

1 IN THE UNITED STATES DISTRICT
2 FOR THE WESTERN DISTRICT OF TENNESSEE
3 WESTERN DIVISION

5 FAVIAN BUSBY and
6 MICHAEL EDGINGTON,

7 Plaintiffs,

8 vs.

NO. 2:20-cv-02359-SHL

9 FLOYD BONNER, JR. and
10 SHELBY COUNTY SHERIFF'S OFFICE,

11 Defendants.

12
13 TEAMS HEARING ON MOTION ECF NO. 218
14 BEFORE THE HONORABLE SHERYL H. LIPMAN, JUDGE

15 Friday

16 6th of August, 2021

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23 CANDACE S. COVEY, RDR, CRR
24 OFFICIAL REPORTER
25 FOURTH FLOOR FEDERAL BUILDING
 MEMPHIS, TENNESSEE 38103

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1 Friday

2 August 6, 2021

3 The Teams Hearing on Motion ECF No. 218 began on this
4 date, Friday, 6th day of August, 2021, at 9:30 a.m., when
5 and where evidence was introduced and proceedings were had as
6 follows:

7

8

9

10 THE COURT: Good morning. We are here for the
11 motion hearing in Busby, et al. versus Bonner, et al.,
12 20-2359. Let's try and go through and see who is here as
13 counsel.

14 MR. TILLY: Your Honor?

15 THE COURT: Yes, sir.

16 MR. TILLY: I cannot hear.

17 THE COURT: That's your problem.

18 MR. TILLY: That's my problem?

19 THE COURT: Yes.

20 MR. TILLY: Let me see.

21 THE COURT: And can everyone else hear me? Nods.

22 Yes.

23 Ms. McClain, if you could send Mr. Tilly a note
24 that tells him that something is off on his end. His video
25 is also sort of flashing.

1 Can you hear me now?

2 MR. TILLY: We can now hear you, Judge. I am so
3 sorry about that.

4 THE COURT: Your video is kind of weirdly
5 flashing. I don't know if your connection is off or not.

6 MR. TILLY: It is flashing.

7 THE COURT: It is doing weird things.

8 All right. And I guess what I'm going to ask to
9 do after we've established who is here is probably ask when
10 you're not speaking to turn off your video, which may help
11 the connection overall. But first, let's establish who's
12 here. Mr. Spickler, I saw -- I see you. And I'm calling
13 Plaintiff's counsel at this point.

14 Ms. Mathai, I think I saw you somewhere.
15 Correct. Yes, there you are.

16 MS. MATHAI: Hi, Your Honor. Good morning.

17 THE COURT: Good morning.

18 Ms. Woods, I've got you. Ms. Morris. I thought
19 I -- yes, Ms. Rosenbloom.

20 MS. MORRIS: Good morning.

21 THE COURT: Good morning. Ms. Yarbrough.

22 Mr. Castelli, is he here?

23 MS. YARBROUGH: I don't believe he's going to be
24 joining us this morning, Your Honor.

25 THE COURT: That's fine.

1 Ms. Brennan-Krohn, are you here? Will she be
2 here this morning?

3 MS. WOODS: I'm not sure, Your Honor. Sorry
4 about that.

5 THE COURT: Okay. That's fine. We will not
6 include her. Mr. Timmons, I see you.

7 Have I missed anyone appearing for Plaintiffs?
8 Any counsel appearing for Plaintiffs?

9 MS. BORNER: Meredith Borner. I'm from Paul,
10 Weiss, and I'm here for Plaintiff.

11 THE COURT: Got it. I'm sorry, Ms. Borner.

12 MR. TIMMONS: Your Honor, Mr. Edgington from my
13 office is trying to get in right now. He may have the wrong
14 link. I'm going to make sure he gets that.

15 THE COURT: Okay. Mr. Edgington as a lawyer?

16 MR. TIMMONS: Yes. Craig Edgington.

17 THE COURT: Okay. I don't have him on my
18 calendar, but that doesn't necessarily mean anything. Okay.
19 Anyone else? Counsel?

20 All right. And then for Defendants, I see
21 Mr. Tilly. Are Mr. Pentecost and Mr. Stokes with you as
22 well, Mr. Tilly?

23 MR. TILLY: They are, Your Honor.

24 MR. PENTECOST: Good morning, Your Honor.

25 THE COURT: Okay. Good morning.

1 Ms. Stigger, are you here?

2 MS. STIGGER: I am present. Good morning.

3 THE COURT: Good morning.

4 Ms. Iverson, are you here?

5 MS. IVERSON: I am. Your Honor, good morning.

6 THE COURT: Good morning. And then I've got a
7 Ms. Goode and Mr. Bledsoe, either of you here?

8 All right. Any other counsel who is here who I
9 missed?

10 All right. Let me ask if you wouldn't mind to --
11 if folks would turn off your video, it's going to be weird
12 for me because I'm not going to see anyone. But still go
13 ahead and turn off your videos. I think that will help the
14 connection overall.

15 The other preliminary comment is to remind
16 everyone that this is court, albeit virtual court. No one is
17 permitted to record this proceeding in any manner, other than
18 the Court. So to be explicit, no audio recording, no video
19 recording, no still photograph of the matter, no recording in
20 any way. Otherwise, you risk violation of the rule and the
21 wrath of the Court.

22 Let me say it's really weird to look at a
23 completely empty screen. So Mr. Tilly, if you would turn on
24 your video on behalf of the Defendant. And if whoever is the
25 principal person who's going to speak on behalf of the

1 Plaintiffs, understanding others may come in, but Ms. Morris,
2 your video is on. Are you sort of the principal person?

3 MS. MORRIS: Yes.

4 THE COURT: Okay. Good. All right. Thank you.
5 That helps me a little bit. Otherwise, it's sort of a blank
6 screen. Mr. Tilly, your video is still doing kind of weird.

7 MR. TILLY: Yes, Your Honor. Should I log out
8 and log back in to see if that resolves the issue? The other
9 option would be for us to attempt to log in to one of the
10 other computers in the room. We try to do one just so we
11 don't have echo in the room.

12 THE COURT: Yeah. You can't do more than one.

13 MR. TILLY: Would you like for me to log out and
14 log right back in? Would that help?

15 THE COURT: Yeah. Let's give it a shot. I don't
16 want to lose you in the middle of the hearing.

17 MR. TILLY: Sure. I will be right back.

18 THE COURT: Okay. In the meantime, Ms. Morris,
19 how is the weather?

20 MS. MORRIS: It's beautiful here. We're not
21 having crazy heat, and it's just beautiful.

22 THE COURT: Good. And where are you?

23 MS. MORRIS: It's 70 in the morning and 80 in the
24 afternoon, which that to me, that's perfect. Maryland,
25 outside of DC.

1 THE COURT: Okay. Yes, that is unusual and
2 pretty.

3 MS. MORRIS: Yes. I think we should all enjoy it
4 as much as we can.

5 THE COURT: Yes. All right. We'll see
6 Mr. Tilly. All right. Let's just proceed on, and we'll all
7 try and ignore the fact that you are flashing.

8 MR. TILLY: I do not know what the problem is,
9 Your Honor. I am very sorry about that.

10 THE COURT: That's all right.

11 All right. So we are here for the hearing on
12 Defendants' motion to terminate. I'll just say for the
13 record I think that's Mr. Edgington coming in as counsel.
14 Because it's Defendants' motion, Mr. Tilly, I think you carry
15 the burden, and thus, I would assume you would converse.
16 Let's talk about first -- well, first, I don't think I need
17 any preliminary statements from you, from either of you
18 unless there's just something you just really want to say.

19 Mr. Tilly, anything that you feel like you need
20 to say preliminarily?

21 MR. TILLY: Your Honor, we had prepared a brief
22 opening statement that we're happy to give just about why
23 we're here today, but if you would prefer us to just move
24 forward, we're happy to do that too. It's really up to you,
25 Your Honor.

1 THE COURT: Well, why don't you go ahead and give
2 me that.

3 MS. MORRIS: Your Honor, if I may, before we get
4 into opening statements, I have one housekeeping matter,
5 which is that we would like to invoke the rule. We're
6 expecting that Mr. Fields is going to be testifying, and he
7 is present in the hearing. And we would ask that he be
8 removed from the proceeding until he is testifying.

9 MR. TILLY: Your Honor, he is our representative,
10 our Rule 30 representative for the jail, and he was deposed
11 as such. I think he would have a right to be present.

12 THE COURT: Ms. Morris, if he's the
13 representative, any response to that?

14 MS. MORRIS: We just want to be sure that that's
15 his capacity here. If that's their position, then that's
16 fine.

17 THE COURT: Okay. All right. Does that affect
18 anyone else present on the conference?

19 MS. MORRIS: As far as I can tell, the only other
20 witness who is present is Inspector Brady, and as an expert,
21 we don't believe that we need to exclude him.

22 THE COURT: Okay. And while we're on preliminary
23 matters, let me just, before you do the opening statement,
24 let me ask Mr. Tilly first, who you intend to present today,
25 if anyone?

1 MR. TILLY: Your Honor, Chief Fields is here for
2 us.

3 THE COURT: Okay. And I know we saw a number of
4 things filed last night. So I know there are other
5 documents. But he's the only witness you intend to offer?

6 MR. TILLY: Yes, Your Honor. At least for -- at
7 this point in time, yes.

8 THE COURT: Okay. Ms. Morris?

9 MS. MORRIS: We have one -- we have one expert
10 witness that we would like to put on. And we have three
11 detainees that we anticipate calling. Each of those should
12 be pretty short. One thing, just to call the Court's
13 attention now, is that the public health expert that we'll be
14 calling is available only from 1:00 to 2:00 and after
15 3:30 p.m. this afternoon.

16 THE COURT: I did not anticipate this going into
17 the afternoon, frankly.

18 MS. MORRIS: Okay.

19 THE COURT: If we need to -- well, we'll tackle
20 that when we get there. I have other matters set this
21 afternoon and assumed we would be able to get through this
22 this morning.

23 Ms. Morris, you also, I think, Plaintiffs
24 subpoenaed Mr. Brady. Do you intend to call him as a
25 witness, or did you anticipate that it would be sort of

1 similar to I think what we did before, which was basically
2 the Court called him as a witness?

3 MS. MORRIS: We were anticipating that likely the
4 Court would call him. And we think it would be appropriate
5 for him to go first before even Defendants' witnesses go on.
6 But if the Court is not calling him, then we would call him.

7 THE COURT: All right. Mr. Tilly, did you
8 anticipate he would go first?

9 MR. TILLY: No, Your Honor. We anticipated that
10 we would go first. It is our motion. We didn't subpoena
11 Mr. Brady. We anticipated that we would be going first.

12 THE COURT: Okay. I kind of had thought through
13 this a little bit, and since Plaintiffs subpoenaed him, I
14 assumed they would present him as a witness, which kind of
15 makes it more in line with -- it will make it more in line
16 with the presentation of material through questions and
17 answers, as opposed to my vague recollection from a year ago
18 of his testimony. So Ms. Morris, I'll leave it to you to
19 call him.

20 MS. MORRIS: All right. That's fine, Your Honor.

21 THE COURT: Okay. All right then, Mr. Tilly
22 you're on.

23 MR. TILLY: All right. Thank you, Your Honor.
24 Your Honor, as you know, we are here today for a hearing on
25 Defendants' motion to terminate the Consent Decree. You'll

1 recall that this lawsuit was brought by Plaintiffs shortly
2 after the COVID-19 pandemic began last year. And they
3 alleged in their lawsuit that the Plaintiffs confinement in
4 the Shelby County Jail was unconstitutional due to the
5 COVID-19 pandemic. And specifically they allege that
6 Defendants failed to implement appropriate remedies to combat
7 COVID-19 in the jail.

8 Now, Defendants, of course, we disputed that.
9 And nonetheless, Plaintiffs argued that they were helpless to
10 protect themselves from COVID-19 in the jail because of
11 Defendants' alleged failures. We disputed that. We
12 litigated it. You'll recall there was quite a bit of
13 litigation last year over that. A lot of discovery took
14 place.

15 We were on the cusp of conducting further
16 discovery that was going to be quite time consuming and
17 expensive. The parties instead got together. They went to
18 mediation. They spent three full days in mediation. They
19 went back and forth for those three full days, and they
20 eventually came to an agreement.

21 And that agreement came in the form of a Consent
22 Decree. And that decree addressed many issues related to
23 COVID-19 but most importantly for here today, Your Honor, it
24 addressed how it terminates. The parties came to an
25 agreement about how the Consent Decree terminates. And the

1 termination provision specifically provides that once a
2 vaccine is offered to and administered to all detainees
3 housed at the jail for a period of more than 14 days and who
4 accept the vaccination, along with educational materials
5 about the vaccine and nonpunitive incentives to take the
6 vaccine that that decree would terminate. That's why -- and
7 Defendants, it is our position that those conditions have
8 been met. That is why we filed our motion to terminate.

9 The Plaintiffs have filed a corresponding motion
10 to modify. They filed their motion for discovery. They
11 filed their motion to stay, to postpone the PLRA stay of the
12 Consent Decree and this Court entered an order on July 9th
13 that said look, what we have to decide first is whether the
14 termination provision has been met. And it held the other
15 motions in abeyance. It held Plaintiffs' motion to modify in
16 abeyance. So the question today, the question before this
17 Court is whether the Consent Decree termination provision has
18 been met.

19 And that's three things: Has the jail offered
20 and administered COVID-19 vaccines? Has the jail provided
21 educational materials about COVID-19 vaccines, and has the
22 jail provided nonpunitive incentives to detainees about
23 COVID-19 vaccines? Your Honor, the proof you are going to
24 hear today and the proof we've already submitted quite
25 frankly, shows that since April, the jail has provided

1 detainees access to COVID-19 vaccines. The jail has provided
2 educational materials to detainees about COVID-19 vaccines,
3 and the jail has offered nonpunitive incentives to detainees
4 to receive the COVID-19 vaccine in numerous ways, Your Honor.
5 And you're going to hear numerous ways that we've done so.

6 So Your Honor, in light of the proof you're going
7 to hear, we believe and it is our position that the Consent
8 Decree should be declared terminated. Thank you.

9 THE COURT: Thank you, Mr. Tilly.

10 Ms. Morris? You're on mute still.

11 MS. MORRIS: Thank you.

12 We also have a brief opening statement. We could
13 either do it now or after Defendants put on their evidence.

14 THE COURT: Up to you.

15 MS. MORRIS: Okay. I will go ahead and give it
16 to you now then.

17 THE COURT: All right.

18 MS. MORRIS: When the parties negotiated the
19 Consent Decree and the Court approved it, it was well
20 understood that its protections should last until the threat
21 posed by COVID-19 was no longer an issue at the jail. Today
22 because Defendants have failed to abide by the decree's
23 protections and to implement an effective vaccination
24 program, an outbreak of COVID-19 is underway at the jail. As
25 of August 4th, ten housing pods were on quarantine, and

1 despite the extremely limited testing they are currently
2 doing, we know that at least 19 people in the jail had tested
3 positive for COVID-19.

4 The evidence you're going to hear today will show
5 that Defendants' vaccination program has been and remains, as
6 Inspector Brady put it, completely ineffective, wrong-headed
7 and doomed for failure. The small improvements that have
8 been made to the vaccination program have been made at
9 Mr. Brady's suggestions, but they've been poorly executed and
10 badly watered down. Further, they're timed in a way that
11 shows that it is Court's scrutiny that prompted Defendants to
12 act.

13 On June 2nd Defendants moved to terminate. They
14 claimed, as Mr. Tilly did just now, that they had created a
15 vaccination program that met the requirements of paragraph 28
16 of the Consent Decree. They said they were offering vaccines
17 to everyone within 14 days of entry into the jail and
18 providing education and incentives. The evidence will show
19 two things, two broad reasons why the Court should deny the
20 motion to terminate and should move swiftly into
21 consideration of Plaintiff's motion to enforce and modify.

22 First, the evidence will show that Defendants
23 have not met the explicit terms of the termination provision
24 of paragraph 28. The vaccination provision of paragraph 28
25 requires that a vaccine be offered to and administered to

1 all detainees housed at the jail for a period of more than
2 14 days and who accept the vaccination. Defendants have not
3 done this as was made clear in their recent discovery
4 responses.

5 In fact, they were in the middle of failing to do
6 this on the day they moved to terminate. On June 2nd it had
7 been 13 days since anyone in the jail had been given a
8 vaccine. And it was another eight days before anyone was.
9 It's a period of 21 days from May 10th to May 20th -- sorry
10 -- May 20th to June 10th when no one received a vaccine in
11 the jail. Anyone who was admitted to the jail between
12 May 20th and May 26th and was released after 14 or more days
13 but before June 10th couldn't have gotten a vaccine at the
14 jail.

15 Moreover, when Defendants filed their reply brief
16 on June 22nd, at a time when they knew that there had been
17 this 21-day period, they failed to indicate anything about
18 their failure to provide the vaccine to every single person
19 who wanted it, who was admitted to the jail for a period of
20 14 or more days. They also said nothing about this during
21 the status conference with the Court on June 23rd.

22 The second broad reason that the Court should
23 deny the motion to terminate is that the evidence will show
24 that the vaccination program is utterly ineffective.
25 Defendants cannot tell you that the program is effective

1 because they do not know. They have chosen not to find out
2 what percentage of the jail population is vaccinated. They
3 don't think that information is important. Nor do they know
4 what the vaccination rate is among the medically vulnerable
5 in their custody. They also don't even know the actual
6 number of COVID-19 cases in the jail at any given time.

7 Defendants' offers of vaccines, education about
8 vaccines and incentives to encourage vaccination have all
9 been deeply flawed. As noted by Inspector Brady, offers are
10 made during booking, when people are not in a position
11 emotionally or physically to make complex medical decisions.
12 When they are -- other than at booking, the offers seem to be
13 just general statements that you can sign up for sick call.
14 And there's a lot of problems with signing up for sick call
15 to get a vaccine. Sick call is requested on a kiosk. But if
16 you're locked in your cell, you can't get to the kiosk. Some
17 of the kiosks are broken. Sick call costs money, even if the
18 vaccination does not. And if people do ask for the vaccine,
19 there are delays, frequently a week or longer before they
20 actually get the vaccine.

21 Education is mostly aimed at telling people that
22 they can get the vaccine. Maybe telling them in the most
23 general terms that it combats the spread of COVID-19. And
24 maybe telling them about the incentives. Defendants are
25 doing almost nothing to combat misinformation coming from

1 jail staff and the community. They're doing nothing to
2 answer people's individual questions about the vaccine. They
3 are doing nothing to ensure that education materials are
4 effective and understood. And they've made no changes to the
5 vaccine education program materials to discuss the Delta
6 variant.

7 And then there's incentives. The incentives have
8 been particularly problematic. They're provided
9 inconsistently, and for very good reason detainees do not
10 trust that they are real. I'm going to give you three
11 examples that you'll hear more testimony about. On May 21st
12 the jail told detainees that anyone who signed up who was
13 vaccinated before May 31st would be entered into a
14 sweepstakes run by the City of Memphis to win a car. But as
15 noted, no vaccines were provided between May 20th and
16 June 10th, so not a single person could have responded to
17 that incentive as there were no vaccines offered before the
18 end of May, which was the cutoff for the sweepstakes.
19 There's also no proof that any detainees actually were
20 entered into the sweepstakes.

21 The next incentive that we've heard a lot about
22 is \$20 deposited into the commissary accounts. Again,
23 there's a timing issue here. The jail population was
24 informed of the commissary incentive on May 26th. You are
25 going to see documents that show that 215 people received the

1 commissary payment. But what you're also going to see is
2 that every single one of those people had already received
3 the vaccine by the time this incentive was announced. All of
4 the people who signed up for the vaccine based on that
5 incentive have not, according to Defendants' documents,
6 received the incentive to date.

7 Finally, they have, at the end of July,
8 Defendants decided to announce a pizza party for -- as an
9 incentive. Mr. Brady had suggested that all housing units
10 that reached -- that they could have an incentive of all
11 housing units that had reached 75 percent vaccination could
12 get a pizza party. Instead, Defendants have offered that the
13 housing unit with the highest vaccination rate, whatever that
14 may be, will get a pizza party. Not only is this a
15 watered-down version of Mr. Brady's proposal, it's also hard
16 to understand how they will do this, given that they have
17 chosen at this point not to actually track vaccination rates.

18 In light of the incredibly flawed execution of
19 the vaccination program, the result is unsurprising. Few
20 people are vaccinated, and there's an active outbreak at the
21 jail, even as we have this hearing here today to discuss
22 whether COVID-19 protections provided by the Consent Decree
23 should be terminated.

24 We wish we didn't need to oppose the motion to
25 terminate. We wish we didn't need to seek enforcement of the

1 agreement to make the jail safer, but we do because
2 Defendants have failed to set up a minimally effective
3 vaccination program and have failed to take other measures to
4 protect the medically vulnerable people in the jail. Thank
5 you.

6 THE COURT: Thank you, Ms. Morris.

7 We've had a few new people come in. I just want
8 to remind everyone that there's no recording of any kind to
9 be done of the hearing itself in any form or fashion. The
10 other thing is we have -- well, I'll leave that video up.
11 That's only one video. All right.

12 Mr. Tilly, do you want to go forward with your
13 proof?

14 MR. TILLY: Yes, Your Honor. I just do want to
15 make sure with the rule being called that I don't know what
16 that other camera is but that just no witness would be
17 present.

18 THE COURT: That other camera I think are the
19 detainees.

20 MR. TILLY: Okay. But they're not present in the
21 room; is that right?

22 THE COURT: I'm unclear.

23 THE MARSHAL: Judge Lipman, this is Singleton
24 with the marshals.

25 THE COURT: Yeah.

1 THE MARSHAL: The Defendants are not present
2 inside the room. They are in another room that's down the
3 hall. So I will not have them present until you call for
4 them.

5 THE COURT: Okay. Thank you. Any other issues?

6 MR. TILLY: Okay.

7 THE COURT: Mr. Tilly?

8 MR. TILLY: Yes. We'll call Chief Kirk Fields,
9 please.

10 THE COURT: All right. Chief Fields, you can
11 turn on your video. Yeah. Thank you, sir.

12 MR. Fields: Am I on? Good morning, Your Honor.

13 THE COURT: Good morning. Let's let Ms. McClain
14 administer the oath. Your video has disappeared off my
15 screen. But Ms. McClain, can you see him on your screen?

16 THE CASE MANAGER: No, ma'am.

17 THE COURT: There you go.

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TESTIMONY OF KIRK FIELDS

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1 * * *

2 **KIRK FIELDS,**

3 **was called as a witness and having first been duly sworn**
4 **testified as follows:**

5 **DIRECT EXAMINATION**

6 **QUESTIONS BY MR. TILLY:**

7 Q. Good morning, Chief Fields. I know you've testified
8 before this Court before in this matter. But just for the
9 record, could you state your full name, please.

10 A. Kirk Fields.

11 Q. And Chief Fields, what is your position with the
12 Shelby County Sheriff's Office?

13 A. Chief jailer.

14 Q. And as chief jailer, what are your responsibilities?

15 A. I'm responsible for running a constitutional jail.
16 I'm responsible for the safety and security of detainees as
17 well as staff and all individuals inside this facility.

18 Q. And as part of your responsibilities, do you oversee
19 the jail's response to COVID-19?

20 A. Yes, sir.

21 Q. So you are personally familiar and involved with the
22 efforts taken by the Shelby County Sheriff's Office in
23 responding to COVID-19 in the jail; is that right?

24 A. Yes, sir.

25 Q. As part of its efforts to combat and prevent the

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1 spread of COVID-19, has the jail provided all detainees
2 housed at the jail access to COVID-19 vaccines?

3 A. Yes, we have.

4 Q. Has the jail provided all detainees access to
5 educational materials about COVID-19 vaccines?

6 A. Yes, we have.

7 Q. Has the jail provided all detainees or has the jail
8 offered -- excuse me -- all detainees nonpunitive incentives
9 to take a COVID-19 vaccine?

10 A. That is correct.

11 Q. And Chief Fields, I want to just talk about each one
12 of those three different things that I asked you about in
13 further detail. Okay? When did the jail first begin
14 providing detainees access to COVID-19 vaccines?

15 A. The first time inmates were provided vaccination was
16 on February 14th of this year.

17 Q. And how was the jail able to provide vaccines on
18 February 14th?

19 A. At that time we received a call from the Memphis
20 Shelby County Health Department informing us that they had
21 some excess vaccines and inquired as to if we had any
22 detainees that may want to be vaccinated.

23 Q. And were some detainees vaccinated at that time?

24 A. Yes, sir. They were.

25 Q. Just so we're clear, was that before the State of

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1 Tennessee had authorized residents in correctional settings
2 to receive a vaccine?

3 A. That is correct.

4 Q. So that was a special exception, if I'm correct; is
5 that right?

6 A. Yes, sir.

7 MS. BORNER: Objection, leading the witness.

8 THE COURT: Try not to lead, Mr. Tilly.

9 MR. TILLY: Yes, Your Honor.

10 BY MR. TILLY:

11 Q. When was the next time the jail was able to provide
12 detainees access to COVID-19 vaccines?

13 A. When the State of Tennessee categorized the jail and
14 other penal institutions as in that classification to receive
15 the vaccine. So that was in April of this year.

16 Q. And what did the jail do to begin offering vaccines to
17 detainees?

18 A. At that time we created a form and distributed the
19 form to every detainee inside the facility as to whether or
20 not they wanted to accept or decline the vaccine. We
21 distributed those forms and had those inmate to sign off on
22 whether they accepted or declined.

23 Q. Okay. I'm going to pull that form up for you to look
24 at. Can you see that, Chief Fields?

25 A. Yes, sir.

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1 Q. What is that document?

2 A. That is the vaccination acknowledgment form that we
3 distributed to each and every inmate that was in the facility
4 on that date.

5 MR. TILLY: Your Honor, I would like to make that
6 Defendants' Exhibit Number 1.

7 THE COURT: Any objection?

8 Hearing none, Exhibit 1.

9 (WHEREUPON, the above-mentioned document was
10 marked as Exhibit Number 1.)

11 BY MR. TILLY:

12 Q. Chief Fields, what were inmates instructed to do with
13 this form when they were provided it?

14 A. They were asked to either make a decision as to
15 whether or not they wanted to accept or decline the
16 vaccination. We also had a box that on the bottom of the
17 sheet informing them that if they changed their mind that
18 they had the ability to change their mind and still receive
19 the vaccination.

20 Q. And did the jail provide any other materials with this
21 form at that time about COVID-19 vaccines?

22 A. Yeah. We provided a document just informing them that
23 it would be nonpunitive action and that they could change
24 their mind at any time and whether they accepted or declined
25 the vaccination had no impact on their housing status or

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1 anything of that nature.

2 MR. TILLY: Your Honor...

3 BY MR. TILLY:

4 Q. Chief Fields, can you see this document?

5 A. Yes.

6 Q. Is that the announcement that you were just speaking
7 about?

8 A. That is correct.

9 Q. And what was the purpose of that announcement?

10 A. Just to let them know that if they changed their mind
11 that they still had the access and the ability to request a
12 vaccine, and regardless of what their decision was that there
13 would be no punitive measures to follow their decision.

14 MR. TILLY: Your Honor, I would like to make that
15 Defendants' Exhibit Number 2.

16 THE COURT: Any objection? Exhibit 2.

17 (WHEREUPON, the above-mentioned document was
18 marked as Exhibit Number 2.)

19 BY MR. TILLY:

20 Q. And Chief Fields?

21 MS. BORNER: No, I'm sorry. No objection.

22 BY MR. TILLY:

23 Q. At the time that the jail provided the vaccine
24 acknowledgment form and the vaccine announcement that we just
25 talked about to detainees, did it also provide another

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1 document educating detainees about vaccines?

2 A. That is correct.

3 Q. What is the document that you're looking at now?

4 A. That is the document that was provided by Wellpath
5 about vaccination education.

6 Q. And that was provided with the vaccine announcement
7 that we just looked at and the vaccine acknowledgment form
8 that we just looked at; is that right?

9 A. That is correct.

10 MS. BORNER: Objection.

11 THE COURT: Note the objection. I think he's
12 leading, but it's pretty minor and helps moves things along,
13 frankly. But still, Mr. Tilly, try not to lead.

14 MR. TILLY: Yes, Your Honor.

15 BY MR. TILLY:

16 Q. After the detainees, Chief Fields, provided those
17 documents -- or I'm sorry -- after the jail provided those
18 documents to detainees, what did jail staff do with those
19 vaccine acknowledgment forms that were completed?

20 THE COURT: Mr. Tilly?

21 THE WITNESS: Those forms?

22 THE COURT: Hang on. Mr. Tilly, do you want to
23 make "Don't Hesitate, Vaccinate" Exhibit 3?

24 MR. TILLY: I do, Your Honor. Thank you, Your
25 Honor. Yes.

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1 THE COURT: Okay.

2 (WHEREUPON, the above-mentioned document was
3 marked as Exhibit Number 3.)

4 THE COURT: No objection, I assume.

5 MS. BORNER: No objection.

6 THE COURT: Okay. Exhibit 3 is "Don't Hesitate,
7 Vaccinate" Wellpath document.

8 Go ahead, Mr. Tilly.

9 MR. TILLY: Okay. I'll repeat my question.

10 THE COURT: Please.

11 BY MR. TILLY:

12 Q. After the jail provided the vaccination acknowledgment
13 form and the other two documents that we just looked at,
14 Chief Fields and detainees completed the vaccination
15 acknowledgment forms, what did jail staff do with those
16 forms?

17 A. Those forms were copied, and they were provided to
18 Wellpath for their records.

19 Q. And just so we're clear, who is Wellpath?

20 A. Wellpath is our contract medical provider for inmate
21 medical services.

22 Q. And what did Wellpath do with those forms?

23 A. Wellpath took those forms and spoke to those persons
24 that accepted the vaccine and spoke to them individually and
25 then scheduled those persons to receive the first vaccine.

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1 Q. And did all the detainees who indicated a desire to
2 receive the vaccine receive one?

3 A. To my knowledge. I know on the first vaccination
4 date, some individuals who signed yes, when they got down to
5 the vaccine site, they changed their minds.

6 Q. Okay. But the ones who didn't change their minds at
7 the scheduled time received the vaccine?

8 A. That's correct.

9 Q. Since mid April has the jail continued to offer
10 detainees COVID-19 vaccines?

11 A. Yes. On a daily basis.

12 Q. And how can detainees request to receive a vaccine?

13 A. They can request through sick call. They can request
14 verbally through security staff, through civilian staff,
15 through medical staff. They can put in a sick call. We've
16 had family members to call and state that we want our loved
17 one to take a vaccination, and we place those individuals on
18 vaccination lists. So any forms of communication, whether it
19 be written, verbally, they're able to make their request.

20 Q. And what do detainees have to pay to receive the
21 COVID-19 vaccine?

22 A. There's no cost.

23 Q. Even if they ask for it, no matter how they ask for
24 it, it's no cost; is that right?

25 A. There is no cost. There is no cost for the vaccine or

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1 follow-up care.

2 Q. Let's assume a detainee initially refuses a vaccine
3 and changes his mind and decides to get one, how would he go
4 about getting a vaccine?

5 A. He could either do it through sick call. Notifying
6 security staff. Notifying medical staff. Notifying our
7 civilian staff. Notifying any person that is working inside
8 this facility.

9 Q. When the jail initially began offering vaccines in
10 April, what kind of COVID-19 vaccine was being offered to
11 detainees?

12 A. At that time it was the Pfizer.

13 Q. Now, why was it the Pfizer at that time?

14 A. That was the vaccine that the State actually provided
15 to the Memphis Shelby County Health Department for us to
16 utilize.

17 Q. Okay. And at a later time, did that change?

18 A. Yes. That changed probably in May when the
19 Johnson & Johnson became available.

20 Q. And so now today, what kind of vaccine is the jail
21 offering detainees?

22 A. The Johnson & Johnson.

23 Q. Okay. You understand that the Pfizer vaccine requires
24 two doses, and the Johnson & Johnson requires one dose; is
25 that right?

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1 A. That's correct.

2 Q. For those who got the -- who received the Pfizer
3 vaccine in those initial weeks that the jail was offering the
4 vaccine, when would they receive the second dose?

5 A. It was based on the time frame that was instituted in
6 the guidelines for the vaccination. So that was either 21 to
7 28 days from the initial dose.

8 Q. What if a detainee received his first dose and then
9 was released from the jail before the time ran to receive his
10 second dose, what would the jail do in that situation?

11 A. The jail, at that person's release, that person would
12 be handed their vaccination card and be handed information as
13 to the agency to contact to receive their second dose. But
14 the vaccination card that they received, we do not hand it to
15 the detainees. We actually put it in their release jacket.
16 So in case they do get released within that time period, they
17 have that information and documentation to take with them so
18 that they can have their follow-up dose.

19 Q. Okay. So the jail ensures it's in the release jacket
20 in case they get released before then, they will have it?

21 A. That's correct.

22 Q. Okay. Did all the detainees that received the first
23 doze of the Pfizer vaccine receive the second dose if they
24 were still incarcerated in the jail?

25 A. That is correct.

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1 Q. Okay. And now again, we've established that the jail
2 was offering the Johnson & Johnson. What if a detainee came
3 into the jail having received the first dose of the Pfizer or
4 of the Moderna and not having received the second dose yet,
5 what would the jail do with that detainee?

6 A. That detainee would then upon the vaccination clinic,
7 that detainee would receive that second dose, whether it been
8 Moderna or Pfizer.

9 Q. After a detainee requests a vaccine, Chief Fields, how
10 does he then go about receiving the vaccine?

11 A. At that time once he makes that request, Wellpath
12 staff would then collect that data, that information, and
13 they would reach out to the City of Memphis and let them know
14 that we have a certain amount of persons that wants to be
15 vaccinated and they request those vaccines. And City of
16 Memphis comes in and provides those vaccines.

17 Q. And why is Wellpath contacting the City of Memphis,
18 just so the record is clear?

19 A. This goes back to issues that took place in early
20 spring or late winter with the Tennessee Department of Health
21 and the Memphis and Shelby County Health Department in
22 regards to vaccine distribution.

23 Q. Well, what do you mean though? I mean, does the City
24 of Memphis have vaccines? Is that what you're saying?

25 A. Yes. Yes. The City of Memphis was given control of

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1 the vaccines.

2 Q. All right. Is the fact that the City of Memphis has
3 control, has that hindered the jail's ability to offer and
4 provide detainees access to vaccines?

5 A. No, sir. It hasn't.

6 Q. And why not?

7 A. Because there is a good working relationship between
8 Wellpath and the City of Memphis in regards to putting shots
9 in arms.

10 Q. How often does the City of Memphis provide vaccines at
11 the jail?

12 A. Mainly it's done weekly. We try to do it every
13 Thursday.

14 Q. When was the last time COVID-19 vaccines were
15 administered at the jail?

16 A. On yesterday.

17 Q. How many received it yesterday, Chief Fields?

18 A. 36 detainees.

19 Q. Okay. Chief Fields, in what ways has the jail
20 provided detainees education about COVID-19 vaccines?

21 A. Any way that's imaginable for us. We do it with
22 educational documents. We do it with videos. We do it with
23 information on our kiosk. We do it with information on our
24 phone systems. We do it with general announcements over our
25 PA system. We do it with peer-to-peer influence from fellow

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1 detainees to one another. Any way that we can communicate
2 both verbal and nonverbal, we are getting the information
3 out.

4 Q. Can you see that document, Chief Fields?

5 A. Yes, sir.

6 Q. This is a four-page document, it looks like. I'll
7 just scroll through it quickly. What is this document?

8 A. That is a document from Amend that we received from
9 Mike Brady that we distribute to the detainees, which is
10 about COVID vaccination information.

11 Q. And when was this distributed to detainees?

12 A. If I'm correct, it was in April of this year. Amend.

13 Q. Have you -- has the jail utilized this document in any
14 other ways?

15 A. Yes. We've actually placed it on the kiosk. We have
16 it posted in the housing units, and then we have it
17 accessible at the staff workstations so that if any detainee
18 want access to it, they can just grab a copy and take it into
19 their housing area or their living quarters.

20 Q. Sorry.

21 MR. TILLY: Your Honor, I would like to mark that
22 as Exhibit 4.

23 THE COURT: Exhibit 4, assuming no objection.

24 MS. BORNER: No objection.

25 THE COURT: Thanks.

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1 (WHEREUPON, the above-mentioned document was
2 marked as Exhibit Number 4.)

3 BY MR. TILLY:

4 Q. And Chief Fields, you stated that they were posted in
5 the housing units. Are they posted in areas that detainees
6 can easily access and read the materials?

7 A. Yes. Some are posted based on the physical plant. So
8 in some housing areas which are smaller than others. Some
9 are posted on the back wall behind the officers' workstation.
10 But the inmates have been verbally informed that they have
11 access to go back there and read that without any type of
12 punitive action.

13 Q. And I think you also said they were at workstations.
14 Explain to the Court what workstations are.

15 A. A workstation is what we have in the majority of our
16 housing units where the officer has their computer, their
17 telephone, their logbooks where they can do their daily
18 activities in terms of notation and reports and things of
19 that nature. So we have these forms placed at the
20 workstations.

21 Q. How do detainees gain access to these forms at the
22 workstations if they so chose?

23 A. They can ask the officers for a copy or if they can
24 have a copy.

25 Q. An officer will provide them a copy; is that right?

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1 A. That's correct.

2 Q. I'll just note one thing. This four-page document,
3 the last two pages, looks like, are in Spanish. What was the
4 reason to have a Spanish version of this document?

5 A. For those residents or detainees that are -- that
6 speak Spanish.

7 Q. Chief Fields, at the time that those Amend documents
8 were provided to detainees -- I'm going to share another
9 document -- did the jail provide detainees any other
10 information about COVID-19 vaccines?

11 A. Yes. We just -- the document that's before us, we
12 provided that document letting them know that the vaccine is
13 free. Of course that there is no punitive measures based on
14 their decision. We also informed them that fruit will be
15 given to them to help counter any side effects that may take
16 place. And we also gave them information as to why it was
17 important to receive the vaccine.

18 MR. TILLY: Your Honor, I would like to make that
19 Defendants' Exhibit Number 5.

20 THE COURT: Exhibit 5.

21 MS. BORNER: No objection.

22 THE COURT: Thank you.

23 (WHEREUPON, the above-mentioned document was
24 marked as Exhibit Number 5.)

25 BY MR. TILLY:

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1 Q. In addition to providing this to detainees, did the
2 jail do anything else with this document?

3 A. Yes. We placed that document on the kiosk, so they're
4 posted in the housing units, and it's posted on the kiosk
5 that the detainees use.

6 Q. And does this document remain posted in the housing
7 units and available to detainees today?

8 A. That's correct.

9 Q. And you noted as you were reviewing this document,
10 Chief Fields, that it informs detainees that their housing
11 assignment would not be changed but based upon receiving a
12 vaccination. Why did the jail decide to inform detainees
13 that their housing assignment would not be changed?

14 A. In a jail environment your housing location is very
15 important to our detainees because they want to feel safe,
16 and most are comfortable with their current housing
17 assignments. So they don't want to be moved without any
18 justifiable reason. So we had to make it clear to them
19 whether you accepted or declined, it has no impact on your
20 housing.

21 Q. And has the jail changed any detainee's housing
22 assignment due to their decision to accept the COVID-19
23 vaccine?

24 A. No, we have not.

25 Q. Would that be an example of one of the incentives you

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1 referred to earlier?

2 A. Yes, sir.

3 Q. You also noted that the vaccine announcement provides
4 that detainees will be given fresh fruit on the day or day
5 after their vaccination. Why did the jail include that
6 information on this notice?

7 A. Well, we just wanted to do something. Fruit is
8 healthy, and then we just wanted to do something to try to
9 encourage them. Fruit is something that's not available on a
10 daily basis with their meals, so we just wanted to try to
11 incentivize it as much as we could.

12 Q. And has the jail provided detainees who received the
13 vaccines fresh fruit upon receiving one?

14 A. Yes, we have.

15 Q. And I'll go back. It says the day of or day after
16 your vaccination. As we today, when are detainees receiving
17 fresh fruit?

18 A. They receive it right after they receive their shot in
19 the arm. It's during the 15, 20-minute observation period
20 after they receive their shot. They receive their fruit at
21 that time.

22 Q. Why do you think that providing fruit acts as an
23 incentive to receive a vaccine?

24 A. Well, I mean, fruits are healthy. Plus, it just, like
25 I say, it's a premium because we don't provide fruit on a

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1 daily basis with their meals.

2 Q. This you'll see on this announcement it also says that
3 you will be provided access to free follow-up medical care if
4 you experience discomfort resulting from your vaccination.
5 What kind of follow-up medical care did detainees receive
6 after receiving a vaccine?

7 A. When Wellpath staff does their pill calls or sick call
8 rounds, they are aware of those individuals who have received
9 the vaccine. So for that 48 to 72-hour time period, they do
10 observations on those individuals when they're making their
11 rounds to make sure that they're okay.

12 Q. And while they're making those observations, if they
13 learn that the detainee is suffering any type of side
14 effects, what will medical staff do at that point?

15 A. They will provide treatment to that person based on
16 their treatment needs.

17 Q. And will a detainee have to pay for that follow-up
18 care?

19 A. No, sir.

20 Q. Okay. Chief Fields, I'm going to pull up another
21 document. Do you see that document?

22 A. Yes, sir, I do.

23 Q. This is a 12-page document. I'll scroll through
24 quickly. Can you identify to the Court what this document
25 is.

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1 A. It appears to be a document that we provided to the
2 detainees with information to include the J & J vaccine.

3 Q. And when was this information provided to detainees?

4 A. That information was hand delivered to every detainee
5 in our facility on dates last week.

6 MR. TILLY: I would like to make that -- I think
7 this is Defendants' Exhibit Number 6.

8 THE COURT: It is Exhibit 6.

9 THE COURT: Any objection?

10 MS. BORNER: No objection.

11 (WHEREUPON, the above-mentioned document was
12 marked as Exhibit Number 6.)

13 BY MR. TILLY:

14 Q. Do you know where the jail obtained this document
15 from, Chief Fields?

16 A. If I'm correct it was provided to us from opposing
17 counsel.

18 Q. Who handed out this material to all the detainees last
19 week?

20 A. It was jail security staff and jail programming staff.

21 Q. And again, I'll note that this document has a Spanish
22 version. Why is there a Spanish version attached to this?

23 A. Yes, sir, it is.

24 Q. And the reason was to provide that version to
25 primarily Spanish speakers; is that right?

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1 A. That is correct.

2 Q. All right. Chief Fields, you've said a few times that
3 documents have been loaded onto the kiosk. What are kiosks?

4 A. Kiosks are little tablets that are enclosed where the
5 detainees can go on and do sick call requests. They can
6 order a commissary. They can pull up their inmate handbook
7 to know their inmate rights and the rules and regulations of
8 this facility.

9 Q. Where are kiosks located?

10 A. In the main housing units, they are located inside the
11 housing units. In some smaller areas, they are located
12 outside the housing area in the hallway.

13 Q. And all the detainees have access to kiosks?

14 A. Yes, they do.

15 Q. I'm sharing a five-page document, Chief. Do you
16 recognize this document?

17 A. Yes, sir. That's some COVID vaccination education
18 information.

19 Q. Is that on the kiosk?

20 A. Yes, sir, it is.

21 Q. And how are these materials accessed if a detainee
22 logs into the kiosk?

23 A. Once that person logs into the kiosk, this information
24 automatically comes up. And they have to acknowledge that
25 they've read or they've seen that information. So each and

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1 every time they go on the kiosk, this information comes up.

2 MR. TILLY: Your Honor, I would like to mark that
3 as Defendants' Exhibit Number 7.

4 THE COURT: Exhibit 7 without objection.

5 MS. BORNER: No objection.

6 (WHEREUPON, the above-mentioned document was
7 marked as Exhibit Number 7.)

8 BY MR. TILLY:

9 Q. Are there other COVID-19 vaccine materials on the
10 kiosk, Chief?

11 A. Yes, sir.

12 Q. Can you see that document, Chief?

13 A. Yes, I do.

14 Q. And where is that document located?

15 A. That document is located on the kiosk as well. As
16 well as posted inside the housing units.

17 Q. Is it true about this document too that before, just
18 like the last one we looked at, that before a detainee can
19 take any action on the kiosk, he must acknowledge that he has
20 read this material?

21 MS. BORNER: Objection.

22 THE WITNESS: That is correct.

23 THE COURT: What's the objection?

24 MS. BORNER: He's continuing to lead. I've tried
25 to be sparing about my objections.

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1 THE COURT: Yes.

2 MR. TILLY: I will not lead, Your Honor. I
3 didn't think that was leading questions, but I'll not lead.

4 THE COURT: All right. Mr. Tilly, is this --
5 isn't this the same document as one we've already seen? Is
6 that the --

7 MR. TILLY: Your Honor, it's a little different
8 actually. It's similar to one of the previous documents, but
9 it is slightly different.

10 THE COURT: Okay.

11 MR. TILLY: Just more educational materials.
12 Yep.

13 THE COURT: All right. And we're moving that as
14 Exhibit 8, Mr. Tilly?

15 MR. TILLY: Yes, Your Honor.

16 THE COURT: Any objection?

17 MS. BORNER: No.

18 THE COURT: Thank you.

19 (WHEREUPON, the above-mentioned document was
20 marked as Exhibit Number 8.)

21 BY MR. TILLY:

22 Q. Okay. Chief Fields, I'll pull up this document for
23 you. What is the title of this document, Chief?

24 A. COVID-19 Post Vaccination Patient Education.

25 Q. And what is this document?

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1 A. That is a document that Wellpath provides to each
2 person after they receive their vaccination. So it's handed
3 to them right after they receive their vaccination.

4 Q. And again, there's a Spanish version attached for the
5 Spanish speaking individuals, correct?

6 A. Yes, sir.

7 MR. TILLY: I would like to make that Defendants'
8 Exhibit Number 9, Your Honor.

9 THE COURT: No objection, Exhibit 9.

10 (WHEREUPON, the above-mentioned document was
11 marked as Exhibit Number 9.)

12 BY MR. TILLY:

13 Q. Okay. Chief Fields, we've covered several examples of
14 written materials concerning COVID-19 vaccines. What are
15 other ways that the jail has undertaken to educate detainees
16 about COVID-19 vaccines?

17 A. We show a COVID vaccination educational video that was
18 done by President Obama, Charles Barkley and Shaquille
19 O'Neal. We show that at least twice a day. We have COVID
20 education -- COVID vaccination education materials on the
21 telephone system. So each and every time an inmate uses the
22 telephone, they have to acknowledge receipt of that
23 information prior to making their phone calls. We also have
24 posters throughout the facility that were done by detainees
25 to encourage peer influence with the vaccination. We also

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1 make general announcements on the PA to speak about the
2 incentive programs and things of that nature.

3 Q. Have you held any events to educate detainees about
4 COVID-19 vaccines?

5 A. Yeah. We had a pep rally in June that we had some
6 doctors come in to meet and ask -- or answer questions that
7 the inmates may have had in regard to the vaccination.

8 Q. And what detainees were -- what detainees attended the
9 pep rally in June?

10 A. We had detainees from our program pods. We have
11 program pods that are scattered throughout the facility. So
12 mostly every floor in this jail had participation with that
13 pep rally.

14 Q. Why did the jail choose detainees from program pods to
15 attend the pep rally?

16 A. Because of the peer influence. Most of those guys,
17 they work. Serve as rock men. And they're out and about,
18 and they communicate with other detainees.

19 Q. And just so we're clear, exactly what happened at the
20 pep rally?

21 A. At the pep rally it was held in our inside gym. It
22 was kind of like a more relaxed atmosphere. They came up by
23 individual housing units and, you know, there were
24 decorations, pom poms, things of that nature. And the
25 medical professionals were seated at tables, and they were

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1 able to go and receive literature and have those one-on-one
2 conversations and ask questions about the vaccination.

3 Q. Do you know about how many detainees attended the pep
4 rally?

5 A. It was a little over 300 detainees that attended the
6 pep rally.

7 Q. What are town hall meetings?

8 A. Town hall meetings are meetings that we hold to allow
9 detainees to address any concerns that they may have that are
10 taking place within the facility. So these meetings are
11 conducted and attended by representatives from our
12 commissary. Food services. Property room. Medical staff.
13 Security staff. Our program staff. So any and everybody
14 that has played a role in our day-to-day operation of this
15 facility participates in those town hall meetings.

16 Q. And has the jail utilized the town hall meetings to
17 educate detainees about COVID-19 vaccines?

18 A. That is correct.

19 Q. How has it done that?

20 A. Medical participates, so medical gets an opportunity
21 to provide them information, to speak with them and encourage
22 them. And it also allows them to address their concerns or
23 their questions to medical in a forum that is -- and town
24 halls normally lasts anywhere between an hour or two. So
25 if -- it allows them to have more time for those intimate

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1 conversations with the medical staff in regards to any
2 concerns that they may have about the vaccine.

3 Q. On a daily basis, Chief Fields, what kind of contact
4 do detainees have with medical staff in the jail?

5 A. It's daily, whether it be during sick call or pill
6 pass. Medical is assigned and medical have staff assigned to
7 every floor within the facility. So there's constant
8 interaction between detainees and medical staff.

9 Q. Has the jail utilized that interaction with medical
10 staff to educate detainees about COVID-19 vaccines?

11 A. I'm sorry. I didn't hear you.

12 Q. Has the jail -- I'm sorry. Has the jail utilized that
13 daily interaction with medical staff and detainees to educate
14 detainees about COVID-19 vaccines?

15 A. Yes, sir.

16 Q. And how so?

17 A. Well, just by having those conversations, that daily
18 interaction. So it allows them to speak individually to
19 those medical professionals rather than in an open forum
20 sometimes.

21 Q. If a detainee asks a security staff member about
22 COVID-19 vaccines or asks wanting to get one or just wanting
23 more information about one, what is that staff member
24 directed to do?

25 A. To direct -- well, to direct that person to medical

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1 and if that person actually wants the vaccine to contact
2 medical so that they can place that person on the vaccination
3 list.

4 MR. TILLY: Your Honor, there are two videos that
5 we listed on our exhibit list. They're about five minutes
6 apiece. I'm happy to play them or if Plaintiff's counsel
7 will stipulate to us admitting them as exhibits, I can just
8 have Chief Fields testify about them.

9 THE COURT: I have watched them both.

10 MR. TILLY: Okay.

11 THE COURT: Ms. Borner, your position on them as
12 exhibits? You're on mute but I think you're saying no
13 objection.

14 MS. BORNER: No objection.

15 MR. TILLY: Okay. I would like to make those our
16 next two exhibits.

17 THE COURT: So let's say Exhibit 10 for the
18 Obama, Barkley, O'Neal exhibit and Exhibit 11 for this is a
19 Ad Council, I think was the producer of the other one.

20 MR. TILLY: Yes, Your Honor.

21 THE COURT: Okay. We'll talk -- well, we'll talk
22 about all the exhibits and how to make those part of the
23 record at the end.

24 (WHEREUPON, the above-mentioned documents were
25 marked as Exhibit Numbers 10 and 11.)

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1 MR. TILLY: Okay.

2 BY MR. TILLY:

3 Q. Chief Fields, speaking about the videos, you mentioned
4 the Barack Obama video earlier. How often is that video
5 played at the jail?

6 A. At least twice daily.

7 Q. Where is it played?

8 A. It's played throughout the entire jail facility. Our
9 televisions are set that -- our main television in our main
10 control center, whatever is shown on that television is shown
11 throughout the facility.

12 Q. Okay. When you say throughout the facility, are they
13 played in the housing units?

14 A. Yes.

15 Q. And how do detainees have the ability to view these
16 videos in the housing units?

17 A. Mainly when the videos are shown, they're 0800 hours
18 and 1500 hours. Those are the times that the inmates come
19 from their cells for -- in the open -- in the day room area.
20 So those are times that they're shown. Some inmates are out
21 at that time; some are not. But even if they're not out,
22 they can hear the video. But the videos are shown twice
23 daily at least.

24 Q. Okay. If a -- just to be clear, if a detainee is in
25 his cell, can he hear the video?

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1 A. Correct.

2 Q. And is that -- we were talking about the Obama video.
3 The Ad Council video as well, give a brief description of
4 what the Ad Council video is.

5 A. That is the Tuskegee experiment video that we show to
6 dispel any thoughts of any type of, I guess, conspiracy or in
7 regards to the vaccine.

8 Q. How often is it played?

9 A. That is played at least twice a day also.

10 Q. In each of the housing units?

11 A. That is correct.

12 MR. TILLY: Your Honor, I also have the audio of
13 the phone recordings that I'm happy to just admit as exhibits
14 instead of playing them, if that is agreeable to the Court
15 and to Plaintiff's counsel.

16 THE COURT: Ms. Borner?

17 MS. BORNER: No objection here.

18 THE COURT: Okay. So is there one recording or
19 more than one, Mr. Tilly?

20 MR. TILLY: There's actually two recordings. One
21 is an English version, and one is a Spanish version.

22 THE COURT: All right. Let's make Exhibit 12 the
23 English version.

24 (WHEREUPON, the above-mentioned document was
25 marked as Exhibit Number 12 .)

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1 THE COURT: And 13 the Spanish version.

2 (WHEREUPON, the above-mentioned document was
3 marked as Exhibit Number 13.)

4 BY MR. TILLY:

5 Q. Briefly, Chief Fields, explain to the Court when a
6 detainee will hear those phone prompts that we just
7 discussed.

8 A. When they pick up that receiver before they can make a
9 phone call, they've got to acknowledge that information.

10 Q. When can detainees make phone calls?

11 A. When they're out for their general recreation time.

12 Q. Are they ever prohibited from making phone calls
13 during that time?

14 A. No.

15 Q. Okay. Chief Fields, we've talked a lot about how
16 detainees in the jail are educated. When are detainees --
17 when are new detainees first informed about their ability to
18 receive the vaccine?

19 A. Upon entry into the facility's intake. That first
20 contact will be with medical staff, with Wellpath.

21 Q. Okay. And during intake if they indicate to Wellpath
22 that they desire a vaccine, what happens?

23 A. Wellpath places them on a list to receive the vaccine.

24 Q. And during intake do detainees receive any information
25 about COVID-19 vaccines?

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1 A. Yes. Wellpath provides them with educational
2 material.

3 MR. TILLY: I'll share a document, Your Honor.

4 BY MR. TILLY:

5 Q. Chief Fields, do you see this is a two-page document?
6 Do you see that?

7 A. Yes, sir.

8 Q. And what is that document?

9 A. That is the documentation that Wellpath provides to
10 them in intake.

11 Q. Okay.

12 MR. TILLY: Your Honor, I would like to make that
13 Defendants' next exhibit, please.

14 THE COURT: And that's different than Exhibit 3?

15 MR. TILLY: It is a little different, Your Honor.

16 THE COURT: Okay.

17 MR. TILLY: I think one of the pages is the same,
18 but the -- there's a second page.

19 THE COURT: All right. Any objection?

20 MS. BORNER: No. No objection.

21 THE COURT: Exhibit 14.

22 (WHEREUPON, the above-mentioned document was
23 marked as Exhibit Number 14.)

24 BY MR. TILLY:

25 Q. And Chief Fields, is there a difference between intake

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1 and orientation?

2 A. Yes, sir.

3 Q. Explain to the Court what the difference between
4 intake and orientation is.

5 A. Well, intake is their introduction into the Shelby
6 County Jail. That's when they're first being arrested and
7 being processed in. Whether they're misdemeanor or felony
8 charges. We have guys that come in to intake and never go
9 into general housing. Based on their charges. They may be
10 released ROR. They may be released on bond. So during that
11 processing time, they may be released prior to a housing
12 assignment.

13 Q. If a detainee is given a housing assignment, typically
14 how much time passes between intake and that housing
15 assignment?

16 A. Between 8 and 12 hours.

17 Q. And when is orientation, when does that take place?

18 A. Orientation is done when they are given their initial
19 housing assignment. When they're actually at that housing
20 location. Our civilian staff, our counselors will go in, and
21 then they will conduct housing orientation.

22 Q. And how does orientation work?

23 A. They have a list of names that's provided to them of
24 all the new inmates to those housing units. And they go in
25 and they conduct an orientation in a group setting.

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1 Q. Better, what's the purpose of orientation?

2 A. Just to give them information about the jail. Give
3 them information about follow-up care or prison
4 representation act, things of that nature.

5 Q. I just shared another document. Do you see that
6 document, Chief Fields?

7 A. Yes.

8 Q. This is a 15-page document. Can you identify for the
9 Court what this is.

10 A. That is actually the housing unit orientation packet.

11 Q. Okay. I want to focus specifically on pages 10 and 11
12 of this orientation packet. Do you see those?

13 A. Yes, sir.

14 Q. What are those pages?

15 A. Vaccination education.

16 MR. TILLY: Your Honor, I would like to mark that
17 as Defendants' next exhibit.

18 THE COURT: Any objection?

19 MS. BORNER: No objection.

20 THE COURT: Exhibit 15.

21 (WHEREUPON, the above-mentioned document was
22 marked as Exhibit Number 15.)

23 BY MR. TILLY:

24 Q. And Chief Fields, I think it identified itself on the
25 document itself, but where did these pages come from?

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1 A. From the CDC.

2 Q. And are there any other times that a detainee may
3 undergo orientation other than when he first gets a housing
4 assignment?

5 A. No, sir. Anytime a detainee is reassigned to a new
6 housing unit, he goes -- he undergoes housing orientation
7 again.

8 Q. And every time, would he get an orientation packet?

9 A. That is correct.

10 Q. Okay. Chief Fields, earlier I asked you about
11 nonpunitive incentives offered to detainees to accept the
12 COVID-19 vaccine. What are the nonpunitive incentives the
13 jail is offering to detainees to accept the COVID-19 vaccine?

14 A. Well, initially it started with the no fear of housing
15 reassignment and the fruit. Then we came with the \$20
16 incentive for the vaccine for the month of June. We extended
17 that through the month of July, and we reextended it through
18 to the end of August.

19 We also have come up with a raffle drawing for anyone
20 vaccinated that is inside this facility, whether they were
21 vaccinated in February, April, May, June, July or August,
22 that their names will be place in a hat for a \$100 credit to
23 their commissary account. We've also come up with a pizza
24 party for the housing unit with the highest amount of
25 vaccinated residents.

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1 Q. Okay. Let's talk a little bit about the \$20
2 incentive. How does the \$20 incentive work?

3 A. What happens is Wellpath provides us those names of
4 those individuals who have been vaccinated. We in turn then
5 provide that information to our finance purchasing department
6 so that we can have the funds or check made out to Aramark.
7 Those names are then given to Aramark, and Aramark places
8 those funds on those inmates' accounts.

9 Q. How did the jail inform detainees about the \$20
10 incentive?

11 A. We did that through fliers. We did that through
12 verbal conversation with our program department. We've done
13 it through PA announcements. Through postings throughout the
14 facility.

15 Q. Chief Fields, can you see the document I've just
16 shared with you?

17 A. Yes, sir.

18 Q. This is a -- can you identify what that is?

19 A. That is the flyer of the posting that was put out for
20 the initial incentive for the \$20 credit that we did for the
21 month of June.

22 Q. And I'll go to page 2. What is this page?

23 A. That is when we extended it. So we put those notices
24 out and made our announcements also for the month of July.

25 Q. And then on page 3?

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1 A. Is the extension and the post notifications of it
2 being extended through the end of August.

3 Q. And Chief Fields?

4 MR. TILLY: Your Honor, I would like to mark that
5 as Defendants' next exhibit.

6 THE COURT: Any objection?

7 MS. BORNER: No objection.

8 THE COURT: Exhibit 16.

9 (WHEREUPON, the above-mentioned document was
10 marked as Exhibit Number 16.)

11 MR. TILLY: Yeah. A collective exhibit would
12 probably be best.

13 BY MR. TILLY:

14 Q. Chief Fields, how does the jail go about providing
15 detainees the \$20 on their commissary account?

16 A. Help me understand your question, please.

17 Q. Well, I think you said earlier that Wellpath provides
18 a list of the names to the jail; is that right?

19 A. That's correct.

20 Q. And then what does the jail do with that list?

21 A. The jail maintains that list. We do our accounting so
22 that we can put in the request for the check to be made to
23 Aramark. And in turn, once that check is made and delivered
24 to Aramark, those names, along with their identification
25 numbers are given to Aramark so that those funds can be

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1 placed on those individual accounts.

2 Q. Is it immediately put on the account, Chief Fields, or
3 does it take a little time?

4 A. It takes a little time because we get the list from
5 Aramark -- I mean, we get the list from Wellpath. And then
6 we tally it up to see what that amount is, and we forward
7 that amount to our purchasing and finance office so that we
8 can get the check made. Once that check is delivered to
9 Aramark, then it takes Aramark a day or two to go in and
10 place those funds on those individual accounts.

11 Q. And Are you providing that incentive to the detainees
12 who receive the vaccine in the jail, who are still housed in
13 the jail?

14 A. That is correct. Can I say that we even grandfathered
15 those in that were received the vaccine in February and April
16 and in May, so we deposited those funds to their account
17 also.

18 Q. Chief Fields, I want to show you another document.
19 What is this document that I just shared with you?

20 A. That is the certificate of appreciation that's given
21 to every detainee who has received their vaccine.

22 Q. And why does the jail provide the detainee the
23 certificate of appreciation?

24 A. Just to show them we appreciate it and hopefully that
25 it can give us some peer influence. Because when they are

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1 given their certificates, they are given it in open forum
2 where the other detainees can witnesses it and hoping that it
3 can influence others to want to receive the vaccine.

4 MR. TILLY: Your Honor, I would like to make that
5 Defendants' Exhibit 17.

6 THE COURT: Any objection?

7 MS. BORNER: No objection.

8 THE COURT: Exhibit 17.

9 (WHEREUPON, the above-mentioned document was
10 marked as Exhibit Number 17.)

11 BY MR. TILLY:

12 Q. Chief Fields, what about the \$100 contest incentive?

13 Can you explain to the Court what that is.

14 A. We were just trying to find ways to better incentivize
15 and thinking of ways that we can do because we are in a
16 detention facility. They could, you know, possibly, you
17 know, generate more buzz about the vaccine.

18 Q. How did you inform detainees about the \$100 drawing?

19 A. We did that through postings. We did that through
20 announcements on the PA, and we did that through -- by our
21 program staff going to each and every housing unit and
22 verbally notifying the detainees of that incentive.

23 Q. Chief Fields, what's the document that I just shared
24 with you?

25 A. That is the flyer or the post ings that we have

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1 throughout the facility notifying the detainees of the \$100
2 drawing.

3 MR. TILLY: Your Honor, I would like to make that
4 Defendants' next exhibit.

5 MS. BORNER: No objection.

6 THE COURT: Exhibit 18.

7 (WHEREUPON, the above-mentioned document was
8 marked as Exhibit Number 18.)

9 BY MR. TILLY:

10 Q. Explain to the Court what the jail's plan is with the
11 pizza party incentive.

12 A. The pizza party, once we are able to identify all
13 those persons that have had the vaccine, then we will look at
14 their housing locations, and we'll be able to determine which
15 housing location has the highest amount of persons that have
16 been vaccinated. And we will give that housing unit a pizza
17 party.

18 Q. When do you plan on awarding that pizza party to the
19 housing unit with the highest vaccination rate?

20 A. That will be sometime in September. We've got to
21 ensure that everyone that's signed up to receive the vaccine
22 up until August 31st actually received their vaccine. So we
23 won't know those numbers until September. Because if I
24 signed up -- or if a person signs up on August 31st, then
25 that person is entitled to be included in that drawing and

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1 participate in it.

2 Q. How are you informing the detainees about the pizza
3 party incentive?

4 A. That is done by postings, the fliers and PA
5 announcements, as well as the civilian staff, the program
6 staff personally telling all the housing units about it.

7 MR. TILLY: Your Honor...

8 BY MR. TILLY:

9 Q. Chief Fields, I just shared another document. Can you
10 identify this document?

11 A. Yeah. That is a document that we have posted in every
12 housing unit from me informing them of the extension of the
13 \$20 incentive as well as the pizza party.

14 Q. And Chief, you mentioned a few times the PA system.
15 Explain to the Court what you mean by that.

16 A. We have a public address system that general
17 announcements are made that can be heard throughout the
18 facility. So we randomly make those announcements.

19 Q. And what incentives are you announcing, just to be
20 clear, over the PA system?

21 A. The extension of the \$20 vaccine through August 31st
22 and as well as the pizza party.

23 Q. What about the \$100 contest?

24 A. Yes. The \$100 contest too. I'm sorry.

25 MR. TILLY: Your Honor, that last document I

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1 would like to mark as the next exhibit.

2 THE COURT: Any objection?

3 MS. BORNER: No objection.

4 MR. TILLY: Did I make the \$100 flyer -- I did?

5 Okay.

6 THE COURT: So the last one that included the
7 reference to the pizza party is Exhibit 19.

8 (WHEREUPON, the above-mentioned document was
9 marked as Exhibit Number 19.)

10 BY MR. TILLY:

11 Q. Okay. Chief Fields, I'll share with you -- what is
12 this that I've shared now?

13 A. These are posters that have been done by detainees
14 encouraging the vaccine that are posted throughout the
15 facilities.

16 Q. Are these all the posters?

17 A. No. They're just examples.

18 Q. And where specifically are those posters placed
19 throughout the facility?

20 A. Throughout -- on every floor throughout the housing
21 units. In the hallways. The corridors where detainees walk.

22 Q. What was the purpose of having detainees prepare these
23 posters?

24 A. It was about peer influence because these were done --
25 their fellow detainees to receive the vaccine.

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1 MR. TILLY: Your Honor, I would like to mark that
2 as Defendants' next exhibit, please.

3 THE COURT: Any objection?

4 MS. BORNER: No objection.

5 THE COURT: Let's make that Exhibit 20. I think
6 it's a ten-page document, Mr. Tilly.

7 MR. TILLY: I believe that's correct, Your Honor.
8 Yes. Yes, it is.

9 (WHEREUPON, the above-mentioned document was
10 marked as Exhibit Number 20.)

11 MR. TILLY: Your Honor, we have filed
12 declarations by Chief Fields, as you know, and part of the
13 information included in those declarations are the
14 vaccination -- the dates that the vaccines were administered
15 as well as the number of detainees who received the vaccines
16 on those dates. For efficiency, I can go through every
17 single date or if the Court is okay and Plaintiff's counsel
18 is agreeable, we can just rely upon what's in those
19 declarations to set forth the administration dates and the
20 number of vaccines that were administered on those dates.

21 THE COURT: I guess, Ms. Borner, my inclination
22 would be to say that is additional testimony that Mr. Fields
23 is offering and is part of the record through the docketing
24 system. And if you wish to cross examine him on that, you'll
25 be free to do so. So is it okay just to rely on the

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1 declaration as the recording of his testimony on those
2 issues?

3 MS. BORNER: Yes. And I will plan to cross
4 accordingly.

5 THE COURT: Okay.

6 MR. TILLY: Thank you, Your Honor.

7 BY MR. TILLY:

8 Q. Chief Fields, I think you testified earlier about
9 vaccinations being administered yesterday. Since April do
10 you know how many detainees in the jail have received a
11 COVID-19 vaccine?

12 A. To include yesterday, we're over 600 detainees that
13 have received the vaccination.

14 Q. Have all detainees in the jail been offered the
15 COVID-19 vaccine since April?

16 A. Yes. And we continue to offer it.

17 Q. Has any detainee in the jail been prevented from
18 obtaining a COVID-19 vaccine?

19 A. No.

20 Q. Have all detainees who have been housed longer than
21 14 days and who have requested a COVID-19 vaccine been
22 provided one?

23 A. Yes.

24 Q. Have all detainees in the jail been provided
25 educational materials about COVID-19 vaccines?

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1 A. Yes.

2 Q. Have all detainees in the jail been provided
3 nonpunitive incentives -- have all detainees in the jail been
4 offered nonpunitive incentives to take the vaccine?

5 A. Yes.

6 MR. TILLY: Your Honor, if I could just look over
7 my notes?

8 THE COURT: Yes.

9 MR. TILLY: Thank you.

10 Your Honor, I think I'm done with my direct.

11 THE COURT: All right. Thank you, Mr. Tilly.

12 Ms. Morris, you had a housekeeping issue.

13 MS. MORRIS: Yes. We would propose that our
14 expert could go on at noon. We expect that he'll take about
15 30 minutes for our direct exam. So we're wondering if that
16 would work in terms of timing for getting him on. I'm not
17 sure that Chief Fields will be done by then to be honest.

18 THE COURT: That's a long cross. Well, we'll see
19 how long the cross goes. I don't have an issue trying to
20 work him in. Let's see how long the cross goes.

21 MS. MORRIS: All right. Thank you, Your Honor.

22 THE COURT: All right. Thanks. All right.

23 Ms. Borner?

24 MS. BORNER: I think as another housekeeping
25 issue and being mindful of the time plan for hoping to take a

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1 brief break before we begin with Chief Fields's cross.

2 THE COURT: What? I'm sorry. What did you say?

3 MS. BORNER: We were hoping to take just a few
4 minutes before beginning Chief Fields's cross.

5 THE COURT: Do you want a break?

6 MS. BORNER: Yes.

7 THE COURT: All right. It needs to be quick if
8 we're going to get done what we need to get done. So it is
9 ten after 11:00 central. Or nine after 11:00. Let's take a
10 ten-minute break. Be ready to go back at 11:20.

11 (Short break.)

12 THE COURT: It is 11:20. Let's get back to it.
13 So I have sent a message to have moved my one o'clock matter.
14 So at this point I've got court -- a couple things in court
15 at 2:00. So our hard stop is about 1:45. We'll see where we
16 are at that the point. And just a reminder to everyone that
17 there's no recording of any type allowed. We are in court,
18 albeit virtual court. All right. Ms. Borner? Am I saying
19 your name right, by the way? Yes. You're on mute.

20 MS. BORNER: You are. I'm trying to dial in, and
21 I don't want to end up with feedback. There. I'm joining.

22 THE COURT: I actually could hear you better by
23 the video. I didn't realize that was what you were doing.
24 Say a word or two.

25 MS. BORNER: Testing.

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1 THE COURT: I could hear you clearer through the
2 video. I didn't know why you were doing the call-in.

3 MS. BORNER: Should I switch back then? That's
4 no problem.

5 THE COURT: Is there a reason you were doing the
6 call-in?

7 MS. BORNER: No. Because in the past people have
8 suggested that's clearer, so...

9 Okay. I'll go back. All right. Then I will
10 switch back.

11 THE COURT: Okay.

12 MS. BORNER: Okay. Testing.

13 THE COURT: Yeah. That's clearer for me to hear,
14 frankly.

15 MS. BORNER: Okay. Great.

16 THE COURT: All right. You may proceed.

17 MS. BORNER: And Judge --

18 THE COURT: I'm sorry. Just a reminder, Chief
19 Fields, you're still under oath.

20 THE WITNESS: Yes, ma'am.

21 MS. BORNER: And Judge, I just wanted to let you
22 know. So we deposed Chief Fields as a 30(b)(6) witness on
23 Wednesday, and despite our absolute best efforts, we do not
24 have the transcript yet. We are planning to file excerpts
25 from it as soon as we receive it. But for purposes of

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1 examining Chief Fields today, I will have to rely on my notes
2 and recollection, if that's okay.

3 THE COURT: Well, let's proceed and see if we run
4 into a problem.

5 MS. BORNER: Okay.

6 **CROSS-EXAMINATION**

7 **QUESTIONS BY MS. BORNER:**

8 Q. Good morning, Chief Fields.

9 A. Good morning.

10 Q. And we met the other day; is that right, Wednesday
11 August 4th?

12 A. Correct.

13 Q. And you sat for a deposition as the 30(b)(6) witness
14 for the Shelby County Sheriff's Office?

15 A. Correct.

16 Q. And you were under oath, correct?

17 A. Correct.

18 Q. And in that deposition as the 30(b)(6) witness, you
19 were speaking on behalf of the Shelby County Sheriff's
20 Office; is that right?

21 A. Correct.

22 Q. Okay. So your counsel asked you a lot of questions
23 about the educational materials and incentives that the jail
24 says it's offering regarding the vaccine, right?

25 A. Correct.

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1 Q. What is the vaccination rate in the jail today?

2 A. I do not have that information.

3 MR. TILLY: Your Honor, I don't know if the
4 vaccination rate is a relevant inquiry to whether the
5 termination provision of the decree has been triggered.

6 THE COURT: I'll allow it.

7 MR. TILLY: And it's not part of the termination
8 provision.

9 THE COURT: I'll allow it as -- I'm going to
10 allow leeway and let the parties argue as to what's relevant
11 in terms of the termination provision.

12 BY MS. BORNER:

13 Q. Chief Fields, is that the jail's position that the
14 vaccination rate in the jail is not relevant?

15 A. No, ma'am.

16 Q. But the jail does not know at this time the
17 vaccination rate?

18 A. That is correct.

19 Q. And has the jail tracked the vaccination rate since it
20 began offering vaccines?

21 A. No we have not. No we have not.

22 Q. And you testified earlier that the jail has as of
23 yesterday administered maybe over 600 vaccines, do you know
24 how many of the recipients of those vaccines are still
25 detained in the jail?

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1 A. No, I do not.

2 Q. So you testified that you are responsible for the
3 safety and security of the detainees and staff in the jail,
4 right?

5 A. Correct.

6 Q. And that you're personally familiar with the jail's
7 efforts to respond to the COVID-19 pandemic?

8 A. Correct.

9 Q. And you invoked the CDC guidelines as information that
10 the jail needs to consider and implement in regards to the
11 pandemic?

12 MR. TILLY: Your Honor, again this is going
13 beyond the -- what is at issue in the termination provision.
14 General questions about the response to COVID-19 are well
15 beyond what we're here to take up today.

16 THE COURT: Your objection is a little premature.
17 I mean, she just asked whether he relies on CDC guidelines.
18 Some of the material you've offered in exhibits does
19 reference CDC guidelines. So I don't know where she's going
20 next.

21 MR. TILLY: Yes, Your Honor.

22 THE COURT: I get your point that -- of what the
23 focus of the hearing is. But let's see what the next
24 question is.

25 MR. TILLY: Thank you, Your Honor.

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1 MS. BORNER: Thank you, counsel. And if I could
2 just -- I'm very aware of how little time we have, so if
3 counsel could try to just be sparing in his objections as I
4 was. I would very much appreciate it.

5 Eric, could we pull up the document that we filed
6 as Exhibit G on our list, and I can rename it for the Court
7 if that's helpful. Thank you.

8 BY MS. BORNER:

9 Q. Chief Fields, do you recognize this document?

10 A. You briefly showed it in my deposition.

11 Q. Right. And it appears to be CDC Considerations For
12 Modifying COVID-19 Prevention Measures in Correctional and
13 Detention Facilities?

14 A. Yes. That's what it reads, yes.

15 Q. Okay. As of June 22nd, 2021, right?

16 A. Correct.

17 Q. After the jail had begun vaccinating its detainees?

18 A. Correct.

19 Q. And when I showed you this exhibit at your deposition,
20 you had never seen it before; is that right?

21 A. Not to my knowledge.

22 Q. Okay.

23 MS. BORNER: Thank you Eric. You can take that
24 down.

25 BY MS. BORNER:

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1 Q. Chief Fields, I think you testified that the vaccine
2 is offered on a daily basis at the jail; is that right?

3 A. Yes.

4 Q. There are not people on premises who administer the
5 vaccine every day, are there?

6 A. No.

7 Q. Okay. In fact, I think you said mainly -- I think you
8 said mainly it's done weekly; is that right?

9 A. Correct.

10 Q. But it hasn't really been done weekly, has it?

11 A. For the most part, yes, it has.

12 MS. BORNER: Okay. Eric, can we pull up the
13 interrogatory responses.

14 I'm sorry. I should have marked the last one as
15 Plaintiff's Exhibit 1, and this one will now be Plaintiff's
16 Exhibit 2 absent any objection.

17 MR. TILLY: Your Honor, I object.

18 THE COURT: Hang on for a second. First, I do
19 one continuous numbering system in a hearing.

20 MS. BORNER: Oh, sure.

21 THE COURT: But second, he didn't identify it,
22 and third, Mr. Tilly, your objection?

23 MR. TILLY: Yes. It wasn't identified. It
24 wasn't authenticated. It was just thrown in front of him,
25 Your Honor. I object to it becoming an exhibit.

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1 THE COURT: We could mark it for ID. It also,
2 you know, it wasn't identified as part of the record because
3 it is Plaintiff's Exhibit G. Do you have the ECF number,
4 Ms. Borner?

5 MS. BORNER: It would be, looks like ECF 244
6 dash...

7 THE COURT: Seven?

8 MS. BORNER: That sounds right. Yes, that's
9 right.

10 THE COURT: So rather than have an exhibit marked
11 for ID purposes, can we just have the record show that the
12 document shown to Chief Fields was ECF 244-7. It was not
13 identified. Any objection to that way to just have the
14 record show what the document was?

15 MR. TILLY: No. No objection to that, Your
16 Honor. Just for identification, no objection.

17 THE COURT: Correct.

18 MS. BORNER: Would the Court be willing to take
19 judicial notice of that document, the CDC guidelines?

20 THE COURT: Mr. Tilly?

21 MR. TILLY: Your Honor, I don't even know what is
22 in all that document. I think it's several pages. I don't
23 think it would be appropriate for the Court to take judicial
24 notice of what's of a 21-page document that has nothing
25 really to do with the termination provision that we're here

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1 for today.

2 THE COURT: That's where I thought you were going
3 to go. I will not at this point. I'll say that I have
4 relied on CDC guidelines not only in this case but in the
5 compassionate release cases that have come before me. But at
6 this point without looking through it all, I'm not going to
7 comment on that document itself. At the end of this we're
8 going to talk about whether there's any additional briefing
9 you all want to do and if there is, that could potentially
10 include any arguments regarding taking judicial notice of
11 that document. All right. Let's proceed.

12 MS. BORNER: Fair enough. Thank you.

13 BY MS. BORNER:

14 Q. So we now have on the screen and I will try -- so this
15 will be ECF Number 244-8. Chief Fields, these are the
16 interrogatories that the Shelby County Sheriff's Office
17 submitted in this case, right?

18 A. Yes, ma'am.

19 Q. And you certified these documents, you signed your
20 name at the end?

21 A. That's correct.

22 Q. Okay. Let's scroll down to the response to
23 Interrogatory 9. And Chief Fields, is this a list of all of
24 the dates of administration of the vaccine at the jail?

25 A. Yes, ma'am.

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1 MR. TILLY: Your Honor, just if they'll allow
2 Chief Fields to look at the entire document, I think that
3 would be helpful.

4 THE COURT: If you could scroll through. I
5 assume he's seen it before since he signed it but just to
6 show that this is the same document, Ms. Borner.

7 MS. BORNER: Sure.

8 BY MS. BORNER:

9 Q. Okay.

10 THE COURT: Maybe Eric needs to scroll through it
11 to show the answer.

12 MR. TILLY: Your Honor, I just want to make sure
13 that he's able to see the answers that she's asking about is
14 all I was trying to point out.

15 THE COURT: Right. That's what I thought.

16 MS. BORNER: Okay. Thanks.

17 BY MS. BORNER:

18 Q. So yeah. So we're looking at the response to
19 Interrogatory Number 9. First of all, Chief Fields, this
20 interrogatory response does not reference the February 14th
21 administration that you referenced during your direct; is
22 that right?

23 A. That's correct.

24 Q. Okay.

25 MS. BORNER: Let's scroll back down a bit, Eric.

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1 Thank you.

2 BY MS. BORNER:

3 Q. So just looking through the dates here on which the
4 vaccine was administered, other than the February 14th
5 administration and yesterday's administration, is this a
6 complete list of the dates on which the vaccine was
7 administered at the jail?

8 A. Can you please scroll down. I don't see July.

9 THE COURT: Is Eric scrolling down?

10 MS. BORNER: Yes, I believe he is. Keep going,
11 Eric. There's a supplement. Yeah.

12 THE WITNESS: Okay.

13 BY MS. BORNER:

14 Q. So is that a complete list with the two exceptions I
15 asked you about earlier?

16 A. Yes, ma'am.

17 Q. Thank you.

18 MS. BORNER: And Eric now, if you could scroll
19 back up. A little bit more. Keep scrolling, Eric. Okay.
20 Thank you.

21 BY MS. BORNER:

22 Q. Chief Fields, so we have here two dates of
23 administration, April 29 and then May 10th.

24 A. Yes, ma'am.

25 Q. Okay. And would you agree that there are 11 days

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1 between those two vaccine administrations?

2 A. That is correct.

3 Q. And then the following date after May 10th is
4 May 20th, and there are ten days between those two
5 administrations, right?

6 A. That is correct.

7 Q. Okay. And then after May 20th, if we go to the next
8 page, you'll see June 10th, and if my math is right, that's
9 three weeks until the next administration, right?

10 A. Yes, ma'am.

11 Q. And then continuing to scroll down July 8th to
12 July 22nd, is that two weeks between administrations?

13 A. Yes, ma'am.

14 Q. Okay.

15 A. 12 days, yes, ma'am. I'm sorry.

16 Q. Well, I think?

17 A. Yes, ma'am. You're correct.

18 Q. Okay. Thank you. I went to law school to not have to
19 do math. Okay. So I think it's fair to say that vaccines
20 have not been administered on a weekly basis at the jail,
21 right?

22 A. On those dates, yes, ma'am. But there's a reason why
23 they weren't administered within that seven-day time period.

24 Q. Okay. What is that reason?

25 A. Because of the lack of sign-ups from the detainees to

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1 receive the vaccine.

2 Q. Is the minimum number of sign-ups six?

3 A. I believe that is correct.

4 Q. Okay. So between May 20th and June 10th, in those
5 three weeks, the jail couldn't find six detainees to sign up
6 and get vaccinated?

7 A. That is correct.

8 Q. Okay. Just a couple of things on the educational
9 materials that you spoke about. You talked about a pep
10 rally, right?

11 A. Yes.

12 Q. And that was -- was that the only time that you've
13 ever had doctors not affiliated with the jail on the premises
14 to answer questions about COVID?

15 A. That's correct.

16 Q. And did the jail have any numbers on how many
17 detainees signed up to get vaccinated following the pep
18 rally?

19 A. No, ma'am.

20 Q. No, ma'am. The jail does not have numbers, right?

21 A. None that are -- I'm sure we do but none that have
22 been forwarded.

23 Q. Okay. And you also talked about town halls. But not
24 all of the housing pods have had town halls about the
25 vaccine, right?

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1 A. That is possible. Yes, ma'am.

2 Q. Okay. Let's -- okay. So you also talked about how
3 jail staff interacts with detainees about getting vaccinated,
4 right?

5 A. Yes.

6 Q. Okay. And I believe you testified that jail staff is
7 instructed to tell detainees who ask about the vaccine to
8 speak with medical; is that right?

9 A. That is correct.

10 Q. Okay. But is there any written directive to staff
11 about what to say when detainees bring up the vaccine with
12 them?

13 A. No, there is not.

14 Q. And is the jail aware that detainees have reported
15 that staff has discouraged them from taking the vaccine?

16 A. Yes. I was made aware of that on Wednesday in my
17 deposition.

18 Q. Okay. And that allegation had appeared in a
19 declaration that Plaintiffs had previously filed, right?

20 A. Correct.

21 Q. And would you agree with me that Plaintiffs filed that
22 declaration in May, May 19th?

23 A. That is correct.

24 Q. Okay. And had the jail done anything to investigate
25 that allegation made in May?

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1 A. No. I was just made aware of it on Wednesday. And on
2 Wednesday I made the comment that we will look into those
3 allegations.

4 Q. Okay. And as of Wednesday nobody had spoken with the
5 individual who had made that statement in his declaration,
6 right?

7 A. That is correct.

8 Q. Okay. Okay. So on the educational materials, you
9 testified that these are accessible to detainees; is that
10 right?

11 A. Correct.

12 Q. You're aware though that Mr. Brady specifically found
13 that the materials were not accessible to detainees, right?

14 MR. TILLY: Object.

15 THE COURT: Basis?

16 MR. TILLY: Mischaracterization of what Mr. Brady
17 would have found.

18 THE COURT: I'll allow it and Chief Fields can
19 agree or not agree, and the record will reflect what
20 Mr. Brady found.

21 A. I did not agree with his assessment.

22 BY MS. BORNER:

23 Q. Okay. Are you also aware that Plaintiffs filed a
24 declaration in which a detainee said that he was not able to
25 read the vaccine education materials?

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1 A. Can you explain, please?

2 Q. On the same day, May 19th, Plaintiffs filed a number
3 of different declarations, and in at least one of them, a
4 witness reported that he was not able to see the vaccine
5 education materials, and I'm wondering if you were aware of
6 that.

7 A. I'm aware of it, but I don't agree with that
8 assessment.

9 Q. Okay. Let's talk about the incentives or the
10 nonpunitive incentives that you described that the jail is
11 offering. When was the pizza incentive announced?

12 A. That was announced the last week of July. I can't
13 tell you the specific date.

14 Q. Okay. So that's last week?

15 A. Correct.

16 Q. Okay. And how about the \$100 raffle?

17 A. That was done at the same time.

18 Q. Okay. And Chief Fields, you testified that detainees
19 were given fruit to combat the symptoms that they may be
20 having following their vaccination?

21 A. Correct.

22 Q. Okay. And are you aware that our clients had not --
23 had reported that they did not receive fruit when they were
24 vaccinated?

25 A. I have not been notified of that.

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1 Q. Okay. Let's look at what we had listed as Exhibit J.
2 So that will be ECF 244-9. Hold on. No, I'm sorry. 244-10.

3 MS. BORNER: Yes. You got it, Eric.

4 BY MS. BORNER:

5 Q. So Chief Fields, what is this document?

6 A. This is a document from our food services manager,
7 Shirley Hayslett just notifying me that fruit was ordered and
8 delivered to inmates that received their vaccines on those
9 particular dates.

10 Q. And would you agree Plaintiffs asked that Defendants
11 provide all documents indicating the dates on which
12 incentives were provided to detainees?

13 A. I'm sorry. I don't understand your question.

14 Q. Would you agree that Plaintiffs requested that
15 Defendants provide documentation of all of the dates on which
16 incentives were provided?

17 A. To my knowledge, yes.

18 Q. Okay. And this document reflects that fruit was
19 ordered on certain days in April and in the first half of
20 May, right?

21 A. That is correct.

22 Q. Do you have any evidence that fruit was provided to
23 people who got vaccinated after that date?

24 A. Yes. That evidence can be provided.

25 Q. Okay. But it hasn't been yet, right?

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1 A. If I'm correct, it may have been. I think we attached
2 some invoices where we show where fruit was ordered.

3 Q. Okay. Let's talk about the \$20 incentive program, if
4 we could. Okay. So how long does the process take to get
5 the \$20 incentive onto a detainee's account?

6 A. I can't tell you the exact time frame. I can tell you
7 that once we receive the information from Wellpath, we then
8 forward that information to our finance purchasing office so
9 that we can have the check amount cut out to Aramark. Once
10 we receive that check, then that check -- once Aramark
11 receives that check, then they begin the process of placing
12 those funds on those individual accounts.

13 Q. Okay. And then Aramark -- am I correct that Aramark
14 then provides documentation to the jail of the deposits into
15 the commissary accounts?

16 A. That is correct.

17 Q. Okay.

18 MS. BORNER: Eric, can we pull up what we had
19 marked as Exhibit K.

20 THE COURT: 244, Exhibit K to what?

21 MS. BORNER: Sorry. This was Plaintiff's list.
22 This was Exhibit K on Plaintiff's list. So that will be...

23 THE COURT: 244-11.

24 MS. BORNER: Exactly.

25 THE COURT: Okay.

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1 MS. BORNER: We'd like to offer this one into
2 evidence.

3 THE COURT: Any objection?

4 MR. TILLY: I have no objection to that, Your
5 Honor. Yeah. We have no objection.

6 MS. BORNER: Okay.

7 THE COURT: This will be Exhibit 20. You haven't
8 made the other --

9 MS. BORNER: Yeah.

10 THE COURT: -- documents exhibits. I was going
11 to go back and ask. I mean, they all are in the ECF system.

12 MS. BORNER: We would like to move them into
13 evidence. I started just identifying them, but I think that
14 was an oversight on my part. I would certainly like to move
15 the interrogatory responses in.

16 THE COURT: All right. Any objection, Mr. Tilly?

17 MR. TILLY: No objection to the interrogatories,
18 Your Honor.

19 THE COURT: So that's Exhibit 21. Then you have
20 the memo. I think the next thing I have is the memo on the
21 fruit.

22 THE CASE MANAGER: Judge, I'm sorry, but I show
23 that the Defendants exhibits with the posters, the ten-page
24 document was Exhibit 20. So it would make a...

25 THE COURT: You show what again? The detainees'

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1 art?

2 THE CASE MANAGER: Okay. The posters, the
3 ten-page document of posters as Exhibit 20.

4 THE COURT: Yes.

5 THE CASE MANAGER: And then 21 would be this
6 exhibit Document 244-11, the one that's showing on the screen
7 now?

8 THE COURT: No. I'm saying before then, we're
9 going back now.

10 THE CASE MANAGER: Okay.

11 THE COURT: After she has already shown
12 Interrogatory responses before now. That's 244-8. That's
13 going to be Exhibit 21.

14 (WHEREUPON, the above-mentioned document was
15 marked as Exhibit Number 21.)

16 THE COURT: And then the next document, I believe
17 that was shown was 244-10, and that is Exhibit 22.

18 (WHEREUPON, the above-mentioned document was
19 marked as Exhibit Number 22.)

20 THE COURT: Then this document would be
21 Exhibit 23.

22 (WHEREUPON, the above-mentioned document was
23 marked as Exhibit Number 23.)

24 THE COURT: Did I miss anything from? Counsel,
25 did I miss anything?

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1 MS. BORNER: Not that I am aware of, no.

2 THE COURT: Okay.

3 THE CASE MANAGER: Thank you, Judge.

4 THE COURT: All right. And let me say we're
5 going to rely on counsel to -- we'll come back to that. But
6 counsel is going to have to play a role in getting this
7 together. All right. You may proceed, Ms. Borner.

8 MS. BORNER: Okay. Thank you. And my apologies
9 for getting us off track there.

10 BY MS. BORNER:

11 Q. So let's look at page 2 of this document. And Chief
12 Fields, are you familiar with this document?

13 A. Yes. It's a check made out to Aramark.

14 Q. Okay. And do you know what the check was for?

15 A. It's for the vaccinations, the \$20 incentive.

16 Q. Okay. And this is dated June 4th here, right? On the
17 top right?

18 A. Okay.

19 Q. And can you tell me what this document is?

20 A. That is a check request made out from -- to my
21 knowledge, from the Shelby County Sheriff's Office to Shelby
22 County Government for a check request.

23 Q. Okay.

24 MS. BORNER: Let's go to page 7, Eric. This will
25 be Bates 3301, if that's helpful.

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1 BY MS. BORNER:

2 Q. And at the bottom it says, "215 inmates times \$20
3 equals \$4300"; is that right?

4 A. Yeah. That's what it states.

5 Q. Okay. And is it your understanding that this is the
6 list of detainees for whom a \$20 incentive was being
7 requested as of June 4th?

8 A. That is possible, yes.

9 Q. Okay. Because they had already been vaccinated at
10 this time, right?

11 A. That is correct.

12 MS. BORNER: Eric, let's go to page 19,
13 Bates 3313.

14 BY MS. BORNER:

15 Q. And if you would be kind enough to turn your head
16 sideways, can you -- do you know what this document is?

17 A. I mean, can you rotate the view.

18 Q. We may be able to.

19 MS. BORNER: Great. Thanks Eric.

20 THE WITNESS: Can you enhance it?

21 A. It appears to be a document from Aramark showing where
22 they credited the detainees' accounts.

23 BY MS. BORNER:

24 Q. Okay. And these names are the detainees who received
25 the \$20?

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1 A. That is correct.

2 Q. Okay. And am I recalling correctly these transactions
3 took place on June 4th, right? It says that on the left.

4 A. Yes.

5 Q. Thank you. Let's go to page 21, Bates 3315.

6 Okay. It says here that there were 92 transactions
7 for a total of \$1840, right?

8 A. Okay.

9 Q. Okay. Next page -- sorry. I'm on the wrong page.

10 Okay. Yeah. This is another 28 transactions totalling \$520,
11 right?

12 A. Yes.

13 Q. Okay. Let's go to page 25, Bates 3319.

14 And this is another set of COVID-19 vaccination
15 payments. If you go to the top of the page; is that right?

16 A. That's correct.

17 Q. Okay. And these transactions were dated June 12th,
18 right, on the left?

19 A. That's correct. Okay.

20 Q. Okay. Let's go to page 27. Okay. And it says here
21 there were a total of 96 transactions for \$1920, right?

22 A. Correct.

23 Q. Okay. We're getting there. Page 29. There's one
24 more transaction here, right, just \$20?

25 A. Correct.

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1 Q. And this is for a detainee initials RV; is that right?

2 A. Yes.

3 Q. Okay. Let's go back to page 7. Okay. And you can
4 see that same individual is listed here, right, RV?

5 A. Okay.

6 Q. Okay. So the deposits that we looked for, these were
7 for \$1840, \$520, \$1920 and \$20; did that all sound right?

8 A. Based on what we saw, yes, ma'am.

9 Q. Okay. And well, do you agree or take my word for it
10 that that adds up to \$4300?

11 A. Well, I will take your word for it.

12 Q. Okay. Thank you. And that was the amount of the
13 invoice that we initially looked at, right?

14 A. Correct.

15 Q. Okay. And so is it fair to say these were the
16 deposits into the commissary accounts for the people who
17 received their vaccines before the end of May?

18 A. I can't necessarily say if it was before the end of
19 May.

20 Q. It does say, yeah, vaccinated inmates February 2021
21 through or -- I'm sorry. It says 02/2021 through 05/2021?

22 A. Okay. That's correct.

23 Q. Okay. And the \$20 incentive program was first
24 announced on May 26, 2021; is that right?

25 A. First initiated in June.

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1 Q. Okay. And it applied retroactively for people who had
2 received a vaccine already and were still in the jail?

3 A. (No verbal response.)

4 THE COURT: Chief Fields, I think there's a
5 question on the table for you.

6 THE WITNESS: I didn't hear anything, Your Honor.
7 I'm sorry.

8 THE COURT: If you could repeat the question.

9 MS. BORNER: Sure.

10 BY MS. BORNER:

11 Q. These payments were all made to people who received
12 the vaccine before the incentive program was actually
13 announced; is that right?

14 A. That's correct.

15 Q. Okay. And am I right that there haven't been any
16 other COVID-19 vax pay deposits into detainee commissary
17 accounts?

18 A. Help me understand. Are you saying that individuals
19 that -- are you asking that if individuals vaccinated after
20 June, have they been paid?

21 Q. Yes. Yes.

22 A. To my knowledge, yes, they have.

23 Q. Okay. But if they had, those would have been recorded
24 like the documents that we've just looked at, right?

25 A. They would have been recorded, not necessarily

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1 submitted. We submitted examples.

2 Q. Okay. So I mean, our Plaintiff's request had been
3 documents sufficient to show -- to identify every detainee
4 who received an incentive, the date received and the
5 incentive received, but it sounds like we have only just
6 received examples of those documents; is that right?

7 A. That's right.

8 Q. Okay.

9 MR. TILLY: Your Honor, I just want to -- I hate
10 to interject, but there were supplemental responses submitted
11 to Plaintiff's counsel. The representations that are being
12 made are incorrect. I mean, they're just incorrect.

13 THE COURT: Well, let me say, Mr. Tilly, Chief
14 Fields just said he only submitted examples. Did you provide
15 all of the document -- let me finish. Did you provide all of
16 the documents of every incentive received by a detainee?

17 MR. TILLY: Your Honor, I think to clarify, I
18 think that there are samples, but there were more samples
19 provided. Not just what is being represented as being
20 presented.

21 THE COURT: You didn't --

22 MR. TILLY: Bates stamp --

23 THE COURT: Go ahead.

24 MR. TILLY: I'm sorry. 3374 through 3387 were
25 provided. That's the Bates stamps that were provided in

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1 addition to what's being represented was provided.

2 THE COURT: Did you provide the documents of
3 every incentive received by a detainee?

4 MR. TILLY: I don't know for sure if that's -- if
5 every document that would look like this was provided. I
6 don't know if every single one was provided. But the ones
7 she went over are not the only ones that were provided.
8 That's the point I'm making.

9 THE COURT: Ms. Borner, Mr. Tilly has given you
10 some other Bates stamp numbers. I don't know what that does
11 for you.

12 MS. BORNER: Yeah. I -- you know, I will have to
13 take a look. I will represent that I don't think that any
14 additional Bates stamp numbers will get us to the 600
15 detainees who have purportedly been vaccinated, but we can,
16 you know, revisit those, or perhaps Mr. Tilly wants to cover
17 that on redirect.

18 I am again mindful of the time and of our expert
19 waiting, so I will just ask one other question.

20 BY MS. BORNER:

21 Q. Chief Fields, we talked earlier about the three-week
22 gap between vaccination administrations on May 20th and
23 June 10th. Do you know how many detainees requested a
24 vaccine during that period?

25 A. Not offhand but I spoke with our health service

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1 administrator, and he informed me that that lapse in time was
2 because we did not have enough sign-ups.

3 Q. Okay. I will leave it there.

4 MS. BORNER: No further questions for now.

5 THE COURT: All right.

6 Mr. Tilly, any redirect?

7 MR. TILLY: Yes, Your Honor. Can I have just a
8 couple of minutes to get my notes together.

9 THE COURT: Yes.

10 MR. TILLY: Thank you, Your Honor.

11 Okay, Your Honor.

12 THE COURT: All right. You may proceed.

13 MR. TILLY: I think it will be brief, I hope.

14 **REDIRECT EXAMINATION**

15 **QUESTIONS BY MR. TILLY:**

16 Q. Chief Fields, do you see the document that I'm sharing
17 with you?

18 A. Yes, sir.

19 Q. This is Bates Stamp 3374 in the bottom right-hand
20 corner. Can you identify --

21 A. Can you enlarge it a little bit for me.

22 Q. Absolutely.

23 A. Thank you.

24 Q. Can you identify what this document is.

25 A. Those are transaction numbers or credits given to

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1 detainees' accounts for receiving the vaccination.

2 Q. Is this a report that was generated after the
3 documents Ms. Borner was just asking you about?

4 A. That is correct.

5 Q. What is the date on this document?

6 A. The stamp date is July 25th, 2021.

7 Q. Okay. And then if I scroll down. Let me turn this
8 around for you.

9 This is a list, what is this page?

10 A. That is the list of those detainees that received
11 their vaccination on 7/29 of this year.

12 Q. And is that later than the documents you were just
13 looking at with Ms. Borner?

14 A. That is correct.

15 Q. Would this be a request for those detainees to receive
16 their payment?

17 A. That right there is actually -- if I'm correct, that
18 is the confirmation. Well, no. That is the request -- well,
19 that is the list that we give to Aramark so that they can
20 place the funds on those individual accounts.

21 Q. So would this be an example -- that was 7/29. Would
22 these be in the process of being paid or maybe they were just
23 paid?

24 A. Yes, that's correct.

25 Q. And to be clear, if an inmate -- if a detainee were to

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1 leave the jail after -- let's say a detainee left a day after
2 he received his vaccination, there would be no way to pay him
3 \$20 in his commissary account; is that true?

4 A. That's correct.

5 Q. If a detainee, for whatever reason, did not receive
6 the incentive that the jail offered to detainees to receive
7 the vaccine, if he didn't receive one, is there any process
8 in place that he could bring that to the attention of the
9 jail?

10 A. Yes. He could notify the security staff. He could
11 notify the counselor. He could file a grievance, and once
12 we're made aware of that oversight, it would be corrected.

13 MR. TILLY: I think that's all we have, Your
14 Honor.

15 THE COURT: Let's go ahead and mark that last
16 exhibit as Exhibit 24.

17 (WHEREUPON, the above-mentioned document was
18 marked as Exhibit Number 24.)

19 MR. TILLY: And Your Honor, that was not on our
20 exhibit list, so you know so we can submit that however the
21 Court would like us to.

22 THE COURT: Okay. All right. Chief Fields,
23 thank you very much. You may be excused, although you're
24 also free to stay with us.

25 THE WITNESS: Yes, ma'am. Thank you, Your Honor.

1 THE COURT: Thank you.

2 Mr. Tilly, you said you weren't going to call any
3 other witnesses anyway, correct?

4 MR. TILLY: No, Your Honor. Not right now.
5 Not -- yeah. No.

6 THE COURT: All right. Ms. Borner, your first
7 witness. I believe your expert. We're close to noon. A
8 little after.

9 MS. BORNER: Yes. That will be Dr. Bertozzi. I
10 will cede the video feed to my colleague, Nancy Rosenbloom.

11 MS. ROSENBLOOM: Thank you, Your Honor. We're
12 just waiting for Dr. Bertozzi to come into the meeting room.
13 Sorry for the delay. I will be very quick with the direct
14 and don't expect it to make more than half an hour at most of
15 the direct of this proposed expert.

16 THE COURT: Okay.

17 MS. ROSENBLOOM: I'm sorry. I'm going to go off
18 mic to just check on our expert.

19 THE COURT: Okay.

20 MS. ROSENBLOOM: He's waiting but I'm not sure
21 he's able to connect yet. Hang on one moment, please.

22 THE COURT: Here he is.
23
24
25

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1 * * *

2 **STEFANO BERTOZZI,**

3 **was called as a witness and having first been duly sworn**
4 **testified as follows:**

5 **DIRECT EXAMINATION**

6 **QUESTIONS BY MS. ROSENBLOOM:**

7 Q. Good morning, Dr. Bertozzi. Could you state your name
8 for the record, please.

9 A. Stefano Bertozzi.

10 Q. Thank you. And we have a little bit of a compressed
11 time frame, so I am going to just run through some highlights
12 of your qualifications with you. Could you tell us where you
13 got your education, please and what your degrees are.

14 A. I have an undergraduate degree in biology from MIT. I
15 have a medical degree from the University of California San
16 Diego, and I have a Ph.D. in health policy and management
17 from MIT.

18 Q. And what is your current position?

19 A. I'm a professor of health policy management at the
20 University of California Berkeley School of Public Health.

21 Q. Have you also served as dean of that institution?

22 A. I have.

23 Q. And for how long?

24 A. Five years.

25 Q. Okay. You also taught at University of Washington in

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1 Seattle; is that right?

2 A. That's correct. As an affiliate professor. It was
3 while I was at the Gates Foundation.

4 Q. And what was your position at --

5 A. In affiliation with the University of Washington.

6 Q. What was your position with the Gates Foundation?

7 A. I was director of their HIV programs and for a while
8 also their tuberculosis programs.

9 Q. Do you have a specialty in infectious diseases as well
10 as a doctor?

11 A. No. But I've worked -- I don't have a clinical
12 specialty in infectious diseases, but I have worked on
13 infectious diseases my entire professional life.

14 MS. ROSENBLOOM: I would like to mark as
15 Exhibit 25, I, believe, for identification the CV of
16 Dr. Bertozzi. And Eric, could you please bring that up.

17 (WHEREUPON, the above-mentioned document was
18 marked as Exhibit Number 25.)

19 MS. ROSENBLOOM: And counsel for Defendants has
20 this, as it was submitted as part of our proposed hearing
21 exhibits yesterday. I'm not sure we need to scroll through
22 entirely unless the Court would like to.

23 BY MS. ROSENBLOOM:

24 Q. Dr. Bertozzi, is this your curriculum vitae?

25 A. This is indeed.

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1 Q. And did you prepare it, and is it correct?

2 A. Yes. To both questions.

3 Q. Okay. Thank you.

4 MS. ROSENBLOOM: And I would move for the
5 admission of this CV as an exhibit.

6 THE COURT: Any objection?

7 MR. STOKES: No, Your Honor.

8 THE COURT: Exhibit 25.

9 (WHEREUPON, the above-mentioned document was
10 marked as Exhibit Number 25.)

11 MS. ROSENBLOOM: Thank you.

12 BY MS. ROSENBLOOM:

13 Q. Dr. Bertozzi, could you briefly recount your
14 experience working in correctional institutions in this
15 country and elsewhere?

16 A. Yes. I became involved in correctional institutions
17 professionally during the 11 years I lived in Mexico. And as
18 I mentioned before, I've spent much of my life working on HIV
19 and other infectious diseases. When we learned that the HIV
20 care and prevention in the Mexico City prison system, which
21 incarcerates about 40,000 people, had terrible quality HIV
22 care, I agreed to be part of a team. I was at that time at
23 the National Institute of Public Health in conjunction with
24 the city AIDS program in Mexico City to evaluate the quality
25 of care. And when we started to do that, we realized that

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1 there were many other infectious disease concerns within the
2 prison system that needed to be addressed.

3 And so we created a comprehensive study that looked at
4 hepatitis, HIV, tuberculosis and actually a number of other
5 chronic medical conditions like hypertension and diabetes as
6 well. While we were conducting that study, the H1N1 flu
7 epidemic came upon us. And so we were required to do
8 comprehensive screening of the entire prison population. And
9 so what started off as being a potentially small project
10 turned into a major project that lasted many years. And I'm
11 grateful to say resulted in vastly improved care for HIV and
12 for hepatitis for the people incarcerated in Mexico City.

13 Q. Thank you. And what's your experience working in or
14 with carceral settings, correctional institutions in the
15 United States?

16 A. Well, most of my life has been spent in global health
17 in Africa, Asia and Latin America. I returned to the US to
18 work at the Gates Foundation and then was recruited as dean
19 in California. While I was dean, the Judge Tiger learned of
20 my previous experience in carceral settings and invited me to
21 join the advisory board of the Plata case, which as I've said
22 to you previously, I'm not able to address any specifics
23 about that here today.

24 But as a result of that, I also met the leaders in
25 California in the academic world who are supporting health in

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1 carceral settings in California, as well as the receiver
2 responsible for all healthcare in California prisons and
3 started to do some work with them even before COVID. But
4 once COVID came along, I've actually been under contract to
5 the receiver to provide advice to him and to his chief
6 medical staff and CDC on responding to COVID within the
7 prison system in California.

8 Q. Is that the entire prison system in California?

9 A. It is. But only the state prison system.

10 Q. And is -- you referred to the Plata case. Is that the
11 litigation called Brown versus Plata, which concerns
12 conditions in the prisons in California?

13 A. That is correct.

14 Q. Okay. And the reason you can't speak about details of
15 your involvement there is because you're a confidential
16 advisor to the Court?

17 A. That's correct.

18 Q. Is that correct? Thank you. Would you also please
19 tell the Court about your work on the CalPROTECT project?

20 A. Yes. That's the project, that's the name of the
21 project that I mentioned which is a contract that the
22 receiver's office has with the University of California. And
23 with Dr. Brie Williams at UCSF, I colead as cofaculty leads
24 that CalPROTECT project. It's intended to help the system
25 understand how to best reduce risk of transmission of COVID

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1 within the prison system as well as improve care of people
2 who have been infected.

3 Q. How many prisons have you visited in the United
4 States?

5 A. As part of this collaboration, it's either nine or
6 ten.

7 Q. And have you also visited jails and prisons elsewhere?

8 A. No, I have not. Well, not recently.

9 Q. Okay. You've been to jails and prisons in Mexico
10 City; is that correct?

11 A. That's correct. And I've been to jails and prisons in
12 the US but not in a professional capacity.

13 Q. Have you been personally to the Shelby County Jail in
14 Tennessee?

15 A. I have not.

16 Q. Have you reviewed some materials from this court case?

17 A. I have.

18 Q. And would those materials include all of the reports
19 of independent Inspector Mike Brady?

20 A. I've reviewed -- I have read all of the reports in
21 various levels of detail. I paid the most attention to his
22 final report, which included reference to the previous
23 reports.

24 Q. Did you also review some other documents from this
25 case, including their declarations of Chief Kirk Fields?

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1 A. I did, as well as declarations of residents and
2 incarcerated persons within the jail.

3 Q. Thank you.

4 MS. ROSENBLOOM: We would like to request that
5 Dr. Bertozzi be qualified as an expert under federal Rule 702
6 in public health policy and management, infectious diseases
7 and best practices for prevention and treatment of infectious
8 disease in correctional facilities.

9 THE COURT: Mr. Stokes, your position?

10 MR. STOKES: Your Honor, I would only object that
11 I don't know the relevance of the doctor's testimony. Again,
12 I don't want to keep belaboring the point, but we're here for
13 the three reasons of termination. And I don't know what his
14 qualifications, what they have to do with those three reasons
15 of termination in paragraph 28, specifically that, you know,
16 under Rule 401, what makes it relevant is a fact of
17 consequence in determining the action. And I don't know what
18 he's going to testify to that. And we got his CV last night.

19 THE COURT: Well again though, we -- there's not
20 a question yet that will really trigger that objection. The
21 question right now is really do you object to Dr. Bertozzi's
22 qualifications as an expert in the areas mentioned by
23 Ms. Rosenbloom?

24 MR. STOKES: Again, we don't see the relevance of
25 his qualifications in this matter, as we sit here today. But

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1 we won't object to his qualifications of him just in general.

2 THE COURT: Okay. I will recognize Doctor -- and
3 I hope I'm pronouncing your name right -- Bertozzi's -- I'll
4 recognize that he is one with specialized knowledge in the
5 areas outlined by Ms. Rosenbloom. You may proceed. But I
6 would, you know, point out Mr. Stokes's objection and expect
7 that the testimony at this point will be focused on those
8 areas that are before the Court at this point.

9 MS. ROSENBLoom: Absolutely, Your Honor and I'd
10 also move to admit what's been marked as Exhibit 25 into
11 evidence, the CV.

12 THE COURT: Yes. It is.

13 MS. ROSENBLoom: Okay. Thank you.

14 BY MS. ROSENBLoom:

15 Q. Dr. Bertozzi, I would like to talk to you about
16 vaccination against COVID-19, specifically in correctional
17 institutions.

18 Is it important to try and achieve a high rate of
19 vaccination in this type of facility, a jail or a prison?

20 A. Extremely important. It's our most effective, most
21 powerful tool to prevent serious infection, serious disease
22 and death from COVID. It also --

23 Q. Is -- and go ahead, please.

24 A. It also plays an important role in reducing
25 transmission of infection to other people.

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1 Q. Is this particularly true in a correctional setting as
2 opposed to the public at large?

3 A. Absolutely. Everything is worse in the congregate
4 living settings, and we've seen massive outbreaks and
5 uncontrolled spread in correctional institutions. California
6 has, the last I looked, seven of the top ten clusters in the
7 United States in prisons and one jail in California. So yes,
8 it's an extremely high-risk environment.

9 Q. What are the other reasons in your professional
10 opinion why a jail or prison is an especially risky
11 environment for the transmission of a disease like COVID-19?

12 MR. STOKES: Your Honor, I'm going to object, the
13 same objection this has no relevance whatsoever to the
14 termination paragraph in the Consent Decree or why we're here
15 today.

16 MS. ROSENBLOOM: Your Honor?

17 THE COURT: Yes.

18 MS. ROSENBLOOM: Defendants' motion for all of
19 these objection to come and in the past. Defendants' motion
20 is based on their alleged effective vaccine education and
21 administration. These questions relate -- the risk of a
22 disease is entirely related to vaccination to prevent a
23 disease.

24 THE COURT: I took your question as more
25 open-ended than just focused on the vaccination. And it may

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1 not be what you intended. Certainly the first question was
2 related to vaccination. Let's just keep the focus on that
3 issue. I'll leave it at that.

4 MS. ROSENBLOOM: Understood. Thank you.

5 BY MS. ROSENBLOOM:

6 Q. Dr. Bertozzi, what are the other risk-related reasons
7 why vaccination of detained people in a jail is important, in
8 your professional opinion?

9 A. Well, I think we should divide that into the
10 importance of vaccination for the person to protect the
11 person who's vaccinated and the importance of vaccination to
12 prevent other people within the environment. So in terms of
13 preventing infection of the person vaccinated, vaccination is
14 important for everybody. But of course, it's more important
15 to people who are more likely to be exposed and therefore
16 infected.

17 So because the rate of onward transmission is so much
18 higher in a congregate setting and in particular in a prison
19 or jail, then vaccination is that much more important.
20 Because if let's say the vaccination prevents 95 percent of
21 severe disease and death. Then the actual amount of severe
22 disease and death that will be prevented depends on the
23 likelihood that you will be infected and therefore exposed to
24 severe disease and death from COVID. So when you have
25 catastrophically large outbreaks that occur in prisons and

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1 jails, it's much more important to be vaccinated because
2 you're much more likely to get infected. So that's number
3 one.

4 But secondly, you have the issue of the prevention of
5 ongoing transmission to other people within that same
6 congregate setting. And especially in congregate settings in
7 which it's not possible to segregate people into smaller
8 housing units so that it approximates the community, which is
9 almost no prisons and jails and certainly none in which
10 people are living with other people in dorm-like settings or
11 even in housing units where the ventilation system for the
12 individual cells is shared amongst multiple cells. In other
13 words, some people think that a housing unit with individual
14 cells is similar to an apartment complex. But most apartment
15 complexes don't have central shared air flow that is
16 recirculated to everybody. But most housing units do.

17 So even in housing units that appear to be safe
18 because they're individual cells with solid doors and solid
19 walls, it turns out that what we've learned is that even
20 those are not safe. And so the vaccination prevents -- as I
21 say, benefits the individual and benefits other people in
22 that same housing unit. Most extremely in dormitory-type
23 settings but also in individual cell housing.

24 Q. Why -- is it safer to have a higher vaccination rate
25 rather than a lower vaccination rate of detainees in a jail

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1 or prison?

2 MR. STOKES: I'm going to object again, and I
3 don't mean to keep interrupting the doctor's testimony. I
4 know his time is precious. But again, the vaccination rate
5 does not have anything to do with whether we're providing
6 vaccines, whether we're providing educational materials and
7 whether we're providing nonpunitive incentives to trigger the
8 termination provision. And again, I don't want to keep
9 interrupting, but I just want that, my objection to be noted
10 for the record.

11 THE COURT: It is noted. I have not yet
12 determined whether the vaccination rate is relevant to those
13 issues. But your objection is noted.

14 You may proceed.

15 BY MS. ROSENBLOOM:

16 Q. Would you like me to repeat the question?

17 A. Please.

18 Q. Okay. Is it important, in your professional opinion,
19 to have a higher rather than a lower vaccination rate of
20 detained people in a jail or a prison?

21 A. Extremely important.

22 Q. Why is that?

23 A. Well, the protection of the individual against his or
24 her own severe disease and death is just a function of
25 whether that person is vaccinated or not. And so when you've

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1 doubled the number of people vaccinated, you've doubled the
2 number of people who have that protection.

3 But it also operates at the level of a community, so
4 that the higher the vaccination coverage in the community,
5 the more it protects people who are not vaccinated. Because
6 it means that for every introduction of infection that
7 happens into that environment, a smaller number of people
8 will be infected from that person. And therefore, a smaller
9 number of those people will infect other people. So think of
10 it as a pyramid. The narrower you can make the pyramid, the
11 better it is for everybody. And that depends upon the
12 proportion of the entire population that has been protected
13 with vaccination.

14 Q. Is the effectiveness of a vaccination program for a
15 detained people in a jail or prison affected by how many
16 staff are also vaccinated?

17 A. Yes.

18 Q. Why is that?

19 A. Well, there are two ways to interpret your question.
20 Let me answer both interpretations.

21 One is that if the only way that the virus can enter a
22 facility is through staff because, for example, there's no
23 visitation and no other entry and no inmates with active
24 infections are introduced into the jail, which of course is
25 much more uncommon in a jail than it is in a prison, then the

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1 only way this the virus can get in is through somebody coming
2 into the jail. If those people are uniformly vaccinated,
3 then that decreases the probability of introduction of the
4 virus into the institution and therefore prevents an
5 outbreak.

6 So once an outbreak occurs, once introduction happens
7 and transmission starts to occur within the jail or prison,
8 then the question is how much can that, the size of that
9 outbreak be limited. And so it's -- the staff vaccination is
10 most important to prevent introductions and less important
11 for preventing transmission within the institution, with one
12 major exception. And that is that in many of the prisons
13 that I have visited and worked with, once there is an
14 introduction, the institution goes on some sort of a lockdown
15 or a reduced mobility situation. That disproportionately
16 typically reduces movement of the residents of the prison or
17 jail and less so of the staff.

18 Now, the CDC guidelines recommend cohorting of staff
19 and residents, but to the extent that staff cross over from
20 one housing unit to another more than residents do in a
21 lockdown situation, then the vaccination levels of staff is
22 critically important to not only prevent introduction but to
23 prevent spread from one housing unit to another within the
24 institution. Was that clear?

25 Q. It was clear to me. Thank you. So I'll go on to the

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1 next question.

2 Thank you. And I appreciate your speaking a little
3 more quickly because we're time constrained. I hope the
4 court reporter will bear with us on that.

5 Dr. Bertozzi, in the current circumstances with the
6 Delta variant, especially in a resurgence of cases in the
7 community in Tennessee and everywhere, is it especially
8 important that detainees in a jail in Tennessee be
9 vaccinated?

10 MR. STOKES: I object, Your Honor. One, it's
11 leading and two, again, I just want to go back to the one,
12 two and three and while we're here today for the provision
13 of 28 in this Consent Decree.

14 THE COURT: Noted.

15 You may answer the question.

16 A. So the more infectious an infectious agent is, the
17 higher the level of protection you need in the population for
18 the same level of benefit. So since the Delta variant is
19 much more infectious than the original Wuhan variant, then we
20 need even higher levels of protection for the same degree of
21 safety. And that is, as I mentioned before, even more true
22 in a congregate setting.

23 BY MS. ROSENBLOOM:

24 Q. Thank you.

25 MS. ROSENBLOOM: I would like to mark for

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1 identification the CDC guidelines from June 2021 that we were
2 looking at earlier. Those would be, I believe, marked as
3 Exhibit 26 for identification for the hearing.

4 Eric, could you pull that document up, please.

5 BY MS. ROSENBLOOM:

6 Q. Dr. Bertozzi, are you familiar with this document?

7 A. Yes.

8 Q. Can you identify it for us, please.

9 A. It's a CDC document on considerations for modifying
10 COVID-19 prevention measures in correctional and detention
11 facilities.

12 Q. And why -- are you familiar with all of the CDC
13 guidelines for correctional settings around COVID-19?

14 A. I am familiar with very many of them. I wouldn't
15 claim to know that I know all of anything like that.

16 Q. Point taken. Are you familiar with this one?

17 A. Yes.

18 Q. And what is the reason for public health experts and
19 others responding to an infectious disease to look to the CDC
20 guidelines?

21 MR. STOKES: Same objection, Your Honor.

22 THE COURT: You may proceed.

23 A. The CDC is a global resource with respect to advice on
24 public health measures. I think all public health
25 professionals look to the CDC and their guidance for the

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1 responses to any public health matters. And especially so in
2 the context of an epidemic or a pandemic.

3 MS. ROSENBLOOM: Thank you.

4 I would like to move for admission of this
5 document as Exhibit 26 into evidence.

6 THE COURT: Any objection other than your general
7 relevance objection, Mr. Stokes?

8 MR. STOKES: No, Your Honor. I sound like a
9 broken record, I realize.

10 THE COURT: I'm going to allow it to be admitted.
11 Exhibit 26.

12 (WHEREUPON, the above-mentioned document was
13 marked as Exhibit Number 26.)

14 MS. ROSENBLOOM: Thank you, Your Honor.

15 Eric, could you scroll to what's labeled Slide 10
16 in here in this document.

17 BY MS. ROSENBLOOM:

18 Q. And Dr. Bertozzi, I'm going to direct your attention
19 to Slide 10 in this guidance. What is this slide dealing
20 with from the CDC?

21 A. This is dealing with the fact that fully vaccinated
22 people can do some things more safely than unvaccinated
23 people can. And that includes participating in activities
24 and also modified quarantine as well as modified masking,
25 suggesting that they present a lower risk both to themselves

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1 and to others within the prison setting.

2 Q. And looking at the box on the right of the document,
3 it's sort of beige. Could you first read for us those three
4 recommendations for fully vaccinated people in correctional
5 settings.

6 A. "Fully vaccinated people still need to be tested
7 routinely at intake and before transfer or release. Be
8 tested once after exposure and wear masks indoors."

9 Q. Is it your expert opinion that jails should follow
10 these guidelines?

11 A. At least these guidelines. I think that we will
12 likely see updated guidance from the CDC with respect to
13 COVID that will actually be even stricter than what's here.
14 We're waiting to see updated guidance. But there is a number
15 of suggestions that we need to be even more conservative than
16 this slide suggests with the Delta variant entering
17 correctional facilities now.

18 Q. Thank you.

19 MS. ROSENBLOOM: Could we look at Slide 12 of
20 this document, please.

21 BY MS. ROSENBLOOM:

22 Q. Is that -- yes. The second bullet point on Slide 12,
23 Dr. Bertozzi, reads "Staff vaccination helps prevent
24 introduction of the virus into a facility." Do you agree
25 with that?

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1 MR. STOKES: Objection, Your Honor. I don't want
2 to interrupt. But the Consent Decree has nothing to do with
3 staff vaccination.

4 THE COURT: Noted for the record.

5 A. Yes, I do.

6 BY MS. ROSENBLOOM:

7 Q. Thank you.

8 MS. ROSENBLOOM: Okay. We can take that document
9 down. Thank you, Eric.

10 BY MS. ROSENBLOOM:

11 Q. I would like to talk with you a little bit about the
12 vaccine education that jails and prisons do or should do.
13 Could you speak generally about your opinion about whether
14 it's enough to offer the vaccination once on an individual
15 basis.

16 A. Well, if that achieved very high rates of vaccination,
17 in excess of 90 percent, then I would say yes. If it doesn't
18 achieve very high rates of vaccination, then no. Certainly
19 our experience in California is that that is not anywhere
20 close to being sufficient. That we have to do much more than
21 that to achieve high rates of vaccination among the
22 incarcerated population.

23 Q. And regarding educational materials concerning
24 vaccination against COVID, what, in your opinion, are the
25 most important features of effective educational materials to

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1 encourage detained people to become vaccinated?

2 A. Well, this is, of course, an evolving area of
3 knowledge as people all over the country are struggling with
4 confronting this problem. I think it's clear that the
5 materials need to be at a level of education and language
6 that's appropriate for the population. They have to be
7 culturally appropriate involvement. They have to be in the
8 right language when there are groups that don't speak English
9 well.

10 And I think another very important point is that they
11 have to be accessible and so people who, you know, they have
12 to have access to the material. But I think, to be honest,
13 the most important part is the ability to engage in dialogue
14 with trusted interlocutors about vaccination. There's a
15 portion of the population that on the basis of just seeing
16 educational materials will accept vaccination. But there are
17 many people for whom that is not sufficient and who need to
18 have an opportunity to ask questions, to have their questions
19 responded to and to believe that they're receiving
20 information from a trusted source. And so we found that
21 providing those opportunities can dramatically increase
22 acceptance of vaccination.

23 Q. In a jail that is overwhelmingly a detained population
24 of African-American people, are there any particular opinions
25 you have about effective vaccine education materials?

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1 A. Well, culturally appropriate that are reflecting
2 recognized experts from the community. But I think even more
3 importantly, as I mentioned, the opportunity to have dialogue
4 with -- so for example, if you have an overwhelmingly Black
5 population in the jail, then having Black doctors and Black
6 nurses from the community who are not directly connected to
7 the jail would probably be much more trusted as
8 intermediaries than would either custody staff or even health
9 staff from the jail.

10 Q. Thank you. In terms of an effective vaccination
11 program for a jail or prison, in your expert opinion, how
12 quickly should a vaccination be available after a person
13 requests it?

14 A. Well, as soon as possible clearly.

15 Q. Why is that important?

16 A. For all the reasons that I mentioned before, a delay
17 in time to vaccination is a delay in protection for that
18 individual. It also, of course, provides an opportunity for
19 misinformation to come in and for that person to change their
20 mind. So for all of those reasons, minimizing delay is a
21 good thing.

22 Let me also mention that movement and access is
23 difficult in any carceral setting. So if you have somebody
24 who is in a position and has expressed a desire to be
25 vaccinated and they can be vaccinated right then, that's

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1 ideal, right, rather than having to create dockets and, you
2 know, movement to facilities where they can be vaccinated and
3 at the time when their housing unit has access and all of the
4 complications that occur with moving people around in COVID
5 times.

6 Q. Is there, in your opinion, any reason why medical
7 personnel who are qualified to give other vaccinations could
8 not also give COVID vaccinations?

9 A. No, and they routinely do.

10 Q. To your knowledge, are there jails and prisons where
11 medical staff on site give COVID vaccine?

12 A. Every California prison. I'm sure that's the case in
13 many, many others, but I know that's the case in...

14 Q. If I -- if a jail is only giving the Johnson & Johnson
15 vaccine, does that require any special storage method?

16 A. It depends on what you mean by special. It requires
17 refrigeration, but certainly storage that is available in any
18 facility that has any sort of health clinic.

19 Q. Well, by refrigeration, do you mean normal
20 refrigeration or a special low temperature?

21 A. No, normal refrigeration.

22 Q. Thank you. In your opinion, is a rate of vaccination
23 around 25 percent or less among a detained population enough
24 to protect the population from COVID-19?

25 MR. STOKES: Same objection, Your Honor.

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1 THE COURT: You may proceed. You may answer.

2 A. No. That's shockingly low.

3 BY MS. ROSENBLOOM:

4 Q. Why do you say shockingly? What do you mean by that?

5 A. Well, because I am accustomed to seeing acceptance
6 rates that are three times that. So I find that to be
7 shockingly low, and it means that a very small proportion of
8 people are protected. I would be interested to know how that
9 breaks down by age and COVID risk factors and things of that
10 sort, but that's shockingly low.

11 Q. You mentioned age. How is age relevant to the need
12 for vaccination against COVID-19?

13 A. Well, age is a very strong predictor of the likelihood
14 that if someone is infected with COVID that they will have
15 severe disease and potentially die. So the older the person
16 or whether they also have other health conditions like
17 diabetes and renal disease increases the probability that if
18 infected, they will have bad consequences. So those are the
19 people that are of highest priority to protect in terms of
20 protecting them from severe disease and death.

21 Q. Is there -- in your opinion, is there a level or a
22 rate of vaccination which is enough to protect a jail or
23 prison population from COVID-19?

24 MR. STOKES: Same objection, Your Honor.

25 THE COURT: You may respond.

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1 A. So especially with the Delta variant, nobody who is
2 not vaccinated is protected. And so we've seen even with
3 very high rates of vaccination that it is still possible to
4 have introductions and that those introductions can continue
5 to spread, even with very high rates of vaccination. So we
6 don't know what the number is there is. There is a
7 theoretical number which suggests that above a certain level
8 of vaccination that it would be unlikely for the virus to
9 propagate within that environment. That's what people often
10 refer to as herd immunity. But of course, a particular
11 introduction, let's say that's 90 percent, which is not a bad
12 guess, but we don't know what the number S, but let's say
13 it's 90 percent. Even at 90 percent, there will be some
14 environments in which the introduction happens with somebody
15 who's more infectious and others in which they're less
16 infectious. So you could get propagation in some and not in
17 others.

18 But what the 90 percent tells you is that on average,
19 it wouldn't propagate if you got to 90 percent. Now, given
20 what we're seeing, it's probably around there that we would
21 have the ability to, on average, prevent propagation within a
22 carceral setting.

23 BY MS. ROSENBLOOM:

24 Q. Dr. Bertozzi, I just have a few more questions. In
25 your expert opinion, does a jail have an effective program to

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1 educate and promote vaccination against COVID-19 if the
2 result has been a rate of 25 percent or so?

3 MR. STOKES: Objection, Your Honor. Same
4 objection.

5 THE COURT: You may answer.

6 A. As I said before, I think it's shockingly low. And
7 it's obviously not effective. Without speaking to what has
8 been done, the result is a lack of effectiveness. And it's a
9 lack of effectiveness in the face of many other institutions
10 that have achieved much higher rates of vaccination,
11 including in populations of Black prisoners. So I would say
12 that it's sort of -- it's obviously evidence of lack of
13 effectiveness.

14 MS. ROSENBLOOM: I have nothing further on
15 direct. Thank you.

16 Mr. Stokes may ask you some questions next.

17 THE COURT: Thank you, Ms. Rosenbloom.

18 Mr. Stokes, do you have any questions?

19 MR. STOKES: Yes, Your Honor. May I take a
20 minute to look over my notes? I know that he's under a tight
21 time frame. I'll be very brief.

22 THE COURT: Okay. Thank you, Mr. Stokes.

23 THE WITNESS: I'm fine, Your Honor, in terms of
24 time.

25 THE COURT: Thank you.

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1 THE WITNESS: No rush.

2 THE COURT: Well, I'm not particularly fine, but
3 I appreciate that you are.

4 MS. ROSENBLOOM: We're doing our best, Your
5 Honor.

6 THE COURT: I know. I know.

7 MR. STOKES: All right. Your Honor, thank you
8 for a brief moment.

9 THE COURT: Yes.

10 **CROSS-EXAMINATION**

11 **QUESTIONS BY MR. STOKES:**

12 Q. Doctor, my name is Austin Stokes. I represent the
13 Defendant in this case. I know we have a bunch of screens
14 here. I just have a few follow-up questions. Are you
15 familiar with the organization Amend?

16 A. I am not only familiar with it. The CalPROTECT
17 project is a project of Amend.

18 Q. Okay.

19 A. I work very closely with Amend.

20 Q. I'm sorry. Sorry to interrupt you. For some reason
21 it appears our screen is the only one that's going in and
22 out. Are you familiar with Dr. Brie Williams?

23 A. Yes. She is my coleader on the CalPROTECT project.

24 Q. Have you reviewed any of the educational materials
25 that the Shelby County Jail has dispersed or distributed to

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1 the detainees?

2 A. I've reviewed the ones that were provided to me, yes.

3 Q. In your opinion, would you believe that Amend, under
4 the direction of Dr. Williams, is qualified to determine what
5 information should be included in vaccine educational
6 materials presented to residents of correctional facilities?

7 A. Absolutely.

8 Q. In your opinion, should a jail incentivize detainees
9 to take the COVID vaccine?

10 A. I believe that's current best practice, yes.

11 Q. And a jail can incentivize detainees to take a vaccine
12 in various ways, correct?

13 A. That is correct.

14 Q. Would you agree that paying detainees to take a
15 vaccine is one of the many ways that you could incentivize
16 acceptance?

17 A. Yes, I would.

18 Q. Can a correctional facility force an inmate to accept
19 the COVID-19 vaccine?

20 A. It could. There's certainly historical precedent for
21 that, but it is not what I would recommend.

22 Q. As we sit here today, do you know the racial makeup of
23 the Shelby County Jail staff?

24 A. I do not.

25 Q. As we sit here today, do you know the racial makeup of

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1 the Shelby County Jail, the medical personnel?

2 A. I do not. I have asked both of those questions but
3 haven't received responses.

4 MR. STOKES: Thank you so much for your time,
5 Doctor. That's all I have for you today.

6 THE WITNESS: Thank you.

7 THE COURT: Any redirect, Ms. Rosenbloom? I'm
8 sorry. I didn't hear you.

9 MS. ROSENBLOOM: Nothing further.

10 THE COURT: Still didn't hear you. I think no is
11 the answer, that you do not have redirect; is that correct?

12 MS. ROSENBLOOM: Correct.

13 THE COURT: That is correct. Okay. I'm not
14 getting your audio back. Yeah, who knows.

15 Doctor, thank you very much for your time, and
16 thank you for adjusting. I think you adjusted things a bit
17 for us, and I appreciate that.

18 THE WITNESS: No worries. Thank you.

19 THE COURT: All right. Thanks. Have a good rest
20 of your day.

21 THE WITNESS: You too.

22 THE COURT: All right. Ms. Woods, I see you
23 coming in to -- coming up to the plate, so to speak.

24 MS. WOODS: Yes. Good afternoon, Your Honor.
25 Plaintiffs plan to call Mike Brady next.

1 THE COURT: All right. Thank you. Mr. Brady,
2 can you come on up. Turn on your video.

3 MR. BRADY: I'm trying to turn it up right now on
4 my video, but it doesn't seem to come on. Yeah. My video is
5 not coming on, Your Honor. My speaker does. It says that
6 the video isn't supported in my browser yet. I don't know
7 what that's about. So I can go to my phone, but I'll have to
8 do both because I can't see the documents if they present
9 any.

10 THE COURT: Yeah. I saw you on the screen way
11 back at the beginning. Maybe let's have you exit, then come
12 back in.

13 MR. BRADY: Yeah. I was on my phone back then,
14 Your Honor. I'm going to get back on right now.

15 THE COURT: Okay.

16 MR. BRADY: And I will mute my...

17 THE COURT: Mute one of them. Can you hear us?

18 MR. BRADY: Yes, I can.

19 THE COURT: All right. And we can see that
20 housekeeping hasn't been in yet.

21 MR. BRADY: No. Okay. Sorry.

22 THE COURT: That's all right. All right. We can
23 see you. Hopefully you can see the screen and we can hear
24 you. All right.

25 Ms. Woods?

1 MS. WOODS: Your Honor, does Mr. Brady need to be
2 sworn in?

3 THE COURT: Yes, he does. Ms. McClain? Thank
4 you.

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TESTIMONY OF MICHAEL BRADY

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2 **MICHAEL BRADY,**

3 **was called as a witness and having first been duly sworn**
4 **testified as follows:**

5 **DIRECT EXAMINATION**

6 **QUESTIONS BY MS. WOODS:**

7 Q. I recognize, Mr. Brady, that you're a court-appointed
8 expert, but could you please state your name for the record.

9 A. My name is Michael Brady. B-R-A-D-Y.

10 Q. And since being appointed independent inspector to
11 oversee the decree in this case, have you done inspections of
12 the Shelby County Jail, Mr. Brady?

13 A. Yes. I did one original one in June of last year,
14 June of 2020. And I have done -- conducted four follow-up
15 investigations since the Consent Decree was approved by the
16 Court.

17 Q. So I'd like to jump right in and discuss your opinions
18 about the vaccine program in effect at the jail. Mr. Brady,
19 in your opinion, has the vaccine program been effective?

20 A. No.

21 Q. Why not?

22 A. One is there's a minimum threshold for inmates to get
23 vaccinated. The number is 26. And that results in
24 inordinate delays in the administration of the vaccination,
25 including some in July. I think there was two weeks in July

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1 that nobody was vaccinated. The -- it's not -- the Wellpath
2 or Shelby County Jail is completely dependent on the EMTs and
3 the City of Memphis for the administration of the vaccines
4 and also the storage of the vaccines, and that results in
5 inordinate delays. And individuals who originally sign up
6 and do not -- then change their minds in the interim period.

7 Q. You just testified there's a minimum threshold of 26?

8 A. That is correct.

9 Q. Is that different than what Chief Fields testified to
10 earlier today?

11 A. It is. I got my information from my -- every time I
12 go do an inspection, I always meet with medical, mental
13 health, Chief Fields, public health and then Lieutenant
14 Styles is my escort. I always meet with them to get current
15 information. And I happened to ask that question about what
16 is the minimum threshold, and the answer was 26.

17 Q. Okay. Mr. Brady, when did you make your first
18 follow-up inspection pursuant to the Consent Decree?

19 A. Wow. I think it was in March. I don't know the exact
20 date.

21 Q. That's fine. March of this year?

22 A. Yes.

23 Q. And how did you summarize your findings from that
24 inspection?

25 A. I'm not sure I understand the question.

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1 Q. Oh, did you summarize what you found during the
2 March 2021 inspection?

3 A. Oh, yes. I do findings and recommendations. I do a
4 little bit of an introduction about what my observations
5 were. And then based on my observations, I make findings and
6 recommendations.

7 Q. Okay. I'm going to ask my colleague Eric to share his
8 screen and pull up a document for us to talk about. Can you
9 see the document, Mr. Brady?

10 A. Stand by. I can.

11 Q. Do you recognize it?

12 A. Yes. It's my report.

13 Q. We can scroll through it if you need. Does it appear
14 to be a true and correct copy of your first inspection
15 report?

16 A. Yes, it does. And it has the filing stamp on it that
17 I recognize as well.

18 MS. WOODS: Your Honor, I move to admit this as
19 Exhibit 27.

20 THE COURT: Any objection?

21 MR. STOKES: No, Your Honor.

22 THE COURT: Exhibit 27.

23 (WHEREUPON, the above-mentioned document was
24 marked as Exhibit Number 27.)

25 BY MS. WOODS

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1 Q. Mr. Brady, can you describe your sense of the vaccine
2 program when you made this March 2021 inspection?

3 A. Well, I felt from the very beginning that the vaccine
4 program is ineffective, it is poorly conceived and poorly
5 thought out.

6 Q. Okay.

7 MS. WOODS: Eric, you can stop sharing for now.

8 BY MS. WOODS:

9 Q. I'm going to concentrate on elements of the vaccine
10 program one at a time, Mr. Brady, starting with education.

11 A. Okay.

12 Q. How effective have vaccine education efforts in the
13 jail been, in your opinion?

14 A. In the four times that I have been there on my
15 follow-up inspections, it has been completely ineffective,
16 for a variety of reasons. When I first went there, the
17 education materials were not available to inmates and were
18 not posted in places where they could readily see the
19 information.

20 In addition, as I suggested to the Shelby County Jail
21 staff, that they should take the Amend information and put it
22 in a -- put it at a reading level that is commensurate with
23 the general average reading level of inmates in all the jails
24 and prisons that I'm in, which is about a 6th grade level of
25 reading. Having this information in a 12th grade reading

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1 level or higher for a significant portion of the population
2 is not an effective way to communicate the education
3 materials.

4 Secondly, handing people materials is not really an
5 effective way to do it. Chief Fields testified about the
6 white coat meetings. Those, I think, are very effective
7 because you have healthcare professionals on site that are
8 answering questions in a smaller setting. The unfortunate
9 thing is they've only reached 300 people with those types of
10 settings.

11 People learn in four different ways. They learn
12 visually. They learn auditorily. They learn through reading
13 and writing. And they learn kinesthetically. And here, what
14 I've seen is I've seen the visual. They did do the -- I
15 looked at the Barack Obama tape.

16 Chief Fields told me about the Tuskegee COVID-19
17 education materials yesterday. So I went online and looked
18 at that. And -- but the materials still -- and I made a
19 point of looking for the materials last night. And I did not
20 see them as prominently posted or prominently posted as the
21 Chief has testified to. I -- now, admittedly, because there
22 are ten housing pods that are on quarantine throughout the
23 jail, I didn't get a chance to go through all of those units
24 because I'm not inclined to walk into a quarantined unit for
25 my own health or the health of the people who are escorting

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1 me.

2 So I didn't go to the 5th floor because the 5th floor
3 has B and C. Those are dormitory settings. The 4th floor, I
4 didn't go into one side of the 4th floor because Housing
5 Pod P, P is quarantined. Third floor housing pod S. So I
6 went to one side on both of those floors.

7 Second floor is positive. That was where the positive
8 unit is. I didn't go to that floor. First floor has -- J is
9 on that and then lower level, essentially all of those
10 housing units which are used for initial medical isolation
11 for booking people, I did not go into those areas, but I did
12 go into a couple of program dorms, which are generally at the
13 end of the housing pods, and I saw the posters in those
14 units, but I did not see them in the units in which I went to
15 this time.

16 So -- and I do want to point out that even in the
17 units that have cell doors, they're not dormitory settings.
18 They're open bars. And the space between one side of the
19 housing pod to the other side of the housing pod is about
20 15 feet. And you've got 34 people in those units. And so
21 they're not wearing their masks when they're in their cells.
22 And the mask compliance on the outside is poor. So I'm
23 really cautious about going into units that are exposed.

24 Q. Just to clarify for the record, when you talk about
25 exposure and quarantine, are you referring to the COVID-19

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1 virus?

2 A. I am. Yes, I am.

3 Q. And you're mentioning being in the jail last night.

4 Was that for an inspection under the decree?

5 A. Yes. And at each of the four inspections -- well, one

6 of them I went two days because of personal conflicts of my

7 escorts, but for the most part, I start at 8:30, and I go

8 until ten o'clock at night. And I interview inmates, and

9 part of the reason I find the education to be ineffective is

10 because of what the inmates tell me, my visual observations

11 and what I've read of the materials that are provided.

12 Q. Okay. I'm going to ask you some more about that in a

13 moment. But first, Mr. Brady, do you remember when you made

14 your second inspection visit under the decree?

15 A. Not off the top of my head.

16 Q. Did you make a report from that inspection?

17 A. Yes. I've made three reports.

18 MS. WOODS: I'm to ask Mr. Abrams, Eric, once

19 again, to share his screen, to pull up a document.

20 BY MS. WOODS:

21 Q. Do you recognize this, Mr. Brady?

22 A. I do. May 6th and 7th. That's the two-day tour that

23 I did because of conflicts of my escorts.

24 Q. And just for the record, what is this document you're

25 looking at?

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1 A. It's my report that I served on the parties or I gave
2 to the parties.

3 Q. Does this appear to be a correct copy of your second
4 inspection report?

5 A. Yes, it does.

6 MS. WOODS: Your Honor, I move to admit this as
7 Exhibit 28.

8 THE COURT: Any objection?

9 MR. STOKES: No, Your Honor.

10 THE COURT: Exhibit 28.

11 (WHEREUPON, the above-mentioned document was
12 marked as Exhibit Number 28.)

13 MS. WOODS: I'll ask Eric to briefly scroll to
14 page 19 of this report.

15 BY MS. WOODS:

16 Q. I know there's a little bit of a lag, so we'll just
17 take one moment for him to get there. Mr. Brady, I apologize
18 it's not highlighted, but towards the very bottom of this
19 page?

20 A. Yes.

21 Q. Could you read the very last sentence that appears on
22 this page.

23 A. "Without a major restructuring of the COVID-19 vaccine
24 education and administration program, it is of little or no
25 value in keeping class and subclass members safe from the

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1 COVID-19 virus."

2 Q. Why did you call for a major restructuring of this
3 program?

4 A. Well, the vaccination rate is very low. There are
5 significant delays, in my opinion, between requests and
6 actual needles in the arm. And the education program, in my
7 opinion, my expert opinion, should be culturally competent.
8 And needs to be in a more limited setting where people are
9 answering questions of inmates, and it has to be delivered in
10 a manner that in my opinion that is culturally competent by
11 people who can -- who the inmates relate to or trust. And it
12 has to be in delivered in a way that's sensitive to the
13 different religious, cultural, ethnic backgrounds and
14 frankly, how they're raised. It's how they're going to
15 receive information.

16 You need to be able to do those rather than having
17 large amounts of written material that are passed out and
18 then TV spots, which I think are good, but they are not the
19 answer. I think that currently in my discussions with HSA
20 Sanders, he's working with the University of Tennessee, and
21 they are going to produce a culturally competent educational
22 video, and he also provided me with one yesterday at my
23 request. And I think that's the move having the town halls.
24 Having the white coat days. Incentivizing the vaccines as
25 they're doing but maybe a little broader now. You've got to

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1 try different things. And one of the reasons why I
2 recommended that every unit ought to get the pizza party if
3 they get to 80 percent is because the cost of the pizza
4 parties are de minimis compared to the loss of life or
5 hospitalizations.

6 Q. Okay. I'll follow up on that in a moment too. When
7 you made this recommendation after your May inspection, did
8 you discuss the changes you just testified to with staff at
9 the jail?

10 A. Yes. I talked to Chief Fields about it, and I also
11 talked to Lieutenant Styles, who is my escort.

12 Q. And in your opinion, has the major restructuring you
13 called for occurred?

14 A. No. The jail is making efforts to increase the
15 incentive programs. To do more white coat meetings. You
16 know, but right now, frankly, based on my inspections, the
17 inspection from yesterday and last night, there are
18 significant other problems that are impacting their ability
19 to provide adequate education and an effective vaccine
20 program.

21 Q. I'll ask Eric to stop sharing his screen again for the
22 time being.

23 Mr. Brady, can you say a little more about what you
24 mean by significant other problems.

25 A. Well, I always ask about staffing when I go. I ask

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1 Chief Fields about staffing. I also ask Lieutenant Styles
2 about staffing.

3 MR. STOKES: I don't mean to interrupt Mr. Brady.
4 But the same objection I had with the prior expert. I don't
5 think staffing has anything to do with the paragraph 28 of
6 the Consent Decree or whether or not this Consent Decree
7 should be terminated.

8 THE COURT: Well, this is actually a little
9 different. I would agree that staffing levels on its own
10 isn't an issue that I outlined for this hearing. But the
11 testimony appears to be headed in a direction of there are
12 some other things that are related to potential changes in
13 the vaccination program. And so I'm going to allow it a
14 little bit, and we'll see if we get into areas that are
15 beyond really what we should be doing here.

16 You may proceed, Mr. Brady.

17 THE WITNESS: Thank you, Your Honor.

18 A. So when I spoke to Chief Fields yesterday, he told me
19 that there are approximately 167 vacancies with badge staff
20 at the jail. I also asked Lieutenant Styles how many people
21 were out sick yesterday, and there were 96 people out sick.
22 That's a combination of three shifts. The result is is that
23 at least half of the floors, let's just take three and four
24 as an example are locked down. And they've been locked down,
25 they only come out two hours a week. And they only get to

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1 shower once a week, according to the inmates.

2 Captain Harris was escorting me last night. And she
3 confirmed that they're not getting their out-of-cell time
4 because of staff shortages. This is at a crisis level, in my
5 opinion. Because one, they don't have access to kiosks.
6 They don't have access to the educational materials. They
7 can't put in sick call slips that way. And the inmates
8 yesterday for the first time were completely hostile toward
9 me. They were so angry about being locked down that I
10 couldn't talk to them about vaccine education. I couldn't
11 talk to them about what their experiences were. I could ask
12 a few questions of people who have been vaccinated and ask
13 them if they received their commissaries, but they were so
14 focused on being so angry about not receiving out-of-cell
15 time for a very long time. Not going to the gym, which is
16 the rooftop area. That it just was a hostile environment.
17 And so in my expert opinion, the states of minds of these
18 inmates, they're not interested in hearing about a pizza
19 party because I brought up the pizza party. And I won't tell
20 you what exactly they told me. But it was profane. And it
21 wasn't -- they don't care about the pizza party.

22 So it does relate to the effectiveness of the program.
23 And until people start getting out and start getting their
24 rec time according to standard operating procedures 420 and
25 the American Corrections Association's ADLs, mandatory ADLs,

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1 these inmates are going to be -- I'm concerned they're going
2 to get violent with staff. And Chief Fields knows that when
3 inmates don't get their out-of-cell time, it's very stressful
4 for them. And as it relates to the vaccination program, it
5 exacerbates the ineffectiveness of the program.

6 BY MS. WOODS:

7 Q. Okay. I want to clarify some terminology you used a
8 little earlier, Mr. Brady. When you say culturally
9 competent, can you explain what you mean?

10 A. Well, it has to take into consideration the culturally
11 competent program takes into consideration the race, the
12 gender, the ethnicity, the culture, the religious beliefs of
13 people. So as an example, if I were going to talk about
14 discrimination and I were going to talk to -- about
15 discrimination to a Jewish audience, it would be far
16 different than I would talk to an African-American audience.
17 It would be far different than I would talk to about with
18 Hispanics and white people. Because white people, as an
19 example, don't have the same life experiences that
20 African-Americans do. Culturally, in many ways, they haven't
21 suffered the prejudice and the -- I'll just -- driving while
22 black. I mean, if I was talking to my son about driving, I
23 wouldn't talk to my son the same way that I would talk to an
24 African-American young man. And I don't think their parents
25 talk to them in the same manner that I talk to my son.

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1 So that's an example. I mean, it has to be delivered
2 in a way that people will hear based on their race, religion,
3 education and culture and each of our -- each of the
4 components I've talked about. There's a Jewish culture.
5 There's an African-American culture. There's a white
6 culture. There's a Hispanic culture. And those also have to
7 be taken into consideration.

8 Q. Just to be clear, this cultural competence concept
9 you're discussing, is that different than your discussions of
10 the reading level of the materials?

11 A. That's because this case does involve the Americans
12 with Disabilities Act. The -- for it to be effective
13 communication under the Americans with Disabilities Act, in
14 my opinion, it needs to be at a 6th grade level because
15 that's the average reading level of the inmate populations
16 across the United States.

17 Q. And that's regardless of race?

18 A. That is correct.

19 Q. Okay. Mr. Brady, when do detainees receive written
20 vaccine education materials?

21 A. Based on my observations, they received them initially
22 when they come in. I think that has improved. But it was --
23 it was initially a single -- when they first came in. In
24 intake booking that's what it was for the -- I believe the
25 first two inspections, the one in March and the one in May.

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1 And then -- excuse me -- I've got -- I apologize. I don't
2 think the vacuum would be conducive to this hearing.

3 Q. We appreciate it.

4 A. So I think it has improved, but I know that efforts
5 have been made by Lieutenant Styles, Captain Harris and Chief
6 Fields' security staff to hand out materials. But the
7 materials that were handed out -- and I'm just going to show
8 you here. It's one of those exhibits that you had, which is
9 the Amend material. And the Amend material is not at a
10 6th grade reading level. It's a 12th grade reading level.
11 If you go into Microsoft and you run -- they have a reading
12 level and you run the reading level, it's 12 plus.

13 And so again, just handing them that information
14 without a smaller, more intimate group, as the doctor
15 testified to, Bertozzi testified to, it's just not effective.
16 Recognizing it's labor intensive. It's really difficult when
17 you are, you know, you've got 96 people out sick. You have
18 167 vacancies. You don't have the staff to do some of this
19 stuff. And I empathize with the Chief and his staff.
20 They're just trying to make the jail work.

21 Q. Mr. Brady, what were your concerns with handing
22 materials out during intake?

23 A. Well, let's face it. Anybody who's been in this
24 business for a long time knows that the vast majority of
25 inmates come in dysregulated. Decompensated. Under the

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1 influence of drugs or alcohol. Severely intoxicated.
2 Stressed out about being arrested. And you know, they're
3 not -- at that point they're not really open to listening to
4 anything about getting a vaccine or getting education
5 materials. It's just not a place where it's effective to
6 attempt to give them education materials or to offer a
7 vaccine, in my expert opinion. And as an example yesterday,
8 there were 65 people in the booking area. And which is a
9 large number of people. And you know, to try -- and a lot of
10 them were, you know, rowdy and under the influence and, you
11 know, hostile. And it's not a good environment.

12 Q. Okay. Mr. Brady, do you recall when you made your
13 third inspection under this decree?

14 A. I believe that was June 16th.

15 Q. And did you make a report from that inspection?

16 A. Yes, I did.

17 Q. Okay. I'm going to ask Eric to pull up a document on
18 his screen. Thank you. Do you recognize this document,
19 Mr. Brady?

20 A. I do.

21 Q. What is it?

22 A. My third report of my third COVID-19 follow-up
23 inspection of the Shelby County men's jail.

24 Q. Is there any reason that this appears to be an
25 inaccurate copy?

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1 A. No.

2 MS. WOODS: Your Honor, I move to admit this as
3 Exhibit 29.

4 THE COURT: Any objection?

5 MR. STOKES: Your Honor, my objection would only
6 the same objection that parts of this report have absolutely
7 nothing to do with the termination of the Consent Decree,
8 which is the reason we're here today.

9 THE COURT: So noted. We'll go ahead and make it
10 Exhibit 29.

11 (WHEREUPON, the above-mentioned document was
12 marked as Exhibit Number 29.)

13 BY MS. WOODS

14 Q. Mr. Brady, during this June inspection, what did you
15 observe about the vaccine education program at the jail?

16 A. Well, the vaccines had increased. I can't recall the
17 number of vaccines off the top of my head, but the vaccine
18 had increased. But the structure of the program remained the
19 same.

20 Q. Did you have concerns about the program at that time?

21 A. Yes. I had the same concerns that I had on my second
22 and my first follow-up inspections.

23 Q. And did you communicate those concerns to jail
24 leadership?

25 A. Yes. I've communicated it. On this particular one, I

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1 sat down with Dr. Randolph, who's the medical director of
2 Wellpath and Health Services Administrator Jeremy Sanders,
3 both of whom I have tremendous respect for. And I said in my
4 view, this is not effective because you are not keeping
5 vaccinations on site. When people -- when inmates want to --
6 let's say there's ten inmates or there's two inmates in a day
7 that want a vaccine, you ought to stick the needle in their
8 arm that day rather than making them wait until 24 other
9 people are willing to take the vaccine. It's kind of a
10 hit-and-miss approach. And, you know, the EMTs are not going
11 to come to administer two vaccines.

12 I expressed my concern about Memphis City really
13 controlling the entire operation. And Mr. Sanders said to me
14 when I said, you know, why aren't you doing it? Why aren't
15 you taking control of it? You have qualified healthcare
16 professionals to administer these vaccines. He said all we
17 -- Memphis City does it. All we get to do is tell them the
18 number of vaccinations we're requesting and the names of the
19 individuals. That was it.

20 And so they have the ability to store Moderna or the
21 Johnson & Johnson vaccine on site because it takes regular
22 refrigeration. They have the ability to administer the
23 vaccines within 48 hours of an individual requesting it.
24 Because they have licensed healthcare professionals, doctors
25 and nurses that could do those injections.

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1 Q. And just to be clear, Mr. Brady, based on your most
2 recent visit to the jail, do you feel that your concerns from
3 June have been addressed?

4 A. No. I think, in my opinion, the Chief and his staff
5 have listened to some of my recommendations. They have
6 implemented some of my recommendations, and the Chief and I
7 just have to agree to disagree about some of the ones that he
8 doesn't agree with with me. And same with Wellpath.
9 Wellpath continues to believe that the most effective way to
10 have the vaccine program administered is to leave it as it
11 is. And Chief Fields and I disagree about the need for
12 culturally competent education.

13 And we probably have a few other disagreements but,
14 you know, we're grown men. We respect each others views, and
15 it doesn't take away from Chief Fields being an open and
16 transparent and candid administrator, which he's been from
17 the outset with me.

18 Q. Okay. I'm going to ask to pull this document down for
19 now.

20 Turning to the videos we heard about earlier,
21 Mr. Brady. What's your opinion about how effective the video
22 featuring former President Obama is at encouraging vaccine
23 uptake?

24 A. I thought the -- I thought the video was going to be
25 more hard-hitting and more detailed. And it's just got the

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1 three of them in kind of an informal setting talking about,
2 joking around and talking about, you know, getting the
3 vaccine and encouraging people to get the vaccine. I just
4 didn't feel it was that -- it was effective.

5 Contrast that to the one that HSA Sanders gave
6 yesterday from the University of Tennessee. I thought that
7 one was really good. And I looked at the Tuskegee one, which
8 is one that's designed to kind of disconnect Tuskegee with
9 the vaccination program because they weren't -- they were
10 denying people effective treatment for syphilis, and it's a
11 treatment versus an experiment. And that, I thought, was
12 well done by African-American people who are descendants of
13 the Tuskegee experiment. I like that. Was about five
14 minutes long. So there are some things that they've done
15 that I think are improvements.

16 Q. Okay. During your inspections, have detainees
17 discussed their impressions of either video with you?

18 A. I don't know that they've seen the Tuskegee video. I
19 haven't heard anybody mention that to me. They did mention
20 that they didn't find the Barack Obama video, you know,
21 compelling. They didn't say the word compelling but just
22 didn't mean anything to them.

23 Q. Okay.

24 A. I don't think it was effective in overcoming vaccine
25 reluctance.

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1 Q. You just mentioned a University of Tennessee video.
2 Is that being shown in the jail?

3 A. I don't know. Mr. Sanders gave it to me yesterday. I
4 don't know if he's provided it to Chief Fields yet. I
5 believe it was a University of Tennessee video. But it had
6 different speakers of different ethnicities. And each of the
7 videos was a healthcare professional, and it was about five
8 minutes in length. And it would target the different races
9 in the jail. African-Americans, about 90 percent. There are
10 170-some white inmates. I don't know what that calculates as
11 far as the percentage. And then there are some -- I saw some
12 Hmong Vietnamese, a few Hmong Vietnamese inmates in the jail
13 yesterday. But the vast majority of the population are
14 African-American.

15 Q. Was yesterday the first you'd heard reference to this
16 video?

17 A. Yes. Yes.

18 Q. Have you seen a video featuring former Shelby County
19 Jail detainees discussing COVID-19 vaccines?

20 A. I have not. And the -- of course, the inmates didn't
21 mention it to me yesterday, but I have not. And when I met
22 with Chief Fields, I think he had another appointment, but we
23 talked for probably 20 minutes. He did not mention that to
24 me there, but I don't think that was intentional. It just
25 was the nature of our conversation.

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1 Q. Under the decree have Defendants responded in writing
2 to your prior reports?

3 A. I think -- well, the first two they had, yes. And I
4 don't recall what the responses were, but they did say they
5 agreed or disagreed with certain recommendations. That was
6 about it. There was no real -- as I recall, there was no
7 real detail to their responses.

8 Q. Okay. I'm going to ask Eric to share his screen once
9 again, for a document.

10 Mr. Brady, do you recognize this?

11 A. Yes.

12 Q. What is it?

13 A. It's the response to my recommendations that are in
14 writing to the Court.

15 Q. Does this appear to be a true copy of those responses
16 to you?

17 A. Yes.

18 MS. WOODS: Your Honor, I move to admit this as
19 Exhibit 30.

20 THE COURT: Any objection?

21 MR. STOKES: Same objection, Your Honor. To the
22 extent that this document has nothing to do with the
23 termination provision and the Consent Decree.

24 THE COURT: I'll allow it. I'll note that for
25 some reason, I can't see the shared documents. They're not

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1 coming up anymore on my screen. But I'll admit it as
2 Exhibit 30 and hear about it and review it at some point.

3 (WHEREUPON, the above-mentioned document was
4 marked as Exhibit Number 30.)

5 MS. WOODS: Okay. Thank you, Your Honor.

6 Looks like Eric is just reloading it in case that
7 helps, but I'll have him turn to page 3.

8 BY MS. WOODS:

9 Q. Mr. Brady, in this document did Defendants say they
10 would develop a video featuring Shelby County detainees who
11 had been vaccinated?

12 A. Yes.

13 Q. And do you recall when these responses were submitted?

14 A. I don't know. I don't know that I have the date. But
15 it looks like May 19th was the date they were filed, which I
16 would assume is at or near the same time they responded to
17 me.

18 Q. I'll ask Eric to scroll to the bottom of the document.
19 All the way down. Do you see a date there?

20 A. 26th of April.

21 Q. Okay.

22 MS. WOODS: We can take this document down, Eric.

23 BY MS. WOODS:

24 Q. Let's talk about the town hall events, Mr. Brady. How
25 effective do you think those have been to educate detainees

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1 about the COVID-19 vaccine?

2 A. I have not -- I have not seen them. But I can tell
3 you that the concept is consistent with what I would
4 recommend that they do on a regular basis with all of the
5 inmates. Because they only reached approximately a little
6 over 300 people out of a current population of 2,005. It's
7 not effective because you're not reaching -- you know, it's
8 15 percent of the population.

9 Q. Just to be clear, I think I'm using my terminology a
10 little vaguely. Is there a difference between a weekly town
11 hall and the pep rally that we heard about earlier?

12 A. Yes. There's a difference. It's called a white coat
13 rally. That occurred on June 24th after I had left from my
14 inspection. I think it's like seven or eight days
15 afterwards. They had the white coat rally, which Chief
16 Fields said was very successful. HSA Sanders told me it was
17 very successful. And I have no reason to believe that it
18 wasn't.

19 That was about 300 people. Then the town halls, I
20 have not seen any of the town halls nor have I seen a
21 schedule of the town halls or the materials that were
22 discussed with the inmates or provided to the inmates.

23 Q. Do you know how often the town halls as distinct from
24 the rally are held?

25 A. I do not. When I talked to HSA Sanders, he was

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1 talking about it in more of a perspective fashion than at
2 current fashion. And again, I think it's going to be staff
3 dependent.

4 Q. What is your understanding of whether the town halls
5 are focused exclusively on COVID-19 vaccines or not?

6 A. I don't have an understanding of this, but it's never
7 been explained to me. I assumed that they were focused on
8 COVID-19 only. But I don't really honestly know at this
9 point.

10 Q. Would it effect your opinion if the town halls had an
11 array of agenda items and not simply the vaccine?

12 A. Yes.

13 Q. How so?

14 A. Well, I mean, the vaccine program is really of
15 critical importance. And if you're doing several other
16 things, in my opinion, it dilutes the importance of it and
17 the focus of the town hall. It was represented to me that
18 they were going to do COVID-19 town halls. I don't know what
19 the other subjects are. But, you know, inmates have a
20 tendency to tune out. So if you're doing several things and
21 people aren't interested in those things, inmates are not
22 interested in hearing about those things, depending on where
23 it is on the agenda. If it's first or if it's last, you
24 could have a less attentive group. In fact, that's one of
25 the suggestions that I made to Chief Fields when I viewed the

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1 Barack Obama video was it was at the end of the loop, which
2 had several other subjects and/or maybe the education
3 materials in the front of it. And there might have been a
4 PRIA video on it. But I suggested that they move it to the
5 front, and Chief Fields did that and moved it to the front.

6 Q. Did the white coat pep rally provide detainees an
7 opportunity to ask questions privately?

8 A. No, I don't think it -- not privately. It was in more
9 of a group setting. They could ask questions, but it was not
10 in a one-on-one situation.

11 Q. And do the town halls present an opportunity to ask
12 questions privately?

13 A. Town halls by their very nature, by the definition of
14 a town hall, the answer is no to that.

15 Q. Okay.

16 MS. WOODS: I'm going to pause -- oh, excuse me.

17 THE WITNESS: May I just say one more thing?

18 BY MS. WOODS:

19 Q. Yeah.

20 A. I think the point you're making about in a private
21 setting, I did have a couple of inmates who have infectious
22 diseases, HIV. Pulling them to the side and didn't really
23 want to discuss or ask questions about how the vaccines
24 affected HIV. They asked me in private, and I notified
25 Lieutenant Styles that they need to talk to a healthcare

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1 professional about that. So I do know that in a couple of
2 situations there are very sensitive matters that inmates
3 don't want to discuss in a group setting.

4 Q. Okay.

5 MS. WOODS: I'm aware that the Court has an
6 upcoming matter, so I wanted to pause and check in about our
7 timing.

8 THE COURT: Yeah. We have moved the two o'clock
9 matter. I now just have a 2:30 matter. So keep going.

10 MS. WOODS: Okay. Thank you, Your Honor.

11 BY MS. WOODS

12 Q. Mr. Brady, do you recall recommending that the jail
13 recruit community leaders to assist with the vaccine program?

14 A. Yes. I have. I recommended that prominent athletes,
15 community members, legislators. I did recommend that.

16 Q. And do you recall which report you made that
17 recommendation in for the first time?

18 A. I think it was my second report, but it's a guess.

19 Q. Would it help to see your second report quickly?

20 A. Yes.

21 THE WITNESS: And Your Honor, could I just take a
22 second and e-mail. I have a two o'clock call with another
23 person. I've got to cancel just real quick. It will just
24 take me one second.

25 THE COURT: Okay. Actually, let's take just a

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1 five-minute break. It's 1:45 or so. Let's -- actually,
2 let's take a ten-minute break. It's 1:45. Let's come back
3 at 1:55.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thanks.

6 (Short break.)

7 THE COURT: So this time the computer kicked me
8 out. I've got a lot of echo. I don't know where that's
9 coming from.

10 But the good news is hopefully coming back in,
11 maybe I'll be able to actually see the documents when they're
12 shared. All right.

13 Mr. Brady, Ms. Woods, I think we were in the
14 middle of your testimony. You may proceed, Ms. Woods.

15 MS. WOODS: Okay.

16 BY MS. WOODS:

17 Q. Mr. Brady, I was just asking you about your
18 recommendation to have local leaders assist with the vaccine
19 program. I'm going to ask Eric to quickly pull up your
20 second report at page 33. Does this -- Mr. Brady, does this
21 refresh your recollection about when you made that
22 recommendation about community leaders?

23 A. Yes.

24 Q. And when did you make that recommendation?

25 A. My second report.

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1 Q. Did Defendants respond in writing to this report, as
2 they did with the first?

3 A. Yes, they usually do. They give me a brief response.

4 Q. So I'm going to ask Eric to pull up another document
5 now.

6 Do you recognize this?

7 A. Yes.

8 Q. What is it?

9 A. It's the Defendants' response to my recommendations
10 from the May 6th, 7th jail inspection.

11 Q. Does it appear to be a correct copy of those
12 responses?

13 A. Yes.

14 MS. WOODS: Your Honor, I move to admit this as
15 Exhibit 31.

16 THE COURT: Any objection?

17 MR. STOKES: Standing objection, Judge, about
18 just to the extent it has nothing to do with the termination
19 provision in the Consent Decree.

20 THE COURT: Got it. Exhibit 31.

21 (WHEREUPON, the above-mentioned document was
22 marked as Exhibit Number 31.)

23 MS. WOODS: And I'll ask Eric to scroll to
24 page 5.

25 BY MS. WOODS:

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1 Q. Mr. Brady, can could you read the highlighted text
2 that's in the second paragraph here.

3 A. "Lastly, as suggested, the SCSO is actively engaged in
4 recruiting local community leaders and celebrities to meet
5 with more detainees on a regular basis to discuss COVID-19
6 vaccines and further encourage detainees to accept
7 COVID-19 -- a COVID-19 vaccine."

8 Q. Have any such community leaders been recruited by the
9 jail?

10 A. I think they tried one athlete, and that person got
11 injured. But I'm unaware of any other activities related to
12 getting -- recruiting local community leaders and
13 celebrities.

14 Q. And to be clear, are any such local community leaders
15 meeting with detainees on a regular basis?

16 A. Not that I'm aware of, and in my inspections, it's
17 never been brought to my attention. And Chief Fields is
18 usually pretty good about telling me what they're doing. And
19 I have not heard any information from either healthcare or
20 mental health or public health or the security staff
21 regarding this issue.

22 Q. Okay. I'm going to ask Eric to scroll up just to the
23 page right above the one we're on. Actually, I apologize.
24 We timed this in a bad order. Can we bring back up the
25 second inspection report for Mr. Brady on page 33.

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1 I can't see it. Can others?

2 A. I can't see it.

3 MS. WOODS: Okay.

4 MR. STOKES: I can, so...

5 THE COURT: I can now.

6 MS. WOODS: Okay. Well, let's make sure

7 Mr. Brady can see it.

8 THE COURT: I think he's trying to reload it.

9 MS. WOODS: Okay.

10 THE WITNESS: I can see it now.

11 BY MS. WOODS

12 Q. Okay. Mr. Brady, in this May report, did you
13 recommend that the jail launch a peer vaccination educator
14 program?

15 A. I did.

16 Q. What did you mean by a peer educator program?

17 A. In my experience in jails and prisons for the last
18 20 years, peer run programs by inmates teaching other inmates
19 about the health advantages of taking a vaccine or any other
20 issue, frankly, a person who was formerly -- who has a mental
21 health issue, a serious mental health issue who was
22 dysregulated or decompensated at one point and homeless, when
23 they come back and have kind of restructured their lives,
24 they are the most effective people to communicate their
25 experiences and why it's important for people to take their

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1 medication. So that translates here with people who have
2 been vaccinated to be taught about the benefits of taking the
3 vaccine and to train them. And then allowing the individuals
4 in each housing pod to speak with their peers about the
5 benefits of it in a more formal type of an educational
6 program. And they would -- it would take the issue of labor
7 out of it because you have these inmates who are readily
8 available to do this and, you know, if they got a little
9 extra -- a few extra meals or, you know, an incentive, I
10 think the acceptance rate from inmates would be very high.

11 Q. Mr. Brady, does providing detainees a certificate of
12 appreciation constitute a peer educator program?

13 A. No.

14 Q. Why not?

15 A. Well, you're giving them a certificate of
16 appreciation. You're not asking the peer to talk about the
17 benefits and risks of a -- of taking a vaccine which you
18 would have to do. You've got to talk about the risks as well
19 as the benefits. The certificate just is the acknowledgment
20 that the inmate took the vaccine. Not that that inmate is
21 encouraging others to do so.

22 Q. And we earlier saw examples of some posters detainees
23 made when Chief Fields was testifying. Do you think those
24 posters constitute peer education efforts?

25 A. I think in the program areas it might because they

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1 are, you know, they're doing -- they're doing something
2 positive, and they may learn something from developing those
3 posters about why it's effective. But they're called rock
4 men, the people who work in the different dormitories.
5 They're not advocating for people to take vaccines. They're
6 doing their work, and last night when I was there, they were
7 some of the most vocal complainants about no shower time. No
8 out-of-cell time. No ability to call their lawyers. No
9 ability to call their families. Getting out for two hours a
10 week. And showering once or twice a week.

11 Q. Okay. And to be clear, so the posters, do these
12 posters satisfy the recommendation you made in this report?

13 A. No. And honestly I didn't -- I went -- I only went
14 into a limited number of housing pods yesterday because of
15 the virus being in so many places in the jail. But I did not
16 see any in -- actually some of the ones I went in, I did not
17 see any more recent posters, and the vaccine education
18 materials were behind the officer's desk. The housing unit
19 officer's desk and were not displayed prominently in the
20 housing units in which I went.

21 Q. Okay.

22 MS. WOODS: We can pull down this document.

23 Thank you, Eric.

24 BY MS. WOODS:

25 Q. Mr. Brady, in your opinion, do the vaccine education

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1 materials in the jail sufficiently discuss the Delta variant?

2 A. They don't discuss it at all.

3 Q. Do you think they should?

4 A. I do. Because with the Delta variant, it has become
5 even more critical that inmates get vaccinated because the
6 Delta variant, they found in studies that the Delta variant
7 people have a thousand times more of the Delta variant in
8 their nose and throat than in the Wuhan original virus, which
9 makes it more deadly, and it also makes it more
10 transmittable.

11 Q. Okay. One last question before I pivot to the
12 incentives for the vaccine. Is there anything else besides
13 what you've discussed so far, Mr. Brady, that you think would
14 be necessary for vaccination education in the jail to be
15 effective?

16 A. I don't think so.

17 Q. Okay. So turning then to the incentives. How
18 effective is the fresh fruit incentive at encouraging
19 vaccination?

20 A. I don't think that's what it was designed for. I
21 think it was to reduce the symptoms of the COVID-19
22 vaccination that was handed out post vaccinations. I did see
23 the last time I was there a box of oranges post vaccination
24 that were being handed out on my last visit in June. On this
25 visit I did go see the vaccination administration. But I

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1 didn't see any fruit out at that time. But I actually came
2 at lunch, so I may have missed it. But it's really to reduce
3 the symptoms rather than an incentive, as I understood it.

4 Q. Okay. Turning to the \$20 commissary credit. Was this
5 credit your idea?

6 A. Yes.

7 Q. Okay.

8 A. I mean, I'm not the one -- I'm not the original
9 thinker of this. I mean, they're doing it all across the
10 United States. You know in universities and schools and
11 general public. I think Memphis even had -- City of Memphis
12 even had -- or County of Memphis had an incentive program of
13 some sort. So it is something that we've done in California
14 and in many of the jails, and it works pretty well.

15 Q. Okay. Did you suggest that the jail adopt the
16 \$20 credit incentive?

17 A. I think I suggested \$25, but they did it at 20, which
18 is close enough.

19 Q. How long after vaccination does it take a detainee to
20 receive the commissary credit?

21 A. I looked into that yesterday because I had five or six
22 complaints from the housing pods about the limited number of
23 housing pods that I went -- about them not getting their
24 vaccinations -- not getting their commissary credits in a
25 timely fashion. And what I found out was from Lieutenant

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1 Styles is that they give it to Aramark right away. They
2 authorize it right away. But the staffing at Aramark is
3 understaffed, and Aramark does not get that entered into
4 their system sometimes for weeks at a time.

5 So some inmates have been waiting several months.
6 Some inmates have been waiting for a few weeks. Some have
7 been waiting for a month. I think there is a staffing issue
8 at Aramark. I think the security staff are doing what
9 they're supposed to do as far as giving the information to
10 Aramark. But Aramark is not following through as they
11 should. That's my understanding.

12 Q. Okay. What's your understanding of the efficacy of
13 the car sweepstakes as an incentive?

14 A. I don't really have any idea. I mean, hey, I would
15 love to win a car. I think some inmates would too. But I'm
16 not sure about that. Because I think that one is -- from my
17 perspective -- and this is subjective based on my
18 interactions with inmates for 20 years -- is a little
19 unrealistic for them. They don't feel the immediate
20 gratification of the incentive. You know, you might have one
21 in a million chance in winning that. If you take the
22 vaccination and you get your \$20 or you get a pizza party,
23 that's a much more relatable concept and a much more
24 immediate gratification for the inmate.

25 Q. Okay. You mentioned the pizza party. Was the pizza

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1 incentive your idea?

2 A. Yes. Chief Fields and I talked about it in June. And
3 I made that recommendation because we actually talked about
4 it a couple of times. And you know, the idea behind it was,
5 look, the cost of providing a pizza party to people, to
6 inmates, any dorm or housing pod that reaches 80 percent of
7 vaccination is de minimus compared to the cost to the County
8 of hospitalization or death of someone who's sick with
9 COVID-19. I mean, we're talking about people on ventilators.
10 We're talking about people who -- you know, this is probably
11 could be anywhere in the hundreds of thousands of dollars of
12 an adverse event.

13 So in my view, you could take it out of the inmate
14 welfare fund program if there is one there. Because all
15 jails make profits on telephone calls and on commissary. And
16 there's a 167 vacancies. That money could be taken out of
17 salary savings. There's a lot of places they could find that
18 money. And again, the cost is de minimus compared to an
19 adverse event.

20 Q. You mentioned recommending pizza for achieving a
21 certain vaccination rate. What was your rationale for
22 recommending a certain vaccination rate before the
23 incentives?

24 A. I actually had done -- way back when done some
25 research on herd immunity. And as I recall, the documents I

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1 read was about 80 percent, 75, 80 percent to achieve herd
2 immunity. I know the Doctor testified something different
3 about that today that. But that was my recollection. I
4 didn't go back and research it further again, but that was
5 the basis of what I was saying was it's an achievable goal
6 because you're going to have some people that are going to
7 refuse regardless of what you offer them. But I thought it
8 was an achievable goal that would significantly reduce the
9 exposure to a negative COVID event, hospitalization or death
10 or sickness in the jail. 80 percent is an achievable number.

11 Q. We also heard earlier that the jail has recently
12 announced drawings for a \$100 award as an incentive. Was
13 that your suggestion?

14 A. No. That's Chief Fields.

15 Q. Okay. Mr. Brady, would it affect the efficacy of
16 incentives if there was a delay in providing the incentives?

17 A. Yes, it does affect it. And I mentioned this in my
18 third report, I think, and that is you've got to get these
19 incentives, you know, well, you've promised them you're going
20 to pay them. You can't wait two months to pay them or give
21 them the commissary credit because the inmate rumor mill will
22 kill the program. If you don't know what that means, I'm
23 happy to explain it.

24 Q. I think I'm okay.

25 MS. WOODS: Unless the Judge would like a further

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1 explanation.

2 THE COURT: No, that's fine.

3 BY MS. WOODS

4 Q. Do you think the delays you discussed on the
5 commissary credit have affected its impact?

6 A. Yeah. Because when you're in the dormitories, and I'm
7 saying hey, you get a \$20 credit, and when I'm in the housing
8 pods telling the inmates you should get a vaccination and
9 then four or five people are speaking up, "I've never gotten
10 mine." You know, that's a negative comment on something that
11 I'm trying to promote and the jail is trying to promote. And
12 why bother doing it? You're not going to get it anyway.

13 Q. Okay. I just have a couple more topics that I'm going
14 to hit pretty quickly. So we talked a little bit earlier
15 about the way the vaccine is administered to detainees who
16 request it. What suggestions have you made to -- for
17 Defendants to administer the vaccines effectively?

18 A. I have made -- multiple times I have made the
19 recommendation that they bring the vaccine program in-house.
20 And by that I mean that store vaccinations on site and have
21 Wellpath be able to administer the vaccine within 24 hours,
22 48 hours of the request for the vaccination. It eliminates
23 the threshold of 26 people and the delays between request and
24 vaccination.

25 It increases -- in my opinion, it would increase the

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1 likelihood of people accepting vaccines. I am an expert in
2 many jails in California and across the nation. And they all
3 have in-house vaccine programs. None of them have an EMT
4 program for inmates. They store the Moderna or the Johnson &
5 Johnson on site, and they administer it in-house.

6 Q. Could the jail maintain its own supply of COVID-19
7 vaccines?

8 A. Well, they would have to get permission from the City
9 of Memphis to do it. But yes, they have refrigeration for
10 other vaccines, influenza. They store insulin. They've got
11 all kinds of stuff that they -- and there's medication that
12 needs to be refrigerated, so they have adequate space. And
13 the life, the shelf life for a vaccine is -- I think some of
14 them are like six months or longer. So there's not a -- you
15 know, if you have two or 300 on site, you know, you could
16 administer the doses. And as I understand it now, the
17 concern about having a full six takers for a vial is no
18 longer a significant concern because there's plenty of
19 vaccine materials. The United States, the CDC wants to get
20 vaccines in arms, so they're less concerned about having the
21 exact number per vial than they are at getting people
22 vaccinated.

23 Q. Does a detainee need to be out of his cell to request
24 a vaccine on the kiosk?

25 A. Well, on the kiosk, yes, you have to have access to

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1 the kiosk.

2 Q. And I think you've covered this a bit but very
3 briefly. How do wait times to receive a vaccine after
4 request affect the overall efficacy of the vaccine program?

5 A. Well, I'll give you an example. There were 60 people
6 who requested a vaccine that was going to be administered
7 yesterday. My understanding that the acceptance rate was --
8 I don't know if it was Chief Fields' testimony it was 36, or
9 I got that from -- like there's two numbers here. One of
10 them was 49, but the actual number I got, I think, from
11 Wellpath was 36. So there's a drop-off. Now, I can't say
12 with certainty that the delay caused these folks to drop off,
13 but it seems likely.

14 Q. From what you've observed on your inspections, are
15 detainees concerned about symptoms upon receipt of a vaccine?

16 A. Yes. They're concerned about symptoms. There's a lot
17 of misinformation out there. This is one of the things that
18 Chief Fields and I agree on is you have to make an effort to
19 you know, dispel these rumors and get rid of all this
20 misinformation. That's, you know, they're talking about
21 people dying and the Johnson & Johnson killing people with
22 the vaccine. And you know, there's a lot of misinformation
23 out there, and people are afraid. They're really afraid.
24 And they're distrustful of -- as I say in all of my reports,
25 the African-American population is very distrustful of

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1 government health programs and the Government. In fact, when
2 I was there, I believe, in March, I met with all -- I met
3 with healthcare providers. I met with public health. I met
4 with mental health. I met with medical. I met with security
5 and transportation and the ventilation people. All in one
6 big large setting. And I brought this up. I -- you know, I
7 brought this issue up.

8 And I said I want to understand why the vaccine
9 acceptance is not lower -- I mean is not higher. And you
10 know, to a person, you know, it was that they're distrustful
11 of the Government and their experiences with Tuskegee and
12 other things, you know, make the African-American population
13 very reluctant to trust anything that the Government is
14 giving.

15 Q. Do you think the concerns you just described are a
16 source of vaccine hesitancy among detainees?

17 A. Absolutely. I hear that all the time. In fact, last
18 night I was -- when I walked into the dorm, one person says,
19 "Yeah, you go ahead and take that and then you'll turn into a
20 mummy." I mean, they're joking back and forth, but there's
21 that, you know, many a truth are spoken in jest.

22 Q. Okay. Mr. Brady, do you think that the class members
23 in this case are receiving the benefits of an effective
24 vaccine program?

25 A. I do not.

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1 Q. Is there anything else you want the Court to know
2 about the vaccine program in the jail?

3 A. Well, I think one is, I think for purposes of this
4 lawsuit, if they would target the vulnerable in more of a
5 targeted education vaccination program for class members and
6 subclass members. That's about 350 or so people. I think
7 that would be very helpful. Because they're
8 immunocompromised. They're going to be more -- the
9 acceptance rate among that population, based on
10 individualized education is going to be much higher. And
11 there hasn't been any discussion about the Delta variant that
12 I'm aware of. And you know, the death rate, the
13 hospitalization, the ventilation rate, people on ventilators
14 is very high.

15 Dr. Randolph from public health told me that
16 98 percent of the infections in Shelby County are from the
17 Delta variant, and he told me that it's logical to believe
18 that that saying would hold true in the jail because the jail
19 reflects the community. So the final thing I'm concerned
20 about is when -- because it's business as usual again and
21 arrests, yesterday there was 65 people in booking, and
22 they'll stay there in a congregate environment for 12 hours
23 or more. And the inn is full as far as the lower levels.
24 And when they have overflow like that, they'll take people
25 who are still in quarantine, and they'll move them to

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1 different housing units without doing serial testing on
2 people who've been -- and they don't do serial testing on
3 people who are exposed, which the CDC guidelines recommend.

4 So that's why you see quarantine units on the
5 5th floor, the 4th floor, the 3rd floor, the 2nd floor, the
6 1st floor and the lower level. That's the reason you see
7 them there is because these really are either they've been
8 exposed from court appearances -- and Lieutenant Lee, who's
9 very competent will notify classification and they'll put
10 that living unit on quarantine when a person is coming back
11 and they've been exposed to COVID-19.

12 So this is, in my opinion, without serial testing,
13 this is a recipe for a disaster waiting to happen.

14 MS. BORNER: I have one last document to go over
15 with Mr. Brady and then one final question.

16 THE COURT: No. We're running out of time. I
17 need to take a break to go take a plea. You've gone way past
18 where I anticipated. So we need to take a break, and we can
19 come back at three o'clock. In the meantime, Mr. Brady,
20 don't talk to anyone about your testimony. Mr. Brady, you're
21 okay from a travel standpoint; is that correct?

22 THE WITNESS: Yes, ma'am. I have a six o'clock
23 plane. The only person that's going to -- is the maid that's
24 going to bother me at four o'clock.

25 THE COURT: All right. Well, let's come back at

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1 three o'clock. We'll come back then. Thank you.

2 (Break.)

3 THE COURT: We can proceed. I think, Ms. Woods,
4 you had said you had one more question for Mr. Brady. And,
5 Mr. Brady, remember you are still under oath.

6 THE WITNESS: Thank you, Your Honor.

7 MS. WOODS: Your Honor, one exhibit and one
8 question. I promise to make it extremely brief.

9 THE COURT: Okay.

10 BY MS. WOODS:

11 Q. Mr. Brady, how many detained people in the jail are
12 currently positive with COVID-19?

13 A. Twenty.

14 Q. And that's based on the number of tests performed?

15 A. Yes, symptomatic people. They tested the symptomatic
16 people and determined that 20 of them -- there were 19 two
17 days ago and now there's 20.

18 Q. Okay. I'll ask my colleague to pull up the last
19 document I want to speak with you about.

20 Do you recognize this, Mr. Brady?

21 A. Yes. It's an e-mail I sent to all the parties.

22 Q. Does it appear to be a correct copy of that e-mail?

23 A. Yes.

24 MS. WOODS: Your Honor, I move to enter this as
25 Exhibit 32.

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1 THE COURT: Any objection?

2 MR. STOKES: Yes, Your Honor, I would object. I
3 don't think this communication has anything to do with
4 vaccines in the correctional facility or the educational
5 materials or the incentives.

6 MS. WOODS: Your Honor, I understand the Court's
7 planning to rule on the relevance objection at a later time.
8 I do want to briefly note that the purpose of the Consent
9 Decree was to provide protection to the class members until
10 the threat of COVID-19 had abated. We think this is relevant
11 to the risk to the class members.

12 THE COURT: I'll allow it for now. And I do --
13 Mr. Stokes, I don't mean to cut you off because I'm sure you
14 had a response to that, but I understand where -- I think I
15 understand what your response is and I understand your
16 position and I understand the Plaintiffs' argument of why
17 this should come in. And it's not -- as Ms. Woods noted,
18 it's not an issue I'm going to rule on as to how it affects
19 my ruling at in point, but I am going to allow it in.

20 (WHEREUPON, the above-mentioned document was
21 marked as Exhibit Number 32.)

22 BY MS. WOODS:

23 Q. Mr. Brady, why did you send this e-mail to the
24 parties?

25 A. Well, there were several reasons. One, is the

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1 introduction of the virus into ten pods on several different
2 floors was very concerning to me in light of the Delta
3 variant being far more infectious and for more deadly. So
4 that was my first concern.

5 The second concern is that the Shelby County Jail
6 Wellpath contractors are not doing serial testing in the
7 exposed housing pods which is contrary to CDC guidelines,
8 which says there should be widespread testing whenever you
9 have an exposed unit because as we know asymptomatic
10 positives can and do appear in very large numbers in
11 congregate settings, including nursing homes and jails and
12 prisons. So those are two of my concerns.

13 A second -- or the third is that because of the --
14 because of the disease state taking longer to maybe manifest
15 itself in some people, not everybody but some people, you
16 know the 14 day time-out is not perfect. So I had not been
17 notified that there were any positives in the case -- in the
18 jail, and as the COVID-19 inspector, I think I should have
19 been notified of the positives and their location and what
20 they're doing regarding contact tracing and testing. And I
21 was notified of none of those things. It could have been an
22 oversight, but I wanted to correct that oversight and ask
23 that they comply with CDC guidelines and do widespread serial
24 testing and that I be notified on a regular basis about
25 positive cases including staff cases because I learned today

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1 or yesterday that there were -- in the last year there have
2 been 155 positive staff cases. Nine have been hospitalized
3 and two have died. That's information that I was not aware
4 of previously and I think that's important information for me
5 to know.

6 And, you know, if they're not doing contact tracing
7 appropriately because of the movement of inmates -- and there
8 was considerable amount of movement of inmates given that you
9 get a court person that's exposed to somebody in court, they
10 come back and quarantine the whole unit. You don't know if
11 that person coming back from the court is positive. And so
12 they may infect everybody else.

13 Assuming that everybody is going to be fine in 14 days
14 unless they prove symptomatic is wrongheaded. And the CDC
15 specifically says that. They say believing that testing only
16 symptomatic inmates, they say it's not effective. And so,
17 you know, immunocompromised people in that jail, they're on
18 the chronic care list. There are over 300 people on the
19 chronic care list. And there are a number on the ADA
20 subclass list. Those folks are really, as the doctor
21 testified this morning, are at a serious risk of serious
22 illness or death. That's why.

23 Q. Okay. We can take the document down, Eric. Thank you
24 for all your help.

25 Mr. Brady, do you think the Consent Decree should

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1 terminate now?

2 MR. STOKES: I object, Your Honor. His expertise
3 is not in our Consent Decree, our negotiations. He wasn't a
4 part of that. I think that's outside of his scope,
5 respectfully.

6 THE COURT: Ms. Woods?

7 MS. WOODS: Your Honor, Mr. Brady has been
8 inspecting the jail during the period of the Decree, and so
9 he certainly has an opinion about the safety of class members
10 which is the whole purpose of the Consent Decree.

11 MR. STOKES: However, he has no basis to
12 interpret the Consent Decree. That's just not within his
13 scope.

14 THE COURT: Yeah. I mean, he's already testified
15 as to his opinion on the issues that are wrapped into the
16 termination provision. And I don't think his opinion about
17 the Consent Decree overall should be a part of this inquiry.

18 MS. WOODS: Okay. Understood. I'll pass the
19 witness then, Your Honor.

20 THE COURT: Okay. Mr. Stokes, do you have any
21 Cross?

22 **CROSS-EXAMINATION**

23 **QUESTIONS BY MR. STOKES:**

24 Q. Hi, Mr. Brady. My name is Austin Stokes. I know that
25 we've communicated before throughout this case, but for the

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1 record, I along with a few other folks are counsel for the
2 Defendants in this case.

3 Throughout your visits to the jail and in your
4 resulting reports you explain that you're assisted by
5 Lieutenant Styles and Captain Harris; is that right?

6 A. Yes. Originally it was Lieutenant Styles, but
7 following my recommendation, the jail completed a compliance
8 unit of one which is Captain Harris. And so both Captain
9 Harris and Lieutenant Styles have been my escorts for the
10 last several visits.

11 Q. And you also met with Chief Fields, Wellpath's medical
12 director Dr. Randolph and HSA Jeremy Sanders during those
13 visits; is that right?

14 A. No. I met with -- I think her name is Ms. Randall
15 from public health last time, and she was supposed to get me
16 some documents that she didn't produce and has produced now.
17 And Dr. Randolph and I communicated by e-mail today.

18 Q. Well, within your written reports you've described the
19 jail staff and Wellpath staff as, quote, consummate
20 professionals who care deeply about the inmates in the Shelby
21 County Jail; is that right?

22 A. Yes. It's very true.

23 Q. Going to your March 5th or early March visit to the
24 jail. On that date the State of Tennessee had not yet
25 entered the phase of its COVID vaccination plan whereby

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1 corrections residences had access to the vaccine, is that
2 fair?

3 A. Yes.

4 Q. Notwithstanding 22 detainees had already received the
5 vaccine?

6 A. Yes.

7 Q. In your opinion should detainees housed within the
8 jail accept the COVID vaccine?

9 A. I think all of us should.

10 Q. If a detainee elects to accept the vaccine will he be
11 more protected from risk of harm for serious illness or death
12 from COVID than if he refuses?

13 A. Absolutely.

14 Q. And you've mentioned the CDC. Do you agree with the
15 CDC's position that COVID vaccines are safe and effective?

16 A. Say that again.

17 Q. Do you agree with the CDC's position that COVID-19
18 vaccines are safe and effective?

19 A. Yes, I do.

20 Q. Do you agree with the CDC's position that there is no
21 preferred vaccine for incarcerated detainee people or
22 correctional staff?

23 A. Yes, I do.

24 Q. So during your second visit in May there was a
25 resulting report from that visit as well; is that right?

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1 A. Yes.

2 Q. And you again explained that the jail staff and
3 Wellpath staff were consummate professionals who cared deeply
4 about the inmates at the Shelby County Jail?

5 A. That will never change. That's how I feel about them.

6 Q. At the time of that May inspection, could detainees
7 housed in the jail access a COVID-19 vaccine if they wanted
8 to?

9 A. Yes.

10 Q. Within the resulting report from that visit you
11 provide that during your meeting with HSA Sanders you
12 reviewed copies of vaccine educational materials, some of
13 which I provided; is that fair?

14 A. Yes.

15 Q. What specifically did you review?

16 A. The Amend documents and vaccine education which I
17 provided to the jail, and I looked at a couple of other
18 simplified versions of, you know, Get Vaccinated. I don't
19 recall exactly what those documents were but I did review
20 them.

21 Did you hear me.

22 Q. I did. I'm sorry. I'm trying to show you something.
23 Can you see that, Mr. Brady?

24 A. I can, but I can't. I'll turn my head to the side.
25 Can you rotate it? Okay.

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1 Q. Is that a little bit better? Can you read that?

2 A. Yes.

3 Q. Are these the Amend materials that you just
4 referenced?

5 A. They look like it. I have to -- let me look at the
6 basics here. Yeah. That's the Amend materials.

7 Q. Okay. And this document is titled "Frequently asked
8 questions about COVID-19 vaccines. Information for residents
9 of correctional facilities." Is that fair?

10 A. Yes.

11 Q. And you testified these are the materials you actually
12 provided to the jail?

13 A. Yes, I did.

14 Q. And this documentation is educational materials
15 concerning COVID-19 vaccines for inmates and detainees at a
16 jail; is that right?

17 A. Yes, it is.

18 Q. What is Amend?

19 A. Amend is a nonprofit arm of UCSF that -- I've only
20 dealt with this group as a result of my other work in class
21 actions across the United States, and they are one of the
22 highly thought of organizations that consist of doctors,
23 medical doctors and other professionals that develop guidance
24 and assist with jails and prisons in the implementation of
25 their vaccine programs in response to COVID-19.

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1 THE COURT: And, Mr. Stokes, just for the record,
2 I think this is Exhibit 4.

3 MR. STOKES: Yes, Your Honor. No, I think
4 it's --

5 THE COURT: You think it's Exhibit what?

6 MR. STOKES: Okay. I think it's 4. I think
7 you're right.

8 THE COURT: Okay.

9 BY MR. STOKES:

10 Q. Mr. Brady, I would direct your attention to the
11 section where it says, "COVID-19 vaccines. The basics."

12 A. Yes. I see that.

13 Q. Okay. Will you read the third bullet point down where
14 the cursor is pointing?

15 A. "There are currently three vaccines available in the
16 United States. Made by the drug companies Pfizer, Moderna
17 and Johnson & Johnson."

18 Q. Do you agree with that statement?

19 A. Yes, I do.

20 Q. Is that statement at a reading level higher than the
21 reading level of many of the inmates at the jail?

22 A. It could be. I haven't run the -- I haven't run the
23 Microsoft Word to see what the reading level is. And my
24 recommendation is based on the average reading level of
25 inmates, not individually specific inmates.

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1 Q. Will you read the fifth bullet point down for me where
2 the cursor is?

3 A. "All three vaccines are safe and highly effective at
4 preventing serious illness from COVID-19."

5 Q. You would agree with that statement?

6 A. I do.

7 Q. Is that statement at a reading level higher than the
8 average reading level of the inmates at the jail?

9 A. I can't tell you because I haven't run it through the
10 Microsoft program that tells you what the reading levels are.

11 Q. Do you think the Microsoft program is more able to
12 determine whether it's a higher reading level or the reading
13 level than the individuals that authored this from Amend?

14 A. Yes, I do, because I spoke with the Amend people, and
15 they told me that they had not run the Microsoft on it and I
16 asked for permission to do that and they denied my
17 permission.

18 Q. I'm going to show you another document.

19 Mr. Brady, can you see this document that I'm sharing
20 with you?

21 A. Yes.

22 Q. Have you ever reviewed this document before?

23 A. I don't think so.

24 Q. Will you please read the line in bold under the blue
25 line?

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1 A. "Three key reasons you should get the COVID-19
2 vaccination."

3 Q. And then could you read each of these bold statements
4 after the numbers?

5 A. "Help keep you from getting COVID-19. Be a safer way
6 to build protection. Be an important tool to help stop the
7 pandemic."

8 Q. Do you agree with number one that a COVID-19 vaccine
9 would help you from getting COVID-19?

10 A. Yes.

11 Q. Is that statement at a reading level higher than the
12 average reading level of the detainees at the Shelby County
13 Jail?

14 A. I don't know if that specific sentence is or not.

15 Q. Number 2, "be a safer way to help build protection,"
16 do you agree with that?

17 A. Yes, I do.

18 Q. Is that statement at a reading level higher than the
19 average reading level of the detainees in the Shelby County
20 Jail?

21 A. I think it probably is.

22 Q. Why is that?

23 A. Because you have "protection" at the end, and that's a
24 multi-syllable word that raises the reading level past sixth
25 grade.

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1 Q. And then the third reason, "be an important tool to
2 help stop the pandemic"?

3 A. Yes. I agree with that.

4 Q. I'm sorry. I missed it.

5 A. I apologize for interrupting you.

6 Q. No, you're fine. Do you agree with that statement?

7 A. I do.

8 Q. Is that statement a far higher reading level than the
9 average reading level than the detainees at the jail?

10 A. That's a different question you asked me before. Is
11 it higher than a sixth grade reading level of the average
12 inmate versus a far higher. Which one do you want me to
13 answer?

14 Q. Well, quite frankly, Mr. Brady, either. Is it a
15 higher level than the average level?

16 A. In my expert opinion I think it would be because
17 "important" is a multi-syllable word and "pandemic" is a
18 multi-syllable word. But you can type that into a Word
19 document and see it for yourself. It's readily available on
20 Word.

21 THE COURT: Again, Mr. Stokes, did you say what
22 exhibit that was because I think that also was an exhibit
23 already offered?

24 MR. STOKES: Yes, Your Honor, that was Exhibit
25 Number 3.

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1 THE COURT: Okay. Thank you.

2 BY MR. STOKES:

3 Q. Mr. Brady, I've put before you Exhibit Number 5. Can
4 you see that document?

5 A. Yes, I can.

6 Q. Have you reviewed this document before?

7 A. I have.

8 Q. Could you read the title of that for us?

9 A. "Free COVID-19 vaccine."

10 Q. Is that statement at a reading level higher than the
11 reading level of the detainees at the jail?

12 A. I don't know. "Vaccine" may take it above the reading
13 level. I don't know.

14 Q. Within the report from the visit that we were
15 discussing you provided, quote, "Wellpath does its best to
16 educate inmates on the benefits of taking the vaccine upon
17 arrival and to offer them the opportunity to take the vaccine
18 when they arrive at the jail." Is that correct?

19 A. Yes, it is.

20 Q. So you agree that educational materials are provided
21 to detainees at intake?

22 A. Yes, I do.

23 Q. I'll show you another document.

24 Mr. Brady, can you see that document that I've shared
25 with you?

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1 A. I can.

2 Q. And for the record I believe that's exhibit -- it's
3 page 10 of Exhibit 15.

4 Have you ever seen this document before?

5 A. I believe I have.

6 Q. I'll scroll down. Can you -- do you recognize the
7 logo on the bottom left corner of document number 003232?

8 A. Yes, I do.

9 Q. Okay. What does that represent?

10 A. Centers for Disease Control.

11 Q. And we've talked about the CDC. Does this document
12 appear to be authored by the CDC?

13 A. It does.

14 Q. Could you read the title of this document?

15 A. "Vaccines (shot) are one of the tools we have to fight
16 the COVID-19 pandemic."

17 Q. Do you agree with that statement?

18 A. Yes, I do.

19 Q. Is that statement at a reading level far higher than
20 the reading level of the inmates at the Shelby County Jail?

21 A. I can't testify to whether or not it's at a far higher
22 level because of the multi -- multi-syllable words. It's
23 probably above a sixth grade reading level based on my
24 expertise as a nationally recognized ADA expert.

25 Q. In order to determine that would you have to put that

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1 into a Microsoft program?

2 A. I would, yes. In order to determine it for certain I
3 would have to do that, yes.

4 Q. Could you read the line that starts with "studies"
5 half way down this document?

6 A. "Studies show that COVID-19 vaccines are very
7 effective at keeping you from getting COVID-19. Experts also
8 think that getting a COVID-19 vaccine may help keep you from
9 getting seriously ill even if you do get COVID-19. These
10 vaccines cannot give you the disease itself."

11 Q. Do you agree with that statement?

12 A. I do.

13 Q. Is that statement at a reading level far higher than
14 the reading level of the detainees at the Shelby County Jail?

15 A. Absolutely.

16 Q. And would you have to put that into a Microsoft
17 program to determine that?

18 A. No. I can tell just from looking at it.

19 Q. Are you aware when the detainees are provided this
20 documentation that we're looking at right now?

21 A. I believe that's a poster, but I can't say if it's
22 provided at intake or not. I don't recall whether it's
23 provided at intake or not.

24 Q. And ultimately during your inspection on May 6th and
25 7th and the resulting report you provided that you viewed

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1 fact sheets and educational materials on the wall; is that
2 fair?

3 A. Yes, yes.

4 Q. You also provided that you determined that vaccine
5 educational materials were provided upon request; is that
6 fair?

7 A. Yes.

8 Q. You also mentioned that during your inspection you had
9 an opportunity to view -- you referred to it as a PSA video
10 with President Obama, Shaquille O'Neal and Charles Barkley.
11 Is that when you first saw that video?

12 A. Well, I saw it I think on my second trip versus my
13 first trip.

14 Q. And you would agree with me that it encourages vaccine
15 acceptance?

16 A. Absolutely.

17 MS. WOODS: Objection, misstates prior testimony.

18 THE COURT: I'll allow him to answer.

19 A. Yes. I think it does.

20 BY MR. STOKES:

21 Q. Is the information presented in that video at a
22 comprehension level appropriate for detainees at the jail?

23 A. Well, it's not reading. So, you know, people can
24 understand. They learn four different ways, and sometimes
25 people can understand the gist of what everybody is saying,

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1 you know, by listening, but the words that they're using are
2 above a sixth grade level when they're talking. At least I
3 hope the President is using words above a sixth grade level.

4 Q. So it's your testimony that the detainees at the jail
5 could not comprehend the information that was presented
6 within that video?

7 A. That's not my testimony.

8 Q. Okay. Could the detainees -- is your opinion
9 comprehend the information that was presented during the
10 President Obama PSA video?

11 A. I think many of them could, yes.

12 Q. Within that same report you provide that it would be
13 beneficial for a vaccination program to include the education
14 of inmates in, quote, smaller groups?

15 A. Yes. Yes, I agree with you.

16 Q. And within that report you also provide it's
17 beneficial for a vaccination program to include medical
18 professionals to meet with inmates?

19 A. Yes, I said that. I wrote that. Sorry. I didn't say
20 it.

21 Q. And within your report you recommend that the jail
22 incentivize taking the COVID-19 vaccine or you incentivize
23 detainees to take the COVID vaccination, is that what you're
24 recommendation was?

25 A. Yes.

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1 Q. Is there more than one way to incentivize a detainee
2 to take a COVID-19 vaccine?

3 A. There's hundreds of ways.

4 Q. Can a jail force an inmate to accept a COVID-19
5 vaccine?

6 A. I think they can, but I don't think the jail's any
7 different than an employment situation, and the CDC has
8 ruled, the Federal Government has ruled, that people
9 requiring people to be vaccinated is lawful. I don't have
10 any specialized knowledge about that, but I don't think
11 inmates are any different than others. It wouldn't be smart
12 as the doctor testified earlier, but it is a possibility.

13 Q. Moving to your -- the time that you inspected the jail
14 in June where your third report resulted. At that time, on
15 June 16th, could the detainees housed within the jail access
16 or obtain a COVID-19 vaccine if they chose to do so?

17 A. Yeah. Not in a timely fashion, but I think they could
18 if they were to request one and they waited until the EMTs
19 showed up.

20 Q. And within that report you reference culturally
21 competent vaccine education program?

22 A. Yes.

23 Q. Okay. And you do that in conjunction with the racial
24 makeup of the jail's inmate population; is that fair?

25 A. Yes. Yes, it's true.

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1 Q. And you talked a little bit about cultural competency
2 earlier. Is that a subjective or objective term?

3 A. I couldn't tell you. It's something -- it is a core
4 competency that healthcare professionals and employers,
5 leaders should use when they have a diverse employment group.
6 And all of the literature I have read says that they need to
7 be sensitive to racial, ethnic, religious and cultural
8 differences and to attempt to understand the background of
9 the people to whom they're speaking and to target -- to be
10 sensitive to that in their training and leadership because
11 people react differently to different stimulus.

12 Q. And within your report you provide that the population
13 of the jail is 90 percent African-American.

14 A. That is correct.

15 Q. How did you calculate that figure?

16 A. I had Lieutenant Styles send me the total population
17 about three weeks ago. Maybe it was sooner than that. It
18 was before my report. So it had to be longer -- earlier than
19 when I wrote my report. It was after my visit. There were
20 1700. I have the document, but it was 1700 inmates. To
21 calculate, I divided it out of a total population of inmates
22 and it came to 89.78 percent, something like that. That was
23 at a point in time. It changes on a daily basis. It may go
24 up or down.

25 Q. Do you know the percentage of African-American

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1 personnel at the jail?

2 A. I do not, but I know it's very high.

3 Q. Do you know what race Chief Kirk Fields is?

4 A. African-American.

5 Q. Do you know what race Sheriff Bonner is?

6 A. African-American.

7 Q. Do you know what race Lieutenant Styles is?

8 A. African-American.

9 Q. Do you know what race the medical director Dr. Donna
10 Randolph is?

11 A. I don't. She appears to be lighter skin. She could
12 be African-American. She could be white or a combination of
13 both. Jeremy Sanders is African-American.

14 Q. I'm sorry?

15 A. The HSA Jeremy Sanders is African-American.

16 Q. Do you know what race the Shelby County health officer
17 Bruce Randolph is?

18 A. He's African-American.

19 Q. Would those personnel in leadership positions being
20 African-American -- could their opinion of what's culturally
21 competent for African-American citizens in Shelby County be
22 different from your view?

23 A. If they understood what cultural competence is, yes.

24 Q. Within that same report you provide that it's
25 beneficial for vaccine programs to be multi-layered; is that

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1 right?

2 A. Yes.

3 Q. What do you mean by multi-layered?

4 A. It should be presented in video form, in writing,
5 orally, and in smaller groups. There should be the white
6 coats like they're doing. There should be the town halls.
7 There should be more individualized counselling.

8 As an example, Ms. Jeter, who's the mental health
9 director, she brings people into the treatment teams and they
10 talk to these seriously mentally ill in a manner that they
11 can understand.

12 Q. And on that visit, that June 16th visit, you witnessed
13 EMTs administering vaccines to the detainees; is that right?

14 A. I did.

15 Q. You noted in your report that that administration was
16 done efficiently?

17 A. Yes. It was very efficient. They brought the inmates
18 in in groups and they administered them by lists, had them
19 wait for 15 minutes to make sure there was no negative
20 reaction to the videos -- I mean, excuse me -- to the
21 vaccines, and then they allowed them to go back to their
22 housing units. Although, I didn't see it, there was fruit
23 provided at that event.

24 Q. And within that report you provide, quote, "the jail
25 has offered a \$20 commissary incentive for inmates to take

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1 the vaccine and that resulted in an uptick in vaccine takers
2 by over 200." Is that fair?

3 A. I think it was 227. I'm a big fan of incentives.

4 Q. In that same report you also recommended that an
5 additional incentive would be to provide a pizza party, and
6 we talked a little bit about that; is that right?

7 A. Yes. It's another way. I recommended that, but Chief
8 Fields is very creative and he -- it's only a recommendation.
9 There is many ways to incentivize things, and that was just
10 one of my suggestions that I thought would be a great idea
11 given the historically indigent population in a jail. And I
12 can tell you when I was a prison administrator that having
13 pizza night or hamburger night or popcorn night or movie
14 night was a big deal. It was a huge deal.

15 Q. And you conducted your latest inspection yesterday,
16 right?

17 A. Yes.

18 Q. And at the time that you were there at the jail could
19 the detainees housed at the facility access or obtain the
20 COVID-19 vaccine if they chose to do so?

21 A. I think they could. It would be more difficult,
22 Mr. Stokes, because they're locked down, and they've been
23 locked down for a significant period of time. So access to
24 the kiosk was limited. Access to telephones was very
25 limited. Putting in a sick call slip, you couldn't do, but

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1 you could notify security staff. But on the sides of the
2 lockdown, there was not a housing officer in each of the
3 housing pods. There were people who were roving between the
4 pods, but you know, that would be the way that they could do
5 it. Or they could do it as Chief Fields said through pill
6 call.

7 Q. During your inspections at the jail have any detainees
8 complained to you that their housing assignments have been
9 altered after accepting a vaccine?

10 A. No.

11 Q. Mr. Brady, I'm going to put another document before
12 you.

13 A. Okay.

14 Q. Can you see this document?

15 A. I can.

16 Q. What is this document?

17 A. It's another Amend document or a page of an Amend
18 document.

19 Q. Well, I'm going to go through it. It appears to be
20 12 pages; is that right?

21 A. Let me count them. There's actually two documents
22 that are 12 pages. One of them is in English and the other
23 one is in Spanish.

24 Q. Have you read this document before?

25 A. Yes, many times.

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1 THE COURT: Did you say, Mr. Stokes, what exhibit
2 this was?

3 MR. STOKES: Your Honor, this is Exhibit 6.
4 Defendants' Exhibit 6.

5 THE COURT: Exhibit 6.

6 BY MR. STOKES:

7 Q. And similar to the Amend materials that you provided
8 to the jail, is this also education materials about COVID-19
9 vaccines?

10 A. It is. I think it's the same document you showed me
11 earlier.

12 Q. Do you recall what date the earlier version -- or the
13 earlier document that I showed you was?

14 A. I do not.

15 Q. Well, could you read the date on this document?

16 A. April 28th.

17 Q. I'm going to flip through this document quickly. We
18 talked about Amend. Do you believe that Amend is qualified
19 to produce a culturally competent educational materials?

20 A. I don't know. I have to say since they're university
21 based they better be.

22 Q. I'm going to direct you to the third page. Under
23 "common misunderstandings." The second paragraph could you
24 read that for us?

25 A. I can't see that. Where is "common

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1 misunderstandings." Can you scroll down a little bit? The
2 title is cut off. Where's "common misunderstandings"?

3 Q. Can you see my cursor up here at the top?

4 A. No.

5 THE COURT: I think you need to adjust the
6 document, Mr. Stokes.

7 A. Scroll up a little bit I can see it.

8 MR. STOKES: Let me retry, Judge. I apologize.

9 THE COURT: We could see it. It just wasn't --
10 on the share function, I think you just can't see as much as
11 you think we can see.

12 MR. STOKES: Understood.

13 BY MR. STOKES:

14 Q. Mr. Brady, can you see this now?

15 A. You just scrolled it up out of my view again. Just
16 pull it down and I can see it. There you go. Right there.
17 Oops, went back up again.

18 Q. Sensitive.

19 A. I can see it now.

20 Q. Okay. You see "common misunderstandings"?

21 A. Yes.

22 Q. Could you read the second paragraph for me?

23 A. "Should I even bother getting this vaccine given all
24 the mutant variant forms of COVID-19? Yes."

25 Q. Do you agree with that statement?

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1 A. Yes, I sure do. I think everybody should get a
2 vaccination.

3 Q. Do you think that the mutant or, quote, variant forms
4 covers the Delta variant?

5 A. I don't think the Delta variant was around in April,
6 but this is not specific to Delta variant. It talks about
7 any variants. And I agree with that statement even in light
8 of the Delta variant or the upcoming Lambda variant.

9 Q. You believe that the statement that we just read is at
10 a higher level of reading comprehension than the average
11 reading comprehension for detainees in the jail?

12 A. Well, I think it's above the sixth grade reading
13 level. I do, yes. But I haven't looked specifically at the
14 Shelby County inmate population reading level. But based on
15 my experience over the last 20 years, the average reading
16 level in a jail is sixth grade level or seventh grade level
17 as the highest.

18 Q. I'm going to direct you to page 5 of that exhibit.
19 Can you read that okay?

20 A. I can see -- yeah. I can see the top but it's not
21 really -- look, I'm an old dog so you've got to blow that up
22 a little bit. I can't see that far.

23 Q. I understand. I was trying to avoid what we were
24 looking at to be different. Can you read the top of this
25 document?

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1 A. Yes. Yes.

2 Q. Okay. Could you read that for us?

3 A. "Frequently asked questions about the Johnson &
4 Johnson COVID-19 vaccine. Information for residents of
5 correctional facilities."

6 Q. So does this document appear to be educational
7 material for residents of correctional facilities concerning
8 the J & J vaccine?

9 A. Yes.

10 Q. Could you look for me under COVID vaccine, the basics,
11 the second bullet point?

12 A. I see it.

13 Q. Okay. Could you read it for me?

14 A. "The Johnson & Johnson vaccine is given as one shot
15 and it is highly effective at preventing serious illness from
16 COVID-19."

17 Q. Do you agree with that statement?

18 A. I do.

19 Q. Do you believe that statement is at an appropriate
20 reading level for the detainees at the jail?

21 A. I don't know, Mr. Stokes. I would have to run it
22 through Microsoft, but I would be concerned that there are
23 multi-syllable words. "Effective," "illness," "Johnson &
24 Johnson." There's words that might -- preventing. Those
25 words will definitely take it to a higher reading level. How

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1 high I don't know.

2 Q. But at the top of this document is the same Amend
3 logo; is that fair?

4 A. Yes, ma'am -- yes, sir.

5 Q. Are you aware that this document that we're looking at
6 today was passed out individually to each detainee in the
7 jail during the week of July 26th?

8 A. I am aware of that. Captain Harris told me that.

9 Q. During your latest inspection did any inmate reveal to
10 you that they didn't receive this documentation?

11 A. No. Frankly, as I said, they were so concerned about
12 out-of-cell time and showering and phones that we didn't get
13 much conversation going about vaccines or education
14 materials.

15 Q. And I think I didn't understand your testimony
16 earlier. During your inspections have you had the
17 opportunity to view the video display concerning the Tuskegee
18 study?

19 A. I didn't during the inspection. I did this morning.
20 Because the Chief told me that he had it. But because he had
21 an appointment with you guys and then he had an appointment
22 in the afternoon I didn't get a chance to get it from him.
23 So when you said it was -- I think during the testimony this
24 morning you said it was Ad Council COVID-19. So I can use
25 Google. I looked up Ad Council and found it.

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1 Q. Based upon your view was the information presented
2 within that video culturally competent?

3 A. Yes. I believe it was.

4 Q. Did the information presented in that video encourage
5 vaccine acceptance?

6 A. Yes, it did. It made the distinction between the
7 Tuskegee experiment and the attempts to get people to accept
8 vaccinations.

9 Q. To date, you've made multiple recommendations for the
10 jail, but you've never recommended any specific educational
11 materials to be provided to the inmates; is that right?

12 A. That's true. I have not. I did provide the jail with
13 the Amend very early on, but beyond that, I made broader
14 statements about cultural competence, about getting the
15 reading level down to where inmates, you know, who are at a
16 lower reading level could understand the paper. Yes.

17 Q. Do you know the total number of vaccines that have
18 been administered in the jail?

19 A. I do. I'll have to look it up, but it's like 500
20 and -- Mr. Sanders sent it to me today. Stand by. Okay.
21 Maybe it was Lieutenant Styles but it was in the upper 500s.
22 560 something is the latest information I've gotten. That
23 included the vaccinations from yesterday.

24 Q. Are you familiar with the amount of vaccines that were
25 administered during each of the vaccine dates thus far at the

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1 jail?

2 A. Approximately. There were approximately 150
3 administered when I was there last time because I tried to
4 come on Thursday so I could see it, see the vaccine
5 administration. And then this time I was told by Mr. Sanders
6 this morning in an e-mail that it was 49 out of 60 this week.
7 I think Chief Fields testified it was 39, but it's actually
8 49.

9 Q. Are you aware that less than 26 vaccines have been
10 administered to detainees at the jail on separate instances?

11 A. No. I'm not aware of that.

12 Q. Mr. Brady, as we sit here today, have COVID-19
13 vaccines been offered to detainees at the jail?

14 A. Yes.

15 Q. As we sit here today, have educational materials about
16 COVID-19 vaccines been provided to detainees at the jail?

17 A. Yes.

18 Q. As we sit here today, have nonpunitive incentives to
19 take the COVID-19 vaccine been offered to detainees at the
20 jail?

21 A. Yes.

22 MR. STOKES: Judge, if I could just have a minute
23 to look over my notes please.

24 THE COURT: Quickly.

25 MR. STOKES: Yes, Your Honor.

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1 Thank you for your time, Mr. Brady. That's all I
2 have for you.

3 THE WITNESS: So I found that number if you want
4 it.

5 MR. STOKES: Sure.

6 THE WITNESS: 568 as of 8/6/21. And the number
7 that was given to me yesterday has been adjusted to 36
8 vaccinated 8/5/21. That's from Mr. Sanders.

9 MR. STOKES: Thank you, Mr. Brady.

10 THE WITNESS: You're welcome.

11 THE COURT: Ms. Woods, do you have any Redirect?

12 MS. WOODS: Very brief, Your Honor.

13 **REDIRECT EXAMINATION**

14 **QUESTIONS BY MS. WOODS:**

15 Q. Mr. Brady, is the onus on detainees or on the
16 sheriff's office to ensure an effective vaccination program?

17 A. Well, it's obviously, on the sheriff's department.
18 It's on public health actually and the sheriff's department.

19 Q. Did any of the documents that Mr. Stokes showed you
20 during his cross examination change your opinion about the
21 efficacy of vaccine education efforts?

22 A. No, it did not.

23 Q. Were there periods of greater than 14 days in a row
24 that the jail did not administer vaccinations?

25 A. As I recall, yes. I have a list of the vaccination

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1 dates and there were gaps. I did not take the time to
2 calculate the number of days. Early on I believe there were
3 larger gaps in the early days. And then in July I believe
4 there was a two-week gap at some point, but I just got that
5 document about three hours ago so I haven't really had a
6 chance to review it.

7 Q. And, Mr. Brady, when you were originally nominated to
8 serve as an independent inspector in this case in June of
9 last year which party put you forward to the Court?

10 A. I don't have a clue. The Court called me and
11 interviewed me and asked me if I -- asked about my
12 qualifications, spent quite a bit of time with me. And then
13 I answered questions and then she made the decision she made.
14 I have no idea.

15 Q. Did Plaintiffs' counsel contact you prior to your
16 nomination with the Court last year?

17 A. No.

18 MS. WOODS: I have no further questions, Your
19 Honor.

20 THE WITNESS: Actually, I do have a recollection
21 now, Judge. I apologize. Mr. Tilly contacted me and asked
22 me if I would be interested in doing that, and I believe
23 that's how my name got put forward.

24 THE COURT: Okay. Mr. Brady, I've got a couple
25 followup questions. Two different issues quickly.

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1 First, there have been a number of questions
2 about reading level, and the questions have all picked a
3 sentence out of a document and asked whether a particular
4 sentence in a multi-paragraph, multi-page document is at a
5 certain reading level. I don't know a lot about reading
6 levels. But is that an appropriate assessment? Can you pull
7 one sentence out of a multi-paragraph/multi-page document and
8 assess the reading level of the whole document based on that?

9 THE WITNESS: No, ma'am. It's not possible and
10 it is inappropriate.

11 THE COURT: Okay. That's what I thought. But
12 just -- common sense tells me that, but I just wanted to ask.

13 The other -- the other question I have is some
14 issues have been raised as to whether the education materials
15 provide information about the Delta variant. As any of us
16 who are paying attention at all know, there have been a lot
17 of questions raised in the community about whether a vaccine
18 should be taken because there are so-called breakthrough
19 infections and if someone is going to get -- is going to be
20 exposed to COVID-19 and potentially get sick from it anyway
21 even if they're vaccinated why take the vaccine. So, you
22 know, while certainly I -- based on what the CDC is telling
23 us, what the statistics are telling us, that's not the right
24 conclusion because as I understand the numbers, the vast
25 majority of people getting the virus right now are

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1 unvaccinated. The incredible vast majority of people being
2 hospitalized are unvaccinated. And the vast majority of the
3 people dying are unvaccinated. I guess first, I mean, are
4 those the statistics that you are seeing?

5 THE WITNESS: Yes, ma'am. As Dr. Randolph the
6 public health officer for Shelby County told me today, the
7 Delta variant is responsible for 90 percent -- 98 percent of
8 the current infection rate, which is up by over 4,000 percent
9 and continues to climb every day.

10 That's the same across the United States in every
11 city in town. Some are at 80 percent, you know, 80 percent
12 of their infections. But taking the -- so yes, the Delta
13 variant is responsible for at least 80 percent of the current
14 infection rate if not larger across the United States.
15 However, taking the vaccine reduces the risk of
16 hospitalization and death. That rarely occurs when you've
17 taken the vaccine.

18 You may get sick. As an example, Senator Lindsey
19 Graham got sick with COVID-19, but he had been vaccinated so
20 his symptoms were mild. And that -- you do have
21 breakthroughs but it's a small number of breakthroughs. And
22 the number of deaths I'm not aware of, but there may have
23 been one or two. But it's a minuscule number compared to the
24 deaths that are occurring as a result of the Delta variant in
25 unvaccinated people.

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1 THE COURT: And so for purposes of this hearing,
2 my question really is, is it important to present that
3 information to the detainees because of all the -- I'll call
4 it noise that's going on out there about whether someone
5 should take the vaccine given the Delta variant? Would it be
6 important to include, you know, directly some of this
7 information, or have -- as you say have conversations in
8 these small group settings about what a vaccine means in this
9 particular environment that we're in right now in August of
10 2021?

11 THE WITNESS: Absolutely. It is critical that
12 that information is presented to the inmate population in a
13 manner in which they can understand it. They can ask
14 questions and make an informed consent. If you look at the
15 informed consent, it has to be explained to people. And, you
16 know, it's really important that they present this
17 information in an understandable way and that they identify
18 the risks of not taking the vaccine as well as the risks of
19 taking the vaccine.

20 And with the virus, the Delta variant being a
21 thousand more times -- the viral load is a thousand times
22 higher. The risk of serious illness or death is
23 extraordinarily high. And this is materially different than
24 the information that was presented earlier before the Delta
25 variant has come about.

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1 The Wuhan virus was not nearly as infectious as
2 this. And the disease -- it's far more contagious and far
3 more lethal.

4 THE COURT: All right. Let's start with
5 Mr. Stokes. Do you have any followup questions based on my
6 questions?

7 MR. STOKES: Just very brief.

8 Mr. Bailey, your explanation of the Delta
9 variant, you would still agree that becoming vaccinated would
10 keep you safe from -- or lower your chances of
11 hospitalization or death; is that fair?

12 THE WITNESS: Yes, it would. It absolutely
13 would.

14 MR. STOKES: That's all. Thank you.

15 THE COURT: And Ms. Woods, do you have any
16 followup questions?

17 MS. WOODS: No, Your Honor. Thank you.

18 THE COURT: Okay. All right. Mr. Brady, you can
19 let housekeeping in now.

20 THE WITNESS: Thank you, ma'am.

21 THE COURT: And hopefully make your plane.

22 THE WITNESS: I hope so too.

23 THE COURT: All right. Thank you so much as
24 always, Mr. Brady.

25 THE WITNESS: Thank you, ma'am. Thank you

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1 everybody.

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1 THE COURT: All right. We've got -- how many
2 detainees did you all want to present? Is it --
3 Ms. Yarbrough, are you taking over here? I did see your
4 video coming up.

5 MS. YARBROUGH: Yes. I keep popping in on the
6 video. I believe it's my turn. We have three clients that
7 we would like to call. I would like the Court to know that
8 we have severely limited the scope of their testimony though.
9 So I anticipate that the direct examination would be 15 to
10 20 minutes per detainee.

11 One Mr. Hibbler, his Direct is going to be even
12 shorter.

13 THE COURT: I was going to say let's go even
14 shorter because I'm canceling things as we go along. All
15 right. If the first person could take a seat. I think I see
16 a marshal's arm.

17 MS. YARBROUGH: Brandon Hibbler.
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TESTIMONY OF BRANDON HIBBLER

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1 * * *

2 **BRANDON HIBBLER,**

3 **was called as a witness and having first been duly sworn**
4 **testified as follows:**

5 **DIRECT EXAMINATION**

6 **QUESTIONS BY MS. YARBROUGH:**

7 Q. Hi, Mr. Hibbler. We are a bit pressed for time today
8 so I'm only going to ask you a couple of questions. Okay?
9 If at any point you can't --

10 THE COURT: First, ask him how to spell his name.

11 MS. YARBROUGH: Well, I was only going to ask if
12 he can't hear me let me know.

13 BY MS. YARBROUGH:

14 Q. Mr. Hibbler, could you spell your name please?

15 A. Brandon, B-r-a-n-d-o-n.

16 Q. Could you spell your last name?

17 A. Yes, ma'am. H-i-b-b-l-e-r, Hibbler.

18 Q. Okay. Mr. Hibbler, how old are you?

19 A. Twenty-eight.

20 Q. And are you currently detained at 201 Poplar?

21 A. Yes, ma'am.

22 THE COURT: Sir, can you try and keep your voice
23 up? And I don't know if you can move the computer at all.
24 You're kind of to the side. There you go. That's better.
25 Just keep your voice up. Okay, sir.

TESTIMONY OF BRANDON HIBBLER

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Louder even.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: All right. Ms. Yarbrough.

5 BY MS. YARBROUGH:

6 Q. Mr. Hibbler, how long have you been in custody at 201
7 Poplar?

8 A. Two years.

9 Q. And I just want to emphasize what the Judge is saying.
10 We are having a little bit of a hard time hearing you. I
11 know you're soft spoken. So just make sure that we can hear
12 you if you can.

13 A. Two years.

14 Q. Okay, great.

15 And what part of the jail are you currently being
16 held?

17 A. 4th floor, N pod.

18 Q. How many hours a day do you spend in your cell?

19 A. Approximately 23 hours because they don't have a lot
20 of staff right now.

21 Q. And so you spend 23 hours in a cell. What do you do
22 with that extra hour in the day?

23 A. If we do get a chance to get out we shower, use the
24 phone, watch TV, play cards, use the kiosk machine.

25 Q. When you're in your cell, can you use the kiosk?

TESTIMONY OF BRANDON HIBBLER

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1 A. No, ma'am.

2 Q. When you're in your cell can you put in a sick call?

3 A. No, ma'am, unless the nurse comes through and give us
4 a sick call.

5 Q. Recently have you always gotten that one hour of rec
6 time?

7 A. Ma'am?

8 Q. Recently have you always received that one hour of rec
9 time a day?

10 A. No, ma'am.

11 Q. Why not?

12 A. Because they say that they are not -- they do not have
13 enough staff to let us out.

14 Q. Okay. I want to ask you about your access to
15 information about the COVID-19 vaccines, okay?

16 A. Yes, ma'am.

17 Q. Have you seen paperwork or posters mentioning the
18 COVID-19 vaccines?

19 A. In some pods there are posters saying something about
20 COVID, but in certain pods like the pod that I'm housed in
21 now, there is nothing posted about COVID nowhere.

22 Q. Have you individually ever been given paperwork by the
23 jail that explains about the vaccines?

24 A. No, ma'am.

25 Q. Have you ever been given any paperwork asking about a

TESTIMONY OF BRANDON HIBBLER

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1 vaccine from the jail?

2 A. They only gave me -- they asked me if I wanted to take
3 the vaccine or not. It was a yes or no paper saying would
4 you like to take the vaccine, yes or no.

5 Q. Do you remember about when that was?

6 A. I would like to say around April or May of last year.

7 Q. In that sheet of paper that had the yes or no question
8 did it have any information about the vaccine?

9 A. No, ma'am. It only asked did you want to take the
10 vaccine or not.

11 Q. Did it explain how the vaccine works?

12 A. No, ma'am.

13 MS. YARBROUGH: I'm sorry. I'm getting some
14 background noise. Is there a radio?

15 THE COURT: I don't know what that is. Do you
16 hear that, Mr. Hibbler? Is that in your area?

17 THE WITNESS: I can hear it, but I'm -- it's not
18 in here.

19 MR. STOKES: Your Honor, we are hearing it
20 through the camera. It's not coming -- the source is not
21 where it's at.

22 THE COURT: I think I knew who it was. A 919
23 number who just muted. Please if you're on this call do not
24 unmute unless you're speaking as part of the hearing.

25 All right. Please go on.

TESTIMONY OF BRANDON HIBBLER

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1 BY MS. YARBROUGH:

2 Q. So going back to that sheet of paper that you got, did
3 it explain how the vaccines work?

4 A. No, ma'am.

5 Q. Did it discuss --

6 A. They only asked would you like to take the vaccine,
7 yes or no.

8 Q. Did it explain anything about side effects of the
9 various vaccines?

10 A. No, ma'am.

11 Q. Did it say anything about differences between the
12 various brands of vaccine?

13 A. No, ma'am.

14 Q. Did it say anything about how effective the vaccine
15 was?

16 A. No, ma'am.

17 Q. Did it say anything about whether or not you would get
18 medical treatment if you had side effects from the vaccine?

19 A. No, ma'am.

20 Q. So did you ever personally receive paperwork from the
21 jail that talked about the vaccines that was written by a
22 group called Amend?

23 A. No, ma'am. I only received a piece of paper from you,
24 Ms. Stella, from when you came to see me. That's when I
25 initially got any paperwork saying anything about the side

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1 effects and everything about the vaccine.

2 Q. Had you ever seen the Amend paperwork on the walls in
3 your pod?

4 A. No, ma'am.

5 Q. Were you ever told by the jail that the Amend
6 information about the vaccines would be available to you at
7 the guard station in your pod?

8 A. No, ma'am. They only spoke about the lawsuit paper,
9 saying if you would like to be part of a class action lawsuit
10 to contact the clerk's office. That was the only piece of
11 paper that they had at the workstation telling us about the
12 vaccine -- I mean telling us about the COVID situation.

13 Q. Have you ever seen other people in your pod receive
14 paperwork that has information about the vaccine?

15 A. No, ma'am.

16 Q. Have you ever seen other people check out materials
17 about the vaccine from the guard station?

18 A. No, ma'am.

19 Q. Have you ever seen information about the vaccine pop
20 up on the kiosk in your pod?

21 A. Excuse me?

22 Q. Have you ever seen information about the vaccine pop
23 up on the kiosk in your pod?

24 A. It doesn't pop up. You have to search for it. And I
25 asked a fellow inmate about it, and they helped me find it on

TESTIMONY OF BRANDON HIBBLER

220

1 the kiosk machine. And it only said if you would like to
2 take the vaccine to put it in sick call and they would help
3 you get the vaccine.

4 Q. Why did you ask someone to help you find it?

5 A. Because I was trying to figure out about the vaccine
6 because they did not tell us about the vaccine. They only
7 asked us would we like to take it, yes or no, and they leave
8 it alone.

9 Q. Have you ever been in a pod where the kiosk wasn't
10 working?

11 A. Yes, ma'am.

12 Q. When you make calls from your pod do you hear a
13 message play that talks about the vaccines before you can
14 place the call?

15 A. No, ma'am. I never heard that message.

16 Q. Are there any videos about the vaccine that play in
17 your pod?

18 A. Yes, ma'am. They played the videos about the vaccine
19 and PRIA like around three o'clock, but we be locked down in
20 the cell. Sometimes we might be out in the pod but sometimes
21 we're in the cell, and everyone in the cells cannot see the
22 TV because it's in the -- half way in the middle of the pod.
23 So everyone cannot see the TV if we're locked down. And the
24 PRIA video shows we have to make a mirror or something that
25 reflects so that we can see the TV if we're locked down.

TESTIMONY OF BRANDON HIBBLER

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1 Q. Okay. So I want to break that down a little bit. So
2 what videos about the vaccine play in your pod?

3 A. They only play the vaccine with -- I mean the video
4 with a little girl and Obama on it, and they also play some
5 guy say awesome time, something like that. It's awesome time
6 explaining about COVID and where it came from and all that.

7 Q. Are you able to watch these videos when you're on
8 lockdown in your cell?

9 A. No, ma'am. We have to make a mirror or something that
10 reflects as far as the TV to see it if you're not in the TV
11 area.

12 Q. When you say a mirror what do you mean? What do you
13 make?

14 A. Like sometimes we have to get a cup and get some Saran
15 Wrap. Clean the Saran Wrap and set it outside the bars and
16 look through it. Or we usually take our toenail clipper and
17 break it apart and look at it through the toenail clipper.

18 Q. So that's how you watch TV from your cell?

19 A. Yes, ma'am. If you don't have -- if you don't have a
20 TV cell, that's the only way that you can see the TV.

21 Q. Do other people in your pod also make these makeshift
22 mirrors?

23 A. Yes, ma'am.

24 Q. Is there any time when you would be able to see the TV
25 directly?

TESTIMONY OF BRANDON HIBBLER

222

1 A. Yes, when they do let us out. When they do let us out
2 for rec time, we are able to see the TV then.

3 Q. Do you ever spend any of your 30 minutes of rec time
4 or hour of rec time watching those videos?

5 A. Yep. Like they start the videos at three o'clock.
6 Sometimes the videos be on when we come out. Sometimes they
7 won't. Sometimes they only show the videos for probably
8 15 seconds or 15 minutes and then they'll turn it off and go
9 back to regular TV.

10 Q. Do you know if those videos say anything about the
11 specific types of vaccines?

12 A. No, ma'am, they don't, not that I know of. It doesn't
13 say anything about specific vaccines.

14 Q. Do the videos talk about who should take the vaccine?

15 A. No, ma'am. People at high risk.

16 Q. Do they talk about information about possible side
17 effects of the vaccine?

18 A. No, ma'am.

19 Q. So what about jail staff? Do they ever say anything
20 about vaccines?

21 A. Like, if we ask them, they'll -- sometimes they'll
22 tell us -- some officers will tell us. Some officers won't.
23 Some officers will say it's good to take the vaccine. Some
24 will say, no, it's not. Some will say they're trying to kill
25 us. We'll get different answers and -- different answers

TESTIMONY OF BRANDON HIBBLER

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1 from different officers.

2 Q. How do you feel when you hear jail staff say that they
3 aren't going to take the COVID-19 vaccine or that the vaccine
4 is going to kill you?

5 A. I would like to have more information about the
6 vaccine.

7 Q. Have you been to any town halls or group meetings with
8 medical professionals about the COVID-19 vaccines?

9 A. Since COVID-19 has been going on down here, they have
10 basically stopped doing town hall meetings in the pod because
11 they said that COVID was around. So this last year I have
12 not seen a town hall meeting in none of the pods that I have
13 been in, but they have recently just started back coming
14 around.

15 Q. So have you heard then from the jail about any town
16 halls or group meetings with medical professionals that are
17 happening?

18 A. No. No, ma'am.

19 Q. Did the jail ever invite your pod to attend a town
20 hall like that?

21 A. No, ma'am.

22 Q. Did you ever attend a different type of a meeting like
23 an expo or a fair or a pep rally about the COVID-19 vaccine
24 on the fifth floor?

25 A. No, ma'am.

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1 Q. Are you familiar with what I'm talking about when I
2 ask you that?

3 A. Well, I'm only familiar about it because like you just
4 asked. They never said anything about going to the fifth
5 floor learning about COVID or none of that.

6 Q. Okay. So now I would like to talk to you a little bit
7 about incentives or things that the jail can do to make
8 people want to get the vaccine.

9 A. Yes, ma'am.

10 Q. Has the jail ever mentioned benefits you could receive
11 if you take the vaccine?

12 A. Lately since -- if I'm not mistaken, since I want to
13 say July the 14th, they have been coming across the intercom
14 saying that you can receive \$20 incentives and you can also
15 win a car or something, and they also -- they just now
16 started telling us that we can be entered into a \$100 raffle
17 ticket drawing or something and a pizza party.

18 Q. Well, why does the day July 14th stick out to you?
19 Why do you remember that?

20 A. Because you came and asked me -- Monday -- on the
21 13th, July the 13th, you asked me have I ever heard of
22 incentives down here about getting anything from the jail
23 staff about the COVID-19 vaccine if you took it. And I told
24 you I never heard of it. I never heard from -- about it from
25 anyone except one officer. But they play so much so I

TESTIMONY OF BRANDON HIBBLER

225

1 thought they was playing. And when you asked me the very
2 next day on the 13th, the very next day July 14th, I heard it
3 come across the intercom.

4 Q. Okay. So you --

5 A. That's the only reason why July 14th stick out to me.

6 Q. So you mentioned a couple of things. I kind of want
7 to take them one by one.

8 Okay. So when -- you had said that -- sorry, I'm
9 reading my notes.

10 Were there any other ways that you had heard about the
11 \$20 besides the announcement?

12 A. Yes. I heard one time from an officer when I was in
13 segregation. It was like, ah, they're giving out \$20 if you
14 take the vaccine. And I thought he was playing because they
15 come around down in the hole playing a lot. So I thought he
16 was playing.

17 But when you initially asked me on the 13th of July
18 have they ever said anything about it, I told you like, they
19 said something about it or an officer said something about it
20 one time but I thought he was playing so I never looked into
21 it. And on the 14th of July, that's when I heard it come
22 across the intercom.

23 Q. Do you know if people who got the vaccine and then got
24 the \$20?

25 A. In my pod that I'm in now a couple of people have just

TESTIMONY OF BRANDON HIBBLER

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1 now -- I think it's like four or five of them have just now
2 received the \$20, and one man that's next door to me, he
3 received an orange.

4 Q. Were you ever present when people were trying to
5 figure out if they got the \$20 or not?

6 A. Yes, ma'am. They would check the kiosk machines and
7 see if the jail staff had put any money on their books.

8 Q. Is it easy to do that?

9 A. Well, you have to -- if we're on lockdown, you have to
10 ask someone to check your kiosk machine for you. You have to
11 ask someone to check the kiosk machine for you to see if any
12 money has been put on your books.

13 Q. Were you ever present when someone was checking other
14 people's commissary accounts?

15 A. Yes, ma'am, in the pod. But like, I couldn't see the
16 kiosk machine, but I was hearing them ask, hey, see if they
17 put that \$20 on my book.

18 Q. So then what happened? Who was checking?

19 A. One guy's name is Bruce and the other guy name is
20 Cane. And they was in the pod with me. They asked the rock
21 men to check their books to see if they put their \$20 on
22 their books.

23 Q. Okay. And did the rock men tell them if they had
24 gotten their \$20 or not?

25 A. Yes, ma'am. One guy got his \$20 and the other guy did

TESTIMONY OF BRANDON HIBBLER

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1 not, and he still been asking them about it.

2 Q. Could other people in the pod hear that this was going
3 on?

4 A. Yes, ma'am.

5 Q. How did it make you feel to hear that some people who
6 took the vaccine didn't end up getting the \$20?

7 A. I said it was confusing, like how is some people
8 getting it but some people not, but all of y'all have taken
9 the vaccine.

10 Q. Have you ever seen a ceremony or a party or a
11 gathering where people in your pod were awarded a certificate
12 for getting the shot?

13 A. No, ma'am.

14 Q. So I think you also mentioned that there was -- you
15 had heard a recording of a promise of a pizza party. Do you
16 think --

17 A. It wasn't a recording. It was a piece of paper. They
18 had it on a piece of paper saying that if you took the
19 vaccine, the most people in your pod -- if your pod had the
20 most people in your pod that take the vaccine that you would
21 win a pizza party.

22 Q. Do you think the promise of a pizza party will get
23 people in your pod to sign up for the vaccine?

24 A. No, ma'am.

25 MR. STOKES: I'm going to object to that, Your

TESTIMONY OF BRANDON HIBBLER

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1 Honor. I don't know that Mr. Hibbler can testify to what
2 other people will do.

3 THE COURT: Ms. Yarbrough, ask him about himself
4 and if you want to try and lay a foundation for others.

5 BY MS. YARBROUGH:

6 Q. Does the promise of a pizza party make you want to get
7 the vaccine?

8 A. No, ma'am. I would like to have more information
9 about the vaccine and the side effects because I'm scared
10 because I have already had COVID once down here.

11 Q. Does the piece of paper you saw say when the pizza
12 party will happen?

13 A. No, ma'am. It only says that you will receive a pizza
14 party if your pod has the most people that take the vaccine.

15 Q. Would you have to work with other people in order to
16 get the pizza party?

17 A. Basically they are trying to get people to take the
18 vaccine and reward you with pizza.

19 Q. I guess my question should have been would -- if you
20 wanted the pizza party, would you have to work with other
21 people in your pod together to earn it?

22 A. Yes, ma'am, basically.

23 Q. Has anyone in your pod started doing that?

24 A. No, ma'am.

25 Q. So about the \$100 raffle, it's a similar question.

TESTIMONY OF BRANDON HIBBLER

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1 Would you like to win the raffle?

2 A. Would I like to win? Well, they said that you would
3 have to have been -- you would have to be vaccinated to win
4 to be entered into the \$100 raffle ticket drawing. And me,
5 myself, I have not been vaccinated because I'm scared they
6 won't tell me enough information about the side effects and
7 what brand of vaccine that I'm taking.

8 Q. Did anyone at the jail ever tell you that you would
9 get fresh fruit if you got the vaccine?

10 A. Yes, ma'am. They said that you would receive an
11 orange if you took the vaccine.

12 Q. And have you seen others get an orange after getting
13 the vaccine?

14 A. I seen one -- I seen one man receive an orange. But
15 he went to second floor medical and came up and I didn't know
16 where the orange came from, but I assume that it came from
17 him taking the vaccine shot because he said he had just took
18 it and they gave him an orange.

19 Q. Do you remember when that was?

20 A. No, ma'am. I'm not sure what day that was.

21 Q. Have you seen anyone get fruit since then?

22 A. No, ma'am.

23 Q. Okay. I have about two more questions.

24 Have you ever seen or heard anything about winning a
25 car through a sweepstakes?

TESTIMONY OF BRANDON HIBBLER

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1 A. Yes, ma'am. They -- in some pods -- like I said
2 earlier, in some pods they have posters up saying that you
3 can enter shot -- the shot sweepstakes for a car, but in
4 other pods like some pods are not receiving that information
5 because they don't have any posters up about it.

6 Q. What about in your pod, is there a poster up?

7 A. No, ma'am. In my pod right now, there is nothing up
8 in 4N about COVID. Nothing. Nowhere. The walls are empty.

9 MS. YARBROUGH: I think those are all my
10 questions if I could have a moment just to check in.

11 THE COURT: Quickly.

12 MS. YARBROUGH: Those are all my questions.

13 Thank you, Mr. Hibbler.

14 THE COURT: All right. Mr. Stokes, do you have
15 any questions for Mr. Hibbler?

16 MR. STOKES: Yes, Your Honor.

17 **CROSS-EXAMINATION**

18 **QUESTIONS BY MR. STOKES:**

19 Q. Good afternoon, Mr. Hibbler. My name is Austin
20 Stokes.

21 A. Good afternoon, sir.

22 Q. I represent the Defendants in this matter.

23 Mr. Hibbler, do you take medication?

24 A. Yes, sir.

25 Q. Regularly?

TESTIMONY OF BRANDON HIBBLER

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1 A. Yes, sir.

2 MS. YARBROUGH: Your Honor, I'm going to object.

3 I'm not exactly sure why that's relevant.

4 THE COURT: Yeah. Mr. Stokes?

5 MR. STOKES: I'll get there very briefly, Your
6 Honor.

7 THE COURT: Very quickly.

8 BY MR. STOKES:

9 Q. How do you receive that medication?

10 A. From the nurse.

11 Q. Every day?

12 A. Yes, sir.

13 Q. Do you have the opportunity to speak with the nurse
14 while she is -- when she hands you the medication?

15 A. Yes, sir, if the officer will allow us to speak to the
16 nurse because they're pushing the nurses out the pod fast.
17 They're basically like, "give them their meds, come on, let's
18 go."

19 Q. Have you ever asked a nurse any questions about the
20 COVID-19 vaccine?

21 A. Well, one -- I asked one nurse, and she told me, she
22 was like, "you've got to put in sick call to get it."

23 MR. STOKES: Thank you, Mr. Hibbler. That's all
24 the questions I have for you.

25 THE COURT: All right. Any Redirect,

TESTIMONY OF BRANDON HIBBLER

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1 Ms. Yarbrough?

2 MS. YARBROUGH: I don't believe so Your Honor.

3 THE COURT: All right. Thank you very much

4 Mr. Hibbler. You may be excused.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Your next witness.

7 MS. YARBROUGH: That would be Mr. Woods. Ronnie

8 Woods.

9 THE COURT: Ms. McClain, you are here, correct?

10 THE CASE MANAGER: I am judge.

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TESTIMONY OF RONNIE WOODS

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RONNIE WOODS,

**was called as a witness and having first been duly sworn
testified as follows:**

THE COURT: Mr. Woods, you're going to have to
keep your voice way higher than that.

THE WITNESS: Ma'am?

THE COURT: Speak up, okay.

THE WITNESS: Okay. Yes, ma'am.

THE COURT: All right, Ms. Yarbrough.

DIRECT EXAMINATION

QUESTIONS BY MS. YARBROUGH:

Q. Mr. Woods, could you state your full name and then
spell it?

A. Ronnie Woods. R-o-n-n-i-e. W-o-o-d-s.

Q. Thank you. Mr. Woods, how old are you?

A. 58.

Q. And are you currently detained at 201 Poplar Avenue?

A. Yes, ma'am.

Q. How long have you been in custody there?

A. 27 months.

Q. And in what part of the jail are you currently being
held?

A. I'm on the sixth floor in 6B.

Q. I should have said this to you at the beginning Mr.

TESTIMONY OF RONNIE WOODS

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1 Woods but I am only going to be asking you a very very small
2 amount of questions. Okay?

3 A. Okay. Yes, ma'am.

4 Q. Do you have kiosks in your pod?

5 A. Yes, ma'am.

6 Q. Can you describe them for us?

7 A. We have one kiosk that we can order our commissary on,
8 and we also have a kiosk that we could do sick calls and
9 counselor calls on, but the one that we do the sick call and
10 the counselor call it doesn't work. It hasn't worked since
11 I've been upstairs. It hasn't been working.

12 Q. So how long has it been broken?

13 A. Ever since I've been -- I started out on the fifth
14 floor and it wasn't working. Then we moved to the sixth
15 floor a few months ago and it's not working up there either.

16 Q. So about -- could you estimate about how many months?

17 A. Probably a little over a year.

18 Q. So if the kiosk you use to put in sick calls is
19 broken, how do you put in sick calls?

20 A. We have to write them on a sick call form on a sheet
21 of paper. We write it out. Just write it out.

22 Q. What do you do with it once you write it out?

23 A. They have a box outside the unit. We can put it
24 inside the box or we can give it to the nurse when she comes
25 around for sick call in the morning or in the evening when

TESTIMONY OF RONNIE WOODS

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1 she comes around for sick call.

2 Q. So how often is the box or tray that you put the sick
3 calls in -- how often is that checked by jail staff?

4 A. I'm not sure how often they check it, but we try to
5 give it to the nurse to speed things up because every time we
6 turn one in it takes days, sometimes weeks to get an answer.

7 Q. When you give the form directly to the nurse do they
8 respond to what you're asking for in the sick call then?

9 A. No. They just put it on the card, and I guess they
10 take it down to the hospital. I don't know. But they don't
11 respond to it right away.

12 Q. So how long then does it take for the jail staff to
13 ultimately respond to your sick call?

14 A. Days, sometimes weeks.

15 Q. Is putting in a sick call a good way to get treatment
16 for something that's bothering you right then?

17 A. No. If you have like the emergency or something
18 probably right then, you really have to tell the officers to
19 call down there to see if they'll see you.

20 Q. Do you know how much sick calls normally cost?

21 A. I think around \$3.

22 MS. YARBROUGH: I believe those are all my
23 questions for Mr. Woods.

24 THE COURT: Mr. Stokes, any questions?

25 MR. STOKES: Yes, Your Honor. Just one moment,

TESTIMONY OF RONNIE WOODS

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1 very brief, please.

2 **CROSS-EXAMINATION**

3 **QUESTIONS BY MR. STOKES:**

4 Q. Good afternoon, Mr. Woods. My is Austin Stokes.

5 A. How you doing, sir?

6 Q. I'm doing all right. Can you hear me okay?

7 A. Yes, sir. I can hear you fine.

8 Q. During your time of being detained in the Shelby

9 County Jail, have you been offered a COVID-19 vaccine?

10 A. Yes, sir.

11 MS. YARBROUGH: Your Honor, I'm going to object.

12 That's pretty far outside the really limited scope of the

13 Direct.

14 THE COURT: It is. Mr. Stokes, it was a very

15 limited area she asked him about.

16 MR. STOKES: Fair enough, Your Honor. I feel

17 like it's relevant to what were here today, but --

18 THE COURT: I understand. But it was -- and you

19 had the opportunity to call witnesses, I'm sure, if you so

20 chose. So anything that's within the scope?

21 MR. STOKES: Nothing else, Your Honor.

22 THE COURT: All right. Mr. Woods, thank you very

23 much for your time. You may be excused.

24 THE WITNESS: All right. Thank you, Your Honor.

25 THE COURT: Anyone else Ms. Yarbrough?

1 MR. SPICKLER: Judge, this is Josh Spickler. I
2 don't know if you can see me but we have one more person and
3 that scope will be limited as well. His name is Richard
4 Wright.

5 THE COURT: Okay. Thank you. Yeah, I can see
6 you. I was wondering why you were here, Mr. Spickler.

7 MR. SPICKLER: Me too, Judge.

8 Hello, Mr. Wright, can you hear me okay?

9 THE WITNESS: Yes, sir.

10 MR. SPICKLER: Okay.

11 THE COURT: Ms. McClain.

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TESTIMONY OF RICHARD WRIGHT

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1 * * *

2 **RICHARD WRIGHT,**

3 **was called as a witness and having first been duly sworn**
4 **testified as follows:**

5 **DIRECT EXAMINATION**

6 **QUESTIONS BY MR. SPICKLER:**

7 Q. Mr. Wright, if you can't hear me through this video,
8 please let me know. If you don't understand a question,
9 please repeat it.

10 And before we get started go ahead and say your full
11 name and spell your last name again real quick.

12 A. My full name is Richard Wright. My last name is
13 W-r-i-g-h-t.

14 Q. How old are you, Mr. Wright?

15 A. Forty-seven.

16 Q. Do you currently live at the jail at 201 Poplar?

17 A. Yes, sir.

18 Q. How long have you been there?

19 A. Almost three years now. A couple months from three
20 years.

21 Q. What part of the jail do you live in?

22 A. 4A.

23 Q. You said pod 4A?

24 A. Yes, sir.

25 Q. About how many people are in that pod?

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1 A. Forty-three.

2 Q. How often do you leave the cell in pod 4A, the cell
3 where you live?

4 A. I come out if it's rec time or I come out if it's sick
5 call or I have to go to second floor medical.

6 Q. How long do you get to stay out when you come out
7 regularly for rec time?

8 A. Four hours on the evening shift. If we come out in
9 the morning time, it will only be two hours. Like today we
10 supposed to be out right now we're not even out.

11 Q. When you get out what are the things that you do in
12 that pod?

13 A. Shower, telephone, and I play a little spades, watch
14 TV.

15 Q. Okay.

16 A. That's about it. Look out the window every now and
17 then.

18 Q. How long have you been in that pod?

19 A. Over a year and a half.

20 Q. Mr. Wright, have you received a vaccine for COVID-19?

21 A. Yes.

22 Q. When did that happen?

23 A. I can barely hear you.

24 Q. I'm sorry. When did that happen, the shot?

25 A. I got it last month.

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1 Q. In July?

2 A. Uh-huh.

3 Q. Okay. Do you know what kind of vaccine you received?

4 A. No, sir. I just know I got one shot and that was it.

5 Q. Okay. How did you let the people in the jail know
6 what you wanted to receive the vaccine?

7 A. The counselor came in and I told him that I wanted it.
8 He had a sheet that we had to fill out that and it went from
9 there.

10 Q. About how long before you got the shot did they come
11 by with that sheet of paper?

12 A. Maybe a couple of times.

13 Q. A couple of times. How long before you took the shot,
14 you received the shot, did you sign up on the paper?

15 A. Oh, once I signed on the paper they came like maybe a
16 week later.

17 Q. Okay. Who came?

18 A. The officers escort us down but we had two people from
19 the fire department that gave us the shot.

20 Q. Why did you decide to get the shot, Mr. Wright?

21 A. I took it because I talked to my family, and I also
22 took it because once I leave here, I want to be able to start
23 back working. That's the only reason.

24 Q. Okay. Did you tell us earlier that you got one shot?

25 A. Yes, sir. That was all, just one. And we asked them

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1 about the second shot, but they said they had no information
2 about it.

3 Q. So are you expecting a second shot?

4 A. Yeah. That's what we thought we was supposed to get,
5 two shots.

6 Q. Do you know which versions of the vaccine require two
7 shots and which do not?

8 A. The only shot I know required just one is the Johnson
9 & Johnson, but I can't remember the name of the two. Sir?

10 Q. Okay. I asked have you asked anyone to tell you which
11 vaccine you got?

12 A. Well, we tried to ask the person that was giving us
13 the shot, but they never told us. All they did was stuck us
14 and kept rolling. Or kept --

15 Q. When you say we asked or tried to ask, who do you mean
16 when you say "we"?

17 A. The two MPD -- the two fire department people that
18 gave us the shot.

19 Q. But you said "we"?

20 A. There was two of us.

21 Q. Okay. I'm sorry to interrupt you, keep interrupting
22 you, but when you say "we asked" who are the "we" who's
23 asking those two fire department --

24 A. Out of my pod there was eight. We all were asking the
25 same question.

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1 Q. Okay. And have you tried since then to find out about
2 whether you need a second shot?

3 A. Yeah, but we still got no response. Even the
4 counselor couldn't tell us.

5 Q. Okay. How could you ask a nurse or another medical
6 professional a question about whether you need a second dose
7 or not?

8 A. We'll have to put it in the kiosk and wait for them to
9 respond back.

10 Q. And have you tried to do that?

11 A. Yeah, we tried, but we got no response.

12 Q. So you don't know if you're fully vaccinated, do you?

13 A. No. And right now if it break out again I don't know
14 if my life going to be secure or not.

15 Q. Let me ask you real quickly about right after you got
16 that shot from those two folks from the fire department. Did
17 a nurse or any medical professional follow up with you within
18 a couple of days?

19 A. No, sir.

20 Q. Did you see a nurse or another medical professional
21 check on the other guys from your pod who got the shot at the
22 same time you did?

23 A. No, sir.

24 Q. Were you told before you got the shot that someone
25 would check on you within a couple of days after you got it?

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1 A. No, sir.

2 Q. Did you have side effects after you got the shot?

3 A. I had the chills. You know, I got hot. That's really
4 about it. Like it was hard to sleep on one side.

5 Q. Did you seek medical attention? Did you submit a sick
6 call for that?

7 A. Well, I tried to. After a week everything was over
8 with so I just never worried about it.

9 Q. Did any of the other folks who took the shot with you,
10 did you see them have side effects?

11 A. They were just complaining about some of the things I
12 just told you about.

13 Q. Did you --

14 A. Some of them talking about --

15 Q. Go ahead. Go ahead.

16 A. No.

17 Q. I didn't mean to interrupt you. I'm sorry.

18 A. As far as the ones that took it with me, you know,
19 they just had like headaches, shivering. Some of them
20 couldn't eat.

21 Q. And did you see any of those guys get medical
22 treatment for those side effects?

23 A. No, sir.

24 Q. Did you get any medication for those side effects?

25 A. No, sir.

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1 Q. Were you told before you got the vaccine that you
2 could get medication for free after you took it?

3 A. No, sir.

4 Q. And then just one more question, Mr. Wright. Were you
5 given a card, a vaccine card that had the type of vaccine on
6 it?

7 A. No, sir. Only thing they told us, they gave us the
8 sheet of paper and then the card I guess you're talking about
9 that we supposed to look at and see. They kept that and said
10 they were going to put that in our property so whenever we'll
11 leave we'll have that card in our property.

12 MR. SPICKLER: One second, Your Honor.

13 THE COURT: Okay.

14 MR. SPICKLER: Those are all the questions I
15 have.

16 THE COURT: Thank you, Mr. Spickler. Mr. Stokes,
17 any questions?

18 MR. STOKES: No questions, Your Honor.

19 THE COURT: Thank you for your time. You may be
20 excused.

21 THE WITNESS: Yes ma'am. See ya.
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1 THE COURT: Bye, bye. Thank you.

2 All right. Anymore proof, Mr. Tilly.

3 MR. TILLY: Your Honor, I think we would probably
4 like to call Chief Fields back to respond to some of the
5 proof that Plaintiffs presented. Umm.

6 THE COURT: You say umm.

7 MR. TILLY: Well, if that's agreeable to the
8 Court. I would like maybe a ten-minute break just to get my
9 thoughts together on that if that's agreeable.

10 THE COURT: We're running up against other things
11 that -- places I have to be that I can't cancel unlike most
12 of the day that I've canceled. So my feeling is we need to
13 come back on Monday.

14 MR. TILLY: That's fine with us, Your Honor.

15 MS. MORRIS: That's also fine with Plaintiffs,
16 Your Honor.

17 MR. TILLY: Your Honor, if I could just make sure
18 that Chief Fields -- if he doesn't have any kind of
19 availability issues. Chief Fields, can you hear us?

20 MR. Fields: Yes, I can.

21 MR. TILLY: Is Monday okay for you?

22 MR. Fields: Monday is fine.

23 THE COURT: Okay. I could do it at 11 o'clock on
24 Monday.

25 MR. TILLY: That works for us, Your Honor.

1 THE COURT: Does that work for Plaintiffs?

2 MS. MORRIS: Yes, Your Honor.

3 THE COURT: All right. We will resume at
4 11 o'clock with Chief Fields, rebuttal testimony. And in the
5 meantime, I also want you all to think about whether -- what
6 your positions are going to be on whether you feel like you
7 need to do more briefing or not after that.

8 MS. MORRIS: And, Your Honor, if I may?

9 THE COURT: Yes.

10 MS. MORRIS: I would like to address two quick
11 issues. One is that we received the deposition transcript
12 for Chief Fields --

13 THE COURT: Good.

14 MS. MORRIS: -- early afternoon. So we will be
15 providing excerpts from that that we'll be submitting as an
16 exhibit before court on Monday.

17 THE COURT: Okay.

18 MS. MORRIS: It was a 30(b)(6) deposition.

19 THE COURT: Yeah. I don't know, technically it's
20 an exhibit to the hearing or it's just an exhibit to your
21 filings, but we can deal with that. I mean, that's -- I'm
22 thinking technically not that I won't accept it.

23 Okay. What else?

24 MS. MORRIS: And then secondly we would just like
25 to say that we assume there will be no concerns about

1 retaliation against the gentlemen who testified this
2 afternoon.

3 THE COURT: Yes. Mr. Tilly, I'm going to -- and
4 actually, Chief Fields, since you're on the line -- look to
5 you all to make sure there's no retaliation against the
6 witnesses who testified this afternoon because of their
7 testimony.

8 MR. Fields: No, ma'am. The Court does not have
9 to worry about that, Your Honor.

10 THE COURT: Okay. All right. Anything else?

11 MS. MORRIS: Not from us, Your Honor.

12 MR. TILLY: Not from Defendants, Your Honor.

13 THE COURT: We'll see you all -- let me say thank
14 you to the marshals who hung around all day today waiting for
15 this. So thank you very much for your time today. I know it
16 wasn't easy to wait for everything else.

17 THE MARSHAL: Yes, ma'am. Thank you.

18 THE COURT: All right. We will see everyone else
19 virtually on Monday at 11:00 central time. Thank you so
20 much. We're in recess.

21 (Adjournment.)
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C E R T I F I C A T E

I, CANDACE S. COVEY, do hereby certify that the foregoing 248 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the Teams Motion hearing on the 6th day of August, 2021, in the matter of:

Busby, et al.

vs.

Bonner, et al.

Dated this the 10th day of August, 2021.

S/Candace S. Covey

CANDACE S. COVEY, LCR, RDR, CRR
Official Court Reporter
United States District Court
Western District of Tennessee