IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

CIVIL COURT DEPARTMENT

DANIEL DOE, et al
Plaintiff,
vs.
STATE OF KANSAS, ex rel KRIS KOBACH, et al
Defendant.

Case No. 2026-CV-112

TRANSCRIPT OF TEMPORARY INJUNCTION
VOLUME II-part 2

BE IT REMEMBERED that on the 30th day of September, 2026, the above-entitled matter comes on for hearing before the Honorable JAMES McCABRIA, Judge of Division No. 4 of the Seventh Judicial District of the State of Kansas, at Lawrence, Kansas.

APPEARANCES

For the Plaintiff: Mr. Harper Seldin
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Reported by Nina Copeland Official Reporter, CCR

THE COURT: Back on the record in 26-CV-112. Look like everybody is present. Unless there is preliminary issues to take up, plaintiff can call their next witness.

MR. BLOCK: Your Honor, at this time, we would like to call Dr. Ayden Scheim as plaintiffs next witness.

MR. COMPTON: One preliminary, but related matter from the State, Your Honor.

THE COURT: Yes.

MR. COMPTON: Plaintiff's counsel last week late disclosed to us a cite of a previous scientific study. September 23rd they sent it to us, and they said Dr. Scheim would be relying on that study in his testimony here today.

September 23rd was the first time we'd seen it. We didn't get to depose Dr. Scheim about it. And in fact, we got it after the deadline for exhibit lists for this matter.

Plaintiffs added it to their list anyway. But we did not have the chance to examine Dr. Scheim about it, ask him any questions about it or investigate the study in any way.

I understand one sense of the way to handle this is to object when it comes up in his

direct examination. Our concern is Dr. Scheim is going to give opinions from the stand that are based on that study and not specifically cite it and we won't be able to object.

So we're objecting to that disclosed report. We'd like a ruling that it was late disclosed and Dr. Scheim can't rely on it before he starts his testimony.

MR. BLOCK: The report came out two days before we sent it to opposing counsel. In his declaration he specifically says, and we wish to supplement these opinions for the basis for them as a result of new scientific research. We gave it to them virtually as soon as we got it.

It's also a discrete study that is -- just takes national data and analyzes it specifically to Kansas. But it's a very -- it would only be two questions concerning it.

THE COURT: What's the, proffer to me the two questions.

MR. BLOCK: Sorry?

THE COURT: Proffer the two questions.

MR. BLOCK: Sure, well, I'll be asking data, nationally about rates of transgender

people who report avoiding the restrooms and then say, do we have any information specifically to Kansas, and then he would describe the Kansas specific information.

MR. COMPTON: This was a topic that was discussed at Dr. Scheim's deposition. We talked about it, didn't reference this study. Obviously, it wasn't out yet.

Also, separately another concern we have is the study us actually dated October 2026, a date hasn't happened yet and if we can't find it on the website of the Institute before they publish it -- we just haven't had any opportunity to investigate this study or ask Dr. Scheim about it, we object to its inclusion at all and the two questions.

MR. BLOCK: Your Honor, it is in plaintiff's exhibit list. We're not actually admitting it into evidence. But the very back tab of our binder says Redfield and Herman, and has a copy of the study, that's the study we'd be relying on.

It was, the way the Williams Institute dates things, it's by the coming month, but Dr. Scheim can testify when it came out.

There -- we weren't sitting on any information we didn't have.

THE COURT: Seems like this was mentioned to me last week at some point?

MR. COMPTON: It may have been mentioned at the status conference, Your Honor. I don't recall.

THE COURT: Well, the issue for the Court is fairness. And we are taking evidence on a temporary injunction, there's additional discovery, additional opportunity to address. Clearly one of the factors that plaintiffs have to meet is likelihood of success on the merits, and I'm sure you believe this assists in tipping the scales that way, but is it fair to include it and have it argued or considered by the Court given the limitation on the other side to address it? How do I resolve that question?

MR. BLOCK: Your Honor, we would like to make a proffer for the record of what those two answers are and this Court can disregard it, if it deems that appropriate.

THE COURT: I think that's the way to proceed. I'm not going to allow it as -- I may change my ruling once I hear more, but that's my

preliminary determination, is the objection is well-founded, I don't find it's through any -- nobody was withholding anything, but it's just where we are and what I think has to be done at this stage. So, okay?

MR. COMPTON: Thank you, Your Honor.

THE COURT: Doctor, please come back forward.

DR. AYDEN SCHEIM, being duly sworn by the court reporter, testified as follows:

DIRECT EXAMINATION

BY MR. BLOCK

Q. Good afternoon, Dr. Scheim.

A. Good afternoon.

Q. Can you please state and spell your name for the record?

A. Ayden Scheim, A-Y-D-E-N, S-C-H-E-I-M.

Q. And what is your profession?

A. I'm an epidemiologist by training.

Q. Do you have any specific focus of epidemiology?

A. Yes, I'm specifically a social epidemiologist.

Q. Where did you receive your professional training?

A. I have a PhD in epidemiology and biostatistics from Western University in London, Canada. And I've completed postdoctoral training in the division of Global Public Health at the University of California, San Diego.

Q. Where did you work after completing your training?

A. I was an assistant, and then an associate professor in the Department of Epidemiology and Biostatistics at Drexel University in Philadelphia.

Q. Where do you currently work?

A. I currently work as a Senior Scholar of Public Policy at the Williams Institute at the University of California, Los Angeles School of Law.

Q. Do you hold any affiliate faculty positions?

A. Yes, I hold affiliate faculty positions at Western University in Canada as well as St. Michael's Hospital in Canada.

Q. Have you received any research grants?

A. Yes, I've received both research grants from the US National Institute of Health and from the Canadian Institutes of Health Research.

Q. Have you written any peer-reviewed publications?

A. Yes, I believe I have about 130 peer-reviewed publications.

Q. And are any of those publications specifically on the topic of the health of transgender population?

A. I think it's 67 that are focused on transgender populations.

Q. Dr. Scheim, did you prepare a declaration in this case?

A. I did.

Q. If you can turn to the binder of plaintiff's exhibits, to tab 11.

A. Yes, I'm there.

Q. Does that appear to be a true and accurate copy of the declaration you submitted?

A. Yes, it does.

Q. And if you turn to page 31 of that document --

A. Mm-hmm.

Q. Does that, is that a copy of your signature?

A. Yes, it is.

Q. And if you turn two more pages to the material behind what's called Exhibit A there, is that a copy of your CV?

A. It is.

Q. And if you turn some more to page 363 --

A. Yes.

Q. It that the bibliography you submitted together with your declaration?

A. It is, yes.

Q. And are the opinions you intend to offer today based on the materials listed in the bibliography?

A. Yes, they are.

Q. And as we discussed before, subject to objection, is there any other publication not listed here that you would proffer testimony for today?

A. Yes, there was a report released just about a few weeks ago that reports on data that are contained at the national level in my declaration, but has a sub-analysis specific to the participants from Kansas.

Q. Do you have any insight as to why that report is dated October 2026?

MR. COMPTON: Your Honor, I'm going to object to Dr. Scheim discussing this report. I thought we said there'd be two questions about it, and the answers would be proffered and that would be the extent of the discussion.

MR. BLOCK: I'm just trying to lay a foundation for what the report is, that's not the substance of it.

THE COURT: I appreciate you being guarded about it, I think we are just sort of establishing what report we're talking about, so I'll allow this question. Feel free to make other objections. But you're generally correct on what the Court's ruling is going to be, or has been.

Go ahead, sir.

BY MR. BLOCK

Q. So do you have any insight as to why reports from the Williams Institution, this one is dated October 2026?

A. I'm not sure, I didn't work on this report. In general, they are just dated by month and I imagine the plan might have been to release it in October, but sometimes things are running sooner, and as an institution, we generally release reports as soon as they're available.

So it might have been as simple as an oversight in not changing the date back to September when it was ready early.

Q. Thank you, Your Honor. Thank you, Dr. Scheim. Before we ask for you to be recognized

as an expert in social epidemiology, I'd like to ask you some questions about what social epidemiologist do, to lay out the proper scope of his expertise.

So Dr. Scheim, what is epidemiology?

A. Epidemiology is the study of who gets sick and why or definitively who is healthy and why, at the population level.

Q. Do you need a medical degree to be an epidemiologist?

A. You do not.

Q. And why is that?

A. While medicine focuses on the care and treatment of individual patients, epidemiology focuses on patterns and causes of disease at the population level. Those causes are often not actually biological causes, but social causes, as is the focus of my research.

Q. And do the diseases that epidemiologists look at also include mental health conditions?

A. Yes, they do. They include physical health conditions, mental health conditions and healthcare access, and other aspects of health status.

Q. And do you need a degree in psychology or psychiatry to be an epidemiologist that studies

social effects on mental health conditions?

A. No.

Q. Why is that?

A. Because first of all, in terms of measuring those mental health conditions, we rely on tools that have been developed by psychologists and psychiatrists or in collaboration with them.

So for example, we measure depressive symptoms using scales that have been validated against a psychiatrist's diagnosis of depression, so that expertise is embedded in the measurement tools that we use.

And epidemiology is also a team science. So we do regularly work, and I regularly work with physicians and psychologists as needed to gain insight, particularly on the interpretation of findings.

Q. And just to clarify what those tools are, were you here in the court when Dr. Turpin was being cross-examined?

A. Yes, I was.

Q. And do you recall questions about the screening questions that she uses at her clinic for metal health assessments?

A. Yes.

Q. And there was some form with the letters and numbers, did that form sound familiar to you?

A. Yes, I believe it was the PHQ-9.

Q. And what is that?

A. The patient health questionnaire nine, it's a standardized tool for measuring depressive systems.

And the way that those tools are used is that if a patient or a participant scores above a certain threshold, they're considered to have probable depression and that threshold was determined based on studies in which psychiatrists and psychologists conducted a clinical interview to establish the presence of depression and use the threshold that best predicts that diagnosis.

Q. And so is that the type of measurement tool that epidemiologists use when conducting surveys of mental health conditions?

A. Yes.

Q. So what type of studies do epidemiologist rely upon?

A. So there are two primary group types of studies that we rely on. There are experimental studies, often randomized controlled trials in which the investigators assign a treatment or an

intervention to one group and compare their outcomes to a group that has a different treatment or no treatment at all. Those are very common when we're thinking about medical treatments.

But for other types of treatments, we most often are exposures or interventions, we most often rely on observational studies. As the name suggests, those are studies with which we observe people in their natural environment. We don't impose an exposure or intervention, we compare people who have those exposures or not organically and look at their outcomes either at one point in time or over time.

THE COURT: Dr. Scheim, it's come to my attention your microphone's off. Our fault, we should have double-checked.

BY MR. BLOCK

Q. So Dr. Scheim, just to illustrate those types of studies, can you give us an example of a question that an epidemiologist might be trying to answer and explain the different types of observational studies that epidemiologist might construct to answer that question?

A. Sure, so take for example an exposure like social isolation. That is something, we clearly

can't randomize people to experience or not experience, but is something of concern from a public health perspective.

So we can design a study in which we have some measure of social isolation. That measure might be how many friends do you have, how much time per week do you spend alone versus with others, and then we can design a range of studies to look at the relationship between that exposure, and the health outcome such, as symptoms of depression.

That may be a cross-sectional study in which we measure social isolation and depression in the same study, at the same period of time, and look at how they are related at that one point in time.

We also can design a longitudinal study in which we measure social isolation at the beginning of the study and then look over time to see whether or not people develop depression or whether their depression symptoms worsen.

Q. Dr. Scheim, are you familiar with the phrase correlation does not equal causation?

A. Yes, I am.

Q. And what does that phrase mean?

A. It means that just because variables are statistically related to each other, it doesn't

necessarily imply that they cause each other.

Q. So under what circumstances do epidemiologist draw a causal connection based on observational studies?

A. So I think the key point is that's sort a simplistic phrase, but the real point is correlation does not always equal causation. And in most modern epidemiology focuses on identifying conditions under which we can draw causal inferences from observational data.

And so in general we discourage reliance on any one individual study to establish a causal inference, and that includes randomized trials because there are many ways in which the results of individual randomized trials can also be misleading.

So we generally ideally rely on systematic reviews and meta-analyses in which the entire body of literature on a specific research question is evaluated or meta-analyses in which those data are quantitatively pooled to generate an overall estimate.

And we also have different tools that we use to evaluate both our confidence in the findings of individual studies, and our confidence in the findings of the overall body of literature.

Q. Are there any principles or standard criteria that epidemiologists consult when deciding whether a causal inference is warranted?

A. Yes, so the criteria that we use that were initially proposed, I believe in the 40s by Bradford Hill, but that are also embedded in a lot of the tools that we use, including things mentioned earlier, like grade, as well as the tools we use to evaluate individual studies.

So we consider factors such as, is a relationship that we see between two factors consistent across studies, across different populations, and across time? How strong is that relationship? Is that relationship explained by plausible mechanisms? Whether that's our biological or psychological mechanisms that are plausible based on what we know about human biology and psychology.

We look at whether there's any experimental evidence directly or indirectly from animals or humans that would support that relationship. Those are the kinds of criteria that we look at.

MR. BLOCK: So at this time, Plaintiffs move to have Dr. Scheim recognized as an expert witness in social epidemiology.

MR. COMPTON: No objection from the State.

MR. BLOCK: And we'd also like to move to have Plaintiff's Exhibit 11, Dr. Scheim's declaration submitted into evidence.

MR. COMPTON: No objection.

THE COURT: Exhibit 11 is admitted. And without objection, he is recognized as an expert in the field of social epidemiology.

(Plaintiff's Exhibit 11 was admitted.)

BY MR. BLOCK

Q. Dr. Scheim, now, I'm going to ask some questions about your opinions in this case. Were you here in court yesterday when the plaintiffs testified?

A. Yes, I was.

Q. Do you recall plaintiff Nicholas Noe and plaintiff Kyle Koe describing their experiences of rather than using the women's restroom in their buildings, leaving the building and having to travel outside to get to another building, just to use a gender-neutral or single-user restroom?

A. Yes, I do.

Q. As an epidemiologist, do you have an

opinion as to whether it's common for transgender people to take similar steps to avoid using restrooms inconsistent with their gender identity?

A. Yes.

Q. And what is that opinion?

A. My opinion is, it is a common phenomenon and we have data to support that from multiple studies.

So starting with, we have data from the 2015 US Transgender Survey, which was the largest ever at that time, survey of transgender people in the US, with about 27,000 respondents. And of those respondents, 59 percent reported that they had avoided restrooms in the prior year because they were concerned about how they would be treated.

We also -- those concerns are also related to experiences they've actually had in restrooms. So a study by Lerner found that reporting avoidance of restrooms was associated with having previously experienced questioning about being in the wrong restroom. And one in four participants in the survey had experienced that kind of questioning.

Q. Are there any other studies you'd like to mention?

A. Yes, so in terms of restroom avoidance,

there's also some research I conducted in Canada. So for example, we conducted a study across the province of Ontario, which is the most populous province in Canada, using a method called respondent-driven sampling, in which we can generate estimates for the trans population of that province, and found that 57 percent of respondents had avoided restrooms due to fears of being outed as transgender or mistreated.

In a subsequent study that we did nationally in Canada, we found that 84 percent of respondents had avoided a range of public spaces that we asked about over the prior, the past five years, including restrooms.

MR. BLOCK: At this point, Your Honor, is when I would have asked a question about whether there's data specific to Kansas. Does the Court want Dr. Scheim to answer that for a proffer?

THE COURT: And this is based on the new study?

MR. BLOCK: Yes, everything else is not based on that study.

THE COURT: For record purposes, you can proffer the question and what you would believe his answer would be.

MR. COMPTON: Just be clear, Your Honor, counsel is making a proffer here. The witness is not answering?

THE COURT: Correct.

MR. BLOCK: So his answer and response to a question saying, do you have data specifically from Kansas, would be to cite statistics from that report, saying that among Kansas respondents to the 2022 US Trans Survey, 63 percent reported in the past year they either sometimes or always avoided using a restroom, such as in public, at work, or at school, because they were afraid of confrontations or other problems.

THE COURT: Thank you.

THE WITNESS: If I may? There's one thing I wanted to mention in response to the last question, that is in my declaration.

Q. Not about the Williams Institute --

A. No.

Q. Dr. Scheim, what did you want to add?

A. I just neglected to mention when I mentioned earlier, that avoidance is related to actual experiences of discrimination, that there is data in my declaration from the 2022 US Transgender Survey, which had over 92,000 respondents.

And again, you know, pointing out that those, that avoidance is related to real experiences that people have had in restrooms. In that study, one in 20 participants had been denied access to a restroom in the prior year.

One in 20 had also experienced harassment or violence in a restroom in the prior year and they were likely to have that experience if they were using a restroom consistent with their sex assigned at birth.

So just as an example of that, five percent of transgender men who had used a men's restroom in the past year reported being denied access. Ten percent of transgender men who reported using a women's restroom had been denied access.

Q. Is there any --

THE COURT: Can you repeat the last part? The two percentages, that you --

THE WITNESS: Yeah, so five percent of transgender men who said that they used women's -- sorry, other way around.

Five percent of transgender men who said they had been using men's restrooms reported being denied access. Ten percent of those who said they were using women's restrooms reported being

denied access.

THE COURT: So twice as many when you are using a restroom inconsistent with your current identification?

THE WITNESS: Exactly.

THE COURT: Okay. Thank you.

BY MR. BLOCK

Q. Is there any qualitative data on how common restroom avoidance is for transgender people?

A. Yeah, so in qualitative studies, including some that I cite in my declaration, for example, a study by (indiscernible.) et al, transgender people report going to really great lengths to plan their days around bathroom access.

So just thinking about social outings, where to work, where to go to school based on the availability of restrooms that they feel safe and comfortable using, as well as restrooms that other people will feel comfortable and safe with them using.

And people -- there's also qualitative of people reporting, you know, questioning harassment in restrooms.

Q. Let's talk about the methodology and the studies that you just discussed. You mentioned the

2015 and the 2022 US Transgender Survey, how was the data for that survey collected?

A. So both the 2015 and the 2022 surveys drew on online surveys where the participants were recruited through online outreach, as well as outreach to community organizations working with transgender populations all across the country.

Q. So was that a randomized sample?

A. No, that would be called a convenience sample.

Q. If it wasn't a randomized sample, how can you be sure that the data is representative of the transgender population more broadly?

A. So there's two parts to answer that question. So in general, we cannot directly generalize findings from any convenient sample to the broader population. This is specifically an issue when it comes to estimates of prevalence, so just how common a phenomenon is.

However, with the US Trans Survey, they do take steps to increase the representativeness of the sample by weighting it to account for known demographics of the transgender population.

There are data sources in the US that collect basic data about -- or that did historically

collect basic information on demographics of the transgender population.

So for example, the CDC, the Center for Disease Control's behavioral risk factors surveillance system did historically collect information on transgender identity.

It didn't collect any information about transgender specific experiences, but it did give us data on, for example, the age and the racial demographics of the transgender population, so that the data from the US Transgender Survey can be weighted to better reflect the demographics of the population.

As I mentioned, there's also data from the studies in Canada that actually were population generalizable.

Q. Let me just ask you that as a separate question. So what methodology for the Canada studies that you conducted was used to make the information more generalizable?

A. So the study that I mentioned specifically from Ontario used a method called respondent-driven sampling, in which individuals are recruited through their social networks, but the recruitment networks are tracked such that each participant's probability

of being recruited into the study can be estimated, and then the data are weighted to account for the fact that some people, particularly people with fewer social connections, were less likely to be recruited into the study. And that's a method commonly used for populations that are referred as hidden, where there's no lists of all members of the population.

Q. Was the data for these studies all self-reported?

A. Yes.

Q. And so how can you be sure that the data is accurate if it's self-reported?

A. So when it comes to the, when it comes to talking about things like avoiding restrooms, there's no other way to determine whether or not someone has avoided a restroom. Not only has no method been developed, but I'm not aware of any method that could be developed to actually verify that other than asking someone, and that's typical of many of the things that we study in epidemiology.

Q. Moving onto a slightly different topic, as an epidemiologist, do you have an opinion on the impact that the fear of anticipated discrimination can have on people's mental health, even when no

discrimination actually occurs?

A. Yes, I do.

Q. And that's true specifically for transgender people?

A. Yes.

Q. What's that opinion based on?

A. So the main source of opinion on that topic is systematic review by Pellicane Ciesla that I cite in the declaration.

And that's a systematic review and meta-analysis, so a quantitative pooling of data across studies, and they found that both experiences of discrimination, as well as anticipation of discrimination, had negative effects on both depression and suicide ideation, but the effects were actually slightly stronger for anticipated discrimination.

And that's consistent with broader research on the particularly negative health effects of chronic stressors, so stressors that are repeated and unrelenting, as opposed to one-time events.

Q. So if we were trying to measure the impact of SB 244 on transgender people's mental health, if we look just at the instances of actual discrimination, are we getting the full picture?

A. No.

Q. What else would we have to look at?

A. We're going to look at both experiences of discrimination as well as anticipated discrimination. And as I mentioned, those two things are related in that one of the main things that leads people to anticipate discrimination is actually experiencing it, but it's not the only thing that leads people to anticipating it.

In a context where actual events of discrimination are as common as they are in the transgender population, most transgender people would know somebody who has experienced that kind of discrimination, even if it hasn't happened to them directly.

Q. And do we have data on how common experiences of actual discrimination are in the transgender population?

A. Yes, we do.

Q. And what does that data say?

A. So I mentioned previously data from the US Trans Survey, for example, showing that as I mentioned specific to restrooms, that one in 20 people, just in the past year had been denied access or harassed or assaulted in restrooms.

We also, you know, if we want to look also to population-based or representative samples, there are very few studies, but there are studies that have used national representative samples to look at discrimination.

So for example, there was a study conducted by the Robert Johnson Foundation National Public Radio and Harvard University in 2017, which found that, I believe it was about 38 percent of respondents had directly been called slurs related to their transgender identity.

Q. Stepping back a little bit, what data do we have about the overall potential mental health impacts of policies that prohibit people from using restrooms consistent with their gender identity?

A. So there's studies showing that among young adults, adolescents and young adults, being denied access to a restroom consistent with gender identity is associated with higher levels of psychological distress and suicidal ideation.

And as I mentioned, those restroom restrictions are also related to restroom avoidance and there's also studies from the US, from China, from South Korea, from multiple continents showing that restroom avoidance is also itself associated

with poor mental health --

THE COURT: With what?

THE WITNESS: Poor mental health.

BY MR. BLOCK

Q. Are there any studies on the positive impacts of being allowed to use restrooms consistent with your gender identity?

A. Yes, there's a study I cite in the declaration from Australia that focused on adult employees finding that employees who are able to use the restroom consistent with their gender, scored higher on an index of employee well-being, including emotional well-being.

Q. Now, I'd like to move from discussing restrooms to discussing ID documents. Is there any data on discrimination in the transgender population connected to having ID documents that don't match your gender identity?

A. Yes, there is. So going back to the 2015 US Transgender Survey, of the respondents who had presented an identity document that didn't match their gender presentation, one-third had had a negative experience when presenting that ID document, most often verbal harassment, but I believe it was about 12 percent who also experienced

being denied services or benefits, and some who also experienced violence related to that ID presentation.

MR. BLOCK: And Your Honor, at this point, I would proffer what the answer would be if I asked if there's any data specific to Kansas.

In response to that question, Dr. Scheim would say, in the 2022 US Transgender Survey, 22 percent of respondents from Kansas, age 16 and older, who had shown IDs with the name or gender that did not match their presentation reported negative experiences, such as being harassed, denied services and/or attacked.

THE COURT: Thank you.

BY MR. BLOCK

Q. So Dr. Scheim, what data do we have about the overall mental health impacts of policies prohibiting people, prohibiting people from having identity documents that don't match their gender identity?

A. So this is a topic is which I conducted a systematic review and meta-analysis for the World Health Organization's forth coming health guideline, and so we conducted a meta-analyses of studies from the United States, from Canada, and New Zealand.

We found that having identity documents consistent with one's gender was associated with a 25 percent reduction in the odds of suicide ideation and a 47 percent reduction in the odds of serious psychological distress.

Q. Are there any other meta-analyses besides the one you conducted?

A. No, there are not.

Q. Any there any other studies that have come out since your meta-analysis?

A. Yes, there are other studies that have come out.

Q. And what are those studies?

A. So there were several studies that came out from Australia after we published or after we conducted the research for our meta-analysis that also found that having identity documents consistent with one's gender was associated with less psychological distress. And in of those studies, also with less suicide ideation.

There was also a study from the US that looked at the potential mechanisms underlining that relationship. So they found that people who had identity documents consistent with their gender were less likely to experience discrimination and that,

in turn, predicted better mental health.

Q. I'd like to ask you some more about the meta-analysis you conducted for the World Health Organization, do you recall when Dr.Turpin was being cross-examined, she was being asked about a study by Dr. Scheim?

A. I do.

Q. And is this WHO study, the study that they were discussing?

A. Yes, it is.

Q. So for that study, what methodology did you use to grade the level of certainty of the evidence?

A. So we used an approach called grade, G-R-A-D-E. And that is an approach that comes out of the evidence-based medicine field specifically for developing clinical guidelines for medical treatments.

We use it in this case because it is a WHO policy that any guideline they publish must apply grade methodology.

Q. And so are there certain types of epidemiologist that do use the grade rating for their research?

A. Yes, grade is really important for

clinical epidemiology, for studies of medical treatments, of medications, of surgeries, essentially of any question where, where the randomized control trial is the gold standard, and the appropriate benchmark against which to evaluate studies.

Q. Do social epidemiologists typically use the grade method of ranking evidence?

A. They do not.

Q. And why is that?

A. So in social epidemiology there are very few questions we can ethically or feasibly answer using a randomized control trial.

So in this case, we cannot randomly assign states to allow people or not allow people to update their identity documents. We also can't randomly assign individuals to be able to or not be able to.

And in grade, observational data automatically enters the evaluation process as low certainty and then can be downgraded further.

So there's a ceiling on how highly rated the certainty can be. It's going to be low certainty or very low certainty, and that's with the observational data basically a forgone conclusion. And so we don't generally use, it because that's

actually not helpful for our decision-making.

Q. So if something is rated on the grade scale as low certainty, that's actually the highest level that an observational study could get, am I understanding you correctly?

A. Essentially yes, so it's nothing with grade is black and white, but essentially there is -- grade is -- there is subjectivity in the application. It relies on the expert application of epidemiologists, but in my experience, I've never seen entirely observational data be rated as anything above low certainty.

And in fact, there's a systematic review that I cite in the declaration that actually shows that even for medical interventions, more complex interventions, so interventions that are more complicated than giving someone a drug or not, are generally also disadvantaged in that system.

It's really designed with a, you know, medication or a simple medical treatment trial in mind.

Q. And Dr. Scheim, you mentioned earlier that it's rarely appropriate to draw a causal inference from a single study; is that correct?

A. Yes.

Q. So under what circumstances is it appropriate for an epidemiologist looking at all the evidence to draw a causal inference?

A. That's a question that's sort of at the heart of epidemiology and I think so -- first of all, we will almost never make a statement of causal certainty. In epidemiology journals, that is often kind of forbidden to do so, to say that X causes Y, period.

What we do is, we weight the totality of the evidence and draw a conclusion about how -- and that's what grade does. It's not, is this a causal relationship or not, it's how confident or certain are we looking at the totality of the evidence that there is likely to be a causal relationship here.

One of the things that's also limiting about grade is it only considers the quantitative studies that have been reviewed in a given systematic review, but there's also other sources of evidence that are legitimate to consider in epidemiology and public health, such as qualitative research, for example.

Q. So sitting here today, making an assessment independently of the grade framework, how certain would you say you are in the conclusion that

policies prohibiting transgender people from having ID documents consistent with their gender identity are associated with these negative mental health aspects?

A. I'm quite certain, and I say that because of the evidence that's reviewed. And also because we know that anticipated discrimination is a chronic stressor, is something that has negative impacts on health, not just in transgender people, but in other populations as well.

And there's no reason to think that transgender people would have fundamentally different bases of psychology or social -- or reactions to anticipated discrimination than other people. I'm not aware of any evidence to that effect.

Q. As an epidemiologist, are you aware of any evidence suggesting that policies prohibiting trans people from having ID documents consistent with their gender identity don't have a negative impact on their mental health?

A. I'm not, there are studies that are inconclusive. So we distinguish between studies that prove there is no effect and studies that are inconclusive.

So in this area, like in all areas, there are things that are inconclusive where the data don't allow us to draw a conclusion one way or another. And there are some studies like that in our review. But there's no studies that have been able to conclude that there is no relationship.

And I can get into the technicalities of that if you want, but that's the general --

Q. I don't think that's necessary unless the judge prefers. As an epidemiologist, are you aware of any data that would indicate that being denied access to restrooms consistent with your gender identity is not associated with negative mental health impacts?

A. No.

Q. So just to sum up, Dr. Scheim, based on your professional training, experience, and the relevant literature, do you have any opinions about the impact of SB 244 on the mental health and well-being of transgender people in Kansas?

A. I do.

Q. And what is that opinion?

A. My opinion is that SB 244 will lead to increased incidences of discrimination as well as increased anticipated discrimination for the

transgender population overall.

And then that will be, in turn, lead to negative mental health consequences, specifically related to psychological distress, suicide ideation, as well as to avoidance of situations in which restrooms or identity documents are required. And that avoidance, in turn, and limited social participation will also have negative health consequences.

Q. Dr. Scheim, can you make that prediction for any individual transgender person? Like can you predict that a particular transgender person will have those negative health and mental health consequences?

A. No, I cannot. Epidemiology deals with populations and averages across populations, not with predictions for any specific individual.

Q. So just as an analogy, could you predict that any particular individual who smokes will, in fact, get lung cancer?

A. No, and in fact, that's not the case, but yet we would say that there's a very strong relationship between smoking and lung cancer, even though most people who smoke will not get lung cancer.

MR. BLOCK: Thank you, no further questions.

MR. COMPTON: Cross-examination?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. COMPTON

Q. Good to see you again, Dr. Scheim.

A. You too.

Q. As I hope you remember, my name is James Compton, I represent the State. I'm going to ask you a few questions this afternoon, all right?

A. Okay. Thank you.

Q. I'll get all my materials set up here. Before I get into what I've got prepared though, I have one clarifying question to ask you while I look for my pen.

You mention several numbers on direct examination about how many trans people avoid the restroom, do you remember that?

A. Yes.

Q. I think the number you said was 59 percent?

A. Yes.

Q. Is it 59 percent of trans people avoid the restroom in jurisdictions where they must use the

restroom associated with their biological sex or is that number just for all jurisdictions everywhere?

A. That number is for all jurisdictions, and it's specifically from 2015.

Q. Did you cite any numbers about how that number changes when a jurisdiction passes a law like SB 244?

A. No, and that's in part because that data is not available. Especially in the case here, obviously, there hasn't been time to collect that data.

Q. So your testimony on direct examination about restroom avoidance, that was just about restroom avoidance in the general population; is that right?

A. Of transgender people, yes.

Q. It was not about how laws like SB 244 might increase restroom avoidance?

A. Correct.

Q. All right, Dr. Scheim, you're not a psychologist, right?

A. Correct.

Q. You are not a psychiatrist?

A. Correct.

Q. You don't have any treatment in the -- any

training in the diagnosis and treatment of mental illness?

A. Correct.

Q. You don't have any medical training at all, right?

A. Correct.

Q. You work for the Williams Institute, that's what you said?

A. Yes.

Q. And that's at UCLA?

A. Yes.

Q. And it's housed at the law school, right?

A. It is.

Q. It's not housed in the school of medicine?

A. It is not.

Q. It's not housed in the school of public-health?

A. It is not.

Q. And your title is Senior Scholar of Public Policy; is that right?

A. Yes.

Q. The Williams Institute collects, conducts and publishes research on LGBT issues, right?

A. Correct.

Q. But you and the scholars there also do

advocacy on LGBT issues, right?

A. That is not correct.

Q. You've never done advocacy on LGBT issues, Dr. Scheim?

A. No part of my professional role at the Williams Institute involves advocacy. We expressly do not do advocacy, we generate evidence to inform policymakers, but we don't take policy positions.

Q. My question is not whether your official duties at the Williams Institute involved advocacy, but whether you've ever done advocacy on LGBT issues?

A. Ever in my life? Yes. Not in any recent memory.

Q. Dr. Scheim, do you remember signing an amicus brief in the United States v. Skrmetti?

A. Yes.

Q. That was a case before the United States Supreme Court, right?

A. Yes.

Q. And it was a case about banning medical gender transition for minor children?

A. Yes.

Q. And you signed an amicus brief asking the United States Supreme Court to strike down

Tennessee's ban on medical gender transition for minors, right?

A. Yes, that brief was based on research, it's a statement of what the research supports.

Q. Okay. And scholars at the Williams Institute regularly sign amicus briefs, don't they?

A. Yes, we sign and we develop amicus briefs, again, that summarize the research on a topic.

Q. So for example, at the United States Supreme Court just last term there was a case called West Virginia v. BJP. Do you know that case?

A. Yes, I do.

MR. BLOCK: Objection, that misstates the title of the case. It's the BPJ.

MR. COMPTON: That's my writing things down wrong getting me again, Your Honor.

BY MR. COMPTON

Q. West Virginia v. BPJ. You know that case?

A. I do know the case.

Q. And you know that scholars at the Williams Institute signed a brief asking the Supreme Court to strike down West Virginia's law on boys playing girls sports?

A. I don't believe I was involved in that brief, so --

Q. That's correct. I'm asking if you're aware of Williams Institute scholars signing such brief?

A. I believe that they may have, I can't confirm or deny because I haven't looked at it.

Q. Do you know the case of 303 Creative v. Elenis?

A. Yes.

Q. Did you know that Williams Institute scholars signed an amicus brief asking the Supreme Court to hold that the First Amendment doesn't allow a photographer to refuse to photograph a same-sex wedding?

A. Yeah, I'm aware of that.

Q. What was that?

A. Yes.

Q. Do you know the case Masterpiece Cake Shop?

A. Yes.

Q. Did you know the Williams Institute scholars signed an amicus brief in Masterpiece Cake Shop asking the Supreme Court to force a Christian baker to bake a cake for a same-sex wedding?

A. I didn't work these at that time, and actually have no direct knowledge of that.

Q. You're also on the Board of Directors for an organization called Global Action For Trans Equality; is that right?

A. Yes, I am.

Q. It's GATE for short?

A. Yes.

Q. GATE is a transgender rights advocacy group, isn't it?

A. Yes.

Q. And you familiar with a GATE publication, a submission to the United Nations calling for the repeal of all laws restricting access to bathrooms to a single-sex?

A. When was that published?

Q. I can go get it for you, if you like.

A. I may or may not be aware of it because it might have been for a time I was not on the board. I'm also not involved in their publications directly, I oversee governance.

Q. It wouldn't have been before your time, I believe it was this year.

MR. COMPTON: Permission to approach, Your Honor.

THE COURT: You may.

BY MR. COMPTON

Q. What did I just hand you, Dr. Scheim?

A. You've handed me a submission for inputs on a Human Right to Sanitation of Nondiscrimination for the Special Rapporteur on the Rights to Water and Sanitation?

Q. And what organization wrote this?

A. Global Action for Trans Equality and the Asian-Pacific Transgender Network.

Q. This is Global Action for Tans Equality is the group where you sit on the Board of Directors, right?

A. Yes.

Q. Will you turn down to the last page, for me? Sorry, not the last page because there is a bibliography, but the third to last page, last page of content. Do you see?

A. I do.

Q. And actually if you, in all fairness to you if you can turn back a page, or back a few pages.

Let's see, this is a list of recommendations, do you see that?

MR. BLOCK: Is there a page number you can identify?

MR. COMPTON: I'm looking at page five.

A. The recommendations started on page four, but I do see the list.

BY MR. COMPTON

Q. And recommendation 25 here, let me know if I read this right. Repeal sex-based bathroom legislations, laws requiring use of facilities corresponding to the sex assigned at birth are incompatible with the human right to sanitation and should be repealed. Did I read that right?

A. You did.

Q. I'd like to talk about your opinion in this case, starting with your opinions with the driver's license portion of SB 244.

Now, in your research and today, you have used the term legal gender recognition; is that right?

A. Correct.

Q. And in the context that we're talking about it, that means having the sex that you prefer listed on your identity documents, right?

MR. BLOCK: Objection to just the terminology.

THE COURT: I don't know what that

objection means.

MR. BLOCK: Objection to form, you're using -- objection to the phrase, the identity that someone prefers.

MR. COMPTON: Your Honor, I don't know --

THE COURT: You can listen to the question. If you need clarification, you can ask for it. Otherwise, I will overrule. So ask your question.

THE WITNESS: Ask it again.

BY MR. COMPTON

Q. Sure, in this context, legal gender recognition means having the sex that you want listed on your identity documents on those documents, right?

A. I would say it refers to being able to update your identity documents to reflect the gender that you live as.

Q. Sure, we will find some common ground here. It means if you want an M on your driver's license, you get an M and if you want an F, you get an F, right?

MR. BLOCK: Same objection.

THE COURT: Overruled.

BY MR. COMPTON

Q. Is that right?

A. I think there's different ways, there are different ways that gender recognition is actually operationalized, and sometimes it does -- for example, in Kansas, if used to actually require a letter from a physician, it's not necessarily that you sort of get whatever you want, it's they're able to update your documents to be consistent with your lived gender.

Q. Fair enough, so it's the ability to put an M on your driver's license if you want, in certain circumstances?

A. Yes.

Q. You testified on direct examination and you include in your report that not having legal gender recognition can lead to certain mental health harms; is that right?

A. Yes.

Q. You've actually published a paper on this topic, right? More than one, even?

A. Yes.

Q. I'd like to talk about one in particular that's come up several times already today, that's your systematic review. Are you familiar with that

paper?

A. Yes, I am.

Q. And this is the paper that my colleague, Mr. Nussbaum was asking Dr. Turpin about earlier?

A. Yes.

Q. And it's the paper that your counsel was asking you about on direct examination?

A. Yes.

Q. I just want to make sure we all have our terms straight, because we're talking about science and sex, and I don't want things to get too confused.

So a systematic review is a specific kind of scholarly article, right?

A. Yes.

Q. It's a scholarly article that surveys a field of research and gathers together all the quantitative studies that it can find; is that right?

A. Yes, some systematic reviews actually include qualitative studies, but yes, all the research, they systematically search the databases to find all available evidence on a specific question, yes.

Q. So you get all the evidence on the

question, and then you go through it and you evaluate it; is that right?

A. Well, first you synthesize what it actually says, but you also alongside that, evaluate it.

Q. And typically this means you evaluate the quality of the evidence?

A. Yes.

Q. And you also evaluate the evidence for what's called bias, right?

A. Well, in fact, quality is a little bit of a misnomer because what you're doing is actually assessing the risk of bias, and that's actually not the same thing.

Because you could have, for example, the highest quality possible cross-sectional study and you might still evaluate that as having a higher risk of bias, due to features inherent to the study design, not the quality of how it was conducted.

Q. Right, they are two separate ratings, you rate them for risk or bias and then you also rate them for quality?

A. Well, no, so the tools that are often referred to as quality assessment, so for example, in this review, we use the Robins-E, the Robins-E is

not a quality rating system, it's a risk of bias rating system.

Q. Right. I apologize if I'm not being clear, we can go all the way back.

In this systematic review, you view something called the Robins-E system to evaluate each individual study for risk of bias?

A. Correct, yes --

THE COURT: Robin Z?

THE WITNESS: Robins, like R-O-B-I-N-S, dash E.

THE COURT: Dash Z, as in zebra?

THE WITNESS: E.

THE COURT: E, sorry. Okay.

BY MR. COMPTON

Q. And separately, but taking into account your Robins-E ratings, you use the grade system to evaluate the quality of the evidence on each given question?

A. Yes, we use grade to evaluate our certainty in the evidence.

Q. And those certainty ratings, you can either have high certainty, moderate certainty, low certainty or very low certainty?

A. Correct.

Q. You talked on direct examination a little bit about why the grade system isn't used in social epidemiology, do you remember that?

A. Yes.

Q. This is a systematic review of social epidemiology papers, right?

A. Correct.

Q. And you wrote this?

A. Yes.

Q. Put your name on it?

A. Yes.

Q. And you used the grade system?

A. Yes, as I've claimed previously, the WHO guidelines give absolutely no leeway in this regard. It was a source of contention among the WHO staff we were working with us as well, but there's no latitude for that.

Q. That's right, you used the grade system in the paper because the World Health Organization requires it?

A. Yes.

Q. Let's talk about what you found in this paper and compare it what you said in direct examination and in your report.

This paper examines the evidence in the

connection between legal gender recognition and the health of trans people; is that fair?

A. Yes.

THE COURT: Is this paper in evidence?

MR. COMPTON: It's not, Your Honor. I'm happy to put it into evidence, if you would like.

THE COURT: I'm thinking of the examination of Dr. Turpin with regard -- it's mentioned in the bibliography of Dr. Turpin?

MR. COMPTON: That's correct. If you'd like to look at it, Your Honor, it is State's Exhibit 134.

I'm going to -- permission to approach, Your Honor?

THE COURT: I have 134.

MR. COMPTON: I think it might make everyone's life easier if it was in evidence. Permission to approach?

THE COURT: Yes.

BY MR. COMPTON

Q. Dr. Scheim, can you turn in the binder there to Defense Exhibit 134? It's tab number 34.

A. The blue book?

Q. I think that's right.
A. I might need more direction.
THE COURT: It's volume three, is what it should say there.
THE WITNESS: Volume three, thank you.
BY MR. COMPTON
Q. There should be a tab number 34.
A. Thirty-four. There is not a tab 34 in this book, volume three.
THE COURT: That's my mistake. Volume two of three, sorry. I'll stay quiet.
MR. COMPTON: -- pull it out, we could avoid this.
THE WITNESS: Found it. Thank you.
BY MR. COMPTON
Q. Do you see Exhibit Number 134, Dr. Scheim?
A. Yes, I do.
Q. Is that your systematic review?
A. Yes, it is.
Q. Can you flip through it to make sure it's a fair and accurate copy of that systematic review?
A. Yes, it is.
MR. COMPTON: At this time, I would offer State's 134 into evidence?

MR. BLOCK: No objection.

THE COURT: 134 is admitted.

(Defendant's Exhibit 134 was admitted.)

BY MR. COMPTON

Q. All right, Dr. Scheim, this is your systematic review that we're talking about again, right?

A. Yes.

Q. And what this systematic review does is it surveys all of the evidence on the connection between legal gender recognition and the health of transgender and gender diverse people, right?

A. Yes, all the quantitative evidence, yes.

Q. So in the systematic review, what you did is, you went and you found all the studies about the connection between legal gender recognition and various kinds of health outcomes in transgender people, right?

A. Correct.

Q. You can turn with me and we can look at them. I think, let's find where they start in earnest here.

I think they start on page 10. You can correct me if I'm wrong. I'm wrong, they start on

page three, that's the results section, right?

A. Yes.

Q. So then if you continue past 3.1, you looked at the connection between legal gender recognition and quality of life?

A. Yes.

Q. Legal gender recognition and mental health and substance abuse?

A. Yes.

Q. And there's a big chart and we have to skip to page 10. Let me know when you're there.

A. Yes.

Q. In this section, you look at the connection between legal gender recognition and suicide ideation, planning, and attempts?

A. Yes.

Q. The connection between legal gender recognition and serious psychological distress?

A. Yes.

Q. Legal gender recognition and other mental-health outcomes?

A. Yes.

Q. And then you get into legal gender recognition and tobacco use?

A. Yes.

Q. Access and use of health services and physical health, right?

A. Yes --

Q. And discrimination and violence?

A. Yes.

Q. Dr. Scheim, I want to go through each of those and ask you about the quality and confidence of the evidence for each one, all right?

A. Okay.

Q. So let's start with mental health and substance abuse. I want you to tell me if I read this correctly. The conclusion to that one is actually on page 10.

Mental health and substance abuse is an overall category, right? It's sort of, it includes several sub-categories --

A. Yes.

Q. -- starting with suicidal ideation, planning, and attempts. Do I have that right?

A. Correct.

Q. So for suicidal ideation, planning, and attempts, this is on page 10, in the top right corner, you evaluated all of the evidence connecting legal gender recognition and suicide ideation, planning, and attempts, and your report says, this

outcome was graded as low certainty due to cross-sectional study designs; is that right?

A. Yes.

Q. And then you also evaluated the connection between legal gender recognition and serious psychological distress; is that right?

A. Yes.

Q. Your report here concludes this outcome was graded as very low certainty due to cross-section designs and risk of bias. Is that right?

A. Correct.

Q. And then the connection between legal gender recognition and other mental health outcomes, these outcomes were graded as very low certainty due to cross-section designs, risk of bias, and imprecision. Did I read that correctly?

A. Yes.

Q. Let's talk about how you rated the potential bias of all the studies in this area.

That big chart that we skipped, the chart that spans from page five to nine, that is a list of all the studies in the systematic review; is that right?

A. Correct.

Q. This is a list of all the quantitative studies that you could find on the connection between legal gender recognition and harms to trans people's health; is that right?

A. Yes, as of the date that we searched, yes.

THE COURT: Out of what?

THE WITNESS: As of the date that we searched.

BY MR. COMPTON

Q. You would agree with me that there are 24 of them, right?

A. Yes.

Q. You would also agree with me that 21 of the 24 are at high or very high risk of bias?

A. Correct.

Q. A couple more specific questions for you about the evidence in here and your testimony, Dr. Scheim, and I'm going to go ahead and apologize in advance to you and the Court because these unfortunately involve a little statistics.

A. All right.

Q. Can you turn with me to page 10?

A. Yes.

Q. Do you remember talking on direct examination about the connection between having the

gender you prefer on your driver's license and suicide ideation?

A. Yes.

Q. Do you remember talking on direct examination about the connection between having the gender you prefer on your driver's license and suicide attempts?

A. Yes -- in my direct I didn't talk about the attempts, I talked about ideation.

Q. Do you remember including it in your report?

A. Yes.

Q. We're going to zoom in here on 3.3.1, the top right-hand corner of page, do you see that?

A. Yes.

Q. This first paragraph here, this is your paragraph analyzing the connection between legal gender recognition and past year suicidal ideation, right?

A. Yes.

Q. The first sentence of this paragraph has a parenthetical with a bunch of numbers in it, right?

A. Yes.

Q. I want to ask you about a few of those numbers, hopefully without getting too in the weeds,

okay?

A. Okay.

Q. This parentheticals says, pooled adjusted odds ratio equals .75, 95 percent CI, .056, 1.00 right?

A. Yes.

Q. All we care about here are that last set of numbers? 95 percent CI .56, 1.00, okay?

A. Yes.

Q. Those numbers are the confidence interval for your finding here, right?

A. Yes.

Q. Confidence interval, forgive me for what is going to be a crude approximation of the reality here, is essentially a range in which the authors think that the true result lies, right?

A. I would complicate that a little bit, I think it's too simple to be. I would say it is a range of values that are consistent with the data observed, it doesn't mean the full range of values are not equally plausible.

The reason we have a point estimate is because the point estimate is the most consistent with the data that we observe, technically a confidence interval is if you repeated the study a

hundred times, 95 of the times, the true value would rely on the interval.

Q. So these two numbers here, the .56 and 1.00, these are basically two sides of the bell curve, right?

A. It -- yeah. Yes, the values in the middle are most plausible, and as we get to the ends, they are consistent with the data, but less plausible, so thinking of it that way can be helpful.

Q. And that bell curve is basically the author saying somewhere in here is the reality, we think, right?

A. Yes, most likely to be.

Q. When a confidence interval includes 1.00 like this, that means the authors think it's possible to interpret their data to say there's no association between the things they are studying, right?

A. It means there is a possibility. That is actually a, would be right on the margin of statistical significance.

The reason we actually don't report statistical significance in this article is because in contemporary epidemiology it's actually strongly discouraged to do so because it's an arbitrary line

in the sand.

The point is, is that the data, consistent with an effect as large as a 44 percent reduction and as small as a zero percent reduction, as I already mentioned, as you get to those extremes, it becomes less and less plausible that those are reflections of reality. There would have to be an extreme situation for values at the end of that interval to be reality.

Q. So I just want to be clear, the fact that the confidence interval includes 1.00, means that the authors think it's possible to read their data to say there's no association between the things they're studying.

MR. BLOCK: Objection, asked and answered.

THE COURT: I understood the answer in a way. So do you understand the question that's being asked?

THE WITNESS: Yes.

THE COURT: Okay.

A. A lot of things are possible, it's also highly improbable.

Q. I understand a lot of things are possible, but I want to know what's possible here?

A. I would say possible, but highly improbable.

Q. So you believe it is possible to interpret the data about the connection between legal gender recognition and suicide ideation, to say there's no association between those two things?

A. I don't agree with that statement. It's that the variance in the data are such that it is, the data themselves are consistent with, are possibly consistent with there being no effect.

The most likely estimate is the point estimate, that's why we have that estimate.

Q. I'm not asking you what's most likely, Dr. Scheim.

A. I would say, it's not impossible.

Q. Maybe we can, if we can answer my question --

A. Sure.

Q. Which is, the fact that there is 1.00 here, means that the authors think it's possible to read this data, to say there's no association between suicidal ideation and legal gender recognition?

A. That's not how we interpret, that's not how we interpret a confidence -- if you state a

confidence interval like that, you would not write in the paper, it is possible there's no association.

We would say, we cannot rule out with 100 percent certainty that there is no association.

Q. Dr. Scheim, do you remember giving a deposition in this case?

A. I do.

MR. COMPTON: Permission to approach?

THE COURT: You may, standing permission.

BY MR. COMPTON

Q. I apologize, this is an FD1, Dr. Scheim.

A. Thank you.

Q. We've reached the point of graduating from binder clips to rubberbands.

THE COURT: I don't know if we're at a point where a recess makes sense, or if we're close?

MR. COMPTON: Can I wrap up this question?

THE COURT: Yes, yes.

MR. COMPTON: Thank, Your Honor.

BY MR. COMPTON

Q. What have I handed you, Dr Scheim?

A. A transcript of my deposition.

Q. Does it look accurate, like your deposition?

A. Yes.

Q. Do you remember being under oath when you gave this testimony?

A. I do.

Q. Can you turn to page 221 for me?

A. I'm there.

Q. I'm going to start at line 13, a somewhat similar conversation you and I had before.

And I started my question with, no, I understand that, but taking the confidence interval for what it is, and you interjected, yeah. I say, the fact that the top end is one, means that the data could be consistent with there being no association between legal gender recognition and suicide ideation. And you respond, it's possible, yes. Did I read that right?

A. Yes.

MR. COMPTON: A recess now, Your Honor, is fine with me.

THE COURT: I was just bringing it to your attention.

MR. COMPTON: I have a good deal more to go. A recess now is the same to me as a recess

in 10 minutes.

THE COURT: Let's go ten more minutes.

BY MR. COMPTON

Q. Dr. Scheim, I've got one more confidence interval question for you.

A. Okay.

Q. I want to drop down one paragraph to the paragraph analyzing the connection between legal gender recognition and suicide attempts.

A. Yes.

Q. There is another confidence interval parenthetical here, right?

A. Yes.

Q. I'm going to skip the other stuff, this one say 95 percent CI: .37 1.36, right?

A. Yes.

Q. This is the confidence interval on your finding that there's an association between legal gender recognition and suicide attempts, right?

A. Correct.

Q. The fact that this confidence interval includes a number that is higher than one, means that your finding here is not statistically significant, right?

A. Exactly.

Q. So when you talk in your declaration about the connection between legal gender recognition and suicide attempts, you've published research finding there is not statistically significant connection between those two things?

A. I've actually published both. I published one individual study that does find a relationship, and in the meta-analysis we don't.

One thing that's important to point out here, is that heterogeneity in the meta-analysis that actually suggested that studies are too heterogeneous to be pooled, which makes a pooled estimate unreliable.

Q. I want to be clear about exactly what happened.

First you published an article finding a connection between legal gender recognition and suicide attempts, right?

A. Yes.

Q. And then you cited that article in your declaration?

A. Yes.

Q. But after you published that, you published the systematic review, right?

A. Yes.

Q. In the systematic review, it reviews your own article about suicide attempts, right?

A. Yes.

Q. And it pools it with other evidence?

A. Yes.

Q. And it finds that there's no statistically significant connection between legal gender recognition and suicide attempts?

A. In that pool, in which as we explained, both -- as explained in the article itself is questionable because of the high heterogeneity. When you have -- the statistic for heterogeneity that goes between zero and a hundred percent, this one is 87 percent.

Generally when you see a heterogeneity statistic that high, it means there's such important differences between the studies that a pooled estimate is uninformative.

And the article actually speculates, we don't know why, but we do speculate on some of the reasons for the heterogeneity.

Q. And you cite your article finding a connection in your declaration, right?

A. Yes.

Q. But you don't cite this finding, do you?
A. I cite that article because it also contains the finding on suicide ideation, that's part of the other meta-analysis, so it's relevant to both of those outcomes.
Q. But to answer my question, you cite your own article finding a connection in your declaration, right?
A. Yes.
Q. But you don't cite your own article finding that there's no connection?
A. Correct.
MR. COMPTON: I'm in a break between topics here, Your Honor, if you want to go for that recess.
THE COURT: Let's break, resume at quarter till. Do you have a guess about how much more time you might have? Thirty minutes?
MR. COMPTON: I don't think it will be that much.
THE COURT: Okay. Quarter till.
(A recess was taken.)
THE COURT: Back on the record. Dr. Scheim, you remain under oath. You may proceed with questioning.

MR. COMPTON: Yes, Your Honor.

BY MS. GUST

BY MR. COMPTON

Q. All right, Dr. Scheim, I told the judge we're going to do this in less than half as hour, so let's see what we can do.

Now, the next thing I want to talk about is the 2015 United States Transgender Survey, you talked about this on direct examination, right?

A. Yes.

Q. You'd agree with me your report relies on this data quite a bit, doesn't it?

A. Yes, that and the 2022 survey, but yes.

Q. We can go through them one at a time if you want, by my count, you cite this data or studies of it in 11 paragraphs of your declaration. Does that sound right?

A. I haven't counted, but that sounds right.

Q. And just so I can be clear for the record, I believe it's in paragraphs 23, 27, 30, 36 38, 42, 43, 49, 52, 53 and 56. Does that sound right?

A. I'd have to double check those, but I'll take your word for it.

Q. You mentioned this on direct examination, but the United Stated Transgender Survey is an

anonymous online survey, right?

A. Yes.

Q. So to take the survey, someone just has to go on the website and answer the questions?

A. Yes.

Q. And their name is not gathered as part of the process, is it?

A. No, technically if they want to enter to win a prize, they can enter their name in a separate form. But no, you don't have to provide your name to complete the survey.

Q. They also don't verify the data from this survey, right?

A. Can you clarify what you mean by verify?

Q. So if someone gives an answer, no one makes sure that that answer is true?

A. Correct.

Q. So if someone goes on the United States Transgender Survey and they say they have a license with their preferred sex on it, there's no way to tell if that's actually true or not?

A. No, in survey research, there is generally no way to verify the facts that are reported, that's typical.

Q. So to be completely blunt, people could

lie on the survey, right?

A. People can always lie on surveys, yes.

Q. I want to talk about this, the survey -- it's going to be in volume number two, I think the binder we were in earlier?

A. Yes.

Q. Tab number 33. It's the big one.

A. Yeah.

Q. Let me know when you're there.

A. I'm there, what page is it for?

Q. So first of all, this is the 2015 United States Transgender Survey, right?

A. Yes.

Q. This survey was only administered to adults; is that correct?

A. Correct.

Q. You had to be 18 or over to take the survey?

A. Correct.

Q. Okay. All right, we're going to go to page 296, okay?

A. All right, I'm there.

Q. Give me a second.

THE COURT: Give me a minute to work on something that just came in. Sorry.

MR. COMPTON: Absolutely, Your Honor.

THE COURT: Sorry about that. You can proceed.

BY MR. COMPTON

Q. Dr. Scheim, we're looking at page 296 of the United States Transgender Survey; is that right?

A. Yes.

Q. This page is discussing potential biases and the data, right?

A. Yes.

Q. I'd like to look at the first full paragraph in the left-hand column. I'd like to tell -- you to tell me, if I read this correctly.

In addition to potential biases described above, the USTS, it's United States Transgender Survey have a high-volume of respondents who indicated that their age was 18 years old, and respondents too, based on their birthday were 17 years old. Is that right? Did I read that right?

A. Yes.

Q. If you skip down a little bit, I'm looking at the sentence saying, this resulted. Do you see that?

A. Yes.

Q. This resulted in 18-year-olds comprising

nine percent of the sample. Did I read that right?

A. Yes.

Q. So almost one in 10, nine percent of people who took this survey for adults said that their age was exactly 18; is that right?

A. Yes.

Q. This is because people lied about their age on the survey, right?

A. No.

Q. No?

A. I cannot tell you why, but that's one of multiple potential explanations.

Q. The authors actually recognize this, right? We can --

A. They say it may be attributable to multiple factors, including the explanation you just gave.

Q. Including people lying about their age on the survey?

A. Yes.

Q. And this is the survey that underlies 11 paragraphs in your report, right?

A. Yes.

Q. Now I would like to talk about paragraphs 52 and 53 of your report. I think this has been

admitted as Exhibit 11.

Do you have it up in front of you? It's not in that binder -- close that one and set it aside.

A. Yes, I have it in front of me.

Q. Got your report?

A. Yes.

Q. Can you go to paragraph, let's start with 52.

A. Yes.

Q. I -- I, for the third time in the last two days, I wrote something down wrong. I'm actually interested in paragraphs 54 and 55.

A. Okay.

Q. Do you see those?

A. Yes.

Q. These paragraphs describe original research that you conducted for this case and another case, right?

A. Correct.

Q. Specifically what you did is, you took analyses that you've published and you tweaked it for two different cases, right?

A. Yes.

Q. You tweaked it for a case in Montana?

A. Yes.

Q. And then you did it again for this case, right?

A. Yes.

Q. Your report doesn't describe the changes that you made to your methodology for these analyses, does it?

A. It does because the only thing I changed was how I coded the exposure variable, which I explained in the report.

Q. Has anyone seen the way you change your coding, Dr. Scheim?

A. No.

Q. Have you published the way that you changed your coding anywhere?

A. No.

Q. Have you published the results of these analyses that you did for this litigation anywhere?

A. No, I don't believe they'd be publishable, they're too close to the original research.

Q. Have the findings that you announced here, the result of your original research, paragraph 54 and 55, have those been independently reviewed by anyone?

A. No.

Q. You haven't even showed your coding to the plaintiffs, have you?

A. I wasn't asked for the coding.

Q. So -- and you're not allowed to share the data that underlies this analysis either, right?

A. No, I wasn't allowed to share the data when I submitted the article either, that's often typical where you have confidentiality guarantees for participants as part of the review process.

Q. So for these two paragraphs in your report, the only person in this room who has seen your coding or your data is you?

A. Yes.

MR. COMPTON: Nothing further -- or let me check with counsel, Your Honor.

Nothing further, Your Honor.

THE COURT: Redirect?

MR. BLOCK: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. BLOCK

Q. Dr. Scheim, just a few things to clear up. Can we go back to page 296 of the US Trans Survey --

A. Yes.

Q. -- that you were just discussing. So in that same paragraph, where it was read to you that

18-year-olds comprised nine percent of the sample --

A. Yes.

Q. Could you read the following sentence beginning with, it is impossible?

A. It is impossible to determine the source of the entirely, but in order to correct for it, the research team traded away to adjust the 18-year-olds in the sample, so the respondents reporting that age appeared more like the 19-year-old respondents in both sample size and other demographics.

Q. So what does that mean in layman's terms?

A. It means that they under weighted the data from the 18-year-olds so they weren't over-represented in the sample estimates. And they also adjusted for demographic differences between those two groups.

Q. And the purpose of that weighting was to sort of counteract the overrepresentation in the survey of people who identified as 18-year-old?

A. Yes.

Q. Thank you. Sorry, did you have something else to add?

A. Just one thing I think is important to point out, that they say we can make it possible to determine, an important consideration that the

transgender population is incredibly young and so we would actually -- what's not clear is how much older representation we would expect because we don't have data on exactly the distribution of transgender people in each age group.

But we would expect there to be more people at younger ages in any sample of transgender people, so it's not clear that there necessarily should be the same number of 18-year-olds as 19-year-old in the first place.

Q. Great. I'd also then like to go back to the portion of your article that you were discussing, so I guess that's on tab 34 of the same binder you're looking at right now?

A. Yes.

Q. If you could turn to the page where it's discussing suicidal ideation, planning, and attempts.

A. That's on page 10?

Q. Yes, it is.

A. Okay, I'm there. Now, what is the difference between suicidal ideation, planning, and attempts.

Q. Suicidal ideation is generally measured in these studies as a response to a question such as,

in the prior year, have you seriously considered suicide or seriously thought about killing yourself.

Suicide planning is a question, in the past year, have you made a plan to die by suicide. And suicide attempts would be, in the past year, have you attempted suicide.

Q. And so in this section, which of those three variables, ideation, planning, or attempts was the variable where it had a confidence interval that included null effects?

A. That was for ideation.

Q. It was for ideation?

A. Yeah, it included, so that's the one that just included 1.0.

Q. And for planning, that was not one?

A. Confidence interval was .64 to .87.

Q. Okay. And so what was the one for attempts then?

A. Attempts is .37 to 1.36.

Q. Did you have something to add when opposing counsel was saying, why did you cite this information, why did you cite this article in your declaration, but not a different article?

A. Yes, so first of all, I explicitly do not draw -- I do not make any opinions in my declaration

about suicide attempts, because I do think the evidence is inconsistent and there's more research that needs to be done.

I do highlight that one paper we mention in the systematic review, the one thing that's important, when I mention the high heterogeneity.

When we see high heterogeneity in a meta-analysis, we look at the individual studies to try to understand what the source of that heterogeneity might be.

And what we see actually, is that there are four studies in that meta-analysis, if we look at the individual studies, to find that having gender accordant identity documents is associated with fewer, with less psychological -- with fewer suicide attempts and two studies do not.

The two studies that do, both focused on populations that we would believe would have been more likely from changing their identity documents in the first place.

So the study from Canada that I co-authored, only looked at updating identity documents amongst participants who were living full-time in a binary gender, so full-time as men or women. At that time, in Canada, people couldn't

change their ID to anything other than male or female, so that's the group for whom we would expect there to be a relationship, if there was one.

In the case of the other study, they limited the analysis to people who wanted to change their ID and they were comparing people that had and hadn't been able to, so that helps to explain some of that heterogeneity.

But again, because the evidence is inconsistent, I don't make opinions about suicide attempts specifically.

Q. And if you turn to your report, which is tab 11, if you could look at paragraph 51?

A. Yes. Yes.

Q. Do you refer to suicide attempts anywhere in that paragraph?

A. No.

Q. You do refer to suicidality, correct?

A. Yes, I specifically, consideration of suicide ideation and planning is what I refer to in that paragraph.

Q. And is the existence of suicidality or suicidal ideation independently relevant aside from the fact that it might lead to actual suicide?

A. Yes, so I mean epidemiology, and public

health more broadly, we think suicidal ideation is in and of itself a problematic health outcome whether or not it leads to suicide attempts.

You know, it's associated with, you know, problems functioning in daily life, with time that's from work, with, obviously, with great mental distress. To have suicide ideation, you need to have pretty severe psychological distress and so that is important in and of itself.

And it's also a very common phenomenon in epidemiologic and psychiatric research that the factors that predict suicide ideation and attempts do differ because there's specific things that need to be present for ideation to turn into an attempt, including access to means of attempting suicide, and ways to overcome the fear of dying by suicide, and that differentiates those across a range of factors that might contribute to suicidality.

Q. You also discussed with opposing counsel the risk of bias in a certain study?

A. Yes.

Q. And so if a study is measuring negative impacts on mental health, does the risk of bias just mean that it might be overstating the negative impacts?

A. No, so the risk of bias, when we say bias, we mean a systematic error in a particular direction. But that could be in either direction, and in fact, there are several studies that we cite in the systematic review that we think over-adjusted, that would have potentially had bias towards a null or no effect.

So for example, there were several studies that adjusted for discrimination. That is problematic because discrimination is what we hypothesize to be one of the main mechanisms that leads from having discordant identity documents to depression, suicide ideation, et cetera.

So if you adjust for discrimination, you're adjusting away the process that actually leads to that relationship and you're going to end up biasing your estimates towards no effect.

Q. So the existence of a risk of bias could mean that the harmful effects are even greater than what was reported in the study?

A. Correct.

Q. And then finally, you discussed with opposing counsel about how the World Health Organization required that all systematic reviews for guidelines be graded under the grade

methodology?

A. Yes.

Q. In issuing a guideline, does the World Health Organization only issue guidelines that are supported by information that ranks higher than low quality?

A. No, they regularly, they show guidelines and, in fact, many clinical guidelines make recommendations even when the evidence has been rated as low certainty. They make recommendations based on the best available evidence, there would be many areas of medicine in which there would be very few guidelines if the evidence was required to be high quality.

And in the guidelines, they will recognize that this recommendation is based on evidence of this certainty level, so it's transparent but they make recommendations nevertheless.

Q. So just because the evidence was reported as being low-quality under grade, that doesn't mean that the evidence wasn't good enough for the WHO to issue a guideline recommendation, correct?

A. Correct.

Q. And are you aware of what the ultimate guideline recommendation will be with respect to ID

documents and gender identity?

A. Yes, I am.

Q. And what is that?

A. They plan to issue a recommendation that states should adopt policies that allow for legal gender recognition.

MR. BLOCK: Thank you, no further questions.

THE COURT: Mr. Compton, any follow up from that?

MR. COMPTON: Nothing further, Your Honor.

THE COURT: Doctor, Thank you.

THE WITNESS: Thank you.

MS. FRUITWALA: Plaintiff calls Dr. Cynthia Calkins to the stand.

THE COURT: Doctor, come forward and be sworn.

CYNTHIA CALKINS, having been duly sworn by the court reporter, testifies as follows:

DIRECT EXAMINATION

BY MS. FRUITWALA

Q. Good afternoon, Dr. Calkins.

A. Good afternoon.

Q. Thank you for being here. Can you please

state your name and spell it for the court reporter?

A. Sure, my name is Cynthia Calkins, C-Y-N-T-H-I-A, last name Calkins, C-A-L-K-I-N-S.

Q. What is your profession?

A. I am a tenured professor of psychology at the John Jay College of Criminal Justice.

I also have a clinical practice where I evaluate offenders and people charged with sexual crimes.

Q. Do you have expertise in the particular type of psychology?

A. I do, I am a clinical forensic psychologist.

Q. What is forensic psychology?

A. So forensic psychology refers to the intersection of law and psychology. And often it may include any number of things including the evaluation and treatment of offenders.

Q. And what do you do as a forensic psychologist?

A. So as a forensic psychologist, I do, as part of my professor role, I do research and teaching. And as a clinical psychologist in my private practice, I also do evaluations of people who, typically who have been charged with sexual

offenses.

Q. How long have you worked as a forensic psychologist?

A. I've been licensed for about the last 15 years or so.

Q. Can you tell us about your formal education and training?

A. Sure, so I did my undergraduate degree in psychology at the University of Buffalo. From there I did a Master's of Clinical Psychology at the University of Nevada, Las Vegas.

From there, I did my PhD at the University of Nebraska, Lincoln, in clinical psychology. And while in Nebraska, I also got a Master's of Legal Studies.

From there I did a predoctoral internship at the Florida Mental Health Institute in Tampa. And then from there, I did a postdoctoral work in Melbourne, Australia both at Monash University and at the Victorian Institute of Forensic Mental Health for their forensic care system.

Q. Let's start with your work as a professor. What is your current position?

A. I am a full professor at the John Jay College of Criminal Justice.

Q. What does your work as a full professor involve?

A. My work involves a balance of teaching, research, and committee work.

Q. Do you teach any classes on sexual offenses or sexual offenders?

A. I do, I have taught a class on sex crimes or the evaluation of sex offenders just about every semester since I've been at the college, or the last 20 years.

Q. Can you tell us about some of those classes?

A. Yes, the class I teach on sex crimes is offered in the school of criminal justice, and we cover sex offense policy and the treatment of offender populations in the criminal justice system.

The class that I teach in our psychology department has a lot of overlap. We also spend a lot of time talking about sex offense policy, but in addition, that class covers ideology of sexual offenses, diagnosis, and evaluation of sexual offenders, and the treatment of sexual offenders.

Q. Can you tell me about your work with the Sex Offender Research Lab?

A. Yes, my colleague, Elizabeth Jeglic, and I

are the directors of that lab. We have a number of students who work under us, students at the BA level, at master's level, at the doctoral level, who are working on projects related to our larger research program or who are doing individual projects that typically, in some manner, relate to sexual offending.

THE COURT: Can you spell your associate's name?

THE WITNESS: Yes, it's Elizabeth Jeglic, J-E-G-L-I-C.

BY MS. FRUITWALA

Q. Are you a founder at that lab?

A. I am.

Q. Let's talk about your research. What topics do you research?

A. I research a variety of topics, but the overarching aim or overarching goal is to promote the prevention of sexual violence, and we do this through an analysis primarily of current sex offense policy.

So we examine and evaluate the evidence underlining current sex crime policies.

Q. Have you received any research grants?

A. I have received a number of research

grants, including two major ones from the National Institutes of Justice.

Q. Have you published any articles?

A. I have published approximately 100 articles.

Q. Are any of those articles peer-reviewed?

A. About half or 50 of them are peer-reviewed.

Q. What does it mean to be peer-reviewed?

A. So peer review refers to an independent analysis by colleagues in the field or experts of the methodology, the scientific rigor, and the claims that you're making in your study.

So it's an independent review typically done by three independent evaluators to overall assess the quality and fit for that journal.

Q. About what percentage of your articles have been on sexual offenses and sexual offenders?

A. I'd say roughly 90 percent.

Q. Do you serve as an editor for any peer-reviewed journals?

A. I do, I'm on the editorial board of psychology crime and law. I also serve on the editorial board of the judicial notebook and then I serve as an ad hoc reviewer for journals like

Psychology and Law and Sexual Abuse.

Q. Have you written any books?

A. I have written four books.

Q. On what topics are your books?

A. One of my books is titled Sexual Violence, Evidence-Based Policy and Prevention. Another book is labeled Protecting Your Child From Sexual Abuse.

The other two books relate to, one is a handbook of criminal justice reform, and the other deals more broadly, it's a handbook of offender treatment.

Q. I'd like to move into your clinical work. What do you do as a clinician?

A. So as a clinician, I have a private practice where I do a variety of evaluations, primarily those evaluations are of people charged or convicted of sexual offenses.

Q. And what does an evaluation of someone who is convicted of a sexual offense involve?

A. It depends, to some degree, on the referral question, but often I'm asked to consider and opine on diagnosis. I might be asked to explain the context or motivations around the crime. Sometimes I'm asked about treatment amenability, or what sort of treatment might be most appropriate.

In most, I'm almost always asked about risk of reoffense.

Q. Have you worked with sexual offenders in a treatment context?

A. I have in Nebraska, in Australia, and also in Nevada.

Q. Dr. Calkins, did you prepare a declaration in this case?

A. I did.

Q. Can you please turn to tab 17, in the white binder in front of you? Are you there?

A. Yes.

Q. Great. Do you recognize this document?

A. I do.

Q. Is this your declaration?

A. It is.

Q. And does this declaration contain your signature?

A. Yes, it does.

MS. FRUITWALA: Your Honor, I move to admit Dr. Calkins' declaration as Plaintiff's Exhibit 17.

MS. GUST: No objection, Your Honor.

THE COURT: 17 is admitted.

(Plaintiff's Exhibit 17 was

admitted.)

MS. FRUITWALA: Thank you, Your Honor.

BY MS. FRUITWALA

Q. Dr. Calkins, as part of your work as a researcher and professor, do you regularly review the research in the field of forensic psychology?

A. I do.

Q. Have you been retained as an expert in this case?

A. I have.

Q. Are you being compensated for your time?

A. I am.

Q. Does your compensation depend on the outcome of this case?

A. It does not.

Q. Have you been qualified as an expert witness in prior cases?

A. I have.

Q. How many cases?

A. Approximately 15.

Q. On what topics have you been qualified as an expert witness?

A. Sexual violence, risk assessment, sex offending.

MS. FRUITWALA: Your Honor, at this time, plaintiffs move to have Dr. Calkins qualified as an expert witness in forensic psychology, sexual offenses, sexual offenders, sex crime policy and prevention, and psychosexual evaluation risk assessments.

MS. GUST: No objection, Your Honor.

THE COURT: Without objection, she'll be allowed to testify on those topis as an expert.

MS. FRUITWALA: Thank you, Your Honor.

BY MS. FRUITWALA

Q. Dr. Calkins, have you developed expert opinions in this case?

A. I have.

Q. Do you have an opinion whether sexual offenses occur in public restrooms?

A. I do.

Q. What is that opinion?

A. I do not think that they occur with any regularity in public restrooms.

Q. Do you have an opinion on whether transgender and intersex people are more likely to commit sexual offenses.

A. I do not think that transgender or

intersex people are more likely to commit sexual offenses.

Q. Do you have an opinion on whether transgender or intersex people are more likely to be victims of sexual offenses?

A. I do believe that there are higher rates of victimization among the transgender and intersex communities.

Q. Do you have an opinion on whether restroom policies like SB 244 will decrease the rates of sexual offenses in Kansas?

A. I do not think they will make a dent or make a change in rates of sexual violence in Kansas.

Q. Dr. Calkins, let's start with your first opinion on the location of sexual offenses.

Much of your research has focused on this topic. What prompted you to look into the location of sexual offenses?

A. So we originally began this line of work because we were interested -- in the early 2000s, a lot of residence restriction legislation had been passed by the nation, and this implied that there were strangers perpetrating offenses in places like public parks or public settings.

So we knew that most offenses were not

committed by strangers, but we didn't know precisely the locations where a lot of this was occurring. So we decided to look at data to get a better estimate of where sexual offenses are actually occurring.

Q. How many studies have you conducted on the location of sexual offenses?

A. Approximately five.

Q. And what methodologies do you use in your research on sexual offenses?

A. So I use a variety of methodologies depending on the research question that we're to answer.

I've used predictive modeling. I've used mapping analyses. We've used survey data. We've used archival studies, archival data. We've used case-controlled methodologies that compare different samples of offender or non-offender groups and the like.

Q. I want to focus on archival studies. What are archival studies?

A. So archival studies rely on existing datasets. So in our case, for example, that typically includes reliance on criminal justice records.

So if we're looking at a sample of

incarcerated offenders, we might be relying on what's in their criminal records, so things like rap sheets, treatment reports, police records and so on.

Q. Are there limitations to archival studies?

A. Yes, there are limitations to all types of studies, but archival studies are limited by what's available in the existing record and those records weren't created for research purposes, they are just the existing record of that case.

Q. Given the limitations, why do you conduct archival studies?

A. I think it's the best way, for example, to answer the question of where the crimes occurred. We wanted to get a sample of convicted sexual offenders, and see what was recorded on those case files about the location of the offenses.

Q. Let's talk about a few of your archival studies on the location of sexual offenses. Can you tell us about your 2009 study entitled Situational Aspects of Sexual Offending?

A. Yes. So the 2009 study used a sample of 405 convicted sex offender cases, and we wanted to see how many of those occurred in public, semi-public, or private locations.

We found in that study that seven percent

of the sample occurred in a public setting.

Q. Where did the other 93 percent of the offenses occur?

A. The overwhelming majority of cases, or 82 percent occurred in a residential location. So this was typically the home of the offender, the home of the victim, or a shared home of the offender and the victim.

Q. And so 82 percent occurred in residences, seven percent occurred in public, what about the remaining?

A. The remaining occurred in places that we operationalized as semi-public, so something like a vehicle that offers a degree of privacy. It's neither public or entirely private.

Q. Okay. Great. So of the seven percent that occurred in public, what public locations were prevalent in the data?

A. Public locations included places like a wooded, a wooded lot, parking lots, parks, and I think there was a boardwalk, malls and so on. Oh, bars.

Q. Did any of the 405 cases occur in a public restroom?

A. No, they did not.

Q. Let's move on to your 2011 study entitled Can Examination of Offense Location Inform Sex Crime Policy. Can you tell us about that study?

A. Sure. This was a similar study using a larger sample of some 1500 cases, and again, it was archival, so we used existing data and we had a team of research assistants who coded the case files to see where these crimes had occurred.

In that study, we found that four percent occurred in a public location.

Q. How many case files did you review?

A. There was, I believe it was 1,568.

Q. Okay. You said that four percent were in a public location?

A. Yes, again the majority occurred in private residential locations and perpetrated by acquaintances or people known to the victim.

Q. And of the four percent that did occur in public, which public locations were prevalent in the data?

A. We have a whole list in the study, but again malls, parking lots, wooded areas, bars, restaurants, that type of thing.

Q. Did any of the roughly 1500 cases occur in a public restroom?

A. No, we later went -- sorry. Sorry about that. I thought my phone was silenced, but the alarm went off.

So did any of them occur in a public restroom?

Q. Yes.

A. No, they did not.

Q. Let's talk about your 2015 study entitled Where Do Sex Crimes Occur, what did that study entail?

A. So in that study we were interested really in that four percent of cases that did occur in a public area. So what we did is, we went back and we looked at or did a bit of a deeper narrative analysis to try to get a sense of what those cases looked like.

So that study was a little more qualitative in design than the other ones. We wanted to know, for example, for cases that were occurring in schools, what exactly did that look like.

The key finding from that study is that half of one percent of the total cases met that stranger danger narrative. And by the stranger danger narrative, I mean that half of one percent

were cases perpetrated by a stranger toward a child victim in a public place.

Q. And did any of the cases that you evaluated for that study occur in a public restroom?

A. No.

Q. Do you have an understanding of why people think that sexual offenses occur in public restrooms?

A. So I think this is largely driven by media reporting, these are highly sensationalized. There have been isolated cases, we hear about them in the media, and there has been, for some time now, this stranger danger narrative that seems to be driving sex crime policy.

Q. Are there reputable scholars in your field who would disagree with your opinion that public restrooms are not a typical site of sexual offenses?

A. I do not believe so, no.

Q. Dr. Calkins, let's move on to talk about who commits sexual offenses. In your field, is there any data supporting the notion that transgender people are more likely to commit sexual offenses?

A. Not that I'm aware of, no.

Q. Can you tell us about the research that's

been done on this question?

A. Yes. So there is one study, for example, Meyer's 2022 work of LGBTQ people on sex offender registries. So this is a snapshot of people who have been convicted of sex crimes and who are already on a sex offense registry.

That study analyzed or looked at -- or sorry, surveyed just under 1,000 people, and there were seven people who identified as transgender in that survey.

Q. In your own clinical work conducting risk assessments of sexual offenders, how many sexual offenders have you evaluated?

A. Approximately 500.

Q. And when you conduct your risk assessments, do you ask the sexual offenders about their gender identity?

A. I do. I do a fairly comprehensive sexual history. And so I ask about many things, including their identity.

Q. Of the 500 sexual offenders that you've evaluated, how many were transgender?

A. None, that I can recall.

Q. So based on your education, training, and the existing research in the field, what is your

opinion about the relationship between transgender identity and sexual offending?

A. There is no relationship that I can see.

Q. Dr. Calkins, has there been any scientific research into whether transgender inclusive restroom policies have an impact on rates of sexual offenses?

A. Yes, there is a study out of Massachusetts, Hasenbush in 2019. And what they did was to compare localities that had nondiscrimination bathroom policies with those that did not.

And they looked at incidents of sex crime, of voyeurism, any some sort of criminal incident, both before and after passage of the laws. And they also looked at matched communities to see if there were any differences in places that did or did not have these laws in place, and they found there was no impact. It didn't seem to make a difference in terms of criminal incidents.

Q. And what is a transgender inclusive restroom policy?

A. So I think this is referring generally to bathroom bills of the SB 244 type.

Q. And what were the authors able to conclude from the data?

A. So they concluded that the

nondiscrimination policies had no impact on rates of criminal incidents in bathrooms in Massachusetts.

Q. Defendants suggest that men might pretend to be women to perpetrate a sexual offense in a public restroom. Have you ever observed this pattern?

A. I have not observed that pattern, and it seems unlikely based on what I know about how sexual crimes are committed.

Q. Are there reputable scholars in the field of forensic psychology who would disagree with your opinion that transgender people do not commit sexual offenses at higher rates?

A. I do not believe so.

Q. I would like to move on to talk about victimization rates. What does the research show on whether transgender people are more likely to be victims of sexual offenses?

A. So the research does demonstrate that transgender people report higher rates of sexual victimization.

Q. Can you tell us about some of that research?

A. Yes, one, an example of one study is Ybarra's, Y-B-A-R-R-A, work. And in this work, she

looked at both survey research from a national large 4,000-person sample of youth and found that transgender youth reported about double the rate of victimizations, but there was no higher rate of reported sexual violence perpetration.

Q. What does the research show about whether intersex people are more likely to be victims of sexual offenses?

A. So there is also a large-scale study out of Europe from the European Union showing that intersex individuals report around 31 or 32 percent rate of victimization.

Q. Based on the evidence in your field, what is the reason that transgender and intersex people are more likely to be victims of sexual offenses than cisgender people?

A. It's highly stigmatized and so I believe they are targeted.

Q. Are there any reputable scholars is your field that would disagree with your opinion that transgender and intersex people are more likely to be victimized?

A. I do not believe so.

Q. Dr. Calkins, were you in the courtroom when Dr. Turpin testified earlier?

A. I was.

Q. Did you hear a discussion about an article from a journal entitled Frontiers of Sociology?

A. Yes.

Q. Are you familiar with this journal?

A. I am familiar with that journal.

Q. Is it a reputable journal in the field of sociology?

A. It is a reputable journal.

Q. Does the journal publish peer-reviewed articles?

A. They do.

Q. Let's move on to talk about sex crime policy. We discussed earlier that you've written several books and articles on evidence-based policy. What does it mean for a policy to be evidence-based?

A. So evidence-based refers both to the logic or rationale underlying the law. So we test the assumptions on which laws are designed, including, for example, the stranger danger assumption.

As well, we do work to see whether laws are working. So this might include community identification laws, resident restriction laws, or the like, are they doing what they are intended to do, which is to lower rates of sexual violence in

our communities.

Q. Can you give us an example of sex crime policy that's not evidence-based?

A. Yes, easily. A lot of our current sex crime policy is not working, and has had no measurable impact on rates of sexual violence in our communities.

So for example, residence restriction law, community notification laws, which are widespread. And even sexual violent predator legislation and this is all likely because they are based on the stranger danger model of offending.

Q. Some people might say, even if a policy isn't evidence-based, what's the harm if it prevents a single sexual assault? What is your response to that?

A. My response to that is that we ought to target our efforts to where the crimes actually are occurring.

So if we know that 82 percent of the crimes are taking place or 90 percent are being perpetrated by people known to the victim, then we should target our efforts and resources and money and attention to doing things that will actually move the needle or make a dent in overall rates of

sex crime.

On top of this, a lot of our current legislation has unintended collateral consequences that tend to actually destabilize offenders and may make sexual violence more likely.

For example, resident restrictions tend to destabilize offenders, they often lose housing, they have nowhere to live. This has happened in many communities like Iowa or Florida. Cases of people living under bridges or in parks because they no longer have homes that fall in the limits.

And they are unable to access treatment or unable to attend appointments or essentially be on the radar and be accounted for. So they have the tendency to destabilize offenders in ways that make sexual offense more likely rather than less likely.

Q. In your declaration, you discuss a crime prevention model called situational crime prevention. What is situational crime prevention?

A. Situational crime prevention is a leading criminological theory that posits essentially that we should focus on situations and modify structural aspects of the environment to make crime less likely or less appealing.

So it's all about increasing the risk to

offenders, decreasing the rewards, and overall changing the calculus of crime. So if somebody is motivated to commit a crime, they would be less likely to decide to do so.

Q. Can you give us an example of crime policy that uses a situational crime prevention model?

A. Yes, lots of cities or neighborhood use, have increased police surveillance or increased lighting and that's associated, like the more streetlamps in a community, the fewer crimes like vandalism and so on.

In the realm of sexual offending, one of the landmark studies is called Shifting Boundaries, and this is a study that examined 30 middle schools, and middle schools were randomly assigned to either a situational crime prevention approach or not, that involved mapping of hotspots where bullying and perpetration and problems tended to happen in the middle schools.

So for those middle schools that received the environmental or situational intervention, there was more surveillance around these hotspots, there was also visible posters making clear what perpetration or what counts as bullying, and that king of thing, and even some structural changes to

the way classes are let out at different times, so that the flow of students in the hallway is different.

And this study was found -- I'm sorry, in the study, the building level interventions were found to have the biggest driver of sexual violence perpetration and bullying rates. So they had the most impact on lowering rates of sex crimes in schools.

Q. Dr. Calkins, I know you already testified that sexual offenses don't occur in public restrooms. Let's assume for the purpose of this next question that we have evidence that sexual offenses are common in public restrooms in Kansas.

Based on the empirical evidence in your field, which interventions are likely to reduce the prevalence of sexual offenses in public restrooms?

A. So I would be surprised to see that because it's not consistent with my own clinical experiences or anything that I've seen in the research. But if that were true, I think the best way we could deal with this problem would be through situational approaches.

So this would mean, it could be a number of things, but perhaps better lighting, more

surveillance or staffing of bathrooms. It might involve for open sightlines in bathrooms or public restrooms. Things like alarm buttons, things like having multiple exits to a bathroom. Any or all of these things would be structural sorts of changes that I would expect might cause a would-be offender to pause and weigh the risks and likelihood of getting away with a crime in this area, and perhaps decide not to do it.

Q. Dr. Calkins, you testified on whether sexual offenses, or where sexual offenses are committed, who commits sexual offenses, and how to prevent sexual offenses from being committed.

Is there any evidence that public restrooms are a common site of sexual offenses?

A. Not in my experience, no.

Q. Is there any evidence that transgender and intersex people are more likely to commit sexual offenses?

A. There is not.

Q. Is there any evidence that trans inclusive restroom policies have any impact on rates of victimization in public restrooms?

A. There is not.

Q. Is there any reputable scholar in your

field who would disagree with your opinions that sexual offenses do not occur in public restrooms and that transgender and intersex people do not commit sexual offenses at higher rates?

A. No, I do not believe so.

Q. In your opinion, as an expert on sexual offenses and sex crime policy, does SB 244 increase the safety of women and girls in public restrooms?

A. I do not believe that increases the safety of women and girls in public restrooms, or that it will make any difference in terms of rates of sex crime in Kansas.

MS. FRUITWALA: Thank you, Dr. Calkins.

MS. GUST: Your Honor, cross-examination?

THE COURT: Yes, please.

CROSS-EXAMINATION

BY MS. GUST

Q. Good afternoon, Dr. Calkins, it's nice to see you again.

A. Good afternoon, it's nice to see you, too.

Q. Dr. Calkins, is it -- would you agree that your expertise in this matter is in the manner and locations in which sex crimes occur?

A. I think that's fair to say.

Q. You do not offer any opinions regarding women's interest in privacy in public restrooms, or locker rooms, correct?

A. I've been brought here to talk about sex crimes and where sex crimes occur.

Q. So is that a no?

A. Am I an expert in privacy? No.

Q. That you're not offering any opinions on privacy interests, correct?

A. No.

THE COURT: No, that's correct, you're not.

THE WITNESS: That's correct, I'm not.

BY MS. GUST

Q. I'd like to start by discussing the reactions of women who experience crimes like exhibitionism and frotteurism, and I promise we will define those terms for the Court.

But your declaration cites to two studies focused on exhibition and frotteurism, correct?

A. Correct.

Q. That's a More Than a Nuisance, the Prevalence and Consequences of Frotteurism and

Exhibitionism, right?

A. Correct.

Q. And Frotteurism and Exhibitionism: An Updated Examination of Their Prevalence, Impact on Victims and Frequency of Reporting?

A. Correct.

Q. Exhibitionist is the exposure of one's genitals to an unsuspecting person?

A. That's correct.

Q. And frotteurism is defined as sexual urges or behaviors that involve touching or rubbing up against a non-consenting person?

A. Correct.

Q. Your study found that almost 62 percent of female victims of exhibitionism reported feelings of violation or disgust?

A. Yes.

Q. Female victims also reported changes in behavior after being victimized?

A. That's correct.

Q. It's not surprising that anybody subjected to unwanted exposure would experience disgust, shame or be upset, right?

A. I think any victim of a sex crime might experience disgust, shame, upset and a host of other

emotional sequelae.

Q. You would agree that everybody deserves to have private spaces where they can go to the bathroom or change or feel safe?

A. I think everybody deserves to feel safe.

Q. Moving from victims' reactions to how to prevent sex crimes. And you talked a little bit about situational crime prevention previously, right?

A. Correct.

Q. You recommended that situational crime prevention is one way to prevent sex crimes?

A. That's correct.

Q. Situational crime prevention focuses on managing the immediate environment to reduce opportunities for crime?

A. Yes.

Q. In your declaration you suggest several situational crime prevention measures including bathroom attendants, right?

A. That's correct.

Q. You did not analyze the cost of having a bathroom attendant in every public restroom in Kansas?

A. I did not, that's not my expertise.

Q. Or the practicality of that?

A. I assume that some of those ideas, like an alarm button or better lighting would be more practical than others.

Q. Let's turn to the opinions you offer in this case and the quality of the underlying data that you rely on in support of those studies.

First, I'd like to talk about your opinion regarding exhibitionism and frotteurism. You opine that public restrooms are not a common site of sexual offenses, like exhibitionism and frotteurism, correct?

A. I'm sorry, can you repeat?

Q. You opine that public restrooms are not a common site for sexual offenses like frotteurism and exhibitionism?

A. That's correct.

Q. In formulating your opinion, you relied on the two studies we already addressed, More Than a Nuisance and the Frotteurism and Exhibitionism: An Updated Examination, correct?

A. Yes, and particularly the first study, because we were able to go back and search how many of those, of the 263 reported incidents of exhibitionism or frotteurism happened in a public

restroom or a locker room.

Q. Those studies looked at the frequency location and victim reactions to exhibitionism and frotteurism, correct?

A. That was part of the study, yes.

Q. Those studies did not analyze where voyeurism occurs, correct?

A. That was not a goal of the study.

Q. So is that a no?

A. Yes, we did not study voyeurism in those two studies.

Q. And when I say voyeurism, voyeurism refers to watching an unsuspecting person whose naked, undressing, or engaging in sexual activity, right?

A. That's correct.

Q. Let's talk about your participant pool for those studies. The pool of participants was made of undergraduate students from an urban university in New York City?

A. Correct.

Q. As far as you know, none of the participants were from Kansas?

A. I don't know, most of the students, or all of the students had some affiliation with the John Jay College of Criminal Justice in New York. Many

or most of them would be living in or around the New York City area, but we do get many students from other states as well.

Q. But you don't know if any came from Kansas, correct?

A. I don't know that, no.

Q. The study acknowledges that the use of an urban college sample may have decreased the generalizability of these findings, right?

A. That's correct.

Q. You agree that Kansas does not have a subway or metro system like New York City, correct?

A. It certainly doesn't have as extensive a subway system as New York City does, but there is public transportation here. I've been seeing those Jayhawk buses looping around.

Q. Neither study asked participants about their use of public restrooms, correct?

A. No, I believe we asked about their use of parks.

Q. Both studies affirmatively ask participants about their use of public transportation, correct?

A. Correct.

Q. Which is consistent with the ultimate

study, finding of the study, correct?

A. I'm sorry, can you -- we did ask students about their use of public transportation, yes. And we did find that the most common sites for these, what were historically called nuisance type sex offenses were occurring in places of public transport.

Q. Turning to your next opinion regarding where contact sex crimes occur. Specifically I'd like to talk about the data underlying the studies that you relied upon to reach this opinion.

You opine there's almost no evidence to suggest that restrooms are a common site of violence, correct?

A. Correct.

Q. You cited to two studies in support of that opinion in your declaration, correct?

A. I don't recall which two, but that sounds right.

Q. The data in those studies was not collected for research purposes, but instead came from archival criminal justice records, right?

A. That is correct.

Q. Those records listed locations such as hospital and workplace as locations of sex crimes,

correct?

A. Correct.

Q. You'd agree that there's generally restrooms in hospitals and workplaces, correct?

A. Yes.

Q. Both of those studies used data from New Jersey, right?

A. Yes, they did.

Q. None of that data came from Kansas, correct?

A. That is correct.

Q. You also mentioned the 2015 study that you did, Where Do Sex Crimes Occur?

A. Yes.

Q. Would you agree that the purpose of the paper was to explore the frequency and nature of sex crimes that occur in locations restricted by geographically based sex crime legislation?

A. Yes, that was the study that we decided to look and do a deeper contextual narrative type analysis of the crimes that were happening in public places.

Q. Would you agree that the location examined in that study is where the offender met the victim, which is not necessarily where the sex crime

occurred, correct?

A. So in our studies, we have distinguished between -- because we've ran into this problem that often where somebody meets the victim, is different from where the offense is perpetrated.

Q. So my questions is a little bit different, and it's a yes or no. The location examined in that study is where the offender met the victim, which is not necessarily where the sex crime occurred, correct?

A. Correct. That sounds about right.

Q. And would you agree that the goal of that study was to provide a more highly contextualized understanding of sex that occurred in areas typically restricted by sex crimes legislation, such as school, parks, churches, and bus stops, correct?

A. Correct.

Q. Now, I'd like to look at how many instances of contact sexual assault you analyzed. You opine that there's almost no evidence to suggest that restrooms are a common site of violence. So you predominantly rely on two studies, correct?

A. So there's five studies overall, three dealing with contact sexual offenses, and two dealing with these nuisance or exhibitionism,

frotteurism type offenses.

Q. So I'd like to focus on the two studies, the 2009 and the 2011 studies. So combined, those studies analyzed around 2,000 incidents of contact sexual crimes, correct?

A. That's correct.

Q. Those studies, those offenses were committed by individuals released between 1996 and 2007, correct?

A. That's correct.

Q. The studies do not actually state when the crimes occurred, correct?

A. The studies don't state where --

Q. When the crimes actually occurred?

A. We would have that data in our dataset. Of when the crimes occurred?

Q. Yes.

A. Yes, I don't know if that was reported, but that would have been -- we knew when they were released, we would have recorded when they committed their criminal offense too.

Q. I'm asking, does the study state when those crimes occurred?

A. I don't know offhand. I don't think we reported that, but that would have been in our data

collection tool.

This was a follow-up recidivism study, so they had to be released between, I think it was 1996 and 2007, so that we had sufficient time to follow them to get meaningful recidivism data.

Q. Fair enough. So let's take 1996 to 2007, because those are the numbers in the study that these individuals were released.

In any given year, you would agree that there are roughly 500,000 reported contact sex offenses in the United States, correct?

A. I trust your numbers.

Q. So from 1996 to 2007, that would be 5,500,000 contact sexual crimes, correct?

A. Okay.

Q. Yet you only looked at approximately .04 percent, right?

A. So the way --

Q. Dr. Calkins, I'm looking for a yes or no answer.

A. I'm just explaining the way research is done.

Q. Dr. Calkin's --

A. Yes, I looked --

Q. You'll have a chance to explain, but you

only looked at .04 percent. That's my question.

A. And we generalize that data, yes.

MS. GUST: Your Honor, I'm not asking about how she analyzes or the implications of it, I'm asking what percentage she looks at relative to all the crimes.

MS. FRUITWALA: Objection, you're asking her a question about percentage without giving her a chance to calculate a percentage or explain where that comes from.

THE COURT: I think your assertion is, the total number of instances being somewhere around 2,000 is about .04 percent of 5.5 million, is that your question?

MS. GUST: Yes.

THE COURT: Do you have any reason to dispute that?

THE WITNESS: No, but the way science works is, we don't --

THE COURT: I know, but on the math --

THE WITNESS: -- examine a million --

THE COURT: -- on the math, you don't dispute that, correct?

THE WITNESS: No, I don't.

THE COURT: Next question.

BY MS. GUST

Q. That number gets even smaller when noncontact sexual crimes, like exhibitionism are factored in, correct?

A. The overall pool numbers get smaller --

Q. Yes.

A. -- wouldn't it get bigger if we're including other types of sex crime?

Q. Yes. Would you agree with that?

A. So I would agree that if we were adding exhibitionism and other, any other noncontact sex crimes, that that number would get bigger, because we're going to get a bigger count.

Q. Noncontact sex offenses were included, you estimated that there are at least a million sex crimes a year in the United States, correct?

A. Is that a number from one of my studies, the million?

Q. It's from your deposition, would you like to review it?

A. I don't need to, I trust that.

Q. So you would agree, if noncontact offenses were included, you estimate that there's at least a million sex crimes in a year in the United States?

A. That sounds about right.

Q. From 1996 to 2007, that would be approximately 11 million sex crimes in the United States, correct?

A. Give or take, yes.

Q. So factoring in noncontact crimes, you analyzed only .02 percent, correct?

A. I would really want to sit down and do these numbers or calculations myself, I'm not sure that --

Q. Dr. Calkins --

A. I --

Q. -- we can take the time if you dispute my representation that it's .02 percent.

A. I think the point you're trying to make is that I studied a small --

Q. Dr. Calkins --

A. -- the overall --

Q. I asked you a question, it's a yes or no, or you did not understand it.

A. I would want --

MS. FRUITWALA: Objection, she is saying she can't answer yes or no, and now you're harassing.

THE COURT: Ask your question.

Listen carefully to the question as it's presented to you, and answer, if you can answer yes or no, and if you can't fulfill your oath, you'll answer it as you can.

BY MS. GUST

Q. Do you have any reason to disagree that factoring in noncontact crimes, analyzed only .02 percent in your 2009 and 2011 studies, correct?

A. So the 0.2 percent is your number?

Q. Correct. Do you have any reason to dispute that number?

A. I would want to sit down and make sure these calculations are in order. This is the kind of thing that would take me a little bit of time, and I don't want to misconstrue anything for the Court.

Q. Let's talk about how current your data is. One of your studies took place in 2009, correct?

A. Correct.

Q. The second study took place in 2011, correct?

A. Correct, the contact study, yes.

Q. As we discussed, the data for those offenses were committed by individuals released from 1996 to 2007, right?

A. Yes.

Q. So at a minimum, that data is at least 19 years old, correct?

A. That's correct. And we, as I said, we used a sample that were released earlier in time because we wanted to follow them up so we could get recidivism data.

Q. You see where I'm going. And some of that data is 30 years old, right?

A. Some of the offenses could be 30 years old, yes.

Q. And because the prisoner's set was released between 1996 and 2007, the data can actually be even older than 30 years, correct?

A. Data in terms of when they committed the sexual crime?

Q. Yes.

A. Yes.

Q. So neither of these two studies, 2009 or 2011 study, account for offenses that occurred in the last 15 years, correct?

A. That is correct.

Q. They didn't account for the 2021 sexual assault of a female student by a biological male in the women's restroom --

MS. FRUITWALA: Objection, assumes facts --

THE COURT: Let's hear the question completely.

BY MS. GUST

Q. They do not account for the 2021 sexual assault of a female student by a biological male in the women's restroom in Loudoun County, correct?

MS. FRUITWALA: Objection, assumes facts not in evidence. Counsel's testifying that and this is the record.

MS. GUST: Your Honor, I'm exploring what data she relied upon. She's saying there's absolutely no evidence of sex crimes relying on studies from 2009 and 2011 with data from 30-plus years ago.

THE COURT: You're asking her about events that occurred in '21?

MS. GUST: Yes.

THE COURT: Which your answer already covers, so it sounds like an argumentative question to me. You could make the argument later, which you already established the fact you need to make the argument. So let's go to the next question.

BY MS. GUST

Q. Moving to your opinion regarding trans-permissive policies. You opine there is no data-based evidence to support the assertion that transgender permissive bathroom policies put anyone at increased risk of victimization, correct?

A. Correct.

Q. In support of this opinion, you rely on a single study, correct?

A. That's correct.

Q. That's the Hasenbush study that you mentioned on direct?

A. Yes.

Q. This study was the first of its kind, right?

A. I believe so.

Q. And it has not been replicated?

A. There actually was a more recent replication, it's unpublished, but somebody by the name of Flores in 2025 looked at state-level data comparing states with and without bathroom bills and also found that there was no evidence that these bathroom bills were causing any kind of change in criminal instance.

Q. You didn't cite that study in your

declaration, did you?

A. I did not.

Q. Moving back to the Hasenbush study. This study looked at only in Massachusetts, correct?

A. That's correct.

Q. It compares sexual misconduct reports in restrooms across two groups of Massachusetts municipalities, correct?

A. Correct, and also that looked at any one municipality and whether their rates of criminal incidents changed before or after passage of the law.

Q. So the first group had no laws addressing which restrooms people could use, correct?

A. That's correct, yes.

Q. And the second group had the laws affirmatively allowing transgender individuals to use the restroom matching their gender identity, correct?

A. Correct.

Q. The study says nothing about laws like SB 244 that require people to use restroom space on biological sex, correct?

A. So precise language of the laws is going to be different, but I think the general idea here

is the same.

Q. My question's a little different, this study says nothing about laws like SB 244 that require people to use restrooms based on biological sex, correct?

A. It's not a Kansas study, it's a Massachusetts study, so it says nothing about SB 244.

Q. It says nothing about laws like SB 244, correct?

A. I think it is relevant, which is why I included it.

Q. My question is a little bit different, it is not whether it's relevant, it's about what the study says.

MS. FRUITWALA: Objection, asked and answered.

MS. GUST: Your Honor, she hasn't answered.

THE COURT: She's clarifying. You're asking a clarifying question. Let's hear it and we'll see if there's an objection.

BY MS. GUST

Q. The Hasenbush study does not say anything about laws that affirmatively require people to use

restrooms based on biological sex, right?

A. Correct.

Q. You have not done a study of the impact of SB 244 on the rate of sex crimes in Kansas, right?

A. I have not.

Q. You testified that the Hasenbush study had been replicated, correct?

A. Yes.

Q. Do you remember being deposed in this matter?

A. I do.

Q. You took an oath?

A. I do.

MS. GUST: Your Honor, may I approach?

THE COURT: You have standing permission.

MS. FRUITWALA: Is this an exhibit in the binder?

MS. GUST: No, it's not. This is her deposition.

MS. FRUITWALA: It's not in the binder?

MS. GUST: I don't believe it's in the binder. It might be in your binder, it's not in

our binders.

BY MS. GUST

Q. Dr. Calkins, is this your deposition transcript?

A. Yes, it looks like it.

Q. Would you please flip to page 85? And I'm going to go to line seven. Do you see that? I'm going to read aloud.

A. Okay.

Q. Are you aware if this study has been replicated, question. Answer: I'm not aware of any recent studies and I don't recall seeing them. There may, there may replications though. Questions: So we discussed earlier how your research regarding -- I'll end there, did I read that correctly?

A. Yes, I'm saying there may be replications, and it turns out there is a very recent unpublished replication. So I may simply have not known about it at the time. It's a 2025 unpublished manuscript, so it would not have been wide circulation.

Q. Let's talk about your opinion regarding victimization of transgender individuals. You do not have any data demonstrating that SB 244 has caused an increase in transgender victimization,

correct?

A. No, I have not done any research specifically on Kansas's Bill.

Q. I want to clarify one of the statements you made on direct. In your survey of sex offenders, were you referring to seven percent or seven individuals out of that number?

A. I'm sorry, can you clarify which study?

Q. So your survey of sex offenders and finding how many, you identify seven percent or seven individuals of sex offender self identify as transgender, correct? I just want to clarify what the seven was referring.

A. I think that's the LGBTQ study of sex offenders on the registry. And -- sorry -- the number is 0.71 or less than one percent, which turns out to be about seven people. So it was 7 out of 963, or less than one percent.

Q. You opine that because restroom restriction laws are animated by stereotypes, they target transgender and intersex individuals, correct?

A. Correct.

Q. You have read the text of SB 244, correct?

A. I have.

Q. You understand that SB 244 says nothing about transgender individuals, correct?

A. Yes, I understand that.

MS. GUST: No further questions.

MS. FRUITWALA: If I can just have a moment, Your Honor?

THE COURT: Does the State have a witness, if we start one?

MR. RODRIGUEZ: Your Honor, we do not have any witnesses who are here and ready to testify.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. FRUITWALA

Q. Dr. Calkins, Counsel asked you whether your studies that were conducted in New York City could be generalizable. Is it possible for a single study to be generalizable?

A. So the way we do science is we used data from multiple studies, multiple places, multiple methodologies and we look for converging evidence.

So the more data that we have from different places, different timeframes, different methodologies, the more confident we can be in those results.

Q. Would you expect to see different results in Kansas?

A. I would not expect to see different results in Kansas because these general trends have been consistent. I've seen data from Minnesota, I've seen data from Australia, looking at locations and it's pretty consistent.

Q. And you've done research, and worked in a number of different states, do you typically see these state-to-state variations?

A. We do not.

Q. Okay, opposing counsel also asked you about the dates of your research, is there any reason to think that the prevalence of sexual offenses in restrooms has changed significantly from the numbers contained in the studies you've discussed?

A. I do not believe so, there have not been in the world of sexual violence any major fluctuations or changes in the last couple of decades, nothing that has significantly moved the needle. So the patterns have been pretty consistent across time, so I wouldn't expect any major changes.

MS. FRUITWALA: No further questions, Your Honor. Thank you.

MS. GUST: Nothing from me, your Honor.

THE COURT: Thank you, Doctor. You can step down.

Plaintiffs have additional, evidence?

MR. SELDIN: Your Honor, we don't have additional witnesses, but before we rest our case-in-chief, there might be some housekeeping related to exhibits.

If it would all right, if we have a 15-minute recess just to confer before we rest our case-in-chief.

THE COURT: I think counsel should confer and double-check with the court reporter, make sure what you think is admitted we show as admitted, and we will resume. So I'll step out till 4:30.

MR. SELDIN: Thank you, Your Honor.

(A recess was taken.)

THE COURT: Back on the record in 26-CV-112. I will let counsel for plaintiffs indicate where they stand and whether they're prepared to rest.

MS. ST. CLAIR: Just a couple of quick housekeeping matters with the exhibits. I

checked with the court reporter during the break and I think we have the same record on what's been admitted so far.

We'd like to make a motion to admit a couple of additional exhibits off of the plaintiff's list and I'm happy to go over them one by one if you need a basis for that.

THE COURT: One second, let me get to the right place here.

MS. ST. CLAIR: Certainly.

THE COURT: Go ahead.

MS. ST. CLAIR: Plaintiff's Exhibit 9 is the declaration of Jessica Slinger, who is a local attorney with the ACLU. We are looking to admit the exhibits attached to her declaration, which include the text and legislative history of SB 180 and SB 244, which we think are admissible under KSA 60-465, A4, B1, which deals with document that are self-authenticating, including official publications.

THE COURT: State?

MR. COMPTON: What's the exhibit number?

THE COURT: Exhibit 9.

MS. ST. CLAIR: Exhibit 9.

THE COURT: And this is a statement from counsel, one of the counsel for plaintiffs, correct?

MS. ST. CLAIR: Yes, Your Honor. It's the declaration of Jessica Slinger's and exhibits.

THE COURT: She's just affirming what the --

MS. ST. CLAIR: Yes, Your Honor, would you like me to go over each of the exhibits?

THE COURT: I want you to give the State a chance to review. If they're not going to object, I won't need it. But if they are, then we may have to do that.

MS. ST. CLAIR: Great.

THE COURT: Your statutory basis was what?

MS. ST. CLAIR: KSA 60-465, A4, B1 a self-authenticating official publication.

THE COURT: 60 -- is it 465?

MS. ST. CLAIR: 465, yes, Your Honor.

THE COURT: You said A?

MS. ST. CLAIR: 4, B1.

THE COURT: Mr. Nussbaum?

MR. NUSSBAUM: Your Honor, we would

object, and I think we would object on two bases, kind of first, that statutory provision cited by plaintiffs' counsel concerns authentication, it does not concerned admissibility.

The Court can, pursuant to, you know, well-established case law, take judicial notice of things like the legislative record. I think that's certainly appropriate within the case law, however, the remainder of the declaration concerns hearsay with no exception.

It's a series of news articles from the Kansas --

MS. ST. CLAIR: -- those --

MR. NUSSBAUM: -- that we'd object to.

MS. ST. CLAIR: Those aren't part of what we're asking to admit, Your Honor.

THE COURT: Sorry?

MS. ST. CLAIR: Those aren't part of what we're seeking to admit, Your Honor.

THE COURT: Well, there's legislative history exhibits and newspaper exhibits.

MS. ST. CLAIR: Sorry. Yes, correct. We ask just to admit the legislative exhibits.

MR. NUSSBAUM: And we would object to

that as well, and we'd object on two bases, first is we don't think they're relevant. We think this case turns on the face of a law, they have not brought any claim that would go to the committee reports and things like that, I don't think has any relevance.

But again, to the extent the Court wants to consider those items, I think they're cited in plaintiff's briefings, and to the extent they fall within the exception for the matters that the Court would take judicial notice of, I think that's appropriate and a way to handle this kind of documentary evidence or information.

MS. ST. CLAIR: They are attached to our TI brief, Your Honor, so they're already in the materials before the Court, however, I think they're relevant to several of plaintiff's claims.

THE COURT: Can I have a proffer as to what you believe their relevance is?

MS. ST. CLAIR: Yeah, we'd be happy to just ask for judicial notice in the alternative. But we do think they're relevant to our procedural irregularity claim, our due process claim, and our equal protection claim.

THE COURT: The irregularity and part of the --

MS. ST. CLAIR: The single-subject violation, Your Honor.

THE COURT: I see. Well, if I were to take judicial notice, I'd have to give the parties notice of what I was taking judicial notice of. If this is the summary of what you'd want the Court to take notice of, to the extent you reference them in any argument, I think I can take notice through the form of the proffer of these exhibits, so what sounds like the best way for me to handle this is for me to say, and I think this meets the concern or the objection I'm hearing.

I'm going admit the legislative history exhibits that are attached to your Exhibit 9, but absent some reference to them in argument, I don't plan to take notice of them.

(Plaintiff's Exhibit 9 was admitted.)

MS. ST. CLAIR: Thank you, Your Honor. I think that's fine.

THE COURT: Okay.

MS. ST. CLAIR: We'd also ask to admit Exhibit 13 under the same provisions, that's a fiscal note.

THE COURT: Let me make my notes on my ruling here on 9.

Okay, Exhibit 13?

MS. ST. CLAIR: Yes, Your Honor.

THE COURT: This is?

MS. ST. CLAIR: The 2026 Senate Bill 244 fiscal note.

THE COURT: Objection?

MR. NUSSBAUM: Your Honor, we don't think it should be admitted into evidence. We do think it, the extent it's a public document, the Court can take judicial notice of it in the same fashion.

THE COURT: I'm going to make the same ruling I did. It's going to be admitted, so it's part of record here, but absent some reference to it or argument on it, I don't -- I won't be looking at it on my own.

(Plaintiff's Exhibit 13 was admitted.)

MS. ST. CLAIR: Thank you, Your Honor.

Past that, we would ask to admit Plaintiff's Exhibits 49 through 50, which are the Kansas Department of Administration's Interrogatory and RFP Responses. Those parties have agreed to stipulate to the admission of those documents.

MR. NUSSBAUM: Your Honor, we have not agreed to the stipulation for those documents.

MS. ST. CLAIR: That's correct, sorry, I said the Kansas Department of Administration has agreed to that.

THE COURT: Let me see if I can find them. Is this in supplement?

MS. ST. CLAIR: Yes, Your Honor. Apologies for that. Plaintiff's supplemental Exhibits 49 and 50.

THE COURT: I'm not seeing 49 and 50.

MS. ST. CLAIR: 1 and 2 apparently.

THE COURT: Say again?

MS. ST. CLAIR: 1 and 2, apologies for that. Kansas Department of Administration amended responses and objections to plaintiff's first interrogatories, that's one. And the exhibit number you want to give it is --

MS. ST. CLAIR: I think we're already using one and two.

THE COURT: I think we have a --

MS. ST. CLAIR: That's why we had 49 and 50 initially, Your Honor. Sorry.

THE COURT: I'm going to denominate it 49 for the department's amended responses to

objections, and objection to plaintiff's first interrogatories and then the other document is -- amended responses and objection to plaintiff's first request for production.

MS. ST. CLAIR: That's correct, Your Honor. I will clarify that tab one that is now, I think potentially coming in as Exhibit 49 has both the initial responses and the amended responses, so there's two documents in that document.

THE COURT: I have three pages. Is that what you have? No?

MS. ST. CLAIR: We have a printing issue, Your Honor. No, we have the full sets in one binder and apparently only a couple of pages in some of the other binders.

THE COURT: How many pages is it?

MS. ST. CLAIR: So the supplement, the amended response is five pages in total, it's printed front and back in my version. The initial responses are 29 pages.

THE COURT: Ms. Bakker, or I want to say Mr. Jordan, that's not right.

MR. BREWER: It's Mr. Brewer, but thank you, Your Honor. Yeah, we talked to counsel, we do stipulate to it. I understand the AG's

objecting.

We don't have the first one in our binder, but we did produce it. I'm not aware of how long it was, but it sounds right.

MR. NUSSBAUM: Your Honor, we would object to their introduction. Among other things, we don't have the document, but these documents contain hearsay and we've had no opportunity to cross-examine any witness about the contents of the documents.

THE COURT: What's the reason for the request to admit them?

MS. ST. CLAIR: Your Honor, interrogatory responses are sworn statements by a party opponent that have evidentiary value for our arguments later.

THE COURT: Tell me the evidentiary value.

MS. ST. CLAIR: Well, there's several entries that go towards again, our procedural argument on the passage of SB 244. There's also responses that have facts that are material, I think to our constitutional claims with respect to whether or not the State considered alternatives to SB 244, what the harms were, or the record before the State

on harms, whether or not any of these other departments were, you know, given the opportunity to provide input into SB 244's passage.

THE COURT: I'm going to give the State, General Kobach's team time to review those, and then we will take up further argument on this another day.

MR. NUSSBAUM: Okay, thank you.

MS. ST. CLAIR: Along the same veins, Your Honor, we were going to move to admit Exhibit 62 through 65, which are the Kansas Department of Revenue's Interrogatories and RFP Responses pursuant to a stipulation, subject to the Attorney General's objections.

THE COURT: Mr. Smith?

MR. SMITH: That's correct, Your Honor.

THE COURT: Describe -- and where are these?

MS. ST. CLAIR: Those are tabs 20 through 23.

THE COURT: In the supplemental --

MS. ST. CLAIR: The supplemental, yes, Your Honor.

THE COURT: 20 through 23. And

certainly, sounds like the State has sort of the limited version that I have anyways, so they'll have to have complete versions. Make sure you have that and it's available to them to review before we go today. If you need to use the copy machine, let me know.

MS. ST. CLAIR: Thank you, Your Honor. We will do that.

THE COURT: Also under advisement.

MR. SMITH: There was also a series of stated objections in the course of the answers and responses. We'd stipulate to the same issue.

THE COURT: Thank you, Mr. Smith.

MS. ST. CLAIR: And finally, Your Honor, we would move to admit as Exhibit 70, the document that is currently at tab 28 in the supplemental plaintiff exhibits.

THE COURT: The tab what now?

MS. ST. CLAIR: It's at 28.

Your Honor, we would move to admit only a portion of that, as excerpts.

THE COURT: Transcript of a motion hearing --

MS. ST. CLAIR: Yes, Your Honor.

THE COURT: -- before Judge Watson

back in '24.

MS. ST. CLAIR: Yes, Your Honor.

MR. NUSSBAUM: Your Honor, we would object to it for many reasons. Among them it's an entirely different statute, it has no relevance to the litigation here.

There's no witness to be cross-examined regarding the testimony that potentially they intend to proffer, hearsay, et cetera. We don't think it's proper to admit this into evidence.

MS. ST. CLAIR: If I may, Your Honor?

THE COURT: Of course.

MS. ST. CLAIR: This is a hearing pursuant to SB 180 where the Kansas Department of Revenue put a, designated as a witness Mr. Selk, who they have identified in their interrogatory responses in this case, as a person most knowledgeable about the creation and maintenance of certain driver's license data, which is of course, very relevant to this case.

And at that hearing, Mr. Selk was, in fact, cross-examined by Mr. Kobach himself. There is extensive testimony from Mr. Selk and Mr.(indiscernible.) in the subsequent portions that

we would seek to designate that is very germane to the topics currently in front of the Court.

We are seeking admission of this -- sorry, admission of this as the admission of a party opponent. It is the AG's production, so you'll see the Bates numbers at the bottom are Kobach 50 through, I believe, 330, along those lines. So these were produced by the AG in this litigation to us.

THE COURT: Upon request?

MS. ST. CLAIR: Upon request, Your Honor.

MR. NUSSBAUM: Your Honor --

MS. ST. CLAIR: And pursuant to the Court's prior order to produce some documents to us, this stands as virtually the only thing that we have received to date.

THE COURT: Does this go to the administrative or clerical nature of the exercise of any discretion?

MS. ST. CLAIR: In part, Your Honor, it also goes to alternatives that Kansas Department of Revenue could consider, were not given the opportunity to in the passage of this bill.

It goes directly towards the asserted

law enforcement interest that the State has claimed exists with respect to driver's licenses, and the consideration of alternatives.

THE COURT: If I say it this way, I don't mean to be dismissive, but I don't like cut and paste out of one case, put it into another. There's context, there's circumstances I can't know and they don't have an opportunity to fully explore facing a transcript.

My ruling right now is denied, if you want to put together a better argument or maybe discuss it, I can certainly reconsider.

MS. ST. CLAIR: Certainly, Your Honor. Thank you.

THE COURT: Anything else plaintiffs are thinking about before we recess for the evening?

MR. SELDIN: Your Honor, we will provide a timekeeping report via e-mail just as soon as we can get back and confirm our math.

THE COURT: Or we can take it up on the record tomorrow, it's fine. I won't be looking at the e-mails.

MR. NUSSBAUM: And Your Honor, we're keeping time as well, so hopefully we have the same number.

THE COURT: Hopefully we will produce some agreed number.

State have anything before we recess then?

MR. NUSSBAUM: One more thing, Your Honor.

MR. COMPTON: One objection at the close of the plaintiffs case-in-chief, Your Honor. The temporary injunction record, the written record of the briefs that Your Honor has, contains a declaration of one of the plaintiffs, Matthew Moe.

Mr. Moe has not testified here, he has not subjected himself to cross-examination. We would object to the inclusion of Mr. Moe's declaration of the written record at this time.

THE COURT: Has it --

MR. SELDIN: Your Honor, if I may, it's already part of the temporary injunction record, with respect to the paper documents.

Mr. Moe was deposed, we are not opposed to deposition designations, if that would cure some of the defendant's concerns. In addition to which, we understand that as a paper record the Court has a more limited ability to make assessments and judgments, we understand that. But nonetheless,

we would offer it for the weight that the Court would give it. Especially given in this posture.

THE COURT: Give me a second.

MR. SELDIN: I apologize.

THE COURT: No, you're fine.

I made some notes to myself about who was who, so let me go back. Here we go. Mr. Moe.

The request to admit Mr. Moe's declaration into evidence in these proceedings, but you're saying it's already part of -- in what way?

MR. SELDIN: Your Honor, we have not actually moved to admit Mr. Moe's declaration in this evidentiary hearing, in part because he has not testified.

We believe, however, that the Court can still consider his affidavit, which was attached to the papers when we renewed our motion for temporary injunction, which was provided under penalty of perjury.

There are many instances where on a temporary injunction it's all a paper record, we consider this hearing supplemental, so the Court can understand things about credibility and obviously delve further.

We understand because he has not

testified and subjected himself to cross-examination in front of you, that the weight you give his affidavit may change. We believe, it's nonetheless still appropriate for this court to consider, when ruling on the temporary injunction motion with respect to the plaintiff's claims.

THE COURT: The affidavit that was attached is the same content-wise as the declaration?

MR. SELDIN: It was -- I don't remember if it was designated as an affidavit or declaration, it was attached and under penalty of perjury, in addition to which, he was deposed.

And so if there's something in there, they want to designate some deposition testimony about, you know, we understand that as well.

MR. COMPTON: Your Honor, it's our position that Mr. Moe didn't show up, he didn't allow the Court to evaluate his credibility, he didn't subject himself to cross-examination.

We had this hearing for a reason and if Mr. Moe is not going to come and testify, his declaration shouldn't be part of the temporary injunction record.

MR. SELDIN: I think that at most

goes to the weight the Court would give it upon review, knowing those things to be true, but striking it at this point would seem both unnecessary and inconsistent with the way that this hearing is structured, with respect to the paper record that's already before the Court, with respect to the temporary injunction motion.

If we were here on the merits, this would be a different conversation. We'd talked about consolidation, we didn't do that. We're sort of in this awkward posture of having done a lot for a temporary proceeding, so we believe it goes to, at most weight, but it's still properly before this Court on this motion.

THE COURT: I'm disinclined, but let me sleep on it and we will return to that tomorrow.

MR. COMPTON: Nothing further from the State, Your Honor.

THE COURT: 8:30 is working for everyone? Does the State have any sense of how many witnesses they would expect to be able to present tomorrow?

MR. COMPTON: We think we can probably do six or seven witnesses tomorrow, obviously depending on the length of

cross-examination.

THE COURT: Of course. I'm just trying to get a sense. Okay. Let me look. I don't have anything tomorrow. Friday, I have a couple things I can address when we get there.

That won't detract really from the proceedings in any meaningful way, 15 minutes isn't meaningful. Okay. Thank you. We're adjourned for the evening.

MR. SELDIN: Thank you, Your Honor.

(Court ended.)

C E R T I F I C A T E

STATE OF KANSAS)
) SS
DOUGLAS COUNTY)

I, Nina Copeland, Certified Court Reporter, do hereby certify that I am the regularly appointed, qualified, and acting Official Reporter for Division No. 6 of the Seventh Judicial District, Douglas County, Kansas, duly certified under and by virtue of the laws of the State of Kansas. I further certify that on the 30th day of September, 2026, I was present at and reported in voice shorthand the proceedings in the aforementioned case before the Honorable James McCabria, Judge of Division 4 of the District Court of Douglas County, Kansas, and that the foregoing transcript is a true and correct transcript of the proceedings as revealed by my voice notes so taken.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Lawrence, Douglas County, Kansas, this 6th day of October, 2026.

__\s\Nina Copeland_____
Nina Copeland, CCR
Official Court Reporter