

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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) July 30, 2024

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ROBERT L. PITMAN
Volume 1 of 4

APPEARANCES:

For the Plaintiff: Ms. Ellen R. Blatt
Mr. Kevin D. Homiak
Mr. Thomas A.J. Olsen
Wheeler, Trigg, O'Donnell, LLP
370 17th Street, Suite 4500
Denver, Colorado 80202

Mr. Brandon W. Duke
O'Melveny & Myers, LLP
700 Louisiana Street, Suite 2900
Houston, Texas 77002

Mr. Jeffrey S. Edwards
Mr. Michael Singley
Ms. Lisa A. Snead
Edwards Law
603 West 17th Street
Austin, Texas 78701

1 **(Appearances Continued:)**

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

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

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

13 Court Reporter: Ms. Lily Iva Reznik, CRR, RMR
14 501 West 5th Street, Suite 4153
15 Austin, Texas 78701
16 (512)391-8792

17
18
19
20
21
22
23
24
25 Proceedings reported by computerized stenography,
transcript produced by computer-aided transcription.

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

I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>Witnesses:</u>				
Marci M. Simmons	26	57	68	69
Antonella Zanobetti	71	85	97	
Berhnardt Tiede, II	100	129	141	143
			146	146
Julie Skarha	149	164	172	174
Charles Malouff	176	195	204	205
David Sweetin	211			

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

E X H I B I T S

	<u>Offered</u>	<u>Admitted</u>
<u>Plaintiffs'</u>		
#46	77	77
#62	51	52
#73	80	80
#70	99	99
#75	83	83
#128	188	189
#148	191	191
#210	126	127
#239	126	127

Defendants'

(None)

09:01:48 1 THE CLERK: Court Calls A-23-CV-1004, Bernhardt
09:01:52 2 Tiede vs. Bryan Collier, for a preliminary injunction
09:01:55 3 hearing.

09:01:56 4 THE COURT: For the plaintiffs.

09:02:00 5 MR. HOMIAK: Good morning, your Honor.

09:02:00 6 Kevin Homiak on behalf of plaintiffs and if I
09:02:04 7 could sort of have each person introduce themselves. We
09:02:07 8 have Mr. Tiede on the end here in the purple, your Honor.
09:02:12 9 And Jodi Cole, Jeff Edwards, Michael -- I'm going to
09:02:19 10 mispronounce your last name, Singley, Lisa Snead, Brandon
09:02:24 11 Duke, Erica Grossman, Tommy Olsen, Ellen Blatt and
09:02:30 12 Aleksandra Chapman.

09:02:33 13 THE COURT: Good morning.

09:02:34 14 And for the defense.

09:02:35 15 MS. CARTER: Good morning, your Honor.

09:02:37 16 My name's Abigail Carter for Mr. Collier, the
09:02:41 17 defendant. With me on behalf of the Attorney General's
09:02:42 18 Office, Kelsey Warren, Lauren McGee, Marlayna Ellis,
09:02:49 19 Zachary Rhines, Sharon Molinare, James Rheams and Mr.
09:02:55 20 Collier.

09:02:55 21 THE COURT: Good morning and thank you.

09:02:57 22 We are here for a hearing on the plaintiffs'
09:02:59 23 motion for a preliminary injunction. I know that there
09:03:06 24 were a number of motions filed last night and maybe even
09:03:11 25 this morning, and it occurs to me that although those

09:03:16 1 motions are asking for the exclusion or preclusion of
09:03:22 2 certain -- the introduction of certain evidence or
09:03:24 3 witnesses, it occurs to me that we'll either spend half a
09:03:28 4 day going through that or we can just proceed on and I'll
09:03:32 5 make those rulings as we go.

09:03:33 6 So here's what I suggest is that when it is the
09:03:37 7 appropriate time for you to make objections for the record
09:03:39 8 that you have made in the last 24 hours, go ahead and do
09:03:43 9 that for the record. If it becomes abundantly clear to me
09:03:46 10 that relief is warranted, then I'm -- it's possible that I
09:03:52 11 may grant that relief at the time, but it's more likely
09:03:55 12 that I'll simply say that I'll carry those objections.
09:03:58 13 We'll get all of this on the record.

09:04:00 14 The purpose of this hearing, obviously, is simply
09:04:02 15 to get everything into the record on which you're relying
09:04:06 16 and we'll have an opportunity after the hearing for you to
09:04:11 17 either to supplement or re-urge those objections in light
09:04:15 18 of what the evidence was. So whatever we do during this
09:04:20 19 hearing will be without prejudice to you urging the
09:04:23 20 objections that you've made already.

09:04:26 21 So with that, I'll again remind you that we --
09:04:30 22 we'll have to get this hearing accomplished before 4:00 on
09:04:33 23 Friday afternoon. In order to do that, I'm happy to spend
09:04:36 24 as much time as we need into the evening, whatever it
09:04:40 25 takes. Obviously, I don't want us to go until Friday to

09:04:44 1 realize that we have two days of testimony left. So if
09:04:47 2 you'll sort of keep a tally of how we're doing, at least
09:04:51 3 from your perspective on getting your evidence in, that
09:04:54 4 would be helpful to make sure that we're on schedule and
09:04:57 5 any adjustments we can make as we go along.

09:04:59 6 With that, is there anything that we need to talk
09:05:03 7 about before we begin?

09:05:09 8 MR. HOMIAK: Yes, your Honor. Just two
09:05:10 9 preliminary matters. First, the parties have discussed
09:05:13 10 the brief opening statements for the Court's benefit. My
09:05:16 11 expectation is that I wouldn't take more than 30 minutes,
09:05:18 12 if that. And the second thing is if the Court is inclined
09:05:22 13 to allow those presentations, I have just one housekeeping
09:05:26 14 matter for that presentation, which is there are a couple
09:05:28 15 of documents in the presentation that have been marked
09:05:32 16 attorneys'-eyes-only and I didn't want the other side to
09:05:35 17 be surprised by, you know, them coming up. I understand
09:05:38 18 that at least a few of the folks here, given a number of
09:05:41 19 the people in the courtroom may not be covered by the
09:05:43 20 protective order. So I just wanted to ask the Court's
09:05:45 21 preference about how to handle those exhibits on the
09:05:49 22 PowerPoint presentation. I think there's probably four or
09:05:52 23 five, your Honor.

09:05:52 24 THE COURT: Okay. I'll tell you, I've read the
09:05:57 25 pleadings in the case, I know why we're here. I know

09:05:59 1 what's at play. If you want, I don't want to deprive you
09:06:02 2 of the opportunity to make your statements, although I
09:06:05 3 can't imagine you're going to tell me anything that I
09:06:07 4 don't already know about why we're here and what we're
09:06:10 5 trying to accomplish.

09:06:11 6 That being the case, I'll give you an opportunity
09:06:13 7 if you want to take a few minutes to do that. I think
09:06:15 8 it's not the highest and best use of our time to be doing
09:06:19 9 that, but I don't want to deprive you of the opportunity.
09:06:22 10 To the extent especially if there's anything that's not in
09:06:24 11 the record or in the pleadings that you -- or something
09:06:30 12 has changed that you want to make me aware of to give
09:06:33 13 context to the evidence that's to come, that's fine. But
09:06:35 14 other than that, I think we really just need to dive in
09:06:38 15 and get this hearing going.

09:06:42 16 MS. ELLIS: Yes, your Honor. Marlayna Ellis.

09:06:44 17 I would just like to echo your sentiment. I
09:06:45 18 absolutely agree. Plaintiffs have identified nearly 15
09:06:48 19 witnesses, they have two-and-a-half days to put on their
09:06:50 20 case. Spending 30 minutes or even five to ten minutes
09:06:52 21 each side, that's a lot of time that, you know,
09:06:55 22 defendants' intention is that we simply -- you know,
09:06:58 23 you're very familiar with the issues. You know, argument
09:07:01 24 from counsel is not going to be helpful and the best use
09:07:03 25 of our time. I'm happy to make a statement, but our

09:07:05 1 position is that we would really prefer to just dive into
09:07:08 2 the testimony.

09:07:08 3 THE COURT: Okay. I think your identification of
09:07:11 4 five or ten minutes probably is appropriate just in case
09:07:14 5 there is something I may not be aware of recent events or
09:07:17 6 change in position or circumstances, that's fine because I
09:07:20 7 don't want you to -- if there are any impressions that I
09:07:23 8 may be under that something has changed and I don't want
09:07:26 9 you to be deprived of the opportunity to set me straight.

09:07:29 10 But other than that, you can assume that I have a
09:07:32 11 familiarity with the pleadings in the case and the
09:07:34 12 underlying issues. But with that Mr. Homiak, I'm happy to
09:07:37 13 hear anything you would like to say in the next five or
09:07:40 14 ten minutes. And if you get to the points that are
09:08:07 15 attorneys'-eyes-only, you can -- are you going to be
09:08:09 16 showing those?

09:08:10 17 MR. HOMIAK: Yes, your Honor.

09:08:10 18 THE COURT: Is there anything you can make
09:08:12 19 reference to without showing them? I don't know that --
09:08:13 20 unfortunately, my -- we could disengage that but my screen
09:08:19 21 is not showing.

09:08:22 22 MR. HOMIAK: So I think what I'll do if it's okay
09:08:24 23 with the Court, I can sort of quickly skip over those
09:08:27 24 slides without talking about them if that's a reasonable
09:08:29 25 compromise, or we could take a second and I could just

09:08:32 1 remove them. Happy to do either one.

09:08:34 2 THE COURT: Or you could let us know and we
09:08:35 3 could.

09:08:37 4 MR. HOMIAK: Take it down.

09:08:38 5 THE COURT: Take that down during that slide.
09:08:39 6 That's fine. Yes.

09:08:40 7 MR. HOMIAK: Okay. I think that's probably
09:08:42 8 easiest just to let you know.

09:08:43 9 May it please the Court. Your Honor, my purpose
09:08:45 10 here is not to rehash anything in the briefing. It's
09:08:48 11 really to identify what we've learned since we began
09:08:51 12 discovery just a couple of months ago and really go
09:08:53 13 through what I see as the key things that we've learned
09:08:56 14 from the documents just in the last couple of weeks and
09:08:58 15 from the 30(b)(6) deposition that was taken last week of
09:09:02 16 TDCJ's designee.

09:09:04 17 So as the Court knows, Mr. Tiede was ordered to
09:09:07 18 -- the TDCJ was ordered to place Mr. Tiede in an air
09:09:10 19 conditioned cell. This was the Court's order from last
09:09:13 20 fall. The new piece of information that we learned when
09:09:15 21 we received Mr. Tiede's medical records is that on April
09:09:20 22 30th, 2024, he underwent an MRI that diagnosed him with
09:09:25 23 having a new condition, a acute to subacute infarct in his
09:09:31 24 thalamus. Now, that controls the motor function. It's a
09:09:33 25 central part of the brain that controls the motor function

09:09:36 1 and that by the fact that it's identified as acute to
09:09:39 2 subacute, that is a new condition that was diagnosed since
09:09:42 3 the Court's last ruling.

09:09:44 4 So in other words, Mr. Tiede's condition has
09:09:47 5 worsened since the Court first ordered that he be placed
09:09:51 6 in an air-conditioned cell. In addition, in the 30(b)(6)
09:09:55 7 deposition of TDCJ, the witness was asked if TDCJ's heat
09:10:02 8 mitigation policy currently requires him to be placed in
09:10:04 9 an air-conditioned cell. Despite his age, 65 years old,
09:10:09 10 despite his preexisting conditions, COPD, hypertension,
09:10:14 11 diabetes -- sorry, I was just informed that this is --
09:10:27 12 that despite the fact that his preexisting conditions and
09:10:33 13 the stroke and the transient ischemic attack that he
09:10:36 14 experienced before the Court's last ruling, TDCJ's
09:10:38 15 position is that he is not required to be in an
09:10:41 16 air-conditioned cell. That is why Mr. Tiede is here
09:10:43 17 today. That is why he is testifying this afternoon.

09:10:46 18 So I'll skip through these fairly quickly. Your
09:10:51 19 Honor, one of the other things that we learned is that
09:10:53 20 TDCJ has identified that there were three inmate deaths
09:10:57 21 that are heat-related. We served an interrogatory,
09:11:00 22 Interrogatory No. 1, and which asked Mr. Collier to
09:11:03 23 identify every heat-related death from January 1st, 2023
09:11:07 24 to the present. He identified three: Elizabeth Hagerty,
09:11:10 25 John Castillo, Patrick Womack. We're going to talk about

09:11:13 1 those three deaths and the documents from those deaths
09:11:16 2 that we received from Mr. Collier, the autopsy reports,
09:11:19 3 the death reports, and the OIG investigation files.

09:11:24 4 You're also going to hear from at least two of
09:11:26 5 our experts that this number, three inmates who had
09:11:29 6 heat-related deaths just last summer, our experts believe
09:11:32 7 is an undercount from the death files that we received
09:11:35 8 from July 15th, that our experts have managed to go
09:11:38 9 through a number of those and identify other instances
09:11:42 10 where they believe heat may have been a contributory
09:11:45 11 factor. So these are the ones that are the AEO slides. I
09:11:49 12 don't know if you would like to just take it down.

09:12:00 13 And, your Honor, the only other thing I would
09:12:02 14 mention about those three deaths is that the common factor
09:12:05 15 is that all three of them were -- all three of them were
09:12:10 16 in non-air-conditioned cells. Your Honor, we also learned
09:12:21 17 that a number of individuals who are elderly and, in many
09:12:24 18 cases, have preexisting conditions died in un-air
09:12:29 19 conditioned cells. So individuals who either were covered
09:12:32 20 by TDCJ's heat mitigation policy and should have been in
09:12:35 21 an air-conditioned cell or individuals who despite their
09:12:39 22 extensive list of preexisting conditions were not required
09:12:43 23 to be in air conditioning, they passed away in
09:12:47 24 air-conditioned cell -- in an un-air-conditioned cell.
09:12:49 25 Excuse me.

09:12:49 1 We've learned that TDCJ inmates have continued to
09:12:55 2 experience heat-related illnesses. This is a list of over
09:12:58 3 a dozen who are diagnosed with heat exhaustion, heat
09:13:02 4 stroke, or hyperthermia just in the summer of 2023. We
09:13:07 5 received from a public records request that was posted
09:13:11 6 online, actually, a document confirming the number of
09:13:14 7 heat-related grievances that had been filed by inmates
09:13:17 8 just in the summer of 2023. And this is just the step one
09:13:22 9 grievances, your Honor, so our -- these documents confirm
09:13:24 10 that over 3600 heat-related grievances were filed in
09:13:28 11 summer of 2023.

09:13:29 12 And I think what I want to point out about this
09:13:31 13 exhibit, your Honor is the fact that a number of these
09:13:33 14 grievances are about the inadequacy, the ineffectiveness,
09:13:37 15 the lack of compliance with the heat mitigation measures.
09:13:42 16 Respite not available, cold water, ice not available, cold
09:13:46 17 showers not available. So over 3,600 step one grievances
09:13:49 18 and then, another 300 step two grievances that your Honor
09:13:52 19 will see.

09:13:53 20 We also received dozens of workers' compensation
09:13:56 21 claims. You'll see a spreadsheet, your Honor, which is
09:13:59 22 Plaintiffs' Exhibit 207 that goes through again just last
09:14:02 23 summer -- actually, it's between 2022 and 2023, there were
09:14:07 24 nearly 80 workers' compensation claims filed by TDCJ staff
09:14:13 25 related to heat and heat issues. This is just a

09:14:18 1 selection. This is just a sample.

09:14:20 2 We also learned from TDCJ's designee last week,
09:14:26 3 your Honor, in the 30(b)(6) deposition that TDCJ admits,
09:14:32 4 their designee admits that they were in favor of the
09:14:35 5 legislature's air conditioning bill, the bill requiring
09:14:39 6 that all Texas prisons be air conditioned, because there
09:14:43 7 is a dangerous condition in the system and extreme heat in
09:14:47 8 the housing areas that has killed inmates and caused
09:14:50 9 numerous inmates and officers to suffer heat-related
09:14:53 10 illnesses. That was their testimony.

09:14:56 11 We learned that TDCJ's 30(b)(6) designee believes
09:15:01 12 that air conditioning -- installing air conditioning is
09:15:04 13 the humane thing to do. It's something that they should
09:15:07 14 have done a long time ago and it's the right thing to do.
09:15:14 15 The witness then went on to explain, well, why is it the
09:15:17 16 right thing to do? Increased temperatures, the state's
09:15:20 17 seeing, the increase in medication that inmates are on as
09:15:23 18 opposed to 20, 30, 40 years ago, a number of factors that
09:15:27 19 exacerbate the need for wanting air conditioning. Again,
09:15:30 20 the witness reiterated, we believe at the agency that it's
09:15:33 21 the right thing to do.

09:15:34 22 Your Honor, I believe you've seen some of this
09:15:37 23 evidence and I think the point of this here is really to
09:15:41 24 just confirm that this isn't -- a lot of this isn't new.
09:15:45 25 It's something that we've known for a number of years that

09:15:47 1 the heat mitigation measures are not working. In 2018, a
09:15:52 2 House committee on corrections issued an interim report
09:15:55 3 that says we know that heat mitigation measures are not
09:15:58 4 working. Judge Ellison in 2017 said much of the same
09:16:01 5 thing and his analysis in that case was not limited in
09:16:04 6 most instances to heat-sensitive individuals. He said
09:16:08 7 heat mitigation measures were not working in the Pack Unit
09:16:12 8 full stop.

09:16:13 9 And your Honor's going to going to hear from
09:16:15 10 Charlie Malouff. He's the Vice-President of TX C.U.R.E.,
09:16:19 11 one of our plaintiffs who was actually housed in the Pack
09:16:22 12 Unit when it went from heat mitigation measures only to
09:16:25 13 temporary air conditioning, and he'll talk to you about
09:16:27 14 the dramatic difference that that made because of Judge
09:16:31 15 Ellison's order.

09:16:32 16 Last, your Honor, we learned that the -- one of
09:16:36 17 the key reports here that we've cited in the briefing,
09:16:39 18 which is from Dr. Purdum, Extreme Temperatures and
09:16:43 19 COVID-19 in Texas prisons. So your Honor may recall that
09:16:46 20 there were a number of surveys that we cited from TDCJ
09:16:49 21 inmates in the briefing, and also in the complaint, that
09:16:52 22 survey was specifically sent to Mr. Collier. It was
09:16:55 23 e-mailed to Mr. Collier on July 11, 2023 because he was
09:17:00 24 actually testifying -- he sat next to Dr. Purdum when she
09:17:04 25 testified to the House Appropriations Committee. He heard

09:17:08 1 every word of her testimony about how the heat mitigation
09:17:11 2 measures were not working as established by those surveys.

09:17:14 3 Your Honor, I think there's actually a lot based
09:17:19 4 on the 30(b)(6) deposition that the parties agree on.
09:17:21 5 There is a dangerous condition in the system, extreme heat
09:17:24 6 in the housing areas that has killed inmates and caused
09:17:27 7 numerous inmates and officers to suffer heat-related
09:17:29 8 illnesses.

09:17:30 9 Really, the question, I think the main reason why
09:17:32 10 we're here is what we're going to do about it, and
09:17:36 11 primarily, Mr. Collier's response has been that it's
09:17:40 12 either the fault of the legislature, legislative inaction,
09:17:44 13 or an issue of cost. And we went back over the last
09:17:48 14 couple of days and pulled every helpful case I could find
09:17:52 15 on this issue which establishes that legislative inaction
09:17:54 16 is not a defense. Cost is not a defense. And my hope, if
09:17:59 17 it's okay with your Honor, is to just give a one-page with
09:18:03 18 those citations. I have a copy for opposing counsel if
09:18:05 19 that's okay, your Honor.

09:18:06 20 THE COURT: Sure.

09:18:12 21 MR. HOMIAK: And a number of these cases were
09:18:14 22 cited in our briefing, your Honor, a number weren't, so
09:18:17 23 that's why I wanted to make sure that those cases were
09:18:19 24 brought to the Court's attention and to hopefully do so as
09:18:22 25 efficiently as possible. So I'm not going to go through

09:18:25 1 those cases, but I wanted to make sure your Honor had that
09:18:25 2 reference.

09:18:26 3 And so, your Honor, at the end of the day, I
09:18:28 4 think what we've learned in just the last three weeks is
09:18:32 5 that there is overwhelming evidence that what is happening
09:18:36 6 right now, the heat mitigation measures that have been in
09:18:38 7 place for years are not working. That the only way, the
09:18:41 8 only way to prevent further suffering, further deaths by
09:18:44 9 inmates, of further suffering by TDCJ staff is to order
09:18:48 10 Mr. Collier to keep cells in a safe temperature range. If
09:18:53 11 your Honor has any questions, I'm happy to answer them.

09:18:55 12 THE COURT: Thank you, Mr. Homiak.

09:19:05 13 MS. ELLIS: May it please the Court. My name is
09:19:07 14 Marlayna Ellis and I represent Defendant Bryan Collier,
09:19:10 15 who was obviously the Executive Director of the Texas
09:19:13 16 Department of Criminal Justice. The Court is obviously
09:19:15 17 well familiar with the pleadings and the claims in this
09:19:17 18 case, but I do want to take a moment to remind the Court
09:19:20 19 of the deliberate indifferent standard, which is
09:19:23 20 incredibly high. It requires the plaintiffs to show more
09:19:26 21 than negligence, more than a disagreement about how heat
09:19:30 22 can best be mitigated in the prisons systems; and it
09:19:33 23 requires the plaintiffs to show that TDCJ is both aware of
09:19:37 24 and is consciously disregarding not just any risk but an
09:19:41 25 excessive risk to inmates' health and safety.

09:19:44 1 Simply put, the plaintiffs simply cannot
09:19:47 2 demonstrate that to the Court this week. The Court's
09:19:50 3 going to hear plenty of testimony from individuals on
09:19:53 4 plaintiffs' side saying that temperatures are increasing,
09:19:56 5 people are at risk, absolutely. This court will not hear
09:20:00 6 testimony from Bryan Collier or any TDCJ official that
09:20:04 7 it's not hot in the summer in Texas because it certainly
09:20:07 8 is. You won't hear testimony that individuals in TDCJ
09:20:12 9 don't wish that there was air conditioning because, of
09:20:15 10 course, if we had that as a resource, of course we would
09:20:21 11 utilize it. But the unfortunate reality that plaintiffs
09:20:24 12 are well aware of is that TDCJ is not a for-profit
09:20:27 13 organization. It gets its funding from the state
09:20:30 14 legislature and that means that the legislature gives us
09:20:33 15 our budget and they get to dictate what we spend our
09:20:36 16 budget on.

09:20:37 17 So over the past couple of years, TDCJ has
09:20:39 18 received historic amounts of funding to implement cool
09:20:44 19 beds. And you'll hear testimony that TDCJ has nearly
09:20:47 20 46,000 cool beds available to its inmate population and
09:20:50 21 you'll hear that that's not the end of this plan. TDCJ
09:20:54 22 has goals to only do more, but of course, that depends on
09:20:58 23 what we get from the legislature, what they approve.

09:21:02 24 I think the fact that Mr. Sweetin's testimony was
09:21:04 25 cited a few minutes ago is a perfect representation of the

09:21:08 1 fact that TDCJ is not trying to hide the ball. We
09:21:11 2 certainly understand that air conditioning would be
09:21:14 3 helpful and our plan is to do more. But what I do want
09:21:20 4 the Court to focus on is, you know, we're going to hear a
09:21:22 5 lot of testimony about the heat score algorithm. Every
09:21:26 6 individual in TDCJ who has a heat score, they are in a
09:21:30 7 cool bed full stop. There's not 12,000 individuals who
09:21:33 8 have been identified under this heat score algorithm,
09:21:35 9 which is essentially a neutral way that TDCJ is attempting
09:21:40 10 to identify those who are going to have the most risk.

09:21:45 11 MR. EDWARDS: And, your Honor, just for the
09:21:46 12 record -- I apologize for interrupting -- that is one of
09:21:48 13 the key points of exclusion, this heat score algorithm and
09:21:53 14 that it was not elaborated, discussed. They put up a
09:21:55 15 witness who had no idea what it was or what it meant and
09:21:58 16 couldn't explain it. However, I just for the record want
09:22:01 17 to do that and I apologize for interrupting.

09:22:03 18 THE COURT: Okay. Thank you.

09:22:04 19 MS. ELLIS: I would like to briefly respond to
09:22:06 20 that. As I was about to go into, this heat score
09:22:10 21 algorithm, it's not something that TDCJ is controlling.
09:22:15 22 Certainly, they utilize the heat score system so if
09:22:19 23 somebody gets a heat score, they will then put that
09:22:22 24 individual in a cool bed. But it is not our contention
09:22:25 25 that we have input on how, you know, what diagnoses or

09:22:30 1 conditions or prescriptions go into consideration.

09:22:32 2 TDCJ relies on our health partners, who are UTMB
09:22:37 3 and Texas Tech, to give us guidance on what needs to go
09:22:41 4 into that algorithm. So to Mr. Edwards' point, TDCJ is
09:22:44 5 not an authority on this policy to the extent that maybe
09:22:47 6 they would like because, as we've consistently said, we
09:22:51 7 are not healthcare providers. We are putting that power
09:22:56 8 in healthcare providers who are evaluating patients, who
09:23:00 9 are telling us individuals who are at risk who are
09:23:02 10 struggling with the heat. What conditions we've noted are
09:23:05 11 really, you know, increasing in relation to heat illness.

09:23:09 12 So I would very much disagree with Mr. Edwards'
09:23:12 13 contention that, you know, our 30(b)(6) was not prepared
09:23:15 14 on this topic. There's also a lot of disagreement about
09:23:18 15 whether this really was a topic, but that does bring me
09:23:23 16 back to my point that 12,000 individuals with a heat
09:23:26 17 score, they're in a cool bed. And if you remember that
09:23:28 18 number I gave you before, your Honor, 46,000 beds is what
09:23:31 19 we have available. That means nearly 30,000 individuals
09:23:34 20 who don't have a heat score, they're in a cool bed. So
09:23:37 21 that kind of goes back to this idea of discretion. TDCJ,
09:23:41 22 you know, even though someone might have a heat score like
09:23:46 23 Mr. Tiede, for example, we do have the ability and some
09:23:47 24 flexibility to put people in cool beds even if, you know,
09:23:51 25 maybe this algorithm hasn't spit out a number saying that

09:23:55 1 they are on paper at risk. It's a perfect example of
09:23:58 2 that. But nonetheless, TDCJ has numerous mitigation
09:24:00 3 measures in place to ensure that, you know, even if you're
09:24:04 4 not in a cool bed, we're going to do what we can because,
09:24:06 5 ultimately, that's all we can truly do.

09:24:09 6 And when we're thinking about this idea of
09:24:11 7 deliberate indifference, it doesn't require us to do the
09:24:16 8 most efficient thing. It requires us to do what we can
09:24:19 9 with the resources that we have available.

09:24:21 10 THE COURT: Let me ask about that because I think
09:24:22 11 that's something that I want for you to be clear with me
09:24:26 12 about from the very beginning and that is I want to make
09:24:30 13 sure what's the state's position with regard to sort of
09:24:34 14 you seem to be saying the conditions are not cruel and
09:24:38 15 unusual. They are not violative of the Constitution.

09:24:43 16 MS. ELLIS: Absolutely not.

09:24:45 17 THE COURT: But what I'm hearing you also say,
09:24:48 18 but if they are, we don't have the money to remedy that.
09:24:52 19 Setting aside the first point, that's what we'll be
09:24:56 20 hearing a lot about. But it can't be that if the
09:24:58 21 conditions of confinement within the Texas Department of
09:25:03 22 Criminal Justice are unconstitutionally -- or
09:25:06 23 unconstitutional, then it can't be that you can just say,
09:25:12 24 well, we just don't have the money to cure that, right?
09:25:15 25 That seems to be what you're saying.

09:25:16 1 MS. ELLIS: So I apologize if I'm not being
09:25:18 2 clear. I think it's a little bit nuanced because
09:25:21 3 certainly we don't believe that TDCJ is being deliberately
09:25:24 4 indifferent. We believe that our mitigation measures and
09:25:27 5 everything we've done at this point is sufficient and it
09:25:30 6 does not equal a constitutional violation.

09:25:32 7 THE COURT: Right.

09:25:32 8 MS. ELLIS: The fact that TDCJ does rely on
09:25:35 9 funding and hopes to be able to implement more measures,
09:25:38 10 that really goes to the relief that plaintiffs are seeking
09:25:41 11 because, ultimately, what plaintiffs want out of this
09:25:44 12 lawsuit is for you to order permanent air conditioning,
09:25:50 13 potentially temporary, but they essentially want the
09:25:53 14 temperatures to go down, right, in indoor conditions. The
09:25:57 15 Court can't order this relief because TDCJ couldn't comply
09:26:00 16 today, tomorrow, six months from now.

09:26:02 17 THE COURT: Then why are we here if --

09:26:05 18 MS. ELLIS: That's a great question, your Honor.

09:26:07 19 THE COURT: Yeah, well, that was not rhetorical.
09:26:11 20 That was the real question because you can't be telling me
09:26:14 21 on behalf of the state that the conditions of confinement
09:26:20 22 imposed by the state could be found to be cruel and
09:26:24 23 unusual, but nobody can do anything about it because the
09:26:30 24 legislature hasn't given the funding. And so, the state
09:26:35 25 can always be off the hook by saying they're not going to

09:26:38 1 give us the money so we're going to keep these people in
09:26:40 2 unconstitutional circumstances and conditions. That can't
09:26:44 3 be the case, right? Or the state could always just thumb
09:26:47 4 their nose at courts and say, well, we don't care if
09:26:51 5 there's a constitutional problem, you can't do anything
09:26:53 6 about it.

09:26:54 7 MS. ELLIS: Well, I mean, the legislature is
09:26:57 8 unfortunately just the reality of the situation and that's
09:26:59 9 why Mr. Collier will be here to testify to the Court so
09:27:02 10 that the Court can understand better that relationship
09:27:06 11 and, you know, what funding we do have, what funding we
09:27:08 12 hope to get and how that --

09:27:10 13 THE COURT: So is there any division of the state
09:27:15 14 that could provide the relief? Are you saying that I have
09:27:18 15 the wrong defendants in the event that we have a
09:27:22 16 constitutional violation here?

09:27:24 17 MS. ELLIS: I would say that the relief that
09:27:26 18 plaintiffs are seeking is not something that they can get
09:27:28 19 from Mr. Collier.

09:27:30 20 THE COURT: Right. But you represent the state.
09:27:32 21 Is there anybody within the state who would be responsive?

09:27:36 22 MS. ELLIS: Well, I don't just represent anyone
09:27:38 23 who works in the state. I have to get their
09:27:40 24 representation, their authority.

09:27:41 25 THE COURT: Right. But theoretically, you know

09:27:45 1 what I'm asking.

09:27:46 2 MS. ELLIS: I know what you're asking, your
09:27:47 3 Honor, but the legislature has never been my client. I
09:27:49 4 don't know how their hands are tied. I don't understand
09:27:53 5 their position --

09:27:53 6 THE COURT: You understand the position of the
09:27:54 7 state with regard to these kinds of lawsuits.

09:27:57 8 MS. ELLIS: Absolutely, your Honor.

09:27:58 9 THE COURT: I just want some clarity about
09:28:00 10 whether or not it's your position that no court could
09:28:01 11 order the state to do anything in the event that they
09:28:04 12 found that there was a constitutional violation in the
09:28:07 13 conditions that people are being held under.

09:28:09 14 MS. ELLIS: I think it depends on the timeline,
09:28:11 15 your Honor, and that's what we'll hear a lot of testimony
09:28:15 16 about is yes, ultimately, your Honor, if you order TDCJ to
09:28:19 17 provide permanent air conditioning tomorrow, it just
09:28:21 18 simply couldn't be done.

09:28:23 19 THE COURT: Well, that's different. That's
09:28:24 20 because that's impossible.

09:28:26 21 MS. ELLIS: Sure, but even in three months, six
09:28:27 22 months.

09:28:27 23 THE COURT: So you're saying the only limitation
09:28:29 24 is a practical one, not a legal one. I understood you to
09:28:33 25 say --

09:28:33 1 MS. ELLIS: No, because, ultimately, you have to
09:28:35 2 remember -- and I'm sorry for speaking over you.

09:28:37 3 THE COURT: Not at all.

09:28:37 4 MS. ELLIS: Ultimately, even if this court says
09:28:40 5 that Mr. Collier needs to do X, Y, Z, where does what
09:28:43 6 money come from, you know. In a situation where -- and
09:28:47 7 you'll hear Mr. Collier say that he wants to get air --

09:28:49 8 THE COURT: Forgive me for interrupting you but
09:28:52 9 that's what I keep coming back to and that is, I think
09:28:54 10 what you're saying is there's nothing that could be done
09:28:56 11 about this. In the event that we find that there's a
09:28:58 12 constitutional violation that the state -- that is being
09:29:03 13 imposed by the state of Texas on people who are imprisoned
09:29:08 14 in its institutions, there's nothing anybody can do about
09:29:12 15 it. We have to rely on the state to either do something
09:29:16 16 or not.

09:29:17 17 MS. ELLIS: I think so and recognize that --

09:29:18 18 THE COURT: Okay. That's all I need.

09:29:20 19 MS. ELLIS: Okay. Well, thank you, your Honor.
09:29:21 20 I appreciate your time.

09:29:22 21 THE COURT: All right.

09:29:23 22 MR. HOMIAK: I think we're ready to get started,
09:29:25 23 your Honor.

09:29:25 24 THE COURT: Please.

09:29:29 25 MR. HOMIAK: Your Honor, the plaintiffs call

09:29:32 1 their first witness, Marci Marie Simmons to the stand.

09:30:02 2 THE COURT: Could you raise your right hand to be
09:30:03 3 sworn?

09:30:03 4 THE CLERK: You do solemnly swear or affirm that
09:30:03 5 the testimony which you may give in the case now before
09:30:03 6 the Court shall be the truth, the whole truth, and nothing
09:30:09 7 but the truth?

09:30:09 8 THE WITNESS: Yes.

09:30:11 9 THE COURT: Please be seated.

09:30:13 10 THE WITNESS: Thanks.

09:30:14 11 MARCI M. SIMMONS, called by the Plaintiff, duly sworn.

09:30:14 12 DIRECT EXAMINATION

09:30:16 13 BY MR. HOMIAK:

09:30:16 14 Q. Please state your name for the record.

09:30:17 15 A. Marci Marie Simmons.

09:30:19 16 Q. And, Ms. Simmons, what organization are you here
09:30:23 17 testifying on behalf of today?

09:30:24 18 A. Lioness Justice Impacted Women's Alliance.

09:30:28 19 Q. Can you briefly tell us what Lioness is?

09:30:31 20 A. Yes, sir. Lioness is an organization made up of
09:30:34 21 formerly incarcerated and currently incarcerated women,
09:30:39 22 girls, gender expansive individuals in Texas.

09:30:41 23 Q. What position do you hold with Lioness?

09:30:43 24 A. I'm the community outreach coordinator.

09:30:45 25 Q. And how long have you worked with Lioness?

09:30:47 1 A. Since about 2022.

09:30:50 2 Q. Why did you first get involved with Lioness?

09:30:52 3 A. I got involved with Lioness because I saw a group of
09:30:56 4 women who had been harmed by the state in the system
09:31:00 5 working to make positive changes within the system and I
09:31:03 6 wanted in.

09:31:04 7 Q. Ms. Simmons, have you previously been incarcerated in
09:31:08 8 the TDCJ system?

09:31:08 9 A. Yes, sir. I spent nearly 10 years inside TDCJ.

09:31:13 10 Q. For what period of time -- or, excuse me, which TDCJ
09:31:16 11 facilities were you housed in during that time?

09:31:18 12 A. I was housed on three units. The first unit was in
09:31:21 13 Dayton, Texas at Plane state jail and then, I was there
09:31:24 14 for eight months, and then, I moved to Gatesville, Texas
09:31:27 15 on the Dr. Lane Murray Unit where I spent the majority of
09:31:31 16 my time. I finished my time, the last five months back in
09:31:34 17 Dayton on the Henley Unit.

09:31:36 18 Q. Did any of the facilities that you lived in that you
09:31:39 19 were housed in at TDCJ have any air conditioning in the
09:31:43 20 living units?

09:31:43 21 A. None of those units had air conditioning in the
09:31:45 22 living units. The Henley Unit, that last unit, that last
09:31:49 23 five months had some kind of cooling system, not air
09:31:53 24 conditioning, but I was there in the winter so I can't
09:31:55 25 attest to how that worked.

09:31:57 1 Q. It's fair to say you spent a total of ten summers in
09:32:03 2 un-air conditioned TDCJ facilities?

09:32:04 3 A. Yes, sir, that's fair.

09:32:06 4 Q. How would you explain the heat level to someone who's
09:32:10 5 never lived inside an un-air-conditioned prison?

09:32:12 6 A. To someone who has never been inside a Texas prison
09:32:14 7 in the summer, I would suggest that especially if you've
09:32:17 8 ever been in the southern states in the summertime and
09:32:20 9 parked your vehicle in the parking lot, maybe when you
09:32:23 10 were inside shopping, return to your vehicle and you open
09:32:27 11 that door and how that wave of heat kind of hits you in
09:32:32 12 the face, that's how it feels when you enter a prison cell
09:32:36 13 in summer, or you enter a dormitory in Texas prisons, it
09:32:40 14 doesn't have climate control in the summer. You get in
09:32:42 15 the car and you close the door, just for those few seconds
09:32:45 16 before you turn the key and roll the windows down and turn
09:32:51 17 on the air conditioning, how that heat feels oppressive
09:32:56 18 and suffocating.

09:32:57 19 For example, sir, the first summer that I was
09:33:00 20 incarcerated on the Plane State Unit, one of the kitchen
09:33:04 21 cooks brought back a raw egg and she stood about ten feet
09:33:09 22 from my bunk, cracked the egg on the floor, we all kind of
09:33:14 23 gathered around this egg and watched it cook. That's what
09:33:17 24 kind of heat we're talking about.

09:33:19 25 Q. How did that heat affect you physically?

09:33:21 1 A. Physically, it made me lose my appetite in summer.
09:33:25 2 It caused me to lose sleep. I sweat profusely and then,
09:33:32 3 sometimes the sweat would slow down and I would begin to
09:33:35 4 worry. I have to pay very close attention to my water
09:33:39 5 intake. Made me weaker, a little bit more lethargic in
09:33:44 6 summer months.

09:33:44 7 Q. Did you notice any effects on your mental state from
09:33:48 8 the heat?

09:33:48 9 A. Absolutely. In the summer months in Texas, prisons
09:33:51 10 that don't have climate control, I was in survivor mode,
09:33:56 11 complete survivor mode. I remembered starting in about
09:34:00 12 the middle of May, mentally telling myself, preparing
09:34:05 13 myself that it was going to get even hotter. I remember
09:34:08 14 mentally counting down the days until about mid-September
09:34:11 15 when I knew things would start to cool down. I felt like
09:34:16 16 a caged animal that nobody cared that we were being housed
09:34:21 17 that way.

09:34:22 18 Q. Did that heat have any effect on your relationships
09:34:26 19 with your friends, your family on the outside?

09:34:28 20 A. It did. Yes, sir. In the summer months, I did not
09:34:32 21 call home near as often. The phones in the dorm were
09:34:36 22 positioned in a place where there was zero airflow. You
09:34:40 23 would have to stand in line for the phone so that
09:34:43 24 definitely impacted my communication with home.

09:34:46 25 Q. Did you ever figure out or know what the temperature

09:34:48 1 was in your unit?

09:34:50 2 A. Yes, sir. The last summer that I was incarcerated in
09:34:53 3 2022, I was on the Dr. Lane Murray Unit in K2 Bravo dorm.
09:34:59 4 Around 2017-ish, it was around when we kind of knew what
09:35:05 5 things were going on with the Wallace Pack Unit. We
09:35:08 6 noticed the changes. One of the changes included
09:35:11 7 thermometers being installed in our dorm. They installed
09:35:14 8 these thermometers very high in the ceiling where we
09:35:16 9 couldn't reach them and they covered the reading with a
09:35:22 10 piece of black electrical tape.

09:35:24 11 So the last summer that I was there, 2020, some
09:35:29 12 ladies and I got together and we wanted to know. We
09:35:33 13 wanted to know what that temperature reading was. It was
09:35:36 14 middle of the summer. We pulled one of the big industrial
09:35:40 15 fans over and I climbed up on the fan. Two ladies held it
09:35:46 16 to support it. We had rolled a couple of maxi pads inside
09:35:50 17 out on the back -- on the top of a broomstick so the
09:35:54 18 sticky side was out and I reached up and rolled that
09:35:58 19 electrical tape out with the sticky side, that reading
09:36:03 20 read 136 degrees Fahrenheit.

09:36:08 21 Q. And how did you feel when you saw that temperature?

09:36:11 22 A. I felt shocked. It frightened me. I felt scared, a
09:36:20 23 little bit panicked, that I was living in that
09:36:25 24 temperature. I also felt a little bit of justification
09:36:30 25 like at least I'm not crazy. I know it feels like we're

09:36:34 1 being housed like these temperatures, but to actually see
09:36:38 2 the number kind of justified how I felt.

09:36:42 3 Q. Did you do anything sort of taking matters into your
09:36:45 4 own hands to help reduce the effects of the heat on
09:36:51 5 yourself personally?

09:36:52 6 A. I did a lot of things to try to get my body
09:36:56 7 temperature down in the summer months. I would wet my
09:36:58 8 T-shirt and shorts, wear wet clothes, wear wet hair. I
09:37:02 9 would lay on the concrete floor in a puddle of water
09:37:06 10 trying to stay cool. When I was housed in cell block
09:37:09 11 housing, the water, it had a sink-toilet combo and so,
09:37:14 12 kind of the typical one you may have seen on TV, sir, and
09:37:17 13 the water spout that comes out of the sink is warm water,
09:37:21 14 but if you flush the toilet a couple of times, that
09:37:25 15 water's cold and I would splash toilet water on my body,
09:37:29 16 legs to cool off.

09:37:32 17 Q. How many times in total would you say you used water
09:37:36 18 from your toilet to cool yourself down?

09:37:39 19 A. Sir, I was housed in cell block housing during summer
09:37:43 20 months at least for two years. I can't give you an
09:37:47 21 accurate number. I did it several times a day the entire
09:37:52 22 summer months.

09:37:52 23 Q. More times than you can count?

09:37:54 24 A. Yes, sir.

09:37:54 25 Q. Did you ever complain to any TDCJ staff about the

09:37:58 1 heat or the lack of air conditioning?

09:38:00 2 A. Yes, sir. Absolutely. I verbally made complaints to

09:38:04 3 TDCJ staff, including ranking officers. Yes, sir.

09:38:10 4 Q. What did you expect to be -- did you actually file

09:38:14 5 grievances about any of those issues?

09:38:15 6 A. I did. Yes, sir. I filed grievances about heat

09:38:19 7 mitigation policies not being followed, not having

09:38:21 8 access -- in particular, not having access to respite

09:38:25 9 areas.

09:38:26 10 Q. What did you expect the results to be from those

09:38:30 11 grievances?

09:38:31 12 A. I expected someone to look at that grievance and do a

09:38:34 13 little investigation. I was housed on a unit at this time

09:38:37 14 that has cameras everywhere, very easy to determine if

09:38:41 15 we're getting respite or not and say, oh, well, she's

09:38:44 16 right, it will be fixed, let's get these people to

09:38:47 17 respite.

09:38:48 18 Q. Did anything change?

09:38:49 19 A. No, sir.

09:38:52 20 Q. Was TDCJ's response to your grievances the same every

09:38:55 21 time?

09:38:56 22 A. Yes, sir. Every grievance I filed regarding heat

09:39:00 23 came back like unsubstantiated, not enough evidence or

09:39:04 24 basically that's not happening.

09:39:06 25 Q. Boilerplate response?

09:39:07 1 A. Yes, sir.

09:39:09 2 Q. I'd like to switch gears now and talk about the other
09:39:11 3 women in your unit that you were housed with. Do you
09:39:14 4 recall how many women you were housed with in the Dr. Lane
09:39:18 5 Murray Unit?

09:39:19 6 A. Like I said, I did the majority of my time on the
09:39:22 7 Murray Unit so I lived in several different dorms. Some
09:39:25 8 dorms were cell block-style housing where I was housed
09:39:28 9 with about 81 other women. Some were more open dorms.
09:39:33 10 One dorm holds 102. One dorm holds 125.

09:39:36 11 Q. Fair to say that each of those dorms was not air
09:39:39 12 conditioned?

09:39:39 13 A. That's correct. Yes, sir.

09:39:41 14 Q. Did you see how the heat affected the other women
09:39:45 15 that you were housed with?

09:39:47 16 A. Yes, sir. Absolutely. We saw -- I saw women that
09:39:52 17 were more lethargic during the summer months. I saw
09:39:56 18 women's tempers flare up a little bit during the summer
09:40:00 19 months. Particularly, the more vulnerable population,
09:40:04 20 elderly people, I saw them not getting up and going to
09:40:10 21 chow, not getting up and refilling their water bottle in
09:40:12 22 the sink, and I remember having to consciousness try to
09:40:18 23 look out for those folks a little bit.

09:40:21 24 Q. During those summers, did you ever see anyone pass
09:40:24 25 out?

09:40:24 1 A. Yes, sir. I saw several people pass out during the
09:40:27 2 summer months.

09:40:28 3 Q. Did you see any seizures?

09:40:30 4 A. Sir, I saw so many heat-induced seizures. I didn't
09:40:35 5 -- I couldn't count how many heat induced seizures. I saw
09:40:39 6 people that were healthier the rest of the time of the
09:40:41 7 year that I never saw any health issues, women that I
09:40:45 8 lived with for years, but during the summer months would
09:40:49 9 have seizures back to back to back.

09:40:51 10 Q. Did you see any women in your unit receive medical
09:40:54 11 treatment for heat-related issues?

09:40:56 12 A. Yes, sir. I saw lots of women that I was housed with
09:41:01 13 receive medical, including ambulances coming very
09:41:04 14 frequently. By frequently, I mean several times a week to
09:41:07 15 the Lane Murray Unit.

09:41:08 16 Q. During the summer?

09:41:09 17 A. Yes, sir.

09:41:10 18 Q. Did any of those women that you were incarcerated
09:41:12 19 with complain to you about how the heat was affecting
09:41:15 20 them?

09:41:15 21 A. Absolutely. Absolutely, everyone. Everyone that I
09:41:21 22 was around was complaining about the heat.

09:41:24 23 Q. And I think you also mentioned there were women that
09:41:26 24 were elderly, housed in the same unit as you; is that
09:41:29 25 right?

09:41:29 1 A. Yes, sir. The Dr. Lane Murray Unit has an onsite
09:41:34 2 medical division and I'm not sure the correct terminology
09:41:37 3 what we called as incarcerated people, we would say that's
09:41:40 4 a medical unit. I don't know what TDCJ calls it, but it
09:41:44 5 has wheelchair accessible. So we had a pretty large
09:41:47 6 elderly population, people on wheelchairs, walkers, canes.
09:41:51 7 Q. What percentage of the women in your unit at Lane
09:41:56 8 Murray would you say were over the age of 60?
09:41:58 9 A. It would be a guesstimation, sir, I would say about 15
09:42:01 10 percent.
09:42:03 11 Q. And based on what you saw, what you knew, what they
09:42:06 12 told you, what percentage of those women had a disability
09:42:08 13 or some sort of health condition?
09:42:10 14 A. Sir, at least 90 percent of that population.
09:42:15 15 Q. You talked about how you dealt with heat. How did
09:42:19 16 the other women in your unit deal with heat?
09:42:22 17 A. Very similar. A lot of women did very similar things
09:42:25 18 to me, wetting their clothes, cell block housing, toilet
09:42:28 19 water, it was very non for us to use that. We did -- I
09:42:32 20 did see women that went to a little bit more extreme
09:42:36 21 measures. The crisis management center is on the Mountain
09:42:41 22 View Unit and it is air conditioned. As an incarcerated
09:42:45 23 woman in Texas, we refer to that area as the icehouse. In
09:42:49 24 the summer months, it was common to hear women say, I've
09:42:54 25 gotta take a trip to the icehouse, this is too much. And

09:42:57 1 to get to the icehouse, you would have to inflict harm on
09:43:00 2 yourself.

09:43:02 3 Q. What do you mean when you say inflict harm on
09:43:04 4 yourself?

09:43:05 5 A. I mean make it look like a suicide attempt, sir.

09:43:08 6 Q. In order to get into the air-conditioned crisis
09:43:12 7 management center?

09:43:12 8 A. Yes, sir, to get a break from the heat.

09:43:15 9 Q. Did the women in your unit tell you about the
09:43:17 10 grievances that they filed, about the heat or the lack of
09:43:22 11 air conditioning?

09:43:22 12 A. Yes, sir, several. Several dozen women have talked
09:43:25 13 to me about grievances because of the heat.

09:43:28 14 Q. And was the result from the grievances the same as
09:43:31 15 the result from your grievances?

09:43:33 16 A. Absolutely the same as mine.

09:43:34 17 Q. What about the corrections officers? Did they ever
09:43:37 18 complain to you about the heat?

09:43:38 19 A. Yes, sir. Correction staff openly talked about how
09:43:42 20 hot it was. They talked about especially in the dorms
09:43:45 21 where they had to wear -- and I'm sorry, I don't know the
09:43:48 22 correct terminology but it's like a Kevlar-looking vest.
09:43:55 23 It looks heavy and watching them take it off at shift
09:43:57 24 change, I believe that it's kind of a heavy material and
09:44:01 25 then, they would have to be in full uniform, so they would

09:44:04 1 say things like --

09:44:09 2 MS. MCGEE: This is unfairly prejudicial hearsay.
09:44:14 3 She's -- it's definitely hearsay.

09:44:14 4 THE COURT: What's your response, Mr. Homiak?

09:44:17 5 MR. HOMIAK: Yes, your Honor. This is not taken
09:44:18 6 for the truth of the matter asserted but, instead, to show
09:44:20 7 the state of mind of the individuals, the corrections
09:44:23 8 officers that she was housed with, and the fact that this
09:44:26 9 goes to some extent to show notice to TDCJ of these heat
09:44:30 10 issues, the fact that the corrections officers were
09:44:31 11 experiencing these issues.

09:44:32 12 THE COURT: Overrule the objection.

09:44:34 13 Q. (BY MR. HOMIAK) So you were telling me about the
09:44:36 14 uniforms that correction officers had to wear. I want to
09:44:39 15 make sure you got a chance to finish your answer.

09:44:41 16 A. Yes, sir. Just that they would make comments like at
09:44:44 17 least you all are in shorts and T-shirt, look at me.
09:44:49 18 Yeah, they complained about walking in the heat. They
09:44:52 19 didn't want duty posts that were in dorms because the
09:44:55 20 dorms weren't air conditioned. Yeah, they definitely
09:45:01 21 verbalized those concerns to us.

09:45:02 22 Q. Just so I understand, did all correction officers
09:45:04 23 have to wear pants in the summer?

09:45:06 24 A. Yes, sir.

09:45:08 25 Q. And did at least some have to wear long-sleeve

09:45:11 1 uniform, as well?

09:45:12 2 A. Some did, yes, sir.

09:45:12 3 Q. And were the correction officers required to walk
09:45:15 4 through your un-air conditioned units as part of their job
09:45:19 5 responsibility?

09:45:19 6 A. Yes, sir. And again, I don't know exactly how many
09:45:22 7 times during an hour is policy for them to walk, but yes,
09:45:25 8 it is one of their job duties to walk the dorm. They
09:45:29 9 didn't very often in the summer months.

09:45:32 10 Q. So you noticed that the corrections officers' rounds
09:45:35 11 were actually less frequent in the summer months?

09:45:38 12 A. Very much so, yes, sir.

09:45:39 13 Q. And was it your experience that they'd actually leave
09:45:41 14 y'all unattended for several hours at a time?

09:45:44 15 A. Yes, sir, often. Oftentimes in the summer months,
09:45:47 16 they would only come in for count time and this was scary
09:45:52 17 for me because when a fight breaks out and officers on the
09:45:57 18 duty post, they break up that fight, there's little to no
09:46:01 19 injury. In the summer months, tempers are a little bit
09:46:03 20 higher, there's no staff member onsite, and I remember
09:46:07 21 seeing more injuries in the summer because of that violent
09:46:11 22 acts.

09:46:12 23 Q. So because of the less frequent rounding from your
09:46:15 24 perspective, fights were more common or, at a minimum,
09:46:18 25 lasted longer?

09:46:19 1 A. Yes, sir.

09:46:19 2 Q. Other than spending more time in the air-conditioned
09:46:23 3 areas and less time in the un-air conditioned areas, did
09:46:25 4 you see corrections officers try to do anything else to
09:46:28 5 deal with the heat?

09:46:29 6 A. Yes, sir. They would carry wet towels or run like
09:46:33 7 just a hand towel maybe under the sinks in our dorm and
09:46:38 8 wear them around their neck. They brought chilled towels.
09:46:42 9 One -- those happened to be invented while I was
09:46:45 10 incarcerated so that was the first time I saw chilled
09:46:48 11 towels was officers wearing chilled towels around their
09:46:51 12 neck. I watched officers pour water down the front of
09:46:54 13 their uniform. And I saw some officers with little
09:46:56 14 plastic handheld battery-operated fans that they would
09:47:01 15 carry.

09:47:02 16 Q. Did you ever see any corrections officers pass out?

09:47:05 17 A. Yes, sir. I saw at least five corrections staff that
09:47:10 18 I know, off the top of my head, that passed out.

09:47:13 19 Q. In the ten summers that you spent in those
09:47:15 20 un-air-conditioned units, did you ever have access to
09:47:19 21 respite rooms?

09:47:20 22 A. I did, yes, sir.

09:47:21 23 Q. Tell me about that.

09:47:23 24 A. We had around the same time that the unit stalled
09:47:28 25 these thermometers in our dorms, that paint crew came

09:47:34 1 around and painted the word "respite" on several doors on
09:47:37 2 our unit, the chapel door, education door, the
09:47:42 3 administrative building door, we didn't know what that
09:47:45 4 meant. I had never heard that term and so, I didn't know.
09:47:50 5 We didn't know. For two summers, these words were painted
09:47:56 6 on the door. And then, the third summer, which was almost
09:48:01 7 -- I believe I spent two summers where respite was
09:48:04 8 available to me so I believe that was 2019, an officer
09:48:07 9 said, hey, y'all are allowed to ask to go to respite.
09:48:12 10 When you're feeling that hot, you're allowed to go get
09:48:15 11 some air conditioning and I remember thinking like what?
09:48:23 12 This has been painted on the door for two summers and we
09:48:26 13 don't know and we started asking.

09:48:28 14 Q. Just so I understand, were those rooms actually
09:48:31 15 physically located in your dorm or your living unit
09:48:35 16 itself?

09:48:35 17 A. No, sir.

09:48:36 18 Q. Where were they located?

09:48:37 19 A. Across the unit in a separate building, the chapel, a
09:48:43 20 separate building, the education building. There was one
09:48:45 21 like on the administrative building where visitation was,
09:48:49 22 but I never knew us to have access there. The infirmary.

09:48:52 23 Q. And in your experience, could you use those respite
09:48:56 24 rooms at any time of the day?

09:48:57 25 A. No, sir. Absolutely not.

09:48:58 1 Q. What were the limitations from your perspective?

09:49:01 2 A. So for sure, we couldn't use them like at night. I
09:49:06 3 never had respite available after 12:00. Starting at
09:49:12 4 about 10:00 a.m., people would start asking and we --
09:49:16 5 sometimes the response from staff would be respite's not
09:49:19 6 open yet, we don't have anybody to open respite yet,
09:49:22 7 there's no respite yet. When I was housed in cell block
09:49:26 8 housing, which I was in a higher security level, I was in
09:49:30 9 medium custody is the terminology there, and that respite
09:49:34 10 was only available once a day and it was in the evening,
09:49:38 11 oftentimes 8:00 or 9:00 p.m.

09:49:41 12 Q. And if you wanted to even when you went to the
09:49:43 13 respite room, could you stay all day?

09:49:45 14 A. No. Absolutely not.

09:49:47 15 Q. In your experience, what were those limitations?

09:49:50 16 A. Sometimes as short as 15 minutes, sometimes as long
09:49:55 17 as about an hour.

09:49:59 18 Q. From your perspective, was your unit ever
09:50:02 19 short-staffed?

09:50:02 20 A. Yes, sir. My unit was often short-staffed from what
09:50:06 21 I witnessed and in the summer months, even more so. For
09:50:11 22 example, when I was housed in the K dorms on Dr. Lane
09:50:15 23 Murray Unit, that's one building with two dorms and a
09:50:19 24 picket. For a fully staffed unit, we would have three
09:50:21 25 officers: One for each dorm, one for the picket. There

09:50:26 1 were times when we had one officer running the entire
09:50:28 2 dorm, they would lock us down and make us stay in our
09:50:31 3 bedding area. Two in the bathroom at a time type of
09:50:36 4 situation. One time, it was a ranking officer, Sergeant
09:50:37 5 Cockerel ran the whole dorm by himself.

09:50:39 6 Q. Did the officers in your unit ever explain to you why
09:50:42 7 they didn't work as often in the summer?

09:50:44 8 A. Yes. It was very common to hear officers say, I take
09:50:49 9 my vacation in the summer.

09:50:51 10 MS. MCGEE: Objection, your Honor. This is
09:50:52 11 hearsay and we also don't have any actual factual proof of
09:50:58 12 this.

09:50:58 13 MR. HOMIAK: Yes, your Honor. As to the hearsay
09:51:01 14 objection, this goes to notice to Mr. Collier the fact
09:51:04 15 that it was widespread that corrections officers were not
09:51:06 16 working as often or were taking vacations more frequently
09:51:09 17 from this witness' perspective in the summer. And as to
09:51:11 18 the second objection, this really is something goes to
09:51:13 19 weight, not admissibility. The Court can take this
09:51:15 20 witness' personal experience, these conversations with the
09:51:17 21 corrections officers and give it whatever weight it deems
09:51:20 22 fit and certainly as a matter of her cross-examination.

09:51:23 23 THE COURT: I'll allow it. Go ahead.

09:51:25 24 Q. (BY MR. HOMIAK) So I don't think you got a chance to
09:51:27 25 finish your answer. I think you were saying the

09:51:29 1 corrections officers were telling you reasons way they
09:51:31 2 didn't work quite as often?

09:51:32 3 A. Yes, sir. Correction staff did both. They would
09:51:36 4 take vacations more often in the summer. They would joke
09:51:39 5 about calling in more in the summer months.

09:51:43 6 Q. Did the short staffing ever affect your ability to
09:51:46 7 use the respite rooms?

09:51:47 8 A. Absolutely, yes, sir. For a respite to be available,
09:51:53 9 there would have to be a corrections staff there
09:51:56 10 monitoring the area so when they were short-staffed, they
09:51:58 11 weren't opening respite.

09:52:00 12 Q. When the respite rooms were open, is there anything
09:52:03 13 you had to do or any requirements you had to meet before
09:52:05 14 you could use them?

09:52:06 15 A. Yes, sir. First thing is you would have to ask your
09:52:10 16 pod boss, whoever was in charge of your dorm, so
09:52:13 17 oftentimes, they're not in the pods so you would have to
09:52:16 18 wait to get an opportunity to ask them. You would have to
09:52:20 19 be fully dressed in your TDCJ uniform. So we did get to
09:52:25 20 be in our shorts and T-shirt if we're in our living area.
09:52:28 21 We would have to put that uniform on. It's kind of a
09:52:34 22 heavy material, not breathable. We would have to make
09:52:38 23 sure our living area was completely in compliance. So you
09:52:43 24 would make sure, I would make sure my bed was made, I
09:52:46 25 would be picking up everything, making sure that, you

09:52:49 1 know, it looked like it was supposed to like the picture
09:52:52 2 on the bulletin board. So those things.

09:52:54 3 And then, if the staff member said that you could
09:52:58 4 go to respite, sometimes you would go straight to respite.
09:53:02 5 Other times, you would stand in line. You would either
09:53:05 6 stand in line in the dorm on one of the walls that --
09:53:10 7 again, those outside walls didn't have very good airflow,
09:53:13 8 so you would stand in line there. Or other times, you
09:53:17 9 would go in line -- for example, if your respite area that
09:53:21 10 was open was the infirmary, they can only fit so many
09:53:25 11 people in that infirmary room so you would wait in line
09:53:28 12 outside.

09:53:29 13 Q. When you got into the respite rooms, were there any
09:53:32 14 limitations on what you could do?

09:53:33 15 A. Yes, sir, and it completely depended on which staff
09:53:37 16 member was in charge of that respite room at that time.
09:53:40 17 We did have very extreme limitations with some staff
09:53:45 18 members. No talking. We were often told to sit on the
09:53:50 19 floor. Sometimes when --

09:53:51 20 MS. MCGEE: Objection, your Honor. Not only is
09:53:52 21 this hearsay but this actually is not -- we don't know if
09:53:55 22 this is the condition right now and these statements are
09:53:57 23 being used to go to the truth of the matter asserted.
09:53:59 24 This is not just for notice to TDCJ.

09:54:04 25 MR. HOMIAK: So I believe the witness was just

09:54:06 1 speaking about commands, which don't have truth value, sit
09:54:10 2 on floor, face the wall, don't talk to each other. So the
09:54:13 3 hearsay, there's actually no truth value there, but even
09:54:15 4 if there were, it still goes to notice to TDCJ, Mr.
09:54:19 5 Collier, the heat mitigation measures are not as
09:54:22 6 effective, in part, because of the conditions that are
09:54:25 7 placed on using the respite rooms, among other things.

09:54:28 8 And again, this goes to the fact that this was
09:54:31 9 the case, I think as the witness testified, 2017 -- or,
09:54:34 10 excuse me, 2020, I believe is the last summer that she was
09:54:37 11 there, certainly goes to make it more likely that that's
09:54:40 12 the case now. And the witness, if I could proffer, will
09:54:45 13 testify that the grievances that she's heard about,
09:54:49 14 complaints she's received from Lioness' members make it
09:54:52 15 clear that the situation there now is consistent with what
09:54:55 16 she experienced.

09:54:55 17 THE COURT: I'll overrule the objection. You'll
09:54:57 18 be able to ask this witness questions about time. Go
09:55:00 19 ahead.

09:55:00 20 Q. (BY MR. HOMIAK) Thank you, your Honor.

09:55:02 21 So you were talking about the various conditions
09:55:04 22 that had been placed on you when you were in respite
09:55:07 23 rooms. Maybe we can just start over. So can you just
09:55:10 24 give us that answer one more time?

09:55:12 25 A. Yes, sir. So again, it just completely depended on

09:55:16 1 what staff was running that respite room. Sometimes I was
09:55:20 2 told to sit on the floor. Sometimes we had to face the
09:55:23 3 wall. Sometimes I was told not to speak. Other times, we
09:55:27 4 were told not to talk. And there would be a video -- TDCJ
09:55:32 5 has some like, for lack of better words, introductory
09:55:36 6 videos when you first get to prison like warning -- public
09:55:40 7 service announcements-style videos, three minutes, and
09:55:44 8 that video would just run on loop while you were there.
09:55:49 9 Disciplinary cases were threatened big time in respite
09:55:54 10 areas.

09:55:54 11 Q. For what?

09:55:55 12 A. For breaking any of the things that I said, for
09:56:00 13 looking away from the wall, for talking, for signaling to
09:56:03 14 someone. Maybe I see someone from another dorm and I'm
09:56:08 15 like, oh, I see so and so, that would be a disciplinary
09:56:11 16 infraction, sir.

09:56:12 17 Q. So you told us earlier that there were limitations on
09:56:17 18 the amount of time that you could spend in one of these
09:56:19 19 respite rooms. If you refused to leave when they told you
09:56:22 20 to, what would happen to you?

09:56:24 21 A. Anytime there was a refusal for a direct order like
09:56:29 22 it's time for you to leave respite, then they would call
09:56:34 23 an ICS and, I'm sorry, but I don't know what that stands
09:56:38 24 for. They would call an ICS, which would mean the officer
09:56:41 25 would call for a backup, other officers would come in,

09:56:44 1 they would use a use of force. So they would suit up in
09:56:49 2 protective gear, sometimes have those plastic shields in
09:56:52 3 front of them and physically remove you and take you to
09:56:54 4 solitary confinement.

09:56:56 5 Q. How frequently did the other women you were housed
09:56:58 6 with use the respite rooms?

09:57:01 7 A. Not as frequently as you might think. Yeah, not as
09:57:08 8 frequently as you might think.

09:57:10 9 Q. Did they tell you why?

09:57:11 10 A. Yes, sir. Especially for the more vulnerable
09:57:15 11 population, those ladies expressed that it was too much to
09:57:20 12 get dressed.

09:57:22 13 MS. MCGEE: Objection, your Honor. Hearsay.

09:57:26 14 THE COURT: Sustained.

09:57:28 15 Q. (BY MR. HOMIAK) Did you see that the women who were
09:57:32 16 not going into the respite rooms, did they appear to you
09:57:35 17 to be fatigued or otherwise experiencing effects from the
09:57:39 18 heat?

09:57:40 19 A. Yes, sir. The same population that had a hard --
09:57:44 20 that I witnessed not refilling their water bottles
09:57:47 21 frequently in the summer months were not getting up and
09:57:51 22 utilizing respite.

09:57:53 23 Q. From your perspective, were the respite rooms
09:57:55 24 effective at reducing the effects of the heat on you?

09:57:58 25 A. Physically, no, sir.

09:58:00 1 Q. Were they mentally effective?

09:58:03 2 A. I think that when they opened that respite room and
09:58:07 3 we saw like some kind of progress, it gave me a little bit
09:58:10 4 of hope. So mentally, maybe it gave me a little bit of
09:58:13 5 hope that change was coming.

09:58:15 6 Q. From your perspective, were they effective on
09:58:19 7 reducing the effects of heat on the other women you were
09:58:21 8 housed with?

09:58:22 9 A. No, sir.

09:58:22 10 Q. Why not?

09:58:23 11 A. I saw that the population that I felt needed it the
09:58:30 12 most weren't utilizing it. We weren't allowed to stay in
09:58:35 13 there very long periods of time.

09:58:38 14 Q. Anything else?

09:58:40 15 A. No, sir.

09:58:41 16 Q. Were there any other heat mitigation measures you saw
09:58:44 17 TDCJ use while you were in un-air-conditioned facilities?

09:58:48 18 A. Yes, sir. Around that same time that the
09:58:52 19 thermometers came in and the respite got painted on the
09:58:54 20 doors, I noticed some other changes. They came in to
09:58:59 21 every dorm and changed one of our showers to a cold
09:59:04 22 shower. They turned the heat off so it was cold. They
09:59:06 23 brought in those big Igloo coolers, those big orange Igloo
09:59:11 24 coolers that you might have seen like on a construction
09:59:14 25 site, a type of cooler with ice water.

09:59:20 1 Q. Did you mention showers?

09:59:22 2 A. Yes, sir.

09:59:23 3 Q. Okay. And from your perspective, were the cold
09:59:27 4 showers effective at reducing the effects of heat on you?

09:59:30 5 A. So the cold showers were great if you could get in
09:59:33 6 it.

09:59:35 7 Q. How frequently could you get into a cold shower?

09:59:38 8 A. So again, that depended on what custody level you
09:59:40 9 were at. And then, even the lowest custody level, general
09:59:47 10 population is what we call it in there, I'm not sure the
09:59:50 11 correct terminology, but even the lowest-custody level,
09:59:53 12 there are restrictions. Showers are open from 7:00 a.m.
09:59:57 13 to 10:00 p.m. There's no showers during count time all
10:00:00 14 the way until count clears. So several times a day for
10:00:03 15 couple of hours, it's completely closed and then, there's
10:00:06 16 one cold shower and there's 80 to 125 women needing to get
10:00:13 17 relief from the heat.

10:00:14 18 Q. From your perspective, was the provision of ice water
10:00:18 19 effective at reducing the effects of heat on you?

10:00:21 20 A. Again, sir, the ice water was great if you could get
10:00:26 21 to it. You can imagine the first year they brought those
10:00:29 22 coolers in, I was in a dorm with 124 other women and they
10:00:35 23 would bring the coolers in and fill them with water and we
10:00:40 24 would line up with our plastic bottle and it's one cooler
10:00:45 25 is not -- it's not enough water for the entire dorm. For

10:00:49 1 that cooler to get refilled, it required a staff member.

10:00:55 2 Not something that we as incarcerated people were allowed

10:00:57 3 to just go get the cooler and open it up and fill it up.

10:01:00 4 It was -- had to be monitored. When they first brought

10:01:04 5 those in, they even locked them. They had a little chain

10:01:07 6 thing around the top. That had went away by the end, but

10:01:10 7 we still weren't allowed to do that without a staff

10:01:13 8 member. So oftentimes, we couldn't get a staff member to

10:01:15 9 refill those.

10:01:17 10 Q. Other than the respite rooms, were there any other

10:01:20 11 parts of the prisons that were temperature controlled that

10:01:22 12 you had access to?

10:01:24 13 A. Yes, sir. I worked outside on the field squad. One

10:01:30 14 of my job duties was to shovel pig droppings in the pig

10:01:37 15 dorm. I said dorm and I should have said barn. Pig barn.

10:01:43 16 And those areas, they did not have air conditioning, but

10:01:48 17 they had some kind of cooling system going from outside

10:01:52 18 where we would have to march to that area and going into

10:01:55 19 that area, it was noticeably cooler.

10:01:58 20 Q. What year were you released from TDCJ's physical

10:02:02 21 custody?

10:02:02 22 A. 2021.

10:02:03 23 Q. And what year did you join Lioness?

10:02:06 24 A. 2022.

10:02:07 25 Q. Is Lioness a membership organization?

10:02:09 1 A. Yes, sir.

10:02:10 2 Q. Who are Lioness' members?

10:02:12 3 A. Currently and formerly incarcerated women, girls,
10:02:17 4 gender-expansive folks.

10:02:19 5 Q. And how does someone become a member of Lioness?

10:02:23 6 A. You let us know you want to be a part of our
10:02:27 7 membership. You let us know you want to be a part of
10:02:30 8 Lioness and you're in.

10:02:31 9 Q. How many of Lioness' members are currently
10:02:33 10 incarcerated in TDCJ facilities?

10:02:36 11 A. Right now, it's over 400.

10:02:43 12 Q. Your, if I may bring up Exhibit 62. What's been
10:02:48 13 marked as Plaintiffs' Exhibit 62?

10:04:44 14 Ms. Simmons, I'm showing you what's been marked
10:04:47 15 as Plaintiffs' Exhibit 62. Do you recognize this
10:04:51 16 document?

10:04:51 17 A. Yes, sir. That's our inside member membership list.

10:04:57 18 Q. This is Lioness' list of members who are currently
10:05:01 19 incarcerated in TDCJ facilities at least as of the date
10:05:05 20 that you provided this to us?

10:05:06 21 A. Yes, sir. It's grown a little bit since then but
10:05:08 22 this is accurate.

10:05:10 23 Q. At this time, we'd move to admit Exhibit 62 into
10:05:13 24 evidence.

10:05:14 25 THE COURT: Any objection?

10:05:16 1 MS. MCGEE: No objection, your Honor.

10:05:17 2 THE COURT: Without objection, so admitted.

10:05:19 3 MR. HOMIAK: Thank you, your Honor.

10:05:21 4 Q. (BY MR. HOMIAK) Ms. Simmons, which TDCJ units does
10:05:24 5 Lioness have members of?

10:05:25 6 A. Nearly every TDCJ prison that houses females, we have
10:05:31 7 representation there.

10:05:33 8 Q. And do Lioness' members pay membership dues?

10:05:38 9 A. They do not.

10:05:39 10 Q. Why not?

10:05:41 11 A. A good portion of our membership are currently
10:05:46 12 incarcerated. They don't have any financial means to pay
10:05:49 13 membership. The other population of our membership is
10:05:53 14 formerly incarcerated so we have a lot of people trying to
10:05:57 15 get back on their feet after prison, doesn't make sense to
10:05:59 16 give them a financial burden.

10:06:01 17 Q. Who currently sits on the Lioness board?

10:06:05 18 A. We have a group of formerly incarcerated women,
10:06:08 19 including Angel Carroll, Alexa Garza, Lori Mellinger,
10:06:15 20 myself, Jennifer Toon, Amanda Cassidy.

10:06:20 21 Q. So is it fair to say that your board consists
10:06:23 22 entirely of formerly incarcerated women?

10:06:26 23 A. Entirely accurate.

10:06:28 24 Q. How does Lioness advocate for its incarcerated
10:06:31 25 members?

10:06:31 1 A. We advocate in a number of ways. We do social media
10:06:34 2 campaigns to bring awareness to the public. We teach
10:06:39 3 civic engagement so our members know how to interact with
10:06:43 4 their legislators. And advocating could look a little bit
10:06:46 5 smaller like if we hear several complaints or concerns
10:06:51 6 from one unit, for example, the Hobby Unit was recently
10:06:55 7 out of water for several days and the ladies didn't have
10:06:58 8 access to a restroom, that advocacy might look like
10:07:01 9 picking up the phone and talking to Hobby and saying, hey,
10:07:04 10 what's going on? What can we do? What are you doing?
10:07:06 11 What can we tell our inside members?

10:07:08 12 Q. I think you mentioned a couple of ways but what are
10:07:11 13 all the ways that -- some more of the ways that Lioness
10:07:15 14 uses to communicate with its members?

10:07:17 15 A. We use mail. Sometimes it's the stamp system still
10:07:22 16 coming. We get stamped letters out or in, stamped letters
10:07:28 17 coming from the prisons to Lioness. But mostly, it's
10:07:32 18 e-messaging through the new system with the tablets.

10:07:36 19 Q. How do Lioness' incarcerated members guide your work?

10:07:40 20 A. Lioness, our inside members guides all of our work.
10:07:45 21 They let us know what's currently going on in their units
10:07:49 22 inside of the units and we campaign around those issues.

10:07:54 23 Q. When did the issue of extreme heat in TDCJ prisons
10:07:57 24 first get on Lioness' radar?

10:08:00 25 A. So that priority came with the development of the

10:08:04 1 organization. Because of our lived experience, we knew
10:08:07 2 that that was an issue and then, our inside members
10:08:13 3 confirmed that that's still going on.

10:08:15 4 Q. It sounds like it was on your radar from day one
10:08:19 5 because of what y'all had experienced.

10:08:20 6 A. Absolutely. Yes, sir.

10:08:21 7 Q. How many of Lioness' members currently live in
10:08:23 8 un-air-conditioned units in TDCJ facilities?

10:08:26 9 A. About 250.

10:08:30 10 Q. Has Lioness received complaints from its incarcerated
10:08:34 11 members about heat in TDCJ prisons?

10:08:36 12 A. Yes, sir. We're swamped in the summer months with
10:08:39 13 letters from our inside members that are not housed in
10:08:43 14 climate controlled.

10:08:44 15 Q. What have your incarcerated members told you what
10:08:47 16 they're going through this summer?

10:08:48 17 A. I brought a letter. Do we want to do the --

10:08:53 18 Q. I think I will cover it in just one moment. More
10:08:57 19 generally --

10:08:57 20 A. I apologize for that. So generally, generally, the
10:09:02 21 same things that I experienced and witnessed from other
10:09:06 22 people.

10:09:06 23 MS. MCGEE: Objection, your Honor. Hearsay.

10:09:09 24 MR. HOMIAK: May I respond, your Honor?

10:09:10 25 THE COURT: Yes.

10:09:11 1 MR. HOMIAK: So this line of questioning is
10:09:12 2 really going to notice from Lioness' members to Lioness
10:09:15 3 itself that, as this witness will testify, ultimately
10:09:17 4 guided its decision to join this lawsuit, its advocacy
10:09:21 5 work and its focus on extreme heat, obviously is a part of
10:09:24 6 the same analysis.

10:09:26 7 MS. MCGEE: We're assuming that these complaints
10:09:29 8 are first factually true and then, they were accurately
10:09:31 9 transferred to Lioness and then, now they're being
10:09:34 10 accurately transferred again. So there's really the
10:09:37 11 reliability here is very low. In addition to that,
10:09:39 12 they're being used to prove the truth of the matter
10:09:42 13 asserted, not just for notice.

10:09:45 14 THE COURT: I'll sustain the objection.

10:09:52 15 MR. HOMIAK: Your Honor, if I may just briefly be
10:09:54 16 heard further on that.

10:09:55 17 THE COURT: Sure.

10:09:55 18 MR. HOMIAK: Which is we'd be happy to provide
10:09:57 19 the Court some case law on the relaxed standard for
10:10:00 20 hearsay that applies in preliminary injunction hearings
10:10:01 21 but I think --

10:10:02 22 THE COURT: I'm aware.

10:10:04 23 MR. HOMIAK: The only thing I would add is that I
10:10:07 24 think it's for the -- it's for the Court to decide whether
10:10:10 25 to take any of what the witness is saying as truth. But

10:10:14 1 we are not offering any of the letters, any of the
10:10:16 2 complaints from these incarcerated members for their
10:10:19 3 truth. It really is to show the subsequent actions of the
10:10:22 4 organization and its reason for it.

10:10:24 5 THE COURT: I get that and certainly it is the
10:10:25 6 case that, in the end, I will be relied upon to use only
10:10:31 7 admissible evidence in the findings of fact and
10:10:33 8 conclusions of law. But I think that sometimes evidence
10:10:38 9 like this is very clearly -- it is as counsel suggests,
10:10:42 10 relying on the truth of what they're saying and it's
10:10:47 11 notice to her is not the issue here. So I think it's
10:10:53 12 inadmissible and I'll sustain the objection.

10:10:54 13 MR. HOMIAK: Thank you, your Honor.

10:10:56 14 Q. (BY MR. HOMIAK) Has the number of complaints from
10:10:59 15 Lioness' members about the heat generally increased,
10:11:03 16 decreased, or stayed the same since 2022?

10:11:07 17 A. Increased, sir.

10:11:14 18 Q. And without getting into the details of those
10:11:17 19 complaints, it's fair to say that Lioness has received a
10:11:20 20 number of complaints from individuals currently
10:11:23 21 incarcerated about the heat?

10:11:25 22 A. Yes, sir. A very large number every summer.

10:11:28 23 Q. And it's fair to say that Lioness has received a
10:11:30 24 number of complaints from its incarcerated members about
10:11:34 25 the lack of air conditioning?

10:11:35 1 A. Yes, sir.

10:11:35 2 Q. It's fair to say Lioness has received a number of
10:11:37 3 complaints about the heat mitigation measures or lack
10:11:40 4 thereof; is that right?

10:11:41 5 A. Yes, sir.

10:11:41 6 Q. Why did Lioness decide to join this lawsuit?

10:11:47 7 A. Lioness decided to join this lawsuit because we are
10:11:51 8 concerned about incarcerated Texans' health and, frankly,
10:11:55 9 their life and even at the risk -- because the majority of
10:12:00 10 our membership is under the direct authority of Texas
10:12:03 11 Department of Criminal Justice, we outweighed the risk of
10:12:08 12 the health of incarcerated Texans.

10:12:10 13 Q. Was that decision not only a response to the
10:12:13 14 complaints that you received but, also, a result of your
10:12:17 15 lived experience with other board members' experience?

10:12:20 16 A. A combination of that, yes, sir.

10:12:22 17 Q. Your Honor, I have no further questions. Thank you.
10:12:25 18 I can take this down.

10:12:38 19 CROSS-EXAMINATION

10:12:44 20 BY MS. MCGEE:

10:12:44 21 Q. Good morning, your Honor. Lauren McGee for Mr.
10:12:47 22 Collier. I'm going to move those away a little bit
10:12:49 23 because I've been told I'm a little on the loud side.

10:12:59 24 Ms. Simmons, I'm Lauren McGee. I represent Mr.

10:13:04 25 Collier and thank you for being here today. I just wanted

10:13:05 1 to clear up something real quick and that is the name. I
10:13:09 2 believe on the lawsuit, it says Build Up, Inc./Justice
10:13:13 3 Impacted Women's Alliance. Are you familiar with that
10:13:15 4 being on the lawsuit?

10:13:16 5 A. Yes, ma'am, they are our umbrella. We're under their
10:13:21 6 organization.

10:13:21 7 Q. Okay. And is Lioness just short for the Justice
10:13:24 8 Impacted Women's Alliance?

10:13:26 9 A. Yes. If it only says Lioness, it's short for Lioness
10:13:30 10 Impacted Women's Alliance. Yes, ma'am.

10:13:32 11 Q. So if I say Lioness, do you understand that I mean
10:13:35 12 the Build Up, Inc., the named plaintiff?

10:13:37 13 A. Yes, ma'am.

10:13:38 14 Q. That's on the lawsuit. Okay. I just want to make
10:13:41 15 sure we're clear on that. You testified that you have
10:13:43 16 about 700 members. There may be a few additional that
10:13:47 17 have joined since you produced the list to your counsel.

10:13:50 18 A. Yes, ma'am.

10:13:51 19 Q. Okay. And you said just over 400. If I told you
10:13:55 20 about 420 are incarcerated, would that sound about right?

10:13:59 21 A. Yes, ma'am.

10:14:01 22 Q. Okay. And Lioness is asking this court to order TDCJ
10:14:07 23 to install air conditioning some wide, correct, is that
10:14:11 24 your understanding?

10:14:12 25 A. Yes, ma'am.

10:14:12 1 Q. Okay. But you only have female members or members
10:14:17 2 identified as female. I apologize, I'm trying to phrase
10:14:19 3 this correctly. Is that right?

10:14:21 4 A. That's correct.

10:14:23 5 Q. So then, everyone incarcerated in TDCJ is not a
10:14:27 6 member of Lioness, correct?

10:14:29 7 A. That's correct.

10:14:30 8 Q. Are you aware that TDCJ has about a hundred
10:14:33 9 facilities?

10:14:34 10 A. Yes.

10:14:34 11 Q. Okay. And of those hundred, only about 15 can
10:14:40 12 actually house females. Are you aware of that?

10:14:42 13 A. Correct. That's correct.

10:14:44 14 Q. So that means there's 85 facilities that can't even
10:14:47 15 house Lioness members.

10:14:48 16 A. That is correct.

10:14:49 17 Q. Okay. Of those 15 facilities where females can be
10:14:56 18 housed, do you know how many of those are air conditioned?
10:14:59 19 100 percent?

10:15:01 20 A. I can't say that I know for sure. I don't know the
10:15:06 21 exact number.

10:15:07 22 Q. If I told you seven, would you have a reason to doubt
10:15:09 23 that?

10:15:10 24 A. I would believe that -- yes, I would doubt that.

10:15:14 25 Q. Okay. Can we go ahead and -- I can approach. I have

10:15:23 1 this printed out and I don't want to sit here and make you
10:15:27 2 count but I can just show you. This is Plaintiffs'
10:15:30 3 Exhibit 204. May I approach, your Honor?

10:15:39 4 THE COURT: You may.

10:15:41 5 Q. (BY MS. MCGEE) I'm going to show you this. If you
10:15:55 6 take a look at that list, that list shows which facilities
10:15:58 7 are air conditioned, which are not. Do you understand
10:16:02 8 that to be what the chart is showing?

10:16:03 9 A. Yes.

10:16:04 10 Q. Okay. I also am going to show her Plaintiffs' No.
10:16:18 11 124. May I approach, your Honor?

10:16:29 12 THE COURT: You may.

10:16:30 13 Q. (BY MS. MCGEE) I don't want to make you count but I
10:16:33 14 want to make sure that we realize we're on the same page
10:16:35 15 here.

10:16:35 16 A. Yes, ma'am.

10:16:36 17 Q. So 124 lists the units and which ones can house
10:16:41 18 males, females who are co-gender where both males and
10:16:47 19 females could be housed. And the other sheet that I
10:16:49 20 showed you, which I believe is 204 -- if I looked at my
10:16:52 21 notes I would know.

10:16:55 22 A. 204, yes, ma'am.

10:16:56 23 Q. Yes. It shows which ones have only air-conditioned
10:17:00 24 beds and so, I'll represent to you -- and you could take a
10:17:03 25 moment and look at those, but I'll represent to you that

10:17:06 1 about seven, it's seven are a hundred percent AC. So you
10:17:17 2 could take a look at that.

10:17:27 3 A. May I ask a clarification question about the
10:17:29 4 document, your Honor? Are you telling me 124, this one is
10:17:35 5 list of all units that are fully air conditioned?

10:17:40 6 Q. No. I'm saying that's a list of all TDCJ units that
10:17:42 7 exist and then, the other document here shows the total AC
10:17:49 8 beds and non-AC beds. So if it has slashes here where
10:17:53 9 it's non-AC beds means, they would -- so they would all be
10:17:59 10 air conditioned.

10:18:00 11 A. Thank you for the clarification. I'm okay to answer
10:18:52 12 that.

10:18:52 13 Q. No. It's fine. It's okay if you don't have an exact
10:18:56 14 number. I just don't want you to feel like I'm just
10:18:58 15 giving you false numbers that of those 15 facilities that
10:19:01 16 can house women, just about half are air conditioned?

10:19:06 17 A. That's correct.

10:19:06 18 Q. And so, that would support your number that you have
10:19:09 19 about 200, I believe you said -- and correct me if I'm
10:19:13 20 wrong -- that are living without air conditioning. The
10:19:15 21 other 220 are living with air conditioning?

10:19:17 22 A. 250 without.

10:19:19 23 Q. 250 without?

10:19:20 24 A. Yes, ma'am.

10:19:20 25 Q. Okay. Now, you testified that when you were

10:19:27 1 incarcerated, Plane was one of the units you lived at?

10:19:30 2 A. Yes, ma'am.

10:19:31 3 Q. Are you aware that that's now -- half of that is air

10:19:34 4 conditioned?

10:19:34 5 A. Yes, ma'am.

10:19:35 6 Q. Okay. And that the Murray Unit was the other unit I

10:19:39 7 believe you said you lived at?

10:19:41 8 A. Yes, ma'am.

10:19:42 9 Q. There's now over 200 air-conditioned beds at that

10:19:44 10 unit. Are you aware of that?

10:19:46 11 A. Yes, ma'am.

10:19:47 12 Q. And you said that you did get to go to respite.

10:19:50 13 A. I did, yes, ma'am.

10:19:51 14 Q. Where it was air conditioned?

10:19:52 15 A. Yes.

10:19:52 16 Q. But the air conditioning didn't help?

10:19:54 17 A. No.

10:19:55 18 Q. Okay. But y'all are asking for air conditioning in

10:19:57 19 the entire system, correct?

10:19:59 20 A. Yes.

10:20:00 21 Q. Okay. Now, you also stated that you were previously

10:20:06 22 incarcerated, correct?

10:20:06 23 A. Yes.

10:20:07 24 Q. And why were you incarcerated?

10:20:09 25 A. I was incarcerated because I got found guilty of a

10:20:11 1 theft charge.

10:20:12 2 Q. And the theft was actually stealing money from a
10:20:15 3 former employer, correct, the government?

10:20:17 4 A. Yes. No. It was theft.

10:20:19 5 Q. It was theft?

10:20:20 6 A. Yes.

10:20:21 7 Q. And you were released on parole in 2021?

10:20:23 8 A. Yes.

10:20:24 9 Q. I'm going to go ahead and hand you -- actually, we
10:20:26 10 can -- do you have Exhibit 30? I believe we're trying to
10:20:35 11 work the technology. I apologize.

10:21:32 12 And do you recognize that as the Certificate of
10:21:35 13 Incorporation for Build Up, Inc.?

10:21:37 14 A. I see that's what this is. Yes, ma'am.

10:21:39 15 Q. Okay. Have you ever seen this before?

10:21:43 16 A. If I have, I don't recall.

10:21:45 17 Q. Well, this was provided to us in response to a
10:21:49 18 discovery request by your counsel. So do you have any
10:21:51 19 reason to believe this is not a correct copy?

10:21:53 20 A. No reason to believe it's not correct.

10:21:55 21 Q. Okay. So I'm going to ask that we scroll to page --
10:21:59 22 the second page, please. And if you look about three
10:22:03 23 quarters of the way down where it says fourth. Do you see
10:22:12 24 where it says fourth?

10:22:15 25 A. Yes, ma'am.

10:22:15 1 Q. Okay. So I just want to make sure that if you'll
10:22:23 2 follow along, make sure I read this correctly. The
10:22:26 3 corporation may have members if it so decides. The
10:22:29 4 conditions of the membership of the corporation shall be
10:22:32 5 stated in the bylaws of the corporation.

10:22:34 6 A. Yes, ma'am.

10:22:35 7 Q. So to me, that means we would look at the bylaws to
10:22:39 8 see membership. Would that be your understanding or do
10:22:42 9 you have any reason to doubt that understanding?

10:22:44 10 MR. HOMIAK: Your Honor, I'm just going to go
10:22:46 11 ahead and object to this line of questioning. The witness
10:22:48 12 says she doesn't recall having seen this document. She's
10:22:50 13 now being asked what the document means. There's no
10:22:52 14 foundation that's been laid that she had any role in
10:22:55 15 preparing it or that she had any role in voting on it.

10:22:58 16 MS. MCGEE: Your Honor, she's here testifying
10:23:00 17 that Lioness has 700 members standing to bring this suit.

10:23:04 18 THE COURT: I'll allow the question. Overrule.

10:23:07 19 Q. (BY MS. MCGEE) So if we will now switch to the
10:23:10 20 bylaws, this is Exhibit 31. Exhibit 31 and if we'll go to
10:23:15 21 page 2. It says bylaws of Build Up, Inc.; is that
10:23:23 22 correct?

10:23:23 23 A. I see that.

10:23:23 24 Q. Okay. So would you believe these are the bylaws for
10:23:28 25 the corporation Build Up, Inc?

10:23:32 1 A. I see that that's what this document's titled.

10:23:34 2 Q. Okay. Now, this was provided to us by your counsel.

10:23:36 3 Do you have any reason to believe this is not the correct

10:23:38 4 document?

10:23:39 5 A. I don't.

10:23:39 6 Q. Okay. And you have a basic understanding of how the

10:23:42 7 membership in your organization works?

10:23:44 8 A. Yes.

10:23:45 9 Q. So I'm going to ask you to flip to page 2. And

10:23:48 10 actually, your Honor I move to admit Defendants' Exhibits

10:23:52 11 30 and 31 at this time.

10:23:55 12 MR. HOMIAK: Same objections, your Honor. I

10:23:56 13 don't think the foundation has been laid or can be laid by

10:23:58 14 this witness.

10:23:59 15 THE COURT: I think that's probably right.

10:24:05 16 MS. MCGEE: Okay.

10:24:09 17 THE COURT: She hasn't said -- she didn't say she

10:24:12 18 knows what it was so I don't think -- unless there's

10:24:14 19 another basis on which it can be admitted.

10:24:19 20 Q. (BY MS. MCGEE) Well, your Honor, they are stating --

10:24:22 21 first of all, this was provided to us by opposing counsel.

10:24:24 22 Secondly, you do understand you are a director of Lioness,

10:24:28 23 correct? You're on that board of directors?

10:24:30 24 A. I'm on a steering committee.

10:24:32 25 Q. On a steering committee and you guys have control

10:24:35 1 over this organization?

10:24:37 2 THE COURT: But she doesn't know what this is and
10:24:39 3 that's what a witness has to provide for it to be
10:24:42 4 admissible. So I'll have to sustain the objection.

10:24:45 5 MS. MCGEE: Well then, I won't move to admit.
10:24:47 6 We'll just continue.

10:24:48 7 THE COURT: I think you already and I overruled
10:24:50 8 it.

10:24:52 9 MS. MCGEE: Okay.

10:24:53 10 Q. (BY MS. MCGEE) How do your members -- your members,
10:24:55 11 how do they become members?

10:24:57 12 A. They interact with us and let us know that they'd
10:25:00 13 like to be members. Sometimes they write us and we ask
10:25:05 14 them, would you like to be a member?

10:25:07 15 Q. What does it mean to be a member?

10:25:09 16 A. Being a member means a part of our organization,
10:25:12 17 getting updates on what we're doing, participating.

10:25:19 18 Q. Do you have any guiding documents that Lioness uses
10:25:23 19 in how it runs its organization, policies, procedures?

10:25:30 20 A. I don't have those with me.

10:25:32 21 Q. But do they exist?

10:25:34 22 A. If they exist in a paper form, I'm not aware.

10:25:40 23 Q. So somewhere are you aware if there is a document
10:25:43 24 that says what kind of members, what classes of members
10:25:46 25 there are in Lioness?

10:25:50 1 A. I'm not aware if there is.

10:26:28 2 Q. Is Lioness a corporation formed here in Texas?

10:26:32 3 A. Yes.

10:26:32 4 Q. It is formed here in Texas?

10:26:34 5 A. Lioness, I would not say Lioness was a corporation.

10:26:38 6 Lioness was formed here in Texas.

10:26:42 7 Q. As far as an entity goes, as far as a corporation

10:26:50 8 goes, is Lioness, Build Up, Inc. on the petition in this

10:26:55 9 case or is Lioness its own individual corporation?

10:26:57 10 A. Lioness is underneath the Build Up, Inc. umbrella.

10:27:00 11 Q. The Build Up documents I'm showing you would be the

10:27:03 12 documents that control Lioness?

10:27:05 13 MR. HOMIAK: Objection, your Honor. Lack of

10:27:06 14 personal knowledge, lack of foundation.

10:27:08 15 THE COURT: You can ask her.

10:27:11 16 A. I don't know.

10:27:12 17 Q. (BY MS. MCGEE) Okay. Do you know who the founding

10:27:14 18 member is of Build Up, Inc?

10:27:17 19 A. I do not know.

10:27:18 20 Q. You never heard the name A. Nicole Campbell?

10:27:22 21 A. I may have heard that name. I have no idea what her

10:27:25 22 position is and I wouldn't even associate that name with

10:27:28 23 Build Up, Inc. I don't recall.

10:27:30 24 Q. Okay. So you wouldn't know that she's actually the

10:27:32 25 sole member of Build Up, Inc?

10:27:35 1 A. No, I wouldn't know that. I didn't know. Do not
10:27:38 2 know that.

10:27:39 3 Q. Thank you. No further questions at this time, your
10:27:44 4 Honor.

10:27:46 5 MR. HOMIAK: Two very brief questions, your
10:27:48 6 Honor. I may have some followup but it's just going to be
10:27:50 7 two.

10:27:51 8 RE-DIRECT EXAMINATION

10:27:51 9 BY MR. HOMIAK:

10:27:52 10 Q. Ms. Simmons, is it fair to say -- actually, you never
10:27:55 11 went to law school, correct?

10:27:56 12 A. Correct.

10:27:56 13 Q. You never studied corporate law?

10:27:58 14 A. Absolutely not.

10:27:59 15 Q. You don't know the difference between a corporate
10:28:00 16 member and an organizational member?

10:28:03 17 A. No, sir.

10:28:04 18 Q. And then, the other question I have was there were a
10:28:07 19 number of questions about Lioness' members and I think you
10:28:10 20 told us at the very beginning of your testimony that
10:28:14 21 Lioness' members include gender-expressive women; is that
10:28:17 22 correct?

10:28:17 23 A. Yes. That's correct.

10:28:18 24 Q. Do you know whether TDCJ currently houses inmates
10:28:21 25 based on their biological sex or how they identify their

10:28:24 1 gender?

10:28:25 2 A. They're housed by their biological sex.

10:28:27 3 Q. So to your knowledge, are there gender-expressive
10:28:30 4 women who are currently housed in TDCJ facilities with
10:28:33 5 men?

10:28:33 6 A. Yes, sir.

10:28:35 7 Q. No further questions. And, your Honor, at this
10:28:40 8 point, I'd ask that Ms. Simmons be excused.

10:28:43 9 THE COURT: Any further questions?

10:28:45 10 MS. MCGEE: I have additional followup, yes.

10:28:47 11 RE-CROSS EXAMINATION

10:28:48 12 BY MS. MCGEE:

10:28:48 13 Q. Ms. Simmons, if you do not know how your membership
10:28:51 14 is formed, how do you know how many members you have that
10:28:53 15 you have standing for this case?

10:28:55 16 A. When someone says they would like to be a member of
10:28:57 17 Lioness, we document that and that's how we get that
10:29:00 18 number.

10:29:01 19 Q. But what is Lioness using to form the basis of their
10:29:03 20 standing in this case --

10:29:08 21 MR. HOMIAK: Objection, your Honor.

10:29:08 22 MS. MCGEE: -- one member?

10:29:09 23 MR. HOMIAK: I'm sorry, your Honor. Objection.
10:29:09 24 Calls for legal conclusion.

10:29:10 25 THE COURT: Can you clarify the question?

10:29:12 1 Q. (BY MS. MCGEE) Yes. I'm asking you understand that
10:29:15 2 Build Up, Inc., Justice Women Alliance, Lioness brought
10:29:19 3 this case as one of the plaintiffs?

10:29:21 4 A. I understand that.

10:29:23 5 Q. Okay. So in order to bring a case, you have to have
10:29:28 6 standing and I'm wondering how you all believe you have
10:29:31 7 standing to bring this case when you have one sole member,

10:29:35 8 A. Nicole Campbell, who's an attorney in New Jersey?

10:29:39 9 A. I'm not aware we have one sole member.

10:29:41 10 MR. HOMIAK: Same objection.

10:29:41 11 THE COURT: Sustained. Anything further?

10:29:44 12 MR. HOMIAK: Not from me, your Honor.

10:29:46 13 THE COURT: Thank you. You may step down. May
10:29:47 14 this witness be released?

10:29:49 15 MR. HOMIAK: Thank you, Ms. Simmons.

10:29:53 16 THE WITNESS: Thank you, your Honor.

10:29:56 17 THE COURT: Next witness.

10:30:03 18 MS. BLATT: Dr. Zanobetti is going to appear by
10:30:05 19 Zoom.

10:30:15 20 THE COURT: I think we have this worked out.

10:32:06 21 Good morning, Dr. Zanobetti. Can you hear me?

10:32:12 22 THE WITNESS: Yes. Hi. Can you hear me?

10:32:14 23 THE COURT: Yes, we can. Thank you. This is
10:32:15 24 Judge Pitman. We are seeing you on Zoom and I think you
10:32:20 25 can hear us and we can hear you. Before we begin, could I

10:32:24 1 please ask you to raise your right hand to be sworn.

10:32:27 2 THE CLERK: You do solemnly swear or affirm that
10:32:27 3 the testimony which you may give in the case now before
10:32:27 4 the Court shall be the truth, the whole truth, and nothing
10:32:34 5 but the truth?

10:32:34 6 THE WITNESS: I swear.

10:32:37 7 THE COURT: Thank you. You may proceed.

10:32:37 8 ANTONELLA ZANOBETTI, called by the Plaintiff, duly sworn
10:32:39 9 via video conference.

10:32:39 10 DIRECT EXAMINATION

10:32:43 11 BY MS. BLATT:

10:32:43 12 Q. Good evening Dr. Zanobetti. Thank you for joining
10:32:45 13 us. We appreciate your presence. I know --

10:32:48 14 THE COURT: I think we're going to have to have
10:32:50 15 you speak into the microphone a little more clearly.
10:32:54 16 That'd be great.

10:32:56 17 MS. BLATT: Is that better for the Court? Okay.

10:33:00 18 Q. (BY MS. BLATT) Good afternoon -- or good morning, Dr.
10:33:02 19 Zanobetti. Thank you so but much for joining us. First,
10:33:05 20 I would like to talk a bit about your educational
10:33:07 21 background. Can you please tell us about your education?

10:33:09 22 A. Yes. So I received my Ph.D. in Applied Statistics
10:33:18 23 from the Department of Statistics of the University of
10:33:19 24 Florence in Italy.

10:33:23 25 Q. And did you do postdoctoral training?

10:33:28 1 A. I did several years of postdoctoral training at the
10:33:34 2 Harvard School of Public Health in Boston.

10:34:22 3 THE COURT: Doctor, our court reporter's
10:34:25 4 equipment is not working properly and for that, she will
10:34:27 5 have to be hearing your testimony over the speakers in the
10:34:31 6 courtroom. Would you be able to get a little closer to
10:34:35 7 the microphone so that we can -- the court reporter can
10:34:38 8 hear you a little better?

10:35:44 9 Q. (BY MS. BLATT) So I'll just briefly go back for the
10:35:48 10 court reporter.

10:35:49 11 Dr. Zanobetti, can you please tell us about your
10:35:51 12 educational background.

10:35:53 13 A. Yes. So I received my Ph.D. in Statistics from the
10:35:58 14 Department of Statistics of University of Florence in
10:36:02 15 Italy.

10:36:04 16 Q. And did you do postdoctoral training?

10:36:08 17 A. I did several years of postdoctoral training at the
10:36:14 18 Harvard School of Public Health in Boston.

10:36:17 19 Q. And what did you study during your postdoctoral
10:36:20 20 fellowship?

10:36:21 21 A. During my postdoc years, I studied the fact of
10:36:28 22 exposure such as air pollution and temperature and climate
10:36:33 23 change on health to really understand which is a impact of
10:36:40 24 temperature and air pollution on human health.

10:36:42 25 Q. And what academic positions have you held?

10:36:46 1 A. So I -- my position have been parallel to the faculty
10:36:57 2 track position. I am a principal research scientist now.
10:37:00 3 And I started as a research assistant and then, I moved on
10:37:07 4 to research scientist and then, senior research scientist.
10:37:10 5 And now I am principal research scientist.

10:37:14 6 Q. So how long have you been at the Harvard School of
10:37:16 7 Public Health?

10:37:17 8 A. It's 25 years this year.

10:37:21 9 Q. And what is your role as a principal research
10:37:24 10 scientist?

10:37:26 11 A. So my role is very similar to the one of a professor
10:37:35 12 in that I have postdoc researcher that works with me. So
10:37:41 13 I mentor and supervise postdoc researchers. I keep on
10:37:46 14 doing analysis, but most like, say, of my work is also to
10:37:52 15 apply for grants to fund my work and the one of the people
10:37:57 16 working for me.

10:37:59 17 Q. Would you describe yourself as an environmental
10:38:03 18 epidemiologist?

10:38:05 19 A. Yes.

10:38:05 20 Q. And what does an environmental epidemiologist study?

10:38:09 21 A. So what we study is really to understand the impact
10:38:14 22 of a certain agent, in this case, like what a study
10:38:21 23 specifically is exposures such as air pollution and heat
10:38:26 24 on human health to try to understand whether, you know,
10:38:32 25 the effect of these exposure impact the health so that we

10:38:39 1 can then find solution and policies to improve human
10:38:41 2 health.

10:38:41 3 Q. So just to make sure I understand. So as part of
10:38:45 4 your research, you look at exposure and exposure is
10:38:49 5 something like heat or pollution; is that correct?

10:38:53 6 A. The exposure is air pollution. But now lately,
10:38:58 7 mostly, I also work on temperature and heat and climate
10:39:02 8 change.

10:39:03 9 Q. And have you published many articles?

10:39:07 10 A. Yes. I published around 270 papers at this time.

10:39:14 11 Q. And how many of those concern the effects of heat on
10:39:16 12 human health?

10:39:18 13 A. I think around a hundred.

10:39:21 14 Q. And have you received special recognition for this
10:39:23 15 work?

10:39:26 16 A. Yes. I actually was recognized as one of the most
10:39:35 17 highly cited researchers ranking in the top one percent of
10:39:35 18 all scientists in my field.

10:39:38 19 Q. In addition to writing articles, do you serve as an
10:39:40 20 editor on any journals?

10:39:43 21 A. Yes. So I serve as a reviewer for several journals.
10:39:49 22 I also am in the editorial board of three major journals
10:39:55 23 and I was a guest editor in another journal.

10:39:58 24 Q. And what do you do as an editor and reviewer for a
10:40:04 25 major journal?

10:40:05 1 A. So when we write papers, these cannot just be
10:40:10 2 published, but these need to be peer-reviewed. So I act
10:40:14 3 mostly as a reviewer, which means I have to read the
10:40:18 4 paper, understand it, and make sure that it is
10:40:21 5 scientifically rigorous and it's -- I check that the data
10:40:32 6 is correct, the statistical methods are correct, so that
10:40:33 7 the paper is valid and scientifically sound.

10:40:38 8 Q. I move to admit Dr. Zanobetti as an expert in
10:40:41 9 environmental epidemiology.

10:40:43 10 THE COURT: Any objection?

10:40:46 11 MR. RHINES: No objection, your Honor.

10:40:47 12 THE COURT: Without objection, she's recognized.

10:40:51 13 Q. (BY MS. BLATT) So, Dr. Zanobetti, I want to switch
10:40:53 14 gears for a bit and now focus more on the research than
10:40:56 15 your background. So generally, before we discuss specific
10:40:58 16 studies, what has your research shown about the effect of
10:41:02 17 heat on human health?

10:41:04 18 A. So we found that heat -- increases in heat or in
10:41:10 19 temperature increase the risk of health. Specifically, I
10:41:15 20 focus on mortality, hospitalization, and other health
10:41:19 21 outcomes.

10:41:19 22 Q. So by mortality, do you mean death?

10:41:22 23 A. Yes, deaths.

10:41:25 24 Q. So you have been part of a multicenter, multicountry
10:41:30 25 collaborative network. What is this?

10:41:34 1 A. So the NCC for short is a network of -- it's an
10:41:41 2 international collaboration of researchers across the
10:41:47 3 globe. So there are many researchers and scientists like
10:41:49 4 me in, you know, in many institutes around the world and
10:41:53 5 so, we decided to get together, and practically, all our
10:42:03 6 data was put together in order to estimate the first
10:42:08 7 effect of the impact of temperature on mortality across
10:42:12 8 the globe.

10:42:15 9 Q. Dr. Zanobetti, can you please turn to Exhibit 46?

10:42:22 10 A. Yes.

10:42:22 11 Q. Can you tell the Court what Exhibit 46 is?

10:42:26 12 MR. HOMIAK: You may have to turn it on to my
10:42:28 13 computer.

10:42:31 14 THE CLERK: I literally can't.

10:42:34 15 MR. HOMIAK: With the HDMI monitor. Oh, because
10:42:36 16 of the Zoom. So I just want to make sure. Can the Court
10:42:43 17 see the -- or do we need to get a paper version?

10:42:47 18 THE COURT: Do you have a hardcopy?

10:42:48 19 MR. HOMIAK: Okay. We do. It will just take a
10:42:51 20 minute. I think it may be in our back room, your Honor.
10:43:54 21 This is a binder with, I think, every exhibit that we're
10:43:59 22 referring to that's in issue.

10:43:59 23 THE COURT: Thank you.

10:44:14 24 Q. (BY MS. BLATT) Dr. Zanobetti, can you please tell the
10:44:17 25 Court what Exhibit 46 is.

10:44:23 1 A. Paper entitled Global, Regional and National Burden
10:44:26 2 of Mortality Associated With Nonoptimal Ambient
10:44:30 3 Temperatures From 2000 to 2019; a Three-Stage Modeling
10:44:33 4 Study.

10:44:34 5 Q. Is this a fair and accurate copy of your article?

10:44:37 6 A. Yes.

10:44:39 7 Q. Your Honor, I move to admit Exhibit 46.

10:44:44 8 MR. RHINES: No objection.

10:44:44 9 THE COURT: Without objection, so admitted.

10:44:50 10 Q. (BY MS. BLATT) Dr. Zanobetti, can you please explain
10:44:51 11 to the Court what you studied here?

10:44:53 12 A. This is one of the study from the NCC network. We
10:44:58 13 aim to study the relationship between ambient temperature
10:45:03 14 and mortality across the world. And in this study, we had
10:45:12 15 other 40 countries, which included 750 locations. We
10:45:19 16 obtain mortality from each location and temperature from
10:45:21 17 each location. We apply the time series analysis to
10:45:27 18 estimate the short-term effects of temperature on deaths
10:45:33 19 and we then computed the excess number of deaths due to
10:45:37 20 the temperature.

10:45:38 21 Q. And where did you get your data from?

10:45:41 22 A. So each of the location, each of the collaborator
10:45:50 23 contribute their data and the mortality data usually come
10:45:52 24 from the National Center of Statistics of each country.
10:45:59 25 The weather data, instead, comes from weather station

10:46:00 1 available in each of the city.

10:46:02 2 Q. And did your study include cities in the United
10:46:07 3 States?

10:46:07 4 A. Yes. I think around 130, 135, depending.

10:46:12 5 Q. And were there cities in Texas?

10:46:15 6 A. Yes, around eight cities, I think, in Texas.

10:46:19 7 Q. And what did you find in your study?

10:46:24 8 A. So we find that increases in temperature create a
10:46:32 9 impact in mortality; therefore, there is an increase in
10:46:36 10 mortality due to an increase in temperature.

10:46:41 11 Q. Dr. Zanobetti, can you please turn to page 4 of
10:46:45 12 Exhibit 46 and look at table 1. Please turn your
10:46:51 13 attention to the first white block.

10:46:55 14 A. Yes.

10:46:55 15 Q. And can you tell the Court what this block -- what
10:46:58 16 data this block includes?

10:47:01 17 A. So the column -- this table present the number of
10:47:08 18 excess deaths and the first white part represent the
10:47:14 19 results for the Americas.

10:47:14 20 Q. So what is an excess death?

10:47:17 21 A. This is the number of excess deaths that are due to
10:47:23 22 the -- based on the risk estimated on the study and the
10:47:31 23 number of deaths general in the population. So how many
10:47:33 24 more deaths there are due to that increase of temperature.

10:47:37 25 Q. So according to your table, please turn your

10:47:40 1 attention to the third column. How many more or excess
10:47:44 2 deaths were there in North America from the heat during
10:47:47 3 your study period?

10:47:49 4 A. So we found that 20,064 excess number of deaths were
10:47:57 5 in North America due to increased heat.

10:48:01 6 Q. So does this mean that extreme heat in Texas also
10:48:05 7 contributed to the deaths that you saw in your study?

10:48:09 8 A. Yes, definitely, because several studies from Texas
10:48:13 9 were included in this analyses, in this result.

10:48:17 10 Q. Dr. Zanobetti, in your expert opinion, what did this
10:48:21 11 suggest about the heat and mortality in Texas prisons
10:48:25 12 during the same time period?

10:48:30 13 A. Well, given that these studies are really
10:48:35 14 generalizable because these include the deaths or mortality
10:48:39 15 of the population and that heat and temperature are
10:48:41 16 increasing, I think that we can say that there is an
10:48:47 17 increase of deaths in prisons due to heat.

10:48:51 18 Q. So now I'd like to turn to Exhibit 73, please.

10:48:59 19 A. Yes.

10:49:00 20 Q. Dr. Zanobetti, can you please tell me what Exhibit 73
10:49:03 21 is?

10:49:05 22 A. This is another of my paper entitled Associations
10:49:09 23 Between Extreme Temperatures and Cardiovascular
10:49:13 24 Cause-Specific Mortality: Results from 27 countries.

10:49:16 25 Q. Is this a fair and accurate copy of your article, Dr.

10:49:19 1 Zanobetti?

10:49:20 2 A. Yes.

10:49:22 3 Q. Your Honor, I move to admit Exhibit 73.

10:49:25 4 THE COURT: Objection?

10:49:29 5 MR. RHINES: No objection.

10:49:29 6 THE COURT: So admitted.

10:49:31 7 Q. (BY MS. BLATT) Dr. Zanobetti, can you please tell the
10:49:33 8 Court what you studied here?

10:49:37 9 A. This is also a study from the NCC collaborative
10:49:45 10 network. In this study, we again examine the relationship
10:49:47 11 within temperature and deaths, but in this case, instead
10:49:50 12 of starting the total deaths, we really focus was on
10:49:54 13 cause-specific cardiovascular deaths.

10:49:57 14 Q. So what kind of cardiovascular deaths did you look
10:50:00 15 at?

10:50:01 16 A. So we examine all cardiovascular causes, ischemic
10:50:06 17 heart disease, stroke, heart failure and arrhythmia.

10:50:09 18 Q. And where did you get your data for this study?

10:50:14 19 A. Similar to the previous study, each of the country
10:50:19 20 contributed to the mortality data and the temperature
10:50:23 21 data.

10:50:24 22 Q. So did the population of your study include both
10:50:27 23 healthy patients and people with preexisting medical
10:50:32 24 conditions?

10:50:34 25 A. Yeah, I mean, this is the mortality. So this is

10:50:37 1 mortality for all the population without any -- you know,
10:50:44 2 so it's really generalizable, include everyone. Mortality
10:50:45 3 from everyone.

10:50:48 4 Q. Okay. To make sure I understand, so is it correct to
10:50:50 5 say that you looked at how many deaths from cardiovascular
10:50:54 6 -- how many excess deaths from cardiovascular disease were
10:50:57 7 caused by excess heat?

10:50:58 8 A. Yes.

10:51:02 9 Q. So, Dr. Zanobetti, please turn to the third whole
10:51:06 10 paragraph on page 9 of your article.

10:51:11 11 A. Yes.

10:51:13 12 Q. There you said that, and I quote, ischemic heart
10:51:17 13 disease is the commonest cause of cardiovascular mortality
10:51:20 14 and it was most frequent cause of death in our data set
10:51:23 15 accounting for 37 percent of cardiovascular deaths. We
10:51:27 16 estimate that about one percent of all ischemic heart
10:51:31 17 disease deaths are attributed to extreme temperatures
10:51:34 18 alone.

10:51:36 19 In your expert opinion, what does this mean
10:51:38 20 inmates housed in uncooled Texas prisons during the
10:51:42 21 extreme summer heat?

10:51:43 22 A. So given that this is a really generalizable result,
10:51:50 23 we can say that also in the prison, there is also one
10:51:55 24 percent risk of ischemic heart disease that's due to
10:52:00 25 extreme temperature.

10:52:00 1 Q. Dr. Zanobetti, please look at the next paragraph on
10:52:05 2 page 9. Here, you state, and I quote, in this study, we
10:52:09 3 estimate that for every 100 stroke deaths, 1.6 excess
10:52:13 4 deaths are attributed to extreme heat days. So can you
10:52:18 5 explain what this means?

10:52:19 6 A. So in this study, we also computed the number of
10:52:25 7 excess deaths and this means that when we look at
10:52:29 8 mortality for stroke, we found that around 1.6 or two
10:52:34 9 excess deaths were attributed to extreme heat.

10:52:36 10 Q. So in your expert opinion, what does this mean for
10:52:40 11 inmates housed in uncooled Texas prisons on extremely hot
10:52:43 12 days?

10:52:45 13 A. So similar to before, I think that these results is
10:52:49 14 generalizable to all the population, including the
10:52:54 15 prisoner in Texas, and so, they also have a higher risk of
10:52:58 16 stroke due to extreme heat.

10:53:00 17 Q. Have you specifically studied heat-related morbidity
10:53:04 18 and mortality in Texas prisons?

10:53:07 19 A. Yes, I did.

10:53:09 20 Q. Dr. Zanobetti, can you please turn to Exhibit 75.
10:53:23 21 Dr. Zanobetti, can you tell us what this exhibit is?

10:53:28 22 A. So this is another one of my paper entitled Provision
10:53:33 23 Of Air Conditioning and Heat-Related Mortality in Texas
10:53:35 24 Prisons.

10:53:36 25 Q. Is this a fair and accurate copy of your article?

10:53:40 1 A. Yes.

10:53:42 2 Q. Your Honor, I move to admit Exhibit 75.

10:53:46 3 MR. RHINES: No objection.

10:53:46 4 THE COURT: So admitted.

10:53:50 5 Q. (BY MS. BLATT) Seventy. Dr. Zanobetti, what did you
10:53:53 6 study here?

10:53:54 7 A. Yeah. In this study, we also examine the association
10:53:59 8 between temperature and deaths, but in this case, we focus
10:54:04 9 on the mortality in Texas prison with and without air
10:54:09 10 conditioning.

10:54:09 11 Q. And generally what did you find?

10:54:11 12 A. We did found that there is an increased risk of
10:54:14 13 mortality or deaths in the Texas prisons, mostly in the
10:54:20 14 one without air conditioning compared to the one with air
10:54:26 15 conditioning.

10:54:26 16 Q. So if I'm understanding correctly, your study found
10:54:29 17 that there's an increased overall risk of death in
10:54:33 18 uncooled Texas prisons; is that correct?

10:54:35 19 A. Yes. Correct.

10:54:37 20 Q. So in your expert opinion, could it be accurate to
10:54:42 21 say that no prisoner has died in a Texas prison since,
10:54:46 22 say, 2012?

10:54:48 23 A. No. For sure, some have died and some of them for
10:54:54 24 sure probably are due to heat.

10:54:55 25 Q. Right. So is it accurate to say that no prisoner has

10:55:01 1 died in Texas prisons due to a heat-related cause since
10:55:05 2 2012?

10:55:05 3 A. No. I think that there should be also some
10:55:12 4 heat-related deaths in Texas after this study period.

10:55:16 5 Q. And what was your role in this study?

10:55:20 6 A. I was the senior author.

10:55:21 7 Q. So what does that mean?

10:55:23 8 A. So while the first author is usually the person who
10:55:29 9 analyze the data and draft the paper, as a senior author,
10:55:32 10 my role is to supervise and mentor the first author. So I
10:55:38 11 work with the first author and I help her with the
10:55:45 12 methods, with the analyses, and with the finding so to
10:55:48 13 make sure that the manuscript was scientifically rigorous.

10:55:53 14 Q. So I believe Dr. Skarha is the first author. So were
10:55:57 15 her methods scientifically rigorous?

10:56:00 16 A. Yes. We applied a case crossover method. That is a
10:56:08 17 method widely used to examine the short-term effects of
10:56:12 18 temperature on health. When I say short terms, I mean
10:56:20 19 like immediate effects like temperature yesterday impact
10:56:25 20 with mortality in these days.

10:56:29 21 Q. So based on your study, in your expert opinion, do
10:56:33 22 you believe that extreme heat in uncooled Texas prisons
10:56:37 23 will continue to cause excess deaths due to heat?

10:56:43 24 A. Yes. Unfortunately, given that temperature is
10:56:49 25 increasing during these years, I think we can -- based on

10:56:52 1 this study, we can say that mortality in Texas prison will
10:56:57 2 increase due to heat.

10:56:59 3 Q. Thank you very much, Dr. Zanobetti. No further
10:57:01 4 questions.

10:57:03 5 A. Thank you.

10:57:19 6 CROSS-EXAMINATION

10:57:23 7 BY MR. RHINES:

10:57:23 8 Q. Good morning, your Honor.

10:57:25 9 Good morning, Dr. Zanobetti. My name is Zach
10:57:28 10 Rhines.

10:57:28 11 A. Good morning.

10:57:29 12 Q. And I represent Mr. Collier.

10:57:32 13 Just a few questions for you, Dr. Zanobetti.

10:57:36 14 Looking at Exhibit 73, you stated that you estimate that
10:57:42 15 ischemic heart disease adds to or is -- one percent of
10:57:48 16 ischemic heart disease deaths are attributable to heat,
10:57:52 17 excess heat, correct.

10:57:53 18 A. Yes.

10:57:53 19 Q. How did you come to that conclusion?

10:57:57 20 A. So this is based on the results of the study. So
10:58:03 21 based on -- so in this study, we also apply a case
10:58:09 22 crossover analysis and we found that the number of excess
10:58:18 23 deaths was one percent for ischemic heart disease.

10:58:18 24 Q. Would you be able to explain that a little bit more?

10:58:24 25 A. So practically, we have the results of the study. We

10:58:32 1 apply a case crossover. We estimate a risk in each
10:58:34 2 location and then, based on the risk and on the mortality,
10:58:40 3 the general total mortality in each location, we compute
10:58:46 4 the excess number of deaths and the percentage based on
10:58:49 5 that.

10:58:53 6 Q. Did you follow that same sort of logic when you
10:58:56 7 calculated the 1.6 excess deaths per 100 strokes?

10:59:00 8 A. Yes. Yes.

10:59:03 9 Q. Next, I want to turn to the final article that we
10:59:07 10 spoke about. Article No. -- or sorry, Exhibit No. 75.

10:59:07 11 A. Yes.

10:59:18 12 Q. So the abstract states that one of the most effective
10:59:21 13 strategies to mitigate the effects of heat is through air
10:59:26 14 conditioning, correct?

10:59:28 15 A. Yes.

10:59:30 16 Q. And when -- mitigating the effects of heat, however,
10:59:38 17 does not necessarily require air conditioning, right?

10:59:43 18 A. No.

10:59:44 19 Q. Because there are other ways that we can mitigate
10:59:47 20 effects of heat, correct?

10:59:49 21 A. There could be.

10:59:51 22 Q. Such as anything that lowers core body temperature,
10:59:55 23 for example.

10:59:58 24 MS. BLATT: Objection, your Honor --

10:59:58 25 A. Yes.

10:59:58 1 MS. BLATT: -- this is outside Dr. Zanobetti's
11:00:00 2 area of expertise.
11:00:01 3 THE COURT: I'll allow the question.
11:00:06 4 MR. RHINES: Thank you, your Honor.
11:00:08 5 Q. (BY MR. RHINES) Apologies. Getting back to it, Dr.
11:00:21 6 Zanobetti, you are aware that there are ways other than
11:00:23 7 air conditioning to mitigate the effects of heat, correct?
11:00:29 8 A. Yes.
11:00:34 9 Q. In fact, the goal of heat mitigation is to lower the
11:00:39 10 core body temperature, right?
11:00:43 11 A. Yes.
11:00:44 12 Q. And that could be done, for example, with a cold
11:00:47 13 shower, right? That could be done with a cold shower,
11:00:59 14 correct, Dr. Zanobetti?
11:01:00 15 A. Yes.
11:01:01 16 Q. Okay. What about drinking ice water?
11:01:05 17 A. Yes.
11:01:09 18 Q. Next, I want to look at the timeframe of Exhibit 75.
11:01:14 19 This was done -- this study looked at data from 2001 to
11:01:19 20 2019, correct?
11:01:22 21 A. Yes.
11:01:24 22 Q. And it analyzed all-cause mortality during the summer
11:01:28 23 months in certain Texas prisons, right?
11:01:31 24 A. Yes.
11:01:33 25 Q. Did you have access to the year-by-year mortality

11:01:38 1 data?

11:01:39 2 A. We have individual mortality data.

11:01:44 3 Q. I'm sorry, could you repeat that?

11:01:46 4 A. We had -- yes, we have individual mortality data.

11:01:53 5 Q. But data for each individual year is what I'm asking,

11:01:58 6 did you have the data on mortality?

11:01:59 7 A. Yes.

11:02:00 8 Q. You did?

11:02:00 9 A. Yes.

11:02:03 10 Q. Okay. Why was that data not included or laid out in

11:02:10 11 this study?

11:02:13 12 A. No. The years that the data that we obtain that was

11:02:17 13 available was only for those years, the 2001 to 2019.

11:02:22 14 Q. That is correct. But I'm asking why you didn't

11:02:25 15 separate the data out into individual years from 2001 to

11:02:30 16 2019.

11:02:35 17 A. The analysis?

11:02:38 18 Q. The data did not exist --

11:02:40 19 A. I'm sorry, I don't understand the question.

11:02:43 20 Q. You state that there were a number of deaths in

11:02:46 21 between 2001 and 2019 data that, I believe, you got from

11:02:50 22 the Bureau of Prisons statistics, right?

11:02:52 23 A. Yes.

11:02:53 24 Q. Did you have data that showed how many deaths

11:02:55 25 occurred from 2001 to 2002, for example?

11:03:00 1 A. Yes, we have individual data.

11:03:03 2 Q. Correct. So why was that not included in your study?

11:03:11 3 A. I'm not sure about your question, but all of that

11:03:14 4 data was included in the study. All the data. All the

11:03:18 5 deaths from 2001 to 2019.

11:03:21 6 Q. I apologize. I may not be being clear enough. Why

11:03:28 7 was that not separated out by year?

11:03:32 8 A. No, we did not do an analysis by year. No, we did

11:03:36 9 not do an analysis by year because we look at all the

11:03:39 10 study period.

11:03:45 11 Q. So based on the article, because there's no analysis

11:03:47 12 by year, it is entirely possible that deaths could have

11:03:52 13 been significantly higher, let's say, 2001 to 2012 and

11:03:57 14 significantly lower over the window of 2012 to 2019,

11:04:01 15 right?

11:04:04 16 A. There can be differences by year for sure, but we

11:04:08 17 cannot say until we do the analysis.

11:04:21 18 Q. Are you aware that TDCJ believes that heat-related

11:04:25 19 deaths peaked in 2011?

11:04:30 20 A. Sorry, I didn't hear you.

11:04:32 21 Q. I'll repeat myself. Are you aware that TDCJ believes

11:04:36 22 that heat-related deaths peaked in 2011?

11:04:40 23 A. No.

11:04:41 24 Q. Would that have affected your analysis to be able to

11:04:46 25 go and look at the pre-2011 and then, post-2011 and

11:04:49 1 compare it?

11:04:51 2 MS. BLATT: Objection, your Honor. Reference to
11:04:51 3 a fact not in evidence --

11:04:55 4 A. I don't think so. I --

11:04:55 5 THE COURT: Just a minute. I'm sorry, Doctor,
11:04:57 6 there's an objection.

11:04:57 7 MS. BLATT: Reference to a fact that's not in
11:04:59 8 evidence. There's been no data introduced to suggest that
11:05:02 9 TDCJ's deaths -- heat-related deaths in prisons had peaked
11:05:07 10 in 2011.

11:05:08 11 MR. RHINES: I think regardless, your Honor, I'm
11:05:10 12 asking her why she has not been able to -- stratify is
11:05:16 13 probably not the right word but separate out deaths by
11:05:18 14 year to give a more accurate depiction of the deaths per
11:05:21 15 year and how they could have been caused by heat based on
11:05:25 16 her article.

11:05:25 17 THE COURT: I think you asked that already. Go
11:05:29 18 ahead.

11:05:32 19 A. So that was not the scope of the analysis at the
11:05:35 20 moment and I'm also not sure we had enough power to do an
11:05:41 21 analysis by year.

11:05:44 22 Q. (BY MR. RHINES) At some point in the article, you
11:05:47 23 make a reference to an average certain number of deaths --
11:05:51 24 excess deaths per heat in non-air-conditioned facilities,
11:05:55 25 right?

11:05:57 1 A. Yes.

11:05:58 2 Q. And then, you average that out by the year, right,
11:06:04 3 to, I believe, 13 or 14 deaths?

11:06:07 4 A. Yes.

11:06:07 5 Q. How could you adequately make that assumption without
11:06:11 6 -- when you have the actual data per year in front of you?

11:06:17 7 A. But what we computed -- what we did is a risk
11:06:21 8 assessment. So we applied a formula and based on the
11:06:26 9 results of our study and we determine the attributable
11:06:32 10 number of deaths.

11:06:35 11 Q. Dr. Zanobetti, you have a Ph.D. in Applied
11:06:39 12 Statistics, right?

11:06:39 13 A. Yep.

11:06:41 14 Q. So I'm sure you're well aware of what a randomized
11:06:45 15 controlled trial is.

11:06:46 16 A. I am.

11:06:47 17 Q. This was not a randomized control trial, right?

11:06:50 18 A. Nope.

11:06:50 19 Q. In fact, this is a type of study that would be termed
11:06:56 20 quasi experimental, correct?

11:07:00 21 A. Yeah.

11:07:00 22 Q. And in a quasi experimental study, you're looking at
11:07:05 23 a data set that is somewhat predetermined.

11:07:08 24 A. (Moving head up and down.)

11:07:09 25 Q. And in doing so, you need to attempt to determine

11:07:12 1 causality, right?

11:07:14 2 A. Yes.

11:07:16 3 Q. And in doing so, you have to control for certain

11:07:19 4 variables or account for them at least, right?

11:07:22 5 A. Yes.

11:07:27 6 Q. And if given the preference -- or if given the

11:07:32 7 opportunity, a research would likely always do a

11:07:36 8 randomized control trial as to a quasi experimental study,

11:07:40 9 right?

11:07:41 10 A. If possible.

11:07:42 11 Q. When would it not be possible?

11:07:44 12 A. Well, in our case, we have where we -- in

11:07:51 13 environmental epidemiology in my case is what I do, I do

11:07:52 14 analysis of preexisting data.

11:08:00 15 Q. So in this case, you measured or, rather, you looked

11:08:06 16 at all-cause mortality, correct?

11:08:09 17 A. Yes.

11:08:09 18 Q. Did you have the listed cause of death for each death

11:08:15 19 in that data set?

11:08:19 20 A. Yes, we did.

11:08:20 21 Q. You did. How many of those do you recall were

11:08:23 22 heat-related?

11:08:27 23 A. Oh, I cannot remember. I'm sorry.

11:08:29 24 Q. Why did you not include the listed cause of deaths?

11:08:34 25 A. We actually look at that in other papers.

11:08:42 1 Q. What papers?

11:08:47 2 A. We did an analysis of cause-specific mortality in the
11:08:57 3 Texas prisons.

11:09:06 4 Q. So given that this study looked at all-cause
11:09:10 5 mortality, it's entirely possible that these prisoners
11:09:14 6 could have died from any number of ailments that could be
11:09:16 7 completely unrelated to heat, right?

11:09:19 8 A. Yes.

11:09:20 9 Q. So something like cancer?

11:09:28 10 A. Yes.

11:09:29 11 Q. Slipping and falling?

11:09:30 12 A. Yes.

11:09:32 13 Q. Regrettably, inmate violence?

11:09:38 14 A. Yes.

11:09:38 15 Q. And none of those theoretically would have much to do
11:09:41 16 with heat, right?

11:09:49 17 A. Yes.

11:09:50 18 Q. I also want to look at how your study looked at how
11:09:57 19 it classified air-conditioned units. If I recall, the
11:10:03 20 study says that it received information from TCPA. I
11:10:13 21 believe that's a Texas Community of Prison Advocates
11:10:16 22 regarding whether each building that was -- each unit that
11:10:21 23 was included in the study was either a majority AC or a
11:10:26 24 majority not in AC, correct?

11:10:28 25 A. Yes.

11:10:30 1 Q. Here, did you operate on the assumption that if an
11:10:38 2 individual was housed in what you considered majority AC
11:10:43 3 unit, that that individual was exposed to AC immediately
11:10:49 4 prior to his death?

11:10:50 5 A. Yes.

11:10:52 6 Q. And I would assume the converse is true then?

11:10:56 7 A. Yes.

11:10:57 8 Q. So if somebody was in a majority non-AC or what you
11:11:00 9 term a majority non-AC unit prior to their death, that
11:11:04 10 means you assumed that they were not exposed to air
11:11:07 11 conditioning prior to their death, correct?

11:11:11 12 A. Yes.

11:11:17 13 Q. Would it be possible, though, that an inmate in any
11:11:22 14 of these units could have been exposed to a -- to air
11:11:28 15 conditioning prior to their death either in a respite
11:11:31 16 room, medical, a chapel, the gymnasium, anything like
11:11:36 17 that?

11:11:36 18 A. Yes.

11:11:37 19 Q. And you would have no way of knowing that when making
11:11:41 20 this assumption, correct?

11:11:42 21 A. Yes.

11:11:44 22 Q. Why didn't you account for that?

11:11:52 23 A. So these -- there are methods that we applied is take
11:11:59 24 into account for all in the individual characteristics
11:12:01 25 and, also, the place where the individual is.

11:12:15 1 Q. Did you take into account any heat mitigation
11:12:18 2 measures other than air conditioning that an inmate may
11:12:21 3 have been able to receive or take advantage of prior to
11:12:23 4 their death?

11:12:28 5 A. We have no information but with this method, we
11:12:30 6 account for all the individual characteristics and...

11:12:35 7 Q. But as we discussed earlier, there are other ways
11:12:38 8 that you can mitigate heat that are not air conditioning,
11:12:43 9 right?

11:12:43 10 A. Yes.

11:12:44 11 Q. And so, it's entirely possible that inmates could
11:12:47 12 have received other heat mitigation measures prior to
11:12:51 13 their death that may not have been AC but may have been
11:12:55 14 effective or may not have been, who knows, right?

11:12:58 15 A. Yep. Yes.

11:12:59 16 Q. But you didn't control for any of these variables,
11:13:02 17 right, or you weren't able to at least?

11:13:05 18 A. Yes.

11:13:10 19 Q. So a couple other variables, I just want to check.
11:13:13 20 In the study, did you control for gender in this study?

11:13:18 21 A. Yes.

11:13:20 22 Q. Did you control for health status or advanced health
11:13:29 23 conditions, serious health conditions?

11:13:32 24 A. Yeah, all the individual characteristic are
11:13:35 25 controlled for by design.

11:13:40 1 Q. Did you control for any medications that were given
11:13:42 2 to prisoners prior to their death?

11:13:46 3 A. They are controlled by design.

11:13:49 4 Q. How so?

11:13:50 5 A. Because in a case crossover analysis, we consider the
11:13:54 6 cases and the control is the same person at different time
11:14:00 7 periods. And so, by design, there are several statistical
11:14:08 8 paper that publish about this method that is widely used
11:14:11 9 because it very well address and adjust for individual
11:14:14 10 characteristics.

11:14:19 11 Q. So you were able to control for health status. You
11:14:22 12 were able to control for...

11:14:23 13 A. Yes.

11:14:24 14 Q. Medications, age.

11:14:29 15 A. Yes.

11:14:33 16 Q. Were you able to control for geographical location?

11:14:37 17 A. Yes.

11:14:39 18 Q. Were you able to control for any difference in
11:14:48 19 prisoner population between units?

11:14:50 20 A. Probably, although we don't know exactly the units
11:14:53 21 where they stay. So the location is more the location of
11:14:57 22 the prison.

11:14:59 23 Q. I have no further questions, your Honor. Pass the
11:15:00 24 witness. Thank you, Dr. Zanobetti.

11:15:03 25 A. Thank you.

11:15:05 1 MS. BLATT: Quickly, your Honor.

11:15:07 2 THE COURT: Yes.

11:15:08 3 RE-DIRECT EXAMINATION

11:15:10 4 BY MS. BLATT:

11:15:10 5 Q. Dr. Zanobetti, I just have a few additional
11:15:14 6 questions. So in epidemiology, you study populations, not
11:15:18 7 individuals; is that correct?

11:15:23 8 A. Yes.

11:15:26 9 Q. Opposing counsel referred to a randomized control
11:15:30 10 trial. I'm not a statistician or a researcher but my
11:15:35 11 understanding is in agreement that when you can do that,
11:15:37 12 that is really an optimal study; is that correct?

11:15:41 13 A. Yes.

11:15:42 14 Q. But when you have an intervention or an exposure that
11:15:47 15 you know will cause harm, can you do that, studies?

11:15:53 16 A. Well, it is little bit complicated because we cannot
11:15:57 17 really do an intervention with exposure that we study.

11:16:01 18 Q. Right. So you're studying exposures that already
11:16:04 19 happened, correct?

11:16:06 20 A. Exactly.

11:16:07 21 Q. So would it make sense to -- based on your studies,
11:16:11 22 you have found that heat causes increase in morbidity and
11:16:14 23 mortality, correct?

11:16:17 24 A. Yes.

11:16:18 25 Q. So would it make scientific or ethical sense to

11:16:22 1 design a study where you took some people and expose them
11:16:25 2 to extreme heat and some people and put them in air
11:16:27 3 conditioning just to see who died?

11:16:30 4 A. No. That's why I --

11:16:31 5 Q. Thank you very much, Dr. Zanobetti. Go ahead.

11:16:35 6 Please finish your answer?

11:16:36 7 A. No. That's why when we look at exposure like heat
11:16:40 8 and air pollution, we use like the exposure has to be for
11:16:45 9 the outcome and we cannot do chamber studies.

11:16:50 10 Q. Thank you very much, Dr. Zanobetti. No further
11:16:52 11 questions.

11:16:52 12 THE COURT: Anything further?

11:16:53 13 MR. RHINES: Nothing further for Dr. Zanobetti,
11:16:56 14 your Honor.

11:16:57 15 THE COURT: Dr. Zanobetti, thank you very much
11:16:59 16 and you're free to go now. Thank you.

11:17:02 17 THE WITNESS: Thank you.

11:17:09 18 THE COURT: We're going to be taking a 10-minute
11:17:11 19 break. Did you have a question?

11:17:15 20 MR. HOMIAK: Yes, your Honor. One very -- it was
11:17:15 21 actually two brief housekeeping matters. Your Honor
11:17:19 22 anticipated the first, the break. The second was the
11:17:20 23 witness at the end of her testimony referred to Exhibit 70
11:17:24 24 and I think 75 was technically admitted. It was actually
11:17:28 25 Exhibit 70 that she was referring to that was admitted.

11:17:30 1 So it was just a essentially typographical error on our
11:17:35 2 part so just wanted to make sure the record is clear.

11:17:37 3 THE COURT: Record will reflect that. Thank you
11:17:39 4 very much.

11:17:39 5 MR. HOMIAK: Thank you.

11:17:40 6 THE COURT: Let's call that a 12-minute break and
11:17:42 7 reconvene at 1:30.

11:24:04 8 (Recess.)

11:33:13 9 MR. HOMIAK: Judge, we just have one brief
11:33:15 10 housekeeping matter that Julie brought to our attention,
11:33:18 11 which is to formally move to admit Exhibit 70 into
11:33:22 12 evidence, which was the new exhibit that was discussed.
11:33:25 13 There were two studies that were quite similar. Exhibit
11:33:29 14 70 and 75, I believe both were discussed but only 75 was
11:33:31 15 admitted and 70 was not. So I think Ms. Blatt probably
11:33:36 16 should be the one to formally move for its admission but I
11:33:40 17 wanted to be sure.

11:33:41 18 THE COURT: That's fine. Consider it moved. Any
11:33:43 19 objection?

11:33:45 20 MR. RHINES: No, your Honor.

11:33:46 21 THE COURT: Next witness.

11:33:48 22 MS. COLE: Approach, your Honor?

11:33:49 23 THE COURT: Yes.

11:33:50 24 MS. COLE: May I approach?

11:33:56 25 (At the bench, on the record.)

11:34:01 1 MS. COLE: Your Honor, may we take these shackles
11:34:04 2 off of Bernie just for his testimony? And the marshal
11:34:09 3 said I could ask you.

11:34:09 4 THE COURT: I don't have an issue. Is that all
11:34:11 5 right with you?

11:34:11 6 MS. WARREN: I don't have an issue with it.

11:34:14 7 MS. COLE: Oh, I'm sorry.

11:34:14 8 THE COURT: Yeah. That's fine. Sure.

11:34:27 9 (End of bench conference.)

11:34:27 10 MS. COLE: Your Honor, plaintiffs call Bernie
11:34:30 11 Tiede to the stand.

11:35:34 12 THE COURT: Before you take a seat, sir, could
11:35:36 13 you please raise your right hand to be sworn.

11:35:37 14 THE WITNESS: Yes.

11:35:40 15 THE CLERK: You do solemnly swear or affirm that
11:35:40 16 the testimony which you may give in the case now before
11:35:40 17 the Court shall be the truth, the whole truth, and nothing
11:35:45 18 but the truth?

11:35:45 19 THE WITNESS: Yes, ma'am, I do.

11:35:48 20 BERNHARDT TIEDE, II, called by the Plaintiff, duly sworn.

11:35:48 21 DIRECT EXAMINATION

11:35:49 22 BY MS. COLE:

11:35:49 23 Q. Thank you, your Honor.

11:35:51 24 Hello, Bernie.

11:35:55 25 A. Hello.

11:35:55 1 Q. Will you please state your full name for the record?

11:35:59 2 A. Yes. My name is Bernhardt Tiede, II.

11:36:04 3 Q. What is your date of birth?

11:36:05 4 A. August the 2nd, 1958.

11:36:07 5 Q. What's your TDCJ number?

11:36:08 6 A. 864378.

11:36:12 7 Q. Do you know why we're here today, Mr. Tiede?

11:36:15 8 A. Yes. We're talking about air conditioning and the

11:36:21 9 problems that I've had medically, especially when I had my

11:36:25 10 stroke last year.

11:36:26 11 Q. Do you understand, Mr. Tiede, we're not revisiting

11:36:30 12 the past? This is just about the conditions of your

11:36:33 13 incarceration right now?

11:36:34 14 A. Yes, ma'am, I do.

11:36:35 15 Q. And so, Mr. Tiede, in 1999, you experienced a

11:36:43 16 conviction for a very serious murder charge.

11:36:46 17 A. Yes, ma'am, I did.

11:36:47 18 Q. And there was a lot of fanfare and bells and whistles

11:36:53 19 down the road and you were out for a couple of years?

11:36:57 20 A. Yes, ma'am.

11:36:57 21 Q. And then, you went back in in 2016?

11:37:00 22 A. Yes.

11:37:01 23 Q. Okay. And so, a person who knows you is Richard

11:37:08 24 Linklater; is that true?

11:37:10 25 A. Yes, ma'am, he knows me.

11:37:11 1 Q. Okay. So at some point, I had worked with Richard
11:37:14 2 Linklater as part of the legal team to get you out and
11:37:18 3 then, I started working with Richard Linklater again after
11:37:22 4 COVID. Do you remember that?

11:37:23 5 A. Yes, ma'am, I do.

11:37:24 6 Q. And so, at that point, we were thinking about how we
11:37:28 7 could get you back time for the time that you were
11:37:32 8 released for two years. Do you remember that?

11:37:34 9 A. Yes, ma'am.

11:37:35 10 Q. And so, things changed on us because you had a
11:37:40 11 medical issue. Do you remember that?

11:37:41 12 A. Yes, I do, last year in June.

11:37:43 13 Q. Okay. So at this point, why don't we walk through
11:37:47 14 what happened last year in June. Do you remember when you
11:37:52 15 first experienced symptoms?

11:37:53 16 A. Yes, ma'am. It was June the 22nd and I thought I was
11:38:01 17 having some problems with my equilibrium because I was not
11:38:08 18 -- I had a lot of problems walking and my face was droopy
11:38:17 19 and my whole side of my body was being weak. And even the
11:38:28 20 guys on the wing said there's something wrong with you.
11:38:36 21 So I did not go to medical that particular night but the
11:38:39 22 next night, on the way -- because it got over. It
11:38:44 23 finished. I went back to being normal. And then, the
11:38:48 24 next night, it happened again at about 3:00 in the
11:38:52 25 afternoon, and then, I went to medical that night after

11:39:01 1 chow and saw medical and they rushed me to the emergency
11:39:09 2 room at the Huntsville Hospital.

11:39:11 3 Q. Okay. So what I'd like to clarify is at that time, I
11:39:15 4 spoke to you regularly as your lawyer on the phone; is
11:39:18 5 that accurate?

11:39:19 6 A. Yes, ma'am.

11:39:20 7 Q. And there were times in passing, do you remember
11:39:23 8 telling me, whew, it's hot, there's no air conditioning?

11:39:26 9 A. Yes.

11:39:26 10 Q. But I had no idea what you were talking about. Is
11:39:30 11 that clear?

11:39:30 12 A. Yes, ma'am.

11:39:31 13 Q. I didn't understand how hot it was?

11:39:34 14 A. Yes, ma'am.

11:39:35 15 Q. And so, with this medical emergency, what were the
11:39:40 16 conditions that you were living in right before the
11:39:43 17 medical issue?

11:39:46 18 A. Well, I'm living in E2 block, cell block of Estelle
11:39:54 19 Unit where I'd been since February of that year and it
11:40:02 20 just was really, really hot outside. In June, the windows
11:40:09 21 are always open and my cell block looked out onto the
11:40:18 22 walkway and then, the windows to the outside and they're
11:40:22 23 always open, but it's blowing hot air and so, whatever's
11:40:29 24 outside is inside my cell, too, because the temperature
11:40:35 25 doesn't vary any.

11:40:37 1 Q. So your cell is not cooler than outside conditions.

11:40:41 2 A. Not at all.

11:40:42 3 Q. And so, at that time, this was in June?

11:40:47 4 A. Yes.

11:40:48 5 Q. Did the heat affect you physically before this big
11:40:56 6 incident?

11:40:56 7 A. Every summer, it's always more difficult to manage
11:41:08 8 inside a cell, especially as hot as it is, but in Estelle
11:41:15 9 especially, it's very, very, very hot because there's no
11:41:18 10 wind blowing, there's no airflow. So you just wallow in
11:41:24 11 sweat at night and wake up and you go to the sink and get
11:41:32 12 a wet rag and put it on your face or, you know, just you
11:41:40 13 have nothing on but your boxers and it's just miserable in
11:41:45 14 my bed because the beds are plastic. So it's not much
11:41:49 15 cooler in the bed either.

11:41:50 16 But yes, it's always difficult during the
11:41:54 17 summertime, tempers flare, you know, that type of thing
11:41:57 18 with the guys.

11:41:58 19 Q. Does it affect your sleeping pattern? Can you tell
11:42:01 20 me about that?

11:42:02 21 A. Yes. You can't sleep at night.

11:42:05 22 Q. So how do you manage that time period for getting
11:42:08 23 your rest during the hot months of the summer?

11:42:11 24 A. Sometimes in the mornings when it's cooler, you go to
11:42:16 25 sleep like about 5:00, 6:00 in the morning and you'll

11:42:19 1 sleep until chow time, until 10:00 or 11:00.

11:42:24 2 Q. So, Mr. Tiede, when you became ill, did you think
11:42:29 3 that it came -- that it was related to the heat at all at
11:42:34 4 that time?

11:42:34 5 A. It was a gradual thing. I did not think that, no.

11:42:40 6 Q. Do you remember that when you told me about becoming
11:42:42 7 ill?

11:42:43 8 A. Yes.

11:42:43 9 Q. I didn't see it as connected to the heat at all.

11:42:46 10 A. No.

11:42:46 11 Q. And so now, let's talk about your emergency room
11:42:53 12 visit.

11:42:54 13 A. Yes.

11:42:54 14 Q. You became very ill. When did you know that you
11:42:57 15 needed to go speak with the medical providers in prison?

11:43:01 16 A. Well, when all of my cellmates there, my people that
11:43:04 17 lived with me said there's something wrong with your face.
11:43:09 18 I said, well, I know, I feel it, you know. And so, they
11:43:13 19 said you need to go to medical. So I had to hang on to
11:43:17 20 somebody's shoulder to walk to medical, to walk to chow,
11:43:21 21 and then, they took me to medical because I was hanging on
11:43:24 22 to somebody because I couldn't navigate. There was
11:43:28 23 something wrong with my inner ear.

11:43:31 24 So I went into medical and I thought this can't
11:43:37 25 go on forever. I can't live like this, you know. So...

11:43:41 1 Q. Did they choose to send you to the hospital in an
11:43:45 2 ambulance?

11:43:45 3 A. Yes. We have a regional medical facility at Estelle,
11:43:51 4 which is a nice little hospital. It's kind of away from
11:43:55 5 the building but I went over there. First, they sent me
11:43:59 6 to the emergency room over there and they triaged,
11:44:08 7 evaluated me and then, called the ambulance, 911 for me.

11:44:11 8 Q. At that point, did they mention what they thought was
11:44:15 9 happening to you? Did anyone guess what the medical issue
11:44:19 10 was?

11:44:20 11 A. Well, they thought it was a stroke, yeah, that's why
11:44:24 12 they called the emergency ambulance.

11:44:27 13 Q. And so, they took you to the ER and then, what
11:44:33 14 happened at the ER?

11:44:34 15 A. They determined that I was possibly having a stroke
11:44:37 16 so they took me to the ER at Huntsville Memorial Hospital
11:44:43 17 and they did an MRI and a CAT scan and did a whole bunch
11:44:47 18 of blood work that night.

11:44:50 19 Q. And so, after they were doing that testing, did they
11:44:54 20 ever tell you what they suspected was happening to you?

11:44:57 21 A. He said that he didn't see anything on the MRI.

11:45:03 22 Q. So on that MRI, he said there was nothing serious?

11:45:06 23 A. No. Yes, that's what he said.

11:45:08 24 Q. So how long did it take for you to go from the
11:45:11 25 hospital to be sent back to Estelle Unit?

11:45:16 1 A. I got back to my cell about 3:00 in the morning.

11:45:20 2 Q. And so, were you returned to your hot cell?

11:45:25 3 A. Yes, I was.

11:45:26 4 Q. How did that feel going back into that?

11:45:29 5 A. Hot.

11:45:30 6 Q. Did you feel better when you were in the air

11:45:33 7 conditioning?

11:45:33 8 A. Oh, yes, ma'am.

11:45:34 9 Q. So at some point the next week, did you and I speak

11:45:39 10 on the phone?

11:45:40 11 A. Yes, we did.

11:45:41 12 Q. And so, you told me what happened. Do you remember?

11:45:44 13 A. Yes.

11:45:44 14 Q. And what did you think was wrong with you since they

11:45:48 15 were saying it couldn't have been a stroke or wasn't a

11:45:50 16 stroke?

11:45:51 17 A. I thought it was Bell's Palsy.

11:45:53 18 Q. And so, how did you figure out you might have Bell's

11:45:58 19 Palsy?

11:45:58 20 A. Well, because I had a secretary at the funeral home

11:46:03 21 in Lake Charles that had it at one time and it was just

11:46:08 22 half of her face and I thought, well, that's similar to

11:46:12 23 what I -- and it left. You know, it took two, three weeks

11:46:18 24 and it left.

11:46:19 25 Q. But during those two to three weeks, I want to

11:46:21 1 clarify your symptoms. On one side of your face, was it
11:46:26 2 drooping?
11:46:27 3 A. One side of my face, was it what?
11:46:30 4 Q. Drooping.
11:46:31 5 A. Droop -- yes. Still is. I don't have any feeling in
11:46:36 6 my left side.
11:46:36 7 Q. How about the ear?
11:46:38 8 A. My ear was hurting tremendously. My right ear was
11:46:42 9 hurting tremendously.
11:46:44 10 Q. And did you assume that you had an ear infection?
11:46:47 11 A. Yes, I did.
11:46:49 12 Q. And so, did you have to use a walker?
11:46:51 13 A. Yes.
11:46:52 14 Q. At some point?
11:46:53 15 A. Yes, I did.
11:46:53 16 Q. When you went back?
11:46:54 17 A. Yes. My next-door neighbor had a walker and he
11:47:00 18 loaned it to me to use because he didn't need it. He was
11:47:03 19 in a wheelchair.
11:47:04 20 Q. And so, when you -- you and I kept in contact and I
11:47:08 21 was concerned?
11:47:09 22 A. Yes.
11:47:10 23 Q. Do you remember that?
11:47:11 24 A. Yes.
11:47:12 25 Q. But I thought maybe you had Bell's Palsy?

11:47:14 1 A. Yeah, sure.

11:47:16 2 Q. And do you remember I really didn't know if it was
11:47:18 3 related to heat and do you remember I wasn't worried about
11:47:21 4 the heat because I had no idea what kind of heat we were
11:47:24 5 talking about?

11:47:25 6 A. That's right.

11:47:26 7 Q. And so, at some point, you were moved -- you were
11:47:32 8 prescribed prednisone?

11:47:33 9 A. Prednisone, yes, ma'am.

11:47:37 10 MS. CARTER: Your Honor, I'm going to object to
11:47:40 11 counsel leading the witness. At this point, she's
11:47:42 12 testifying.

11:47:42 13 THE COURT: Sustained.

11:47:43 14 Q. (BY MS. COLE) Bernie, how long did you stay without
11:47:48 15 air conditioning?

11:47:48 16 A. At that time?

11:47:49 17 Q. Uh-huh.

11:47:49 18 A. I mean, after this had happened? Well, from June the
11:47:54 19 22nd, well, we had no air conditioning until he -- the
11:48:02 20 doctor prescribed prednisone. I asked let's try
11:48:06 21 prednisone because I'd heard that, you know, prednisone
11:48:09 22 kind of helps with Bell's Palsy and, of course, if it was
11:48:15 23 even mildly going to help, we waited way too late. This
11:48:20 24 is in August. So they sent me to high security for one
11:48:26 25 week while I had the prednisone, and after they take the

11:48:33 1 prednisone away from you, they send you back to main
11:48:37 2 building.
11:48:38 3 Q. So tell me about how you felt when you were moved to
11:48:42 4 air conditioning.
11:48:43 5 A. Felt a lot better. It was a lot better to -- it's a
11:48:48 6 lot easier to live.
11:48:49 7 Q. So before you were sent to air conditioning, do you
11:48:54 8 remember that Richard Linklater and I had spoken about
11:48:57 9 your medical condition?
11:48:58 10 A. Yes, I do.
11:49:00 11 Q. And do you remember that we tried to file a state
11:49:04 12 filing to see if we could help you get -- so you'll have
11:49:09 13 to remember we filed --
11:49:12 14 MS. CARTER: Your Honor, this is leading the
11:49:13 15 witness.
11:49:13 16 THE COURT: Okay. Can you --
11:49:15 17 Q. (BY MS. COLE) Okay, your Honor. Do you remember what
11:49:17 18 kind of filing we made in state court?
11:49:19 19 A. Yes.
11:49:20 20 Q. What was it?
11:49:21 21 A. It was a TRO.
11:49:23 22 Q. Not in federal court. In state court?
11:49:26 23 A. Oh, in state court, oh, no, I don't recall.
11:49:30 24 Q. Do you recall a nunc pro tunc?
11:49:33 25 A. Oh, yes. To correct my sentence.

11:49:36 1 Q. And so, we filed one. Do you remember that at some
11:49:39 2 point when you were moved back to air conditioning, I
11:49:47 3 wanted Rick to go visit you?

11:49:49 4 A. Yes. We scheduled a visit for the first week of
11:49:54 5 August.

11:49:54 6 Q. At that time, did I tell you -- so did I mention that
11:49:58 7 your health sounded differently on the phone?

11:50:00 8 A. Yes.

11:50:01 9 Q. And did I mention I was worried about you?

11:50:03 10 A. Yes.

11:50:04 11 MS. CARTER: Judge, I hate to keep making the
11:50:06 12 same objection but counsel's leading the witness.

11:50:09 13 MS. COLE: Response, your Honor? I do want to
11:50:11 14 say that Bernie has had a stroke, Mr. Tiede, and his
11:50:16 15 recall and memory is not as it used to be and I see that
11:50:19 16 he's struggling with some routine issues he would
11:50:22 17 remember. I don't want to lead but I want -- how can I
11:50:26 18 handle that with your preference, your Honor?

11:50:28 19 THE COURT: Well, I think you just need to not
11:50:30 20 lead, I'm afraid.

11:50:32 21 MS. COLE: Okay.

11:50:32 22 THE COURT: You need to ask open-ended questions
11:50:34 23 that don't suggest the response.

11:50:36 24 MS. COLE: Thank you, your Honor.

11:50:37 25 Q. (BY MS. COLE) So, Bernie, do you recall if I told you

11:50:44 1 I was worried if you would die?

11:50:45 2 A. Yes.

11:50:46 3 Q. And so, do you recall I arranged a visit with Richard

11:50:51 4 Linklater?

11:50:52 5 A. Yes.

11:50:52 6 Q. And so, tell me about the visit Richard made, a legal

11:50:59 7 visit. Tell me about that.

11:51:00 8 A. Yes. He came to see me in the visit room at Estelle.

11:51:07 9 Q. What date was it?

11:51:09 10 A. It was August the 8th.

11:51:11 11 Q. And how did --

11:51:12 12 A. August the 4th. It was on a Friday.

11:51:15 13 Q. How did Mr. Linklater respond to your condition?

11:51:20 14 A. He was asking me questions.

11:51:21 15 MS. CARTER: Objection, your Honor. This is

11:51:22 16 calling for hearsay testimony.

11:51:24 17 MS. COLE: Response, your Honor? I would say

11:51:25 18 that's present-sense impression.

11:51:27 19 THE COURT: I'll allow the question. Go ahead.

11:51:29 20 A. He was very concerned about my health and he came

11:51:34 21 immediately to see me, yeah, and he was -- he just wanted

11:51:39 22 to make sure that, you know, I was okay. So we sat and

11:51:44 23 talked for a couple of hours.

11:51:46 24 Q. (BY MS. COLE) And so, what happened next? Do you

11:51:52 25 recall? Did he ask you about the heat, the heat when he

11:52:03 1 spoke with you? Did he talk to you about the heat
11:52:07 2 conditions?

11:52:07 3 A. The heat conditions, not that I recall.

11:52:12 4 Q. Okay. So do you remember what you did when he left
11:52:23 5 his visit with you?

11:52:23 6 A. Well, he was going to write a letter and the letter
11:52:27 7 was going to define what he saw and that's what it ended
11:52:37 8 up. I read the letter.

11:52:39 9 Q. So he captured some footage --

11:52:42 10 A. Yes.

11:52:43 11 MS. CARTER: Your Honor, again, I'm going to
11:52:46 12 object to this is leading the witness and counsel's
11:52:48 13 testifying.

11:52:48 14 MS. COLE: Okay. So, your Honor, at this point,
11:52:50 15 I would like to play some clips that were captured that
11:52:53 16 were sent to me.

11:52:57 17 THE COURT: Have those been disclosed?

11:52:58 18 MS. COLE: Oh, yes, your Honor, it's on the list.

11:53:00 19 MS. CARTER: I'm going to object to this being
11:53:02 20 played in and admitted, your Honor. Bernie is here to
11:53:05 21 testify and he's just testified that he doesn't even
11:53:08 22 remember Mr. Linklater asking about heat or heat-related
11:53:11 23 conditions. His counsel has testified that he has
11:53:13 24 suffered from a stroke and she purported this video was
11:53:17 25 taken immediately after, then we can presume that his

11:53:20 1 testimony there will not be any more informative as it is
11:53:23 2 now. Bernie's already testified that he has reviewed
11:53:26 3 these documents and if it hasn't informed his testimony as
11:53:30 4 live on the stand, then that video is not appropriate
11:53:33 5 right now.

11:53:34 6 THE COURT: So what's the objection?

11:53:36 7 MS. CARTER: I'm objecting that the best evidence
11:53:38 8 is here on the stand, your Honor.

11:53:39 9 THE COURT: Overruled.

11:53:40 10 MS. COLE: Okay. So at this point, can we please
11:53:47 11 -- first of all, can we please put a photo of AD 1 up --
11:53:55 12 the Exhibit AD 1 up, please.

11:54:05 13 Q. (BY MS. COLE) And, Bernie, do you remember that photo
11:54:07 14 coming from the visit?

11:54:09 15 A. Sure, yes. Mr. Linklater's phone.

11:54:15 16 Q. Can we please play 241 through 249 without breaks so
11:54:22 17 that we show his face and what they were discussing.

11:54:27 18 MS. CARTER: Your Honor, I'm going to object and
11:54:28 19 ask that counsel lay the foundation for these videos. Mr.
11:54:32 20 Tiede has already testified that he does not remember
11:54:34 21 this.

11:54:34 22 MS. COLE: Your Honor, response?

11:54:35 23 THE COURT: Yes.

11:54:36 24 MS. COLE: This is precisely the issue. This man
11:54:38 25 has had a stroke and does not remember, obviously, speak

11:54:42 1 ing about the heat and it is a material issue at hand in
11:54:46 2 this preliminary injunctive hearing.

11:54:48 3 THE COURT: I understand that.

11:54:49 4 MS. CARTER: Your Honor, I'd like to respond.

11:54:51 5 THE COURT: Let me talk first and then, you can
11:54:55 6 talk. You still have to establish a foundation for the
11:54:59 7 admission of it. So do you want to ask him some more
11:55:02 8 questions about this setting and this video?

11:55:06 9 MS. COLE: Yes, your Honor.

11:55:06 10 Q. (BY MS. COLE) So, Mr. Tiede, Richard Linklater wrote
11:55:13 11 a letter, you said?

11:55:14 12 A. Yes, he did.

11:55:15 13 Q. So what did we use that letter for first? Do you
11:55:28 14 remember what we used that letter and footage for first?

11:55:31 15 A. No.

11:55:31 16 MS. CARTER: Your Honor, this calls for
11:55:33 17 speculation. I'm going to object to this, as well.

11:55:35 18 THE COURT: I'll allow the question. Go ahead.

11:55:37 19 MS. COLE: I would like to present the motion for
11:55:41 20 judgment nunc pro tunc that we filed, your Honor, that
11:55:44 21 contains the letter and cites to the footage that we are
11:55:49 22 about to see so that we have a proper foundation that this
11:55:52 23 is the authentic footage and the context we used that in.
11:55:57 24 But I have to do it the old way. I didn't put it into
11:56:00 25 evidence yet.

11:56:01 1 THE COURT: That's fine.

11:56:02 2 MS. COLE: Is that acceptable, your Honor?

11:56:03 3 THE COURT: Sure.

11:56:05 4 MS. CARTER: Your Honor, I'm going to object to

11:56:07 5 this being admitted into evidence. This was apparently

11:56:10 6 filed in the 123rd District Court, Rusk County, and I

11:56:13 7 don't see what this has to do with the current proceedings

11:56:15 8 and the relief plaintiffs are seeking in this case.

11:56:18 9 MS. COLE: It lays the foundation, your Honor, of

11:56:21 10 these videos exactly what we just heard all about.

11:56:26 11 THE COURT: Okay.

11:56:28 12 MS. CARTER: I'm asking for the foundation of

11:56:30 13 this document. How is this relevant to this case, your

11:56:32 14 Honor.

11:56:33 15 THE COURT: The relevance then.

11:56:34 16 MS. COLE: It's an exhibit is attached to it --

11:56:40 17 okay.

11:56:43 18 Mr. Tiede, were these video clips taken -- is

11:56:49 19 this -- so, your Honor, first of all, on this nunc pro

11:56:53 20 tunc, there is the letter with the videotape cited as an

11:56:59 21 exhibit that was filed in state court and I wanted to

11:57:03 22 present that to him so that he can see that letter.

11:57:09 23 THE COURT: You can present it to him.

11:57:13 24 MS. COLE: Okay. Thank you, your Honor.

11:57:15 25 MS. CARTER: Your Honor.

11:57:16 1 MS. COLE: How would we mark that?

11:57:19 2 MS. CARTER: It's not marked.

11:57:20 3 MS. COLE: That's right, your Honor. Do we have
11:57:23 4 a preferential marking?

11:57:27 5 MR. HOMIAK: The next exhibit in order would be
11:57:29 6 272. It's just being used to refresh his recollection. I
11:57:34 7 don't think it needs to be formally admitted.

11:57:36 8 MS. CARTER: Your Honor, I do want to point out
11:57:37 9 that counsel said she was laying the foundation to this
11:57:39 10 video through this irrelevant document and that it was
11:57:41 11 only being used to lay the foundation, but she hasn't
11:57:44 12 shown how this document was relevant to this case.

11:57:46 13 THE COURT: Right. I'm going to allow her some
11:57:47 14 questioning to see if she does that.

11:57:50 15 Q. (BY MS. COLE) Okay. Don't say anything. Just review
11:57:54 16 this and tell me if you remember this document.

11:57:55 17 A. Yes.

11:57:56 18 Q. The entire thing.

11:58:15 19 A. Yes.

11:58:16 20 Q. Okay. So, Mr. Tiede, when we attempted to obtain
11:58:26 21 assistance for you because of your health condition, do
11:58:30 22 you recall seeing this document?

11:58:32 23 A. Yes.

11:58:32 24 Q. And do you recall that we put this document on file
11:58:35 25 for you?

11:58:36 1 A. Yes.

11:58:37 2 Q. In an attempt to rectify your sentence.

11:58:40 3 A. Yes.

11:58:41 4 Q. For back time in order to seek relief for your
11:58:45 5 medical care.

11:58:45 6 A. Yes.

11:58:47 7 Q. And do you recall no one responded in the state court
11:58:51 8 to this?

11:58:51 9 A. Not yet. No one's done anything yet.

11:58:55 10 Q. And so, your Honor, I would offer this exhibit and
11:58:59 11 part of my standard that I have to meet is to show that
11:59:02 12 there's no other legal way. And I also want to lay the
11:59:06 13 foundation to this video to show the visuals of the effect
11:59:12 14 of the stroke closer to the time period and, also, his
11:59:16 15 memory at issue with his health.

11:59:20 16 THE COURT: I think the problem is ordinarily, in
11:59:23 17 admitting a piece of evidence like a video, you need
11:59:28 18 someone to establish the proper predicate and I don't know
11:59:31 19 who that is or how it's been done.

11:59:33 20 MS. COLE: May I ask a question, your Honor?

11:59:34 21 THE COURT: Sure.

11:59:36 22 Q. (BY MS. COLE) Mr. Tiede, do you remember Richard
11:59:39 23 Linklater taking a video of you, talking to you?

11:59:41 24 A. Yes, I do.

11:59:43 25 MS. COLE: And that's it, your Honor. This is

11:59:45 1 the video that we're talking about.

11:59:48 2 MS. CARTER: Your Honor, I'm going to say that
11:59:51 3 the exchange she just had was leading the witness and that
11:59:53 4 the proper person to introduce this evidence is not here
11:59:56 5 and was not on their witness list. I appreciate that she
11:59:59 6 would like to use this to lay the foundation, but that
12:00:01 7 does not properly lay the foundation saying that you would
12:00:04 8 like to use to it lay the foundation.

12:00:06 9 THE COURT: Okay. At this point, I'll allow you
12:00:08 10 to play it and I'll reserve my ruling as to admissibility.

12:00:13 11 MS. COLE: Thank you, your Honor. Can we play
12:00:15 12 this, please?

12:00:19 13 (Audio and video file played.)

12:01:25 14 Q. (BY MS. COLE) Do you remember that?

12:01:27 15 A. Yes, I do.

12:01:29 16 MS. CARTER: Your Honor, just for the record, I'm
12:01:31 17 going to object to foundation again.

12:01:34 18 THE COURT: I think he just remembered. Does it
12:01:36 19 not solve your problem?

12:01:38 20 MS. CARTER: I'm sorry?

12:01:39 21 THE COURT: I think he just said he remembered
12:01:42 22 it. Does that now solve our problem?

12:01:44 23 MS. CARTER: I believe --

12:01:45 24 THE COURT: The objection is that there's no
12:01:47 25 foundation that we don't know if it is what it's

12:01:50 1 purporting to be. Not only is there an indicia of
12:01:55 2 reliability, because it appears to be what they say it is,
12:01:57 3 but he just said he remembered it.

12:01:58 4 MS. CARTER: But Mr. Tiede previously testified
12:02:00 5 he didn't even remember Mr. Richard Linklater asking about
12:02:04 6 heat or heat conditions, which is the subject of this
12:02:06 7 lawsuit.

12:02:07 8 THE COURT: Right. But the question is whether
12:02:08 9 or not this is an authentic piece of evidence and he just
12:02:12 10 said he remembered it.

12:02:13 11 MS. CARTER: Okay.

12:02:14 12 MS. COLE: Okay. Thank you, your Honor.

12:02:15 13 THE COURT: Objection overruled.

12:02:18 14 MR. HOMIAK: For the record, this is 242.

12:02:21 15 (Audio and video file played.)

12:02:34 16 Q. (BY MS. COLE) Do you remember saying that?

12:02:36 17 A. Yes.

12:02:37 18 Q. Mr. Tiede now?

12:02:38 19 A. Yes.

12:02:38 20 Q. Okay. Can we go to the next piece, please, 243?

12:02:47 21 (Audio and video file played.)

12:04:23 22 MS. CARTER: I'm going to object to this portion
12:04:25 23 as hearsay.

12:04:26 24 THE COURT: I'm sorry. Do you want to do that
12:04:29 25 again for the record?

12:04:30 1 MS. CARTER: I'm going to object to this portion
12:04:32 2 of the video as hearsay.

12:04:34 3 MS. COLE: Your Honor, anything that is not
12:04:37 4 Bernie Tiede speaking is not being presented. Only
12:04:40 5 Bernie's words and, to be honest, it's an exception to the
12:04:44 6 hearsay if he cannot remember having this conversation. I
12:04:48 7 will need to prove that up by asking him.

12:04:50 8 THE COURT: I'll overrule the objection. Go
12:04:52 9 ahead.

12:04:52 10 MS. COLE: Thank you, your Honor.

12:04:55 11 (Audio and video file played.)

12:06:12 12 Q. (BY MS. COLE) Do you remember that conversation, Mr.
12:06:17 13 Tiede?

12:06:17 14 A. Sure. Yes.

12:06:18 15 Q. Okay. Can we play the next piece, please?

12:06:27 16 (Audio and video file played.)

12:07:17 17 Q. (BY MS. COLE) Do you remember that conversation, Mr.
12:07:20 18 Tiede?

12:07:20 19 A. Yes.

12:07:21 20 Q. Is that accurate?

12:07:21 21 A. Yes.

12:07:22 22 Q. Okay. May we play the next one, please, 245?

12:07:29 23 (Audio and video file played.)

12:08:26 24 MS. CARTER: Your Honor, I'm going to object to
12:08:27 25 this portion of the video as speculation.

12:08:29 1 THE COURT: Objection noted.

12:08:32 2 MS. COLE: Okay.

12:08:35 3 (Audio and video file played.)

12:09:17 4 Q. (BY MS. COLE) Do you remember that, Mr. Tiede?

12:09:19 5 A. Yes, I do.

12:09:19 6 Q. Okay. Is there another one?

12:09:21 7 MR. HOMIAK: Yes. We have 246, 247, 248.

12:09:25 8 MS. COLE: May we go right through, your Honor,
12:09:27 9 so that I can ask only one --

12:09:30 10 MS. CARTER: Just for the record, I would like to
12:09:31 11 say that I would ask that counsel establish what they are
12:09:33 12 trying to admit with each video. Mr. Tiede has said that
12:09:36 13 he remembers every video thus far and they haven't
12:09:39 14 established what testimony they're trying to admit through
12:09:41 15 these videos or that he doesn't remember them.

12:09:45 16 MS. COLE: A response? Your Honor, this is
12:09:47 17 showing multifaceted information that's relevant to our
12:09:52 18 material issue at hand. One, we are seeing the physical
12:09:56 19 features almost immediately after this issue, before we
12:10:01 20 were able to move Mr. Tiede into the air conditioning.
12:10:05 21 And also, there is some information, I don't know if he
12:10:09 22 remembers it or not and I do want to make sure that he can
12:10:12 23 recall that, and again, that goes to his cognitive
12:10:15 24 functioning, which we'll have to argue is in peril if we
12:10:20 25 don't get a preliminary injunctive relief keeping him out.

12:10:23 1 And it looks like under Rule 803(1) or (5), this
12:10:27 2 is all a present-sense impression. He can't remember
12:10:33 3 fully and this is best evidence.

12:10:36 4 MS. CARTER: Your Honor, I respond to the
12:10:38 5 present-sense impression, it would be correct if she asked
12:10:41 6 him a question he could not remember. She has not asked
12:10:44 7 any questions that would elicit the testimony of the video
12:10:47 8 that we don't know what it's about yet. I'd ask that she
12:10:49 9 ask a question and Mr. Tiede say that he doesn't
12:10:52 10 understand or doesn't remember and then, have the video
12:10:55 11 come in and answer that. But she has not asked a single
12:10:58 12 question to necessitate a video for what we don't know he
12:11:02 13 doesn't remember.

12:11:03 14 MS. COLE: Respond, your Honor? I asked a basic
12:11:05 15 blanket question, do you remember discussing the heat when
12:11:07 16 you visited with Mr. Linklater, and he clearly said he did
12:11:11 17 not remember it at all.

12:11:15 18 THE COURT: Are all of these videos taken on the
12:11:17 19 same day, the same occasion? Are these different excerpts
12:11:21 20 of one continuous interaction?

12:11:23 21 MS. COLE: Yes, your Honor, it's one.

12:11:24 22 THE COURT: Then I will admit all of them for
12:11:28 23 purposes of this hearing and give you a running objection
12:11:32 24 to the evidence.

12:11:35 25 MS. COLE: Thank you, your Honor.

12:11:36 1 MR. HOMIAK: Just for the record, it's 241 to
12:11:39 2 249.
12:11:39 3 THE COURT: Thank you.
12:11:42 4 (Audio and video file played.)
12:12:41 5 MS. COLE: Okay. The next one, please.
12:12:44 6 MR. HOMIAK: 247.
12:12:46 7 MS. COLE: 247.
12:14:58 8 (Audio and video file played.)
12:14:59 9 MS. COLE: And the final video, your Honor, 248.
12:15:03 10 Oh, two more.
12:15:07 11 (Audio and video file played.)
12:16:29 12 MS. COLE: 249, the last video.
12:16:34 13 (Audio and video file played.)
12:17:13 14 Q. (BY MS. COLE) Okay. Do you remember those videos
12:17:15 15 now?
12:17:15 16 A. Yes. Yes, I do. Yes. I remember Richard Linklater,
12:17:19 17 yes, coming.
12:17:20 18 Q. Do you remember that conversation now?
12:17:22 19 A. Yes, I do, yes.
12:17:23 20 Q. And so, after this video, do you remember what
12:17:28 21 happened when I found out what you looked like? Do you
12:17:36 22 remember me talking to you?
12:17:38 23 A. Sure. Many times. I mean, as far as what? I mean,
12:17:43 24 I'm not understanding.
12:17:44 25 Q. That I took your medical condition more seriously

12:17:48 1 when I saw that.

12:17:50 2 A. Yes. You ordered all my medical records from the
12:17:52 3 last 27 years, and yes, you took it upon yourself to look
12:18:02 4 into all of that medical problems.

12:18:04 5 Q. And do you remember at that point, Mr. Tiede, me
12:18:08 6 telling -- do you remember me telling you that it might --
12:18:13 7 that your illness might be heat-related?

12:18:16 8 MS. CARTER: Your Honor, I'm going to object to
12:18:19 9 this as leading the witness.

12:18:19 10 THE COURT: It is leading the witness.

12:18:21 11 Q. (BY MS. COLE) Did I mention my concern to you, Mr.
12:18:23 12 Tiede?

12:18:23 13 A. Yes, you did.

12:18:25 14 Q. What was it?

12:18:26 15 A. That I was having a heat stroke. That I had had a
12:18:30 16 heat stroke. They had said no, that I did not, but you
12:18:37 17 were affirming you were feeling like my illness was
12:18:43 18 heat-related.

12:18:44 19 Q. And so, now I would like to place the first batch of
12:18:48 20 medical records that I received up. Mr. Tiede, do you
12:18:52 21 remember me getting this HIPAA release from you?

12:18:56 22 A. Yes. I signed the HIPAA release to you.

12:18:58 23 Q. And I had permission?

12:19:00 24 A. Yes. I gave you permission to get all my TDCJ
12:19:03 25 records.

12:19:04 1 Q. Okay. At this point, your Honor, I'd like to put the
12:19:07 2 records up.

12:19:09 3 MS. CARTER: Your Honor, I'd like to object.
12:19:14 4 This is not the proper witness to -- Mr. Tiede is not a
12:19:16 5 medical witness and neither is Ms. Cole.

12:19:21 6 THE COURT: Are you offering them into evidence?

12:19:23 7 MS. COLE: Yes, your Honor.

12:19:24 8 THE COURT: Then what's the foundation?

12:19:25 9 MS. COLE: The foundation is these are his own
12:19:28 10 medical records and we both saw -- okay. Your Honor, may
12:19:42 11 I take a very brief break or not -- just step aside?

12:19:45 12 THE COURT: Sure. Would this be a good time for
12:20:35 13 us to take our lunch break perhaps?

12:20:37 14 MS. COLE: I don't mind a break, your Honor.

12:20:39 15 THE COURT: All right. We're overdue, anyway.
12:20:42 16 So let's take a lunch break. Let's break until 1:15 and
12:20:46 17 we'll commence testimony at that time.

12:21:14 18 (Lunch recess.)

13:17:19 19 THE COURT: Ms. Cole, you may continue.

13:17:22 20 MS. COLE: Your Honor, we'd like to start by
13:17:25 21 admitting Mr. Tiede's medical records, Exhibits 210 and
13:17:30 22 239, and both come directly from TDCJ and are accompanied
13:17:35 23 by a business records affidavit.

13:17:38 24 THE COURT: Any objection?

13:17:39 25 MS. CARTER: Yes, your Honor. The objection

13:17:41 1 isn't to the authentication. The business record provides
13:17:44 2 authentication but it doesn't lay the foundation. Mr.
13:17:48 3 Tiede is not a medical professional and he hasn't been
13:17:51 4 designated as an expert. They had the opportunity to
13:17:57 5 designate an expert to introduce the medical records to
13:17:59 6 talk about causation, or diagnoses, or treatment and they
13:18:04 7 didn't do so. So I would ask that they would lay
13:18:07 8 foundation for any medical testimony they're attempting to
13:18:09 9 admit.

13:18:09 10 THE COURT: Overruled and admitted.

13:18:12 11 MS. COLE: Thank you, your Honor.

13:18:14 12 Q. (BY MS. COLE) Mr. Tiede, how old are you now?

13:18:18 13 A. I'm 65. I'll be 66 on Friday.

13:18:21 14 Q. On Friday? Okay. And have you been diagnosed with
13:18:27 15 COPD?

13:18:28 16 A. Yes, I have.

13:18:29 17 Q. Can you tell me, what is COPD?

13:18:31 18 A. Chronic obstructive pulmonary disease is just a
13:18:36 19 constant, chronic disease of the lungs, usually a lot of
13:18:44 20 bronchitis, other things lead to COPD. It's just a
13:18:51 21 chronic obstructive pulmonary disease of the lungs.

13:18:56 22 Q. Do you recall when you were diagnosed with that?

13:19:02 23 A. No.

13:19:03 24 Q. Okay.

13:19:04 25 A. I don't.

13:19:05 1 Q. That's all right. Have you been diagnosed with
13:19:07 2 diabetes?
13:19:08 3 A. Yes, I have. I've been diabetic for about 19 years.
13:19:12 4 Q. Okay.
13:19:14 5 A. I was on medicine, metformin and glipizide and then,
13:19:19 6 just recently went on insulin.
13:19:20 7 Q. Okay.
13:19:21 8 A. So I take insulin twice a day.
13:19:23 9 Q. Have you been diagnosed with hypertension?
13:19:25 10 A. Yes, I have. I've been high blood pressure ever
13:19:29 11 since I've been in the system and before.
13:19:32 12 Q. Okay. Relatively recently now, you're going blind in
13:19:37 13 an eye?
13:19:37 14 A. Yes. My right eye is going blind. I have some
13:19:41 15 bleeding on the retina itself.
13:19:44 16 Q. And so, do you have any other medical conditions?
13:19:51 17 A. Not that I know of.
13:19:53 18 Q. And you just learned that you had some kind of
13:19:58 19 stroke-like event from your last MRI?
13:20:00 20 A. Yes, I had some kind of a brainstem stroke.
13:20:04 21 Q. Okay. And so, does your health improve while you're
13:20:08 22 in air conditioning?
13:20:09 23 A. It feels a lot better.
13:20:11 24 Q. Okay. And does it decline when you're back in
13:20:14 25 extreme heat?

13:20:15 1 A. I'm sure it would.

13:20:16 2 Q. Okay. No further questions, your Honor.

13:20:23 3 CROSS-EXAMINATION

13:20:30 4 BY MS. CARTER:

13:20:30 5 Q. May it please the Court.

13:20:31 6 Good afternoon, Mr. Tiede. My name's Abigail

13:20:35 7 Carter and I represent Mr. Collier.

13:20:36 8 About how long have you been in TDCJ custody?

13:20:40 9 A. Twenty-seven years, I was in TDCJ custody as of

13:20:48 10 August -- no. Excuse me, TDCJ custody in March 26th of

13:20:59 11 1999 was when I was accepted into the TDCJ.

13:21:03 12 Q. So about 27 years?

13:21:05 13 A. Yes. Plus two years I had at the county jail, yes.

13:21:09 14 Q. Thank you.

13:21:11 15 Do you get in any trouble at TDCJ ever?

13:21:14 16 A. No. Not at all.

13:21:17 17 Q. You don't have any disciplinaries?

13:21:19 18 A. I have five, six.

13:21:22 19 Q. Over all of 27 years?

13:21:23 20 A. Yes.

13:21:24 21 Q. I'd say --

13:21:25 22 A. Minors.

13:21:26 23 Q. -- that's a pretty spotless record, wouldn't you?

13:21:28 24 A. Yes, it is, comparatively speaking.

13:21:32 25 Q. Do you get along with other inmates?

13:21:37 1 A. Yes, I do.

13:21:38 2 Q. Do you get along with TDCJ staff?

13:21:40 3 A. Yes, I do.

13:21:40 4 Q. Have you ever filed a lawsuit against TDCJ before?

13:21:43 5 A. No, ma'am, I never have.

13:21:45 6 Q. This is the first lawsuit you filed against TDCJ?

13:21:48 7 A. Yes, ma'am.

13:21:50 8 Q. Mr. Tiede, earlier, your attorney was talking about

13:21:53 9 the nunc pro tunc that was filed in state court?

13:21:58 10 A. Yes.

13:21:58 11 Q. And I apologize, for the record, I don't practice

13:22:01 12 state court so I'm not sure the perfect name. Did you

13:22:05 13 write that complaint or did your attorney?

13:22:12 14 A. The judge wrote the original nunc pro tunc. Is that

13:22:17 15 what you're talking about? I'm not sure what you were

13:22:19 16 talking about.

13:22:20 17 Q. I believe it's the document that they --

13:22:23 18 A. Correct. The nunc pro tunc that was original? That

13:22:27 19 was issued by Judge DeVasto? Is that the one you're

13:22:35 20 referring to?

13:22:35 21 MS. COLE: Objection, your Honor. Relevancy.

13:22:37 22 There were numerous nunc pro tuncs. None of them are

13:22:40 23 relevant to our issues at hand right now.

13:22:43 24 MS. CARTER: I'm actually referring to the one

13:22:44 25 that Ms. Cole admitted earlier that they argued --

13:22:48 1 A. Oh, the one I saw right here, yes. What about it?

13:22:52 2 Q. (BY MS. CARTER) What did you want from filing that?

13:22:55 3 A. Well, I'd like to have my two years credited back to

13:23:01 4 me that I was out here in Austin, okay, from '14 to '16

13:23:07 5 because my bond stipulated that I would not enjoy my

13:23:13 6 freedom whatsoever so I was considered myself some type --

13:23:21 7 some way of being incarcerated. So when they took it away

13:23:26 8 from me, Ms. DeVasto never did give it back to me.

13:23:30 9 Q. And when you filed -- when you or your attorney filed

13:23:46 10 the federal complaint back in, I think it was, August, did

13:23:49 11 you or Ms. Cole write that complaint?

13:23:51 12 A. I did not write any complaint.

13:23:53 13 Q. Did you know what that complaint was asking for?

13:23:56 14 A. About being in air conditioning. Letting me stay in

13:24:00 15 the air conditioning.

13:24:02 16 Q. Did that complaint also seek to -- for you to be

13:24:06 17 credited two years of your sentence time?

13:24:09 18 A. Not that I know of.

13:24:14 19 Q. But originally, you wanted to be released from TDCJ

13:24:17 20 custody sooner than 2029; is that correct?

13:24:21 21 A. Yes. I was originally released from TDCJ property by

13:24:26 22 2027, however, I spent two years here in Austin on the

13:24:32 23 streets in a bench warrant, being bench warranted, and I

13:24:40 24 was able to stay in Austin for two years. So I wanted

13:24:43 25 those two years credited back to my TDC time so that I

13:24:47 1 would be released in 2027, like I originally was.

13:24:52 2 Q. And do you still believe that you should be released
13:24:55 3 sooner than 2029?

13:24:56 4 A. Yes, ma'am. I believe I should be released in 2027.

13:25:00 5 Q. So why did your attorney amend your complaint to drop
13:25:03 6 those claims?

13:25:08 7 MS. COLE: Objection, your Honor, relevancy and
13:25:10 8 called for a legal class.

13:25:11 9 THE COURT: What's the relevance?

13:25:15 10 MS. CARTER: Mr. Tiede's testified in depth about
13:25:17 11 what he remembers about the original state court
13:25:19 12 proceedings, but I believe has testified he can't remember
13:25:21 13 what was discussed about his heat claims.

13:25:27 14 THE COURT: So what's the relevancy of this? I'm
13:25:31 15 sorry.

13:25:31 16 MS. CARTER: I'm trying to establish here that
13:25:32 17 Mr. Tiede had -- the original complaint here was seeking
13:25:35 18 much more than heat and I'm trying to see why Mr. Tiede
13:25:38 19 determined that the other claims shouldn't go forward and
13:25:41 20 this one should even though he's now housed in AC.

13:25:46 21 THE COURT: Sustain the objection.

13:25:49 22 Q. (BY MS. CARTER) Mr. Tiede, have you ever heard of
13:25:52 23 Lioness?

13:25:52 24 A. Who? Oh, that company that was up here earlier?
13:25:57 25 Lioness? No, I have not.

13:26:00 1 Q. Have you ever heard of Texas Prisons Community
13:26:03 2 Advocates?
13:26:04 3 A. Yes.
13:26:05 4 Q. Have you ever heard of TX C.U.R.E.?
13:26:09 5 A. Yes, very much so.
13:26:11 6 Q. Have you ever heard of Coalition For Texans With
13:26:14 7 Disabilities?
13:26:15 8 A. Yes.
13:26:15 9 Q. Are you a member of any of these groups?
13:26:17 10 A. No, I'm not.
13:26:18 11 Q. How did these groups come to be affiliated with this
13:26:28 12 case?
13:26:28 13 A. I don't know.
13:26:29 14 Q. Do you know if these groups reached out to you?
13:26:33 15 A. Yes, they reached out to my attorney.
13:26:37 16 Q. Have you ever received any correspondence from these
13:26:40 17 groups written to you at the unit?
13:26:41 18 A. No.
13:26:45 19 Q. What unit are you at now, Mr. Tiede?
13:26:47 20 A. I'm at Connally Unit in Karnes County, Kenedy.
13:26:56 21 Q. And were you ever housed at the McConnell Unit
13:26:59 22 before?
13:26:59 23 A. Yes, I was.
13:27:00 24 Q. When were you housed there before?
13:27:02 25 A. I was housed there from 2019 until 2022.

13:27:07 1 Q. So three years; is that fair?

13:27:09 2 A. Yes, ma'am, that's fair.

13:27:12 3 Q. About how long have you been back at Connally?

13:27:16 4 A. Since June the 10th.

13:27:21 5 Q. Do you live in a dorm or do you live in a cell-style

13:27:25 6 housing?

13:27:25 7 A. I live in air conditioning in the old state building

13:27:30 8 12 -- 12 building.

13:27:31 9 Q. So you're in a cell?

13:27:33 10 A. Yes, ma'am. I'm in a cell.

13:27:35 11 Q. And what custody level are you, Mr. Tiede?

13:27:37 12 A. I'm a P2 S3, which is a minimum custody.

13:27:45 13 Q. Is that safekeeping housing?

13:27:48 14 A. Yes, it is.

13:27:48 15 Q. And are you housed just with other safekeeping

13:27:51 16 inmates?

13:27:51 17 A. Yes. Not -- yes, in my house. In the building,

13:27:56 18 there are many, many custody levels.

13:27:58 19 Q. But where you live is in AC?

13:28:01 20 A. Yes, right. It's just safekeeping.

13:28:03 21 Q. And that's current, correct?

13:28:04 22 A. Yes, ma'am. It's been that way since 19 -- since

13:28:13 23 2000.

13:28:14 24 Q. So you've been in AC since 2000?

13:28:17 25 A. I've been -- yes. Well, mostly, I've been in AC

13:28:22 1 since 2016 when they took safekeeping out of 3 building
13:28:28 2 and put them in 12 building at Telford.

13:28:35 3 Q. So prior to coming back to Connally this year when
13:28:38 4 you were housed there before, you were still housed in AC?

13:28:43 5 A. They put me in high security, which is air
13:28:49 6 conditioned at Estelle Unit.

13:28:52 7 Q. So when you were at Estelle, you were in air
13:28:55 8 conditioning, as well?

13:28:56 9 A. Yes.

13:28:58 10 Q. When did you move to Estelle?

13:29:00 11 A. In February of '22 and I was in the main building
13:29:13 12 then. I was not in high security then.

13:29:18 13 Q. Do you know why?

13:29:21 14 A. Why what?

13:29:22 15 Q. Why were you housed in the main building at Estelle?

13:29:25 16 A. Because all the safekeeping is in E2.

13:29:29 17 Q. So you were still housed with all safekeeping
13:29:32 18 inmates?

13:29:32 19 A. Yes, ma'am.

13:29:33 20 Q. And all of them were housed in the main building at
13:29:35 21 Estelle?

13:29:35 22 A. Yes, without air conditioning.

13:29:38 23 Q. Did you ever ask anybody why?

13:29:41 24 A. No. You don't ask questions like that. Huh-uh.

13:29:46 25 Q. Did you ever ask to move back to Connally?

13:29:49 1 A. No.

13:29:50 2 Q. You weren't upset about not being in AC housing?

13:29:53 3 A. I was in AC housing.

13:29:55 4 Q. At Estelle?

13:29:56 5 A. Yes. I was in high security.

13:30:03 6 Q. Did you ever file a grievance about going back to

13:30:06 7 Connally?

13:30:06 8 A. No.

13:30:09 9 Q. Your attorneys are alleging that you were housed in

13:30:12 10 un-air condition. When did that happen?

13:30:14 11 A. When?

13:30:20 12 Q. I'm asking you. When were you housed in

13:30:22 13 un-air-conditioned housing?

13:30:23 14 A. From 1999 until 2016, on November the 6th.

13:30:34 15 Q. And is that what you're suing about today?

13:30:40 16 A. I'm asking not to go back into un-air-conditioned

13:30:43 17 housing.

13:30:44 18 Q. Have you been told you're going back to

13:30:46 19 un-air-conditioned housing?

13:30:48 20 A. No.

13:30:49 21 Q. Have you filed a grievance asking not to go back to

13:30:57 22 un-air conditioned housing?

13:30:59 23 A. No.

13:30:59 24 Q. Have you ever filed a grievance before, Mr. Tiede?

13:31:01 25 A. Oh, yes, ma'am.

13:31:02 1 Q. But you haven't filed it about heat or AC housing or
13:31:07 2 Estelle or Connally?

13:31:12 3 A. Huh-uh.

13:31:13 4 Q. Why have you filed grievances before?

13:31:15 5 A. Well, because I asked for -- I filed grievances when
13:31:21 6 I was asking for the -- my first grievance this time to
13:31:30 7 please adjust the requirements for a heat score so that
13:31:38 8 people like me that fall through the cracks would be
13:31:45 9 recognized.

13:31:48 10 Q. And you filed a grievance about that?

13:31:51 11 A. Yes, I did.

13:31:53 12 Q. Would you be surprised to know that TDCJ has no
13:31:55 13 record of you filing a grievance since 2016?

13:32:00 14 A. Don't know why. I never got any responses back.

13:32:08 15 Q. Would you be surprised to know that your counsel's
13:32:10 16 never disputed that you haven't filed a grievance?

13:32:16 17 A. Never disputed that I've never filed a grievance.
13:32:21 18 No, I didn't know that.

13:32:24 19 Q. Earlier, you were telling your attorney that during
13:32:28 20 your medical event that happened last summer, you were
13:32:31 21 housed at the regional medical facility at Estelle?

13:32:35 22 A. Well, they rushed me there -- I was not housed there.
13:32:41 23 Rushed to the emergency room there.

13:32:42 24 Q. How long were you there?

13:32:43 25 A. About 20 minutes.

13:32:46 1 Q. Is that area AC?

13:32:49 2 A. Yes. And they have a geriatric center also, which is
13:32:53 3 very nice; it's air conditioned.

13:32:57 4 Q. Mr. Tiede, how long have you been in air conditioning
13:33:00 5 now?

13:33:02 6 A. Since 2016 and then, I've been in air conditioning
13:33:11 7 and then, I got out of air conditioning on February the
13:33:15 8 1st when they moved us to Estelle.

13:33:24 9 Q. And you've already told me that that was because
13:33:27 10 safekeeping inmates are housed in the main building; is
13:33:30 11 that correct?

13:33:30 12 A. Yes, that's correct.

13:33:31 13 Q. But when did you get moved back into AC?

13:33:40 14 A. When I filed a assault against TDCJ to please put me
13:33:49 15 back in air conditioning.

13:33:51 16 Q. And when did you do that?

13:33:54 17 A. In September of last year.

13:34:00 18 Q. Well, I'll represent to you, Mr. Tiede, that you
13:34:03 19 actually filed suit in August.

13:34:04 20 A. Oh, okay.

13:34:05 21 Q. And that you were moved to air conditioning during
13:34:09 22 September. Does that sound right?

13:34:10 23 A. That sounds correct, yes.

13:34:11 24 Q. So about ten months you've been in air conditioning
13:34:14 25 now; is that right?

13:34:16 1 A. Yes.

13:34:19 2 Q. Earlier this morning, your counsel testified that
13:34:22 3 your condition has only worsened since our last time we've
13:34:25 4 talked to Judge Pitman; is that true?

13:34:28 5 A. My counsel told -- said that? Because it looked like
13:34:32 6 it was a lot worse in this video.

13:34:36 7 Q. Have you experienced any medical decline in the last
13:34:40 8 year?

13:34:40 9 A. Yes, I'm going worse and blind in this right eye
13:34:47 10 because I'm bleeding in my right eye.

13:34:48 11 Q. And that's happened even though you've been housed in
13:34:51 12 AC housing?

13:34:52 13 A. Probably because of a stroke, possibly.

13:34:56 14 Q. And I want to talk a little bit about that stroke.

13:35:00 15 A. I'm not a medical professional.

13:35:02 16 Q. Neither am I. I'm just going to ask you --

13:35:04 17 A. Just a poor little undertaker.

13:35:11 18 Q. I understand that you have a number of health issues
13:35:13 19 that Ms. Cole asked you about. It's true you're a
13:35:16 20 diabetic?

13:35:16 21 A. Yes, ma'am, insulin dependent.

13:35:18 22 Q. And how long have you had diabetes?

13:35:23 23 A. Eighteen, 19 years, somewhere in there.

13:35:28 24 Q. Is it true that you have high cholesterol?

13:35:31 25 A. Yes.

13:35:33 1 Q. Is it true you that you have high blood pressure?

13:35:35 2 A. Yes.

13:35:35 3 Q. Has a provider ever told you that you were at risk of

13:35:41 4 a stroke because of these conditions?

13:35:46 5 A. I'm sure they have. Things I've read.

13:35:54 6 Q. What have you read?

13:35:56 7 A. You know, how to prevent strokes and high blood

13:36:00 8 pressure goes.

13:36:02 9 Q. What kind of documents are those? Are those just for

13:36:05 10 inmates or are those just doctors testifying about

13:36:08 11 patients everywhere?

13:36:09 12 A. Well, the Merck Manual that I've read, you know,

13:36:17 13 different things about that.

13:36:17 14 Q. You've read before that having diabetes and high

13:36:21 15 cholesterol and high blood pressure can lead to a stroke?

13:36:24 16 A. Yes, I have.

13:36:25 17 Q. Have you ever heard the term "triple threat" being

13:36:27 18 used in reference to those conditions?

13:36:28 19 A. No.

13:36:30 20 Q. But you've been conscious of your risk of stroke

13:36:35 21 before unrelated to heat; is that correct?

13:36:40 22 A. Well, I mean, other than yes, other medicated

13:36:46 23 conditions that I have, yeah.

13:36:49 24 Q. Has a doctor ever told you you had a heat stroke or

13:36:52 25 did you just hear that from Ms. Cole?

13:36:56 1 A. A doctor told me that I had had a brainstem stroke.

13:37:01 2 Q. But a doctor never said heat stroke, did they?

13:37:04 3 A. No.

13:37:06 4 Q. Did a doctor ever tell you that any of your
13:37:08 5 conditions were from the heat?

13:37:13 6 A. No.

13:37:17 7 Q. Nothing further.

13:37:20 8 RE-DIRECT EXAMINATION

13:37:20 9 BY MS. COLE:

13:37:25 10 Q. Hello, Mr. Tiede.

13:37:27 11 A. Hey.

13:37:28 12 Q. Do you recall that Dr. Cross provided four
13:37:33 13 declarations for you?

13:37:34 14 A. Yes, I do.

13:37:35 15 MS. CARTER: Objection, your Honor. That's
13:37:37 16 leading.

13:37:37 17 THE COURT: Overruled.

13:37:39 18 Q. (BY MS. COLE) Bernie, did your lawyer tell you that
13:37:43 19 you don't think very well nowadays?

13:37:46 20 A. Yes.

13:37:46 21 Q. And that you don't think like you used to.

13:37:48 22 A. Yes.

13:37:49 23 MS. CARTER: Your Honor, this is testimony from
13:37:50 24 counsel.

13:37:51 25 THE COURT: Sustained.

13:37:54 1 Q. (BY MS. COLE) Bernie, so I'm going to ask you:
13:37:58 2 Didn't you file grievances October 10th, 2023, October
13:38:04 3 22nd or 23rd, 2023, October 31st, 2023, and November 15th,
13:38:12 4 2023?
13:38:15 5 A. Those dates sound about right.
13:38:17 6 Q. Do you remember working with your lawyer?
13:38:20 7 A. Yes.
13:38:20 8 Q. To craft your grievances?
13:38:22 9 A. Yes, I do.
13:38:23 10 Q. And is there any receipt you get when you file your
13:38:26 11 grievance?
13:38:27 12 A. There's no receipt you get. You don't even know
13:38:30 13 whether it's been accepted or not.
13:38:32 14 Q. Could you make a copy for me? I asked you to make a
13:38:35 15 copy and send it back to me.
13:38:37 16 A. Yes.
13:38:37 17 Q. Did you do that?
13:38:38 18 A. No.
13:38:39 19 Q. Could you do that?
13:38:40 20 A. No, I could not.
13:38:42 21 Q. So we filed the grievance but we don't know what
13:38:45 22 happened to them?
13:38:45 23 A. I have no earthly idea.
13:38:47 24 Q. And if they're saying you have a triple threat, do
13:38:50 25 you even know what a heat score is?

13:38:52 1 A. No or how it's arrived at.

13:38:55 2 Q. Has anyone told you that TDCJ says if you have things
13:39:00 3 like a triple threat, you're not supposed to be in extreme
13:39:03 4 heat, anyway?

13:39:04 5 A. No, have not heard that.

13:39:06 6 Q. Isn't it true you didn't go to air conditioning again
13:39:09 7 until a federal judge told you?

13:39:12 8 MS. CARTER: Your Honor, I'm going to object to
13:39:17 9 leading.

13:39:19 10 Q. (BY MS. COLE) I'll withdraw, your Honor.

13:39:20 11 Why did you go to air conditioning? Again, how
13:39:24 12 did you move to air conditioning after your medical event?

13:39:27 13 A. Because the judge ordered it.

13:39:30 14 Q. The federal judge?

13:39:31 15 A. Yes.

13:39:32 16 Q. And when you went to the air conditioning facility,
13:39:37 17 did you see empty air-conditioned beds available around
13:39:41 18 you?

13:39:41 19 A. Yes, there are.

13:39:42 20 Q. Okay. No further questions, your Honor.

13:39:44 21 MS. CARTER: Just briefly, your Honor.

13:39:46 22 RE-CROSS EXAMINATION

13:39:48 23 BY MS. CARTER:

13:39:48 24 Q. Mr. Tiede, didn't earlier you testify that you had
13:39:53 25 been moved to air conditioning housing after your stroke?

13:39:58 1 A. Yes.

13:39:59 2 Q. So for a time period after you had your stroke you
13:40:02 3 were housed in air conditioning housing?

13:40:05 4 A. Well, not because TDCJ did. I mean, not because TDCJ
13:40:11 5 asked to do it or wanted to do it. Is that what you --
13:40:20 6 ask me one more time.

13:40:22 7 Q. Before we had the hearing in September -- or I think
13:40:25 8 it was October. Before we had the hearing in October,
13:40:28 9 were you ever housed in air conditioned housing?

13:40:30 10 A. Yes, of course.

13:40:31 11 Q. And were you housed in air-conditioned housing after
13:40:34 12 the stroke but before the hearing?

13:40:40 13 A. Was I housed in air conditioning after the hearing --
13:40:46 14 after the stroke but before the hearing, no.

13:40:50 15 Q. You were never housed there for a period of a week or
13:40:53 16 so?

13:40:53 17 A. One week in August, I was housed because they gave me
13:40:56 18 prednisone.

13:40:58 19 Q. And why was that?

13:41:00 20 A. Because I asked the doctor if we could try prednisone
13:41:07 21 because sometimes with a stroke victim, it might help.

13:41:12 22 Q. Why did the prednisone --

13:41:12 23 A. Cuts down the --

13:41:15 24 Q. -- move you to an AC bed?

13:41:17 25 A. Because it's one of the required medications that

13:41:19 1 requires air conditioning or climate controls.

13:41:26 2 Q. But prior to that, no doctor had told you that your

13:41:30 3 health had been impacted by heat?

13:41:32 4 A. No.

13:41:35 5 Q. And you told me earlier that you filed this complaint

13:41:37 6 in August or I think we may have gotten the -- you said

13:41:41 7 September?

13:41:41 8 A. I got the dates wrong, whatever it is.

13:41:43 9 Q. You said August?

13:41:44 10 A. Yes. Thank you.

13:41:45 11 Q. Why didn't you file grievances before filing a

13:41:48 12 lawsuit?

13:41:51 13 A. Because it was being rectified.

13:41:55 14 Q. So you didn't feel the need to file a grievance?

13:41:57 15 A. I didn't feel that was the need at that time, no.

13:42:03 16 Q. And I believe your counsel testified that she may

13:42:06 17 have directed you to file a grievance.

13:42:08 18 A. Yes.

13:42:09 19 Q. When did that happen?

13:42:16 20 A. I don't remember the day. October maybe. No.

13:42:20 21 November. October.

13:42:23 22 Q. Earlier, we talked about inmates that may get more

13:42:27 23 disciplinaries or get more grievances than you do. Do you

13:42:32 24 know why inmates file grievances?

13:42:35 25 A. Because they are unhappy with stuff.

13:42:40 1 Q. And when you were unhappy, you chose to file a
13:42:43 2 lawsuit instead of filing a grievance?

13:42:48 3 A. I was seeking immediate help. I know that the
13:42:55 4 grievance process certainly does lack.

13:42:57 5 Q. But you didn't try?

13:42:59 6 A. No.

13:43:01 7 Q. Thank you.

13:43:03 8 RE-DIRECT EXAMINATION

13:43:03 9 BY MS. COLE:

13:43:07 10 Q. Mr. Tiede.

13:43:08 11 A. Yes.

13:43:09 12 Q. I filed a lawsuit, a TRO immediately because I
13:43:12 13 thought you would die, didn't I?

13:43:14 14 A. Exactly.

13:43:15 15 Q. And so, we had no assurances from TDCJ even after all
13:43:20 16 of this that -- well, let me change it. I see you're
13:43:23 17 coming. Could they send you to un-air-conditioned housing
13:43:28 18 tomorrow when they get you back to your cell?

13:43:31 19 A. Of course, yes.

13:43:31 20 Q. There's no assurance.

13:43:32 21 A. No.

13:43:32 22 Q. No further questions, your Honor.

13:43:35 23 RE-CROSS EXAMINATION

13:43:37 24 BY MS. CARTER:

13:43:37 25 Q. One more question. I believe I asked you earlier if

13:43:41 1 you had been told that you were moving back to an AC cell.

13:43:44 2 Have you been ever told that, Mr. Tiede?

13:43:47 3 A. That I'm moving back to a air conditioned?

13:43:50 4 Q. I'm sorry, an un-air-conditioned cell?

13:43:52 5 A. No.

13:43:53 6 Q. Thank you.

13:43:57 7 THE COURT: Anything further? Could I have
13:44:04 8 counsel, please.

13:44:08 9 (At the bench, on the record.)

13:44:15 10 THE COURT: Just wanted to confirm that Mr. Tiede
13:44:17 11 is going to be transported back. Is it your intention to
13:44:19 12 keep him here?

13:44:21 13 MS. COLE: I don't see -- let me talk to everyone
13:44:23 14 else but I think it's better.

13:44:25 15 THE COURT: I think it's very unreasonable
13:44:29 16 sometimes to keep him here.

13:44:29 17 MS. COLE: I would recommend -- let me make sure
13:44:31 18 but I would say that's --

13:44:41 19 MR. HOMIAK: Because he's a party, he could stay
13:44:43 20 but I think it's a question of where -- I mean, it's a lot
13:44:46 21 to put on --

13:44:47 22 THE COURT: Resources and stuff.

13:44:49 23 MR. HOMIAK: Yeah. Is that all right?

13:44:52 24 MS. CARTER: If he goes? You'll just have to let
13:44:54 25 me know because I'll make sure that TDC -- they can --

13:44:56 1 yeah.

13:44:57 2 THE COURT: Just seems like a lot for y'all to
13:44:59 3 have to --

13:45:01 4 MS. COLE: Your Honor, my concern is I don't want
13:45:03 5 him moved out of air conditioning. Can I get assurances
13:45:05 6 that they won't move him out of air conditioning?

13:45:08 7 MS. CARTER: I can't make any --

13:45:10 8 MS. COLE: Would be my concern. I don't think
13:45:12 9 they will but --

13:45:14 10 THE COURT: May be the best thing that can happen
13:45:14 11 to you during this hearing.

13:45:16 12 MS. COLE: I don't want him to die.

13:45:17 13 THE COURT: I understand.

13:45:20 14 MR. HOMIAK: Yeah, I think it makes sense for him
13:45:23 15 to go back. I mean, it's just a lot --

13:45:25 16 MS. COLE: I also do.

13:45:28 17 MR. HOMIAK: Thank you, your Honor.

13:45:45 18 (End of bench conference.)

13:45:45 19 THE COURT: Thank you, sir. You may step down.

13:45:48 20 THE WITNESS: Thank you. All right.

13:45:51 21 THE COURT: All right. The next witness.

13:46:00 22 MR. OLSEN: Your Honor, the plaintiffs call Dr.
13:46:09 23 Julie Skarha.

13:46:26 24 THE COURT: Ms. Skarha, if you could walk back
13:46:30 25 toward the courtroom and walk toward me. Could you please

13:46:46 1 raise your right hand?

13:46:48 2 THE CLERK: You do solemnly swear or affirm that
13:46:48 3 the testimony which you may give in the case now before
13:46:48 4 the Court shall be the truth, the whole truth, and nothing
13:46:52 5 but the truth?

13:46:52 6 THE WITNESS: I do.

13:46:56 7 JULIE SKARHA, called by the Plaintiff, duly sworn.

13:46:56 8 DIRECT EXAMINATION

13:47:00 9 BY MR. OLSEN:

13:47:00 10 Q. Good afternoon, Dr. Skarha. Could you please tell us
13:47:04 11 your educational background?

13:47:06 12 A. Happy to. I went to McGill University for my
13:47:11 13 undergraduate degree where I studied environmental
13:47:13 14 sciences and statistics, and then, I completed my Ph.D. in
13:47:17 15 Epidemiology at Brown University in 2022.

13:47:21 16 Q. What is your current occupation?

13:47:23 17 A. I'm a public health analyst for the Department of
13:47:26 18 Health in Vermont, and then, I'm also a research associate
13:47:29 19 with Brown University for -- in their department of
13:47:31 20 epidemiology.

13:47:33 21 Q. And have you taught epidemiology classes?

13:47:37 22 A. I have.

13:47:37 23 Q. Have you personally conducted epidemiological
13:47:43 24 investigations and published the results of those
13:47:46 25 investigations?

13:47:47 1 A. I have.

13:47:49 2 Q. Your Honor, I'd ask that Ms. -- sorry, has
13:47:55 3 epidemiology been the focus of your studies and now your
13:47:58 4 career?

13:47:58 5 A. It is.

13:48:00 6 Q. Your Honor, I ask that Dr. Skarha be recognized as an
13:48:04 7 expert in epidemiology.

13:48:06 8 THE COURT: Any objection?

13:48:08 9 MR. RHINES: None, your Honor.

13:48:09 10 THE COURT: She'll be so recognized.

13:48:12 11 Q. (BY MR. OLSEN) Thank you.

13:48:13 12 Dr. Skarha, what is epidemiology as a discipline?

13:48:17 13 A. Sure. I think of it as the science or research side
13:48:20 14 of public health. So we collect data from populations and
13:48:25 15 then, look at that data to help answer questions like does
13:48:29 16 smoking increase your risk of getting lung cancer, do
13:48:32 17 seatbelts prevent injuries, or does rising temperatures
13:48:36 18 affect your risk of death.

13:48:37 19 Q. And so, you were anticipating my next question. Have
13:48:42 20 epidemiologists studied the effects of heat on human
13:48:45 21 health?

13:48:45 22 A. Yes, extensively.

13:48:47 23 Q. And broadly stated, what have their findings been?

13:48:51 24 A. So I think the main findings are that heat stroke is
13:48:55 25 not the only outcome that heat can cause. There are a

13:48:58 1 variety of other health outcomes that increase when we see
13:49:01 2 a rise in temperatures, including cardiovascular
13:49:05 3 disease-related outcomes, so myocardial infarctions or
13:49:09 4 heart attacks, exacerbations including asthma-related
13:49:17 5 hospitalizations. We see things like an increase in
13:49:20 6 kidney failures, a variety of chronic diseases that are
13:49:25 7 exacerbated by heat. And we also see an increase in risk
13:49:28 8 of suicide.

13:49:29 9 Q. Have you personally studied the effects of heat on
13:49:32 10 human health?

13:49:33 11 A. I have.

13:49:33 12 Q. And how many papers or articles have you published on
13:49:36 13 that topic?

13:49:36 14 A. I think five right now.

13:49:38 15 Q. Okay. I want to focus on one in particular. Kevin,
13:49:44 16 could you put up the first page of Exhibit 70?

13:49:51 17 Dr. Skarha, what is Exhibit 70?

13:49:54 18 A. So this is a paper that I published in November 2022
13:49:59 19 and it's titled the Provision of Air Conditioning and
13:50:02 20 Heat-Related Mortality in Texas Prisons.

13:50:07 21 Q. What prompted you to research and write this?

13:50:11 22 A. I was writing my doctoral dissertation so I had to
13:50:14 23 come up with a research topic in the field of
13:50:17 24 epidemiological. The effects of heat on human health have
13:50:20 25 been studied quite widely in a number of populations but

13:50:24 1 not in prison populations. So this was a way for me to
13:50:27 2 bring my unique innovative research to the field of
13:50:32 3 epidemiology and that ended up being my doctoral
13:50:34 4 dissertation.

13:50:35 5 Q. Why did you focus on Texas, specifically?

13:50:39 6 A. There were kind of two reasons. So for this paper, I
13:50:44 7 focused on Texas, one, because for the types of analyses
13:50:48 8 that I was conducting, you need a lot of data and that
13:50:51 9 means a lot of deaths. And because I believe Texas has
13:50:56 10 the largest incarcerated population in the U.S. relative
13:51:00 11 to the other states, there were enough deaths there for me
13:51:04 12 to analyze this data just for Texas alone. And then,
13:51:09 13 also, there was information on air conditioning which
13:51:12 14 isn't -- I wasn't able to get for other states but I was
13:51:16 15 able for Texas.

13:51:18 16 Q. And on page 1 here, you were listed as the lead
13:51:22 17 author of this study. Could you just describe at a high
13:51:25 18 level the work you did that went into this study?

13:51:30 19 A. Sure. So I came up with the study design. I cleaned
13:51:38 20 all the data sets and merged all the necessary data sets.
13:51:43 21 I analyzed the data, I wrote up the findings, I submitted
13:51:47 22 the findings to a peer-review journal. I answered
13:51:53 23 questions and reviewer comments from the peer-review
13:51:58 24 journal and then, it was published.

13:52:01 25 Q. And what was the objective of your study? What were

13:52:05 1 you trying to analyze, specifically?

13:52:08 2 A. If there was a relationship between heat and extreme
13:52:13 3 heat and Texas prisons and risk of death.

13:52:15 4 Q. And to do that, did you gather and analyze different
13:52:19 5 categories of data?

13:52:20 6 A. I did. So I specifically analyzed deaths that
13:52:26 7 occurred in prisons with air conditioning and then, I
13:52:28 8 analyzed deaths that occurred in prisons without air
13:52:32 9 conditioning.

13:52:32 10 Q. Okay. And so, that's mortality data?

13:52:34 11 A. Yes.

13:52:35 12 Q. Where did that data come from?

13:52:37 13 A. So the data comes from the U.S. Department of
13:52:41 14 Justice, the Bureau of Statistics, which is housed under
13:52:43 15 the U.S. Department of Justice collects or maintains the
13:52:47 16 data set mortality in corrections and it's a list of all
13:52:54 17 deaths that occur in U.S. state and privately contracted
13:52:58 18 state prison facilities.

13:53:00 19 Q. And is the Bureau of Justice Statistics, are those
13:53:05 20 considered reliable? Is that data considered reliable?

13:53:09 21 A. Yes, definitely. There was validation study of this
13:53:12 22 data, I think, in 2013 and so, matching the deaths in that
13:53:17 23 data set with the national death index and it proved quite
13:53:23 24 reliable.

13:53:23 25 Q. What did you focus on in the data in terms of

13:53:27 1 location where the deaths occurred and then, the time
13:53:32 2 period?

13:53:32 3 A. Yeah. So for this paper, I only focused on deaths
13:53:38 4 that occurred in Texas. I focused on all the years of
13:53:43 5 available data so that was 2001 to 2019 and then, I only
13:53:50 6 looked at warm months. So I considered warm months to be
13:53:53 7 any deaths that occurred between May and October.

13:53:55 8 Q. And how many deaths were there in Texas prisons
13:53:59 9 during those months from 2001 to 2019, roughly?

13:54:03 10 A. Approximately 3,500 deaths.

13:54:06 11 Q. And of those deaths, how did you determine whether
13:54:09 12 the inmate was housed in an air-conditioned or a
13:54:12 13 non-air-conditioned facility?

13:54:14 14 A. So in the mortality data set that I used lists the
13:54:20 15 facility that the person was housed in before they died.
13:54:23 16 So I had information on what facility the person was in
13:54:27 17 and then, I used information from TDCJ who has put out
13:54:32 18 public information about which prisons are fully air
13:54:36 19 conditioned, which prisons are partially air conditioned,
13:54:40 20 and which prisons have no air conditioning.

13:54:42 21 Q. And so, I take it the TDCJ described fully
13:54:50 22 air-conditioned and non-air-conditioned facilities were
13:54:53 23 straightforward to categorize?

13:54:54 24 A. Yes.

13:54:55 25 Q. How did you characterize the prisons that TDCJ

13:54:59 1 characterized as partially air conditioned?

13:55:04 2 A. So for that list of partially air-conditioned prison,
13:55:07 3 there were about 40 to 50, I looked at information given
13:55:10 4 by TDCJ about that prison and then, I also talked with the
13:55:16 5 Texas Prisons Community Advocates about any experience,
13:55:20 6 knowledge they had about whether this prison was likely,
13:55:24 7 fully -- like mostly air conditioned so someone who died
13:55:28 8 there would have mostly be exposed to AC before their
13:55:32 9 death or was mostly un-air conditioned. So someone who
13:55:34 10 died that would have been mostly exposed to not air
13:55:39 11 conditioning before their death.

13:55:39 12 Q. Did you exclude any of the reported deaths based on
13:55:43 13 you just didn't -- have felt like you didn't have
13:55:44 14 sufficient information about the air conditioning status
13:55:47 15 of the facility?

13:55:49 16 A. I did. Yeah.

13:55:52 17 Q. Based on your analysis of the 3,500 deaths that
13:55:55 18 occurred, how many of the deaths were in facilities with
13:55:59 19 air conditioning and how many of the deaths were in
13:56:01 20 facilities without air conditioning?

13:56:03 21 A. So it was about 1,300 deaths in facilities with air
13:56:09 22 conditioning and then, about 2,100 in facilities without
13:56:15 23 air conditioning.

13:56:15 24 Q. And so, you had mortality data and then, you had
13:56:19 25 information about air conditioning status of the prison.

13:56:23 1 Then you also looked at temperature data; is that right?

13:56:26 2 A. Correct.

13:56:27 3 Q. And what data did you use for that component of your
13:56:31 4 analysis?

13:56:31 5 A. Sure. So I used the data set called the North
13:56:34 6 American Land Assimilation Data System, I think, and this
13:56:41 7 is a data set that comes from NASA and NOAA and it's
13:56:44 8 publicly available to researchers. It includes daily
13:56:48 9 temperature data that goes back to 1980 and essentially
13:56:52 10 the entire contiguous U.S. is gridded out into
13:56:57 11 twelve-by-twelve kilometer squares or six-by-six mile
13:57:01 12 squares, and then, there's temperature data for each of
13:57:03 13 those squares in the U.S. going back to 1980.

13:57:07 14 Q. So what you're describing as sort of a geographically
13:57:13 15 based measure of temperature at a given time, that data
13:57:17 16 exists and is maintained?

13:57:19 17 A. Correct.

13:57:19 18 Q. And that's what you used?

13:57:21 19 A. Correct.

13:57:21 20 Q. So let's talk about the 2,100 deaths that occurred in
13:57:27 21 prisons without AC. Could you describe with the mortality
13:57:33 22 data, the information about the facility being not AC and
13:57:37 23 then, the gridded temperature data, kind of how you
13:57:41 24 brought those together?

13:57:42 25 A. Sure. So I used something called the case crossover

13:57:48 1 method to analyze the data. So what that involves is for
13:57:51 2 those 2,100 deaths, I had information for each person on
13:57:56 3 where they were living before they died so I knew they
13:57:58 4 were in a non-air-conditioning facility. I knew the date
13:58:01 5 of their death and so, I could link in temperature data
13:58:05 6 for where that person was being housed on the day that
13:58:09 7 they died.

13:58:10 8 So if someone died on June 20th in 2013 in the
13:58:16 9 Estelle Unit in Folsom, Texas, I would have information on
13:58:24 10 what the highest temperature was on that day on June 15,
13:58:29 11 and then, I would compare that to temperatures on days
13:58:34 12 surrounding that. So I look at the person, the
13:58:39 13 temperature on the day that someone died, and I also pull
13:58:43 14 control days. So temperature on days that they didn't die
13:58:46 15 but near that death and if the temperature is higher on
13:58:51 16 the day that they died, that suggests to me that heat
13:58:54 17 might have played a factor. Heat might have played a role
13:58:58 18 in that death.

13:58:59 19 Now, on an individual level, obviously, I can't
13:59:01 20 say okay, that person died because of the heat, but out of
13:59:05 21 that population level when I do this for 2,100 people,
13:59:09 22 2,100 deaths, I look to see if there's a relationship
13:59:13 23 between the temperature on the day that someone died and
13:59:16 24 whether there is higher risk of death on those days.

13:59:21 25 Q. And is the -- you mentioned this is the cause

13:59:24 1 crossover analysis.

13:59:25 2 A. That's correct.

13:59:28 3 Q. And is that method commonly accepted in the field of

13:59:30 4 epidemiology?

13:59:32 5 A. Yes. This is a very standard study design.

13:59:35 6 Q. And is it used across other questions that

13:59:39 7 epidemiologists study?

13:59:40 8 A. Yes. Especially for short-term exposures that we're
13:59:46 9 interested in so whether that's increase in our pollution

13:59:50 10 or what someone was doing before a car crash, this is a

13:59:55 11 great study design to help see if there's a relationship

13:59:58 12 between the exposure and then, a health outcome like

14:00:04 13 asthma attacks or a car accident.

14:00:07 14 Q. And so, the exposure you were analyzing in this

14:00:10 15 specific study was exposure to heat with the health

14:00:14 16 outcome of mortality, right?

14:00:15 17 A. That's correct.

14:00:18 18 Q. Kevin, could you put up the figure at the bottom of

14:00:24 19 page 5 of Exhibit 70.

14:00:36 20 Dr. Skarha, does the orange line in this figure

14:00:40 21 reflect the findings from your case crossover analysis as

14:00:44 22 to deaths in prisons without air conditioning?

14:00:47 23 A. It does.

14:00:48 24 Q. And describe what it's showing.

14:00:52 25 A. Sure. So you can see the heat index listed on the

14:00:57 1 horizontal line so if we look at a day like 95 degrees, so
14:01:02 2 a day when it was 95 degrees out, you can kind of follow
14:01:05 3 that -- the vertical end up until you reach the horizontal
14:01:09 4 line and so, you can see the change in mortality, the
14:01:12 5 change in risk of dying increase by five percent. So what
14:01:18 6 that means is the risk of dying on a 95-degree day was
14:01:24 7 five percent higher than it was on an 85-degree day or
14:01:28 8 below.

14:01:31 9 Q. How about heat index of a hundred, what did you find
14:01:35 10 there?

14:01:35 11 A. Sure. Yeah. So the risk of dying in a prison with
14:01:39 12 air conditioning was about --

14:01:42 13 Q. Sorry. I'm focused on prisons without AC.

14:01:45 14 A. Yes. Okay. Prisons without air conditioning. Yes.
14:01:48 15 So the risk of dying in prison without air conditioning
14:01:51 16 when it was a hundred degrees out was 10 percent higher
14:01:55 17 than the risk of dying when the temperature was 85 degrees
14:01:59 18 or below.

14:02:01 19 Q. So in other words, deaths in prisons without AC on
14:02:09 20 85-degree days was your baseline; is that right?

14:02:12 21 A. Yes.

14:02:13 22 Q. And then, you compared that number of deaths to the
14:02:16 23 number of deaths in prisons without AC on this example,
14:02:21 24 100-degree days; is that right?

14:02:23 25 A. Exactly.

14:02:24 1 Q. Okay. And when you say there's a 10 percent increase
14:02:28 2 in mortality on 100-degree days, is that based on the fact
14:02:35 3 that you observed more deaths in prisons without AC on
14:02:40 4 100-degree days than there were deaths in prisons without
14:02:44 5 AC on 85-degree days?

14:02:46 6 A. Exactly.

14:02:48 7 Q. And based on your analysis for the warm months from
14:02:52 8 2001 to 2019 of the 2,100 deaths in Texas prisons without
14:02:58 9 AC, how many of these deaths were attributable to extreme
14:03:03 10 heat?

14:03:03 11 A. I found that 271 deaths were attributable to extreme
14:03:09 12 heat during this period.

14:03:10 13 Q. What does that work out to in terms of an annual
14:03:13 14 average?

14:03:13 15 A. That's about 14 deaths a year related to heat.

14:03:19 16 Q. I want to talk now about your analysis of Texas
14:03:21 17 prisons with air conditioning. And you said -- you
14:03:25 18 testified earlier, it was about 13 or 1,400 deaths during
14:03:30 19 this time period; is that right?

14:03:31 20 A. In Texas prisons with air conditioning, yes.

14:03:33 21 Q. So during this time period and for those deaths, what
14:03:39 22 method did you use to examine the association between
14:03:42 23 extreme heat and mortality in prisons with AC?

14:03:46 24 A. So the same method, the case crossover method.

14:03:51 25 Q. And if we look again at figure 5 on Exhibit 70, does

14:03:57 1 the blue line in this figure reflect the findings from
14:04:01 2 your case crossover analysis as to deaths in prisons with
14:04:06 3 AC?

14:04:06 4 A. It does.

14:04:06 5 Q. And describe what that shows.

14:04:09 6 A. Sure. So you can see on a 95-degree day in Texas
14:04:14 7 prisons with air conditioning, the risk of death doesn't
14:04:18 8 change between a day in Texas prisons with air
14:04:23 9 conditioning when it's 85 degrees or below. So no
14:04:26 10 difference in risk of death as we go from 85 degrees, 95
14:04:31 11 degrees. And, then, when we get to a hundred and 105
14:04:36 12 degrees, there's a slight decrease in the risk of dying
14:04:40 13 compared to the risk of dying when it's 85 degrees or
14:04:45 14 lower.

14:04:46 15 Q. In your analysis, did you consider whether the
14:04:49 16 different mortality outcomes you observed in prisons
14:04:54 17 without AC versus prisons with AC at times of extreme heat
14:04:58 18 could have been attributable to variables besides the
14:05:01 19 heat?

14:05:02 20 A. I did.

14:05:03 21 Q. Okay. And what did you consider?

14:05:06 22 A. Yeah. So I considered whether the age distribution
14:05:11 23 of prisons with AC and prisons without AC looked
14:05:15 24 different. So could it be that people who are in prisons
14:05:18 25 without AC tend to be older. I looked at whether there

14:05:20 1 was differences in the number of people who are black in
14:05:23 2 prisons with AC compared to prisons without AC. I looked
14:05:27 3 at whether there was difference in sex so were there more
14:05:32 4 women in prisons with AC than prisons without AC, and I
14:05:36 5 found no substantial or significant differences between
14:05:40 6 these two groups.

14:05:42 7 Q. Did you also consider the relative facility
14:05:45 8 characteristics between prisons with AC and prisons
14:05:48 9 without AC?

14:05:49 10 A. I did, yeah. I considered what about where prisons
14:05:54 11 are located, so is it just that prisons without AC are not
14:05:58 12 located -- or are located in very warm places in Texas and
14:06:03 13 prisons without AC aren't. I considered who operated the
14:06:09 14 prison, was it privately operated instead of
14:06:12 15 state-operated, and a few other variables, and I found no
14:06:18 16 significant difference between those two that would
14:06:21 17 explain this difference.

14:06:24 18 Q. So if I'm hearing you correctly, the primary
14:06:27 19 difference between these two sets of prisons was air
14:06:32 20 conditioning; is that right?

14:06:32 21 A. Yes.

14:06:33 22 Q. And what does that tell you about how AC affects
14:06:37 23 mortality risk on hot days in Texas prisons?

14:06:42 24 A. I found no association between increase in
14:06:46 25 temperature and risk of death in prisons with air

14:06:49 1 conditioning, so that tells me that air conditioning is
14:06:51 2 protective in this case.

14:06:52 3 Q. And in your expert opinion and based on your study,
14:06:57 4 do you believe that more inmates will die from extreme
14:07:01 5 heat in Texas prisons that aren't air conditioned in the
14:07:04 6 future?

14:07:04 7 A. I do.

14:07:07 8 Q. This morning, counsel for Mr. Collier mentioned that
14:07:13 9 your study was a quasi experimental study rather than a
14:07:17 10 randomized control study and I just wanted to ask you,
14:07:22 11 what is the distinction between the two? And do you
14:07:26 12 believe that a quasi experimental study is still a valid
14:07:29 13 way of doing an epidemiological investigation?

14:07:33 14 A. Sure. Yeah. So randomized control trial is a study
14:07:38 15 designed in epidemiology where the epidemiologist get to
14:07:42 16 design the exposure. So when you think of the vaccine
14:07:44 17 trials, those are randomized control trials. We're giving
14:07:47 18 some people the vaccine, we're giving some people the
14:07:50 19 placebo, we're going the study the results.

14:07:53 20 For a lot of exposures that we're interested in,
14:07:57 21 it's not ethical to assign people or like to give people
14:08:00 22 some exposures, including exposure to extreme heat, so a
14:08:04 23 lot of epidemiological studies are done using
14:08:06 24 observational data, which makes it a quasi experimental
14:08:11 25 study design. So just like how we look at how asbestos

14:08:18 1 affects someone's risk of cancer, that's all observational
14:08:23 2 data. We're not giving people asbestos but we still know
14:08:26 3 that asbestos cause certainly types of cancer. And so,
14:08:29 4 I'm using the same kind of study design here.

14:08:33 5 Q. Thank you.

14:08:51 6 CROSS-EXAMINATION

14:08:57 7 BY MR. RHINES:

14:08:57 8 Q. Good afternoon again, your Honor.

14:08:59 9 Dr. Skarha, my name is Zach Rhines. I was up
14:09:06 10 here a little bit earlier as your counsel mentioned, and I
14:09:08 11 represent Mr. Collier. And I just have a few questions
14:09:12 12 about the study that we've been going over today. My
14:09:22 13 first question has to do with the subject of air
14:09:27 14 conditioning in general. Air conditioning, you mentioned,
14:09:32 15 is a -- is an effective method of heat mitigation in the
14:09:38 16 abstract, right?

14:09:38 17 A. Yes.

14:09:39 18 Q. But that's not the only method of heat mitigation,
14:09:41 19 right?

14:09:42 20 A. Yes.

14:09:42 21 Q. Yes, it is the only method of heat mitigation?

14:09:46 22 A. No, it's not the only method of heat mitigation.

14:09:50 23 Q. Right. And the purpose of heat mitigation methods is
14:09:54 24 theoretically to lower the core body temperature, right?

14:09:57 25 A. I agree.

14:09:58 1 Q. And so, to do that, you could do something like a
14:10:02 2 cold shower or a cold bath, right?

14:10:06 3 A. I'm not a medical doctor but I suppose, yes.

14:10:09 4 Q. Drink some cold water?

14:10:13 5 A. That sounds reasonable.

14:10:14 6 Q. Next, I want to talk about the timeframe that you
14:10:19 7 studied. This timeframe goes from 2001 to 2009; isn't
14:10:24 8 that right?

14:10:25 9 A. 2001 to 2019.

14:10:28 10 Q. 2019. And in that large timeframe, I would assume
14:10:34 11 there will have been fluctuations in year temperature,
14:10:38 12 right?

14:10:38 13 A. Yes.

14:10:40 14 Q. And 2019, by my count, was five years ago, right?

14:10:46 15 A. Uh-huh.

14:10:52 16 Q. Were you able to look at the year-over-year data on
14:10:55 17 deaths related to that study?

14:11:00 18 A. I was.

14:11:01 19 Q. And why was that not included in the study?

14:11:05 20 A. I guess a few reasons. It didn't seem super relevant
14:11:10 21 and -- for the study and that information is publicly
14:11:13 22 available through the Bureau of Justice Statistics. They
14:11:18 23 publish that information.

14:11:21 24 Q. I'm sorry. Did you say the information was not
14:11:23 25 available?

14:11:23 1 A. No. It's publicly available.

14:11:25 2 Q. Oh, it's publicly available, the year over year?

14:11:28 3 A. Yes.

14:11:29 4 Q. And so, did you calculate -- did you notice any

14:11:35 5 trends relating to the values -- relating to the number of

14:11:39 6 deaths as they became more modern?

14:11:42 7 A. I didn't look at year by year.

14:11:45 8 Q. Didn't look at trends?

14:11:46 9 A. No.

14:11:47 10 Q. Didn't attempt to calculate a P-value for anything on

14:11:51 11 that?

14:11:51 12 A. No.

14:11:53 13 Q. Okay. And you looked at all-cause mortality, right?

14:12:04 14 A. I did.

14:12:05 15 Q. You did not attempt to distinguish or control for the

14:12:08 16 actual cause of death.

14:12:10 17 A. Not in this paper.

14:12:12 18 Q. Not in this paper. So theoretically, some of those

14:12:15 19 deaths that you say are attributed to extreme heat could

14:12:18 20 have just been on a hot day and somebody slipped and fell,

14:12:23 21 right?

14:12:26 22 A. I don't agree with that.

14:12:30 23 Q. Why?

14:12:32 24 A. Because I'm just looking to see if there was a

14:12:35 25 pattern in the data. So in prisons without air

14:12:40 1 conditioning, even if there are deaths in there that
14:12:43 2 weren't due to heat, I still see a pattern in the data.
14:12:46 3 So there's something there compared to prisons without air
14:12:49 4 conditioning where there's nothing.

14:12:51 5 Q. Right. You see a pattern in the data?

14:12:54 6 A. Yeah.

14:12:54 7 Q. But earlier, I believe earlier today, and correct me
14:12:59 8 if I'm mischaracterizing your testimony, but you testified
14:13:02 9 that the high heat causes the excess death.

14:13:08 10 A. Yes. So in epidemiology like in this study, I'm just
14:13:15 11 using observational data. I didn't assign heat exposure,
14:13:20 12 but I think I controlled for all necessary variables. I
14:13:25 13 think there's no other explanation for why deaths increase
14:13:30 14 in Texas prisons without air conditioning except for the
14:13:33 15 lack of air conditioning, which is why we say yes, this
14:13:36 16 pattern is explained by the lack of air conditioning.

14:13:45 17 Q. So you were able to control for all relevant medical
14:13:48 18 conditions between the air conditioned units and the
14:13:52 19 non-air-conditioned units?

14:13:53 20 A. I was.

14:13:54 21 Q. How so?

14:13:54 22 A. So with the time stratification crossover method,
14:13:59 23 which is pretty unique and method in epidemiology, because
14:14:04 24 I'm comparing the day that someone died to other days
14:14:07 25 surrounding their death, I'm looking at the same person.

14:14:10 1 So if someone has a medical condition on the day that they
14:14:14 2 died, they're also going to have that medical condition a
14:14:16 3 few days before their death or two weeks before their
14:14:19 4 death.

14:14:20 5 So the study design allows me to control for all
14:14:24 6 those other characteristics that increases someone's risk
14:14:26 7 of death.

14:14:28 8 Q. But there are some medical conditions that may not be
14:14:34 9 exacerbated by heat, right?

14:14:37 10 A. I'm not a medical doctor but I would guess that's
14:14:40 11 true.

14:14:40 12 Q. I would think that's true, as well. So if it's a hot
14:14:44 13 day and somebody dies of a medical condition that is not
14:14:48 14 exacerbated by heat, how can you in good conscience call
14:14:52 15 that a heat-related death or a death caused by heat?

14:14:58 16 A. I think pointing to the -- my findings in prisons
14:15:03 17 with air conditioning so if there was no relationship
14:15:05 18 between as temperatures rise and the risk of death, that
14:15:09 19 would bear out in the data and it bears out in my analysis
14:15:12 20 of prisons with air conditioning. There's no association
14:15:14 21 between increase in temperatures and risk of death
14:15:17 22 because, yeah, that can happen; but I do find in prisons
14:15:24 23 without air conditioning so that's still there regardless.

14:15:46 24 Q. The population between different prisons can vary
14:15:55 25 significantly. Are you aware of that?

14:15:57 1 A. I think so. Yes.

14:16:01 2 Q. How were you able to control for that?

14:16:05 3 A. Yeah, it goes back to the time-stratified case
14:16:09 4 crossover method. So by comparing, I'm essentially
14:16:14 5 comparing someone to themselves, the only thing I'm
14:16:16 6 changing is their exposure so that the temperature they're
14:16:20 7 exposed to on the day that they died. So if they're in a
14:16:22 8 facility with 2,000 other people, I'm controlling for that
14:16:28 9 same as if someone was in a facility with just 200 people.

14:16:36 10 Q. But I'm not talking about the amount of people. I'm
14:16:38 11 talking about the difference in characteristics between
14:16:40 12 the population that may make them more susceptible to
14:16:44 13 death and I'm not necessarily talking about medical
14:16:48 14 issues. It could be a, you know, a higher supervision
14:16:53 15 population that may or may not be more susceptible to
14:16:57 16 violence, right? There are many, many factors, as far as
14:17:02 17 I understand, that can affect how -- if an inmate,
14:17:06 18 unfortunately, passes away in prison, how they pass away.
14:17:10 19 And it appears from what you're saying here in the summer,
14:17:13 20 you're boiling it just down to one factor, which is heat.
14:17:17 21 Am I mischaracterizing that?

14:17:27 22 A. I guess I would say, I don't know if I'm saying
14:17:30 23 anything different than you. Like yeah, I am just looking
14:17:37 24 at heat. I'm looking to see if there's a relationship
14:17:39 25 between as temperatures rise and if the risk of dying

14:17:42 1 rises. If there was no relationship, I wouldn't see
14:17:45 2 anything. If it was just that people in high-security
14:17:48 3 facilities were a lot more violent, I wouldn't see a
14:17:52 4 relationship in the data but it still is there.

14:17:57 5 Q. Okay. I want to move now to how you characterize --
14:18:02 6 I think what you term in the paper majority AC units
14:18:06 7 versus majority non-AC units and my understanding, correct
14:18:11 8 me if I'm wrong, is that you did that by seeing if it was
14:18:15 9 fully air conditioned, if it was no air condition
14:18:18 10 whatsoever, or if there were partially units that were air
14:18:22 11 conditioned, right? You sort of categorized them that
14:18:25 12 way.

14:18:26 13 A. I don't totally agree.

14:18:28 14 Q. Okay. Why?

14:18:34 15 A. So I used information from TDCJ, publicly available
14:18:40 16 information about which prisons are mostly air conditioned
14:18:46 17 and which prisons are mostly un-air conditioned and for
14:18:48 18 that partial group, I did separate them into either mostly
14:18:51 19 air conditioned or mostly un-air conditioned. So it
14:18:53 20 wasn't three groups. It just ended up being two.

14:18:56 21 Q. And that's what I meant by -- I must have not
14:18:59 22 explained that well. I apologize. And then, when you
14:19:06 23 determined whether an inmate had been exposed to air
14:19:09 24 conditioning 24 hours prior to that inmate's death, you
14:19:12 25 looked simply at whether they were housed in either what

14:19:17 1 you termed majority air conditioned or majority non-air
14:19:21 2 conditioned, correct?

14:19:21 3 A. Correct.

14:19:22 4 Q. You did not account for the fact that they could have
14:19:24 5 been -- let me back up. Sorry. You're aware that even in
14:19:32 6 non-air-conditioned units, they have areas that are air
14:19:35 7 conditioned, right?

14:19:36 8 A. Correct.

14:19:36 9 Q. Such as chapels, gyms, what have you, respite rooms.
14:19:43 10 And so, it's entirely possible that some, or many, or all
14:19:49 11 of these inmates who passed away in what you term majority
14:19:54 12 non-air-conditioned-units were actually exposed to air
14:19:58 13 conditioning within 24 hours of their death.

14:20:00 14 A. Correct.

14:20:00 15 Q. Last, I believe it's at the end of the article, you
14:20:10 16 note that you have not looked at data from 2020 to
14:20:14 17 present, right?

14:20:15 18 A. Yes.

14:20:15 19 Q. But you expect the results to be the same or similar.

14:20:19 20 A. I would, yeah.

14:20:22 21 Q. Why is that?

14:20:26 22 A. To my knowledge, there hasn't been any significant
14:20:30 23 changes in the usual temperatures in Texas.

14:20:39 24 Q. So it only has to do with the actual temperatures in
14:20:42 25 Texas.

14:20:44 1 A. I guess, also, air conditioning infrastructure,
14:20:50 2 actually, I don't have too much knowledge on whether
14:20:52 3 that's changed over the past five years now.

14:20:54 4 Q. And you haven't taken into account any efforts that
14:20:57 5 TDCJ or the state may have taken to mitigate the effects
14:21:00 6 of heat in the past four years to come to that conclusion.

14:21:04 7 A. Does that include installing air conditioning?

14:21:07 8 Q. It can include installing air conditioning.

14:21:10 9 A. I have not analyzed the data from the past four
14:21:12 10 years. That's correct.

14:21:13 11 Q. Okay. But I'm talking about the conclusion you drew
14:21:17 12 that you said that I don't think it's going to be
14:21:19 13 different. Because you haven't analyzed it, you really
14:21:21 14 can't come to that conclusion because you don't know what
14:21:24 15 the -- because you don't know what the actual data is,
14:21:26 16 right?

14:21:28 17 A. I haven't analyzed it. I have access to it but
14:21:34 18 that's correct, I haven't analyzed it as of now.

14:21:35 19 Q. No further questions. Thank you, Dr. Skarha. Thank
14:21:39 20 you, your Honor.

14:21:41 21 MR. OLSEN: Just a few followup, your Honor.

14:21:43 22 RE-DIRECT EXAMINATION

14:21:44 23 BY MR. OLSEN:

14:21:44 24 Q. Dr. Skarha, Mr. Collier's counsel asked you questions
14:21:49 25 about mitigation measures so cold water, showers, that

14:21:56 1 kind of thing. He also asked you, you know, potentially
14:22:01 2 others. If those mitigation measures were actually
14:22:09 3 effective preventing heat-related deaths in prisons
14:22:12 4 without AC, what would you expect to see in your data?
14:22:17 5 A. So in the analysis of deaths in prisons without AC, I
14:22:19 6 wouldn't expect to see an effect if people weren't being
14:22:23 7 affected by the temperatures they were exposed to.
14:22:26 8 Q. And --
14:22:27 9 A. I did see an effect.
14:22:28 10 Q. But you did see an effect?
14:22:29 11 A. Yeah, even with mitigation measures happening.
14:22:33 12 Q. Okay. Director Collier's counsel talked about the
14:22:44 13 variables that come into play when an individual dies. I
14:22:47 14 take it the job of an epidemiologist is to analyze data
14:22:52 15 across a population, not to look at the individual
14:22:55 16 circumstance of a death; is that fair?
14:22:58 17 A. That is correct.
14:22:59 18 MR. RHINES: Objection, your Honor. Leading.
14:23:01 19 THE COURT: Overruled.
14:23:13 20 Q. (BY MR. OLSEN) And notwithstanding counsel's
14:23:17 21 questions, the fact is the analysis you performed in the
14:23:23 22 case crossover analysis, that is a widely accepted method,
14:23:27 23 correct?
14:23:27 24 A. Correct.
14:23:28 25 Q. And you stand by the conclusions in your study?

14:23:31 1 A. I do.

14:23:32 2 Q. And you haven't analyzed the data from 2019 to 2024,
14:23:39 3 but are you familiar with the general literature and then,
14:23:42 4 the findings of your own study about the effects of heat
14:23:46 5 on human health?

14:23:47 6 A. Yes.

14:23:48 7 Q. And so, based on that, if it's getting hotter in
14:23:53 8 Texas, would you expect to see a resulting number of
14:23:58 9 deaths in prisons without AC?

14:24:01 10 A. I would.

14:24:01 11 Q. Thank you.

14:24:06 12 RE-CROSS EXAMINATION

14:24:13 13 BY MR. RHINES:

14:24:13 14 Q. Just a few questions, if I may, your Honor.

14:24:22 15 Dr. Skarha, you've stated that it's getting
14:24:25 16 hotter in Texas every year, right?

14:24:28 17 A. I'm not an environmental -- I'm not a climatologist,
14:24:34 18 but to my knowledge, based on just like general media that
14:24:39 19 I read, yeah, that's my understanding.

14:24:41 20 Q. Just wanted to make sure. And if you would analyze
14:24:49 21 year-by-year data seeing the temperatures getting higher
14:24:51 22 -- and I'm posing a hypothetical for you. I want to see
14:24:55 23 how you answer. If you looked at year-by-year data as the
14:25:00 24 temperature was going up and you saw a resulting decrease
14:25:03 25 in deaths, it decreased in deaths during the warm months

14:25:07 1 in TDCJ prisons, would that change your opinion at all?

14:25:22 2 A. I don't think so. No.

14:25:26 3 Q. Would that data set surprise you?

14:25:31 4 A. Does the data set include information on the

14:25:36 5 temperature on the day someone died?

14:25:39 6 Q. Yes. My assumption here is everything you looked at

14:25:43 7 but if you stratified it year by year and saw a decreasing

14:25:46 8 amount of deaths each year.

14:25:49 9 A. I'm not looking at total number of deaths, I'm just

14:25:53 10 looking at whether there are more deaths when it's hot

14:25:55 11 than when it's not hot.

14:25:59 12 Q. Then I was probably not being entirely clear. If you

14:26:06 13 saw a decrease in what you would term to be excess deaths,

14:26:09 14 would you be surprised there?

14:26:14 15 A. I guess I would need more information about how

14:26:16 16 excess deaths are being calculated.

14:26:22 17 Q. I have no further questions. Thank you, your Honor.

14:26:25 18 Thank you again, Dr. Skarha.

14:26:27 19 MR. OLSEN: Nothing further from me, your Honor.

14:26:28 20 THE COURT: Thank you. You may step down. May

14:26:30 21 this witness be released?

14:26:31 22 MR. OLSEN: Yes.

14:26:32 23 THE COURT: Okay. You're free to go. Thank you

14:26:33 24 very much. Next witness.

14:26:36 25 MR. HOMIAK: Yes, your Honor, at this time,

14:26:38 1 plaintiff calls Charlie Malouff to the stand.

14:27:07 2 THE COURT: Raise your right hand to be sworn.

14:27:10 3 THE CLERK: You do solemnly swear or affirm that
14:27:10 4 the testimony which you may give in the case now before
14:27:10 5 the Court shall be the truth, the whole truth, and nothing
14:27:16 6 but the truth?

14:27:16 7 THE WITNESS: I do.

14:27:23 8 CHARLES MALOUFF, called by the Plaintiff, duly sworn.

14:27:23 9 DIRECT EXAMINATION

14:27:25 10 BY MR. HOMIAK:

14:27:25 11 Q. Please state your name for the record.

14:27:26 12 A. Charlie Malouff.

14:27:28 13 Q. And, Mr. Malouff, what organization are you
14:27:30 14 testifying on behalf of today?

14:27:32 15 A. TX C.U.R.E.

14:27:34 16 Q. What is TX C.U.R.E.?

14:27:35 17 A. TX C.U.R.E. is a 501(c)(3) nonprofit criminal justice
14:27:41 18 advocacy organization focusing on the inmates and the
14:27:44 19 families in the TDCJ in the prison system.

14:27:47 20 Q. So you said what TX C.U.R.E. is. What is TX
14:27:57 21 C.U.R.E.'s mission?

14:27:57 22 A. Our mission is to advocate for the inmates and the
14:28:01 23 families for unjust prison conditions, to assist them in
14:28:06 24 navigating the TDCJ system, how to work with policy
14:28:09 25 compliance, and then, how to deal with unjust systems and

14:28:13 1 seeking resolution, and educating the public and the
14:28:16 2 legislators and the families on what's wrong with the
14:28:19 3 system.

14:28:20 4 Q. What position do you currently hold with TX C.U.R.E.?
14:28:23 5 A. Vice-President.

14:28:24 6 Q. How long have you served as Vice-President?
14:28:27 7 A. Almost two years.

14:28:29 8 Q. Before we talk more about your experience with TX
14:28:33 9 C.U.R.E., I'd like to talk to you about your professional
14:28:36 10 background. Did you serve in the military, sir?
14:28:37 11 A. Yes, sir, I did.

14:28:38 12 Q. And in what branches?
14:28:40 13 A. Air Force and then, Coast Guard.

14:28:42 14 Q. How many years did you serve in the Air Force?
14:28:44 15 A. Six years in the Air Force.

14:28:46 16 Q. Were you honorably discharged?
14:28:47 17 A. Yes, sir.

14:28:48 18 Q. What years did you serve in the Coast Guard?
14:28:51 19 A. 1998 to 2005.

14:28:54 20 Q. Were you honorably discharged?
14:28:55 21 A. Yes, sir.

14:28:56 22 Q. And do you have any law enforcement experience?
14:28:58 23 A. Yes, sir.

14:28:59 24 Q. How many years in total did you work in civilian law
14:29:03 25 enforcement?

14:29:03 1 A. Cumulatively, Air Force, security police, Coast
14:29:09 2 Guard, federal law enforcement, civilian law enforcement,
14:29:10 3 total 29 years.

14:29:11 4 Q. What was the highest civilian law enforcement
14:29:13 5 position you held?

14:29:14 6 A. Chief of police.

14:29:16 7 Q. And, Mr. Malouff, were you previously incarcerated in
14:29:19 8 the TDCJ system?

14:29:20 9 A. Yes, sir.

14:29:21 10 Q. What crime were you incarcerated for?

14:29:23 11 A. I was incarcerated for securing a document by
14:29:27 12 deception.

14:29:28 13 Q. During what period of time were you incarcerated in
14:29:30 14 TDCJ facilities?

14:29:31 15 A. Between 2015 through June 1, 2018.

14:29:35 16 Q. Total of about three-and-a-half years; is that
14:29:38 17 correct?

14:29:38 18 A. Yes, sir.

14:29:39 19 Q. Which TDCJ facilities were you housed in during that
14:29:42 20 time?

14:29:44 21 A. There was Holliday, Byrd, Pack, then Michael,
14:29:50 22 Darrington, Dominguez, Torres, the Walls.

14:29:55 23 Q. Were you also in the Estelle Unit?

14:29:57 24 A. And the Estelle, yes.

14:29:59 25 Q. Did any of those facilities that you mentioned have

14:30:01 1 air conditioning in the living areas while you were housed
14:30:03 2 there?

14:30:03 3 A. Not until I got to the Pack Unit during the -- at the
14:30:09 4 end when we had the air conditioning.

14:30:10 5 Q. After Judge Ellison's order?

14:30:15 6 A. Yes.

14:30:15 7 Q. Is it fair to say that three of your four summers
14:30:17 8 were in un-air conditioned units and the last one in the
14:30:20 9 Pack Unit was in a temporarily air-conditioned unit?

14:30:23 10 A. Yes.

14:30:23 11 Q. Did you ever know what the temperature was in the
14:30:28 12 un-air-conditioned units you were housed in?

14:30:31 13 A. At the Byrd Unit, yes.

14:30:33 14 Q. Tell me about that.

14:30:34 15 A. There was when you came out of the wing, we had to
14:30:39 16 take a right to go to the chow hall or to the law library,
14:30:43 17 or whatever, and the little picket where the officer was,
14:30:46 18 there was a digital monitor and I remember one time, it
14:30:48 19 was 129 degrees; another time, it was 114; another time,
14:30:52 20 it was 118.

14:30:54 21 Q. So you're actually reading that temperature on the
14:30:56 22 digital thermometer of your unit?

14:30:59 23 A. Yes, I did.

14:30:59 24 Q. And how did that heat affect you physically?

14:31:01 25 A. It was horrible. You felt dehydrated. You could

14:31:06 1 feel -- felt like it just literally sucks the oxygen right
14:31:09 2 out of you.

14:31:10 3 Q. What, if anything, did you do to help reduce the
14:31:12 4 effects of the heat on yourself?

14:31:14 5 A. Not much until they threw me into seg during the time
14:31:19 6 I was there, at the end of the wing, I do not know how
14:31:22 7 these guys did it, but they would literally start fires,
14:31:24 8 and then, with the fires, they knew that the officers
14:31:27 9 would come bring firehoses, spray them down and then, the
14:31:31 10 backwash, the water would come back through. We would
14:31:36 11 strip down and be able to lay down on the water on the
14:31:38 12 concrete.

14:31:38 13 Q. So inmates in your unit from your perspective would
14:31:40 14 start fires so that officers would respond by hosing down
14:31:45 15 the unit; is that fair?

14:31:46 16 A. Yes, sir.

14:31:47 17 Q. And then, once that water flooded the unit, you would
14:31:51 18 actually lay down on the ground in the water?

14:31:53 19 A. For the few minutes you had, yes, sir.

14:31:55 20 Q. Did you ever complain to anyone at TDCJ about the
14:31:58 21 heat or the lack of air conditioning?

14:32:00 22 A. Lots.

14:32:00 23 Q. Tell me about that.

14:32:01 24 A. Well, I have Type 2 diabetes, high blood pressure,
14:32:07 25 it's exceedingly hot, trying to get cold water, not

14:32:10 1 getting water. Depending on where you were, guards not
14:32:14 2 coming around, no timeliness. There would be times where
14:32:17 3 they actually would bring water but it would be hours
14:32:22 4 before you saw your next round of water.

14:32:26 5 Q. Did you file grievances about the heat or the lack of
14:32:29 6 air conditioning?

14:32:29 7 A. Yes.

14:32:29 8 Q. What was the response?

14:32:31 9 A. Nothing.

14:32:35 10 Q. Was that the response every time?

14:32:37 11 A. Pretty much.

14:32:39 12 Q. Did you see how the heat affected the other men you
14:32:41 13 were incarcerated with?

14:32:42 14 A. Yes, sir.

14:32:43 15 Q. Tell me about that.

14:32:44 16 A. The people would be sweating profusely. Guys were
14:32:51 17 trying to go to respite. They would ask -- even though
14:32:55 18 you would ask, it would take a long time before somebody
14:32:58 19 would show up to take you because you had to be escorted.

14:33:02 20 And then, those that were there, a lot of times, it was
14:33:05 21 only for a very short period of time. It wasn't for any
14:33:08 22 prolonged respite and then, they were brought back.

14:33:13 23 Q. Did you ever see anyone pass out in your unit in the
14:33:16 24 heat?

14:33:16 25 A. Yes. There was two times, specifically, I remember

14:33:19 1 where we were sweating profusely and they started -- and,
14:33:23 2 then, they went from sweating to no sweat to the
14:33:27 3 discoloration to kind of a queasiness and then, watched
14:33:32 4 them drop out.

14:33:33 5 Q. Did they receive medical attention?

14:33:35 6 A. Yes. It took a long time for them to finally come
14:33:40 7 with a gurney. To me, it was they were having a heat
14:33:43 8 stroke at that point and it just -- where they were
14:33:46 9 located, it just took a long time for the response.

14:33:50 10 Q. Were there any men that you were incarcerated with
14:33:53 11 over the age of 60?

14:33:55 12 A. Lots.

14:33:55 13 Q. What percentage of the men, approximately, would you
14:33:58 14 say you lived with that were over the age of 60?

14:34:02 15 A. Twenty-five, 30, 35 percent.

14:34:07 16 Q. How did you see the other men you were housed with
14:34:10 17 deal with the heat other than the example you mentioned
14:34:12 18 with starting fires?

14:34:14 19 A. Guys would start to wet their shirts whenever they
14:34:18 20 could. If they could get to a shower, they would wet it.
14:34:21 21 You really didn't want to put your clothes in the toilet.
14:34:25 22 A lot of the sinks didn't work so you just had to take
14:34:28 23 your chances.

14:34:30 24 Q. Do you recall inmates starting fires to get cool more
14:34:34 25 than once?

14:34:34 1 A. Oh, yeah, within almost 60 days that I was there, it
14:34:41 2 was fairly regularly.

14:34:44 3 Q. Did the correction officers ever complain to you
14:34:46 4 about the heat?

14:34:46 5 A. Yes, sir, they did.

14:34:47 6 Q. Did the correction officers in your unit have to wear
14:34:52 7 full uniforms with pants, Kevlar vests, long sleeves?

14:34:57 8 A. Yes, sir. Your Honor, the officers that were here,
14:35:02 9 they were dressed just like that, long-sleeve gray shirts,
14:35:07 10 stab vests. And most of them were in stationary position
14:35:10 11 so they, to me, actually were suffering a lot worse than
14:35:14 12 we were.

14:35:15 13 Q. What did they tell you about the heat?

14:35:16 14 A. That it was stifling, that they really couldn't
14:35:18 15 complain in fear of retaliation of being fired.

14:35:21 16 Q. Did the corrections officers have to walk through
14:35:24 17 your un-air-conditioned units as part of their daily
14:35:27 18 responsibility?

14:35:28 19 A. Yes, sir.

14:35:28 20 Q. Did you notice them walking through, performing
14:35:33 21 rounds in your units less frequently during the summer?

14:35:36 22 A. Yes.

14:35:37 23 Q. And were there times that you recall being left
14:35:40 24 unattended for several hours during the summer?

14:35:43 25 A. Multiple hours.

14:35:46 1 Q. How many times could you estimate -- excuse me. How
14:35:49 2 many times would you estimate being left unattended for
14:35:53 3 several years during the summer?

14:35:57 4 A. Other than at the Pack dorm, lots of hours. Lots of
14:36:02 5 days.

14:36:02 6 Q. Was your unit ever short-staffed?

14:36:05 7 A. Yes.

14:36:06 8 Q. Was it accurate to say that your unit was
14:36:09 9 short-staffed more often than not in the summer?

14:36:12 10 MS. WARREN: Objection, your Honor, speculation.
14:36:15 11 Mr. Malouff does not know the staffing numbers at TDCJ.

14:36:19 12 Q. (BY MR. HOMIAK) Mr. Malouff, from your perspective,
14:36:21 13 was your unit short-staffed?

14:36:23 14 A. Yes.

14:36:23 15 Q. And from your perspective, would it be accurate to
14:36:25 16 say that your unit was short-staffed more often than not
14:36:28 17 in the summer?

14:36:29 18 MS. WARREN: Your Honor, I renew my objection.

14:36:30 19 THE COURT: Overruled.

14:36:31 20 A. I believe so.

14:36:32 21 Q. (BY MR. HOMIAK) In the summers you spent in
14:36:36 22 un-air-conditioned TDCJ facilities, did you ever have
14:36:39 23 access to respite rooms?

14:36:41 24 A. A couple of times. I had put in an I-60 for respite,
14:36:50 25 we had to be escorted. And then, I got to go to the hall

14:36:53 1 one time and it was probably 15 minutes and then, told to
14:36:58 2 go back.

14:36:59 3 Q. So just to be clear, the respite rooms that you used,
14:37:03 4 what unit were they located in?

14:37:05 5 A. The respite at the time was during the Pack lawsuit
14:37:09 6 and I had to go to the main building and where I was at
14:37:11 7 was in the administrative hallway.

14:37:13 8 Q. So the respite rooms weren't actually physically
14:37:16 9 located inside your dorm?

14:37:17 10 A. No.

14:37:19 11 Q. And approximately how far away were they? How far
14:37:24 12 would you have to walk to get there?

14:37:26 13 A. Quarter, half mile.

14:37:30 14 Q. And I think you said you had to put in a request.
14:37:33 15 You mentioned something called an I-60; is that right?

14:37:36 16 A. Yes. You couldn't just walk. You had to put in a
14:37:39 17 request to go or call for somebody and then, they would
14:37:43 18 arrange and then, they had to escort you and then, you
14:37:47 19 could go.

14:37:47 20 Q. Just so I understand the process, there is a written
14:37:49 21 form called an I-60, or at least there was at the time,
14:37:52 22 that you would have to put in the request in order to be
14:37:56 23 physically escorted to a respite room; is that correct?

14:37:59 24 A. Yes, at that time, yes.

14:38:01 25 Q. Were there times when -- how long typically did that

14:38:08 1 process take?

14:38:12 2 A. It could be up to a half hour, could be an hour,
14:38:15 3 depends on the day, how many people were available.

14:38:18 4 Q. And were there times when your I-60 wasn't responded
14:38:20 5 to at all?

14:38:21 6 A. Yes.

14:38:22 7 Q. From your perspective, did short-staffing ever affect
14:38:27 8 your ability to use a respite room?

14:38:29 9 A. Yes, I believe it did.

14:38:31 10 Q. How long were you typically allowed to spend in a
14:38:34 11 respite room?

14:38:35 12 A. At the time, it was very short, maybe 15, 20 minutes.

14:38:39 13 Q. Were you able to stay there all day if you wanted to?

14:38:41 14 A. No.

14:38:44 15 Q. And from your perspective, were the respite rooms
14:38:46 16 effective at reducing the effects of the heat on you?

14:38:48 17 A. No.

14:38:49 18 Q. Why not?

14:38:50 19 A. It was short-term, it really didn't do anything for
14:38:53 20 you, and as soon as you left, you went right back into
14:38:56 21 that heat.

14:38:58 22 Q. From your perspective, were the respite rooms
14:39:01 23 effective at reducing the effects of heat on the other men
14:39:04 24 you were housed with?

14:39:05 25 A. Only for the time they were there at the respite.

14:39:08 1 Q. Were there any other heat mitigation measures you saw
14:39:11 2 TDCJ use during your time there other than the respite
14:39:13 3 rooms that we've talked about?

14:39:14 4 A. Once we entered into the lawsuit, they would come
14:39:17 5 around with these 12-inch blocks of ice in blue 55-gallon
14:39:23 6 trash barrels that were dedicated for the cold water.
14:39:26 7 They had a pitcher and whatever was in that pitcher and
14:39:29 8 whatever you had, a bowl, cup, whatever was the allocation
14:39:32 9 that you got, and once they left, it may be two, four, six
14:39:36 10 eight hours before you saw somebody come back.

14:39:38 11 Q. Was that cold water effective at reducing the effects
14:39:42 12 of the heat on you?

14:39:42 13 A. Only as long as it was cold.

14:39:46 14 Q. I think you told us you were in the Pack Unit when it
14:39:49 15 received temporary air conditioning in 2018; is that
14:39:51 16 right?

14:39:51 17 A. Yes, sir.

14:39:53 18 Q. How long do you recall that process taking,
14:39:55 19 approximately, from the date of the court order issued by
14:39:59 20 Judge Ellison until the air conditioning was up and
14:40:01 21 running?

14:40:02 22 A. I believe we had it less than 90 days between 60 and
14:40:08 23 90 days.

14:40:09 24 Q. From your perspective, was that temporary air
14:40:11 25 conditioning in the Pack Unit effective at reducing the

14:40:12 1 effects of the heat on you?

14:40:14 2 A. Yes, it was.

14:40:15 3 Q. Was it also effective at reducing the effects of the

14:40:18 4 heat on your fellow inmates from your perspective?

14:40:20 5 A. Oh, absolutely.

14:40:20 6 Q. Mr. Malouff, what year were you released?

14:40:24 7 A. June 1, 2018.

14:40:26 8 Q. And what year did you join TX C.U.R.E.?

14:40:29 9 A. 2022.

14:40:31 10 Q. Who are TX C.U.R.E.'s constituents?

14:40:38 11 A. Our constituents are all of the 100 -- approximately
14:40:42 12 133,000 prisoners in the TDCJ and now of the about 15,000
14:40:49 13 federal prisons in the Texas area, and then, all of the
14:40:53 14 about 680-some-odd-thousand family members.

14:40:57 15 Q. I'd like to go ahead and show you what's been marked
14:40:59 16 as Exhibit 128, pull that up.

14:41:32 17 Mr. Malouff, do you recognize this as the high
14:41:35 18 value data set?

14:41:38 19 A. Yes, sir, I do.

14:41:39 20 Q. So from your perspective, this is the list of folks,
14:41:42 21 at least as of the date of you having pulled this set, who
14:41:46 22 are TX C.U.R.E.'s constituents in TDCJ facilities?

14:41:50 23 A. Yes, sir.

14:41:50 24 Q. Your Honor, I move to admit Exhibit No. 128 into
14:41:55 25 evidence.

14:41:55 1 MS. WARREN: No objection subject to the
14:41:58 2 protective order.

14:41:58 3 THE COURT: So admitted.

14:42:04 4 Q. (BY MR. HOMIAK) Mr. Malouff, what TDCJ units does TX
14:42:07 5 C.U.R.E. have constituents in?

14:42:09 6 A. Every one of them.

14:42:10 7 Q. And can you tell us who sits on TX C.U.R.E.'s board
14:42:13 8 currently?

14:42:14 9 A. We have professional citizens. We have a couple of
14:42:20 10 formerly incarcerated. Our president is a licensed
14:42:24 11 counselor. We've got a doctor, nursing, a retired
14:42:27 12 brigadier general from the Air Force. Our treasurer has
14:42:30 13 been in the banking industry for over 30 years. And then,
14:42:32 14 we have a wife of one of the inmates who is a paramedic
14:42:37 15 with Montgomery County Sheriff.

14:42:41 16 Q. Do you sit on the board?

14:42:43 17 A. Yes, sir, I do.

14:42:44 18 Q. And so, in addition to you, are there any other
14:42:45 19 formerly incarcerated individuals on the board?

14:42:47 20 A. Yes.

14:42:48 21 Q. How many more?

14:42:49 22 A. We got two of us from TDCJ, one from the federal
14:42:53 23 system.

14:42:54 24 Q. And are there any family members whose loved ones are
14:42:57 25 currently incarcerated in the TDCJ system?

14:42:59 1 A. Yes, that would be the paramedic, her husband's at
14:43:01 2 the Wynne Unit.

14:43:03 3 Q. How does TX C.U.R.E. advocate for its constituents?

14:43:07 4 A. We advocate through when the inmates would write us,
14:43:11 5 we respond back. And then, we have direct contact with
14:43:14 6 the family members and then, indirect contact from the
14:43:19 7 inmates through the family members. And then, we also
14:43:23 8 advocate through the legislators on the Corrections
14:43:27 9 Committee.

14:43:27 10 Q. Have you personally testified to the Texas
14:43:30 11 legislature about the effects of the heat on your
14:43:33 12 organization's constituents?

14:43:35 13 A. On the organization, yes, this last year, this last
14:43:37 14 legislative session.

14:43:38 15 Q. And how does TX C.U.R.E. communicate with its
14:43:42 16 constituents?

14:43:43 17 A. We communicate through we have a periodic newsletter
14:43:46 18 and then, through social media, and then, the direct
14:43:50 19 contact with the family members or direct letter back and
14:43:53 20 forth with the inmate.

14:43:54 21 Q. Do you have a mailing list?

14:43:56 22 A. We do. Short but we do.

14:43:58 23 Q. Mr. Malouff, do you recognize this to be TX
14:44:06 24 C.U.R.E.'s mailing list?

14:44:07 25 A. Yes.

14:44:08 1 Q. It's a fair and accurate copy of that mailing list to
14:44:13 2 your knowledge?

14:44:13 3 A. Yes, sir.

14:44:13 4 Q. Your Honor, I'd move to admit Exhibit 148.

14:44:16 5 MS. WARREN: No objections, your Honor, subject
14:44:18 6 to the protective order insofar as inmates' addresses and
14:44:22 7 unit information is on this document.

14:44:24 8 THE COURT: And subject to that order, it's
14:44:25 9 admitted.

14:44:28 10 Q. (BY MR. HOMIAK) Mr. Malouff, how do TX C.U.R.E.'s
14:44:33 11 incarcerated constituents guide your work?

14:44:36 12 A. Based on the type of complaint, the number of
14:44:38 13 complaint, what's being taken, and the severity of the
14:44:44 14 complaint, the constitutionality, misconduct, medical
14:44:48 15 determines whether we work to help them, we make sure that
14:44:51 16 everything's in compliance, grievances have been filed.
14:44:55 17 There's been attempts to get resolution, we'll go through
14:44:58 18 the ombudsman's office all the way up and, if necessary,
14:45:02 19 we'll go to the Corrections Committee, the Oversight
14:45:05 20 Committee down to the capitol.

14:45:07 21 Q. When did the issue of extreme heat in Texas prisons
14:45:11 22 first get on your organization's radar?

14:45:13 23 A. When I came on board.

14:45:15 24 Q. Without getting into the details of the specific
14:45:18 25 complaints, has your organization received complaints from

14:45:21 1 its constituents, from its incarcerated constituents about
14:45:26 2 the heat in Texas prisons this summer?

14:45:28 3 A. Up until we became a plaintiff, yes, we have lots of
14:45:31 4 complaints.

14:45:31 5 Q. Have you still continued to receive complaints even
14:45:34 6 after becoming a plaintiff?

14:45:35 7 A. No. All of a sudden, the mail stopped.

14:45:38 8 Q. Have you received complaints last summer from your
14:45:45 9 constituents about the heat in Texas prisons?

14:45:47 10 A. Yes, we did.

14:45:47 11 Q. And without getting into the details, have you
14:45:49 12 received complaints from the constituents about the lack
14:45:51 13 of air conditioning in TDCJ's heat mitigation measures?

14:45:55 14 A. Yes, we have.

14:45:56 15 Q. Did those complaints motivate TX C.U.R.E.'s decision
14:46:02 16 to join this lawsuit?

14:46:03 17 A. Yes.

14:46:07 18 Q. In your own words, why did TX C.U.R.E. decide to join
14:46:10 19 this lawsuit?

14:46:10 20 A. The having lived through it personally, knowing the
14:46:16 21 complaints that policy is not being complied with, they're
14:46:21 22 not getting respite timely, they're not getting cold water
14:46:25 23 timely, medical issues, it's exceedingly hot. We tried to
14:46:31 24 get legislation but this is more it needs to be done now.
14:46:43 25 It's an unconstitutional condition having been through

14:46:45 1 that.

14:46:46 2 MS. WARREN: Objection, your Honor, to the
14:46:48 3 unconstitutional condition. That's an opinion on the
14:46:53 4 ultimate issue.

14:46:53 5 THE COURT: Sustained.

14:46:55 6 Q. (BY MR. HOMIAK) So, Mr. Malouff, without talking
14:46:57 7 about the constitutionality, just want to make sure you
14:47:02 8 could otherwise four your answer.

14:47:03 9 A. Yes. When people are telling me they have medical
14:47:06 10 conditions that they're stuck in the heat, they're not
14:47:09 11 getting their insulin, they're not getting ice water,
14:47:12 12 that's disturbing, and having been through that, it's
14:47:16 13 disturbing. And so, the number of complaints is huge and
14:47:23 14 when the families say the people are being retaliated
14:47:30 15 against for filing grievances --

14:47:32 16 MS. WARREN: Objection, your Honor. Hearsay.

14:47:35 17 MR. HOMIAK: Your Honor, this goes to notice to
14:47:37 18 Mr. Collier that they're filing grievances and whether
14:47:40 19 there is any retaliation. It's not for the truth of the
14:47:42 20 matter asserted but really for notice to Mr. Collier.

14:47:44 21 MS. WARREN: May I respond to that, your Honor?

14:47:46 22 THE COURT: Sure.

14:47:46 23 MS. WARREN: It may go to notice to TX C.U.R.E.
14:47:50 24 but it does not go to the notice of the Texas Department
14:47:52 25 of Criminal Justice. Mr. Malouff is not testifying that

14:47:55 1 the Texas Department of Criminal Justice knew about this.
14:47:57 2 It's that his organization knew about it because family
14:48:01 3 members and inmates were reporting to C.U.R.E.

14:48:06 4 MR. HOMIAK: So when I was referring to
14:48:08 5 grievances, I think Mr. Malouff was referring to
14:48:11 6 grievances filed with TDCJ and reports that he had
14:48:14 7 received that folks were being retaliated against for
14:48:16 8 filing those grievances. And so, the issue of grievances
14:48:19 9 being filed about people and what TDCJ may or may not have
14:48:22 10 done in response to that goes to the notice piece.

14:48:26 11 MS. WARREN: General grievances, we're fine with.
14:48:28 12 It's the statements from family members and particular
14:48:30 13 inmates to Mr. Malouff that we consider hearsay.

14:48:33 14 THE COURT: You want to rephrase the question
14:48:34 15 then.

14:48:35 16 MR. HOMIAK: Yes, your Honor.

14:48:36 17 Q. (BY MR. HOMIAK) So, Mr. Malouff, is it fair to say
14:48:37 18 that the organization's decision to join this lawsuit as a
14:48:40 19 plaintiff was motivated both by your lived experience
14:48:44 20 being incarcerated in un-air conditioned facilities in the
14:48:48 21 TDCJ system and the complaints that you've received from
14:48:50 22 your constituents who are incarcerated and family members?

14:48:54 23 A. Yes, sir.

14:48:55 24 Q. No further questions, your Honor.

14:48:57 25

CROSS-EXAMINATION

14:48:57

1

14:50:10

2

BY MS. WARREN:

14:50:10

3

Q. Mr. Malouff, my name is Kelly Warren. I represent

14:50:14

4

the Texas Department of Criminal Justice and the director,

14:50:17

5

Mr. Bryan Collier. You understand that's who I am and

14:50:20

6

that's who I represent?

14:50:20

7

A. Yes, ma'am.

14:50:22

8

Q. You said that you were released from TDCJ custody

14:50:27

9

June 1st, 2018, right?

14:50:29

10

A. Yes, ma'am.

14:50:30

11

Q. And since then, you have not been to a TDCJ facility.

14:50:34

12

A. No.

14:50:35

13

Q. You have not set foot in any of the TDCJ units.

14:50:39

14

A. No.

14:50:41

15

Q. So you don't -- you've not seen any of the

14:50:44

16

improvements as far as air conditioning that TDCJ has

14:50:47

17

implemented.

14:50:49

18

A. Only whatever you guys show at like a summit or

14:50:53

19

whatever that you would present. Other than that, no.

14:50:56

20

Q. You personally have not seen those improvements.

14:50:59

21

A. No.

14:51:01

22

Q. Would it surprise you to learn that there are over --

14:51:06

23

that there are a number of fully air-conditioned units now

14:51:09

24

within TDCJ that have nothing to do with the Pack lawsuit?

14:51:19

25

A. Not really, because there's capital improvements that

14:51:23 1 the legislature has passed. So I know since 2019 when I
14:51:30 2 first started advocating for the air conditioning that
14:51:33 3 there has been slow progression, but I also monitor the
14:51:37 4 TDCJ website that talks about the number of beds, and
14:51:41 5 then, the number of beds that are actually done versus in
14:51:47 6 the works and then, what's to be.

14:51:49 7 Q. Right. So there's planned and there's under
14:51:53 8 construction, we'll call it, and then, there are completed
14:51:56 9 beds, right?

14:51:56 10 A. Correct.

14:51:57 11 Q. And you don't know, you have not seen any of those
14:51:59 12 since 2018.

14:52:01 13 A. Correct.

14:52:02 14 Q. You just experienced the temporary air conditioning
14:52:05 15 that was installed in the Pack Unit due to the Cole vs.
14:52:09 16 Collier lawsuit?

14:52:10 17 A. Yes.

14:52:11 18 Q. Now, you understand, actually, very well, that TDCJ
14:52:15 19 has to get money from the legislature in order to make
14:52:19 20 capital improvements throughout the agency, right?

14:52:22 21 A. That's for capital improvements, yes.

14:52:24 22 Q. And that's not only just air conditioning, that's
14:52:28 23 repairs on facilities, maintenance on equipment, things
14:52:34 24 like that, right?

14:52:35 25 MR. OLSEN: Objection, your Honor. Lack of

14:52:36 1 foundation.

14:52:37 2 MS. WARREN: Your Honor, Mr. Malouff is very
14:52:40 3 familiar with the -- with what TDCJ has to spend this
14:52:44 4 money on. He's been heavily involved in lobbying against
14:52:47 5 and for some of the bills.

14:52:48 6 THE COURT: You could ask him if he knows.

14:52:51 7 Q. (BY MS. WARREN) Do you know whether or not TDCJ has
14:52:55 8 to do other improvements on their units besides just air
14:52:59 9 conditioning?

14:52:59 10 A. Yes.

14:53:00 11 Q. Okay. And they have to get money for all of those
14:53:02 12 improvements from the legislature.

14:53:04 13 A. Yes.

14:53:10 14 Q. Now, you lobbied against two bills that -- two House
14:53:18 15 Bills 1355 and 2950, right?

14:53:22 16 A. I lobbied against the bill because of the duration of
14:53:27 17 the time to install the air conditioning.

14:53:29 18 Q. That's right. So 1355 and House Bill 2950 would have
14:53:34 19 provided money to TDCJ to install air conditioning, but it
14:53:38 20 did not have a timing provision in those bills; is that
14:53:43 21 correct?

14:53:43 22 A. The one bill was you would have air conditioning by
14:53:48 23 the end of the summer. The other two bills would have
14:53:51 24 gone into 2026, 2027, and to me, that was absolutely
14:53:56 25 unacceptable.

14:53:56 1 Q. So by the end of the year 2024?

14:54:01 2 A. With the one bill, it would have -- between 2024 and
14:54:05 3 2025, we would have had air conditioning at those prisons.

14:54:09 4 Q. How many prisons?

14:54:11 5 A. With the funding that was in those bills, it would
14:54:13 6 have been all of them.

14:54:14 7 Q. So instead of lobbying for all three bills for air
14:54:18 8 conditioning, you lobbied against two of the bills just
14:54:21 9 because you didn't like the timeline.

14:54:23 10 A. Just because of the timeline. The bills were right.
14:54:27 11 We needed the air conditioning. Waiting three summers,
14:54:30 12 four summers is absurd. We had temporary air conditioning
14:54:34 13 at Pack. There was no reason they could not have put
14:54:38 14 temporary air conditioning in the rest of those units even
14:54:41 15 with the capital improvement on the one bill --

14:54:43 16 Q. I'm going to stop you right there, Mr. Malouff.

14:54:46 17 MR. OLSEN: Your Honor, I just ask that counsel
14:54:47 18 not interrupt Mr. Malouff.

14:54:49 19 MS. WARREN: Your Honor, I would ask the Court to
14:54:50 20 direct the witness to answer the question asked.

14:54:52 21 THE COURT: All right. You want to ask the
14:54:53 22 question.

14:54:54 23 Q. (BY MS. WARREN) Yes. Now, like you said, some of
14:54:59 24 those bills would have had provisions for air conditioning
14:55:02 25 by the end of 2026, 2027, right?

14:55:05 1 A. Correct.

14:55:06 2 Q. And you lobbied against that bill.

14:55:08 3 A. The timeline, yes.

14:55:09 4 Q. Okay. Now, you said on direct, you were found

14:55:16 5 guilty, convicted of securing by deception the execution

14:55:23 6 of a document affecting property valued in excess of

14:55:28 7 \$200,000, right?

14:55:29 8 A. That's what I was convicted for.

14:55:31 9 Q. Okay. Basically, what you were convicted for is

14:55:35 10 applying for grant money from the state and federal

14:55:38 11 government to fund a wind turbine project, right?

14:55:41 12 MR. OLSEN: Objection, your Honor. Relevance.

14:55:43 13 THE COURT: Overruled.

14:55:44 14 Q. (BY MS. WARREN) Essentially what that charge, what

14:55:49 15 that conviction means in your case was that you were

14:55:52 16 convicted for allegedly putting false statements in a

14:55:56 17 document to secure a grant to fund wind farms that your

14:56:01 18 company would have maintained and built, right?

14:56:05 19 A. That's what I was convicted for.

14:56:07 20 Q. You were convicted for lying on a document to the

14:56:11 21 state and federal government to secure funds.

14:56:15 22 A. That's what the conviction is for.

14:56:17 23 Q. Okay. Have you recently tried to secure funds from

14:56:20 24 any of your constituents, TX C.U.R.E.?

14:56:24 25 A. No.

14:56:25 1 Q. You have not.

14:56:27 2 A. For TX C.U.R.E.?

14:56:29 3 Q. Have you tried to secure any funds from anyone

14:56:34 4 related to TDCJ?

14:56:36 5 A. TX C.U.R.E. just takes -- gives grants and donations

14:56:40 6 so it's on our website. But for me, no.

14:56:43 7 Q. You have not tried to secure any funds from anybody

14:56:47 8 related to TDCJ to fund lawsuits?

14:56:50 9 A. I was working as a paralegal. The lawyer was putting

14:56:54 10 together a class action against TDCJ last year and the

14:56:58 11 lawyer put out that there would be upfront costs. So I

14:57:02 12 was acting under my employment with the attorney but not

14:57:05 13 as TX C.U.R.E.

14:57:07 14 Q. Your Honor, may I approach the witness?

14:57:09 15 THE COURT: You may.

14:57:11 16 MS. WARREN: I'll be referring to Exhibit 39,

14:57:15 17 page 7.

14:57:24 18 Q. (BY MS. WARREN) Do you recognize that text message?

14:57:30 19 A. No, I do not.

14:57:32 20 Q. You do not recognize that text message.

14:57:34 21 A. No. Not that is not from me. I do not recognize

14:57:36 22 that.

14:57:41 23 Q. You never sent this text message?

14:57:42 24 A. No, ma'am, I did not.

14:57:43 25 Q. What's the last digit of your phone number?

14:57:46 1 A. Five, three.

14:57:49 2 MR. OLSEN: Your Honor, I'm not sure what exhibit
14:57:51 3 we're referring to. I may have missed it.

14:57:54 4 MS. WARREN: Thirty-nine, page 7. Your Honor,
14:57:57 5 I'm going to use this for impeachment purposes only.

14:58:00 6 Q. (BY MS. WARREN) Mr. Malouff, you claimed that you've
14:58:03 7 never solicited funds from a woman named Leslie.

14:58:07 8 A. I do not know of a Leslie.

14:58:09 9 Q. Is that your photo here?

14:58:11 10 A. That is my photo.

14:58:14 11 MR. HOMIAK: Your Honor, if I may, I think part
14:58:16 12 of the situation is that this at least appears to me to be
14:58:19 13 like a social media message as opposed to a text message.
14:58:22 14 I'm not sure if that's part of what's going on but I just
14:58:24 15 wanted to point that out.

14:58:26 16 Q. (BY MS. WARREN) That works even better. This is your
14:58:29 17 profile picture on social media, right?

14:58:32 18 A. Yeah, it's my profile.

14:58:33 19 Q. So that someone sent this from your profile without
14:58:38 20 your knowledge and you had no idea about it until today?

14:58:41 21 A. I know on Facebook, my profile, there's constant
14:58:47 22 duplications, clones and impersonations so I'm telling
14:58:51 23 you --

14:58:52 24 Q. So someone impersonated you --

14:58:54 25 THE COURT: Let him answer.

14:58:56 1 MS. WARREN: Sorry.

14:58:56 2 A. I'm telling you, I do not recognize that. I did not
14:58:59 3 send that. I do not know about that.

14:59:00 4 Q. (BY MS. WARREN) So you have not been soliciting funds
14:59:02 5 from TDCJ family members?

14:59:03 6 A. Not for that, no.

14:59:15 7 Q. Now, you claim that TX C.U.R.E.'s members encompass
14:59:20 8 all of the inmates incarcerated within TDCJ, regardless of
14:59:26 9 sex or gender?

14:59:27 10 A. No. TX C.U.R.E. does not have members. We have
14:59:29 11 constituents. There's a difference.

14:59:30 12 Q. And you claim that everyone is a constituent?

14:59:34 13 A. Yes.

14:59:34 14 Q. Every single person within TDCJ?

14:59:36 15 A. They have the ability to write to us and ask us for
14:59:39 16 assistance or whatever.

14:59:41 17 Q. Do they also have the ability to write you and ask to
14:59:45 18 opt out of being a member of TX C.U.R.E.?

14:59:47 19 A. We don't have a membership. There is no membership.
14:59:50 20 There is no way to opt in or opt out what you do not have.

14:59:54 21 Q. So you have no members at all.

14:59:56 22 A. No.

14:59:57 23 Q. And that's stated in your articles of incorporation,
15:00:00 24 correct? Your Honor, may I approach the witness with
15:00:11 25 Exhibit 66?

15:00:14 1 THE COURT: Yes.

15:00:36 2 MS. WARREN: It's Defense Exhibit 59.

15:00:46 3 Q. (BY MS. WARREN) Mr. Malouff, do you recognize Exhibit
15:00:49 4 39 -- 59? Excuse me.

15:00:55 5 A. I recognize it, but I wasn't there when this was put
15:00:58 6 together so that's beyond my scope.

15:01:05 7 Q. I will represent to you that this is the -- these are
15:01:11 8 the Articles of Incorporation of TX C.U.R.E., provided to
15:01:15 9 us by Mr. Tiede by the plaintiffs' counsel.

15:01:18 10 A. Okay.

15:01:20 11 Q. Your Honor, we move Exhibit 59 in evidence.

15:01:24 12 MR. HOMIAK: I don't think that a sufficient
15:01:26 13 foundation has been laid at this point.

15:01:28 14 THE COURT: I mean, are you relying on the fact
15:01:32 15 you got it from them?

15:01:33 16 MS. WARREN: Yes, it's authentic.

15:01:35 17 THE COURT: That's not a sufficient foundation.

15:01:37 18 Q. (BY MS. WARREN) TX C.U.R.E. has absolutely no
15:01:40 19 members?

15:01:41 20 A. No.

15:01:42 21 Q. You just -- you consider everybody to be a
15:01:45 22 constituent?

15:01:46 23 A. Yes.

15:01:46 24 Q. And they have no choice in that.

15:01:48 25 A. You always have a choice.

15:01:50 1 Q. So they can ask to opt out of TX C.U.R.E.?

15:01:53 2 A. If you don't write us, then we don't know who you
15:01:57 3 are.

15:01:58 4 Q. So if you don't write TX C.U.R.E., you're not a
15:02:01 5 constituent?

15:02:02 6 A. Not necessarily.

15:02:03 7 Q. So everyone in TDCJ is a constituent and they can't
15:02:08 8 opt out?

15:02:09 9 A. If they write us, then we respond to them.

15:02:12 10 Q. Pass the witness.

15:02:28 11 MR. HOMIAK: I just want to make sure, if I can,
15:02:29 12 your Honor. May I proceed?

15:02:30 13 THE COURT: Yes.

15:02:32 14 RE-DIRECT EXAMINATION

15:02:33 15 BY MR. HOMIAK:

15:02:33 16 Q. Mr. Malouff, I wanted to clarify one thing, which is
15:02:36 17 you mentioned that outside of your role at TX C.U.R.E., at
15:02:39 18 some point, I think you said while you were working as a
15:02:42 19 paralegal, you did collect some money for a lawsuit; is
15:02:45 20 that right?

15:02:45 21 A. No. I never touch anything -- if there was any
15:02:51 22 relationship between the attorney and the client, that was
15:02:53 23 with the attorney. As far as any provision of discussion
15:02:59 24 of funds, it was there will be upfront fees because there
15:03:04 25 are upfront fees in filing a lawsuit. But any fees would

15:03:08 1 be negotiated by the attorney.

15:03:11 2 Q. Understood. Okay. So I think that helps clear the
15:03:15 3 confusion, which is you, at some point in time, worked for
15:03:18 4 a lawyer at a law firm, right?

15:03:19 5 A. Yes.

15:03:20 6 Q. And at some point in time, that lawyer decided as
15:03:23 7 part of bringing in a lawsuit on behalf of other people
15:03:26 8 that he would need costs to cover that lawsuit; is that
15:03:28 9 right?

15:03:28 10 A. Yes, sir.

15:03:29 11 Q. So in your capacity as an employee of that attorney,
15:03:33 12 you helped with that process in some capacity; is that
15:03:35 13 right?

15:03:35 14 A. Yes, sir.

15:03:35 15 Q. And that's it?

15:03:37 16 A. Yes, sir.

15:03:38 17 Q. No further questions, your Honor.

15:03:39 18 RE-CROSS EXAMINATION

15:03:41 19 BY MS. WARREN:

15:03:41 20 Q. Briefly, your Honor. Would you be surprised to learn
15:03:45 21 that the people to whom you were sending messages asking
15:03:49 22 for money for an attorney's lawsuit, would you be
15:03:53 23 surprised to learn that they considered that harassment?

15:03:57 24 MR. HOMIAK: Objection, your Honor. Assuming
15:03:59 25 facts not in evidence.

15:04:00 1 MS. WARREN: Your Honor, I'm asking him a
15:04:01 2 question.

15:04:01 3 THE COURT: You could ask.

15:04:05 4 Q. (BY MS. WARREN) Would it surprise you to know that
15:04:07 5 the people to whom you sent that text message considered
15:04:10 6 that to be harassment?

15:04:13 7 A. Considering I didn't send it, then yes, I would be
15:04:16 8 very surprised.

15:04:17 9 Q. But you did ask for money?

15:04:19 10 A. No.

15:04:20 11 Q. For the lawsuit.

15:04:21 12 A. No.

15:04:23 13 Q. Okay. Pass the witness.

15:04:26 14 MR. HOMIAK: No further questions, your Honor.
15:04:27 15 I'd ask that Mr. Malouff be excused.

15:04:28 16 THE COURT: You may step down and may this
15:04:30 17 witness be released?

15:04:31 18 MS. WARREN: We won't recall him.

15:04:34 19 THE COURT: Okay. Thank you. Free to go. Next
15:04:36 20 witness.

15:04:37 21 MR. HOMIAK: Your Honor, I'm wondering if now is
15:04:39 22 a good time for a break or if you'd like to wait a little
15:04:41 23 bit longer.

15:04:41 24 THE COURT: No. That's fine. We could take a
15:04:44 25 break now. Let's take a break to 3:20 and we'll resume

15:04:50 1 testimony at that time.

15:04:51 2 MR. HOMIAK: Your Honor, we do have one issue. I
15:04:54 3 think it makes sense to bring it up now so that we could
15:04:56 4 get set up for this.

15:04:58 5 MR. EDWARDS: We intend to play the deposition of
15:05:02 6 the 30(b)(6) witness, Mr. Sweetin, and there's been some
15:05:08 7 objection to it. I think the Court's ruling this morning,
15:05:10 8 or at least advisory, was let's play it and we could take
15:05:14 9 it up as it goes. We have submitted to the Court the
15:05:19 10 designations. We have submitted to the Court a full copy
15:05:23 11 of the deposition with all of the objections and, you
15:05:26 12 know, my personal thought is that we play the deposition
15:05:30 13 and to the extent TDCJ wishes to object to any portion of
15:05:34 14 it, we can go through that with you after we play it just
15:05:37 15 in the interest of time. But what I mean is we reserve
15:05:42 16 the right for any objection to be -- you know, to be
15:05:45 17 sustained and you're going to hear it regardless. So that
15:05:48 18 was my thought process.

15:05:49 19 THE COURT: Sure.

15:05:50 20 MS. ELLIS: So couple of things. Obviously, Mr.
15:05:52 21 Collier is here to testify. We have put him on our
15:05:56 22 witness list. You know, the Court requested us to inform
15:05:59 23 counsel whether he was going to be here. He is here. He
15:06:01 24 is for all purposes the agency. So we don't need to look
15:06:06 25 at his testimony from the agency being Mr. Sweetin and

15:06:10 1 then, also, Mr. Collier, because Mr. Collier is here. To
15:06:13 2 the extent they want to use that as impeachment evidence,
15:06:16 3 I suppose that would be fine. But simply playing an
15:06:18 4 entire -- you know, video clips of somebody who is already
15:06:21 5 here would be incredibly improper. But also, the
15:06:25 6 designations that they made last night were, in fact, not
15:06:28 7 complete, so there were a lot of lines designated. So the
15:06:30 8 fact that we didn't have an opportunity to address the
15:06:33 9 optional completeness, we started a record and I'm happy
15:06:35 10 to give you what we have so far, but a lot was missing,
15:06:39 11 objections, context.

15:06:40 12 So we would ask that -- you know, we don't think
15:06:43 13 that this should be admitted, but if it does, please give
15:06:45 14 us an opportunity to identify optional completeness.

15:06:49 15 THE COURT: Sure.

15:06:50 16 MR. EDWARDS: No objection to the defendants
15:06:51 17 getting a little bit more time to identify optional
15:06:54 18 completeness, which is -- which is, I think, the
15:06:57 19 appropriate solution. As to whether or not this is
15:07:00 20 corporate deposition testimony, corporate -- it is and
15:07:04 21 even if it was just an employee, it would be an admission
15:07:09 22 by a party opponent and we could play it. And obviously,
15:07:13 23 we're allowed to play this for any purpose and so we would
15:07:15 24 ask --

15:07:15 25 THE COURT: Sure. I'm going to let you play it.

15:07:17 1 The question is when you say you don't have a problem
15:07:21 2 giving them additional time, does that mean before you
15:07:23 3 play it or --

15:07:24 4 MR. EDWARDS: Oh, no, no. I would like to play
15:07:26 5 it, but to the extent they wish to strike portions of it,
15:07:29 6 we could argue about that after the fact just in the
15:07:32 7 interest of time.

15:07:33 8 MS. ELLIS: Your Honor, I would say that we would
15:07:34 9 like to be able to raise those objections first because we
15:07:37 10 can't then go back and then, show the Court the entirety
15:07:40 11 of the context, what was asked, the objections. It
15:07:43 12 doesn't make sense right now to play that video without
15:07:46 13 allowing us the time to make those objections. I imagine
15:07:49 14 our team would be fine if they wanted to, you know, play
15:07:53 15 this video at a later time after. But there's really no
15:07:55 16 reason, especially because there's not a live witness,
15:07:58 17 it's a recording, the Court is able to listen to these
15:08:01 18 transcripts or these designated excerpts at any time.
15:08:04 19 There's no reason that has to take place right now.

15:08:06 20 THE COURT: I think that's probably true. But
15:08:09 21 the issue, though, is that even if you're given additional
15:08:13 22 time during the hearing, I'm not going to take time during
15:08:15 23 the hearing to go and make those rulings. And so, in any
15:08:18 24 event, I'm going to let them play what they want to play
15:08:21 25 at their peril and you could come back later, even after

15:08:24 1 this hearing during the post-hearing briefing period, and
15:08:27 2 tell me why what they played during the hearing wasn't
15:08:30 3 complete or was misleading or whatever.

15:08:32 4 So I understand and appreciate the position
15:08:35 5 you're in. I assure you, it won't -- I'm going to let
15:08:39 6 them put it on how they want to put it on, but it won't in
15:08:42 7 any way deprive you of the opportunity either during this
15:08:44 8 hearing at a later time or after the hearing to convince
15:08:48 9 me that what they're showing me is not complete or is
15:08:53 10 misleading in some way.

15:08:55 11 MS. ELLIS: Yes, your Honor. Could you provide
15:08:56 12 some clarification about Mr. Collier's role here? Because
15:08:59 13 he is the 30(b)(6) representative. He is here to testify.
15:09:03 14 Plaintiffs are more than welcome to question him. I guess
15:09:06 15 I don't understand why they need to play a video of the
15:09:09 16 30(b)(6) representative when Mr. Collier, himself, is the
15:09:12 17 representative and he is here. That would be the best
15:09:14 18 evidence.

15:09:14 19 THE COURT: Because it's their case and they can
15:09:16 20 present whatever witnesses they want to put on so that's
15:09:19 21 fine.

15:09:19 22 MS. ELLIS: Thank you, your Honor.

15:09:20 23 THE COURT: All right. Let's give a little
15:09:22 24 longer now. Let's say 3:25, we'll be back in session.

15:15:13 25 (Recess.)

15:27:10 1 THE COURT: Mr. Edwards.

15:27:12 2 MR. EDWARDS: Yes, your Honor.

15:27:14 3 Provided there's no objection from defense
15:27:16 4 counsel, for the benefit of the court reporter, the
15:27:18 5 transcripts of this deposition in the way it's being
15:27:22 6 presented is docket entry 161-1 and we would ask the Court
15:27:27 7 that the court reporter not need to transcribe everything
15:27:30 8 and just use that as the official record.

15:27:32 9 THE COURT: Any objections?

15:27:34 10 MS. ELLIS: No objection.

15:27:35 11 THE COURT: Okay. Very good. Thank you.

15:27:36 12 MS. ELLIS: I do want the -- and I can probably
15:27:38 13 do this whenever he brings up the actual transcript, but I
15:27:42 14 do want to reassert something before we do that. Thank
15:27:47 15 you.

15:27:49 16 MR. EDWARDS: We call David Sweetin, the 30(b)(6)
15:27:55 17 corporate representative of the Texas Department of
15:27:59 18 Criminal Justice for Bryan Collier in his official
15:28:01 19 capacity. And just for the Court's benefit and everyone's
15:28:04 20 benefit, for the first minute, the transcript down at the
15:28:07 21 bottom, which has been synced, is less than ideal but that
15:28:10 22 goes away after about 50 seconds.

15:28:12 23 THE COURT: Okay. Very good.

15:28:15 24 MS. ELLIS: Yes, your Honor. So obviously, I'd
15:28:16 25 like to reassert my prior objections, but moreover, when

15:28:21 1 we do supplement to the Court the optional completeness, I
15:28:25 2 would like the Court to just be aware of the objections
15:28:28 3 that were made during the deposition and take those into
15:28:32 4 consideration. I don't think in real time, I can follow
15:28:33 5 through with the transcript and the video and make those
15:28:35 6 objections now but --

15:28:36 7 THE COURT: Sure.

15:28:37 8 MS. ELLIS: -- I would like to reassert that.

15:28:38 9 THE COURT: Absolutely.

15:28:39 10 MR. EDWARDS: No objection to that, your Honor.

15:28:40 11 THE COURT: Okay. Thank you.

15:28:48 12 (Audio and video file played.)

16:49:25 13 MR. EDWARDS: Pass the witness, your Honor.

16:49:26 14 MS. ELLIS: Obviously, we have no questions,
16:49:28 15 however, we will get our completeness designations on file
16:49:30 16 with the Court. And I would just like to make a quick
16:49:33 17 comment about Mr. Sweetin's testimony. He was by no means
16:49:38 18 designated as an expert for UTMB, he's not a medical
16:49:41 19 doctor. Yes, he's an agency representative. So please
16:49:43 20 keep that in mind when you're reviewing his responses
16:49:45 21 we've never held him out to be an expert on this
16:49:48 22 algorithm, medically speaking. Thank you, your Honor.
16:49:50 23 THE COURT: Thank you.
16:49:51 24 MR. EDWARDS: If I could just briefly respond to
16:49:53 25 that. It would have been nice at the deposition if Mr.

16:49:57 1 Sweetin had as much knowledge as the attorneys here have
16:50:00 2 had to argue that. Just a little bit of what he said is
16:50:03 3 he has no idea at all and I'll let you make -- I'll
16:50:08 4 obviously defer to what's written on the category of the
16:50:10 5 topic, but it is directly pertinent to that and that's
16:50:14 6 I'll say. Thank you, your Honor.

16:50:15 7 And with regards to our day today, it is 4:50 and
16:50:19 8 we are -- we don't have any more witnesses so if the Court
16:50:23 9 was so inclined, we'd politely ask that we be excused for
16:50:27 10 the day.

16:50:27 11 THE COURT: Okay. I think we've made good you
16:50:31 12 progress today. Are you in a position to disclose whether
16:50:37 13 or not all of the remaining witnesses on your witness list
16:50:39 14 will be testifying or whether or not -- we want to have a
16:50:46 15 sense of our progress here.

16:50:49 16 MR. HOMIAK: I think we're still trying to figure
16:50:52 17 out the status of two, your Honor. I think we have the
16:50:55 18 witnesses who we believe are going to be testifying
16:50:56 19 tomorrow, right now, confirmed. And I think with how
16:50:59 20 quickly we moved today, we are going to add a few to that
16:51:02 21 schedule. But from our perspective, we are ahead of
16:51:05 22 schedule and, I think, on track to finish Thursday
16:51:09 23 morning, certainly before lunch, and my hope would be
16:51:11 24 before then with how things are tracking. I think we will
16:51:16 25 meet what goal, your Honor.

16:51:16 1 THE COURT: Okay.

16:51:18 2 MS. ELLIS: Your Honor, will we get equal time?

16:51:20 3 Because my understanding was that both sides would have

16:51:21 4 two days. So to the extent that they go into Thursday

16:51:24 5 morning, that would be cutting into our time. Would we be

16:51:28 6 allowed an opportunity to come back on Monday? I would

16:51:30 7 hate to do that, but plaintiffs' counsel chose to

16:51:33 8 designate 15 people. If they can't get that accomplished

16:51:35 9 by tomorrow, you know, we're willing to stay late today.

16:51:39 10 We're willing to stay late tomorrow, but that will eat

16:51:41 11 unto our time.

16:51:42 12 THE COURT: Yeah. I think what we need to do is

16:51:46 13 plan on finishing up tomorrow. We're finishing early

16:51:50 14 today because you don't have any additional witnesses.

16:51:54 15 And so, we're going to not have that problem tomorrow. So

16:52:00 16 I expect you to get everybody on tomorrow unless there are

16:52:03 17 some circumstance that are unusual.

16:52:07 18 MR. HOMIAK: Your Honor, I was just informed

16:52:08 19 there is a single expert witness who could only testify on

16:52:13 20 Thursday morning. And so, part of what I'm wondering is

16:52:15 21 whether it would be okay to do the witnesses a little bit

16:52:18 22 out of order. So have one or two of Mr. Collier's

16:52:21 23 witnesses ready to go tomorrow afternoon, evening in the

16:52:24 24 event that we finish early, which I think would be likely,

16:52:28 25 so that we can fit the final expert and final witness on

16:52:32 1 Thursday morning.

16:52:34 2 MS. ELLIS: May I respond?

16:52:34 3 THE COURT: Sure.

16:52:35 4 MS. ELLIS: I don't understand. This wasn't
16:52:38 5 communicated to us. Of course, if we had more knowledge
16:52:40 6 about the timing, I think we would have been willing to do
16:52:42 7 that. But now, we're kind of placed in a position by
16:52:45 8 giving last notice to our witnesses to be here when we've
16:52:48 9 indicated to everyone plaintiffs have two days, we have
16:52:50 10 two days, we will start on Thursday. So to the extent
16:52:54 11 that their witness can only testify on Thursday morning, I
16:52:57 12 would have assumed that that information would have been
16:53:00 13 provided much earlier than the day beforehand.

16:53:05 14 And can we also ask for who that expert is?
16:53:07 15 Because that may be a -- is it a quick witness? I don't
16:53:10 16 know.

16:53:10 17 THE COURT: Yeah. Is it a --

16:53:12 18 MR. HOMIAK: It's Dr. David Uribe. Sorry, Paul
16:53:17 19 Uribe.

16:53:30 20 MS. ELLIS: Your Honor, this is a big witness.
16:53:32 21 That witness is going to take a lot of time, probably from
16:53:34 22 our cross perspective, as well, and this is an individual
16:53:38 23 that was not -- they did not do a declaration in regards
16:53:41 24 to their motion. If this witness wasn't available when
16:53:45 25 they should have been, I don't know what else can be done,

16:53:52 1 quite honestly.

16:53:53 2 THE COURT: Okay.

16:53:55 3 MR. EDWARDS: Your Honor, all he's going to
16:53:56 4 simply testify about is deaths that -- Dr. Vassallo will
16:54:01 5 be testifying tomorrow about the dangers in the prison
16:54:03 6 system, and they should know that that's coming, and about
16:54:05 7 the many people who have died as a direct consequence of
16:54:09 8 heat. Dr. Uribe is a forensic pathologist who will
16:54:13 9 basically testify that from a pathological standpoint,
16:54:16 10 there were numerous deaths in the system. You know, I
16:54:21 11 don't know why it would take a particularly long time.

16:54:23 12 MS. ELLIS: Are there not a lot of autopsies?

16:54:26 13 MR. EDWARDS: Are there not a lot of autopsies?

16:54:31 14 MS. MCGEE: There are 49 that have been provided
16:54:33 15 in the exhibit list, 49.

16:54:35 16 MS. ELLIS: And we obviously need the opportunity
16:54:37 17 to cross-examine Mr. Uribe and we did object to Mr. Uribe
16:54:41 18 in our filing yesterday. I know that wasn't giving a lot
16:54:44 19 of time to the Court, but obviously, that individual was
16:54:47 20 designated on Friday. I mean, I just don't imagine how
16:54:52 21 this could be quick. I mean, we've spent an hour on
16:54:55 22 people who were not experts.

16:54:57 23 MR. EDWARDS: Your Honor, again, I can't promise
16:54:59 24 you what -- how cross-examination will go but the intent
16:55:03 25 is certainly not to discuss 49 autopsies. It is to

16:55:07 1 discuss, you know, between -- let's say 10 with a focus on
16:55:11 2 five of the ones that are just from our standpoint and
16:55:15 3 from the experts' standpoint clearly deaths. They are --
16:55:20 4 you know, the reason for this is simply. They are
16:55:24 5 claiming -- anyway, the reason -- we hope the reason for
16:55:28 6 this is evidence to the Court.

16:55:29 7 But we do not anticipate that it will be a
16:55:31 8 particularly long direct. And again, we will do
16:55:35 9 everything in our power to move this case along and I hope
16:55:38 10 that that was our goal today. And Dr. Uribe is a witness.
16:55:43 11 He was disclosed to them. There's no requirement that we
16:55:46 12 provide a report. We are telling you that he is going to
16:55:50 13 talk about the autopsies and talk about the deaths and we
16:55:54 14 view him as a complement to Dr. Vassallo.

16:55:58 15 And so, I would -- again, far from me to tell
16:56:01 16 defense counsel how to practice, but they should read into
16:56:03 17 what Dr. Vassallo testifies to about deaths and safely
16:56:08 18 expect that Dr. Uribe will be talking about those and that
16:56:10 19 will be the focus of his testimony, give or take one or
16:56:14 20 two or, you know, potentially even four or five more. He
16:56:17 21 is a different bend from the pathology standpoint but
16:56:20 22 that's the intent. And again, we're happy to give our
16:56:24 23 order of witnesses if it's reciprocated. We're happy to
16:56:28 24 do all the appropriate things that one should do during a
16:56:30 25 trial. All we would ask is that, you know, it's

16:56:34 1 reciprocal in terms of that.

16:56:36 2 THE COURT: Okay. Is this a live witness or --

16:56:40 3 MR. EDWARDS: This witness will be a Zoom as of
16:56:44 4 now.

16:56:50 5 MS. CARTER: Just briefly, while I appreciate Mr.
16:56:53 6 Edwards' representation to read into Dr. Vassallo's
16:56:55 7 testimony, it sounds to me that he said that now we've
16:56:58 8 heard from two different experts that there were deaths.
16:57:00 9 We know that is plaintiffs' contention. I'm not
16:57:03 10 understanding why Dr. Vassallo and Dr. Uribe's testimony
16:57:07 11 is different. He did use the word "complement." So I'm
16:57:13 12 struggling to see how duplicitous testimony is not
16:57:16 13 redundant and that it absolutely must take place and talk
16:57:19 14 about five, 10, potentially 49 -- I'm wondering why 49
16:57:23 15 were on the exhibit list if they weren't intended to be
16:57:26 16 introduced with this witness on Thursday when we're
16:57:28 17 finishing early today. I mean, I don't know who all their
16:57:30 18 witnesses are here, but we told our witnesses to be
16:57:34 19 available for the entirety of the hearing. We were told
16:57:37 20 that we would have two days and this is just concerning
16:57:40 21 that we're going to go into our time because plaintiffs
16:57:43 22 have decided to play an hour and 20 minutes of depo
16:57:47 23 designations that maybe should have filed objections to.
16:57:49 24 THE COURT: All right. So here's what we'll do.
16:57:54 25 First check with this witness to see if he will be

16:57:56 1 available late tomorrow so that we can get this in
16:57:59 2 tomorrow. If that is not a possibility, then we will
16:58:04 3 convene at 8:00 on Thursday morning to give you an
16:58:08 4 opportunity to put on that witness. My concern is that --
16:58:14 5 and there's no way for me to police this other than just
16:58:19 6 my impressions tomorrow and that is my concern is that we
16:58:24 7 will get to the end of the day tomorrow and still have
16:58:27 8 time.

16:58:28 9 Now, my saying that will maybe cause you to make
16:58:31 10 sure that doesn't happen so there's no way for me to solve
16:58:34 11 that, but that is a concern. And if I see that you're
16:58:39 12 dragging tomorrow because you don't want to end and upset
16:58:43 13 me, then we may revisit this. And I'll say that one day
16:58:50 14 of finishing early without witnesses is okay but two days,
16:58:55 15 not and then, I won't let you put that witness in on
16:58:58 16 Thursday.

16:58:59 17 MR. EDWARDS: And if you could help me. Is the
16:59:01 18 day intended to go till 6:00 or 5:00 p.m.?

16:59:03 19 THE COURT: I think I said early on that we're
16:59:06 20 going to try this case past normal times, whatever it
16:59:12 21 takes. And so, we're not doing that today and that's
16:59:14 22 okay. But if tomorrow, you finish up at 4:00, then we're
16:59:20 23 not going to have any witnesses from you on Thursday.

16:59:23 24 MR. EDWARDS: Loud and clear, your Honor.

16:59:25 25 THE COURT: If it's going slowly tomorrow to

16:59:27 1 avoid that --

16:59:28 2 MR. EDWARDS: I will not be dancing around his CV
16:59:30 3 for an hour and a half to accomplish a goal.

16:59:32 4 THE COURT: No, you won't. I'll be watching.

16:59:35 5 MR. EDWARDS: Understood, your Honor.

16:59:36 6 MS. ELLIS: Thank you, your Honor.

16:59:37 7 THE COURT: All right. Are y'all good?

16:59:39 8 MR. EDWARDS: Actually, I have good news for
16:59:42 9 defense counsel and the Court. Dr. Uribe can, in fact,
16:59:44 10 testify on Wednesday and so, the only reason he would not
16:59:47 11 would be if, for some reason, you know, everybody goes
16:59:50 12 longer than is anticipated. But that will take care of
16:59:53 13 that problem and hopefully we'll be able to finish
16:59:56 14 tomorrow.

16:59:56 15 THE COURT: That's great news. There's always a
16:59:59 16 solution.

16:59:59 17 MR. EDWARDS: We can talk about it. We don't
17:00:01 18 need to involve you in terms of the order of witnesses.
17:00:03 19 Thank you, your Honor.

17:00:03 20 THE COURT: Great.

17:00:04 21 MS. ELLIS: Thank you, your Honor.

17:00:05 22 THE COURT: Thank you very much. Anything else
17:00:06 23 we need to do before -- yes.

17:00:08 24 MS. GROSSMAN: Would the Court entertain --
17:00:10 25 there's one witness other than Dr. Uribe who is flying in

17:00:12 1 tomorrow. She is very short. Would the Court entertain a
17:00:15 2 very short witness on Thursday morning? I cannot imagine
17:00:19 3 it would take more than a 20-minute direct.

17:00:22 4 THE COURT: And she's not available tomorrow?

17:00:25 5 MS. GROSSMAN: She's flying. I could call her
17:00:27 6 right now and see if we could transfer to Zoom but the
17:00:29 7 flights have been bought. She would be getting in, I
17:00:34 8 believe, like 6:30 so perhaps then she could just come
17:00:37 9 right here. I can check or I could see if we could change
17:00:40 10 it to Zoom. I'm just wondering if the Court would
17:00:43 11 entertain a short direct on Thursday.

17:00:45 12 THE COURT: So I mean --

17:00:47 13 MS. ELLIS: Who is the individual, may I ask?

17:00:48 14 MS. GROSSMAN: Brittany Robertson.

17:00:53 15 MS. ELLIS: I think we would have the same
17:00:56 16 concern. I mean, we have no opposition to her testifying
17:00:59 17 over Zoom if she can be available tomorrow; that way, we
17:01:01 18 don't have to deal with the flight situation. So if she's
17:01:05 19 available tomorrow, that would certainly be our
17:01:07 20 preference.

17:01:07 21 THE COURT: Do your best and if tomorrow, you
17:01:11 22 haven't been able to work that out, then we'll work
17:01:14 23 something out. But the expectation is that I would love
17:01:19 24 for you to get everybody on that you need to put on
17:01:21 25 tomorrow. We'll stay late to accomplish that. If that

17:01:26 1 simply cannot be done, we'll revisit that tomorrow and
17:01:29 2 nobody will be unreasonable.

17:01:32 3 MR. EDWARDS: Your Honor, it's the Court's
17:01:34 4 intention to finish then on Friday, however late we go?

17:01:36 5 THE COURT: No. Friday at 4:00.

17:01:39 6 MR. EDWARDS: Thank you, your Honor.

17:01:39 7 THE COURT: All right. Anything else?

17:01:41 8 MS. ELLIS: No, your Honor. Thank you very much.

17:01:42 9 THE COURT: Thank you very much. We'll recess
17:01:44 10 and see you tomorrow. Do you want to start at 8:30
17:01:47 11 tomorrow?

17:01:48 12 MR. HOMIAK: Yes, your Honor.

17:01:49 13 THE COURT: All right. 8:30 tomorrow morning.
14 (Proceedings adjourned.)

15
16
17
18
19
20
21
22
23
24
25

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

* * * * *

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

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

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

WITNESS MY OFFICIAL HAND this the 10th day of August,
2024.

Lily Iva Reznik

~~~~~  
*LILY I. REZNIK, CRR, RMR  
Official Court Reporter  
United States District Court  
Austin Division  
501 West 5th Street,  
Suite 4153  
Austin, Texas 78701  
(512) 391-8792  
SOT Certification No. 4481  
Expires: 1-31-25*