5 you oversee the folks who train them?

16:19:25 6 A. Sometimes I do. I'm in a lot of classrooms. I talk

16:19:28 7 to a lot of cadets on a regular basis, all of our

16:19:33 8 academies, our Unibase pre-service classes, as well as

16:19:37 9 routinely make those rounds and sometimes I will just

16:19:39 10 randomly go in and talk and teach school.

16:19:42 11 Q. And since you've started in that role in July of

16:19:44 12 2023, have you continued to communicate with folks who are

16:19:47 13 currently working in TDCJ facilities every day?

16:19:52 14 A. Not every day. It's not part of what I do, no.

16:19:56 15 Q. Is it fair to say that you continue to communicate in

16:20:01 16 some capacity with the folks who are working in TDCJ?

16:20:02 17 A. That's correct.

16:20:03 18 Q. Now, Mr. Collier's attorney asked you about

16:20:08 19 Defendants' Exhibit 13C. I want to ask you a couple of

16:20:11 20 questions about Defendants' Exhibit 13D if I can bring

16:20:15 21 that up. Mr. Ginsel, do you recognize this document as

16:20:28 22 another training lesson plan?

16:20:31 23 A. It is. It's from September 1, 2023. It's a Go Home

16:20:36 24 to Your Family and the training approval was Mr. Danny

16:20:39 25 Landrum, who's now currently my manager 3 who assists me

16:20:44 1 in overseeing all of the correctional academies and the 29
16:20:47 2 Unibase pre-service and inservice courses.

16:20:50 3 Q. Fair to say you're familiar with this lesson plan as
16:20:52 4 part of your role as director of correctional development?

16:20:56 5 A. Yes.

16:20:57 6 Q. Your Honor, at this time, I'd move to admit
16:21:00 7 Defendants' Exhibit 13D.

16:21:02 8 MS. MCGEE: No objection.

16:21:03 9 THE COURT: So admitted.

16:21:04 10 Q. (BY MR. HOMIAK) So, Mr. Ginsel, I think you just
16:21:07 11 mentioned a lesson title which is Go Home to Your Family;
16:21:11 12 is that right?

16:21:11 13 A. That is correct.

16:21:12 14 Q. And under performance objectives, the objectives
16:21:17 15 include upon completion of this module, participants will
16:21:21 16 be able to, one, identify the five leading causes of
16:21:26 17 serious employee injury and four leading causes of
16:21:29 18 in-the-line-of-duty TDCJ deaths. Have I read that
16:21:32 19 correctly?

16:21:33 20 A. Yes.

16:21:34 21 Q. And then, No. 2, the second performance objective is
16:21:38 22 discuss prevention strategies for causes of employee
16:21:42 23 injury and death. Have I read that correctly?

16:21:43 24 A. Correct.

16:21:44 25 Q. If we could flip to page 15, down on the bottom. So,

16:22:06 1 Mr. Ginsel, do you see where at the bottom of page 15, it
16:22:10 2 says heat exhaustion and it's bolded and then, beginning
16:22:16 3 of that paragraph says the fifth leading cause?

16:22:19 4 A. Yes.

16:22:20 5 Q. So if you could just read along silently as I read
16:22:24 6 out loud. The first sentence in that section says the
16:22:27 7 fifth leading cause of serious employee injury within the
16:22:30 8 TDCJ is heat-related illness. Have I read that correctly?

16:22:36 9 A. Yes.

16:22:38 10 Q. Is that consistent with your understanding in your
16:22:40 11 experience as the director of correctional development for
16:22:43 12 TDCJ?

16:22:46 13 A. I can tell you that how it affects or how it relates
16:22:53 14 to the current number of related injuries or illnesses for
16:22:58 15 TDCJ to have to go back and look to see if it's currently
16:23:01 16 fifth or if it's number one, or because we have trips and
16:23:05 17 falls, the inmate assaults, just regular injuries that
16:23:09 18 happen on a unit, you know, struck by a metal object, you
16:23:15 19 know, gates, things of that nature, so I'd have to go back
16:23:17 20 and look at that.

16:23:17 21 Q. Mr. Ginsel, do you have any reason to dispute what
16:23:20 22 this training module says which is that the fifth leading
16:23:24 23 cause of serious employee injury within the TDCJ is
16:23:26 24 heat-related illness?

16:23:27 25 A. Not until I go back and look and see the current

16:23:32 1 injury rates, no.

16:23:32 2 Q. So sitting here today, you have no reason to dispute
16:23:34 3 that fact?

16:23:35 4 A. No.

16:23:38 5 Q. And it says -- the next sentence says let's face it,
16:23:41 6 we live in Texas and for a good portion of the year, Texas
16:23:44 7 is hot. Have I read that correctly?

16:23:46 8 A. Yes.

16:23:46 9 Q. We don't have any control over the temperatures but
16:23:49 10 we do have control over how we treat our bodies during the
16:23:53 11 hot weather months. Do you see that?

16:23:55 12 A. I do.

16:23:55 13 Q. Next sentence says no one is immune from suffering a
16:23:59 14 heat-related illness from the fittest employee to those
16:24:02 15 who may be prone to medical conditions; is that right?

16:24:04 16 A. That's correct.

16:24:05 17 Q. The last sentence of that paragraph says everyone
16:24:08 18 should take extra care to ensure they adhere to all
16:24:12 19 precautions to prevent heat-related illness. Have I read
16:24:15 20 that correctly?

16:24:16 21 A. Yes, sir.

16:24:17 22 Q. If we could flip to the next page. Scroll down to
16:24:38 23 high-risk treatment and prevention. Sir, do you see the
16:24:48 24 first -- it's sort of the second section that says
16:24:51 25 high-risk treatment and prevention of heat-related

16:24:53 1 illness, do you see that section?

16:24:55 2 A. I do.

16:24:56 3 Q. Underneath that, it says high risks and the second

16:25:02 4 sub-bullet point is taking diuretics, psychiatric

16:25:08 5 medications and certain other medications such as steroids

16:25:13 6 that can cause allergic reactions when exposed to direct

16:25:16 7 sunlight. Do you see that?

16:25:17 8 A. I do.

16:25:18 9 Q. And then, after that, it says if you are on a

16:25:21 10 medication that could make you more susceptible to heat,

16:25:24 11 take precautions and listen to your body. Do you see

16:25:27 12 that?

16:25:27 13 A. I do.

16:25:27 14 Q. The next bullet point says identifies as a high risk

16:25:36 15 for heat-related illness the elderly and those with

16:25:39 16 heat-related conditions affected by elevated temperatures;

16:25:42 17 is that right?

16:25:43 18 A. I do.

16:25:44 19 Q. And then, the next sub-bullet point is elevated

16:25:47 20 temperature and high humidity conditions; is that right?

16:25:50 21 A. That's correct.

16:25:52 22 Q. And under treatment, it says the first -- the very

16:25:56 23 first bullet point is move person out of direct sunlight

16:26:01 24 into a cool area, air-conditioned environment, if

16:26:04 25 possible; is that right?

16:26:06 1 A. That is correct.

16:26:13 2 Q. And then, the very next page, if we can go to page 17

16:26:26 3 under respite areas, that sort of standalone paragraph

16:26:30 4 says heat-related illnesses preventable. Do you see that?

16:26:35 5 A. Where are you at?

16:26:37 6 Q. So it's a few lines above -- do you see where summary

16:26:41 7 is bolded, it says heat-related illnesses preventable? Do

16:26:45 8 you see that?

16:26:45 9 A. Okay.

16:26:46 10 Q. Do you agree with that?

16:26:48 11 A. If heat-related illness is preventable, I think

16:26:52 12 mitigation efforts taken properly and those individuals

16:26:56 13 are -- and we're talking about staff -- drink plenty of

16:27:01 14 water, then absolutely.

16:27:04 15 Q. So you agree heat-related illness is preventable,

16:27:07 16 right?

16:27:07 17 A. It can be preventable, yes.

16:27:09 18 Q. Have you personally given this training module?

16:27:11 19 A. I have not personally given this training module.

16:27:14 20 Q. Have you personally talked to -- in your role as

16:27:18 21 director of correctional development, have you personally

16:27:20 22 talked to any folks who are currently working at TDCJ,

16:27:24 23 let's say, this summer, current TDCJ staff about the

16:27:28 24 effects of the extreme heat on them?

16:27:32 25 A. I've talked to new cadets, I've talked to our

16:27:35 1 training instructors, I've talked to our training majors
16:27:38 2 in regards to heat awareness and preparation for heat
16:27:42 3 awareness to ensure that we're conducting our daily safety
16:27:46 4 briefings to ensure that they understand that our
16:27:48 5 mitigation efforts must be in place, that our individuals,
16:27:51 6 our cadets that are coming to our training and those
16:27:54 7 individuals are coming into our inservice classes are
16:27:56 8 taking those preventable mitigation measures prior to
16:27:59 9 coming and drinking water on a routine basis, or some type
16:28:03 10 of electrolyte.

16:28:05 11 You asked me if heat-related illness is
16:28:07 12 preventable, I said it could be preventable with those
16:28:11 13 mitigation efforts that are in place for our staff that
16:28:14 14 are in our training.

16:28:15 15 Q. Mr. Ginsel, that wasn't my question. My question was
16:28:18 16 whether you have talked to any current TDCJ staff folks
16:28:23 17 who are currently working in TDCJ facilities about the
16:28:25 18 effects of the heat on them. Do you understand that
16:28:28 19 question?

16:28:29 20 A. I do. Based on what you just rephrased it as, yes.

16:28:32 21 Q. Okay. So have you talked to any current TDCJ staff
16:28:35 22 folks who are currently working in TDCJ facilities about
16:28:38 23 the effects of the heat on them?

16:28:40 24 A. I can tell you is I walk facilities and our staff are
16:28:44 25 on their three-week experience phase. When I'm there, I'm

16:28:48 1 talking to the staff that are currently assigned and I'm
16:28:51 2 talking to our new cadets and I'm ensuring that -- asking
16:28:55 3 them: Are you drinking plenty of water? How are you
16:28:58 4 feeling? Are you taking proper steps to stay cool? Are
16:29:02 5 you using cool towels? Those types of questions if that's
16:29:07 6 what you're asking.

16:29:08 7 Q. My question was fairly simple which is whether you
16:29:10 8 have talked to folks who are currently working in TDCJ
16:29:13 9 facilities about the effects of the heat on them?

16:29:16 10 A. Well, I think I just answered that. I'm going to our
16:29:20 11 facilities and I'm talking to staff who are at the
16:29:22 12 facilities. I'm talking to correctional officers who are
16:29:26 13 working cell blocks, correctional officers who are working
16:29:28 14 rec yards. As I'm walking around and our staff are also
16:29:31 15 there, our new cadets are working with them and our
16:29:34 16 training instructors, I'm talking to those individuals
16:29:37 17 while I walk around if that's -- that answers your
16:29:41 18 question. Are you talking facilities as in facilities
16:29:43 19 division? Are you talking our facilities as unit general
16:29:48 20 basis?

16:29:51 21 Q. I think you've given a good overview of some of the
16:29:53 22 topics you've talked to them about. I'm wondering if
16:29:55 23 anyone says to you, any of the TDCJ staff that you've
16:29:58 24 talked to, let's just keep it focused to this summer, in
16:30:03 25 the -- how did you describe it? The experiential three

16:30:07 1 weeks?

16:30:07 2 A. Experience phase.

16:30:08 3 Q. So the experience phase when you're walking these
16:30:10 4 facilities, you're talking to them about what's going on,
16:30:12 5 what they're going through, do they ever complain to you
16:30:16 6 about the heat?

16:30:18 7 A. Do they complain?

16:30:19 8 Q. Yes.

16:30:20 9 A. Oh, I mean, they tell me sometimes it's warm in here
16:30:23 10 but we're managing.

16:30:25 11 Q. Do they ever complain to you about how heat makes
16:30:28 12 them feel?

16:30:29 13 A. I don't recall anybody complaining how it made them
16:30:31 14 feel.

16:30:32 15 Q. Do they ever complain to you about the heat making
16:30:34 16 them sick?

16:30:35 17 A. If somebody told me they were sick, I would have had
16:30:37 18 them medical relieved and taken to medical and I did not,
16:30:42 19 I have not done that because I have not had anybody report
16:30:45 20 that to me during my time walking around. I was just at
16:30:48 21 Estelle Unit last week, I believe last week, and I walked
16:30:53 22 all over that facility for four straight days and not one
16:30:58 23 individual said, I feel sick from the heat.

16:31:02 24 Q. Has anybody that you've talked to who's currently
16:31:06 25 working at that TDCJ facility this summer ever asked you

16:31:10 1 why it is that the facilities are not air conditioned?

16:31:13 2 A. No, sir, that did not come up.

16:31:16 3 Q. And when you train your cadets or when you just

16:31:21 4 talked to them informally before they go into TDCJ

16:31:24 5 facilities, do you tell them or are you aware of any of

16:31:27 6 the training modules in which they are taught that they

16:31:30 7 are going into facilities that are not fully air

16:31:33 8 conditioned?

16:31:33 9 A. Oh, we tell them that. Yes.

16:31:35 10 Q. You tell them you are going into facilities that are

16:31:38 11 not fully air conditioned?

16:31:38 12 A. We tell them. That's why we go over heat awareness

16:31:41 13 protocols and mitigation efforts with them on a regular

16:31:45 14 basis, some of our facilities are not fully air

16:31:47 15 conditioned. We take them on tours on facilities that are

16:31:49 16 not particularly air conditioned. Some may be partially

16:31:52 17 air, conditioned, some may be fully air conditioned around

16:31:55 18 the state. We go to those facilities, different ones, and

16:31:57 19 then, we go work part of the experience phase at different

16:32:01 20 facilities around the state. Some are air conditioned,

16:32:03 21 some are not air conditioned. And so, they experience

16:32:05 22 that before they actually graduate and we talk to them

16:32:08 23 about the mitigation efforts.

16:32:10 24 Q. So you tell them this because TDCJ has identified

16:32:16 25 that the fifth leading cause of serious employee injury

16:32:21 1 within TDCJ is heat-related illness. That's one of the
16:32:23 2 reasons why you tell the new cadets this, right?

16:32:25 3 A. We also tell them about slip strips and falls and
16:32:27 4 many other potential injuries or illnesses that you can
16:32:30 5 get within TDCJ.

16:32:32 6 Q. That wasn't my question. My question was one of the
16:32:34 7 reasons you tell new cadets this, about the fact that the
16:32:39 8 prisons are not fully air conditioned is that TDCJ has
16:32:42 9 identified that the fifth leading cause of serious
16:32:45 10 employee injury in TDCJ is heat-related illness, yes, or
16:32:52 11 no?

16:32:52 12 A. I mean, that's part of it, yes. We tell them it's a
16:32:56 13 potential risk of injury in heat illness, absolutely.

16:32:58 14 Q. Have any of the cadets that you've interacted with
16:33:01 15 ever asked you why it is that TDCJ's facilities are not
16:33:04 16 fully air conditioned?

16:33:05 17 A. I have not had one ask that question. I've had some
16:33:07 18 that ask is there a plan to air condition. I do remember
16:33:11 19 getting asked once.

16:33:13 20 Q. Have any of the cadets ever asked you how hot it gets
16:33:19 21 in the TDCJ facilities?

16:33:21 22 A. I don't recall being asked.

16:33:23 23 Q. And have you told them that at least in some
16:33:26 24 instances, temperatures in those facilities may exceed a
16:33:30 25 hundred, 110 degrees, 115 degrees heat index?

16:33:34 1 A. I have not personally told any of the cadets that. I
16:33:39 2 do know that we discussed that some of the units are --
16:33:45 3 because of the temperatures, there are extreme
16:33:48 4 temperatures in TDCJ as we discussed, 10.64. And we go
16:33:51 5 over, once again, those mitigation efforts and steps to
16:33:54 6 take within 1064 and the seasonal preparedness checklist.

16:33:59 7 Q. And so, is it fair to say that -- actually, let me go
16:34:14 8 back to page 16 on this. Sir, are you aware that in the
16:34:29 9 summer of 2022 and summer of 2023, roughly, 80 TDCJ staff
16:34:39 10 members filed workers' comp. claims based on injuries that
16:34:43 11 they suffered from heat?

16:34:45 12 A. I'm not aware but I'm not going to dispute it.

16:34:48 13 Q. You're not going to dispute it?

16:34:49 14 A. I'm not aware of that.

16:34:51 15 Q. Does that number surprise you?

16:34:53 16 A. That that number claiming or alleging that they had
16:34:57 17 some type of heat illness, is that what you're asking?

16:34:59 18 Q. Eighty workers' comp. claims from TDCJ employees for
16:35:04 19 heat-related illnesses in 2022 and 2023. Does that number
16:35:08 20 surprise you?

16:35:09 21 A. During the two summers, you know, we teach -- if
16:35:14 22 you're looking for a yes or no, I will just tell you that
16:35:16 23 we teach those individuals self ownership and to monitor
16:35:19 24 themselves and to make sure that before they come to shift
16:35:22 25 that they're hydrated and that they're prepared when they

16:35:26 1 come. If an individual, let's say they work second shift,
16:35:29 2 they come in at 2:00 in the afternoon, they've not
16:35:34 3 hydrated, they drink either soda or some type of Red Bull
16:35:37 4 or something of that nature, multiple before shift, and
16:35:40 5 they come in and they're not prepared and they have a heat
16:35:44 6 illness, you know, we try to educate them. And, you know,
16:35:46 7 we can't force them to do that prior to coming to shift
16:35:51 8 but we educate them. Here's the realities. If you don't,
16:35:53 9 you could potentially have a heat-related illness.

16:35:56 10 Q. Mr. Ginsel, do you remember my question?

16:36:00 11 A. I think you were looking for a yes or no.

16:36:01 12 Q. I was. Did you give me a yes or no answer?

16:36:04 13 A. Can you ask me again?

16:36:05 14 Q. So does that number surprise you that there were 80
16:36:10 15 workers' comp. claims from TDCJ employees from
16:36:12 16 heat-related illness that they experienced in summer of
16:36:15 17 '22 and '23? Does that number surprise you, yes or no?

16:36:20 18 A. I mean, I can just tell you it's not a yes or no
16:36:23 19 because, once again, I think if that individual's not
16:36:26 20 taking self ownership and not taking responsibility to
16:36:29 21 prepare and follow our mitigation purposes and they get a
16:36:33 22 heat illness and it's one of those 80 or if it's all of
16:36:37 23 those 80, I don't know that. I don't know what each
16:36:39 24 individual case is. You'd have to give me some foundation
16:36:43 25 on what those causes of those 80 are.

16:36:45 1 Are they taking medications? Are they taking
16:36:50 2 some type of -- you know, are they obese or they're
16:36:55 3 diabetic or some type of health condition that exacerbate
16:37:00 4 that? Our training is to educate those individuals on
16:37:09 5 self mitigation efforts to prepare prior to coming to work
16:37:13 6 and during while they're at work.

16:37:17 7 Q. Do you typically believe what your cadets and what
16:37:20 8 TDCJ staff members tell you? Is that your sort of
16:37:24 9 standard practice?

16:37:25 10 A. Well, sometimes on the new cadets, they don't always
16:37:28 11 see necessarily the big picture and they have a small view
16:37:31 12 of what we do at TDCJ and sometimes it just takes
16:37:35 13 explanation and education to explain to them okay, here's
16:37:37 14 the bigger picture, here's what you're not seeing. So
16:37:42 15 that's not also a yes or no. I would say it's more of us
16:37:45 16 as being mentors and coaches and instructing those
16:37:49 17 individuals, guiding them along so that they are educated
16:37:55 18 on what we do and how we do it.

16:37:56 19 Q. So if a TDCJ staff member said, I'm experiencing this
16:38:02 20 illness because of the heat, would you be inclined to
16:38:06 21 believe them when they say that?

16:38:08 22 A. If they said they're experiencing illness.

16:38:10 23 Q. Because of the heat?

16:38:11 24 A. Because of the heat.

16:38:12 25 Q. Would you be inclined to believe them?

16:38:13 1 A. I would.

16:38:15 2 Q. Now, does it concern you that in the last two summers
16:38:19 3 between 2022 and 2023, 80 TDCJ staff members filed
16:38:25 4 workers' comp. claims where they said, I'm experiencing
16:38:28 5 illness because of the heat, does that concern you, yes or
16:38:29 6 no?

16:38:29 7 A. Well, yes. I mean, you rephrased that different.
16:38:32 8 You said concern. It always concerns me anytime an
16:38:36 9 employee has any related illness or injury.

16:38:38 10 Q. And do you personally believe that air conditioning
16:38:41 11 all of TDCJ's facilities would reduce the risk of TDCJ
16:38:44 12 staff suffering heat-related injuries, yes or no?

16:38:48 13 A. I don't think that's a yes or no. I think, once
16:38:50 14 again, our mitigation factors and I think we're moving in
16:38:52 15 that direction to air condition as many beds as possible.
16:38:57 16 I think you heard testimony. And I remember providing
16:39:00 17 testimony for 32,000 beds at the time. Now we're at
16:39:04 18 46,000. We're soon to be at 60,000.

16:39:06 19 Q. So you can't tell me, yes or no, whether installing
16:39:10 20 air conditioning in all of TDCJ's facilities would reduce
16:39:12 21 the risk of heat-related injuries on your staff?

16:39:15 22 A. Oh, absolutely, it would reduce the risk if you're
16:39:18 23 talking about risk, yes.

16:39:20 24 Q. No further questions, your Honor.

16:39:22 25 THE COURT: Anything further?

16:39:24 1 MS. MCGEE: Just a few, your Honor.

16:39:25 2 RE-DIRECT EXAMINATION

16:39:25 3 BY MS. MCGEE:

16:39:31 4 Q. Mr. Ginsel, I understand that sometimes it's
16:39:35 5 difficult to answer questions, complicated questions with
16:39:39 6 a direct yes or no, but are there times where sometimes
16:39:43 7 officers have to do a job that is outside?

16:39:47 8 A. Yes.

16:39:48 9 Q. Outside where you can't air condition it?

16:39:51 10 A. That is correct.

16:39:52 11 Q. And do they have a uniform requirement of equipment
16:39:56 12 they have to wear at their job?

16:39:58 13 A. That's correct.

16:39:59 14 Q. What is that equipment that they have to wear?

16:40:02 15 A. Well, we make sure that they have a gray uniform,
16:40:08 16 gray and blue uniform, striped uniform. It's pants, a
16:40:11 17 full shirt. You know, they cannot strip down to shorts
16:40:14 18 and a T-shirt. They have to be fully uniformed and then,
16:40:19 19 if they're working in an area where they have to be --
16:40:24 20 let's say, a tactical response team or something of that
16:40:27 21 nature, then they have to put on a full mask or potential
16:40:31 22 helmet. And then, working an outside picket, they're
16:40:35 23 required to carry weapons with them outside if they're
16:40:37 24 working in what we consider to be patrol vehicle outside,
16:40:42 25 then they're routinely going around. So we relieve those

16:40:46 1 individuals based on the temperatures typically every two
16:40:50 2 hours. We relieve these individuals, bring them back in
16:40:54 3 and go from there.

16:40:56 4 Q. They have to wear like I don't know what you call
16:40:59 5 bulletproof vests or vests?

16:41:01 6 A. That's correct. The thrust vest is what we call
16:41:03 7 those. So we have staff not only in uniform but also in
16:41:06 8 thrust vests during that time, as well, which then you
16:41:11 9 know the thrust vests that are on top of the body and it
16:41:13 10 has a metal plate inside of it to prevent from being
16:41:16 11 struck with some type of edge weapon, you know, what we
16:41:21 12 call a shank, which would be a knife or some type of
16:41:24 13 penetrating object that would be used by the offender
16:41:27 14 population, inmate population to stab with.

16:41:30 15 Q. Do they have to wear like boots?

16:41:32 16 A. Boots or some type of protective gear on their feet
16:41:36 17 so that they're protected but also it's comfortable. So
16:41:40 18 y'all see a lot of times, we call magnum boots,
16:41:44 19 military-type boots, many of the staff wear those
16:41:46 20 military-type boots to ensure that they're protected and
16:41:51 21 it also supports their ankles while standing many times
16:41:54 22 during long periods of the day.

16:41:57 23 Q. Do the staff and officers have access to ice water
16:42:03 24 while they're on the shift?

16:42:04 25 A. They do.

16:42:05 1 Q. How about electrolytes?

16:42:07 2 A. They do.

16:42:07 3 Q. Do they have access to cooling towels?

16:42:09 4 A. They do.

16:42:10 5 Q. Do they have access going to respite, assuming like
16:42:14 6 nothing too exciting is happening at the moment?

16:42:16 7 A. That's correct. They do.

16:42:19 8 Q. To your knowledge, are officers a part of this
16:42:23 9 lawsuit?

16:42:25 10 A. Not to my knowledge.

16:42:27 11 Q. Thank you. No further questions.

16:42:31 12 MR. HOMIAK: No questions, your Honor.

16:42:32 13 THE COURT: Thank you, sir. You may step down.

16:42:34 14 THE WITNESS: Thank you, your Honor.

16:42:35 15 THE COURT: Next witness.

16:42:37 16 MR. RHINES: Defendants call Paul Morales.

16:43:03 17 THE COURT: Please raise your right hand.

16:43:06 18 THE CLERK: You do solemnly swear or affirm that
16:43:06 19 the testimony which you may give in the case now before
16:43:06 20 the Court shall be the truth, the whole truth, and nothing
16:43:11 21 but the truth?

16:43:11 22 THE WITNESS: I do.

16:43:13 23 PAUL MORALES, called by the Defendant, duly sworn.

16:43:13 24 DIRECT EXAMINATION

16:43:13 25 BY MR. RHINES:

16:43:21 1 Q. Good afternoon, Mr. Morales. Could you please state
16:43:24 2 your name for the record?

16:43:24 3 A. Paul Morales.

16:43:25 4 Q. Mr. Morales, could you briefly describe your
16:43:39 5 educational background?

16:43:39 6 A. I have a Master's Degree in Criminal Justice from
16:43:41 7 Southwest University.

16:43:43 8 Q. You have a bachelor's degree, as well?

16:43:45 9 A. Yes, sir.

16:43:46 10 Q. From where?

16:43:46 11 A. Same place.

16:43:47 12 Q. Who's your current employer?

16:43:51 13 A. TDCJ.

16:43:53 14 Q. And how long have you been at TDCJ?

16:43:55 15 A. Total, just short of 31 years.

16:43:59 16 Q. What do you mean by total?

16:44:00 17 A. Well, I actually retired in 2016 and came back in
16:44:04 18 '21.

16:44:05 19 Q. When did you start at TDCJ?

16:44:09 20 A. I started as a correctional officer in 1989.

16:44:13 21 Q. And how long were you a correctional officer?

16:44:15 22 A. Almost two years. I promoted up to sergeant in 1990
16:44:23 23 at a latter part of 1990 at the Price Daniel Unit in
16:44:28 24 Snyder, Texas.

16:44:28 25 Q. And how long were you a sergeant?

16:44:31 1 A. Two years.

16:44:33 2 Q. Were you promoted again?

16:44:34 3 A. Yes, sir.

16:44:37 4 Q. To save my asking too many questions, could you
16:44:42 5 briefly go through your career at TDCJ for the Court?

16:44:44 6 A. Sure. In '92, I promoted to lieutenant at the
16:44:46 7 McConnell Unit when that unit opened up. In 1994, I
16:44:52 8 promoted to captain back on the Price Daniel Unit. 1996,
16:44:57 9 I promoted to major at the Wallace Unit in Colorado City,
16:45:02 10 1999, I was appointed as assistant warden at the Lynaugh
16:45:06 11 Unit. I was transferred to the Connally Unit in 2002 as
16:45:14 12 assistant warden. 2003, I was appointed to senior warden
16:45:17 13 at the Segovia Unit in Edinburg, Texas. 2003, I was moved
16:45:24 14 to the Lynaugh Unit, N5 Unit in Fort Stockton, Texas.
16:45:30 15 2005, I was promoted to the McConnell Unit as senior
16:45:35 16 warden. And then, I was transferred in 2006 to the
16:45:40 17 Connally Unit. 2009, I made regional director in region
16:45:45 18 three. 2012, became the training director. 2013, I
16:45:54 19 became the -- or was selected as the deputy director at
16:45:58 20 the CID. And 2014, I was promoted to the director of
16:46:08 21 administrative review risk management and then, I retired
16:46:11 22 in 2016.

16:46:12 23 Q. And what's your current position?

16:46:14 24 A. I'm currently the manager over our counsel substitute
16:46:19 25 program under the umbrella of administrative review and

16:46:23 1 risk management.

16:46:25 2 Q. You testified just now that that was -- that you were
16:46:28 3 the director of that unit prior to retirement, right?

16:46:30 4 A. That's correct.

16:46:31 5 Q. What does the administrative review and risk
16:46:33 6 management division do?

16:46:35 7 A. Well, we provide oversight to the different
16:46:39 8 departments within our TDCJ facilities. There are five
16:46:43 9 departments that are assigned in our units and we help
16:46:48 10 mitigate risk and liability for the agency.

16:46:51 11 Q. Your Honor, given the witness' experience in
16:46:59 12 corrections and risk management, I'd like to offer him as
16:47:02 13 an expert in corrections and correctional risk management.

16:47:02 14 MS. SNEAD: No objection, your Honor.

16:47:02 15 THE COURT: So recognized. Thank you.

16:47:14 16 Q. (BY RHINES) I want to talk about the administrative
16:47:15 17 review and risk management division. You understand if I
16:47:17 18 say ARRM?

16:47:17 19 A. Yes, sir.

16:47:18 20 Q. That that's what I'm referring to. What is ARRM
16:47:24 21 primarily responsible for?

16:47:25 22 A. Within ARRM, there are several defendant departments
16:47:28 23 and I could go one-by-one if you wish.

16:47:31 24 Q. Just briefly, if you could.

16:47:33 25 A. Okay. Well, we have risk management, of course.

16:47:36 1 There are risk managers located on all our TDCJ
16:47:41 2 facilities. They -- obviously, they look for risks on the
16:47:43 3 unit. They send reports every month. They do the
16:47:48 4 training. And then, we have a monitor behavioral
16:47:54 5 intervention, which is our use of force. They monitor our
16:47:59 6 use of force by BIP plan, which is behavioral intervention
16:48:03 7 plan, they ensure that all reports are accurate and
16:48:09 8 submitted in a timely manner. We have our grievance
16:48:13 9 department step one, step two. We have access to courts.
16:48:18 10 We have the monitor and standards which is also -- they
16:48:23 11 oversee our pre-audits, our American Federation
16:48:28 12 Association accreditation audits, risk-based audits and
16:48:32 13 then, we have the counsel substitute program.

16:48:34 14 Q. So given that would it be fair to say that ARRM
16:48:39 15 basically acts as a somewhat independent oversight of the
16:48:45 16 entire system?

16:48:47 17 A. It's fair to say. I mean, we work -- we are part of
16:48:52 18 TDCJ but we do provide oversight.

16:48:55 19 Q. Were you present earlier in the courtroom today for
16:48:57 20 testimony of Mr. Lumpkin?

16:48:58 21 A. I was.

16:48:59 22 Q. Did you hear him talk about what were termed "heat
16:49:04 23 strike teams"?

16:49:05 24 A. I did.

16:49:05 25 Q. Could you briefly explain what heat strike teams are?

16:49:08 1 A. Heat strike teams were at the direction of Mr.
16:49:13 2 Collier, they began June 1 of 2024. They're a three-team
16:49:20 3 member made up of risk management, grievance and ACA. All
16:49:26 4 of those will be regional supervisors. There's two causes
16:49:32 5 that would initiate a strike, a heat strike team visit.
16:49:36 6 Those would be the heat range, as Mr. Lumpkin explained,
16:49:40 7 and we use a 1064 as a guide to schedule those -- the
16:49:47 8 temperature in those units and those locations are 105 or
16:49:51 9 more for three consecutive days or the heat index is 113
16:49:56 10 or more for three consecutive days, we'll schedule a heat
16:50:00 11 strike team visit. The other cause is, of course,
16:50:02 12 offender grievances. Grievances that have to do with ice
16:50:07 13 water, showers, respite and fans, those will be a reason
16:50:15 14 that a heat strike team visit would occur.

16:50:18 15 So those three members, they take the tool that
16:50:23 16 we have and they go throughout the facility, irregardless
16:50:26 17 of why the schedule or why the state visit was scheduled,
16:50:31 18 we are going to through an entire review of every area of
16:50:35 19 that facility.

16:50:36 20 Q. Is the individual facility or facility leadership
16:50:39 21 informed when a heat strike team makes a visit?

16:50:42 22 A. No, sir. They're unannounced.

16:50:44 23 Q. Why is that?

16:50:44 24 A. That way, we can go onsite and determine if we're
16:50:49 25 following our protocols without prior knowledge or prior

16:50:55 1 informing them that we are coming.

16:50:57 2 Q. Have you ever participated in one of these heat
16:51:00 3 strike teams?

16:51:01 4 A. I have.

16:51:03 5 Q. How many?

16:51:04 6 A. Two.

16:51:05 7 Q. And on these heat strike team visits, what happens?

16:51:10 8 A. Well, first thing we do when we get there as a team,
16:51:15 9 we'll go inform administration that we're there to perform
16:51:18 10 a strike or heat strike team visit. We're going to go
16:51:22 11 through the audit tool, the checklist, but we're also
16:51:24 12 going to talk to numerous offenders, numerous staff, we're
16:51:29 13 going to go to every housing location, every work
16:51:33 14 location. If inmates are working outside, we're going to
16:51:36 15 go visit that location, speak to the offenders or the
16:51:38 16 inmates, speak to the staff. We're going to make a total
16:51:45 17 look at that facility and every area and follow that
16:51:49 18 checklist, ensure that we're following our protocols.

16:51:53 19 Q. In your experience, about how long did these visits
16:51:55 20 take?

16:51:56 21 A. Well, if we're on a big unit like 2250 that was
16:52:00 22 mentioned earlier, one of the maximum security facilities,
16:52:02 23 it's going to take the majority of the day. A smaller
16:52:04 24 unit, we might do it between four to six hours.

16:52:07 25 Q. Are these heat strike team visits simply a matter of

16:52:12 1 just checking a box and moving on?

16:52:14 2 A. No, sir.

16:52:16 3 Q. Could you tell me a little bit more about why?

16:52:18 4 A. Well, we're going to ensure that we're following our
16:52:20 5 protocols. We're going to talk to the inmates. We're
16:52:23 6 going to talk with the staff. We're going to visibly look
16:52:29 7 inside all the coolers. We're going to go looking through
16:52:31 8 the service department, ensure that ice water's being
16:52:34 9 served at each meal. We're going to go and see if there's
16:52:38 10 abundance of ice. Most of our food service departments in
16:52:43 11 the event that an ice machine goes down, they store ice.
16:52:47 12 So we make sure that they're storing ice in the event that
16:52:50 13 an ice machine goes down so we could have ice to serve.

16:52:54 14 Q. What other things do you look for?

16:53:01 15 A. We look at respite. We look at making sure that the
16:53:04 16 officers know the protocols for an inmate to be able to go
16:53:08 17 to respite. We talk to inmates about respite. We walk
16:53:16 18 around, we made sure that if they're out working that they
16:53:20 19 are wearing proper PPE. We made sure that they're taking
16:53:26 20 breaks if they're on -- outside, working outside. Or we
16:53:28 21 ask the inmates how often they take a break, if they have
16:53:32 22 available drinking water, et cetera.

16:53:34 23 Q. Do you ever check for -- do you speak to TDCJ
16:53:44 24 employees and correctional officers about different
16:53:46 25 issues?

16:53:46 1 A. Yes, sir. We make sure that every employee as we
16:53:50 2 interact with that employee is carrying their information
16:53:52 3 card that has the heat identification, heat cramps, heat
16:53:58 4 exhaustion, we make sure they have that card with them.

16:54:01 5 Q. Could you just explain for the Court briefly what
16:54:04 6 that card is and why it's important?

16:54:06 7 A. Well, it's been testified to earlier, but in this
16:54:09 8 card, it has the symptoms of heat stress, heat cramps,
16:54:14 9 heat exhaustion, and then, it has the basic CPR to tend to
16:54:19 10 that inmate's for each one of those.

16:54:23 11 Q. And why is it important for each TDCJ employee to be
16:54:27 12 holding one of these cards?

16:54:28 13 A. So in the event of an inmate that just has the
16:54:32 14 symptoms of either one of those three, then they would be
16:54:34 15 able to better attend to that inmate, get him the proper
16:54:37 16 care.

16:54:38 17 Q. Are correctional officers required to carrier these
16:54:42 18 cards?

16:54:42 19 A. Yes.

16:54:45 20 Q. At the conclusion of a heat strike team visit, what
16:54:50 21 happens next? Is it just over?

16:54:52 22 A. Well, no, depending on if there are any findings.
16:54:57 23 Everyone generates their report, they submit it to the
16:54:59 24 deputy director of ARRM, they formulate a report, it's
16:55:07 25 shared with the executive administration, it's shared with

16:55:10 1 CID leadership. If any of those findings require a
16:55:15 2 corrective action, then they will provide a corrective
16:55:18 3 action.

16:55:19 4 If any time during our tour that we see a simple
16:55:25 5 fix -- for instance, we're walking around, we see that the
16:55:28 6 shower -- I shouldn't say simple -- we'll ask how long
16:55:39 7 that shower may be down, we'll go to each shower that's
16:55:44 8 operational and check that it's cool to the touch. We'll
16:55:48 9 ensure that if the ice buckets are not filled, we'll make
16:55:54 10 sure that they get filled, et cetera. So there's some
16:55:56 11 corrective action we can take immediately to ensure that
16:56:02 12 it's also done, but we'll also share that information with
16:56:04 13 the unit administration as we leave for day.

16:56:09 14 Q. Next, I'm going to show you a document that we have
16:56:12 15 as Defendants' Exhibit 10. Mr. Morales, do you recognize
16:56:42 16 this exhibit?

16:56:44 17 A. That's a report that was generated after the Estelle
16:56:49 18 Unit visit.

16:56:50 19 Q. Do you recognize this document?

16:57:29 20 A. Yes, I do.

16:57:30 21 Q. Have you had the chance to review it?

16:57:32 22 A. I have read some of those. I have not reviewed it
16:57:36 23 all.

16:57:37 24 Q. To the best your knowledge, what is this document?

16:57:40 25 A. Well, that's the document that is submitted to the

16:57:43 1 leadership, as I mentioned earlier, identifies the members
16:57:47 2 of the strike team, identifies the date that the site
16:57:52 3 visit was conducted. It will identify how many inmates
16:57:59 4 they may have talked to, the staff they talked to. It
16:58:02 5 will identify any findings that they may have had during
16:58:05 6 their visit. It will also include the things that -- the
16:58:11 7 protocols that were being followed according to the AD
16:58:15 8 1064. And then, it will at the end conclude whether they
16:58:21 9 were complying or not complying.

16:58:24 10 Q. And does this document notate multiple strike team
16:58:29 11 visits?

16:58:29 12 A. Yes.

16:58:30 13 Q. Your Honor, I'd move to enter into evidence Exhibit
16:58:34 14 10.

16:58:38 15 THE COURT: So admitted.

16:58:41 16 Q. (BY MR. RHINES) Mr. Morales, you talked if there was
16:58:44 17 a quicker fix like no ice in a particular cooler, you said
16:58:48 18 that that was something that could be dealt with while the
16:58:51 19 strike steam was onsite, right?

16:58:52 20 A. Yes, sir.

16:58:53 21 Q. What would happen if there was a larger issue that
16:59:00 22 was notated by the heat strike team?

16:59:02 23 A. Well, if it was something that was going to need
16:59:05 24 attention, facility's attention, maintenance attention, we
16:59:08 25 would obviously check to make sure there was a work order

16:59:11 1 done, that how long it's been done, had it been reported,
16:59:16 2 what is the approximate fix of that shower, et cetera, and
16:59:23 3 modify -- make sure that everyone is aware that that
16:59:28 4 shower is done. I mean, that's...

16:59:32 5 Q. So -- and I guess I wasn't clear. If there was
16:59:35 6 something more pervasive or something more systemic than
16:59:41 7 simply than a broken shower, what would the response of
16:59:45 8 the strike team be?

16:59:45 9 A. I'm not sure I understand your question.

16:59:48 10 Q. So, for example, if you notated an issue -- and this
16:59:51 11 is a pure hypothetical. If you notated an issue where
16:59:55 12 guards were not consistently bringing inmates to respite
16:59:59 13 when requested, what would be the corrective action, if
17:00:04 14 any, that the heat strike team would take or recommend?

17:00:07 15 A. Well, obviously, we would discuss that with the
17:00:10 16 administration. We know that there are challenges,
17:00:15 17 depending on where the respite area is located, whether
17:00:21 18 restrictive housing or general population, we would notify
17:00:24 19 the unit administration of our findings. But we know that
17:00:33 20 -- you know, there are things that happen during the
17:00:35 21 course of a day that prevent or prohibit immediate respite
17:00:42 22 for some inmates compared to others and so, we know that
17:00:49 23 -- we tell the inmates that we will get to them as soon as
17:00:52 24 we can.

17:00:56 25 Q. If a more systemic problem was noted, would that be

17:00:59 1 elevated to senior leadership at TDCJ?

17:01:01 2 A. Yes. Absolutely.

17:01:07 3 Q. I have no more questions, your Honor. I pass the
17:01:09 4 witness.

17:01:36 5 CROSS-EXAMINATION

17:01:46 6 BY MS. SNEAD:

17:01:46 7 Q. Hello, Mr. Morales. My name is Lisa Snead. I'm one
17:01:51 8 of the attorneys representing Mr. Tiede and the other
17:01:53 9 plaintiffs in this case.

17:02:06 10 So the ARRM, am I getting that acronym correct?

17:02:12 11 A. Yes.

17:02:13 12 Q. The ARRM division reports aggregate information about
17:02:16 13 grievances to executive leadership within TDCJ, correct?

17:02:20 14 A. That is correct.

17:02:21 15 Q. And the ARRM reports how many heat-related grievances
17:02:28 16 there have been to the executive director's office every
17:02:31 17 single month, correct?

17:02:32 18 A. There is a report generated, yes.

17:02:35 19 Q. Is that report broken down by facility or is that
17:02:38 20 just generally aggregate leadership hears the number of
17:02:43 21 grievances?

17:02:44 22 A. It's broken down several different ways through -- by
17:02:47 23 the code, whatever that code may have been for that
17:02:49 24 grievance, and then, the code is identified in the index,
17:02:57 25 and then, it's broken down by each individual unit.

17:02:59 1 Q. And just to clarify, I think sometimes we're using
17:03:02 2 unit to talk about all of McConnell, but then, sometimes
17:03:07 3 we're using unit to say this one building. So when you
17:03:09 4 say broken down by unit, do you mean facility or actually
17:03:13 5 like building cell block?

17:03:14 6 A. The whole facility.

17:03:15 7 Q. Okay. Thank you. And so, the ARRM division also
17:03:23 8 reports heat-related illnesses and deaths to executive
17:03:28 9 leadership within TDCJ, correct?

17:03:33 10 A. No.

17:03:34 11 Q. So you're only tracking grievances not heat-related
17:03:37 12 illnesses and deaths?

17:03:43 13 A. That's correct.

17:03:44 14 Q. So, Mr. Morales, this is the Texas Department of
17:04:18 15 Criminal Justice Monitoring of Temperature and
17:04:19 16 Temperature-Related Deaths Fiscal Year 2023 report. Were
17:04:23 17 you aware generally that TDCJ is required to report all
17:04:28 18 step one grievances step two grievances about heat,
17:04:31 19 heat-related injuries, and heat-related deaths to the
17:04:33 20 Texas legislature?

17:04:34 21 A. Sure, yes.

17:04:36 22 Q. This would appear to be the 2023 report, correct?

17:04:40 23 A. It appears to be, yes.

17:04:42 24 Q. And just to clarify for the Court, fiscal year 2023
17:04:46 25 ended on August 31st, 2023, correct?

17:04:51 1 A. Yes.

17:04:52 2 Q. So this is the entire fiscal year in this report even
17:04:55 3 though it came out in December?

17:04:56 4 A. I believe it is.

17:04:57 5 Q. All right. Can we go to page 4, please. And so,
17:05:13 6 TDCJ reported to the legislature that step one grievances
17:05:19 7 alone related to heat, there were 5,202 last summer,
17:05:25 8 correct?

17:05:27 9 A. According to this, yes.

17:05:29 10 Q. Would you expect the Texas Department of Criminal
17:05:31 11 Justice to report accurate information to the Texas
17:05:33 12 legislature?

17:05:35 13 A. Yes.

17:05:36 14 Q. It would be a pretty big problem if they didn't
17:05:38 15 report accurate information, correct?

17:05:39 16 A. That's correct.

17:05:42 17 Q. And so, those 5,202 grievances, did this data come
17:05:48 18 from your department, the ARRM division?

17:05:50 19 A. Well, if the step one and two step grievances -- that
17:05:55 20 information would have been submitted to executive
17:05:57 21 services and then, they reported this right here.

17:06:03 22 Q. So can you explain to me, does ARRM do anything with
17:06:08 23 these grievances?

17:06:11 24 A. Well, that's our way of knowing or tracking the
17:06:16 25 grievances throughout the agency and then, that's how we

17:06:20 1 track. The information on the grievances that are
17:06:23 2 displayed to the executive services is what we have as far
17:06:27 3 as what's being reported to our grievance department.
17:06:29 4 Yes.
17:06:30 5 Q. Okay. So -- and I'm just trying to make sure I'm
17:06:33 6 following you.
17:06:33 7 A. Yes.
17:06:34 8 Q. The grievances are coming to ARRM, ARRM is passing
17:06:39 9 that data to executive services, and they are the ones who
17:06:41 10 hand the reporting to the legislature?
17:06:42 11 A. Yes.
17:06:43 12 Q. Okay. Would you agree with me that heat-related
17:06:55 13 complaints or complaints about temperature, generally
17:07:00 14 medical heat restrictions, fans, air conditioning, these
17:07:02 15 heat-related complaints spiked substantially in June and
17:07:07 16 July and August, correct?
17:07:09 17 A. According to this report, yes, that's true.
17:07:11 18 Q. And again, you told me that TDCJ reports accurate
17:07:14 19 information to the legislature so grievances spiked in the
17:07:18 20 summer, right?
17:07:19 21 A. Yes.
17:07:20 22 Q. Probably pretty obvious. And then, step two
17:07:24 23 grievances, TDCJ in fiscal year 2023 alone had 609 step
17:07:31 24 two grievances related to temperature, right?
17:07:35 25 A. Yes, according to this document, yes.

17:07:38 1 Q. And TDCJ was doing strike teams in the summer of
17:07:44 2 2023, correct?

17:07:45 3 A. No.

17:07:46 4 Q. That's new this year?

17:07:47 5 A. June 1, 2024.

17:07:57 6 Q. So in terms of these grievances, you know that
17:08:02 7 temperatures are routinely in the 90s and hundreds inside
17:08:06 8 the prisons, correct, prisons without air conditioning, I
17:08:08 9 should say in the summer?

17:08:13 10 A. Rephrase the question, please.

17:08:14 11 Q. Sure. So you have 5,811 grievances between step one
17:08:23 12 and step two about heat, especially in the summer, and you
17:08:28 13 know the temperatures inside cells in un-air conditioned
17:08:30 14 facilities are routinely in the 90s and hundreds inside of
17:08:34 15 the prison, correct?

17:08:37 16 A. I mean, that's a fair question or a fair assumption
17:08:41 17 that that's what it is, yes.

17:08:44 18 Q. And you know that high temperatures place inmates and
17:08:48 19 officers at risk of harm, don't you?

17:08:56 20 A. That's a fair question, yeah.

17:08:59 21 Q. Well, it's a fair question which is why I'm asking
17:09:02 22 you.

17:09:02 23 A. Yes.

17:09:03 24 Q. Yes was your answer to my question. Employees --
17:09:18 25 you're aware also that employees routinely make workers'

17:09:20 1 compensation claims for heat-related injuries they suffer
17:09:24 2 while on the job, right? I believe we saw some of them
17:09:27 3 earlier today?

17:09:28 4 A. I saw.

17:09:29 5 Q. Is that the first time you learned that employees
17:09:32 6 make workers' compensation claims for heat-related
17:09:34 7 injuries?

17:09:34 8 A. Well, no, I mean, it's not the first time. I've been
17:09:37 9 aware of that. No.

17:09:42 10 Q. Do you agree as the -- I believe I've seen you in the
17:09:48 11 courtroom every day since Tuesday; is that right? You've
17:09:52 12 generally heard testimony?

17:09:53 13 A. I have.

17:09:53 14 Q. Okay. Do you agree as the medical providers have
17:09:57 15 testified to that air conditioning units would eliminate
17:10:01 16 the risk of injury from the heat?

17:10:04 17 MR. RHINES: Objection, your Honor. She's asking
17:10:05 18 for a medical opinion. He's not a medical expert.

17:10:07 19 THE COURT: I'll allow the question.

17:10:11 20 Q. (BY MS. SNEAD) Do you need me to repeat it?

17:10:13 21 A. Yes.

17:10:13 22 Q. So do you agree as the medical providers have
17:10:16 23 testified to while you've been here in the courtroom that
17:10:19 24 air conditioning units would eliminate the risk of injury
17:10:21 25 from the heat indoors?

17:10:22 1 A. Eliminate?

17:10:24 2 Q. Yes.

17:10:25 3 A. I would say that it would certainly help. I don't

17:10:28 4 know that it would eliminate heat-related illness.

17:10:31 5 Q. I appreciate absolutes. Would you agree as the

17:10:35 6 medical providers have testified to that air conditioning

17:10:39 7 units would almost completely eliminate the risk of injury

17:10:44 8 from the heat?

17:10:45 9 A. Not knowing --

17:10:46 10 MR. RHINES: Same objection, your Honor.

17:10:47 11 THE COURT: Overruled.

17:10:49 12 A. Not knowing the condition of the inmate or the causes

17:10:51 13 of what may lead to -- I'm sure heat can be labeled as a

17:10:58 14 contributing factor but I don't know that that would be

17:11:01 15 the cause factor completely as you've stated.

17:11:15 16 Q. (BY MS. SNEAD) I'm trying to think -- I'm trying to

17:11:19 17 identify what question you think I asked to get that

17:11:23 18 response. So you have heard the medical providers

17:11:26 19 testify?

17:11:27 20 A. I did hear it.

17:11:28 21 Q. That air conditioning units would eliminate the risk

17:11:31 22 of inmates suffering heat-related injuries inside of the

17:11:35 23 Texas prisons. You recall that testimony, correct?

17:11:37 24 A. Yes, that's what they said, yes.

17:11:40 25 Q. Do you agree with those medical providers?

17:11:43 1 MR. RHINES: Objection, your Honor. Asked and
17:11:45 2 answered. At this point, she's asked it three separate
17:11:47 3 times.

17:11:48 4 THE COURT: I'll allow one more time.

17:11:50 5 Q. (BY MS. SNEAD) All right. So you just agreed you've
17:11:54 6 heard medical providers testify that air conditioning
17:11:57 7 units would eliminate the risk of injury from the heat
17:11:58 8 indoors in the TDCJ prisons. Do you agree that that's
17:12:03 9 true, that as medical providers have testified, air
17:12:08 10 conditioning units would eliminate the risk of injury from
17:12:11 11 the heat?

17:12:24 12 A. Yes. I mean, I would agree with that.

17:12:35 13 Q. This has already been admitted into evidence. So,
17:12:41 14 Mr. Morales, this was a study that was conducted by the
17:12:48 15 Hazard Reduction and Recovery Center out of Texas A & M by
17:12:53 16 Dr. Carlee Purdum and some other folks whose names are
17:12:56 17 underneath, Amite Dominick, Benika Dixon, published in
17:13:02 18 July of 2022. Have you ever seen this report?

17:13:04 19 A. I have not.

17:13:05 20 Q. So you're in charge of the ARRM division which gets
17:13:10 21 information about grievance, heat-related grievances and
17:13:16 22 no one has ever made you aware of a report by TDCJ prisons
17:13:21 23 that said that 60 percent of inmate surveys reported
17:13:25 24 wellness checks weren't done?

17:13:27 25 MR. RHINES: Object to foundation, your Honor.

17:13:29 1 THE COURT: Object to what?

17:13:31 2 MR. RHINES: Lack of foundation.

17:13:32 3 THE COURT: I'll allow the question.

17:13:35 4 A. I was not -- I haven't been the director since 2016
17:13:40 5 so this report came after that.

17:13:44 6 Q. (BY MS. SNEAD) And I apologize because I'll admit, I
17:13:49 7 was tracking you from McConnell, Daniel Wallace, Connally,
17:13:54 8 Segovia, Connally and, then, I lost you more recently. So
17:13:56 9 can you tell me directly, you left in 2016?

17:13:59 10 A. I did.

17:14:00 11 Q. You came back and you're doing what exactly now?

17:14:03 12 A. I am the manager over the counsel substitute program.

17:14:08 13 Q. And what is the counsel substitute program?

17:14:11 14 A. We are the department that provides advocacy for the
17:14:14 15 inmate during the major disciplinary process, major
17:14:18 16 disciplinary. We have staff onsite that will service the
17:14:22 17 inmate, informing them that they have received a major
17:14:25 18 disciplinary case and then, they will be advocates for
17:14:27 19 that inmate during the process to ensure that their due
17:14:30 20 process is adhered to.

17:14:31 21 Q. Okay. So have you had inmates get disciplinary
17:14:35 22 charges? Is that --

17:14:36 23 A. Major disciplinary offense.

17:14:40 24 Q. A charge, an event. Is that the word you used?

17:14:42 25 A. Offense.

17:14:43 1 Q. Offense. Thank you. Have you had inmates get major
17:14:50 2 discipline offenses related to, for example, starting a
17:14:53 3 fire in their unit during the summer?

17:14:57 4 A. I don't know that specifically. I mean, I don't know
17:15:01 5 that to be...

17:15:02 6 Q. You don't know whether it's true or not?

17:15:03 7 A. No.

17:15:04 8 Q. Okay. So I understand you haven't been the risk
17:15:08 9 manager or the ARRM division head since 2016, but if while
17:15:14 10 you were the division head, a report came out where
17:15:21 11 inmates were surveyed and were reporting that 60 percent
17:15:27 12 -- or 60 percent of inmates surveyed were reporting
17:15:31 13 wellness checks not done, that will be pretty alarming to
17:15:34 14 you, wouldn't it?

17:15:36 15 A. Well sure.

17:15:39 16 Q. Don't you think that any reasonable person in your
17:15:42 17 position, or the position you held, or in Mr. Collier's
17:15:46 18 position would have looked into that?

17:15:48 19 A. We do.

17:15:50 20 Q. So you think TDCJ had looked into 60 percent of
17:15:56 21 inmates surveyed said wellness checks weren't done?

17:15:59 22 A. If that was brought to the attention, we would look
17:16:01 23 to see what the cause may be and investigate that.

17:16:05 24 Q. And that's what any reasonable person in the position
17:16:08 25 of the ARRM division director or Mr. Collier's position

17:16:12 1 would do, right?

17:16:13 2 A. Yes.

17:16:15 3 Q. And so, similarly, if a report came out where 43
17:16:21 4 percent of inmates surveyed reported that they had a
17:16:25 5 health crisis disregarded, my God, that's a pretty
17:16:28 6 concerning number, wouldn't it be?

17:16:30 7 MR. RHINES: Objection, your Honor. She's basing
17:16:32 8 all of that on a document that is rife with hearsay.

17:16:37 9 MS. SNEAD: And I'm not offering it as proof of
17:16:40 10 the matter asserted. I'm asking if you got a report that
17:16:42 11 said this, what would you do?

17:16:44 12 THE COURT: I'll allow the question.

17:16:46 13 Q. (BY MS. SNEAD) So, Mr. Morales, I'll ask it again.
17:16:47 14 When you were the ARRM division director, if you had
17:16:51 15 gotten a report out of Texas A & M that said that 43
17:16:56 16 percent of TDCJ inmates surveyed had a health crisis
17:17:00 17 disregard, that's alarming, right?

17:17:04 18 A. Well, I would look at the report, sure.

17:17:06 19 Q. You would need to actually follow up to see why this
17:17:11 20 report indicated that 43 percent of inmates surveyed were
17:17:15 21 reporting their health crisis was disregarded, right?

17:17:18 22 A. I would look at the validity of the report. I would
17:17:21 23 look at the totality of the report, the sources, all that,
17:17:24 24 that there was a concern that we needed to look into,
17:17:27 25 obviously, we would look into it.

17:17:38 1 Q. And so, what I believe you were just saying is you
17:17:43 2 would look to see what the source of the 43 percent was,
17:17:48 3 like why does the report say that. You would investigate
17:17:51 4 to see if the source was reliable, whether Texas A&M is
17:17:54 5 reliable, I suppose, right?

17:17:55 6 A. Sure.

17:17:56 7 Q. And again, that's what any reasonable person in the
17:18:00 8 position of the ARRM division director or Mr. Collier's
17:18:04 9 position would do in response to hearing something like 43
17:18:09 10 percent of inmates surveyed had a health crisis
17:18:12 11 disregarded. Any reasonable person in your position would
17:18:15 12 have looked into that, correct?

17:18:17 13 A. Yes.

17:18:36 14 Q. If you got a report where two-thirds of inmates
17:18:41 15 surveyed had no access to cool down, extra showers, again,
17:18:49 16 you would look into that, right? I mean, that's
17:18:52 17 concerning. If you as the ARRM division director, if you
17:18:58 18 had received this, or received any report that said two
17:19:01 19 thirds of inmates surveyed had no access to cool down,
17:19:05 20 extra showers?

17:19:06 21 A. Within my purview, absolutely, I would look into what
17:19:10 22 I could do to help mitigate that, yes.

17:19:13 23 Q. And if Mr. Collier got a report that indicated that,
17:19:17 24 you would expect him to look into it, or director or
17:19:22 25 someone like yourself to look into that, wouldn't you?

17:19:26 1 MR. RHINES: Objection. Calls for specification.

17:19:27 2 THE COURT: I'll allow the question.

17:19:29 3 MS. SNEAD: I'm sorry, Judge, I didn't hear you.

17:19:31 4 THE COURT: I'll allow the question.

17:19:32 5 Q. (BY MS. SNEAD) Thank you.

17:19:34 6 A. Please repeat it.

17:19:45 7 Q. So you would expect either in your current position

17:19:49 8 or when you were the ARRM division director that if Mr.

17:19:53 9 Collier were made aware of a report out of Texas A & M

17:19:57 10 that said that two thirds of inmates surveyed had no

17:20:01 11 access to cool down, extra showers, you would expect Mr.

17:20:07 12 Collier to look into that, right, to direct you maybe as

17:20:10 13 the ARRM division director to look into it or whichever

17:20:14 14 position would be most appropriate for that?

17:20:19 15 A. Of course. I mean, I'm sure that's what he does.

17:20:21 16 Q. That's what any reasonable person would do if you're

17:20:25 17 hearing that two-thirds of inmates who were surveyed are

17:20:30 18 saying there's no cool down, extra showers, right? I

17:20:33 19 mean, you've been in the courtroom, you've heard

17:20:35 20 testimony, I think a lot of it, from your colleagues

17:20:37 21 talking about how important showers are, but goodness,

17:20:40 22 two-thirds of inmates surveyed are saying they have no

17:20:43 23 access. You'd look into that, right?

17:20:52 24 If we can open Plaintiffs' Exhibit 265. So, Mr.

17:21:09 25 Morales, you just -- I'll give you a minute to look at it.

17:21:40 1 Now, you indicated in response to a question I just asked
17:21:42 2 about if Mr. Collier were made aware of this report, what
17:21:45 3 you would have expected him to respond. So I'll submit to
17:21:48 4 you that this e-mail, Plaintiffs' Exhibit 265 -- you can
17:21:52 5 scroll up to the top, Paul -- is an e-mail to Mr. Collier
17:22:04 6 and some of his staff where the 7-11-22 Texas A & M
17:22:10 7 University report is an attached document. And this is --
17:22:27 8 they've misspelled Dr. Purdum but Dr. Purdum there --
17:22:31 9 they're sending on her materials from when Mr. Collier
17:22:34 10 spoke at the House of Appropriations Committee meeting on
17:22:37 11 July 12th, 2022.

17:22:39 12 So this e-mail is Dr. Purdum -- Dr. Purdum sent
17:22:46 13 it to, I believe, some staff and then, Ms. Blifford
17:22:57 14 forwarded it to Mr. Collier. Do you see that?

17:23:01 15 A. I see from Norman Garza to Ms. Blifford and then, to
17:23:06 16 Mr. Collier and some others.

17:23:08 17 Q. Yes. So the top, yes. I didn't mean to suggest this
17:23:11 18 was a single e-mail. The top is Ms. Blifford sending this
17:23:14 19 Texas A & M attachment to Mr. Collier on July 11th, 2022,
17:23:20 20 right?

17:23:20 21 A. Yes.

17:23:20 22 Q. Your Honor, I'd move to admit Plaintiffs' Exhibit
17:23:24 23 265.

17:23:24 24 MR. RHINES: I object, your Honor. She's laid no
17:23:27 25 foundation. Mr. Morales has no knowledge of any of this.

17:23:30 1 Admitting it, I think, would be improper. It's also
17:23:33 2 hearsay for what it's worth.

17:23:39 3 MS. SNEAD: I don't believe it's hearsay since
17:23:44 4 I'm not -- I mean, we can scroll and look at what the rest
17:23:47 5 of the e-mail says. But I'm not trying to necessarily
17:23:49 6 assert anything other than this is an e-mail from Kate
17:23:52 7 Blifford to Mr. Collier from Texas A & M.

17:23:56 8 THE COURT: Right, but he can't say what it is or
17:23:58 9 where it came from.

17:24:00 10 MS. SNEAD: That's fine.

17:24:01 11 THE COURT: Sustained.

17:24:02 12 Q. (BY MS. SNEAD) So this is the -- I believe, the
17:24:24 13 strike team report that you were just discussing with your
17:24:28 14 attorney right before he passed the witness and this was
17:24:33 15 -- did you say this was the Estelle Unit in June of 2024?
17:24:35 16 Is that right?

17:24:36 17 A. June 7, 2024.

17:24:42 18 Q. Okay. Do you happen to know on the Estelle Unit, is
17:24:46 19 the C2 unit one of the ones that's air conditioned?

17:24:50 20 A. I do not.

17:24:51 21 Q. You don't know?

17:24:52 22 A. I don't know.

17:24:56 23 Q. So do you see where it says about the middle of the
17:24:58 24 screen, C2 day room?

17:25:00 25 A. Yes.

17:25:02 1 Q. So the air conditioner blower wasn't working when you
17:25:06 2 went on June 7th, right?

17:25:07 3 A. I didn't go.

17:25:08 4 Q. Sorry. When the strike team went on June 7th, the
17:25:13 5 day room blower wasn't working according to this, correct?

17:25:15 6 A. According to that report, yes.

17:25:17 7 Q. What is an MWR number?

17:25:21 8 A. That's a major work request.

17:25:24 9 Q. So if something's broken at a TDCJ unit, someone has
17:25:27 10 to put in a work order, has to get approved, goes up the
17:25:30 11 chain?

17:25:30 12 A. Yes.

17:25:31 13 Q. Okay. So the work order to replace this broken air
17:25:35 14 conditioner part was submitted on April 18th of 2024,
17:25:39 15 right?

17:25:40 16 A. Yes.

17:25:41 17 Q. No one approved that request until May 9, 2024,
17:25:45 18 right?

17:25:49 19 A. According to this, yes.

17:25:50 20 Q. And as of June 7th, that air conditioning still
17:25:54 21 wasn't working, right? Well, the blower still wasn't
17:25:59 22 working, correct?

17:26:00 23 A. Yes.

17:26:03 24 Q. Do you think the temperature went up between April
17:26:07 25 2024 and June 2024?

17:26:08 1 A. I think it went up?

17:26:11 2 Q. I'm submitting or I'm asking you, do you think in the
17:26:15 3 Estelle Unit, it was hotter on June 7, 2024 when the air
17:26:18 4 conditioner was broken than it was on April 18, 2024 when
17:26:22 5 it was broken?

17:26:23 6 MR. RHINES: Object, your Honor. You're asking
17:26:25 7 for -- a lack of person knowledge. He already testified
17:26:30 8 that he was not at the unit where the heat strike team --
17:26:33 9 for this particular heat strike team so he can't testify
17:26:35 10 as to whether it was hotter in this particular unit at any
17:26:39 11 particular day.

17:26:39 12 MS. SNEAD: And I'll clarify that. I'm just
17:26:42 13 asking if it's hotter in whatever city the Estelle Unit is
17:26:45 14 located in in June than it is in April. I'm not even --
17:26:49 15 I'm not talking about the temperature in the C2 day room.

17:26:52 16 THE COURT: You can ask him for his experience.

17:26:54 17 Q. (BY MS. SNEAD) Sure. Where is the Estelle Unit
17:26:57 18 located?

17:26:58 19 A. It's in Huntsville or outside of Huntsville.

17:27:01 20 Q. And you've been to Huntsville, right?

17:27:03 21 A. I currently live in Huntsville.

17:27:06 22 Q. So would you agree with me it's hotter in June in
17:27:08 23 Huntsville than it is in April, generally speaking?

17:27:11 24 A. Generally speaking, yes.

17:27:17 25 Q. Pass the witness.

RE-DIRECT EXAMINATION

17:27:25

1

17:27:29

2

BY MR. RHINES:

17:27:29

3

Q. Just a few clarifications on redirect, your Honor.

17:27:37

4

Mr. Morales, you testified that you've been on two strike team visits, right?

17:27:40

5

17:27:42

6

A. That's correct.

17:27:42

7

Q. When was the first one, do you remember,

17:27:45

8

approximately?

17:27:46

9

A. It was latter part of June. It was on the Polunsky Unit.

17:27:53

10

17:27:53

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Q. Latter part of June of this year?

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A. Yes.

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Q. And when was the other one?

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A. First part of July on the Stiles Unit.

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Q. Earlier, you testified that heat strike teams began in 2023. Is that accurate?

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A. No. It's 2024.

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Q. I'm sorry. You believe it was 2024, not 2023?

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A. That's when the administrative risk management division was instructed to form the strike teams.

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Q. Do you know when the first strike team began, the

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first strike team began -- I'm sorry. Do you know when

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the first strike team went out?

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A. I believe in August of '23, our deputy director was training and I don't know when they started, to be honest

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17:28:43 1 with you. I had heard that they were going to -- that
17:28:47 2 emergency management -- the office of emergency management
17:28:50 3 was going to do these but I don't know that to be a
17:28:53 4 hundred percent.

17:28:59 5 Q. So it's possible they could have started in 2023?

17:29:01 6 A. It's possible. I don't know that. I just know when
17:29:04 7 ARRM started doing them.

17:29:05 8 Q. Okay. Next, I want to turn to that Texas A & M
17:29:09 9 study. Prior to counsel showing you that study, had you
17:29:14 10 seen it before in this courtroom?

17:29:16 11 A. Just in this courtroom.

17:29:18 12 Q. Do you remember when?

17:29:20 13 A. Either Monday or Tuesday.

17:29:25 14 Q. I'll represent to you that I -- that it was brought
17:29:31 15 up in front of another witness here, Dr. Dominick. Do you
17:29:36 16 remember me performing a cross-examination on her?

17:29:37 17 A. I do.

17:29:38 18 Q. Do you remember how she answered when I asked her how
17:29:43 19 many surveys she analyzed for this survey?

17:29:53 20 A. I want to say 360 or around that number.

17:29:57 21 Q. Ballpark, I think was 309, I think.

17:30:01 22 A. 309.

17:30:02 23 Q. And so, when counsel says that a certain number of
17:30:09 24 inmates or a certain percentage of inmates, rather, have
17:30:14 25 reported X, Y or Z, that certain percentage of inmates,

17:30:19 1 you understand, right, is out of that 309 surveys

17:30:24 2 analyzed, right?

17:30:25 3 A. Correct.

17:30:29 4 Q. And do you also remember that the nature of those --

17:30:33 5 of that survey involved a number of what Ms. Dominick

17:30:39 6 termed as anecdotal responses?

17:30:42 7 A. Yes.

17:30:44 8 Q. And you remember that when I asked Ms. Dominick how

17:30:48 9 many overall surveys were responded to, do you remember

17:30:51 10 what she said?

17:30:52 11 A. I do not.

17:30:55 12 Q. Do you remember that she said that she couldn't tell

17:30:56 13 me?

17:30:59 14 A. I don't remember that, to be honest with you.

17:31:01 15 Q. Okay. Last, I want to look at the -- I want to talk

17:31:14 16 briefly about the strike team reports. Counsel showed you

17:31:16 17 the strike team report from the Estelle Unit, right?

17:31:21 18 A. Yes.

17:31:22 19 Q. And what was the issue that counsel notated for you?

17:31:29 20 A. The blower fan.

17:31:31 21 Q. I'm sorry, could you speak up?

17:31:32 22 A. The blower fan.

17:31:34 23 Q. The blower fan was not working. In your experience

17:31:40 24 in corrections and as a warden and everything else, does

17:31:48 25 it normally take a little bit of time to fix mechanical

17:31:50 1 issues around units?

17:31:53 2 A. Yes.

17:31:57 3 Q. And in this case, would inmates have the ability to

17:32:04 4 access other heat mitigation tools if they needed to?

17:32:10 5 A. Yes, they would.

17:32:11 6 Q. At the Estelle Unit?

17:32:12 7 A. Yes, they would.

17:32:13 8 Q. What type of tools would they be able to access?

17:32:16 9 A. Well, they're outlined in our AD 1064 policy. They

17:32:22 10 have respite, they have drinking cold water, they have

17:32:28 11 cold showers.

17:32:30 12 Q. One final question. You testified that you'd been

17:32:33 13 with TDCJ combined over 31 years, right?

17:32:37 14 A. Yes.

17:32:37 15 Q. And you began prior to 1992.

17:32:40 16 A. That is correct.

17:32:41 17 Q. And I'll submit to you that I was born in 1992 so

17:32:45 18 that's a really long time that you've been with TDCJ.

17:32:49 19 Have you noticed the culture surrounding heat change

17:32:54 20 around TDCJ over your tenure with the agency?

17:32:59 21 A. Absolutely, yes.

17:33:00 22 Q. How so?

17:33:03 23 A. Well, I believe as Mr. Ginsel described earlier, when

17:33:14 24 I started in '89, it was just that's how we worked.

17:33:15 25 That's the conditions we worked in. That's the conditions

17:33:17 1 the inmates lived in at that time. And over time,
17:33:27 2 gradually, we started mitigating the heat, you know, but I
17:33:30 3 will say that in the past 10 years to actually the last --
17:33:36 4 before I came back.

17:33:36 5 Within the five years that I came back and
17:33:39 6 although we had 1064 in place then, it's at the forefront
17:33:45 7 of everything we do between April and October and it's
17:33:51 8 taken very seriously. Our staff are working very
17:33:55 9 diligently to ensure that we are compliant with that
17:33:58 10 policy. As I stated earlier, you know, food service, they
17:34:05 11 ensure we have extra ice available should the ice machine
17:34:09 12 go down. I've seen -- numerous times, I've been on
17:34:14 13 different units, the water -- and not even when a strike
17:34:18 14 team. It was just visiting on a unit, there's staff
17:34:21 15 taking inmates around with water so they could fill up the
17:34:24 16 ice buckets. So I've seen a tremendous change in the
17:34:27 17 culture. It's what we do to ensure that we take available
17:34:33 18 resources -- we use every available resource to mitigate
17:34:36 19 heat.

17:34:38 20 Q. No further questions, your Honor.

17:34:42 21 MS. SNEAD: Nothing further, your Honor.

17:34:43 22 THE COURT: Thank you, sir. You may step down.

17:34:46 23 And where are we in your witness list? Tell me
17:34:50 24 witnesses remaining.

17:34:50 25 MR. RHINES: We're on -- I believe, your Honor,

17:34:53 1 that I think we're good today. I believe we have three
17:34:56 2 witnesses for tomorrow.

17:34:58 3 THE COURT: Is that something that, I guess,
17:35:02 4 allowing for that is Mr. Collier one of them?

17:35:05 5 MR. RHINES: Yes, your Honor.

17:35:05 6 THE COURT: I imagine that might be a lengthy
17:35:08 7 witness.

17:35:09 8 MR. RHINES: I would assume so.

17:35:10 9 THE COURT: Do you have a high level of
17:35:13 10 confidence that it will be done by, at the latest, 4:00?

17:35:18 11 MR. RHINES: I anticipate that we will be, your
17:35:21 12 Honor, pending plaintiffs' conducting a particularly
17:35:24 13 lengthy cross-examination.

17:35:25 14 THE COURT: Sure.

17:35:26 15 MR. RHINES: But our intent is to be done by
17:35:28 16 4:00.

17:35:29 17 THE COURT: Okay. Then I think we can call it a
17:35:31 18 day and reconvene in the morning. And Mr. Homiak.

17:35:37 19 MR. HOMIAK: Yes, your Honor. Just a few brief
17:35:39 20 housekeeping matters. The first is we have just a couple
17:35:43 21 of exhibits that I think were discussed and perhaps my
17:35:47 22 colleagues did not succeed in actually getting admitted
17:35:54 23 over the last two days. So I don't know what the Court's
17:35:56 24 preference would be about formally moving to admit those.
17:36:00 25 I'm happy to do that now.

17:36:02 1 THE COURT: Sure.

17:36:03 2 MR. HOMIAK: And I think I have a completed list
17:36:05 3 here. So the first one is Exhibit -- Plaintiffs' Exhibit
17:36:19 4 54, entitled Association of Extreme Heat With All-Cause
17:36:23 5 Mortality In The Contiguous United States. I believe that
17:36:26 6 was discussed with Dr. Vassallo.

17:36:30 7 MR. SINGLEY: Yes, your Honor. That's one I
17:36:32 8 discussed with Dr. Vassallo and inadvertently failed to
17:36:35 9 move to admit. So I move to admit Plaintiffs' 54. It's
17:36:38 10 one of the studies.

17:36:38 11 THE COURT: Any objection? It's in.

17:36:42 12 MR. SINGLEY: Oh, it is admitted. Sorry about
17:36:43 13 that. Thank you.

17:36:45 14 MR. HOMIAK: And then, the only other ones that I
17:36:48 15 have on my list are 238 and 241 to 249.

17:36:56 16 MS. SNEAD: You said on the record -- so 238, 241
17:37:01 17 through 249 were the videos of Mr. Tiede and you made the
17:37:04 18 comment in the transcript and I did find that the court
17:37:07 19 reporter sent yesterday that you were going to admit all
17:37:09 20 of the videos for purposes of this hearing, and so, they
17:37:11 21 didn't get individually moved into evidence. But your
17:37:14 22 Honor did say you were going to admit them all. So
17:37:17 23 they're not in list we received from the court reporter,
17:37:18 24 but I believe it's accurate but that you did admit them.

17:37:21 25 THE COURT: All right. Anybody have any dispute

17:37:23 1 with that?

17:37:24 2 MS. ELLIS: Oh, no, no, no, not that. Just
17:37:27 3 generally, I don't have the best memory in terms of every
17:37:30 4 one of these exhibits. Can we just maintain whatever
17:37:32 5 objections were raised during the hearing on these?

17:37:34 6 THE COURT: Sure.

17:37:35 7 MS. ELLIS: Okay.

17:37:39 8 MR. HOMIAK: I could just tell you. So 238 was
17:37:42 9 the picture of Mr. Tiede pre-stroke. And then, 241 to
17:37:50 10 249, it was the split-up video that Mr. Linklater took of
17:37:56 11 Mr. Tiede. And so yes, I think Ms. Snead is right that
17:37:59 12 the videos were admitted by the Court, but I don't think
17:38:01 13 that was necessarily noted in the court reporter's
17:38:05 14 records. So it's 238 and 241 through 249, your Honor.

17:38:10 15 THE COURT: That will be reflected in the record
17:38:12 16 as having been admitted.

17:38:14 17 MR. HOMIAK: Thank you, your Honor. And then, I
17:38:16 18 believe there's one other -- and then, we have Plaintiffs'
17:38:24 19 Exhibit 91, which was discussed with Dr. Vassallo
17:38:29 20 yesterday, Extreme Heat And Suicide Watch Incidents Among
17:38:35 21 Incarcerated Men and I don't believe that was on the court
17:38:39 22 reporter's list. So if we could go ahead and move to
17:38:42 23 admit that.

17:38:42 24 THE COURT: Any objection?

17:38:44 25 MS. ELLIS: I believe I raised an objection

17:38:46 1 during the testimony but I can't tell you right now.

17:38:50 2 THE COURT: Okay.

17:38:55 3 MS. ELLIS: I don't know what your ruling was.

17:38:56 4 THE COURT: Apparently, I admitted it for the
17:38:58 5 purposes --

17:38:58 6 MS. ELLIS: Okay. Thank you, your Honor.

17:39:00 7 MR. HOMIAK: And then, I think the last two are
17:39:04 8 the autopsies in Plaintiffs' Exhibit 16 and 17, which I
17:39:08 9 know were what we are referring to as the older autopsies.
17:39:14 10 I think they were from the pre-2012 time period and those
17:39:17 11 were discussed with Dr. Leonardson, I believe. But those
17:39:22 12 are what Mr. Edwards discussed with Dr. Leonardson so
17:39:27 13 those would be the last two that we would move to admit.

17:39:28 14 THE COURT: Any objection to the admission of
17:39:30 15 those exhibits?

17:39:31 16 MS. ELLIS: No, your Honor.

17:39:32 17 THE COURT: Then so admitted. Sixteen and 17 are
17:39:46 18 not what you say they are.

17:39:49 19 MR. HOMIAK: You know, it's not out of the
17:39:51 20 question.

17:39:53 21 MR. JAMES: I'm sure that's my mistake. I
17:39:56 22 apologize.

17:39:56 23 MR. HOMIAK: Oh, sorry. Yes, they are 28 and 29.
17:40:00 24 I apologize.

17:40:01 25 THE COURT: Not at all. And with no objection,

17:40:03 1 those are admitted.

17:40:04 2 MS. ELLIS: Yes.

17:40:05 3 THE COURT: Thank you. All right.

17:40:06 4 MR. HOMIAK: Then last, but not least, I know Mr.
17:40:09 5 Duke has a brief housekeeping matter.

17:40:11 6 MR. DUKE: It goes to what your Honor mentioned
17:40:14 7 and the other side mentioned about the scope of some of
17:40:16 8 the testimony tomorrow. It's a little bit awkward because
17:40:20 9 we're wanting to raise defendants' motion with respect to
17:40:26 10 the use of Sweetin's testimony, the 30(b)(6) deposition
17:40:30 11 representative, and our concern is that if that motion is
17:40:34 12 carried, we might need to expand the questioning because
17:40:40 13 of the way I understand their objection to the use of that
17:40:44 14 testimony is that we shouldn't be able to rely on it at
17:40:48 15 all.

17:40:48 16 And I don't want to make their argument for them,
17:40:50 17 but they appear to be relying on Rule 32(a)(4), which
17:40:54 18 requires the witness to be unavailable and their argument
17:40:57 19 is that TDCJ and Mr. Collier is available. We think that
17:41:01 20 the answer to my question is that this falls under
17:41:05 21 32(a)(3), which does not have an availability requirement.
17:41:09 22 They do cite a case but it's because of the rule change in
17:41:12 23 2007 that the numbering might be off. But we would think
17:41:18 24 it might be useful to have a ruling with respect to just
17:41:20 25 that narrow issue of whether or not we could use the

17:41:22 1 30(b)(6) testimony as part of this hearing so that we
17:41:26 2 don't feel obligated to rehash that same testimony with
17:41:30 3 the witness before us.

17:41:34 4 MS. ELLIS: So I will say, Brandon, I couldn't
17:41:36 5 hear you so clearly. So from what I did think I hear, you
17:41:46 6 want to know our position on whether you can use Mr.
17:41:50 7 Sweetin's deposition tomorrow whatsoever?

17:41:53 8 MR. DUKE: No, no. What I understand your -- I
17:41:55 9 have your position in writing and it says that --

17:41:57 10 MS. ELLIS: What position are you talking about?

17:41:59 11 MR. DUKE: What I'm reading from right now is
17:42:01 12 document 169, which was the reply that was filed this
17:42:03 13 morning so the issue wasn't fully briefed. It's your
17:42:06 14 motion so I don't want to restate your argument for you
17:42:08 15 but reading what you say in the first --

17:42:10 16 MS. ELLIS: What was our original motion?

17:42:13 17 MR. DUKE: Your motion was to -- objection to
17:42:15 18 Sweetin's witness testimony through deposition and you say
17:42:19 19 that it's improper for us to rely on the testimony, the
17:42:23 20 deposition excerpts in this hearing at all.

17:42:30 21 MS. WARREN: Okay.

17:42:31 22 MR. DUKE: But he is not an unavailable witness.
17:42:34 23 TDCJ is not an unavailable witness.

17:42:36 24 MS. ELLIS: Okay. So to clarify, we've never
17:42:40 25 contended that in certain circumstance, Mr. Sweetin's

17:42:43 1 testimony certainly would be able to come into this
17:42:45 2 hearing. To the extent that he has said something that
17:42:49 3 you want to question Mr. Collier on, obviously, Mr.
17:42:52 4 Collier is the agency for purposes of being the equivalent
17:42:55 5 of Mr. Sweetin. I am not totally sure what you're honing
17:42:59 6 in on.

17:43:00 7 The way in which Sweetin's deposition transcript
17:43:03 8 was entered in without completeness, without our
17:43:06 9 objections noted being played for an hour and 20 minutes,
17:43:09 10 that was something we objected to as him being unavailable
17:43:12 11 because Mr. Collier was here.

17:43:15 12 MR. DUKE: Right. And we just would like a
17:43:17 13 ruling on whether or not the witness for a 30(b)(6)
17:43:22 14 representative needs to be available in order for us to
17:43:25 15 use it for any purpose during the hearing, which I think
17:43:29 16 the rule clearly allows.

17:43:30 17 THE COURT: The answer's no.

17:43:32 18 MR. DUKE: The answer is the witness does not
17:43:34 19 need to be --

17:43:35 20 THE COURT: Correct.

17:43:40 21 MS. ELLIS: I don't think so.

17:43:41 22 MR. HOMIAK: Your Honor, I apologize. We do have
17:43:43 23 one more and this may be obviated by if Mr. Collier's
17:43:47 24 counsel is willing to share the witness order tomorrow, my
17:43:52 25 colleagues have raised some concern that given the number

17:43:54 1 of witnesses, if Mr. Collier goes last, that may not have
17:43:59 2 as much time as may be necessary to cross-examine him. So
17:44:04 3 certainly, I think Mr. -- I think they said three
17:44:06 4 witnesses and so, if they're willing to share the order
17:44:08 5 and if Mr. Collier's going first, then I don't think we
17:44:11 6 have any concerns about that. But I just wanted to make
17:44:13 7 sure that -- and we can be mindful if he's last in keeping
17:44:17 8 our cross-examinations quite short to avoid that, as well.

17:44:20 9 THE COURT: Sure. Would you be willing to share
17:44:21 10 your witness order?

17:44:23 11 MS. CARTER: Judge Pitman, we were not shared
17:44:26 12 that same accordability from them in terms of their list
17:44:30 13 of witnesses and I believe they told us on Monday night,
17:44:32 14 they would be calling all the seven the next day and they
17:44:35 15 didn't end up calling them. So I would just say that we
17:44:38 16 weren't accorded that same ability to determine who would
17:44:41 17 be going first. I think you can tell from this that we
17:44:44 18 got through five, I believe, today so we've managed our
17:44:47 19 time very well. And like we argued since the beginning of
17:44:51 20 this hearing is that we set our times to fit within those
17:44:53 21 two hours and we are completely respectful of your 4:00
17:44:56 22 hard stop and we will be able to complete in the time
17:44:58 23 limit.

17:44:59 24 THE COURT: Okay. Very good. And if I sense
17:45:01 25 that you're going to be deprived of a meaningful

17:45:05 1 opportunity to cross-examine any witness, we will take
17:45:08 2 care of that as we go.

17:45:09 3 MR. HOMIAK: Thank you, your Honor.

17:45:11 4 THE COURT: And just because it's something we
17:45:13 5 can do to give us a little margin, let's start at 8:30
17:45:17 6 tomorrow morning just to give us a little more -- make me
17:45:20 7 feel a little better, if not you.

17:45:24 8 So is there anything else we need to accomplish
17:45:26 9 before we break for the day?

17:45:28 10 MR. HOMIAK: Nothing, your Honor. Thank you very
17:45:29 11 much.

17:45:29 12 THE COURT: All right. Anything else?

17:45:30 13 MS. CARTER: Nothing your Honor.

17:45:32 14 THE COURT: Great. We look forward to seeing you
17:45:35 15 tomorrow morning at 8:30.

16 (Proceedings adjourned.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter,
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