

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

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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.

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13                   TEAMS HEARING ON MOTION ECF NO. 218  
14                   BEFORE THE HONORABLE SHERYL H. LIPMAN, JUDGE  
15                   Monday  
16                   9th 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 I N D E X

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9 E X H I B I T S

10 (None marked.)

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1 Monday

2 August 9, 2021

3 The Teams Hearing on Motion ECF No. 218 began on this  
4 date, Monday, 9th day of August, 2021, at 11:00 a.m., when  
5 and where evidence was introduced and proceedings were had as  
6 follows:

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10 THE COURT: Good morning. We are here for a  
11 continuation of the motion hearing in Busby, et al. v. Floyd  
12 Bonner, et al, 20-2359. I think I've sort of taken roll and  
13 I believe I know who's here. So I'm going to call out first  
14 all the plaintiffs' attorneys who I think are here. Meredith  
15 Borner, Josh Spickler, Maria Morris, Nancy Rosenbloom, Stella  
16 Marie Yarbrough and Brice Timmons.

17 Did I miss any plaintiffs' attorneys who are  
18 here?

19 MR. TIMMONS: Your Honor, Craig Edgington is  
20 sitting with me. Brice Timmons.

21 THE COURT: Okay. Craig Edgington. Anyone else?  
22 Any other plaintiffs' attorneys who are here?

23 All right. Defendants. Mr. Tilly, I know you  
24 are here. I assume you have Mr. Stokes and Mr. Pentecost  
25 with you?

1 MR. TILLY: I do, Your Honor.

2 THE COURT: All right. I don't think I saw Ms.  
3 Stigger or Ms. Iverson here; is that correct? Or are either  
4 one --

5 MS. STIGGER: Good morning. This is Bridgett  
6 Stigger. I'm dialling in this morning.

7 THE COURT: Okay. Thanks, Ms. Stigger.

8 Any -- any other lawyer here?

9 MR. ELLIS: Your Honor, I'm just observing,  
10 Daniel Ellis with Disability Rights Tennessee.

11 THE COURT: Okay. Thank you, Mr. Ellis.

12 Yeah, just to clarify, anyone is welcome to be  
13 here. I really meant any attorneys here who are on behalf of  
14 one of the parties in the hearings. But thank you,  
15 Mr. Ellis.

16 All right. Mr. Tilly, your video is not on.  
17 Let's make sure your video is working. Okay. There you are.

18 And, Ms. Borner, are you handling this, where we  
19 are now?

20 MS. BORNER: I will be handling Chief Fields.  
21 Yes.

22 THE COURT: Okay. For all those on for part of  
23 the hearing, let me just remind everyone that we are in  
24 court. It is not permitted to record anything that happens  
25 in court in any manner, in federal court at least. So no

1 audio, no video. If there is anything else you could record,  
2 none of that either.

3 All right. We were -- where we left off last, it  
4 was defendants' rebuttal proof, and they indicated a desire  
5 to recall Chief Fields; is that correct, Mr. Tilly?

6 MR. TILLY: Yes, Your Honor.

7 THE COURT: All right. Excuse me. Chief Fields,  
8 if you would turn your video on.

9 MR. FIELDS: Good morning, Your Honor.

10 THE COURT: Good morning. How are you, sir?

11 MR. FIELDS: All right. And yourself, ma'am?

12 THE COURT: Good. All right. Ms. McClain, if  
13 you would administer the oath.

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**TESTIMONY OF KIRK FIELDS**

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**KIRK FIELDS,**

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

**DIRECT EXAMINATION**

**QUESTIONS BY MR. TILLY:**

Q. Good morning, Chief Fields.

A. Good morning.

Q. On Friday we heard testimony about how much time detainees are allowed out of their cells in the Shelby County jail. And I just want to ask -- start with just a few questions about that. Okay?

A. Yes, sir.

Q. How many hours a day are detainees typically allowed out of their cells at the Shelby County jail?

A. Normally five to six hours per day.

Q. And during their time out of their cells where are detainees allowed to be in the jail?

A. They're in the dayroom area, the common area, where they have access to telephones, showers, kiosks. They can watch television. They can play games at the game tables. So they're out in the open area, the dayroom area of their housing units.

Q. And are there TVs in the housing units?

A. That's correct.



**TESTIMONY OF KIRK FIELDS**

9

1 Q. On Friday you talked a little bit about the PA system  
2 at the jail. Are there speakers in the housing units where  
3 detainees can hear announcements over the PA system?

4 A. That is correct.

5 Q. What about if the detainee was in his cell when an  
6 announcement came over the PA system, could he hear that  
7 announcement?

8 A. Yes, sir.

9 Q. During times that detainees are in their cells and not  
10 in the dayroom, do they have access to communicate with  
11 correctional officers?

12 A. Yes, they do.

13 Q. How do they have that access with correctional  
14 officers?

15 A. Security and wellness rounds are made at least twice  
16 an hour. So when the staff make those rounds, they check  
17 individual cell by cell so those detainees have an  
18 opportunity to discuss any issues with the staff at that  
19 time.

20 Q. Are they able to ask staff questions about COVID-19  
21 vaccines?

22 A. Yes, they are.

23 Q. And if they ask them specific questions about COVID-19  
24 vaccines, what would the staff do?

25 A. Staff will in turn get those detainees' information

**TESTIMONY OF KIRK FIELDS**

10

1 and contact medical so the medical provider can have a  
2 conversation with those persons.

3 Q. What if the detainee asks staff for some of the  
4 educational materials the jail has provided the detainees  
5 access to while they're in their cells, what would the staff  
6 do?

7 A. They would provide it to them from the information  
8 that is at the officer's workstation.

9 Q. How often is pill call done in the housing units?

10 A. Pill call is done at least once per shift, depending  
11 on the medication schedule of those -- of those persons.

12 Q. And how many shifts are there each day at the Shelby  
13 County jail?

14 Chief Fields, did you hear me?

15 A. There are -- there are three shifts.

16 Q. Are detainees allowed out of their cells during pill  
17 call?

18 A. Was your last question how many shifts? Yes. There  
19 are three shifts.

20 Q. Are detainees allowed out of their cells during pill  
21 call?

22 A. I'm sorry; I didn't hear you. There was a breakup in  
23 communication.

24 Q. Let me try it again. Chief Fields, are detainees  
25 allowed out of their cells during pill call?

**TESTIMONY OF KIRK FIELDS**

11

1 A. I didn't hear the last part of your question.

2 MR. TILLY: Judge, I don't know if there's a --  
3 can you hear me?

4 A. Yes, they are.

5 THE COURT: I can hear you okay. I don't know if  
6 there's something on Chief Fields' -- something with the  
7 technology. I can hear you fine, Mr. Tilly. Are you not  
8 hearing him, Chief Fields? Chief Fields, can you hear me?

9 MR. TILLY: Your Honor, to me it looks like his  
10 video is delayed.

11 THE WITNESS: I'm getting bits and pieces, Your  
12 Honor.

13 THE COURT: Same from me can --

14 THE WITNESS: Yes, ma'am. I can hear you.

15 THE COURT: You can hear me fine. Let's try  
16 again, Mr. Tilly.

17 MR. TILLY: Chief Fields, can you hear me now?  
18 Chief Fields, can you hear me?

19 THE WITNESS: Yes, ma'am.

20 MR. TILLY: Your Honor -- Your Honor, maybe if he  
21 signed out and signed back in.

22 THE WITNESS: Yes, sir.

23 THE COURT: Do you want to try that, Chief  
24 Fields? Do you want to sign out and sign back in?

25 THE WITNESS: Yes.

**TESTIMONY OF KIRK FIELDS**

12

1 THE COURT: Okay.

2 MR. TILLY: It's the oddest thing. It's never  
3 done that.

4 THE WITNESS: Yeah. Can I sign off and log in  
5 from a different terminal?

6 THE COURT: Yes.

7 THE WITNESS: Yes, please. Thank you. Yes,  
8 ma'am.

9 THE COURT: There is also -- and there was this  
10 on Friday with Chief Fields too. There's an audio delay.  
11 We'll see if the -- I noticed that on Friday as well. But I  
12 don't think we had the issue of him actually being able to  
13 hear you on Friday as much.

14 THE WITNESS: Okay. I'm back on. Can you all  
15 hear me?

16 THE COURT: Yes.

17 MR. TILLY: Chief, can you hear me?

18 THE WITNESS: Yes, sir.

19 MR. TILLY: Okay. All right. Let's try this  
20 again then. Thank you for your patience, Your Honor.

21 BY MR. TILLY:

22 Q. Chief, are detainees allowed out of their cells during  
23 pill call?

24 A. Yes.

25 Q. And do they have access to medical staff during pill

**TESTIMONY OF KIRK FIELDS**

13

1 call?

2 A. Yes, they do.

3 Q. And are they able to make requests to medical staff if  
4 they have any questions about COVID-19 vaccines?

5 A. Yes.

6 Q. Did you listen to Mr. Brady's testimony on Friday  
7 afternoon, Chief Fields?

8 A. Yes, I did.

9 Q. And do you recall that he testified that some  
10 detainees had reported to him not receiving more than an hour  
11 out of their cells for an extended period of time?

12 A. Yes.

13 Q. Do you find that report from detainees to be credible?

14 A. No. But there are times on weekends, on Saturdays and  
15 Sundays, that there may be some validity to it, based on our  
16 staffing needs.

17 Q. What about during the weekdays, how much time do they  
18 get out of their cells?

19 A. During the weekdays it's an average of five to six  
20 hours per day.

21 Q. During the weekends when they -- in the event on the  
22 weekends if they receive an hour of time out of their cells  
23 what can they do during that hour?

24 A. They can use the telephone. They can shower. They  
25 can transact business on the kiosk. They can look at

**TESTIMONY OF KIRK FIELDS**

14

1 television. They have leisure time for that -- for that  
2 hour.

3 Q. Just as they do during the weekdays?

4 A. Correct.

5 Q. Did you hear inmate Brandon Hibbler testify on Friday  
6 afternoon?

7 A. Yes, I did.

8 Q. And did you hear him complain about not having much  
9 time out of his cell recently?

10 A. Yes, I did.

11 Q. Have you done anything to determine how credible that  
12 testimony is from Mr. Hibbler?

13 A. Yes, I have.

14 Q. What did you do?

15 A. I went back to check our housing units and recreation  
16 schedules. I found out that on Thursday evening Mr. Hibbler  
17 and his housing unit were actually out between five and six  
18 hours on Thursday evening on the 2:00 to 10:00 shift.

19 Q. Has the number of correctional staff hindered the  
20 jail's ability to offer detainees vaccines?

21 A. No, sir.

22 Q. Has the number of correctional staff hindered the  
23 jail's ability to provide the detainees the opportunity to  
24 receive a vaccine?

25 A. No, sir.

**TESTIMONY OF KIRK FIELDS**

15

1 Q. Has the number of correctional staff hindered the  
2 jail's ability to provide detainees educational materials  
3 about vaccines?

4 A. No, sir.

5 Q. Has the number of correctional staff hindered the  
6 jail's ability to offer detainees nonpunitive incentives to  
7 take the vaccine?

8 A. No, sir.

9 Q. Did you hear Mr. Brady's testimony on what he believed  
10 was the required number of vaccine signups necessary for the  
11 City of Memphis to schedule a vaccine administration date on  
12 Friday afternoon?

13 A. Yes, sir, I did.

14 Q. What did you hear Mr. Brady testify was his  
15 understanding of that number?

16 A. That the minimum requirement for a vaccine clinic was  
17 26 individuals.

18 Q. Is that correct?

19 A. No, it's not correct.

20 Q. What is the number, Chief Fields?

21 A. That number would be six.

22 Q. Chief, how many -- how many housing units are in the  
23 jail?

24 A. Approximately 60.

25 Q. Are different kinds of educational materials

**TESTIMONY OF KIRK FIELDS**

16

1 concerning COVID-19 vaccines available and posted in each and  
2 every housing unit?

3 A. Yes, they are.

4 Q. Has the jail implemented a process to ensure that  
5 educational materials about vaccines remain available and  
6 posted in each of the housing units?

7 A. Yes, we have.

8 Q. And what process has the jail implemented?

9 A. I've assigned a captain to audit that. So she makes  
10 rounds throughout the jail on a daily basis to inspect, to  
11 make sure that the material is posted and available at the  
12 officer's workstation.

13 Q. If she finds that there's any issue with it being  
14 posted or available what does she do?

15 A. She corrects it immediately.

16 Q. And did you hear Mr. Hibbler testify on Friday that he  
17 had not seen any educational materials in his housing unit?

18 A. That's correct.

19 Q. Have you done anything to determine -- to look into  
20 that allegation?

21 A. Yes.

22 Q. And what have you done and what have you learned?

23 A. I personally walked into his housing unit which is 4  
24 November, inspected the pod, and I witnessed the learning  
25 material posted in at least three places inside the housing



**TESTIMONY OF KIRK FIELDS**

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1 unit.

2 Q. And is the material also available at the guard  
3 station in his housing unit?

4 MS. BORNER: Objection. He's leading.

5 A. That is correct.

6 MR. TILLY: I don't think that was a leading  
7 question.

8 THE COURT: I don't think that was leading.  
9 Yeah. You may proceed.

10 BY MR. TILLY:

11 Q. Chief Fields, did you listen to Mr. Ronnie Woods'  
12 testimony on Friday as well?

13 A. Yes, I did.

14 Q. And as chief jailer what do you know about Mr. Woods?

15 A. That he is a well known convicted drug dealer in the  
16 city of Memphis.

17 MS. BORNER: Objection.

18 THE COURT: Yeah. Let's keep the testimony to  
19 what's relevant here.

20 MS. BORNER: Can I move to strike that from the  
21 record?

22 THE COURT: Mr. Tilly?

23 MR. TILLY: Your Honor, I think that the point is  
24 just that plaintiffs called a very well known leading drug  
25 dealer in the city of Memphis a --

**TESTIMONY OF KIRK FIELDS**

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1 THE COURT: Mr. Tilly. Mr. Tilly, that's totally  
2 irrelevant. I have already said it's irrelevant what these  
3 detainees are accused of doing. That's irrelevant.

4 MR. TILLY: Okay.

5 THE COURT: If you want to get to something  
6 relevant that's fine, but I see no reason to get into what he  
7 is accused of doing. I will strike it.

8 Go ahead, Mr. Tilly.

9 BY MR. TILLY:

10 Q. Chief Fields, how long has Mr. Woods been housed --  
11 strike that.

12 Do you know where Mr. Woods is currently housed?

13 A. Yes, sixth floor, bravo pod.

14 Q. And how long has he been housed on the sixth floor?

15 A. Four about a month.

16 Q. Did you hear him testify or complain about a kiosk not  
17 working in the sixth floor on Friday?

18 A. That is correct.

19 Q. Have you done anything to determine whether he has  
20 access to a kiosk that's operational?

21 A. Yes, I have.

22 Q. And what have you done and what did you learn?

23 A. I personally went to sixth floor bravo housing unit.  
24 There are two kiosks in the housing unit. One is currently  
25 working and one is currently on an order for repair.

**TESTIMONY OF KIRK FIELDS**

19

1 Q. But he has -- because one is working, he has access to  
2 a kiosk?

3 MS. BORNER: Objection. That is leading.

4 A. That is correct.

5 THE COURT: Yes. That was leading, Mr. Tilly.

6 MR. TILLY: Yeah, I understand, Your Honor.

7 BY MR. TILLY:

8 Q. Prior to moving to the sixth floor where did Mr. Woods  
9 reside in the jail?

10 A. He has been housed on the third floor and he's been  
11 housed on the fifth floor.

12 Q. Are the kiosks working or operational on the third and  
13 did you say the fifth floor?

14 A. That's correct.

15 Q. Chief Fields, where are you from originally?

16 A. Memphis, Tennessee.

17 Q. Did you grow up in Memphis?

18 A. Yes.

19 Q. Have you lived in Memphis your entire life?

20 A. That's correct.

21 Q. How long have you worked in corrections?

22 A. Thirty-two years.

23 Q. How long have you worked for the Shelby County jail?

24 A. Thirty-two years.

25 Q. For the record, Chief Fields, what is your race?

**TESTIMONY OF KIRK FIELDS**

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1 A. African-American.

2 Q. Did you hear Mr. Brady testify that in his opinion the  
3 educational materials the jail is providing detainees at the  
4 Shelby County jail are, quote, culturally incompetent or not  
5 culturally competent?

6 A. Yes, I did.

7 Q. What are your thoughts on that opinion from Mr. Brady?

8 A. As an African-American man that grew up in Memphis,  
9 Tennessee, I found that assessment to be very disrespectful.

10 Q. And why is that?

11 A. Because I'm from this community. I've grown up  
12 through this community. I've worked in this profession for  
13 32 years, and based on the material that we provided, it is  
14 comprehensible and relatable to anybody that reads it  
15 regardless of their race or their skin color.

16 MS. BORNER: Your Honor, could I move to strike  
17 that? Chief Fields is not here as an expert witness today.

18 THE COURT: He did not -- and he hasn't been  
19 offered as an expert. He is testifying as to his personal  
20 opinion here, and I'll allow it.

21 MR. TILLY: Thank you, Your Honor.

22 BY MR. TILLY:

23 Q. Based upon your knowledge of detainees in the Shelby  
24 County jail, do you believe that they can comprehend the  
25 educational materials that the jail is providing them?

**TESTIMONY OF KIRK FIELDS**

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1 A. Most definitely.

2 Q. Would that include the written materials that the jail  
3 is providing them?

4 A. Yes, sir.

5 Q. Would that include the videos the jail is playing two  
6 times every day?

7 A. Yes, sir.

8 Q. Has anyone with Wellpath indicated to you a concern  
9 that the educational materials being provided to detainees  
10 are not culturally competent?

11 MS. BORNER: Objection, hearsay.

12 MR. TILLY: That's not --

13 MS. BORNER: Counsel asked if anyone in Wellpath  
14 has indicated to him.

15 MR. TILLY: That's --

16 THE COURT: It's an out of court statement. I  
17 guess is it offered for the truth of the matter asserted?

18 MR. TILLY: It's just asking whether he's been  
19 made aware by anybody but Mr. Brady, Your Honor. That's  
20 not -- I wasn't offering it for the truth of the matter  
21 asserted. I was offering it to show that no concerns have  
22 been raised by Wellpath.

23 THE COURT: I will allow it.

24 A. None have been relayed to me.

25 BY MR. TILLY:

**TESTIMONY OF KIRK FIELDS**

22

1 Q. Has anyone other than Mr. Brady informed you that the  
2 materials are not culturally competent?

3 A. No, sir, they haven't.

4 Q. Based upon your knowledge of the detainees in the  
5 Shelby County jail do you believe they are culturally  
6 competent?

7 A. Yes. I believe they are.

8 Q. And why do you think that, Chief?

9 A. Just based on my interaction and my years of service,  
10 my conversations with them. No issues or concerns have been  
11 addressed to me.

12 Q. Has anyone informed you that any specific detainee  
13 cannot comprehend the materials that have been provided?

14 MS. BORNER: I'll just -- these are all sort of  
15 kind of calling for hearsay in the same way. So same  
16 objection. Just note.

17 MR. TILLY: Your Honor, again, this is not  
18 offered for the truth of the matter asserted. It's just  
19 simply offered to show whether anyone has informed him that  
20 someone doesn't comprehend the materials, and if someone has  
21 not informed him that someone -- if no one has indicated to  
22 him that there's an issue comprehending the materials then  
23 there's nothing that he should have to respond to, and that's  
24 just the point of the testimony.

25 THE COURT: Well, right. I guess your point is

**TESTIMONY OF KIRK FIELDS**

23

1 whether he's on notice. It kind of contradicts your point  
2 that he should -- excuse me -- that he's qualified to offer  
3 his own opinion, but putting that aside, it is a issue of a  
4 statement. You're offering it for the effect on the listener  
5 or some -- it seems like there is some exception to hearsay.  
6 You're asking him questions to determine what course of  
7 action he should or shouldn't have taken. I'll allow it.

8 MS. BORNER: Okay. With respect, I would just  
9 suggest that I don't think that this is being offered for the  
10 effect on the listener. The question isn't really whether  
11 Chief Fields is on notice of the conditions. The question is  
12 what are the conditions in the jail.

13 THE COURT: I mean, that's a good point as to how  
14 I would ultimately determine the answer here. But if the  
15 defendants want to make an argument that it's also related to  
16 what sort of notice Chief Fields is --

17 MR. TILLY: And that's exactly what we're trying  
18 to do, Your Honor. It's what he knows and the notice that he  
19 has or does not have.

20 THE COURT: I'll allow it, but, Mr. Tilly -- I  
21 mean Ms. Borner's point that this particular issue, I think  
22 there's a question as to whether the notice is the relevant  
23 question or whether what the -- what's actually going on is  
24 the relevant question, but I'll let you proceed. Just let's  
25 move quickly. I think you're almost done with this issue.

**TESTIMONY OF KIRK FIELDS**

24

1 MR. TILLY: Sure.

2 BY MR. TILLY:

3 Q. Chief Fields, if a detainee could not understand the  
4 materials that are being provided what steps would the jail  
5 take for that detainee?

6 A. We would refer that person to Wellpath so that they  
7 could meet with that person on an individual level to provide  
8 them the proper information.

9 MR. TILLY: Your Honor, I may be close to  
10 finished if I could have just a few minutes just to look over  
11 my notes if that's okay.

12 THE COURT: Sure. Yes.

13 MR. TILLY: Thank you.

14 Thank you, Your Honor. That's all the questions  
15 I have at this time.

16 THE COURT: All right. Thank you, Mr. Tilly.  
17 Ms. Borner, do you have any questions?

18 MS. BORNER: I do. Is the Court amenable to a  
19 five-minute break before we get started?

20 THE COURT: Do we need a five-minute break?

21 MS. BORNER: Okay. Okay. It was worth a shot.

22 **CROSS-EXAMINATION**

23 **QUESTIONS BY MS. BORNER:**

24 Q. Okay. Chief Fields, nice to see you again.

25 So I think I'm going to try my own screen sharing



**TESTIMONY OF KIRK FIELDS**

25

1 today. You testified under oath at a deposition last week,  
2 right?

3 MR. TILLY: Your Honor --

4 A. Correct.

5 THE COURT: Yeah. Ms. Borner, just ask your  
6 questions, and if we -- you need to ask your questions  
7 directly. If there's something about the deposition that  
8 you're going to bring to his attention for some reason then  
9 that's fine but just ask your questions directly.

10 MS. BORNER: Okay.

11 BY MS. BORNER:

12 Q. Okay. Chief Fields, you testified about the two  
13 kiosks in I believe it was Mr. Woods' pod; is that right?

14 A. Correct.

15 Q. And you said that one of the kiosks is broken and the  
16 other is functioning; is that right?

17 A. That's correct.

18 Q. Isn't it true that one of the kiosks is used for sick  
19 calls and the other kiosk is used for commissary?

20 A. I'm sorry. No, ma'am. They can be used for both.

21 Q. You also testified about the time that the detainees  
22 are permitted out of their cell, right?

23 A. Correct.

24 Q. And you referenced some investigation that you did  
25 following our hearing of the amount of time that

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1 Mr. Hibbler's pod had been out of their cell?

2 A. That is correct.

3 Q. Have defendants produced to plaintiffs any documents  
4 reflecting the investigation that you conducted?

5 A. No, ma'am, we have not.

6 Q. Chief Fields, you offered a number of opinions on the  
7 cultural competency of the education materials about the  
8 vaccinations offered to detainees, right?

9 A. Yes, ma'am.

10 Q. Do you have any expertise on the ADA?

11 A. Are you asking me about the American Disability Act?

12 Q. I am, yes.

13 A. No, ma'am, I do not.

14 Q. Okay. And do you know what the average reading level  
15 of the detainees in the jail is?

16 A. No, ma'am, I do not.

17 Q. You also testified earlier today about the minimum  
18 number of detainees who need to request a vaccine in order  
19 for the City to come offer vaccines, right?

20 A. That's correct.

21 Q. Okay. And you said that number was six?

22 A. That's correct.

23 Q. Okay. And last week we looked at your -- at the  
24 Shelby County Sheriff's Office's response to the  
25 interrogatories that plaintiffs propounded, right?

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1 A. Are you talking about in the deposition?

2 Q. No. Apologies. I'm talking about at the hearing.

3 A. Could you refresh my memory in regards to which  
4 interrogatories?

5 Q. Sure. This was Interrogatory Number 9 that reflected  
6 the dates on which vaccines were administered at the jail.

7 A. Okay. I don't have it before me, but, yes, ma'am.

8 Q. Okay.

9 MS. BORNER: Your Honor, can I put the document  
10 on the screen? It's already been admitted.

11 THE COURT: Yes.

12 MS. BORNER: Okay. Okay. Maybe I've  
13 overestimated myself. Hold on.

14 THE COURT: Where is Eric when you need him?

15 MS. BORNER: If Eric is there and wants to save  
16 the day. Are you seeing the right thing by any chance?

17 THE COURT: No.

18 MS. BORNER: No.

19 THE COURT: You're trying to share Exhibit 21,  
20 correct? Interrogatory responses?

21 MS. BORNER: Yes, that's right. Okay. I will --  
22 I'm sorry.

23 THE COURT: It just popped up for me.

24 MS. BORNER: Oh. How about now?

25 THE COURT: I can see it on my screen. It's very

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1 small. Can you see it, Chief Fields?

2 THE WITNESS: Yes. I would ask if she can  
3 enhance it. Thank you.

4 MS. BORNER: Sure. Thank you for bearing with  
5 me.

6 BY MS. BORNER:

7 Q. So we spoke on Friday about the vaccination  
8 administrations dated May 20, 2021, and then June 10, 2021;  
9 is that right?

10 A. Okay. Yes, ma'am.

11 Q. And you agreed that that was about three weeks that  
12 the jail had gone without administering the vaccine?

13 A. That's correct.

14 Q. And that on June 10th when a vaccination did occur 58  
15 detainees were signed up for that, for that date, right?

16 A. Something else is coming up on my screen.

17 Q. Oh, I'm sorry.

18 A. Okay. I think yeah it was -- it shows 58 received the  
19 J & J and four detainees received their second dose of the  
20 Pfizer.

21 Q. Okay. Is 58 52 more than 6?

22 A. By my math, yes.

23 Q. Okay. Now I will figure out if I can stop sharing.  
24 Chief Fields, is it correct that you're not aware of  
25 any misinformation about the vaccine being spread at the

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1 jail?

2 MR. TILLY: Object, Your Honor. That is beyond  
3 the scope of my Direct.

4 THE COURT: That is beyond the scope, Ms. Borner.  
5 Your question was the spread of the virus?

6 MS. BORNER: The spread of misinformation about  
7 the virus.

8 THE COURT: And I think as stated it seems like  
9 it's beyond the scope. I mean, I can kind of -- well, as  
10 stated, it's beyond the scope.

11 MS. BORNER: Okay.

12 BY MS. BORNER:

13 Q. Sure. Chief Fields, you testified about staff, jail  
14 staff, communicating with detainees regarding the vaccines,  
15 right?

16 A. Correct.

17 Q. Okay. And is it your testimony that you are not aware  
18 of any misinformation about vaccines being spread in the  
19 jail?

20 A. That is correct. I think you brought to my attention  
21 the one individual that we were looking to to gather more  
22 information on, but outside of that no, ma'am, I'm not aware  
23 of any.

24 MR. TILLY: Judge, I'm going to again object to  
25 it being outside the scope here. I don't know...

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1 THE COURT: You asked a number of questions about  
2 access to staff, to detainees being able to talk to  
3 correctional staff when they come around, how often they come  
4 around. It's within the scope.

5 BY MS. BORNER:

6 Q. And Chief Fields, I think you also testified that jail  
7 staff come around and they will provide information about the  
8 vaccine in addition to referring people to medical; is that  
9 right?

10 A. What do you mean by jail staff will provide  
11 information?

12 Q. I believe you testified that jail staff -- that if a  
13 detainee had questions about the vaccine that jail staff  
14 would provide them with information in response?

15 A. No. I think what I testified to was that we refer  
16 them to medical or pass the documentation that we have on  
17 hand to them.

18 Q. Okay. And, sorry, just to go back for a second to the  
19 June 10th administration that we were talking about a minute  
20 ago at which 58 Johnson & Johnson vaccines were administered.  
21 Do you recall what the reason was for there being a  
22 three-week delay before that administration?

23 A. Can I ask you to repeat your question? We had some  
24 type of technical glitch at the beginning of your question.

25 Q. Sure. The three-week delay between the May 20th and

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1 June 10th vaccine administrations we talked about that  
2 earlier, right?

3 A. Yes, ma'am.

4 Q. What is your understanding of the reason for the delay  
5 before the June 10th administration?

6 A. I was informed that there was a lack of signups for  
7 vaccinations.

8 Q. Now I would like to bring up the deposition testimony  
9 if I may.

10 Chief Fields, you recall you were deposed as a  
11 30(b)(6) witness last week?

12 A. That's correct.

13 Q. Okay. And you were under oath, right?

14 A. That's correct.

15 MS. BORNER: Is this showing up for everybody,  
16 the transcript?

17 THE COURT: Not yet for me. I don't know if  
18 anyone else can see. Ah, yes.

19 MS. BORNER: Okay.

20 BY MS. BORNER:

21 Q. Chief Fields, can you see this too?

22 A. Yes.

23 Q. Okay. I asked you:

24 "Question: Do you know why there was a 21-day wait  
25 between the two vaccination dates?

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1           Answer: I think that's because individuals had to  
2 receive their second does, the time frame between the first  
3 dose and the second dose of the Pfizer and not having enough  
4 signup before then during that time period.

5           Question: It says that there were 58 Johnson &  
6 Johnson vaccines administered that day, so there was some  
7 demand it seems, right?

8           Answer: Well, you've got to realize during that time  
9 we switched over from the Pfizer to the Johnson & Johnson.  
10 So based on the fact that the City of Memphis had control of  
11 the vaccines they determined when they were going to come in  
12 so that they could maximize their time or their manpower."

13           Did I read that correctly?

14 A.       Yes, ma'am, you did.

15 Q.       Was that your testimony?

16 A.       Yes, it was.

17 Q.       Okay. Chief Fields, there are more than a thousand  
18 detainees in the jail who have not gotten vaccinated, right?

19 A.       That's possible. Yes, ma'am.

20 Q.       You haven't had any discussions with those detainees  
21 about why they haven't gotten vaccinated, right?

22 A.       When you say "you," are you speaking personally to me?

23           MR. TILLY: Your Honor, again, this is -- I don't  
24 know how this is within my direct examination of whether  
25 Chief Fields has had discussions with detainees about why



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1 they haven't received the vaccine.

2 THE COURT: Ms. Borner?

3 MS. BORNER: Again, I'm trying to understand the  
4 nature of the interactions between staff and detainees which  
5 Chief Fields did testify about. And so, you know, since  
6 Chief Fields may only have personal knowledge of his own  
7 interactions with detainees, I wanted to ask about his.

8 MR. TILLY: Your Honor --

9 THE COURT: That answers part of it.

10 I mean, Mr. Tilly, you asked a number of  
11 questions about how detainees can communicate with people and  
12 who is communicating with the detainees. So to that extent,  
13 it would be within the scope.

14 MR. TILLY: Your Honor, my only response to that  
15 is my questions concerned about their interactions with staff  
16 during security and wellness checks. It wasn't as broad as  
17 Ms. Borner is making it. It was more limited to the security  
18 and wellness checks that are done inside the housing units.  
19 This is much broader than that.

20 THE COURT: Well, it actually is a very narrow  
21 question because, as she said, she's only asking him about  
22 his personal interactions. I'll allow it. I'm not sure what  
23 it really gets us. I don't think it's -- I don't think Chief  
24 Fields is the one to go around and talk to everyone. But  
25 I'll allow the question.

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1 Do you remember the question, Chief Fields?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay.

4 A. No. I have not spoken to over possibly a thousand  
5 inmates as you stated as to why not -- they have not been  
6 vaccinated. But that question is asked in their intake by  
7 our medical professionals as to have they had the vaccine and  
8 would they like to be vaccinated.

9 BY MS. BORNER:

10 Q. Are you aware of the reason that any detainees have  
11 chosen not to be vaccinated?

12 A. No, ma'am, I'm not.

13 Q. I take it then you don't know whether the educational  
14 materials offered address the reasons that certain detainees  
15 have chosen not to be vaccinated?

16 A. Well, we've tried to provide the material so that any  
17 fears or questions that they may have could be answered with  
18 our materials and with our videos and with those  
19 conversations that they can have with the medical  
20 professionals.

21 Q. Chief Fields, you talked about pill call and that it  
22 happens once a shift, right?

23 A. Yes, at least once a shift, yes, ma'am.

24 Q. And that's one of the ways that detainees can get  
25 information about the vaccine during pill call?

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1 A. That is correct.

2 Q. Pill calls are not generally done by medical doctors,  
3 are they?

4 A. They're done by medical professionals.

5 Q. But not medical doctors, right?

6 A. No. Doctors do not make pill calls.

7 Q. Do nurse practitioners make pill calls?

8 A. It's possible.

9 Q. Okay. And registered nurses sometimes do pill calls?

10 A. It's possible, yes, ma'am.

11 Q. And licensed practical nurses also sometimes do pill  
12 calls?

13 A. Yes, ma'am.

14 Q. Are you familiar with -- sorry. Strike that.

15 Are you aware that licensed practical nurses receive  
16 about one year of training beyond high school for their  
17 certification?

18 MR. TILLY: Your Honor, I don't know what the  
19 relevance of all this is.

20 THE COURT: I'll allow it.

21 A. No, ma'am. I have no idea.

22 BY MS. BORNER:

23 Q. Okay. Just -- Chief, earlier you talked about the  
24 number of hours that detainees spend in their cell, right?

25 A. Yes, ma'am.

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1 Q. And when detainees are locked in their cell they can't  
2 necessarily see the TV monitors, right?

3 A. Depends on their cell location. Yes, ma'am.

4 Q. And can they use the kiosks when they're locked in  
5 their cell?

6 A. No, they cannot.

7 Q. Does understaffing in the jail have any impact on  
8 detainees ability to spend time out of their cell?

9 A. I wouldn't say "understaffing." I would say staff  
10 shortages sometimes impacts the amount of time that the  
11 detainees are out of their living areas.

12 Q. Okay. How many units are currently on lockdown  
13 because of the new outbreak?

14 MR. TILLY: Your Honor, objection, outside the  
15 scope.

16 THE COURT: Well, you asked about time out of  
17 cells. So that part of it would be potential. I'm not  
18 sure that -- seems like the question was broader than that.

19 MR. TILLY: Your Honor, I don't think there's  
20 testimony that if a cell is on -- or a housing unit is on  
21 quarantine that they're locked in their cells.

22 THE COURT: Yeah. That's my question. I don't  
23 know. So, Ms. Borner, on its own, it is beyond the scope of  
24 the Direct. I don't know where you're going with the  
25 question, whether it has to do with time locked in cells or

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1 not.

2 MS. BORNER: Yeah. I mean, generally speaking,  
3 we're trying to suss out to what extent detainees currently  
4 have access to the kiosk and other -- and the TV for  
5 educational, you know, viewing. And if indeed cell -- people  
6 are on lockdown because of a new outbreak, then that would  
7 limit their access to the kiosk and the TV, for example.

8 THE COURT: So the first question is, you know, I  
9 don't know what the setting is when a unit is on quarantine,  
10 whether that means they have to remain in their cells. So  
11 there's a question point missing there to get to.

12 BY MS. BORNER:

13 Q. Okay. Chief Fields, if a unit is on quarantine  
14 because of a COVID outbreak are they locked in their cells?

15 A. No, ma'am. There is just no movement outside of their  
16 housing unit. They're allowed to move about their housing  
17 unit and conduct their general business such as leisure time,  
18 television time, telephone time, shower time and things of  
19 that nature. They just have no movement outside of their  
20 immediate housing unit.

21 Q. So if a cell is on quarantine that's maybe up to 64  
22 detainees mingling about in their housing unit?

23 MR. TILLY: Object to the question. Again, I  
24 think this is outside the scope, Your Honor, of how many  
25 detainees are mingling in the housing unit.

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1 THE COURT: I think it is outside the scope.

2 MS. BORNER: Okay. If you just give me 60  
3 seconds, I will see if I have anything else, please.

4 THE COURT: Mr. Tilly took more than 60  
5 minutes -- 60 seconds so you can take a few minutes.

6 MS. BORNER: That is very charitable, Judge.  
7 Thank you.

8 THE COURT: I think for those in the hearing  
9 several people remain unmuted. I'm talking about those  
10 people who are not speaking in the hearing. There's a 202  
11 number and a 248 number that both appear to be unmuted.  
12 Unless you're about to speak, you need to mute your phone or  
13 mute your audio.

14 MS. BORNER: Just a few more questions, Chief  
15 Fields, before I give you back to counsel.

16 BY MS. BORNER:

17 Q. How often do nurse practitioners do pill call in the  
18 jail?

19 A. I mean, I can't say that. That depends on their  
20 staffing allocation. I don't know.

21 Q. Do you know how often registered nurses do pill call?

22 A. No, ma'am.

23 Q. Do you know how often LPNs do pill call?

24 A. No, ma'am.

25 MS. BORNER: Okay. That's is all. Nothing

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1 further. Thank you.

2 THE COURT: Thank you, Ms. Borner. Mr. Tilly,  
3 any redirect?

4 MR. TILLY: None, Your Honor.

5 THE COURT: All right. Chief Fields, thank you  
6 so much for your time again. You may be excused or hang on.  
7 Either way.

8 THE WITNESS: Thank you, Your Honor.

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1 THE COURT: Thanks.

2 Mr. Tilly, any other rebuttal proof?

3 MR. TILLY: No, Your Honor.

4 There is one issue I do want to raise whenever  
5 the time is appropriate concerning plaintiffs have put in  
6 excerpts of Chief Fields' deposition transcript this morning.  
7 They included that as part of their filing. It's about  
8 117 pages worth of his -- excerpts from his deposition, Your  
9 Honor, and we have not had the opportunity to review those  
10 117 pages. And it's possible that we would like to put other  
11 portions of his deposition into the record in light of what  
12 they've put into the record.

13 The other point I would just make is that in our  
14 brief real quick review before the hearing this morning,  
15 there were some portions that had been redacted including  
16 some objections that were made. At least one example of an  
17 objection that was made. And we think that that shouldn't be  
18 redacted from the record in case it's something we would want  
19 to bring to Your Honor's attention. So I guess we would just  
20 like the ability to have some time to determine what  
21 portions, if any, of his deposition transcript should be  
22 admitted for our proof and address any issues with the  
23 redactions that were made, you know, concerning objections  
24 that were made during the deposition.

25 THE COURT: All right. I think it may be a



1 little bit of an estimate, but it seems like the plaintiffs  
2 probably had 24 hours to turn his deposition around. How  
3 much -- how much time do you need?

4 MR. TILLY: Your Honor, I think they had the  
5 weekend. If you would give us two days. Maybe by the close  
6 of business on Wednesday if that's acceptable.

7 THE COURT: Yeah. Ms. Borner, do you have a  
8 position here?

9 MS. BORNER: I don't have any objection to that.  
10 And I would just note that in light of the Judge's  
11 recognition that we did not have terribly long with the  
12 deposition, I can represent that any kind of a redaction of  
13 an objection, you know, that wasn't part of an otherwise  
14 redacted section would be inadvertent.

15 MR. TILLY: Yeah. I was not accusing you.

16 MS. BORNER: Okay.

17 MR. TILLY: I was not trying to accuse plaintiffs  
18 counsel. I understand that they had limited time to redact.  
19 I just wanted to point that out that there could be issues  
20 that we would want to raise.

21 THE COURT: Okay. So by close of business on  
22 August 11th, defendants should file any additional portions  
23 of Chief Fields' deposition that they want to rely on. Okay.

24 Let's talk about next steps. Do you -- other  
25 than that, let me ask you first, Mr. Tilly, since you -- this

1 is the defendants' motion. Do you wish to file something  
2 else -- another memo? Do you wish to make more arguments  
3 here?

4 MR. TILLY: Your Honor, unless it benefits the  
5 Court, we think that -- we don't see a need for another memo.  
6 We think we have -- we have filed our motion. We filed our  
7 reply. The motion has been fully briefed. The Court has  
8 heard quite a bit of proof over Friday and today. Unless  
9 there's some specific benefit that you see, we don't think  
10 it's necessary.

11 THE COURT: And do you -- had you anticipated  
12 doing a closing argument here?

13 MR. TILLY: I had, Your Honor.

14 THE COURT: Okay.

15 MR. TILLY: I did have closing remarks prepared.  
16 Yes, Your Honor.

17 THE COURT: All right. Ms. Morris, I see your  
18 video is back up so I assume you're on call now. So did you  
19 anticipate closings and no further written?

20 MS. MORRIS: So the one thing that we think would  
21 be worthwhile in terms of additional briefing would be on the  
22 question of -- essentially the relevance objections that have  
23 been raised several times, what the impact of the rate of  
24 vaccination, of the context of how much COVID there is in the  
25 facility at the moment. We think these things are relevant

1 to the issue before the Court, and we think it would be  
2 appropriate to have briefing on sort of what the scope -- why  
3 those things are relevant or as presumably defendants will  
4 say not relevant.

5 THE COURT: Are you prepared to do a closing as  
6 well?

7 MS. MORRIS: We can do -- yes. We'll do a  
8 closing.

9 THE COURT: All right. Let me hear your closings  
10 and then we'll come back to that issue.

11 Mr. Tilly?

12 MR. TILLY: Yes, Your Honor.

13 Your Honor, as you know and as we mentioned at  
14 the beginning of this hearing on Friday, this lawsuit was  
15 brought at the beginning -- shortly after the pandemic began.  
16 Plaintiffs claim that their confinement in the Shelby County  
17 jail was unconstitutional, unlawful, due to the dangers posed  
18 to them by COVID-19.

19 During the litigation and at the beginning of the  
20 case plaintiffs allege that defendants attempts to combat  
21 COVID-19 in the jail were insufficient. They allege that in  
22 many different ways. They allege that we weren't allowing  
23 them to socially distance, weren't providing them cleaning  
24 supplies, weren't giving them sufficient masks, not providing  
25 soap. And in essence what they were arguing was that they

1 were helpless to protect themselves from the COVID-19  
2 pandemic because of defendants alleged failures. But key to  
3 that argument, Your Honor, if you'll recall, was that there  
4 weren't vaccines available. Because there weren't vaccines  
5 available, they in essence were saying well defendants are  
6 the gatekeepers to keeping us safe. And because they are,  
7 Court, we need you to intervene. And obviously we disputed  
8 that. We believe that defendants and the Shelby County jail  
9 did an amazing job at combatting COVID and have continued to  
10 do so.

11 I think it's pertinent and very telling that in a  
12 facility that has housed between 1700 and 2000 detainees over  
13 the course of the pandemic, we've had no detainees that have  
14 died, Your Honor. And it remains our position that  
15 defendants have done an amazing job combatting COVID.

16 And we had that fight. We fought about it last  
17 year. We went back and forth with plaintiffs counsel. We  
18 did extensive discovery. And we were on the cusp of doing a  
19 lot more expensive and time-consuming discovery when the  
20 parties decided to come together and mediate the case. And  
21 they -- the parties spent three full days in mediation. And  
22 they came to an agreement, and that agreement as you know was  
23 the Consent Decree. And as part of the Consent Decree, part  
24 of what was agreed upon was how the Consent Decree  
25 terminates. And the way that the Consent Decree terminates

1 makes perfect sense, Your Honor, because it provides what we  
2 all understood, that once detainees have the ability to make  
3 themselves safe by taking a COVID-19 vaccine, it's over.  
4 They can't allege that their constitutional rights are being  
5 violated anymore. They can't allege that their confinement  
6 in the jail is unlawful anymore because they can accept a  
7 COVID-19 vaccine.

8           Now, despite the agreement between the parties  
9 about how the Consent Decree terminates, despite that,  
10 plaintiffs refuse to acknowledge that it should terminate,  
11 and they are attempting to move the target necessary for  
12 termination.

13           Over the course of the hearing on Friday when you  
14 heard plaintiffs' proof, you heard so much that is completely  
15 irrelevant to whether the termination provision has been met.  
16 And the proof you have heard unequivocally shows that the  
17 termination provision has been met and the Consent Decree  
18 should be declared terminated.

19           I'll go through -- as you know there's three  
20 prongs to this Your Honor. One, are we offering and  
21 administering vaccines to the detainees who have been housed  
22 in the jail for longer than 14 days? Those who accept the  
23 vaccine. Two, are we providing educational materials about  
24 the vaccine? Three, are we offering detainees nonpunitive  
25 incentives to take the vaccine? And when you look at each of

1 those prongs, we think it is very clear that the termination  
2 provision has been met.

3 First, no one is arguing that the jail hasn't  
4 offered the vaccines, Your Honor. No one has argued that.  
5 Everyone admits that the vaccines have been offered. No one  
6 is arguing that the vaccines do not effectively eliminate the  
7 risks posed by COVID-19. But despite that fact, plaintiffs  
8 are trying to move the target.

9 For example, they offered their expert, Dr.  
10 Bertozzi, on Friday afternoon who provided this Court  
11 opinions about vaccination rates in jails and what a good  
12 vaccination rate may or may not be, but a vaccination rate  
13 threshold is completely absent from the consent decree's  
14 termination provision. It's not there. It's not there. And  
15 the parties agreed to the termination provision as written.  
16 There is no requirement for a vaccination rate.

17 By putting proof on before this Court and arguing  
18 that that is important, plaintiffs are trying to move the  
19 target on something we agreed to. Your Honor --

20 THE COURT: Mr. Tilly, though, let's talk about  
21 vaccine offering a little bit. There was proof that there's  
22 a delay so that once someone is -- decides to get the shot,  
23 there's a delay in their ability to do so, and a delay  
24 necessarily results in some people changing their mind which  
25 gets into sort of the education side of things. So let's put

1 that aside for why they changed their mind. Let's put that  
2 aside for a minute. But just the delay itself means that  
3 some people change their mind.

4 Does that mean you're not offering it? I mean,  
5 Mr. Brady has opined that it would be much more effective,  
6 which is the point of the Decree, to make the jail as safe as  
7 possible. Brady has opined that it would be much more  
8 effective if you had the vaccine in-house and could  
9 administer it basically immediately.

10 So, you know, I think one of the questions is  
11 does that mean your offering it is not a true offering  
12 because you can't followup when someone does accept quick  
13 enough.

14 MR. TILLY: Your Honor, first off the Decree does  
15 not provide a specific timeframe. What the Decree provides  
16 on that is that it has to be offered to people who have been  
17 housed 14 days or longer. I'll note we're offering it to  
18 everybody. The termination provision only requires that  
19 people get it that are not 14 days or longer than 14 days,  
20 excuse me. But the thing about that is I could you know -- a  
21 detainee, whether we had an immediately or not he can still  
22 change his mind. It's within his power. We could have it on  
23 hand and give it to him ten minutes later, but within those  
24 ten minutes he could change his mind. Or we could have it on  
25 hand within a week and he could change his mind in that time.

1 But the point is the Decree does not require a specific  
2 timeframe. It just requires that it's offered and if they  
3 accept it's provided. And they can change their mind before  
4 it's provided. That's within their power.

5 But I think there's something I want to make  
6 very -- a point that you made that I disagree with Your Honor  
7 on. When you say the point of the Consent Decree was to make  
8 the jail as safe as possible, or when plaintiffs argue that  
9 the point of the Consent Decree is to provide an effective  
10 vaccination program, that is completely -- that's not in the  
11 Consent Decree. If you read the Consent Decree, the  
12 beginning of the Consent Decree notes what I noted at the  
13 beginning of my argument. That the point of plaintiffs'  
14 action was an allegation that their constitutional rights  
15 were being violated. The agreement between the parties was  
16 addressing a lawsuit about constitutional rights of class  
17 members being violated.

18 When we offer a vaccine and they refuse the  
19 vaccine they can no longer assert that their constitutional  
20 rights are being violated. And I think it's important to  
21 note, Your Honor, not only did the parties agree to this  
22 termination provision paragraph 28, there's also paragraph 31  
23 where the parties agree that the Consent Decree would not be  
24 read beyond what is necessary to protect the constitutional  
25 rights of the detainees.



1           So when plaintiffs try to flip and change what  
2 they're -- change the purpose of the Consent Decree to make  
3 it as safe as possible or to say it's created to create an  
4 effective vaccination program, the word "effective" doesn't  
5 appear in the Consent Decree, and that's a very subjective  
6 determination and that is not what defendants agreed to.  
7 It's not what plaintiffs agreed to.

8           And, Your Honor, I think going back to the  
9 original point about vaccines. There's no proof that the  
10 vaccine has not been available -- made available to all the  
11 detainees in the record. And as we sit here today, Your  
12 Honor, the proof shows that no one has been -- who has been  
13 incarcerated in that jail longer than 14 days has been  
14 refused a vaccine. They've been offered it repeatedly. And  
15 anyone who has accepted one who has said that they will take  
16 one has been scheduled and they have received the vaccine.  
17 Prong one has been met.

18           THE COURT: So the sheriff's position then is  
19 that making the jail as safe as possible is a higher standard  
20 than a constitutional violation, that keeping a jail safe is  
21 not required by the Constitution?

22           MR. TILLY: No, Your Honor. That's not -- that's  
23 a different question than what's the purpose of the Consent  
24 Decree because --

25           THE COURT: You said it's to -- it's sort of

1 cabined by the concept of what's a constitutional violation.

2 MR. TILLY: Sure.

3 THE COURT: So you're separating out what's a  
4 constitutional violation from whether the jail is safe or  
5 not. You're saying those are two different things.

6 MR. TILLY: I think the more important question,  
7 Your Honor, is if I'm being offered a vaccine and I refuse  
8 it, I can't -- if I refuse it -- look, if I refuse a vaccine  
9 in the real world, I may be unsafe. Okay. But if I -- and  
10 so in the same sense, if I refuse a vaccine, just anywhere I  
11 may be unsafe. But in a jail setting, if I refuse a vaccine,  
12 the question is not for this Court whether you're safe or  
13 unsafe. The question is whether your constitutional rights  
14 are violated because a vaccine would make that detainee safe.  
15 That's undisputed. Everyone agrees that if they take the  
16 vaccine they're safe.

17 So the point is the jail is providing detainees  
18 the opportunity to be made safe. It's up to them whether  
19 they refuse or accept it.

20 THE COURT: I mean, I understand what you're  
21 saying about the individual decision, but part of the problem  
22 here is, frankly just like in the community, if all  
23 individuals got vaccinated it would make the community  
24 overall safer. And you say everyone believes that. Not  
25 everyone believes that. We know not everyone believes that

1 unfortunately from my perspective. The difference though  
2 here is in a congregate setting, the idea of community and an  
3 obligation within a community to help the community be safer  
4 obviously is raised. It's a much more significant -- an  
5 individual has a much more significant impact on the  
6 community as a whole. Right? I mean, because if everyone  
7 refuses, we got a big problem in a congregate setting.

8 Hang on, though. We still have the issue that  
9 some are going to be -- some are going to refuse it even  
10 after all the best educational material we can come up with,  
11 best nonpunitive incentives we can come up with. Some are  
12 still going to refuse it, and that's not your fault, right.

13 MR. TILLY: That's right, Your Honor. And I  
14 think your point --

15 THE COURT: But hang on.

16 MR. TILLY: Yes, Your Honor.

17 THE COURT: So the question is, do we have  
18 educational materials at the level we should? Do we have --  
19 do you have nonpunitive incentives at the level you should,  
20 and are you offering and administering the shot in a -- in an  
21 effective manner. I won't say the most effective manner  
22 because we can argue, you know, on the fringes, but are the  
23 words of the Consent Decree -- have you fulfilled the words  
24 of the Consent Decree by what you are doing? And I still  
25 think there's a question there.

1           And my question about the delay in administering  
2 the shot, it's a question that, you know, does that delay  
3 create a disincentive that makes your program ineffective?

4           Not could it be better if there was no delay. I  
5 get, you know, everything could be better. But does it take  
6 away from the words themselves?

7           MR. TILLY: I think it clearly does not, Your  
8 Honor. That's our position. We have had over 600 detainees  
9 vaccinated since April. That's not the definition of  
10 ineffective. And it is undisputed again that it is being  
11 offered daily, that they can accept one. Can they change  
12 their mind? Yes, anyone can change their mind. We can  
13 change our mind at any point in time if we choose to accept  
14 one and then change our mind, but that's not within the  
15 jail's control.

16           And the Consent Decree again does not provide a  
17 specific timeframe. It just does not. And plaintiffs and  
18 defendants came to that agreement.

19           THE COURT: Let me go back to the way you just  
20 started this. You said offered daily. It might be offered  
21 daily. It's not offered daily because it's not administered  
22 daily.

23           MR. TILLY: It's offered daily in the sense that  
24 they can sign up for it at any point in time, Your Honor.  
25 They can sign up for it and then within a week they're going

1 to get it. They're going to have the vaccine. Can they  
2 change their mind? Yes, they could, for whatever reason.  
3 But that -- again, the point is they cannot say that their  
4 constitutional rights are being violated because they change  
5 their mind. It's being offered to them.

6 And, you know, if the jail had 2,000 detainees  
7 and only one accepted the vaccine, the one who accepted the  
8 vaccine is made safe. He's made safe. And when you look at  
9 the question before the Court whether there's constitutional  
10 rights violations, it's an individualized question. Yes,  
11 this is a class action, but each class member has the choice  
12 whether to accept or not accept the vaccine. And since April  
13 the jail has been providing detainees access to vaccines. If  
14 they wanted one, they would have had one.

15 THE COURT: What about -- and I guess you've  
16 broken it down and I've done this too, broken down the  
17 question to the three categories. You know, offering and  
18 administering the vaccine, educational materials and  
19 nonpunitive incentives. We heard testimony from plaintiffs'  
20 expert that the rate of vaccination if we could figure it out  
21 and in the jail, the rate of vaccination appears to be much  
22 lower than in other jails, dramatically lower than in other  
23 jails.

24 Does that tell me something about -- and here, I  
25 think -- and maybe this is the way we should all think of it.

1 Here we look at all three things together: The way in which  
2 it's being offered and administered, the educational  
3 materials that are out there and the nonpunitive incentives.  
4 Does the fact that the rate is so much, you know,  
5 dramatically lower than in other jails tell us that those  
6 three things together something is going wrong? Something is  
7 going wrong because we have so many fewer detainees willing  
8 to take the vaccine. That would be a concern. That is a  
9 concern.

10 MR. TILLY: I don't think that that's relevant to  
11 whether the termination provision has been met, Your Honor.

12 THE COURT: Well, and you know -- and I know you  
13 had this, you know, it's self-terminating argument. And  
14 that's essentially what I think you're still arguing is.  
15 Look at the words of the document. It says do these things  
16 and we're doing those things. I go back to what I said in  
17 the Order about self-terminating. You know, your position is  
18 the words don't have -- don't have to have any real meaning  
19 behind them.

20 MR. TILLY: No.

21 THE COURT: Under what you're saying, you could  
22 offer any educational material, and as long as it does  
23 provide information about the vaccine, it's on point, then  
24 that's fine. But that can't be the way that this provision  
25 plays out. I mean, the idea of something being an effective

1 educational material, an effective nonpunitive incentive, it  
2 has to be read into the document or else -- I think I used  
3 the widget. You know, you could have produced any widget.  
4 Whether it was, you know, actually did what it was supposed  
5 to do or not, if it was a widget, it was a widget; and that  
6 can't be the answer.

7 MR. TILLY: Your Honor, the Consent Decree says  
8 what it says. And that is provide and offer vaccines,  
9 provide educational materials about vaccines and offer  
10 nonpunitive incentives to take the vaccines. That's what the  
11 parties agreed to. The parties did not agree to some  
12 subjective definition of what is or what is not effective.  
13 And, quite frankly, defendants would not have agreed to some  
14 kind of subjective definition of what is and is not  
15 effective.

16 You know, one of the points that I think is  
17 important for the Court to consider is if it takes that  
18 interpretation in essence it rewards plaintiffs for not  
19 taking the vaccine because if they don't take the vaccine the  
20 Consent Decree remains in place.

21 THE COURT: No. And let me say -- because that's  
22 a good point. I don't want to do that, and that is not at  
23 all -- not at all the point, but the point is to put the  
24 detainees in a position where they have all the information  
25 they need and they have their questions answered. And so I

1 understand that point and I don't want to go there.

2 MR. TILLY: And I know Your Honor doesn't, and  
3 I'll move on -- I do want to address your point on the  
4 educational materials and the nonpunitive incentives, but I  
5 would just reiterate to you that we feel strongly that if the  
6 termination provision -- if words are read into the  
7 termination provision about effectiveness or the unnecessary  
8 vaccination rate or how persuasive the materials need to be,  
9 that does incentivize class members not to take the vaccine  
10 because they're being rewarded by keeping the Consent Decree  
11 in place, and I think that that is a real concern that the  
12 Court should consider.

13 But getting to the educational materials, Your  
14 Honor. Your example about we could just create any widget,  
15 that's not what we've done. We've provided Amend -- we've  
16 provided a lot of things. But one of the things we've  
17 provided, we handed out to every detainee in the jail on two  
18 separate occasions, are materials from the organization  
19 Amend.

20 Plaintiffs own expert gave a glowing review of  
21 Amend. He noted that they are highly qualified to put these  
22 materials together for detainees and correctional  
23 institutions. We're not just using some random educational  
24 materials that we put together ourselves or we found on the  
25 internet. We're using the best that are out there.



1           I will also note that Mr. Brady provided them  
2 originally and then two weeks ago or three weeks ago  
3 plaintiffs' counsel sent us updated versions and asked us to  
4 hand them out. So I don't understand how we can take the  
5 position that these materials are insufficient when  
6 plaintiffs' counsel themselves provided them to us.  
7 Mr. Brady recommended them. And since Mr. Brady hasn't  
8 recommended any other educational materials. He has talked  
9 about doing other things, more small group settings, making  
10 it multi-layered. But he wasn't provided any other written  
11 documents or recommended any other written materials be  
12 provided.

13           And going back to the Consent Decree, it doesn't  
14 require a multi-layered program. It doesn't require anything  
15 specific other than educational materials being provided.  
16 Now, notwithstanding that, Your Honor, we have given a  
17 multi-layered educational program. I mean, we're doing  
18 videos two times a day in every housing unit. We're doing  
19 all these written materials. We're providing them at intake.  
20 We're also providing them at orientation. It's not just at  
21 intake. And I think that's something important for the Court  
22 to note that Mr. Brady missed because he criticizes us for  
23 giving it at intake. Well, we're not just giving it at  
24 intake. Chief Fields testified we're also giving other  
25 materials at orientation which occurs later than intake,

1 eight to 12 hours later.

2 And any time a detainee's housing unit changes he  
3 gets that orientation material again. And on top of that  
4 we're doing pep rallies. We're utilizing town halls.

5 THE COURT: It seems like some -- I hear what  
6 you're saying, but not all of this has sort of played out. I  
7 mean, there's some question about posting materials. There's  
8 some question about access to materials. The so-called pep  
9 rally, I think that was once with a -- it wasn't with  
10 everyone. It was with a group of -- and tell me if I'm  
11 wrong, Mr. Tilly. I think it was -- the idea was to pick  
12 sort of influencers. So it was a smaller group of people --

13 MR. TILLY: Yes, Your Honor.

14 THE COURT: -- to go out and sort of advocate for  
15 vaccines. I don't know if there's been any followup to see  
16 if, you know, what has -- in fact, I think that was some of  
17 the question. There wasn't follow-up to see has that been  
18 effective or not. The town halls, they're about other things  
19 and not all housing units have had them.

20 So as I understand a town hall it's something  
21 that used to happen all the time. It was limited during  
22 COVID. They're starting them again. But it's to hit all  
23 sorts of different issues, not just COVID.

24 MR. TILLY: That's true, Your Honor. But it does  
25 address COVID.

1 THE COURT: Right. Right.

2 MR. TILLY: And it is true that every housing  
3 unit has not had a town hall on COVID at this point. But the  
4 Consent Decree -- I think the point I was making is the  
5 Consent Decree doesn't require anything other than  
6 educational materials being provided. We have done that and  
7 we have done a whole lot more. And that includes the town  
8 halls, the pep rally, the one-on-one with medical that Chief  
9 Fields continued to testify about.

10 You know, detainees are -- they have access to  
11 medical staff. They're able to ask those questions. Medical  
12 staff are there to, you know, encourage them to take the  
13 vaccine. Those are all things that we're doing additional --  
14 in addition to what's required to terminate under the Consent  
15 Decree.

16 And I think my point is Mr. Brady, when he -- in  
17 his testimony, look, he says the program should be better,  
18 could be better, should be better; and here's the things that  
19 the jail should be doing better. And he focuses on they  
20 should be doing more, you know, small group settings,  
21 individualized settings. He liked the pep rally. He likes  
22 the town halls. He thinks we should be doing more. And the  
23 jail continues to do those things. But that opinion does not  
24 really come into play as to whether the Consent Decree has  
25 been terminated because the parties didn't agree to some

1 multi-layered educational program was necessary. They didn't  
2 agree to some kind of subjective definition of what's  
3 persuasive educational materials. They just agreed that  
4 educational materials had to be provided to detainees about  
5 the vaccine. And defendants should not be penalized because  
6 we've gone beyond what's necessary under the termination  
7 provision because what we've done beyond that is not to  
8 Mr. Brady's liking. That shouldn't penalize us for that.  
9 And again, that is plaintiffs trying to move the target on  
10 what they agreed to about what would lead to termination of  
11 the Decree.

12           And, Your Honor, I'm ready to move on to  
13 incentives unless you have other questions about the  
14 materials.

15           THE COURT: No. What I was going to say is I'm  
16 assuming your argument is the same on the nonpunitive  
17 incentives?

18           MR. TILLY: Well, I mean, I think the point about  
19 nonpunitive incentives, it is the same argument. We have to  
20 give them, right? There's nothing in the Decree that says  
21 they have to be so effective or so persuasive. But I will  
22 tell you this: Everyone has admitted that what we're doing  
23 are nonpunitive incentives. I mean, plaintiffs' expert, he  
24 agreed that monetary incentives, those are nonpunitive  
25 incentives. He said that is a perfectly great example of

1 nonpunitive incentives.

2           Mr. Brady has put into one of his reports that  
3 the non -- the monetary incentives seem to be working. He  
4 himself admitted that we are giving nonpunitive incentives.  
5 I don't really think there's a dispute about whether we're  
6 providing nonpunitive incentives. I think it's very clear we  
7 are. You know you have the \$20. You have the \$100 contest.  
8 You have the pizza party. You have fresh fruit that's being  
9 provided. You have a guarantee that no detainee's housing  
10 units will be changed if he accepts the vaccine. And you  
11 have a promise that we're going to give you free access to  
12 medical care. That's what the jail is doing.

13           I mean, I don't know what more we could possibly  
14 do to incentivize the detainees to accept the vaccine beyond  
15 paying them more than \$20, and we're paying them money. You  
16 know, we should not -- again, just one of those things meets  
17 what would be required under the termination decree. Just  
18 one of those things would. We're doing a plethora of them.  
19 And we shouldn't be penalized because plaintiffs argue, well,  
20 some of them really aren't -- they don't think that, you  
21 know, providing fresh fruit is really an incentive. We think  
22 it is, but there's many other ways that we're doing that.

23           THE COURT: Well, I think the fresh fruit -- I  
24 don't know -- we're kind of all over the board on that. But  
25 on the commissary credit, it's not paying them; it's giving

1 them commissary credit, which as long as they're still  
2 incarcerated is real.

3 I frankly never -- I'm not sure I ever got an  
4 answer on how long it takes to get the credit on the account.  
5 It seemed like there was a delay, and the argument is the  
6 delay makes others think that they're really not going to get  
7 it, that it's not real.

8 I think where we ended up with was the delay was  
9 actually on Aramark's part, but I'm not sure I ever heard how  
10 long it was taking the account to truly -- to actually get  
11 credited.

12 MR. TILLY: Just to that point, Your Honor, I  
13 don't think that there is much of a delay. But, secondly,  
14 you have heard from no one that they did not receive the  
15 incentive. You heard from no one that they were not  
16 incentivized because of the delay. I mean, there's some  
17 conjecture on plaintiffs' part about that, but there's no  
18 proof in the record to show that.

19 I think that Mr. Brady himself has said the  
20 incentives seem to be working. It increased the vaccine  
21 numbers in June when we started offering the \$20, and it did.  
22 I mean, if you look at the number of vaccines that were  
23 administered in June, there was an uptick. I don't know how  
24 you -- how that can be interpreted as anything less than a  
25 nonpunitive incentive based upon what is before the Court.

1 THE COURT: Okay. All right. Anything else, Mr.  
2 Tilly?

3 MR. TILLY: Your Honor, I believe we've -- I will  
4 just close with this: That again -- and I know I don't want  
5 to belabor the point -- but plaintiffs have the ability to  
6 accept the vaccine. Everyone -- everyone here knows and  
7 believes the vaccines are safe and effective and will keep a  
8 detainee safe. And the parties agreed to the termination  
9 provision as written after three days of mediation, and we  
10 would just ask that this Court not allow plaintiffs to move  
11 the target after the parties came to this agreement.

12 We think that based upon the proof that it is  
13 very unequivocally clear that the termination provision has  
14 been met.

15 THE COURT: All right. Thank you, Mr. Tilly.  
16 Ms. Morris?

17 MS. MORRIS: Your Honor, we disagree.

18 THE COURT: All right. Thank you all very much.

19 MS. MORRIS: As an initial matter, the proof is  
20 that in fact the words of paragraph 28 have not been  
21 satisfied. Paragraph 28 requires that the vaccine be offered  
22 to and administered to all detainees housed in the jail for a  
23 period of more than 14 days. And we have heard that there  
24 was a period of -- that covers the period during which the  
25 motion to terminate was actually filed, from May 20th to

1 June 10th, 21 days.

2           Anyone who came into the jail between the end of  
3 vaccinations on the 20th and about the 26th and who left the  
4 jail before June 10th and was there for 14-days did not  
5 receive the vaccine and could not receive the vaccine. Those  
6 people did not receive an offer of the vaccine. So  
7 defendants have in fact not offered and administered to all  
8 detainees housed there for 14 days.

9           But I think it's also important to look at what  
10 the settlement is. The settlement is -- it sounds in  
11 contract law. In Tennessee there is an implied covenant of  
12 good faith and fair dealing. Everyone is entitled to the  
13 benefit that they're bargaining for. You can't just get out  
14 of it through token compliance. In order for defendants to  
15 be meeting the requirements of the settlement they need to be  
16 having offers, education and incentives that are minimally  
17 effective. Otherwise it's just words.

18           They haven't been effective. Inspector Brady  
19 found that the program was completely ineffective, that it  
20 was wrong headed and doomed for failure. Dr. Bertozzi  
21 testified that it was shocking how low the vaccination rate  
22 was. The clients testified that they haven't received  
23 education and they don't know about incentives or they don't  
24 believe in them because of things like the delays.

25           And the problem with the Amend materials isn't



1 the Amend materials. It's that the clients said that they  
2 haven't -- that the detainees who testified said they just  
3 haven't received them until last week or I guess it's now two  
4 weeks ago.

5 Defendants have said a couple things about --  
6 there are a couple of things that came up during Mr. Tilly's  
7 closing that I just want to touch on very quickly. First is  
8 the pep rally, the testimony was that it was for people in  
9 the programming pods. So roughly 300 people who were in  
10 particular housing units. That means that even if they are  
11 talking about it, they're talking about it to the people in  
12 their housing units. So they're not able to be influencing  
13 people anywhere else in the jail.

14 Secondly, Mr. Tilly described education. He said  
15 it's okay that the town halls haven't happened in every  
16 housing unit because all they have to do is provide  
17 education, but it's inherent in the structure of paragraph 28  
18 that the education has to be provided to everyone, not just  
19 people who happen to be in the right housing unit.

20 Also with regard to the question of that delay in  
21 the \$20 incentive, it would be our position that it doesn't  
22 matter whether it's an Aramark delay or a delay by the jail.  
23 The jail is trying to -- the idea of an incentive is to  
24 convince people to get the vaccine because they're going to  
25 get the money. If it is delayed in being delivered, I don't

1 know that any detainee would parse out who is the cause of  
2 that delay when thinking about whether they believe it's a  
3 real incentive.

4           And then there's one issue that I really do think  
5 is important to think about. We just heard that reading any  
6 requirement of minimal effectiveness into the settlement  
7 would be a reward to people for not taking the vaccine  
8 because it would continue the settlement. The only reward  
9 that people would get is COVID-19 protections. That's the  
10 entire benefit that the people who are theoretically being  
11 rewarded for not taking vaccines are getting, and that's sad.

12           I think it should be clear in where we are in the  
13 summer of 2021, that COVID-19 protections should continue  
14 regardless. And so there's in fact no reward at all to the  
15 plaintiffs from refusing a vaccine.

16           That's all I have. I'm happy to answer  
17 questions.

18           THE COURT: I guess -- I assume, Ms. Morris, you  
19 would agree, though, that it's not -- if we have effective  
20 educational materials, if we have nonpunitive incentives, if  
21 the vaccine is offered and administered to everyone -- or  
22 offered to everyone within the 14 days and they have an  
23 opportunity to get it if they accept it, if we do all those  
24 things, if the defendant does all those things and there  
25 still are refusals that -- if they fulfilled those terms of

1 the Consent Decree even with refusals, then it should be  
2 terminated.

3 MS. MORRIS: Yes. Well, if they were -- but the  
4 one thing that I would change from the way you described that  
5 is if there were effective educational materials that were  
6 being effectively communicated to the people in the jail, if  
7 there was an effective incentive program that was being run  
8 in a manner that demonstrated to the people in the jail that  
9 there really was an incentive here and they were offering it  
10 to every single person who was there for 14 days, then, yes,  
11 even if there were refusals. And I think in that case you  
12 would probably see a significantly higher rate.

13 I'm not saying you would see a vaccination rate  
14 of 80 percent or 70 percent, but right now, they've as was  
15 stated during closing they've vaccinated 600 people. They  
16 currently have roughly 2000 people in the jail. They don't  
17 know how many people who are in the jail have been  
18 vaccinated. So we know that it's somewhere less than  
19 30 percent of the jail has been vaccinated because of the in  
20 and out of the jail.

21 THE COURT: You know, the fact that we really  
22 don't know the rate of vaccination of the people actually in  
23 the jail is concerning. But does that really answer the  
24 question? You know, there's so many unfortunate influences  
25 in our community right now. So much misinformation about the

1 vaccine and what it can do for people -- and this gets to  
2 some of those questions I asked Mr. Brady at the end of his  
3 testimony -- that it seems like again while I frankly wish I  
4 knew the rate of vaccinations within the jail right now. I'm  
5 not sure it answers the question of the effectiveness of the  
6 materials. It could, but it could not because of all the  
7 other influences in the community.

8           And that kind of begs the question of how do I  
9 evaluate the effectiveness of the materials, how do I  
10 evaluate the effectiveness of the nonpunitive incentives.  
11 And to put it in Mr. Tilly's terms, there was no -- there was  
12 never an agreement on exactly what these things would look  
13 like. So isn't it enough that there are items we can put in  
14 each of those buckets. There are educational materials out  
15 there. There are nonpunitive incentives out there. Isn't  
16 that enough to fulfill what was actually agreed to following  
17 that three-day mediation?

18           MS. MORRIS: First off, I think the vaccination  
19 rate I think is one part of the puzzle. I don't think it is  
20 the answer all on its own. But the reason that it is  
21 important is that as Dr. Bertozzi said in his expert opinion  
22 that low vaccination rate shows that the jail is not making  
23 sufficient efforts to educate, to incentivize. We are in  
24 a -- we are in a context where unfortunately there is a lot  
25 of misinformation out in the community. There's no

1 constitutional requirement for medical care in the community.  
2 There is in the jail. And part of medical care is providing  
3 adequate information that people can make informed consent.  
4 And what we heard from our clients on Friday is that they  
5 were not given the kind of information they needed in the  
6 face of all the misinformation to make an informed consent.  
7 And I think that really gets to the crux of why this has been  
8 so deeply ineffective to the point that these can't be  
9 reviewed -- regarded as meaningful offers, education and  
10 incentives.

11 THE COURT: And the issue of -- and Mr. Tilly  
12 took exception to my characterizing or asking whether the  
13 sheriff was saying -- defendant was saying that the Consent  
14 Decree does not require them to make the jail safe. The  
15 Consent Decree is addressing a constitutional issue, and the  
16 defendants' position is they have addressed that issue  
17 through what they've done. You're bringing in the idea of  
18 the constitutional requirement for medical care and that  
19 medical care requires the informed consent, is that your  
20 tie-together of those issues?

21 MS. MORRIS: So I think -- I mean -- mostly I  
22 think it's really important to think about how the education  
23 and informed consent play together in this particular  
24 context. I really think that the termination under  
25 paragraph 28 is not about a -- it's not about the -- it

1 should be about whether paragraph 28 has been -- has been  
2 satisfied. The question of whether there is a constitutional  
3 violation, I think that would come into play if we were  
4 looking at termination under paragraph 29 when, you know,  
5 we'd be going back and forth about whether it was appropriate  
6 to terminate because it was no longer necessary.

7 THE COURT: Okay. And what is it that you want  
8 to address in further briefing?

9 MS. MORRIS: The relevance of -- a lot of what  
10 I've just said today but with citation to case law. The  
11 relevance of the vaccination rate and the spread of COVID-19  
12 in the jail and the Delta variant, the context in which the  
13 vaccination program is happening currently.

14 THE COURT: Okay. Mr. Tilly, anything to say  
15 about that, I suppose?

16 MR. TILLY: About the briefing?

17 THE COURT: Yes.

18 MR. TILLY: Your Honor, our position has not  
19 changed. We have briefed this. It's -- you have heard  
20 proof, and we think that what is relevant is what the Consent  
21 Decree says constitutes termination. And again, based upon  
22 what is before the Court, we think that's clearly been met.  
23 You know, I would address Ms. Morris' argument about the  
24 issue about whether paragraph 28 addresses constitutional  
25 rights. It undoubtably does, Your Honor. And I think that

1 again I would point the Court to the other part of the  
2 Consent Decree, I think it's paragraph 31, where the parties  
3 agreed. We agreed that this Consent Decree is not going to  
4 go beyond what is necessary to protect the constitutional  
5 rights of the plaintiffs. And if we're offering them  
6 vaccines and they're refusing them, they cannot say that  
7 their constitutional rights are being violated. They are now  
8 the gatekeepers as to whether they're going to be safe from  
9 COVID-19 just as anybody in the real world is if you choose  
10 to get a vaccine or if you don't. And that's what the  
11 parties contemplated when we agreed on the Consent Decree.

12 THE COURT: Well --

13 MR. TILLY: Go ahead.

14 THE COURT: Do you want to finish?

15 MR. TILLY: Well, again, I hate to belabor the  
16 point, but the question of the effectiveness of the  
17 educational materials, we're using the very educational  
18 materials that plaintiffs' counsel asked us to. We're using  
19 the very educational materials that Mr. Brady provided, the  
20 very educational materials that plaintiffs own expert said  
21 were created by a, you know, organization that is fully  
22 qualified to determine what would be appropriate in a  
23 correctional setting to provide detainees information about  
24 COVID-19 vaccines.

25 I don't know if there's any better materials out

1 there, Your Honor. No one -- the plaintiffs certainly  
2 haven't offered to you an idea of what would be a better set  
3 of educational materials. Mr. Brady has not. We're offering  
4 the best that we know of and the best that anyone here knows  
5 of. Even plaintiffs' expert has admitted that. So I  
6 guess -- I mean, that's the only other point I wanted to make  
7 in regard to educational materials in light of what Ms.  
8 Morris said.

9 THE COURT: Well, let me -- so I'm going to allow  
10 the plaintiffs to submit something else if they wish to. I  
11 mean, I think I've shown that I'm -- if I don't think it's  
12 relevant to the question, if I end up agreeing with Mr. Tilly  
13 that the material isn't -- doesn't help answer the question  
14 I'll say so, but I hate to not provide plaintiffs an  
15 opportunity to make their argument if they feel like they  
16 need to add, as Ms. Morris says, citations to the record.  
17 But I need to do -- it needs to happen quickly. Any  
18 additional briefing needs to happen quickly.

19 MS. MORRIS: Your Honor?

20 THE COURT: Yeah.

21 MS. MORRIS: Your Honor, we'd be happy to submit  
22 it by close of business on Wednesday.

23 THE COURT: That's quickly.

24 All right. Close of business on -- that's  
25 August 11th. That's great.



1           Mr. Tilly, if you want to reply to it, I mean, I  
2 would say by Friday, close of business on Friday.

3           MR. TILLY: That's pretty quick, Your Honor.  
4 Because -- could we have until Monday, close of business on  
5 Monday?

6           THE COURT: If you want to work on it over the  
7 weekend, I'll give you to close of business on Monday.

8           MR. TILLY: Thank you.

9           THE COURT: But, you know, that gives us I  
10 think -- I don't remember now if our date is August 30th or  
11 August 31st, but it's one of them that we need to rule by, so  
12 the 31st --

13           MR. TILLY: To be honest, Your Honor --

14           THE COURT: -- when the 60 days is done.

15           MS. MORRIS: I believe it is the 31st.

16           THE COURT: It's one of them I know. So it  
17 basically gives us two weeks. So we need whatever -- we need  
18 to hear from whatever -- it is -- I'm told it is the 31st.  
19 So we need to hear from you all in order to do our work.

20           All right. Anything else we can address today?

21           MS. MORRIS: I don't believe so, Your Honor.

22           MR. TILLY: No, Your Honor.

23           THE COURT: All right. Just remind everyone on  
24 the -- as part of the proceeding there's no recording that  
25 was permitted of this proceeding in any manner at all. And

1 with that, I thank y'all for your time and your patience and  
2 look forward to reading more from y'all.

3 (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 75 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 9th day of August, 2021, in the matter of:

Busby, et al.

vs.

Bonner, et al.

Dated this 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