

**THE SUPREME COURT OF THE STATE OF NEVADA**

THE STATE OF NEVADA,  
DEPARTMENT OF CORRECTIONS,

Appellant,

vs.

JOSE MIGUEL NAVARRETE, an  
individual,

Respondent.

Case No. 82113

District Court No.: A-1979766-9  
(Eighth Judicial District Court of  
Nevada)

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**JOINT APPENDIX VOL. III OF VII**

Aaron D. Ford  
Nevada Attorney General  
Michelle Di Silvestro Alanis  
Bar No. 10024  
Supv. Sr. Deputy Attorney General  
Office of the Attorney General  
555 E. Washington Ave. #3900  
Las Vegas, NV 89101  
Phone: 702-486-3268  
Fax: 702-486-3773  
malanis@ag.nv.gov  
*Attorneys for Appellant*

Dan Marks, Esq.  
Bar No. 002003  
Law Office of Daniel Marks  
610 S. 9<sup>th</sup> Street  
Las Vegas, NV 89144  
Phone: 702-386-0536  
office@danielmarks.net  
*Attorney for the Respondent*

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## **CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on May 10th, 2021, I electronically filed the foregoing document via this Court's electronic filing system. I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

Daniel Marks, Esq.  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Office@danielmarks.net

/s/ Anela Kaheaku  
Anela Kaheaku, an employee of  
the Office of the Attorney General

1 is not a technique that NDOC trains their officers to do.  
2 There is no tactic to put your arm around an inmate's neck.

3           Officers are trained to put their hand on an  
4 inmate's back when they're going to restrain. We heard  
5 testimony from the investigator, from other officers, there's  
6 specific techniques used to restrain an inmate. That  
7 technique to restrain is nowhere depicted on that video.  
8 There is no showing that Officer Valdez was restraining the  
9 inmate. The video clearly shows the officers keeping the  
10 inmate on the wall and Officer Valdez approaching the inmate  
11 from behind with both hands, pushing him into the wall, taking  
12 his arm the inmate's neck, pulling him back from the wall.  
13 It's not until he gets pulled back that his hands suddenly  
14 come off the wall. There was no sudden gesturing in that  
15 video.

16           We heard from Supervisory Investigator Moore. He's  
17 been with NDOC for 28 ½ years, conducting investigations. He  
18 said that this wasn't a trained technique. It's not taught by  
19 NDOC. His opinion was that there was no physical threat  
20 imposed by that inmate. When the inmate looked at his wrist,  
21 the officers didn't respond. It wasn't until seconds later  
22 that there was a reaction.

23           In fact, he also noted that there were no restraints  
24 out. Officer Valdez didn't have restraints out because there  
25 was no active restraining the inmate.

1           The internal investigation incorporated the criminal  
2 investigation and that's how that evidence—we do have the  
3 evidence of all the inmate's summary testimony to the  
4 investigators. There is nothing in that investigation that  
5 warrants the force that was used on that inmate. Taking extra  
6 food didn't warrant being on the wall for 11 minutes and  
7 having a use of force. Being verbally abusive or making  
8 verbal comments like we heard today did not warrant a use of  
9 force with an arm around the inmate's neck. There was no  
10 justification for the force that was used in that video.

11           The Defense pointed out that the investigator told  
12 him, there was nothing you could do at that point when the  
13 inmate was getting taken down, but there was a lot of things  
14 that, again, Officer Navarrete could've done in the 10 minutes  
15 prior from it occurring. As the Senior Officer he had the  
16 obligation to deescalate, intervene or have Officer Valdez  
17 walk away.

18           We heard from Officer Wachter who said, Officer  
19 Valdez got those inmates riled up. He didn't like the  
20 interaction that he saw Valdez have with the inmates. He even  
21 counseled him on his behavior.

22           Wachter also told you the procedure. You pull  
23 inmates out, you do a random search, you search them and you  
24 get them on their way. There's no time to keep them on the  
25 wall for 11 minutes. He said that the time that he was on the

1 wall was longer than necessary. He also told you that inmates  
2 get mouthy all the time. Maybe not every single inmate, but  
3 that's something they encounter on a daily basis at their  
4 jobs. They're trained to do their "verbal judo" is what he  
5 described it as, to get the inmates relaxed.

6           Officer Wachter also said that they're not trained  
7 on putting an arm around the inmate's neck. His testimony  
8 was, if the inmate wasn't being compliant, he wouldn't have  
9 kept him on the wall for that long because he didn't have time  
10 to deal with that. He also testified that the use of force  
11 was not appropriate and he was the third officer within that  
12 area, even though he did not witness the actual force  
13 happening.

14           We then heard from Former Associate Warden Adams.  
15 He had been with the Department for 32 years and retired as  
16 the Associate Warden. Part of his job was to review incident  
17 reports and review grievances. When he first saw the video,  
18 his immediate reaction was, this is in violation of policy and  
19 felt that it needed to be investigated. So, with his  
20 experience, he knew that this was not correct policy and  
21 procedure.

22           He also testified, that's not an appropriate  
23 technique, you don't put an arm around an inmate's neck. And  
24 that Senior Officer Navarrete was the first line supervisor in  
25 charge.



1           He went through all of the ARs, all of the OPs, with  
2 us during his testimony and said that the force needs to be  
3 proportionate to the threat and force should only be used when  
4 there is no alternative. He also felt that there was no--there  
5 was nothing depicted in the video that showed a restraining or  
6 that the inmate was being restrained.

7           We also heard from Warden Howell who is the current  
8 Warden of Southern Desert. He talked about why these charges  
9 were appropriate for Officer Navarrete. It's because there  
10 were two different things occurring. There's the allegation  
11 of permitting the excessive force and the allegation of the  
12 false and misleading statements or dishonesty.

13           Both of those acts of misconduct are egregious. He  
14 said they're serious acts of misconduct and if you look at  
15 NDOC's Chart of Discipline, these are Class V offenses that  
16 warrant a termination for the very offense.

17           A false and misleading statement, he said, you have  
18 to be able to trust your officers and believe them, that their  
19 reports are accurate. When they give false or misleading  
20 statements, or omissions from their report, then their  
21 credibility goes down. He felt that there were glaring  
22 omissions from that report.

23           He also talked about that as the Senior officer,  
24 Navarrete permitted the force to be used on the inmate because  
25

1 there were, again, so many things he could've done to  
2 intervene in the 11 minutes that the inmate was on the wall.

3           Lastly, we heard from Warden Russell who served as  
4 the Pre-Disciplinary Hearing Officer. Again, a long term  
5 employee. He had been employed with—or he's been employed  
6 NDOC, he still is, for 12 years and is now the Warden at—gosh,  
7 I forgot which—Warm Springs. He served as the Pre-  
8 Disciplinary Hearing Officer and during that time, Officer  
9 Navarrete had the opportunity to present his side of the case.  
10 That's the purpose of the Pre-Disciplinary Hearing. He could  
11 explain everything that he's explained to the Hearing Officer  
12 today.

13           Despite reviewing the video and reviewing the  
14 evidence and hearing from Officer Navarrete, Warden Russell  
15 also believed that the termination was appropriate for this  
16 conduct. He gave you all of the reasons, similar to Warden  
17 Howell, the seriousness of the conduct. The fact that these  
18 were Class V offenses. He saw that the inmate was on the wall  
19 for a long time. Valdez was swinging his arms. Navarrete did  
20 nothing to stop the act from occurring. He felt that the  
21 report was not even close to what had occurred, it had also  
22 omissions in it and he would've affirmed the termination  
23 regardless of which charge would've been presented.

24           He also gave testimony, similar to Warden Howell,  
25 about why the good of the public service would be served by

1 this termination. Because the public wouldn't be able to  
2 trust NDOC and the officers that are there to protect the  
3 inmates and the staff. It would be a misuse of power.

4 We heard significantly from Officer Navarrete and he  
5 again, states to the investigator and today, they're not  
6 trained to wrap their arm around an inmate's neck. Suddenly,  
7 it seems like Officer Navarrete's view of the video is  
8 completely different than what I see because I see, very  
9 clearly, an officer taking his right arm and putting it around  
10 the inmate's neck. Whether that is considered a technical  
11 chokehold because the other arm is not being used, perhaps  
12 that my misunderstanding of a chokehold.

13 To me, there is very clearly and to NDOC, very  
14 clearly an officer's arm being placed around an inmate's neck  
15 and pulling him back for no apparent reason.

16 Officer Navarrete acknowledged the ARs, the OPs, his  
17 post-order. He knew his obligations as an officer. He was  
18 trained on use of force. He knew when force should be used.  
19 Force is to be proportionate.

20 He also knew his obligation as an officer to submit  
21 his own individual report that was accurate. We're not asking  
22 him for a three page report. We're asking for an accurate  
23 report that reflects the facts that you--what you have  
24 witnessed as the senior officer there. Not an opinion or any  
25 of that. Simply identify what you have seen.

1           Instead, Officer Navarrete says, the inmate came off  
2 the wall while Officer Valdez was restraining him. There was  
3 no restraining him. There's no restraints out. There was no  
4 technique being used to restrain. It was a use of force. He  
5 even admits that when the inmate came off the wall, it was  
6 slight and that was the last movement before he got taken down  
7 by the officer.

8           There's nothing in the policies that says you can  
9 use force for verbal abuse. There has to be a physical threat  
10 and there was no physical threat here when Officer Valdez used  
11 force and Officer Navarrete stood by and watched.

12           Again, he felt threatened but turned his back  
13 several times and walked away. He waited—conveniently, this  
14 use of force occurs after all the inmates have left culinary  
15 and before all the other inmates have come up for culinary.  
16 So, there is no other inmates around and Officer Wachter has  
17 his back towards the entire incident.

18           We heard from a couple of other officers and their  
19 testimony, they weren't even employed at Southern Desert  
20 Correctional Center at the time of this incident. They had  
21 absolutely no relevance in this case. They didn't work there.  
22 They didn't review the reports. They weren't involved in the  
23 discipline. They weren't involved in the use of force.

24           The testimony and evidence clearly show that Officer  
25 Navarrete allowed unnecessary force and then lied in his

1 report. Not only was there a lie or false statement in the  
2 report, but then there were also several omissions.

3 Again, we heard from every line of officer.  
4 correctional officer, supervisor investigator, associate  
5 warden, warden; all of these different people have told you  
6 that this is not an appropriate policy and the act depicted in  
7 that video is not consistent with policy and it was wrong.

8 A correctional officer is a critical position and  
9 officers need to be accountable, honest and credible. NDOC is  
10 sued by inmates for this type of-

11 DANIEL MARKS: Objection, there's no evidence  
12 in the record that they were sued by inmates.

13 HEARING OFFICER: I don't think she said that.

14 MICHELLE ALANIS: I didn't say that.

15 DANIEL MARKS: There's no evidence of any  
16 lawsuits that are relevant to that-

17 MICHELLE ALANIS: I didn't say that this inmate  
18 sued.

19 DANIEL MARKS: You said they're sued.

20 HEARING OFFICER: I think there was some evidence  
21 that they could be sued, I think I heard that from one of the-

22 MICHELLE ALANIS: I believe that we did have  
23 testimony that obviously there can be lawsuits-

24 HEARING OFFICER: I'll let her proceed.  
25

1 MICHELLE ALANIS: I can rephrase it. If excessive  
2 force is used on an inmate it exposes NDOC to liability and  
3 there is a likelihood that they could be sued and face  
4 liability for improper use of force.

5 The Hearing Officer himself has seen this video  
6 numerous times. We have played it numerous times at this  
7 hearing. I apologize—

8 HEARING OFFICER: I'm going to look at it again  
9 too.

10 MICHELLE ALANIS: And you will probably look at it  
11 again.

12 HEARING OFFICER: Many times.

13 MICHELLE ALANIS: And, you've seen it several  
14 times because this Hearing Officer also heard the hearing of  
15 Officer Valdez. So, this video has been played and replayed  
16 and it very clearly depicts, as you held in that case, that  
17 there were no actions from the inmate—

18 DANIEL MARKS: I'm going to object to that  
19 because you said that you would look at this de novo. There  
20 was evidence withheld in that case.

21 MICHELLE ALANIS: There was no evidence withheld.

22 DANIEL MARKS: The second video was withheld.

23 MICHELLE ALANIS: And I object to that statement.

24 HEARING OFFICER: Well, you know, what I—what I  
25 did in that case—

1 DANIEL MARKS: You specifically said you would  
2 look at this de novo and not rely on the Valdez hearing.  
3 She's arguing exactly what I said you should recuse yourself,  
4 that she would do. Based on your order, we expected an  
5 absolute clean de novo and now she's arguing a prior case that  
6 you said would not be relevant.

7 HEARING OFFICER: I think referring to another  
8 case is probably not appropriate. I'm going to look at this  
9 case. This is a different situation. It's a different  
10 factor. It's different allegations. So, it's really  
11 different evidence, I think too.

12 MICHELLE ALANIS: There's been times when other  
13 cases have been mentioned that you may have been a Hearing  
14 Officer on those cases as well.

15 HEARING OFFICER: Yeah, I know, I hate that—I hate  
16 those kind of things because I really—I really, you know—

17 MICHELLE ALANIS: So, I just want to point that  
18 out.

19 HEARING OFFICER: --I don't—I'm not the Nevada  
20 Supreme Court here, I don't have any precedential value.

21 MICHELLE ALANIS: Correct.

22 HEARING OFFICER: I'd have a hard enough time  
23 keeping track of the evidence in this hearing, let alone what  
24 I did eight months ago or a year ago. So, let's just focus on  
25 this one.

1 MICHELLE ALANIS: Okay. Looking at NAC  
2 284.646(1)(a), the appointing authority can dismiss an  
3 employee if they have penalties prescribing such conduct.

4 NDOC's AR 339 sets forth the conduct for the  
5 employees that they are required to follow. They also set  
6 forth a chart of disciplinary or corrective action and  
7 sanctions that would be imposed if they engage in misconduct.

8 NDOC charged Navarrete with a Class V and a Class  
9 IV-V. Navarrete understood that those charges and the actions  
10 that he engaged in could lead to a dismissal on a very first  
11 offense. The fact that there was no prior discipline in his  
12 employee folder is irrelevant. For a Class V offense, the  
13 first offense could lead to dismissal and it's serious enough  
14 that you don't need any progressive discipline under the  
15 statute.

16 Under NAC 284.646(1)(b) we also have authority to  
17 dismiss because that regulation identifies, an appointing  
18 authority may dismiss an employee for any cause set forth in  
19 NAC 284.650. Here, Officer Navarrete—I'm sorry, and if the  
20 seriousness of the offense or condition warrants such  
21 dismissal. Again, progressive discipline is not needed.

22 Here we have three violations under NAC 284.650,  
23 Section 1, activity which is incompatible with the conditions  
24 of employment. 10 was the dishonesty and 21 was the use of  
25 force or assault or battery. These all three are serious



1 conduct. Again, we heard from Warden Howell who identified  
2 why dishonesty—why the excessive force is a serious and  
3 egregious problem and how they can't have officers lying on  
4 reports because it brings their credibility into question.  
5 These reports are relied on a daily basis.

6 If we look at the defenses raised by Officer  
7 Navarrete, they have first pointed out that there was—that we  
8 needed good cause in our request in our extension or that  
9 there was some violation of NRS 284.387. Again, we have  
10 argued this at length in our supplemental briefing and even  
11 today.

12 Again, it's NDOC's position that there is no  
13 violation under NRS 284.387. The statute says that discipline  
14 would have to be served within 90 days of when the employee is  
15 noticed of the allegations of misconduct. Here, the notice of  
16 allegations was dated October 21, 2016. The 90-day deadline  
17 would have expired on January 19, 2017. However, prior to  
18 that, NDOC requested an extension of 60-days from the Division  
19 of Human Resource Management. They sent the form as required  
20 under the regulation to the Department or Division's  
21 Administrator. They set forth the reason why they needed that  
22 extension, which was because it was being reviewed by the  
23 Attorney General's Office, which is in compliance with the NRS  
24 and the Administrator approved the extension of time.

1 Therefore, there was 60-days added on to that extension making  
2 the new deadline March 20, 2017.

3           Officer Navarrete signed for his Specificity of  
4 Charges on March 16, 2017. The extension was granted. It is  
5 a non-issue. There is no due process violation and it's our  
6 position again, that determinations of whether an extension—  
7 whether there was good cause for an extension is outside the  
8 authority of this Hearing Officer.

9           There is no language in the statutes or the  
10 regulations that say that the Hearing Officers are to review  
11 the extensions provided by the Administrator. And in fact,  
12 that would go against the legislative intent of having these  
13 extensions. Why would an agency ever ask for an extension if  
14 an extension that was rightfully granted was then going to be  
15 challenged at every hearing because they disagreed with the  
16 good cause listed on the form. It completely goes against the  
17 purpose of the extension.

18           Good cause existed because the AG's Office is  
19 required to review. The extension was granted and that is the  
20 end of that argument.

21           They've also claimed that the inmate was non-  
22 compliant. Again, I've argued this a bit ad nauseum here.  
23 The inmate was not a threat. If we want to assume everything  
24 that they have set forth, that the inmate raised his palms  
25 several times, swayed or rocked or moved his head, he may have

1 done that. But, it did not rise to the level of force that  
2 was used. If the inmate was non-compliant—assuming everything  
3 that they've argued is true because there's no audio on that  
4 video, it still does not support or justify the actions that  
5 then stemmed from the inmate's actions. There was no reason  
6 for force to be used.

7           The inmate never turns around suddenly. He doesn't  
8 take any sudden actions against the officers. He's on the  
9 wall for 11 minutes. There's no other inmates around him when  
10 this occurs. So, there's no other distractions.

11           Whether we slow it down, do it piece by piece, watch  
12 the video in segments, have a tickler counting how many times  
13 he raises his palms off of the wall, it doesn't change the  
14 outcome that there was no physical threat and therefore, no  
15 force should have been used.

16           It was excessive, it was unnecessary and Senior  
17 Officer Navarrete watched the entirety of the situation  
18 culminate and take place. He never intervened or deescalated  
19 the situation. It was his obligation as the senior officer  
20 that if he saw Officer Valdez getting worked up, to tell him  
21 to step aside. There was simply no justification for the use  
22 of force that occurred.

23           Looking at Officer Navarrete's report, again, he  
24 keeps saying that the inmate was being restrained. There's no  
25 evidence of the inmate being restrained. He's not getting

1 restrained until he's on the ground. Several feet away from  
2 the wall. There was no attempt at Officer Valdez trying to  
3 restrain this inmate. The restraints weren't even out. He  
4 wasn't using a technique that he had been trained on to  
5 restrain him.

6 There's been a second video shown after the inmate—  
7 when the cart comes with medical. Again, this video,  
8 completely irrelevant. The excessive force had already  
9 occurred. The inmate mouthing off afterwards doesn't change  
10 what just occurred.

11 The standard Your Honor is taxed with is finding  
12 just cause. NRS 284.396 grants authority to the Hearing  
13 Officer to find just cause for the discipline. NRS 284.385  
14 provides an appointing authority may discipline a permanent  
15 classified employee when it considers the good of the public  
16 service will be served thereby. A discharge for just cause is  
17 one which is not for any arbitrary, capricious or legal reason  
18 which is based on the facts supported by substantial evidence  
19 and reasonably believed by the Employer to be true. That is  
20 the substantial evidence standard set forth in *Southwest Gas*.  
21 We've also heard arguments that it's the preponderance of the  
22 evidence standard but as we've pointed out, it's *O'Keefe* that  
23 governs.

24 The first step is the de novo review and the second  
25 step is whether or not the conduct was serious. *O'Keefe* has

1 said that a Class V offense is serious as a matter of law.  
2 So, when we are looking at—and then the third step, I  
3 apologize, is the differential review on whether or not it  
4 would serve the good of the public service.

5 This is whether or not there is substantial  
6 evidence. Nowhere in *O'Keefe* is it talking about the  
7 preponderance of the evidence. That is what the Supreme Court  
8 has outlined for this Hearing Officer to use as guidance in  
9 determining the outcome of this case.

10 So, we do have a false and misleading statement that  
11 has occurred and we do have an incident of permitting  
12 excessive force. So, Step 1 of *O'Keefe* has been met. Step 2,  
13 these are serious infractions. Class V. That has been met.  
14 Step 3 is whether or not the good of the public service would  
15 be served by this discipline. We heard both from Warden  
16 Russell and Warden Howell on why this termination was  
17 appropriate and would serve the good of the State of Nevada.

18 Officer Navarrete's termination was supported by  
19 substantial evidence and NDOC had just cause to dismiss him  
20 for using excessive—or, for permitting the use of excessive  
21 force and for making false and misleading reports. We would  
22 ask that his termination be upheld and he not be reinstated to  
23 NDOC.

24 HEARING OFFICER: Okay. All right.  
25

1           DANIEL MARKS:           Mr. Hearing Officer, a couple of  
2 things. So, first, I'm not going to belabor the 90-days,  
3 [inaudible]. I think they missed the point. If you need to  
4 ask a higher authority for an extension and the statute says,  
5 upon good cause, I think simply we know as attorneys you've  
6 got to lay out the good cause. Otherwise, you're just asking  
7 for an extension that's a rubber stamp. I think they totally  
8 missed the boat.

9           Being with the AG when every single termination goes  
10 to the AG is nothing, That's just saying, it's in my office.  
11 They didn't set forth good cause. Good cause is some  
12 unforeseen event, it's been briefed. So, hopefully you'll  
13 take a look at that.

14           The second scary thing is, *Nassari* is a case that  
15 says the standards for Administrative Hearing Officers is  
16 preponderance. If the standard isn't preponderance, which is  
17 the more likely than not standard burden of proof in a civil  
18 case, then someone could be fired for something that's less-  
19 not more likely than not. It's less likely than not. So then  
20 there is essentially no standard, if you can be fired for  
21 something that didn't happen.

22           She's arguing a substantial evidence test. That's  
23 less than preponderance. If preponderance is 50 plus 1,  
24 substantial evidence is something less. Then you're  
25 essentially firing someone for something that you can't prove

1 happened and that would go against the idea of O'Keefe where  
2 you're supposed to determine de novo, did this happen.

3 In other words, did someone run a red light in a  
4 civil personal injury case, is it more likely than not. We  
5 don't require 100% but we don't require 49%. You've got to  
6 prove 50 plus 1. Is it more likely than not. That's what we  
7 tell juries. That's what we argue. They have to prove their  
8 case by more than 50%. All right.

9 The second kind of procedural or the third kind of  
10 procedural issue, we filed to disqualify you. Even though I  
11 know, you know, for a long time, I know you're fair, on the  
12 theory they withheld that second tape. We didn't get that  
13 until after the eve of the criminal case. You made certain  
14 statements—

15 MICHELLE ALANIS: I'm going to object again to  
16 this withholding of the tape. There has been--

17 DANIEL MARKS: It was withheld, it was not in  
18 the investigative file.

19 MICHELLE ALANIS: There was no—I did not withhold  
20 any evidence in this case.

21 DANIEL MARKS: Okay, they didn't provide it,  
22 they didn't produce it. They didn't take it into account when  
23 they fired him.

24 MICHELLE ALANIS: I did provide it.  
25

1 DANIEL MARKS: The witnesses, Rod Moore, didn't  
2 see it. Adams didn't see it. None of their witnesses saw it  
3 prior to the termination. So, call it what you want-

4 HEARING OFFICER: I'm not considering it as some  
5 kind of a willful withholding of any evidence, I don't see  
6 that.

7 DANIEL MARKS: Right, they-they-

8 MICHELLE ALANIS: I just don't appreciate the  
9 statement.

10 DANIEL MARKS: --they made decisions-I'm not  
11 asking for a *Smithhorn*, you know, I'm not asking for a  
12 presumption of withheld evidence. What I'm saying is, you  
13 made a decision on an incomplete record in the other case.  
14 You said, I'll look at this all de novo without taking into  
15 account what you did in the other case and then in closing  
16 argument, she tried to bring up the other case. So, that's  
17 not proper based on your decision.

18 Let's look at what really is going on. They have  
19 the burden of proof here. Nobody that was there did they  
20 call. Just think about this. Look at their Pre-Hearing.  
21 They said, they're going to call Norales. I can imagine why  
22 they didn't call Norales, but they said they were going to  
23 call Norales.

24 So, theoretically, in a use of force case, you get a  
25 subpoena the prisoner, you get them to come in, they come to



1 the preliminary hearing and you say, I was beaten, I had a  
2 concussion because your injury does go to alleged use of  
3 force. Nothing is dispositive. Everything is a puzzle,  
4 everything is building blocks of evidence.

5 One piece of evidence is, was the inmate damaged?  
6 Because if you're alleging, oh we're scared of lawsuits, oh  
7 this person's damaged, so it's a car accident with no injury.  
8 They didn't call Norales.

9 They, for some unknown reason, they didn't call  
10 Knatz. Knatz came out with the video. Knatz was the direct  
11 supervisor. They didn't call Knatz. Knatz was the Sergeant.  
12 He was out there. He could've said, oh yeah, Norales-Valdez  
13 is a bad guy. Oh, Valdez was picking on this guy. Oh, I  
14 interviewed these people or I did this or I did that. He  
15 didn't call him.

16 They didn't call Sergeant, now Lieutenant Willett.  
17 Willett was the head guy. It was a Sunday. So, he was head  
18 of the total prison. He was essentially the warden for the  
19 day. Everyone else, you know, was home watching football,  
20 it's Sunday. He's there. It's not a casino, you know, where  
21 you're there Sunday or whatever. They're home, the  
22 Administrators are all home watching football. Willett is  
23 there.

24 Willett goes out. Willett is talking to obviously  
25 Navarrete and Willett looked at the report. If Willett who

1 was promoted to Lieutenant, Willett is the head guy, if he  
2 really thought this was excessive force, he would've suspended  
3 him immediately, sent him home immediately. He said it was  
4 not excessive.

5           You know, it's a little like the [inaudible]  
6 pornography. You know it when you see it. When you work in a  
7 prison, you didn't want evidence of what is it, but you know,  
8 kicking, hitting, but Willett did testify excessive force  
9 would be kicking him when he's down. Hitting him, using a  
10 baton, using pepper spray without warrant.

11           MICHELLE ALANIS:     I'm going to object, that's  
12 exactly what you didn't want [crosstalk]

13           DANIEL MARKS:       And you let me ask it a  
14 different way and he testified.

15           HEARING OFFICER:    He can, ma'am.

16           DANIEL MARKS:       You know, it's trying to  
17 describe pornography, you can't describe it but they--society  
18 has decided, Playboy is not pornography, some other stuff is  
19 pornography; when we have all those disputes and the cases you  
20 read in law school. You know, *Roth* and *Miller* and all the  
21 pornography cases.

22           Excessive force is hard to describe but somebody  
23 like Willett who has been there, got promoted and he was the  
24 chief guy on the job in the yard and he looked at the video  
25 and looked at the report and talked to the officers and said,

1 it's not excessive. And he was there. How does a company,  
2 how does an Employer—normally, you go up the chain of command,  
3 especially in law enforcement or military or even in a casino,  
4 you go up the chain of command. How is it that the chain of  
5 command who deals with inmates and deals with this stuff day-  
6 to-day says, I didn't see excessive force, I didn't see  
7 anything. I didn't see a chokehold. I didn't see a false or  
8 misleading report. And yet, people that weren't there are  
9 saying oh this is the worst that ever happened, he can't  
10 believe it, it's a lie, it's excessive force.

11 I mean, the State is in a state of overkill. The  
12 person who made the decision, what case have you seen where  
13 the person injured doesn't come, the inmate and the person who  
14 made the decision to terminate doesn't come.

15 MICHELLE ALANIS: I'm going to object.

16 DANIEL MARKS: How can you object—

17 MICHELLE ALANIS: That's completely off point.  
18 I've had places of cases where there's been other wardens—

19 DANIEL MARKS: The decision maker doesn't come  
20 to back—

21 MICHELLE ALANIS: Yes. Yes.

22 DANIEL MARKS: --the decision.

23 HEARING OFFICER: It's an argument.

24 MICHELLE ALANIS: If they're no longer employed  
25 there, yes.

1           DANIEL MARKS:           They choose under subpoena and  
2 list it and they decide not to call the warden decision maker,  
3 they just call another warden who wasn't—who wasn't there, who  
4 didn't make the decision. How does that meet a preponderance  
5 standard? They didn't—you have to weigh all the evidence.

6           How do you have a case where the alleged injured  
7 party doesn't come, the alleged decision maker doesn't come.  
8 Let's look at what they have. They had an investigator,  
9 Molnar, who they didn't call, who was the lead investigator.  
10 They called Rod Moore. Rod Moore said, you know, I really  
11 don't know what goes on in Southern Nevada at one point. Rod  
12 Moore hadn't been on the yard in 15 years. If you go back and  
13 look at your notes. Rod Moore thought the inmate never took  
14 his hands off the wall. That was in his report. Never took  
15 his hands off the wall. That was Rod Moore. I think we said,  
16 oh should you be fired for false and misleading report and  
17 there was an objection. That was their investigation.

18           They didn't call Molnar. They didn't call Gentry.  
19 Gentry had this happening at night, at dinner. You know.  
20 They didn't call Knatz. They didn't call Willett. They didn't  
21 call anybody that really was there in the decision making  
22 chain of command. He didn't know—Moore testified, I didn't  
23 really know the policy of hands on the wall because I'm up  
24 north, I haven't been to Southern Desert. He was their—he was  
25 their first witness and lead investigator.

1           Then they called Wachter, whose back was to the  
2 incident. To try to say, oh I think it's excessive force.  
3 What is Wachter? Wachter's just a CO. So we called our COs  
4 to say, it's not excessive force, if you recall. They call  
5 Wachter. Wachter's not an officer. Wachter isn't anything  
6 special. From the video, Wachter has his back to the  
7 incident. Wachter denied hearing anything at all. We asked  
8 Wachter under cross-examination, did you hear anything the  
9 officer said? No. Wachter is so not believable, he's within  
10 five, six, 10 feet of them. He walks right near them, he  
11 doesn't remember anything the inmate said, he doesn't remember  
12 anything the officer said. Yet, he's here saying, no I think  
13 it's excessive, no you can't do that.

14           When I asked him, is there any regulations as to how  
15 long someone is on the wall, he had to admit, no. Hopefully  
16 that's in your notes. He admitted there is no regulation as  
17 to length. And he admitted, if an inmate is non-compliant,  
18 you can cuff them up. He said that.

19           They called Associate Warden Adams and I think Adams  
20 overreacted. I think Adams didn't do a complete  
21 investigation. I think Adams sent it to the IG without a  
22 basis. I think Adams didn't rely on his own people on the  
23 ground, Knatz and Willett who were dealing with the inmate and  
24 dealing with the correction officers and are the most  
25

1 knowledgeable. He went right to the IG and the IG didn't see  
2 all the videos.

3           Here's what Adams said. Adams actually been in the  
4 yard. You know, he worked his way up. Under cross-  
5 examination, he said, there is no rule as to how long an  
6 inmate can be on the wall. And he said, cuffing up is not use  
7 of force. If you recall. He said, it is, it isn't. It  
8 really isn't. In the rules and regulations, cuffing up is not  
9 use of force.

10           So, that's a long way around our case. Obviously,  
11 Navarrete did not use force. You saw the video. I don't  
12 know-how they're going to argue this, he did not use force.  
13 So, it was a couple of different scenarios.

14           They're saying he should've stopped the wall length,  
15 you know, the 11 minutes on the wall, but there's no rule  
16 about that. You can't fire somebody, you can't discipline  
17 somebody for being too long on the wall.

18           #1, Navarrete is the only person in this hearing  
19 that was there. There's no audio. So, his word is  
20 uncontradicted because they have no witnesses. He's telling  
21 you, not just mouthing off, being non-compliant, saying I'm  
22 not going to follow the rules and regulations. They can't  
23 contradict that. They can't prove their case like that  
24 because there's no audio. And they called no witnesses.  
25 Because Wachter couldn't hear anything. He said it. Believe

1 it or not. So, you have to take Officer Navarrete's word that  
2 he was counseling a non-compliant inmate. That goes  
3 uncontradicted. They can't really contradict that.

4 So then we get to the cuff up by Valdez. Again,  
5 they didn't call anybody to contradict that Valdez said, if  
6 you take your hands off one more time, I'm going to cuff you  
7 up. And then he approaches. According to Navarrete, there's  
8 no reason to take out the handcuffs that can be used as a  
9 weapon, you've got to get control of the inmate. Pushing him  
10 up against the wall to cuff up is not-is a technique that is  
11 one of the acceptable techniques.

12 They are treating this as a use of force that Valdez  
13 just went to the wall and took the person down and that's the  
14 use of force. Our case is, he was attempting to restrain him.  
15 The inmate resisted and he took him down. That was believed  
16 by Willett because Willett is the only other person they  
17 called that really was there that saw or heard or looked-did  
18 anything. He was the guy that was the head guy there and he  
19 said he looked at it and it was standard. This happens every  
20 day. They cuff people up every day.

21 They're saying this was a planned use of force.  
22 There's no evidence it was planned. It was a spontaneous use  
23 of force. Rod Moore admitted at the time of the use force,  
24 there was nothing Navarrete could've done. He said that on  
25 the stand. If he said it and he's their witness, how do you

1 terminate someone for using-permitting excessive force? Can  
2 they prove that by a preponderance when their own witness  
3 says, there's nothing he could've done at that moment. And  
4 there's no rule violation of the counseling or the length of  
5 time on the wall.

6 By the way, I think Moore had it 15 minutes on the  
7 wall, should he be fired because we all know it was under 11?

8 MICHELLE ALANIS: Objection, misstates evidence.

9 DANIEL MARKS: I mean, they played fast and  
10 loose. And that comes into the quality of report writing.

11 HEARING OFFICER: It's argument.

12 DANIEL MARKS: There's a couple of things on  
13 quality report writing. You know, you look at-as an attorney,  
14 as a young attorney, you're thinking, oh is it two pages,  
15 three pages, you know, what's a Supreme Court brief, you can  
16 get models or you get formats and you talk to other people.

17 For eight and a half years, this was the quality of  
18 the writing. This was the length of the writing. We called  
19 Sergeant Tansey because he's a Sergeant out there to tell you  
20 that this is the type of reports that were done. We called  
21 Lieutenant Willett, this in the type of reports that were  
22 done. There are errors in Rod Moore's report. There are  
23 errors in Gentry's report. There are more misstatements going  
24 from 15 minutes, hands never off the wall; that's more  
25



1 misstatements and misleading than anything Jose did. And  
2 Gentry's report.

3           Here's something else. The evidence is  
4 uncontroverted that Jose knew that there was a video. So, I  
5 guess you've got to look at human nature. If you're an  
6 attorney and you're submitting the case and you know you're  
7 going to watch the video. I think human nature, even as an  
8 attorney, I'm not going to be as detailed, knowing you're  
9 going to watch the video, just because it's like, you're going  
10 to watch the video and I'm going to give kind of a summary,  
11 well I think the video shows—watch the video. He knew they  
12 were going to watch the video and he has an explanation that  
13 his form is not the use of force form. He did what he always  
14 did, this is what he perceived.

15           They're trying to say, oh you didn't put every  
16 single thing on the video in your report. That wasn't the  
17 custom and practice there. I think we all, as an attorney,  
18 have been like, we're sending the video to the Hearing  
19 Officer, we're sending the video to the Court. We're doing  
20 the mediation, we're going to play the video. You know, I  
21 think in that scenario, I would do a paragraph. I don't know  
22 that I would do every single lead up and build up knowing  
23 we're all going to watch the video.

24           So, calling it false and misleading when he knows  
25 there's a video and the Sergeant gets a copy of the report,

1 approves it and says, file it, how do you fire somebody? They  
2 promoted Willett, who didn't think it was false or misleading.  
3 How do you fire somebody for filing a false and misleading  
4 report that's approved by his Sergeant? How do you do that?

5           They haven't explained that. They haven't answered  
6 that. They haven't brought anybody in authority that was  
7 there to tie the knots together, to sort of put the ball over  
8 the 50 yard line.

9           They've got Perry Russell, he wasn't there. He's a  
10 Pre-Term Hearing, you can't cross-examine witnesses--no one  
11 wins Pre-Term Hearings, it's virtually impossible. There's  
12 no--there's no evidence like you see. He didn't look at all  
13 the evidence, he didn't look at the second video. He didn't  
14 see it slow motion. He didn't see all the evidence.

15           They called Adams who made a decision without any  
16 sound, who wasn't there, who didn't want to talk to the people  
17 that were there. They didn't call Gentry. They called  
18 Wachter who didn't see anything. How do they put the ball  
19 over the yard line?

20           If Willett wanted more, he could've asked for more.  
21 If Willett thought it was misleading, that would carry a  
22 little more weight because he knows what the standard of  
23 report writing is. He deals with these guys every day. He's  
24 the guy they send the reports to.

1 I mean, from first grade on, I think you write  
2 reports to your teacher based on, kind of what is the custom  
3 in the school, what is the requirements of the teacher. I  
4 think as a lawyer, you send points and authorities to the  
5 Judge based on who the Judge is. Do they want a lot, do they  
6 want a little. What is it?

7 The big thing is, it was spontaneous. It wasn't  
8 planned force. It was a cuff up. It wasn't use of force.  
9 And, they did come off the wall. So, I don't get how the  
10 report could be false and misleading as it's used in-in their  
11 rules.

12 I think Wachter and Adams all said a non-compliant  
13 inmate who wouldn't follow the rules, wouldn't keep his hand  
14 sin the position to be cuffed up, that's legitimate. So, if  
15 Valdez blows the cuff up, if he goes to cuff him, there's no  
16 evidence that Valdez said, I'm just going to put you to the  
17 ground, what was the point. I mean, there's no evidence of  
18 that. It's illogical. If Valdez unartfully fumbles the cuff  
19 up. That's not a termination against Jose.

20 The most this is is a fumbled attempt to cuff up  
21 which Rod Moore says, couldn't be stopped. We're talking  
22 about the elbow, the cocking and we went through it. He  
23 showed you what a chokehold was on me. This was an inartful  
24 take down of the shoulder that could've slipped up when he  
25 took him down, but it wasn't a premediated, we're going to

1 hurt this guy. He didn't kick him. He didn't hit him. You  
2 don't see him agitated. There's no evidence he cursed at him.  
3 There's no evidence he said anything to him. There's no  
4 evidence that Valdez was out to get this guy.

5 And Jose did everything he could to deescalate.  
6 They didn't want to have to go to the Sergeant because that  
7 would've left the yard not secure. So, he did everything to  
8 deescalate.

9 You could see Jose's attitude on the stand. He's a  
10 very mellow guy. That's the same type of demeanor that he  
11 showed in the yard. They kept saying about threatening. The  
12 issue isn't threatening. The issue is, when you tell an  
13 inmate hands up, and he won't put his hands up and he says,  
14 I'm not following the rules, and he had taken food out of the  
15 culinary, that's a non-compliant inmate that can be cuffed up  
16 and brought to the Sergeant.

17 The Sergeant doesn't come out. You bring the inmate  
18 to the Sergeant. That was the evidence that Adams said, that  
19 was the evidence that Wachter said. That's the evidence that  
20 Jose said.

21 So, we don't believe they have proven by 51% that  
22 Jose permitted use of force. They don't have a witness that  
23 he permitted excessive force. A cuff up is not excessive.  
24 Taking to the ground, as Willett said, is the least force that  
25 could've been used. What less force could've been used? The

1 only other alternative is let him go back to the unit and Jose  
2 said, then you have a non-compliant inmate who can cause  
3 problems for other officers and they were short staffed. They  
4 were in a lockdown.

5 So, what else could he have done? This is the least  
6 amount of force hand-to-hand, attempted cuff up that could've  
7 been used.

8 Regarding the report writing, if the Sergeant  
9 approved it, and he's his immediate supervisor, how can you  
10 prove the preponderance of the evidence to terminate. They  
11 call it a lie. There's no lie. We all can read briefs, you  
12 know, the night before a Supreme Court argument, oh why didn't  
13 I say this, why didn't I elaborate on that. We've all been  
14 there.

15 I think Jose admitted, if he knew it was an event of  
16 this significance, he certainly could've written more. I  
17 think he honestly told you at the time, I don't want to  
18 minimize it, but it was no big deal. This wasn't hitting a  
19 guy in the head with a baseball bat that you know is going to  
20 go to all these reviews.

21 This is a cuff up that happens numerous times a day.  
22 It wasn't something that he thought, I have to write three  
23 pages. He submitted it to his Sergeant and he said, in the  
24 past, if they want more evidence or they want me to expand on  
25

1 something they tell me. So, how do you fire a guy when his  
2 immediate supervisor says, the report's fine put it in NOTIS.

3 They may disagree. They didn't discipline Willett.  
4 They didn't discipline Knatz.

5 MICHELLE ALANIS: Objection to any other person's  
6 discipline.

7 DANIEL MARKS: Why? Isn't that relevance on  
8 preponderance standard?

9 HEARING OFFICER: Sustained.

10 MICHELLE ALANIS: He said-

11 HEARING OFFICER: Sustained.

12 MICHELLE ALANIS: Not relevant.

13 HEARING OFFICER: I wouldn't know that anyway, so.

14 MICHELLE ALANIS: And it's confidential.

15 DANIEL MARKS: Okay. But the point is, we deal  
16 in a chain of command. It's sort of a para-military  
17 organization. You go up the chain of command. There's a rule  
18 in there, follow the chain of command. One of the rules in  
19 their AR is, follow the chain of command. You know that  
20 intuitively. You handle these cases.

21 How do you meet a preponderance standard when the  
22 person who is your immediate supervisor, whose an officer, who  
23 is the head person there is saying, I don't see a violation of  
24 anything. And came and testified under oath, under subpoena.  
25 And then bring a bunch of people that weren't there and

1 weren't in the chain of command and they didn't call the  
2 decision makers or anybody in the chain of command. They  
3 didn't call Gentry.

4           So, based on that, we would ask you to reverse this.  
5 They can't meet the preponderance standard. They didn't meet  
6 the standard. There's total gaps in their case. And ask that  
7 you reinstate Jose with all his backpay and benefits. Thank  
8 you.

9           HEARING OFFICER:     Thank you. As the person  
10 writing the report, I certainly—I always like to start with  
11 the burden of proof. So, are you saying that it's different  
12 than a preponderance of the evidence, because I was a little  
13 bit unclear on that. You're very—

14           MICHELLE ALANIS:     Sorry, because you said, as the  
15 person writing the report, I didn't know if you were asking me  
16 at first—

17           HEARING OFFICER:     I'm the one that's actually  
18 going to write the decision in the case—

19           MICHELLE ALANIS:     Yes, yes.

20           HEARING OFFICER:     So, I need to know if you—if you  
21 dispute that or what's your idea of what the burden of proof  
22 is on this?

23           MICHELLE ALANIS:     My position is that this is a  
24 substantial evidence standard. Was there substantial evidence  
25

1 that NDOC considered when they believed a violation to have  
2 occurred.

3 HEARING OFFICER: Okay.

4 MICHELLE ALANIS: So, when NDOC reviews that  
5 video, was there substantial evidence that the misconduct  
6 occurred when they based—you know, when they made that  
7 disciplinary decision. I don't have *O'Keefe* in front of me—

8 HEARING OFFICER: *O'Keefe* is a decision that  
9 governs my decisions in this case.

10 MICHELLE ALANIS: That's our position, is that  
11 *O'Keefe* governs and *O'Keefe* lays out the three step analysis.

12 HEARING OFFICER: Okay.

13 MICHELLE ALANIS: And that should be what guides  
14 this Hearing Officer.

15 HEARING OFFICER: Okay.

16 DANIEL MARKS: It's got to be read in  
17 connection with *Nassari* which sets forth, it's got to be  
18 preponderance, otherwise, you're [crosstalk]

19 MICHELLE ALANIS: And, I'll get to *Nassari* because  
20 I get—

21 HEARING OFFICER: Gets the last word.

22 DANIEL MARKS: [crosstalk] situation. Had he  
23 had the de novo standard as to whether it happened, if you  
24 don't have to meet the more likely than not.

25



1 HEARING OFFICER: I'll figure it out. I know, I  
2 heard what you said, that's why I'm asking her position on it.

3 DANIEL MARKS: Okay.

4 HEARING OFFICER: SO, that's cool. Okay.

5 DANIEL MARKS: You've read *Nassari*, right?

6 HEARING OFFICER: I've read all these things at  
7 one point or another. I didn't memorize them, unfortunately  
8 but I'll look at them again.

9 DANIEL MARKS: Also, you have to look at *Graham*  
10 *v. Connor* which talks about the—

11 HEARING OFFICER: I'll look at them all.

12 DANIEL MARKS: --split second thing, you can't  
13 do it by, you are—you know, essentially, you've got to put  
14 yourself in the officer's shoes not in the comfort of your  
15 chambers.

16 HEARING OFFICER: I understand. My chambers  
17 aren't that comfortable anyways, but I'll look at it.

18 DANIEL MARKS: I hope it's better—I hope it's  
19 better than these chambers, but—

20 HEARING OFFICER: Right. So, with that, the last  
21 word.

22 MICHELLE ALANIS: Yes. So, he's kind of jumped in  
23 there already on the *Nassari*, *Nassari* is not the governing  
24 case here or the standard. *Nassari* is not an employment case.  
25 It's not a case where an employee appealed discipline. It's a

1 licensing case. I believe it was a chiropractic licensing  
2 case.

3 HEARING OFFICER: Oh, *Nassari*, okay.

4 MICHELLE ALANIS: Yeah, we are not even dealing  
5 with the same type of action. *O'Keefe* is a disciplinary  
6 matter that just got issued from the Supreme Court. So,  
7 *Nassari* is a completely different type of case that we are  
8 dealing with.

9 I'm not going to get into the good cause issue. I  
10 think we've argued that enough and I think this Hearing  
11 Officer has all of our positions on that. We believe the  
12 extension is valid and there is no issue there.

13 As far as any reference to this second video and any  
14 withholding of a second video, again, there has been  
15 absolutely no evidence of that. As soon as they requested  
16 this video, I provided it to counsel. So, I'm not sure where  
17 they keep going with a second video being withheld. There's  
18 been absolutely no evidence in this case or any other-or, at  
19 least to my knowledge, I don't want to mention it but I don't  
20 believe there's been any evidence in Valdez that there was a  
21 withholding of a video.

22 So, I don't think we can make representations that  
23 we've improperly withheld a video. The video they're  
24 referencing-it's not like they're talking about a second  
25 camera positioned at the culinary. We're talking about a

1 video that goes along with the inmate's injuries. That is a  
2 video that they're required to run because the inmate is  
3 claiming injuries and going to medical. That's what that  
4 video is.

5           It does not show the force. It does not show any of  
6 the events leading up to the Officer Valdez using  
7 inappropriate force on the inmate. It's just the inmate on  
8 the ground with the responding officers and nursing staff  
9 coming and the comments after it. It has nothing to do with  
10 the false or misleading statements at issue here. It has  
11 nothing to do with the excessive force.

12           NDOC is not saying that you can't restrain an inmate  
13 or that you can't conduct a random search. We understand that  
14 these are regular practices. The problem here is, we have a  
15 video where there is no attempt at restraining. There is a  
16 search where an inmate is placed on the wall for an  
17 unnecessary amount of time and that was the testimony of the  
18 witnesses. There may not be a rule of an exact amount of time  
19 but it was unnecessary.

20           Whether the inmate—you know, they brought up that  
21 the inmate wasn't called to the stand. The inmate doesn't  
22 have knowledge of NDOC's policies and procedures and training.  
23 We had the officers here, the associate warden, the  
24 investigator whose been trained. And, might I add, the  
25

1 investigator gave testimony that he had to restrain an inmate  
2 just three weeks ago, or three weeks from his testimony.

3           So, is he involved in the everyday occurrences?

4 Yes, he gave testimony on that. Inmate Norales can't tell us  
5 about NDOC training and policies. And, Inmate Norales,  
6 whether or not he sustained an injury has no bearing on  
7 whether or not there was a use, an inappropriate or  
8 unnecessary use of force. The fact was, it was a violation of  
9 conduct. Whether an injury was sustained is not determinative  
10 of whether or not there was an improper, unnecessary use of  
11 force.

12           There was a comment that Willett could've suspended  
13 Officer Navarrete. He doesn't have that authority. You can't  
14 suspend an officer on the spot. We would be in complete  
15 violation of NAC 284 and NRS 284, the entire chapter. There's  
16 procedures that need to take place and he wouldn't have had  
17 that authority to suspend on the spot.

18           I think this Hearing Officer is very well aware of  
19 the procedures. I mean, we have an Administrative Hearing.  
20 We don't need to call every single witness that's been  
21 identified in these reports. They keep making these  
22 allegations that we didn't have anybody that was there. It's  
23 quite contradictory and baffling because here we had Officer  
24 Navarrete who obviously we said we would cross or call.. We  
25 have Officer Wachter.

1           We have Associate Warden Minor Adams who was the  
2 Associate Warden at the time of the incident. He's the one  
3 that comes in and he told you, part of his duties is reviewing  
4 NOTIS and all of the reports of the day prior or the shifts  
5 prior and that's what he did. He reviewed it and saw the  
6 video.

7           When he saw the video, what did he do? It's not his  
8 obligation to investigate. It was appropriate to be sent to  
9 the Inspector General's Office. That's who investigates the  
10 misconduct. They assigned it to the Investigator. All of the  
11 proper procedures were followed.

12           Officer Knatz, Sergeant Knatz—

13           HEARING OFFICER:     How do you spell that by the  
14 way?

15           MICHELLE ALANIS:     I think it's K-N-A-T-Z. It's  
16 somewhere in here. K-N-A-T-Z.

17           HEARING OFFICER:     Okay.

18           MICHELLE ALANIS:     Sergeant Knatz wasn't there when  
19 the use of force occurred. Yes, he was on duty but he wasn't  
20 physically present. He came in the part afterwards. There  
21 was no—there wouldn't have been any testimony from Officer  
22 Knatz that he was contacted because the inmate was non-  
23 compliant because we already heard. They never contacted him.  
24 Even though the rules say, if the inmate is being non-  
25

1 compliant, you contact your Sergeant before the use of force  
2 occurs.

3           Sergeant Willett, he was also not there. He was on  
4 duty but he didn't witness anything. So, he's not going to  
5 provide anything. The Sergeants are not in line with the  
6 disciplinary process. It happened because Associate Warden  
7 Adams reviewed the video and sent it through the proper  
8 channels. It's not up to Sergeant Knatz or Sergeant Willett  
9 to determine the discipline.

10           I believe there was a miss-categorization of  
11 Investigator Moore's testimony. He said, there's been an  
12 argument that the inmate took his hands off the wall. I  
13 believe Investigator Moore said that the palms came off but  
14 the fingertips were still on the wall and that was his inmate  
15 on why the inmate didn't come off the wall. It wasn't an  
16 entire coming off the wall. That him moving his head and  
17 lifting his hands like this was not coming off the wall.

18           We call an Associate Warden who is involved, in this  
19 case, directly involved. A supervisor investigator who was  
20 directly involved in investigating this case and they want to  
21 claim that officers—I don't remember—Officer Lunkwitz and  
22 Officer Tansey who weren't even at Southern Desert at the time  
23 in question and have no relevance to this case are somewhat  
24 more relevant than Associate Warden Adams, the current Warden  
25

1 Howell, and all the other parties that we called that actually  
2 had actions within this case.

3 Willett said that he reviews the reports for grammar  
4 to make sure that they flow. He wasn't there reviewing the  
5 report side-by-side with the video making sure that it was a  
6 play-by-play and correct. He simply reviewed it to make sure  
7 it made sense and grammar and it was submitted. That's not an  
8 approval of the report. It's the Associate Warden that came  
9 in and reviewed NOTIS, that is the one reviewing the reports  
10 and making the determination, not Sergeant Willett. That's  
11 why the case ended up in investigation.

12 Today we suddenly hear from Officer Navarrete who  
13 seems to remember everything that's been said on the video.  
14 Yet, surprisingly, it's nowhere in any of his reports or any  
15 of the statements that he made to the investigator. Today, he  
16 remembers everything almost two and a half years later.

17 The comment about, it happening at that moment.  
18 Investigator Moore specifically talked about that yes, at the  
19 very moment that Officer Valdez pushed the inmate into the  
20 wall, perhaps there was nothing that Officer Navarrete  
21 could've done. The 11 minutes leading up to that point, there  
22 were several things and the investigator went through those.

23 Officer Navarrete is required as an officer to write  
24 his own accurate and truthful report. That means, accurate  
25 statements and including important facts that he has

1 witnessed. I'm not going to read the entire report, detailed,  
2 on NDOC bate #19, but the most important sentence at issue  
3 here is the sentence that starts, "At approximately 0645  
4 hours, Inmate Norales, #1104257 came off the culinary wall  
5 while CO Valdez was attempting to restrain him resulting in a  
6 spontaneous use of force".

7           That video that we've watched probably 100 times in  
8 the last two days, there is no evidence of the inmate coming  
9 off the wall when Officer Valdez approaches him from behind  
10 and pushes him into the wall. He moved five seconds prior and  
11 you see Officer Valdez, he didn't immediately respond and rush  
12 over to the inmate from that movement. No, he causally starts  
13 coming up behind him and then, boom, pushes him into the wall.

14           So, that statement of him coming off the wall,  
15 that's misleading. While CO Valdez was attempting to restrain  
16 him. So, the inmate came off the wall while CO Valdez was  
17 attempting to restrain him. There was no part of that video  
18 showing Officer Valdez attempting to restrain the inmate. He  
19 pushed him in the wall and put his arm around his neck.

20 Suddenly today, it's his arm was around his chest. There is  
21 no evidence of that on that video. It is very clear that his  
22 right arm goes around the inmate's neck and he pulls him back.

23           There was no restraints. That is a false statement  
24 in that report. He had an obligation to put in an accurate  
25 depiction of what happened. It in no way reflects what's in



1 that video. And then to make matters even worse, so not only  
2 do we have a false statement, which is a violation of the AR.  
3 We then have the fact that he omitted information.

4 So, there's really two issues with his statement,  
5 the false and misleading statement and the omissions. If you  
6 have witnessed all of that that occurred in 11 minutes with  
7 verbal abuse, fuck you, I'm not following rules, you're a  
8 faggot, so many threats of the inmate moving off the wall, he  
9 was so concerned for his safety, why wasn't that in here?  
10 That would've justified any force.

11 He didn't list any of that. No, instead he misled  
12 with the inmate came off the wall when he was attempting to  
13 restrain him. That is not what happened. He left out every  
14 fact, including the arm around the neck, one of the most  
15 important things that should've been listed in this report  
16 because as an officer, he has an obligation to report  
17 violations of policy. He admitted that that is not a  
18 technique used by NDOC. So, it's a technique that shouldn't  
19 have occurred and it should've been in this report.

20 In his violation of the excessive force, we're not  
21 saying that Officer Navarrete pushed the inmate into the wall  
22 and swung his arm around. We understand that he's not the one  
23 that engaged in the excessive force. It is our position that  
24 there's still a violation of policy because he allowed the  
25 force to occur.

1           This wasn't the first time he worked Valdez. We  
2 have evidence of Valdez's character.

3           DANIEL MARKS:           There's no evidence of Valdez's  
4 character.

5           MICHELLE ALANIS:       We have the statements of  
6 Officer Wachter saying that he—he riles up the inmates or  
7 whatever his statement was there. That's the evidence I'm  
8 referring to, so that's what I mean by that.

9           We have—so, we have his statements about Valdez from  
10 Officer Wachter. You have 11 minutes, which Officer Wachter  
11 said was too long. AW Adams said was too long of a time.  
12 While there's no per se time limit in viewing that video as a  
13 whole, there was no reason for the inmate to still be on the  
14 wall and to get to that point. There were so many other steps  
15 that could've been taken.

16           DANIEL MARKS:           Your Honor, he's not charged  
17 with keeping them on the wall too long, so I don't think  
18 that's [crosstalk]

19           MICHELLE ALANIS:       It doesn't—

20           HEARING OFFICER:       This is her argument so she gets  
21 to finish it up.

22           MICHELLE ALANIS:       He is charged—

23           DANIEL MARKS:           [crosstalk]  
24  
25

1 MICHELLE ALANIS: --with the excessive force  
2 violation which is—let me make it very, very clear. Of course  
3 I don't have the language right in front of me.

4 HEARING OFFICER: I've read it. I've heard it.  
5 So—

6 MICHELLE ALANIS: Okay. Willfully employing or  
7 permitting the use of unnecessary, unauthorized or excessive  
8 force. I think in this video, we have what's unnecessary  
9 because there's no physical threat. It's unauthorized because  
10 we don't authorize force where there's no physical threat.  
11 Verbal statements do not justify a use of force and we have  
12 excessive force because they're not trained to put their arm  
13 around an inmate's neck. Where was the threat? Why is the  
14 inmate being pulled to the ground? There was no physical  
15 occurrence here.

16 He willfully employed or permitted the use of force.  
17 Unnecessary, unauthorized or excessive force and the evidence  
18 supports that.

19 I think it's very clear that what we have here is,  
20 there's no evidence of a physical threat and the use of force  
21 was not justified. Each of these charges alone is enough to  
22 support a termination under NDOC's disciplinary matrix. So,  
23 even if this Hearing Officer doesn't believe that he allowed  
24 or permitted the use of force, we still have the violation of  
25

1 false and/or misleading statements, both under the AR and  
2 under NAC 284.650.

3           Again, it's knowingly providing a false or  
4 misleading statement including omissions, either verbally or  
5 in written reports concerning actions related to the  
6 performance of official duties. That's exactly what happened  
7 here. He gave a false statement by saying he came off the  
8 wall while he was being restrained. Then there were several  
9 omissions, as we heard from numerous witnesses.

10           Officer Navarrete, the evidence supports that he not  
11 only engaged in the false and/or misleading statements but  
12 also permitting the unnecessary use of force. Therefore, NDOC  
13 would ask that this hearing Officer uphold the termination and  
14 not reinstate the officer and should for some reason we lose  
15 and you reverse that decision, we do want to point out that  
16 there was a stipulation and order entered about a year ago  
17 staying the amount of the backpay.

18           So, should this Hearing Officer disagree with either  
19 of those violations and reverse the discipline, we would ask  
20 that you also look at that stipulation.

21           HEARING OFFICER:     I don't have that, do I?

22           MICHELLE ALANIS:     I would hope so. It's been filed  
23 with the—

24           HEARING OFFICER:     Oh, has it, okay.  
25

1 MICHELLE ALANIS: Yeah. I can—I can send a copy  
2 but the Hearings Division should have it.

3 DANIEL MARKS: I think we can deal with the  
4 backpay for now.

5 MICHELLE ALANIS: I just want to make sure  
6 because—I only point it out for the Hearing Officer because I  
7 know you're writing the report and rather than get to the  
8 point of a reconsideration motion.

9 DANIEL MARKS: We agree to continue the hearing  
10 pending the criminal case and so there's a date, but we can  
11 deal with that later depending on your ruling.

12 MICHELLE ALANIS: Obviously, just to be clear, we  
13 don't think it should be reversed, but should it be—

14 HEARING OFFICER: I understand.

15 MICHELLE ALANIS: --we would ask that you consider  
16 the stipulation as well.

17 HEARING OFFICER: Okay. All right. Thank you all  
18 very much. Two very fine attorneys, did a very fine job on  
19 this.

20 DANIEL MARKS: Thank you for your time.

21 HEARING OFFICER: I do appreciate it. You guys  
22 are very thorough.

23 MICHELLE ALANIS: Sorry.

24 HEARING OFFICER: No, that's good.

25

1           DANIEL MARKS:       When do we normally get these  
2 decisions

3           MICHELLE ALANIS:    Thirty days.

4           HEARING OFFICER:   Well, where's my—I think it  
5 says—

6           MICHELLE ALANIS:    The rules say 30 days.

7           HEARING OFFICER:    I think it's 30 days and if I  
8 can get it out quicker, I will but this is kind of  
9 complicated. So, it might take me all of that.

10                   [end of proceeding]

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**CERTIFICATE OF TRANSCRIPT**

I, Jaime Caris, as the Official Transcriber, hereby  
certify that the attached proceedings before the Judge,

In the Matter of:

JOSE MIGUEL NAVARRETE,  
Petitioner-Employee


Appeal No.: 1713379-MG

vs.

DEPARTMENT OF CORRECTIONS,  
Respondent-Employer

were held as herein appears and that this is the  
original transcript thereof and that the statements  
that appear in this transcript were transcribed by me  
to the best of my ability.

I further certify that this transcript is a true,  
complete and accurate record of the proceeding that  
took place in this matter on April 16, 2019 in Las  
Vegas, Nevada.



Jaime Caris  
Always On Time  
July 19, 2019

NEVADA STATE PERSONNEL COMMISSION

BEFORE THE HEARINGS OFFICER

FILED

JUL 31 2019

APPEALS OFFICE

In the Matter of:

JOSE MIGUEL NAVARRETE,  
Petitioner-Employee

Appeal No.: 1713379-MG

vs.

DEPARTMENT OF CORRECTIONS,  
Respondent-Employer

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
HONORABLE MARK GENTILE, ESQ.  
HEARINGS OFFICER

APRIL 2, 2019

9:05 AM

2200 SOUTH RANCHO DRIVE, SUITE 220  
LAS VEGAS, NEVADA 89102

Ordered by: Department of Administration  
2200 South Rancho Drive, Suite 210  
Las Vegas, NV 89102

Transcribed By: *DOC004* Jaime Caris, Always On Time

00283  
**JA 0552**



A P P E A R A N C E S

On behalf of the Petitioner:

Daniel Marks, Esq.

Law Office of Daniel Marks

601 South Ninth Street

Las Vegas, Nevada 89101

On behalf of the Respondent:

Michelle Alanis, Esq.

Office of the Attorney General

555 East Washington Avenue, Suite 3900

Las Vegas, Nevada 89101

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I N D E X

<u>EXAMINATION</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Rod Moore	43	96	131	
David Wachter	150	170	176	185
Warden Adams	200	234	255	262
Warden Russell	269	282		

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E X H I B I T S

IDENTIFIED

ENTERED

EVIDENCE

Petitioner's Exhibit 1	9	16
Petitioner's Exhibit 2	9	16
Petitioner's Exhibit 3	9	16
Petitioner's Exhibit 4	9	16
Petitioner's Exhibit 5	9	16
Petitioner's Exhibit 6	9	16
Petitioner's Exhibit 7	9	16
Petitioner's Exhibit 8	9	
Petitioner's Exhibit 9	9	16
Petitioner's Exhibit 10	9	16

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E X H I B I T S

IDENTIFIED

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EVIDENCE

Respondent's Exhibit A	5	11
Respondent's Exhibit B	5	11
Respondent's Exhibit C	5	11
Respondent's Exhibit D	5	11
Respondent's Exhibit E	5	11
Respondent's Exhibit F	5	11
Respondent's Exhibit G	5	11
Respondent's Exhibit H	5	11
Respondent's Exhibit I	5	
Respondent's Exhibit J	5	219
Respondent's Exhibit K	5	219
Respondent's Exhibit L	5	219
Respondent's Exhibit M	5	
Respondent's Exhibit N	5	

P R O C E E D I N G S

HEARING OFFICER: All right. We are on the record. Case #1713379-MG. Jose Miguel Navarrete v. Department of Corrections. Could the attorneys make their appearances for the record, please?

MICHELLE ALANIS: Good morning, Your Honor, Michelle Di Silvestro Alanis, on behalf of the Employer, Nevada Department of Corrections and with me is Warden Jerry Howell.

HEARING OFFICER: Good morning.

DANIEL MARKS: Your Honor, Daniel Marks, Nicole Young. We're the attorneys for Jose Navarrete who is to my far right.

HEARING OFFICER: Good morning. All right. I noted in the briefs that there are procedural arguments as well as substantive arguments. To me, it doesn't make sense to handle them separately or preliminarily, so we'll just go forward with the hearing and you guys can make whatever arguments you need to make on that.

We have a lot of Exhibits that have been identified with the briefs. Are there—typically, I like to just admit the Exhibits. Unless there's a reason not to.

DANIEL MARKS: Your Honor, can I be heard?

HEARING OFFICER: Yeah.

1           DANIEL MARKS:           So, we exchanged the pre-hearing  
2 statements pursuant to the deadline, I forget what that was,  
3 like a week or 10 days ago.

4           HEARING OFFICER:       All right.

5           DANIEL MARKS:           And we exchanged the Exhibits.  
6 I don't think on our end there's anything shocking and there  
7 was nothing in their original packet that I thought was really  
8 objected to.

9           Friday afterhours, I don't know, 6:00, I got a  
10 supplemental statement, that's really a rebuttal to my  
11 statement. I didn't file a supplement because I thought under  
12 the rules, we're just going to argue it out and if you want  
13 further briefing, they chose to kind of rebut my statement,  
14 which I don't think is proper, but I'll just argue it.

15           Then I got a bunch of new Exhibits, including  
16 Exhibits they claim were under seal. There's no explanation  
17 for why they're under seal or what they are and the  
18 significance. They're not obviously relevant. I don't like  
19 to object in these kinds of hearings. I like everything to  
20 come in but when you get something Friday at 6:00, it's sort  
21 of a red flag. They put these things under seal. I think  
22 they should have to lay some foundation or explanation as to  
23 why it's such a late filing, why they think it's under seal,  
24 what the relevance is.

1           They also attached—you know, inmate grievances  
2 against my client which were not sustained. There would be no  
3 logical reason—I think the evidence will show, inmates do  
4 these grievances all the time. It's just like, you know, a  
5 kid complaining about school. It's a common practice. I  
6 think they should have to lay some foundation or relevancy and  
7 not just dump a bunch of irrelevant grievances over eight  
8 years after the fact. They obviously didn't think it was  
9 significant when they did their list of Exhibits.

10           So, to the extent they added things Friday  
11 afterhours, i would think that they should have to lay proper  
12 foundation and objection. We don't have copies of their  
13 proposed J&L that they claim were under seal. It just says,  
14 confidential submitted under seal, to you, I don't know how  
15 that's possible.

16           I would like that reserved or at least not admit  
17 anything until we see where they're headed.

18           HEARING OFFICER:     All right.

19           DANIEL MARKS:        And then my question on the 90  
20 days is more of a question, I take it you don't want us to  
21 argue that preliminarily, that will just be part of our whole  
22 case and you'll rule on that at the end.

23           HEARING OFFICER:     I think that's a better way to  
24 do it.

1 DANIEL MARKS: And I agree, I just wanted to  
2 make sure that's how you wanted it.

3 HEARING OFFICER: That is how I want it, yeah. I  
4 think it makes more sense, because actually some of the  
5 evidence might touch on that issue too, so.

6 DANIEL MARKS: Okay.

7 HEARING OFFICER: Do you have a response?

8 MICHELLE ALANIS: I do. A majority of the  
9 Exhibits that were supplemented, which we did state in our  
10 pre-hearing statement that we reserve the right to supplement  
11 any Exhibits.

12 The ones that were added are operational procedures,  
13 specifically Operational Procedure 405 and Operational  
14 Procedure 407. These are not shocking or necessarily new  
15 documents. The employee is familiar with these operational  
16 procedures. He has to be familiar with them for his job.

17 HEARING OFFICER: Yeah.

18 MICHELLE ALANIS: You know, they were regularly  
19 available to him throughout his employment. I believe they're  
20 even referenced and possibly—I'd have to double check here but  
21 possibly even provided within the other investigative files  
22 into this incident.

23 The same thing with the post order. That is  
24 something that the employee is familiar with for his specific  
25



1 assigned post. He signs for it and that's what M is, is a  
2 signature page to his post order.

3 HEARING OFFICER: So, the two confidential  
4 documents are ones like the Use of Force, I think.

5 MICHELLE ALANIS: One is the Use of Force, that's  
6 correct. And if you look at the—not the last page, it's  
7 actually this version is not marked but some of the  
8 operational procedures are accessible to inmates and other  
9 operational procedures are not. That goes to the safety and  
10 security of the prison because it discusses various procedures  
11 for the officers, what they need to do to maintain safety,  
12 what their steps would be. That's the same thing with the  
13 post order.

14 HEARING OFFICER: Right.

15 MICHELLE ALANIS: So, throughout the operational  
16 procedures, there are several that are what NDOC considers  
17 confidential. They're not inmate accessible. They're not  
18 meant to be published to the public and routinely in these  
19 types of proceedings and even other court proceedings, we've  
20 submitted them to the Court under seal.

21 HEARING OFFICER: You don't give a copy to—

22 MICHELLE ALANIS: I can—I should have had a copy  
23 for him.

24 HEARING OFFICER: I think he needs a copy of it  
25 probably.

1 MICHELLE ALANIS: Yes, I can give him a copy and  
2 if we want to take time for him to look at it, that is fine.

3 DANIEL MARKS: Your Honor, I have a question.

4 HEARING OFFICER: Yes.

5 DANIEL MARKS: I thought the whole case is  
6 about Use of Force and I thought in your original documents, I  
7 thought they did provide some Use of Force Guidelines. I  
8 don't think that can be secret. That's going to be the  
9 argument.

10 MICHELLE ALANIS: That's the Administrative  
11 Regulation and it is not confidential.

12 DANIEL MARKS: At least—right, I mean, in our  
13 briefs, we were arguing I think under 339 and 405, why don't  
14 we just see how this thing plays out.

15 HEARING OFFICER: Yeah.

16 DANIEL MARKS: I don't think a regulation—I  
17 guess I was taken by them saying it's under seal with no  
18 explanation. We're not—I'm not going to go out and publish  
19 them but I think it's not super-secret. We should be able to  
20 argue it within this room and if there's a Petition for  
21 Judicial Review, I don't think just because they claim it's  
22 under seal—the Use of Force, if you're going to terminate  
23 somebody and have a state hearing, I think it's a legitimate  
24 argument.

25

1           So, I don't want to be then accused of violating  
2 some unknown confidentiality rule.

3           HEARING OFFICER:     We'll work it out.

4           DANIEL MARKS:        Okay.

5           HEARING OFFICER:     I agree with you that you need  
6 to have a copy of it during the hearing, at least to go up if  
7 the case goes on appeal.

8           DANIEL MARKS:        Right, okay.

9           HEARING OFFICER:     And so, I will make arrangements  
10 for that.

11          DANIEL MARKS:        That's fine and let's just deal  
12 with that as it comes, but—

13          HEARING OFFICER:     That's good. So, anyway, so I-  
14 N, then I guess are not going to be admitted now. We can talk  
15 about it as the case goes on. Other than that—

16          MICHELLE ALANIS:     You said, I-N? Right?

17          HEARING OFFICER:     Right, that's in the supplement.

18          MICHELLE ALANIS:     Yes.

19          HEARING OFFICER:     All right. So, we'll keep that  
20 in the [inaudible] for a while and see how it goes.

21          MICHELLE ALANIS:     Do you want me to pull the ones  
22 out of that witness binder? I apologize, I was supposed to  
23 bring him.

24          DANIEL MARKS:        No.

1 HEARING OFFICER: No, you can leave it there right  
2 now.

3 DANIEL MARKS: That's fine. And, then we had 1  
4 through, what 10?

5 HEARING OFFICER: Yeah. I have 1-7 for Mr.—

6 DANIEL MARKS: There's 10, there's videos.

7 HEARING OFFICER: All right.

8 DANIEL MARKS: And then, can we get a copy at  
9 some point of what she's referencing? The extra Exhibits.

10 MICHELLE ALANIS: I can—if you want to look at the  
11 ones that are in there, they should be in there and I can have  
12 them emailed as well.

13 DANIEL MARKS: Great.

14 MICHELLE ALANIS: Or have someone run them down.

15 HEARING OFFICER: So, 1-10 of the Petitioner's  
16 Exhibits are admitted.

17 MICHELLE ALANIS: I do have objections.

18 HEARING OFFICER: Oh, you have objections, I'm  
19 sorry. Then they're not admitted, all right.

20 MICHELLE ALANIS: Sorry. [pause]

21 HEARING OFFICER: Let's go through them.

22 MICHELLE ALANIS: The first one is, the Use of  
23 Force Report. It's actually been within, I believe the other  
24 investigative reports. So, I don't really have an objection  
25 per se, but I guess I'm wondering who they're going to have—

1 HEARING OFFICER: Which number do you have?

2 MICHELLE ALANIS: Number 1.

3 HEARING OFFICER: Oh, okay.

4 NICOLE YOUNG: So, I didn't see the incident  
5 report in any of your Exhibits, so that's why we included it.

6 MICHELLE ALANIS: Let me see here. [pause]

7 HEARING OFFICER: So, the objection is what?

8 MICHELLE ALANIS: [pause] It's okay. We can let  
9 the Use of Force—I thought it was in the—because this is part  
10 of the criminal investigation which is—some of it, the report  
11 is actually included within the administrative investigation.  
12 So, I will allow Exhibit 1, that's fine.

13 HEARING OFFICER: All right.

14 MICHELLE ALANIS: As far as Exhibit 2, it looks  
15 like a portion of a medical record for the inmate—I'm going to  
16 object as to the foundation. I don't believe there's going to  
17 be anybody to testify regarding these two pages.

18 HEARING OFFICER: Okay.

19 MICHELLE ALANIS: #3 is the criminal verdict and  
20 this is irrelevant to the administrative case that we're here  
21 for today. So, I don't think it has any bearing on this  
22 administrative appeal.

23 And similar to #3, #5—I apologize, no, #5 is  
24 actually a criminal complaint for the inmate. Again, this was  
25 the criminal complaint for the inmate, which I'm assuming

1 brought him into prison. It's not relevant to—we know we're  
2 dealing with a prison and inmates. They're obviously in there  
3 for some reason or another. So, I don't think that's  
4 relevant.

5 And the same objection to 4 was the objection I had  
6 to #2, it just looks like a portion of a medical record.

7 I don't have an objection to 6, 7.

8 And, I believe #8, the video of #8, let me see the  
9 reference here. I don't know if the Hearing Officer has had  
10 the opportunity to review these.

11 HEARING OFFICER: No, I have not.

12 MICHELLE ALANIS: Okay. I believe it's #8, it  
13 says, Video Clips of Incident and when I looked at it,  
14 someone's actually gone in and made comments on the video.  
15 They're slides. So, I'm just objecting at this time to the  
16 foundation of whose prepared this particular video. We've  
17 produced a video of the incident. We've produced a video of  
18 another—another video that was requested and there's no  
19 notations on those videos.

20 HEARING OFFICER: All right. All right.

21 DANIEL MARKS: Do you want me to argue it?

22 HEARING OFFICER: Do you want to be heard? Yeah.

23 DANIEL MARKS: Yeah. So, first of all, on the  
24 medical record, completeness, they can always add—completeness  
25 isn't a valid objection.

1 First of all, can we have an Exclusionary Rule  
2 because I don't want my arguments to then—I think they have a  
3 witness sitting here. Can we have the Exclusionary Rule?

4 MICHELLE ALANIS: We do, he's the first witness,  
5 that's fine.

6 HEARING OFFICER: Sure. Go out in the hallway and  
7 we'll get you in a minute.

8 DANIEL MARKS: So, [inaudible] Your Honor, so  
9 the same AG's Office that's doing this obviously prosecuted my  
10 client, it was a not guilty verdict.

11 HEARING OFFICER: Correct.

12 DANIEL MARKS: So, they can't—if you hand a  
13 document to one AG, I don't think that you know, counsel here  
14 can say, hey we don't have it. So, for instance, on the  
15 videos, there were videos that they produced, the State, there  
16 were videos that were exchanged during the criminal trial that  
17 were slowed down and that had information that was shown in  
18 that trial to the jury. There's no reason why you can't have  
19 the same information, but if they have a real legitimate  
20 objection, we can deal with that at the time and lay the  
21 foundation.

22 These are all things they've had for months. And,  
23 nothing is altered, we're just—there's like, highlighting,  
24 slow down. There's an issue about how many—in the reports,  
25

1 they say he never took his hands off the wall. We have a  
2 video that shows, he took his hands off the wall 14 times.

3 They have a video saying there was excessive force,  
4 presumably he was beaten to a pulp, or that it was inhumanity  
5 to a prison. Inhumanity you would think of as like,  
6 yesterday's case, cruel and unusual punishment. Torturing  
7 somebody to death.

8 We have a medical record saying basically he didn't  
9 have a scratch. I would think you would want all that to make  
10 an intelligent decision in this case. Everything they have is  
11 probably coming in. I'm not sure why they're objecting.

12 A lot of our evidence goes to rebut what we think  
13 are false and misleading reports filed by the Warden, filed by  
14 the IG's Office. They terminated him for false and misleading  
15 report. We're going to show you that numerous, the high-level  
16 people in the State, including the Warden filed a false  
17 report. Is that knowingly? Was she ever prosecuted? Was she  
18 fired? But, certainly you can't fire-if the standard is,  
19 these reports don't make any sense and we'll show you that,  
20 how do you terminate somebody and prosecute him for filing a  
21 report? At the end of this thing, you're going to see his  
22 report is going to be a lot cleaner and closer to the facts  
23 than some of the reports of the people they used to prosecute  
24 him. So, I would think you'd want to see all that because,  
25 for instance-



1           Like, when you're a young lawyer, you go, oh should  
2 this brief be two pages, three pages, 30 pages? You know, it  
3 depends. It is Supreme Court, is it District Court? You  
4 know, it used to be some Judges that were like, I'm not going  
5 to read more than two pages.

6           We're going to show you that he did a report in  
7 context of what he did 100 times over a nine year career and  
8 his report is more accurate than the reports they're using to  
9 fire him. So, I think you'd want to see all that and then  
10 make your decision.

11           HEARING OFFICER:     I've been doing this for some  
12 time now and I just believe that everything should come in. I  
13 mean, I really do. I may not consider everything, I may not  
14 consider it relevant. It's not a jury trial. It's just me.  
15 And so, and that way, if it goes up beyond me, then we have  
16 the foundation of everything that Mr. Levine—I'm sorry, not  
17 Mr. Levine, Mr. Marks wanted to get in. I'm used to your  
18 partner there. And, everything you want to come in.

19           MICHELLE ALANIS:     I understand, I just have a few  
20 responses because some of that is inaccurate. Our office is  
21 comprised of several DAGs. So, just because there was a  
22 different Deputy Attorney General prosecuting that case, it's  
23 not like we all share—we all have the same cases.

24           So, and specifically the personnel files are  
25 actually blocked off from the other people in our office. So,

1 to say that everything was in their possession, he's relying  
2 on Exhibits that were used in a criminal trial, that actually  
3 have date stamps from the criminal trial.

4           So, it's just—to me, I don't have an issue with #9  
5 and #10, I understand, he's slowing down the video and the  
6 other video is after the use of force. I don't believe it's  
7 relevant, but I don't have a problem with it. The one I take  
8 issue with is #8 because there's notations on the video.  
9 Those notations weren't made—that wasn't part of what was  
10 produced to Mr. Marks when he asked for the video. So,  
11 somebody's modified it. In the meantime, I don't know who  
12 that is and I'm just saying that I think they need to lay the  
13 foundation before it gets admitted.

14           HEARING OFFICER: I think it probably does too,  
15 but I'm sure, if he wants to use these, he'll explain what it  
16 is and how it got there. So, and I'll hold him to that. So,  
17 we'll hold this kind of in a [inaudible]. So, the ones you  
18 really have problems with are the medical reports which I  
19 think I'm going to let in.

20           MICHELLE ALANIS: Okay.

21           HEARING OFFICER: So, I'm going to let 1 in, 2 in.  
22 The jury verdict. It is what it is. I mean I know what it  
23 is, so I'm going to let it in. 4 is coming in.

24           MICHELLE ALANIS: I'm sorry, you said, what's  
25 coming in?

1 HEARING OFFICER: 4.

2 MICHELLE ALANIS: Okay.

3 HEARING OFFICER: Really this is a criminal  
4 complaint—I don't see any relevance to that, really, but—

5 DANIEL MARKS: It is—it will be tied up.

6 HEARING OFFICER: Nor do I see a harm in having it  
7 in either, so. I'm just going to let it in as part of their  
8 Exhibits. Do you have a problem with 6 or 7?

9 MICHELLE ALANIS: I do not.

10 HEARING OFFICER: Okay. So, they're in. 8's  
11 going to be held back and 9 and 10 is in. So, do I have that  
12 correct, I think I do.

13 DANIEL MARKS: Yes.

14 HEARING OFFICER: All right, awesome. And then,  
15 we have the State's A-H and we're keeping the other ones in a  
16 [inaudible] and we'll use them as we go along. All right.  
17 I'm glad we got through that. Anything else preliminarily you  
18 guys want to do?

19 DANIEL MARKS: No, [crosstalk]

20 MICHELLE ALANIS: Do you want me—I mean, I have  
21 objections to some of the witnesses they've identified and I  
22 don't know if they're sitting out there, so—

23 DANIEL MARKS: They're not and they won't be  
24 here until this afternoon anyway.

25

1 HEARING OFFICER: Okay. How many witnesses does  
2 the AG anticipate calling today?

3 MICHELLE ALANIS: I anticipate—

4 HEARING OFFICER: Are we going to get this done  
5 today? I hope so.

6 MICHELLE ALANIS: I anticipate five witnesses, one  
7 is telephonic if there's no—I know I had asked opposing  
8 counsel and then I forgot to email you on that.

9 HEARING OFFICER: I never have a problem with it.

10 MICHELLE ALANIS: Oh, okay.

11 HEARING OFFICER: That's fine.

12 DANIEL MARKS: Who is telephonic?

13 MICHELLE ALANIS: The telephonic testimony would  
14 be for now Warden Russell.

15 HEARING OFFICER: Okay. So, you have five and how  
16 many do you have?

17 DANIEL MARKS: We have five.

18 HEARING OFFICER: Wow, okay.

19 DANIEL MARKS: But some are short.

20 HEARING OFFICER: Okay. Well, I mean, let's hold  
21 the objections to when they're being called.

22 MICHELLE ALANIS: Okay.

23 HEARING OFFICER: I guess, it's kind of hard for  
24 me to rule on it now.

25

1 MICHELLE ALANIS: I just-sometimes I know, if  
2 there's people sitting out there and if they're not going to  
3 testify then I like to just address it now-

4 DANIEL MARKS: They're not-

5 MICHELLE ALANIS: --but he said that they're not.

6 DANIEL MARKS: --they won't be here until this  
7 afternoon.

8 MICHELLE ALANIS: So, that's fine.

9 HEARING OFFICER: Oh, okay. Awesome. So, I  
10 suppose you both could give me an opening statement, if you'd  
11 like or you could waive that and get right to the witnesses,  
12 but whatever you'd prefer.

13 MICHELLE ALANIS: I'm going to go ahead and do an  
14 opening statement.

15 HEARING OFFICER: Okay. I have read the briefs.

16 MICHELLE ALANIS: Okay. I can start? Okay.

17 HEARING OFFICER: You may proceed.

18 MICHELLE ALANIS: Okay. Hearing Officer, this  
19 matter is fairly straightforward. Jose Navarrete was a  
20 correctional officer with NDOC assigned to Southern Desert  
21 Correctional Center. He was dismissed from State service in  
22 2017 for permitting the unnecessary use of force and for  
23 submitting a false and/or misleading report on the use of  
24 force and this incident.

1           On March 16, 2017, a Specificity of Charges was  
2 issued to Mr. Navarrete identifying various violations, both  
3 under the Nevada Administrative Code, Sections 1, 10 and 21.  
4 Specifically, that was for activity which is incompatible with  
5 the conditions of his employment, dishonesty and any act of  
6 violence which arises out of or in the course or the  
7 performance of his duties.

8           He was also charged under NDOC's Administrative  
9 Regulation 339 and specifically for violations regarding  
10 knowingly providing false and misleading statements. And the  
11 unauthorized use of force—willfully employing or permitting  
12 the use of force.

13           These charges, under AR 339, are serious charges and  
14 specifically, the false and misleading statements is a Class V  
15 Offense which calls for a dismissal upon the first offense.  
16 The other violation under AR 339 is a Class IV to V offense,  
17 which means again, it can also lead to dismissal upon the  
18 first offense.

19           These are serious infractions under NDOC's policy.  
20 The evidence and testimony today is going to show that on  
21 October 9, 2016, at approximately 6:45 AM, both Officer Valdez  
22 and Officer Navarrete were assigned to the search and escort  
23 post. They were conducting searches outside of the culinary,  
24 following the breakfast meal. Inmate Norales was allegedly  
25 randomly selected for a search.

1           He was put on the wall with several other inmates.  
2 Although those inmates were released after their pat downs,  
3 Inmate Norales was left on the wall for a minimum of 11  
4 minutes. We can see that the evidence will show that Valdez  
5 became increasingly agitated while Navarrete watched what was  
6 going on but never deescalated or intervened in that  
7 situation.

8           Ultimately, a use of force results where Valdez  
9 comes up behind the inmate, pushes him into the wall and  
10 places his arm around the inmate's neck, taking him down to  
11 the ground.

12           The evidence will show that an investigation was  
13 conducted and the allegations of misconduct were sustained.  
14 Mr. Navarrete was aware of NDOC's policies and procedures when  
15 he started his employment. He knew that these were violations  
16 of policy. He knew that the force that was placed on Inmate  
17 Norales was outside of NDOC's Policy and was not authorized.

18           The issue for this Hearing Officer to decide is  
19 whether or not there was just cause for Mr. Navarrete's  
20 dismissal from state service. And, NRS 284.385 allows the  
21 appointing authority to dismiss an employee when the  
22 appointing authority considers that the good of the public  
23 service will be served thereby. We just have to show that the  
24 dismissal was with just cause.

1 I'd like to point out that again, we recently have  
2 new Supreme Court decision in the O'Keefe case which lays out  
3 the Hearing Officer's steps. There's a three-part test. I  
4 won't go through all the specific steps.

5 HEARING OFFICER: I'm very familiar with it.

6 MICHELLE ALANIS: We probably argued that ad  
7 nauseum at this point.

8 HEARING OFFICER: Right.

9 MICHELLE ALANIS: But first, obviously we have to  
10 see whether or not, de novo, if he engaged in that conduct.  
11 We believe the evidence will show that there's substantial  
12 evidence supporting that. The second step is whether or not  
13 this was serious. Again, we believe that the evidence will  
14 show these were serious violations. And third, is whether the  
15 appointing authority believed the good of the public service  
16 would be served by this dismissal. The evidence today, with  
17 the testimony of the witnesses will show that this in fact  
18 served the good of the public and it was in the best interest  
19 of the State.

20 We are entitled to dismiss an employee both under  
21 NAC 284.646(1)(a) that allows an appointing authority to  
22 dismiss if we've adopted rules and policies authorizing the  
23 dismissal of an employee for such cause. We have adopted  
24 rules. That's what AR 339 is for. So, we are entitled to  
25 dismiss under NAC 284.646(1)(a).



1           We also have authority under 284.646(1)(b) which  
2 provides that an appointing authority may dismiss an employee  
3 for any cause in NAC 284.650 if the seriousness of the offense  
4 warrants such dismissal. And, progressive discipline is not  
5 needed in those situations. Allowing or permitting the use of  
6 excessive force, as well as submitting a false or misleading  
7 statement, are both serious offenses which warrant a  
8 dismissal.

9           The evidence and testimony today will show that  
10 there was substantial evidence in the record supporting NDOC's  
11 decision to terminate and we would ask that NDOC's decision to  
12 terminate the employee is upheld.

13           HEARING OFFICER:     Great, thank you.

14           DANIEL MARKS:        Your Honor. A couple of things  
15 she said are just—with all due respect, just not true. And  
16 you read our brief. I don't want to get—I'm not adding, I  
17 don't want to get into like, arguments on procedure unless  
18 it's really germane, okay.

19           The standard is preponderance of the evidence, under  
20 Nasserri [phonetic] and that's common sense. Preponderance, as  
21 we tell juries is what's more likely than not. What is, you  
22 know, the tip of the scale. If they can't prove this happened  
23 more likely than not, they lose. They have the burden of  
24 proof. It's not substantial evidence.

1           If you read Nasser and O'Keefe, it's preponderance  
2 and de novo. If they prove it happened then we may or may not  
3 get to Steps 2 or 3. We'll save that for another day, whether  
4 we need progressive discipline. Our case is, it didn't happen  
5 and they can't prove it. So, if they don't prove it, then we  
6 should prevail. And you don't get to substantial evidence,  
7 you don't get to progressive discipline. But, you have to  
8 read O'Keefe and Nasser together.

9           So, when she keeps saying substantial, the law is  
10 preponderance. Is it more likely than not that it happened.  
11 I think that's clear cut by the—from the Supreme Court. So, I  
12 don't think we should get into a procedural semantic game.

13           The 90-day Rule. Let's say you're in court and it's  
14 a Motion to Amend, which we know is liberally construed, but  
15 it's not 100%, it's not a rubber stamp, it's not an amendment.  
16 Just because you say you want to amend, you have to ask the  
17 Court and you have to, depending on the Judge, have some good  
18 reason.

19           The record they produced will show, they asked for  
20 these extensions in a bunch of cases and all they said is,  
21 it's at the AG Review. They didn't give any reason that would  
22 be just cause, that as a Judge, a lawyer, anyone practicing  
23 knows from, you know, your first case when you got to go in  
24 front of a Judge and give good cause.

1           You can't just show up and say, I'm busy. There has  
2 to be some good cause. The evidence is going to show that  
3 they turned this over, apparently to criminal investigators  
4 within three days. They rushed to judgment. They had  
5 concluded, at least their position of what they thought he did  
6 within three days.

7           So, the idea that they couldn't get it done within  
8 90 days, the evidence, in their own record will belie what  
9 they're saying. Because they didn't do a full and complete  
10 investigation. I think at the end of today, you're going to  
11 see from our case, after three days, they hadn't interviewed  
12 the prisoner, they hadn't watched all the videos. They had  
13 incorrect information and yet, they turned it over to the IG  
14 saying they thought there was a criminal charge and then 90--  
15 you know, right before the 90 days were running, they go it's  
16 still with the AG, that's their excuse for not doing the  
17 Specificity of Charges.

18           So, I think when the evidence comes out today,  
19 you're going to see, they didn't meet the just cause--the good  
20 cause standard that the Legislature required. We've given the  
21 Legislative History. If the Legislature wanted any time you  
22 wanted to extend, you just said I want to extend and it was no  
23 cause or you didn't have to convince somebody of cause, then  
24 they wouldn't have written the reg as they wrote it.

1           They wrote it saying, 90 days, they shouldn't have  
2 state money being wasted. They shouldn't have the state  
3 employee being in limbo. You have to come up with something.  
4 We briefed what other courts or other jurisdictions have said  
5 is a good cause for extension. Some unpredictability. You  
6 know, I guess you could have a death in the family. There's a  
7 lot—we've all gone to court and tried to convince Judges of  
8 good cause, I'm sure you've done it yourself. You just can't  
9 show up.

10           If you look at the documentation they submitted to  
11 the Director for good cause, they're only statement, they did  
12 a bunch of them at the same time. They didn't make it  
13 specific to this case, which is required and all they said,  
14 it's at the AG's Office, which is them.

15           So, it's within the State—just different people  
16 looking at it. I think you would conclude at the end of this,  
17 that doesn't meet the regulation of good cause.

18           Now that the procedural wrangling is over, let's  
19 talk about the substance. Jose Navarrete was a nine year  
20 Veteran of the Department of Corrections. He had an excellent  
21 record in spite of their, you know, Friday filing of these  
22 inmate grievance, he'll explain the whole inmate grievance.  
23 He had no prior discipline.

24           He had shown bravery. He was actually attacked in a  
25 cell and attempted to be choked and you know, and luckily he

1 wasn't hurt. But he—he you know, kind of knew—they don't want  
2 you to know how bad the inmate was, well you have people in  
3 there from a DUI which may be someone had, you know, a drink  
4 at a Christmas party and killed someone, I think that's  
5 different than chasing someone with an axe or committing  
6 murder. There are people there that are life without parole  
7 in our society, maybe [inaudible] of someone that's not a  
8 criminal different than life without parole, attempted murder,  
9 rape, those kinds of things. So, I think it kind of is  
10 relevant who you're dealing with, in terms of what's going on.

11           The job is search and escort, as it says, is to  
12 escort the prisoners from the culinary and search them. The  
13 reason you search them—and again, he doesn't write the rules.  
14 For nine years, this is what he's been doing. He didn't wake  
15 up that day and decide to do things differently. For nine  
16 years that he dealt with search and escort over his career,  
17 you search them because they have weapons. They make shanks.  
18 They're are weapons that can kill people in the yard, that can  
19 kill inmates and that can kill officers.

20           They steal food out of the culinary. Now, to us,  
21 what is stealing food? That sounds kind of like a joke. You  
22 know, like back to, you know, high school, bringing snacks to  
23 class, but no they trade that food for guns. They trade that  
24 food for drugs. I know you've done other prison cases, but we  
25

1 have to kind of make the record. It's not a joke that you  
2 take food out.

3 So, the officers are trained, if somebody steals  
4 food, I'm not saying that you, you know, bring them up on  
5 charges, but you take away the food. You throw it away.  
6 They're searching for that food.

7 They're also searching the inmates—believe it or  
8 not, there's drugs in the facility. They're searching the  
9 inmates for drugs and the evidence is going to be this inmate  
10 had a history of drug interaction.

11 So, that's his job. The evidence is going to be,  
12 there was no animus towards Ricky Norales. Jose had been on  
13 graveyard shift like before and had just been transferred back  
14 to days. So, he was trying to get to know the inmates.

15 He will tell you, they're outnumbered—you'll see in  
16 the video, there's what, 200-300 to 2. So, unless you get to  
17 know these guys, unless you sort of, in a weird way, try to  
18 calm them and befriend them, it's kind of a weird  
19 psychological component, you can't really use force, you're  
20 going to be killed. So, you have to use a weird psychological  
21 balance to try to keep order there, that Jose will explain.

22 This was a total random search and pat down. There  
23 will be no evidence that they can produce that's seen in the  
24 record that he was ever—that Norales was chosen for any  
25

1 reason. There's no evidence that Valdez had any animus. Jose  
2 will testify, he had no animus, he didn't know the guy.

3           You will see from the video, most of the inmates  
4 take the position high hands, high on the wall, stay on the  
5 wall and let the pat down go. You will see from the video,  
6 Norales never has his hands high above his head. He has his  
7 hands at his chest which is not the proper position. He's  
8 fidgeting. He keeps taking his hands off the wall when he  
9 thinks the correctional officers aren't looking at him.

10           The video will show, he took his hands off the wall  
11 about 14 times. He's constantly turning his head and  
12 fidgeting, which Jose will tell you is a sign something is  
13 going on because you're supposed to just put your hands on, do  
14 the pat down and it's seconds and you're gone. There's an  
15 inmate right to the left on the video who is a huge guy, but  
16 he does the position, kind of knowing hey, this is the  
17 routine, he's patted down and he's gone.

18           You will see the difference in the demeanor and body  
19 language of Norales from the prisoners to his right and left  
20 and how they're trying to get them going.

21           The last thing Jose will testify--the last thing he  
22 wants is what happened here. They were totally outnumbered in  
23 the yard. They were totally short-staffed. Any time you  
24 discipline or do something like this, you have to call back-

25

1 up. You have to take the prisoner to the shift commander.

2 That leaves people less--having less guards in the yard.

3 Obviously, as a correctional officer, he's very  
4 conscious of his other correctional officers being killed or  
5 injured by being outnumbered. So, he will testify, the last  
6 thing you want to do is create a problem, but you have to do  
7 your job. So, while they were patting down Morales, they  
8 found contraband. He had stolen food from the culinary. And  
9 you'll see Valdez throw that away.

10 So, that justifies continued pat down. For whatever  
11 reason, the state video has no audio. And they--so, they fired  
12 him and they basically made conclusions about what happened  
13 without an audio. So, the only people that really heard the  
14 audio, or heard what hap--what was said was Norales who never  
15 showed at the criminal trial, I don't know if he's going to  
16 show up today but he never showed at the Valdez hearing.  
17 Valdez and Jose.

18 Jose will tell you that the inmate was non-  
19 compliant. He was cursing. He was saying, you're not going  
20 to touch me. You're not going to pat me down. He said, what  
21 are you a fag? What are you doing? I'm not going to follow  
22 the rules, I'm not going to listen.

23 Now, if Jose was a bad--the sad thing about this is,  
24 if he was a bad corrections officer, he would've just said,  
25 fine, go, we found the food. You're not supposed to take out



1 food, don't do it again and send him down the road to the next  
2 guy. He will testify, that's not the way you're supposed to  
3 do corrections. If you have a guy that's telling you, you  
4 can't pat me down, I'm not going to follow your rules, I'm not  
5 going to listen, you got to try to calm him down. You've got  
6 to try to counsel him. You will see his head fidgeting.  
7 That's a sign he could've been on drugs. His body was moving.  
8 His hands were off the wall. He wasn't listening to commands.

9           The only way to control 300 people when you're two  
10 is to make them follow the rules. It created more problems  
11 for Jose to do that, but he was trying to honestly do his job  
12 correctly. He wasn't trying to hassle this one inmate. And  
13 you can see that because you'll see the difference in the body  
14 language and the hand movements between Norales and the other  
15 inmates.

16           The was on the side, trying to counsel the inmate.  
17 Hey, calm down. Hey, you're going to be okay. Hey, you've  
18 got to follow the rules. That's what he will testify he's  
19 saying. They don't have any of that because there's no audio.

20           Then we get into the actual rules, there isn't a  
21 rule about interceding in force. The rule is, if you see use  
22 of force, you're to report it. You can't intercede,  
23 especially in these circumstances. The evidence will be, if  
24 one correctional officer tries to stop another, you're going  
25 to have a prison riot, you're going to cause a security

1 breach. You can't do it, absent maybe the guy taking a  
2 baseball bat and you try to stop it.

3 In this situation, of counseling on the wall, you  
4 cannot intercede and stop another person. You have to be a  
5 team and unified. Remember, this isn't violence of hitting  
6 the guy, kicking the guy, taking a weapon and hitting him,  
7 taking a bat and hitting him. It's not a pepper spray where  
8 he pulls it out and you can say, hey wait man, stop.

9 The evidence is going to be and the testimony will  
10 be that when the inmate was not compliant, it was under 11  
11 minutes. They're claiming 15, 16 minutes on the wall, I don't  
12 think they watched the whole video. The whole video is 16  
13 minutes. The evidence is going to be, he's on the wall for  
14 the 10 ½ minutes, they weren't on him the whole time. They  
15 were dealing with other inmates, if they were randomly  
16 searched.

17 When the inmate kept taking his hands off the wall,  
18 14 times, refused to listen to commands, Valdez, not Norales,  
19 made the decision to cuff him up. He said, I'm going to cuff  
20 you up. You cuff them up and take them to the Sergeant.  
21 Cuffing up is not an excessive use of force by definition.  
22 It's allowed when an inmate is non-compliant. It's not  
23 considered use of force.

24 You will see in the video that as Valdez goes to do  
25 that and Navarrete will explain what Valdez was telling the

1 inmate, the inmate turned his head, you will see him move his  
2 shoulder, turn his head slightly in slow motion and resisted  
3 the cuffing.

4 Valdez attempted, unartfully, to take him down,  
5 shoulder—it was not a choke hold and you'll see that on the  
6 video. He took him down. They rolled and tussled. If the  
7 inmate was not resisting, they wouldn't have tussled some 10  
8 feet off into the area. You will see them go from the wall  
9 all the way back about 10-12 feet. That's an inmate not  
10 complying.

11 That's what the evidence will be. If he was  
12 complying, he would've gone straight to the ground. If Valdez  
13 really had a choke hold and took him down, he would've been  
14 down right where he was. Instead, they tussled back some 10-  
15 12 feet. You'll be able to see that.

16 Another Officer [inaudible], was going to go to  
17 help. He saw Jose was closer. Jose went to help. The first  
18 time Jose lays a hand on the inmate is to help Valdez cuff  
19 him. So, clearly, there's no excessive force. He doesn't  
20 touch him on the wall. He doesn't lay a hand on him.

21 You will see the rule doesn't say intercede. It  
22 certainly doesn't say intercede to prevent a cuffing. There's  
23 no excessive force by Jose. The rule isn't permitting  
24 excessive force. It's using excessive force. Even if it was  
25

1 permitting, he didn't permit it. He believed Valdez was  
2 legitimately cuffing him.

3 If you disagree with that, you bring the inmate to  
4 the Sergeant and you discuss it with your supervisors later.  
5 One correctional officer can't, in that scenario, stop another  
6 correctional officer; otherwise there will be chaos in that  
7 yard. You can't expect Jose to do that.

8 So, we don't believe they're going to prove by a  
9 preponderance of the evidence that Jose never used excessive  
10 force in that scenario. We'll have officers to say, they  
11 would've done the same thing. There's nothing you can do.

12 Interestingly enough, after-after Jose cuffed him,  
13 or Valdez cuffed him and Jose aided, they call the shift  
14 commander and you'll see a cart—a medical cart come with the  
15 shift commander. That medical cart had a video and audio.  
16 They refused to produce that in the Valdez hearing and that  
17 was the subject of our motion and they refused to produce that  
18 in Jose's file, claiming it was not part of the investigation.

19 You have to take into account, you know, how good  
20 was the investigation if that wasn't part of it? What's  
21 interesting there is, the inmate says, oh I had a concussion.  
22 He's just obviously lying because the medical evidence is he  
23 was fine. He says, you should train your officers better. I  
24 just played your officers. You should teach them or train  
25 them better. They're going to pay for my kid's college. And

1 then you can hear him laughing a crazy laugh in the cart, all  
2 the way back to the infirmary.

3 That obviously was withheld until Judge [inaudible]  
4 ordered it, I think the day before--

5 MICHELLE ALANIS: I'm going to object. I don't  
6 know what the--we're here on a different hearing, so.

7 DANIEL MARKS: But you ruled in the Valdez case  
8 certain rulings and I think you never had--I think it's  
9 relevant that they had that video and they never produced that  
10 video.

11 MICHELLE ALANIS: The video was produced in this  
12 case. You've already ruled on this issue and I don't mean to  
13 interrupt his opening but we're kind of going in another land.

14 DANIEL MARKS: Okay, that's fine but I think  
15 the point is, if the inmate said, I played your officers and  
16 the inmate was laughing and the inmate wasn't hurt, it's hard  
17 to prove there was excessive force. So, I think, you have to  
18 take the whole--you have to take it all into account. You  
19 can't just look at--

20 MICHELLE ALANIS: He has it. It's in evidence.

21 DANIEL MARKS: --a second on the wall--

22 HEARING OFFICER: I think what she's objecting to  
23 is your characterization of them hiding evidence--

24 MICHELLE ALANIS: Right.

25 HEARING OFFICER: --and other [crosstalk]

1           DANIEL MARKS:           Well, it's true but okay, I'll  
2 let you deal with that later. The point is, they didn't  
3 produce that in your original file.

4           MICHELLE ALANIS:       [crosstalk]

5           DANIEL MARKS:           They didn't produce it and it's  
6 clearly an element of exculpatory evidence. Jose—also, Jose  
7 then goes back to work. So, let's get the report right.  
8 Because you have to look at sort of the holistic approach to  
9 this institution and what they're doing.

10           If these reports are as big a deal as now they want  
11 to make them, you would say, hey go write your report. We're  
12 relieving you, go write your report. Jose then has, you know,  
13 200 other inmates coming from another unit and he'll explain,  
14 inmates coming back and forth for morphine. Back and forth.  
15 So, he doesn't do his report right away. He does his report  
16 4-5 hours later. He did his report and again, to me, is an  
17 issue of what is the standard report. Jose didn't file what's  
18 called a Use of Force report. He filed the normal report that  
19 he's filed hundreds of times before. He did it in the same  
20 way that he did hundreds of times before. Valdez had to do a  
21 Use of Force because the determination by the shift commander  
22 was that Valdez used force. So, there's a different report  
23 for Use of Force, than for not—you know, just regular  
24 observance. They had Jose do the observance report, not the  
25 Use of Force report.

1           He will testify he—he put in the report what he  
2 perceived. They're accusing him of covering up a crime. He  
3 didn't believe he used force. He didn't honestly believe a  
4 crime was committed based on these facts. He did the normal  
5 reporting in the system that he did, always. He sent the  
6 report to his Sergeant. The Sergeant approved it.

7           Jose will testify that his normal reporting is to  
8 send it up the chain of command and to say, is there something  
9 you want me to add or is this good enough? Kind of like, in  
10 school hey you know, is it a two-page paper? Is it a one-page  
11 paper? Not everything is a 30-page paper.

12           So, he sent it up to his Sergeant. Hey, is this  
13 what you need? Do I need anything more? He never thought he  
14 was under investigation. He wasn't, when this happened told,  
15 you know, go home or go to the office, or now you're being  
16 interviewed, it was no big deal at the time to him. Not that  
17 it wasn't serious, but he didn't perceive that he was in any  
18 jeopardy of losing his job or certainly not being charged with  
19 a crime, so he did his report and he did it about five hours  
20 later. He did it based on what he perceived he had watched  
21 the video, I believe in the culinary. He did have access to  
22 watching the video, no audio. I think it's the video that  
23 they had.

24           It was no big deal at the time. He certainly didn't  
25 knowingly conspire, he didn't consult Valdez—actually called

1 him and said, you know, stuff to him and Jose said, you know,  
2 do your own report. He didn't conspire with Valdez. Their  
3 two reports are not even alike. He honestly did his report.  
4 He can't be terminated unless he knowingly filed a false  
5 report and they have nobody to testify that he knowingly went  
6 out to file a false or misleading report. He gave the honest  
7 story.

8 He's been pretty consistent throughout all these  
9 proceedings and even, you'll see from the investigation, what  
10 he told the investigators. He's been very consistent as with  
11 [inaudible]. For whatever reason, the state rushed to judge.  
12 Within three days, they turned it over to criminal  
13 investigation. They did that before they did a full and  
14 complete investigation.

15 For whatever reason, they just don't want to admit  
16 they didn't do a complete investigation. They rushed to  
17 judgment. They don't want to admit there isn't a  
18 preponderance of the evidence that Jose used excessive force  
19 and there isn't a preponderance of the evidence that he  
20 knowingly made a false or misleading report.

21 Assuming they can't prove that, you don't have to  
22 get to parts 2 and 3 of O'Keefe, he should be reinstated with  
23 full back pay. That's what we expect to prove, Your Honor.



1 HEARING OFFICER: All right. All right. Do you  
2 want—do you want to take a break or do you want to roll right  
3 into it?

4 DANIEL MARKS: Let's roll because we have  
5 people this afternoon we subpoenaed.

6 MICHELLE ALANIS: Yeah, I don't—I think we're good  
7 to start with our first witness.

8 HEARING OFFICER: Sure.

9 [pause to get witness]

10 DANIEL MARKS: Is there coffee in the building?

11 HEARING OFFICER: I brought my own. I don't  
12 think—I've never seen any.

13 DANIEL MARKS: I still have some but in case I  
14 run out.

15 NICOLE YOUNG: You're just going to have to  
16 wait.

17 HEARING OFFICER: I think I looked last time I was  
18 here last week and I did not find any.

19 DANIEL MARKS: Okay. I know Panera is across  
20 the street.

21 HEARING OFFICER: Yeah. [pause] Thank you. The  
22 Exhibits up there are fine? Where did they go?

23 MICHELLE ALANIS: Oh, I think they were—

24 NICOLE YOUNG: So, are we going to get a copy  
25 of Exhibits J and L?

1 MICHELLE ALANIS: I haven't had the chance to  
2 request or if we could make a copy out of that book. I don't  
3 know if the Hearings Division will allow us?

4 HEARING OFFICER: You want me to make a copy for  
5 them?

6 MICHELLE ALANIS: I guess we can do that.

7 HEARING OFFICER: Is that okay with you?

8 MICHELLE ALANIS: Can we take a-

9 DANIEL MARKS: Are you using them with this  
10 witness?

11 MICHELLE ALANIS: I don't believe so. So, if we  
12 want to do that on the next break.

13 HEARING OFFICER: Next time we take a little  
14 break, I'll do it, is that okay?

15 DANIEL MARKS: That's fine.

16 HEARING OFFICER: All right. If you need them,  
17 we'll take a break if you want them, but otherwise.

18 MICHELLE ALANIS: I don't anticipate it, but-

19 HEARING OFFICER: Yeah, you never know. Could you  
20 raise your right hand?

21 ROD MOORE: Yes sir.

22 HEARING OFFICER: Do you solemnly swear that the  
23 testimony you're about to give in this hearing will be the  
24 truth, the whole truth and nothing but the truth?

25 ROD MOORE: I do.

1 HEARING OFFICER: All right sir, thank you. You  
2 may proceed ma'am.

3 MICHELLE ALANIS: Can you please state and spell  
4 your name for the record, please?

5 ROD MOORE: Sure, it's Rod Moore. R-O-D, M-  
6 O-O-R-E.

7 MICHELLE ALANIS: And, Mr. Moore, where are you  
8 employed?

9 ROD MOORE: I'm employed with the Department  
10 of Corrections, inside the Inspector General's Office.

11 MICHELLE ALANIS: How long have you been employed  
12 with NDOC?

13 ROD MOORE: Approximately 28 ½ years.

14 MICHELLE ALANIS: And you said that you're in the  
15 Inspector General's Office, what is your current position?

16 ROD MOORE: I am the Northern Supervisor in  
17 the Inspector General's Office. Supervisory Criminal  
18 Investigator is my official title.

19 MICHELLE ALANIS: How long have you been the  
20 Supervisory Criminal Investigator?

21 ROD MOORE: Probably since 2010.

22 MICHELLE ALANIS: And, how long have you been with  
23 the Inspector General's Office or assigned to that position?

24 ROD MOORE: 2005.  
25

1 MICHELLE ALANIS: So, with my quick math here, you  
2 didn't spend the entire 28 ½ years of your career with NDOC in  
3 the Inspector General's Office, right?

4 ROD MOORE: No, I did not.

5 MICHELLE ALANIS: What did you do prior to the  
6 Inspector General's Office?

7 ROD MOORE: I was a Correctional Officer,  
8 starting in 1990 at Nevada State Prison.

9 MICHELLE ALANIS: And, did you have any other  
10 ranks as an officer?

11 ROD MOORE: Just, I was the Facility  
12 Investigator from 1994-2005 at Nevada State Prison.

13 MICHELLE ALANIS: And, back in 1994, were the  
14 positions a little bit different within NDOC, you said a  
15 Facility Investigator?

16 ROD MOORE: It's a Warden's position. You  
17 get appointed by the Warden to that position, but I was still  
18 a correctional officer rank.

19 HEARING OFFICER: Is this up in Ely, Nevada?

20 ROD MOORE: No, Nevada State Prison, in  
21 Carson City.

22 HEARING OFFICER: Okay.

23 MICHELLE ALANIS: So, you've been trained as a  
24 Correctional Officer?

25 ROD MOORE: That is correct.

1 MICHELLE ALANIS: And, are you POST Certified?

2 ROD MOORE: Yes, I am.

3 MICHELLE ALANIS: Okay. And you've—did you  
4 receive training as an investigator?

5 ROD MOORE: Yes.

6 MICHELLE ALANIS: Was that training through NDOC?

7 ROD MOORE: Yes. NDOC and various classes  
8 and things of that nature, throughout the years.

9 MICHELLE ALANIS: Were the classes something you  
10 did on your own or through the State?

11 ROD MOORE: Both.

12 MICHELLE ALANIS: What are your duties as the  
13 Supervisory Investigator?

14 ROD MOORE: Currently, I have seven  
15 investigators that I supervise. We supervise two different  
16 sections. What we call the Internal Affair Section and the  
17 Criminal Section. The investigators are only assigned to one  
18 or the other, they don't do both. And, all the IRs that are  
19 generated through the State, if a Warden or Associate Warden  
20 wants them investigated, they will—inside of our NOTIS, our  
21 information system, they will click a button that is tapped,  
22 Refer to IG. I can go into that queue and I can see all the  
23 cases that were assigned to the IG's Office. I then have the  
24 ability to either exercise and sign it, after some other  
25 preliminary stuff and/or call the Warden or the Associate

1 Warden and see if this is something they want to handle, or if  
2 we just want to investigate it.

3 MICHELLE ALANIS: So, you mentioned a couple of  
4 different acronyms. I just want to make sure the record is  
5 clear. You said there's an IR. What is an IR?

6 ROD MOORE: Oh, sorry. It's an Incident  
7 Report.

8 MICHELLE ALANIS: And you mentioned NOTIS. Is  
9 that the Nevada Offender Tracking--

10 ROD MOORE: Nevada Information--Nevada  
11 Offender Information Tracking System.

12 MICHELLE ALANIS: Okay.

13 ROD MOORE: Tracking Information--

14 MICHELLE ALANIS: Tracking Information System.

15 ROD MOORE: Yeah.

16 MICHELLE ALANIS: NOTIS.

17 HEARING OFFICER: What was the second word,  
18 Offender?

19 ROD MOORE: Offender, yeah.

20 MICHELLE ALANIS: Offender. Nevada--

21 ROD MOORE: Nevada Offender Tracking  
22 Information System.

23 HEARING OFFICER: Thank you.

24 MICHELLE ALANIS: And so, the IR, the Incident  
25 Reports are submitted through NOTIS.

1           ROD MOORE:           Correct.

2           MICHELLE ALANIS:    Do you also investigate cases?

3           ROD MOORE:           Yes, I do.

4           MICHELLE ALANIS:    Do you investigate both the  
5 internal affairs and the criminal or just one or the other?

6           ROD MOORE:           Usually it's an internal affairs  
7 case.

8           MICHELLE ALANIS:    And, when you say, "internal  
9 affairs", are we talking about something like what we're here  
10 for today, where's there's allegations of misconduct?

11          ROD MOORE:           Yes, it would be an  
12 administrative investigation.

13          MICHELLE ALANIS:    Do you have any special  
14 certifications as an investigator?

15          ROD MOORE:           I am a Category 2 Peace Officer,  
16 certified.

17          MICHELLE ALANIS:    Any training certifications?

18          ROD MOORE:           Relevant to IAs or just in  
19 general?

20          MICHELLE ALANIS:    In general, in your position or  
21 that are relevant to your position.

22          ROD MOORE:           I've been a court certified  
23 expert in prison gangs and street gangs since 1998. I've been  
24 through numerous interview and interrogation certifications.

25

1 MICHELLE ALANIS: How many cases would you say  
2 that you've investigated?

3 ROD MOORE: Oh gosh. Well over 100.

4 MICHELLE ALANIS: And, in the 100 how many would  
5 you say are internal affairs versus criminal?

6 ROD MOORE: I would say it's probably about  
7 60/40, internal affairs.

8 MICHELLE ALANIS: Can you tell me a little bit  
9 more about the process when an internal affairs case is  
10 assigned?

11 ROD MOORE: Sure. Once I see it in the  
12 queue, inside NOTIS, I will—if we decide we are going to  
13 investigate it, as it stands now, I will send a letter or a  
14 memo to the Director of the Department of Corrections stating  
15 that, this is the employee that we're investigating. I will  
16 give the underlying charges like, unbecoming conduct, neglect  
17 of duty, that kind of thing.

18 He will in turn send it back to me. Once I get that  
19 back and the date on it that he gets that back to me, then I  
20 assign the case to one of my investigators. That's for  
21 internal affairs only.

22 MICHELLE ALANIS: Okay. And once you assigned it  
23 to the investigators, what's the general procedure at that  
24 point for them?

25



1           ROD MOORE:           I will send them an email  
2 stating that, I have assigned you this case and I will give  
3 them just a brief synopsis of what it is, in an email. Then,  
4 one of the administrative assistants will prepare a case file  
5 for me.

6           MICHELLE ALANIS:    Are there any standard steps  
7 that an investigator needs to take in an IA file, like any  
8 requirements? Do they have interview or--

9           ROD MOORE:           Yes, there's--

10          MICHELLE ALANIS:    --are there any specific steps?

11          ROD MOORE:           Yes, it's very structured in the  
12 IA or the administrative format. You have a 90-day timeclock.  
13 The investigator--we used to give--I'll schedule it out for a  
14 due date, about one month. Once the 1906 is back.

15                 Now, granted, when I had this case, the 1906 and all  
16 that did not--that wasn't part of the law then.

17          MICHELLE ALANIS:    What do you mean by "1906"?

18          ROD MOORE:           The 1906 is a form that I send  
19 the Director, who is the appointing authority, that we have an  
20 allegation of misconduct of AR 339 and we are going to  
21 investigate it with his approval.

22          MICHELLE ALANIS:    So, the 1906, is that the memo  
23 that you mentioned earlier that you send to the Director?

24          ROD MOORE:           That is correct, but at that  
25 point, SB 478 had not passed into law then. So, it was

1 basically, I will not this case but I will take a look at it  
2 in general and back then it was like, okay yeah, we're going  
3 to investigate this case. And then, once I assign it, it  
4 establishes a date of assigned and then from that date was the  
5 30-day clock is what starts, for the investigator.

6 MICHELLE ALANIS: Okay. So, in this case for Mr.  
7 Navarrete, there wouldn't be, based on what you're saying, a  
8 memo to the Director.

9 ROD MOORE: Not at that point, no.

10 MICHELLE ALANIS: This is a new--

11 ROD MOORE: At point, no.

12 MICHELLE ALANIS: --this was a new procedure that  
13 was implemented.

14 ROD MOORE: Correct.

15 MICHELLE ALANIS: So, once that deadline is set  
16 for the investigator, are there any other steps they have to  
17 take, aside from complying with that?

18 ROD MOORE: They will send the employee the  
19 alleged accused, they will send them a form, said notice for  
20 interview and interrogation. It will have the date, the time,  
21 location, who will be in the interview. What are the specific  
22 allegations being brought against them. And, once that's  
23 established, the employee will put, to be determined or who  
24 they want their rep to be, things of that nature. Then the  
25

1 employee signs it, the witness signs it, investigator signs  
2 it.

3           Once that is established and you're in the office  
4 for the interview, you have several other forms. You have the  
5 Administrative Rights Form, which is basically a Garrity,  
6 stating that no—anything said in this interview will not be  
7 used against you in any subsequent criminal proceedings. Then  
8 we have the Admonition of Confidentiality, things of that  
9 nature. Then the interview can continue.

10           MICHELLE ALANIS:       Once the investigator is done  
11 interviewing the employee, is there anything else they need to  
12 do at that point?

13           ROD MOORE:           Interview all pertinent  
14 witnesses that—that kind of stuff, then they will finalize  
15 their report and they'll get it to me. I will review the  
16 report but it's good to make changes or go back and do further  
17 follow-up. Then what I will do is I will forward it off to  
18 the Inspector General, my boss. Then, the Inspector General  
19 will then pass it on to the adjudicator.

20           MICHELLE ALANIS:       And, who is the adjudicator,  
21 typically?

22           ROD MOORE:           It all depends. Usually it's  
23 the Warden at the facility, but it could be—if it's against a  
24 Warden or Warden's administration, we can ask another Warden  
25 to do it.

1 MICHELLE ALANIS: Can you tell me—so, you've  
2 described a process for the Internal Affairs. When you  
3 review—when there's an IR and there's a potential for a  
4 criminal investigation, how is that determined?

5 ROD MOORE: Well, you have to balance it out  
6 to see if—if it involves an employee for the Department. 1,  
7 is there an established crime or a violation of the NRS and  
8 does that violation violate any of our standards in AR 339.  
9 If it doesn't and we just solely go criminal then those are—  
10 those are pretty easy. Then I just assign it. There's no  
11 forms. There's no—none of that. Then whoever is interviewed  
12 will be done under Miranda.

13 MICHELLE ALANIS: So, when you get that incident  
14 report, you're reviewing it to see whether or not you believe  
15 there's a potential for criminal misconduct and if that  
16 criminal misconduct violates a policy under the AR, then that  
17 would determine if it's an Internal Affairs investigation?

18 ROD MOORE: You could actually run both at  
19 the same time.

20 MICHELLE ALANIS: Okay. So, the criminal doesn't  
21 necessarily occur first?

22 ROD MOORE: In most cases it will.

23 MICHELLE ALANIS: If a criminal investigation is  
24 conducted first, is it then normally reviewed or included in  
25 the Internal Affairs investigation?

1           ROD MOORE:           Yes, it would. It would be if  
2 it was relative to—which it usually is, but yes, you could use  
3 that information in an administrative but you can't use an  
4 administrative in the criminal.

5           MICHELLE ALANIS:    Got it. Turning to the  
6 investigation in this case, were you aware that there was an  
7 investigation into the misconduct of Officer Navarrete?

8           ROD MOORE:           On the administrative side or a  
9 criminal side?

10          MICHELLE ALANIS:    Either or.

11          ROD MOORE:           Either or. I was made aware  
12 about, approximately the same time. I don't know all the IRs  
13 or incidents that happened down here in Southern Nevada.  
14 Yeah, I was aware that there was a use of force, criminal case  
15 being done at Southern Desert Correction Center. The  
16 Inspector General had advised me that I would be doing the  
17 Internal Affairs.

18          MICHELLE ALANIS:    And, when you say the Inspector  
19 General, who is that?

20          ROD MOORE:           That is Pamela K. Delporto.

21          MICHELLE ALANIS:    So, Pamela Delporto advised you  
22 that there would be an Internal Affairs investigation?

23          ROD MOORE:           That's correct.

24          MICHELLE ALANIS:    And, she assigned it to you?

25          ROD MOORE:           Correct.

1 MICHELLE ALANIS: Is that common for you to  
2 conduct investigation as the supervisor?

3 ROD MOORE: In this specific case, it would.  
4 I believe, if memory serves me correct, there were—there was  
5 several investigators that got involved in the criminal, in  
6 some way, shape or form. We want to make sure that there's a  
7 solid line between anything and everything from criminal to  
8 administrative. So, with a—a majority of the investigators in  
9 some way, shape or form, being involve in the criminal aspect  
10 of it, it was just cleaner to have somebody else do the  
11 administrative. So, I was assigned it.

12 MICHELLE ALANIS: So, to your knowledge the  
13 criminal investigation was being handled in South?

14 ROD MOORE: Correct.

15 MICHELLE ALANIS: And your located up North you  
16 said.

17 ROD MOORE: Correct, in Carson City.

18 MICHELLE ALANIS: And, when you were assigned the  
19 case, what did you understand this investigation to be about?

20 ROD MOORE: It was a violation of AR 339,  
21 under the Subtitle of Excessive Force, the manner in which the  
22 force was used and I believe there was also a—creating a  
23 situation where force would have to be used. That—so, if you—  
24 if your conduct somewhat initiates that use of force, when it  
25 wouldn't have regularly, that is also a violation of 339.

1 MICHELLE ALANIS: Okay. And, did you conduct an  
2 Internal Affairs investigation in this case?

3 ROD MOORE: Yes, I did.

4 MICHELLE ALANIS: Can I have you--there's a thick  
5 binder next to you. If I could have you look at Exhibit A,  
6 and it's marked on the bottom with bate stamps, NDOC 0001 and  
7 it goes to 112.

8 ROD MOORE: Okay.

9 MICHELLE ALANIS: Are you--is that the  
10 investigation that you conducted, or the investigative file?

11 ROD MOORE: [pause] Yes, it is.

12 MICHELLE ALANIS: And, if you could turn to NDOC  
13 41. Is this the--is this a report that you prepared?

14 ROD MOORE: Yes ma'am.

15 MICHELLE ALANIS: Okay and that's your signature--

16 ROD MOORE: That is.

17 MICHELLE ALANIS: --towards the bottom. [pause]  
18 As part of this investigation, did you review the video of the  
19 incident?

20 ROD MOORE: I did.

21 MICHELLE ALANIS: And, I actually have the video  
22 and I would like for you to kind of review it with me and walk  
23 me through it a little bit, if that's okay.

24 ROD MOORE: Okay.

25

1 MICHELLE ALANIS: And bear with me with this  
2 laptop. [crosstalk]

3 ROD MOORE: Sir, do you have any water? No,  
4 okay, that's fine.

5 HEARING OFFICER: This is not really my home away  
6 from home, so I don't have really--

7 ROD MOORE: No worries.

8 HEARING OFFICER: I'm sorry.

9 MICHELLE ALANIS: [pause] I apologize I didn't  
10 ask, but it's okay that I'm approaching the witness--

11 HEARING OFFICER: We're not that formal here.

12 MICHELLE ALANIS: I know, I remained seated and--  
13 ha. [inaudible]. [pause] And the video of this incident did  
14 not have any sound, right?

15 ROD MOORE: No it did not.

16 DANIEL MARKS: Just for the record, is this the  
17 video, the whole--you're going to play the whole 16 minute  
18 video without sound, or how--just can you explain what you're  
19 going to do?

20 MICHELLE ALANIS: I'm just going to play the  
21 video. I don't know that I'm going to play the entire 16  
22 minutes of it, but this is the video that I included. It was  
23 our bates number 11, 112, within the investigative file.

24 DANIEL MARKS: Correct, okay. And you  
25 stipulate it has no sound.



1 MICHELLE ALANIS: Yes.

2 HEARING OFFICER: Would you like me to pull that  
3 chair up so you can watch it as well?

4 SPEAKER: No, I think I'll be good right  
5 here. Is that good?

6 MICHELLE ALANIS: Is that okay? Can you see it  
7 okay?

8 ROD MOORE: Yeah. It's good for me.  
9 Everybody can see it?

10 HEARING OFFICER: Yeah.

11 MICHELLE ALANIS: Warden Howell, did you want to--  
12 it's up to you, I know you know--

13 SPEAKER: [inaudible]

14 HEARING OFFICER: This is what I can do, I can  
15 pull my chair over here, so that way they can see as well.

16 DANIEL MARKS: Are you going to stop it, or  
17 just tell us what you're going to do?

18 MICHELLE ALANIS: I was just going to play certain  
19 parts of it and have him describe what we're looking at in  
20 this video. I probably will stop it at times. I'm not going  
21 to play it straight through the entirety of the 16 minutes. I  
22 think that might be a little much.

23 DANIEL MARKS: [inaudible] watching closer,  
24 can--I'd like my client to get up and see what's going on.  
25

1 HEARING OFFICER: Can you see it? Do you want to—  
2 do you want to identify the time stamp?

3 MICHELLE ALANIS: I think we're fine, let's just  
4 start it.

5 HEARING OFFICER: Okay, that's fine.

6 MICHELLE ALANIS: So, if you can identify for me,  
7 what are we looking at right now?

8 ROD MOORE: What we're looking at—we're  
9 looking at inmates coming out of the culinary after they have  
10 eaten. It looks like there's a couple of inmates, several  
11 inmates that are on the wall with their hands up on it.

12 MICHELLE ALANIS: Okay. I'm just going to pause  
13 real quick, before we [inaudible]. So, you're saying these  
14 are inmates leaving the culinary, is that right?

15 ROD MOORE: Correct.

16 MICHELLE ALANIS: And, what meal was being served  
17 in the culinary at this time?

18 ROD MOORE: I believe it was a breakfast  
19 meal.

20 MICHELLE ALANIS: Okay. And, this is the exit  
21 over here?

22 ROD MOORE: That's correct.

23 MICHELLE ALANIS: Is there a different door for  
24 the entrance, when the inmates are coming in to eat?

25

1                   ROD MOORE:               I believe so. I'm not too  
2 familiar with Southern Desert, but I believe so. If they're  
3 exiting out of that one, there would be another one probably,  
4 most likely [inaudible]

5                   MICHELLE ALANIS:       And, at this point in the video,  
6 are you able to identify the employee, Mr. Navarrete?

7                   ROD MOORE:               I believe he's standing right  
8 here. That's--

9                   MICHELLE ALANIS:       This individual right here?

10                  ROD MOORE:               That one right there.

11                  MICHELLE ALANIS:       With a little--with the black  
12 hat?

13                  ROD MOORE:               Correct.

14                  MICHELLE ALANIS:       And, are you able to--you said  
15 there were inmates on the wall. Is it these guys right here?

16                  ROD MOORE:               That's correct.

17                  MICHELLE ALANIS:       And, are you able to identify at  
18 this point, I can play a little more if you need me to,  
19 Officer Valdez?

20                  ROD MOORE:               I believe he's standing behind  
21 to the right of Officer Navarrete.

22                  MICHELLE ALANIS:       To the right of Navarrete?

23                  ROD MOORE:               Yeah, right here.

24                  MICHELLE ALANIS:       Okay. And so, for the record,  
25 it looks like he's wearing maybe a gray jacket?

1                   ROD MOORE:            It's green.

2                   MICHELLE ALANIS:    Oh, okay.

3                   ROD MOORE:            Yeah, there's different shades

4 of it.

5                   MICHELLE ALANIS:    It's a little bit lighter than

6 Mr. Navarrete's jacket.

7                   ROD MOORE:            Correct.

8                   MICHELLE ALANIS:    Are you able to tell at this

9 point, how many inmates are on the wall?

10                  ROD MOORE:            I believe four to five.

11                  MICHELLE ALANIS:    And, can you tell us who Inmate

12 Ricky Norales is, who is the subject of this incident? Are

13 you able to tell from here?

14                  ROD MOORE:            I—I believe it's this

15 [inaudible] right there.

16                  MICHELLE ALANIS:    Okay. When you say—which one

17 are you pointing to?

18                  ROD MOORE:            This one right there.

19                  MICHELLE ALANIS:    Where we can see like the dark

20 hair right now?

21                  ROD MOORE:            Correct.

22                  MICHELLE ALANIS:    Okay. And, we just saw, it was

23 playing, but there was an inmate that walked off. Let me back

24 up. [pause] So, is that Officer Navarrete in the video, that

25 patted down that inmate?

1                   ROD MOORE:               I believe it is, yes.

2                   MICHELLE ALANIS:       And, what do you observe when  
3 you're looking at this video, what's happening right now?  
4 Aside from the inmates leaving.

5                   ROD MOORE:               Two things that I observed,  
6 they're checking to make sure that the inmates aren't taking  
7 food and contraband out of the culinary. And they're doing  
8 what they call a pat search. Over the clothing. Then you see  
9 the inmates, as they're walking, they're watching and seeing  
10 how they're being.

11                  MICHELLE ALANIS:       And so, just for reference,  
12 we're at about 1:10 in the video and you said, the inmates  
13 were leaving and other inmates were being patted down on the  
14 wall?

15                  ROD MOORE:               Correct.

16                  MICHELLE ALANIS:       And so now, I'm going to pause  
17 it right here at 1:33. Actually, let me go back. [pause]  
18 I'm going to start at about 1:27 into the video. How many  
19 inmates at this point are on the wall?

20                  ROD MOORE:               Two or three. I can't tell if  
21 there's one on the other side of-possibly two.

22                  MICHELLE ALANIS:       Who-where is Officer-at the  
23 1:27, can you describe what's happening with Officer  
24 Navarrete?  
25

1                   ROD MOORE:               Yeah, he's approaching Inmate  
2 Norvell, is it Norvell?

3                   MICHELLE ALANIS:       Norales.

4                   ROD MOORE:               Norales. He's approaching him  
5 and conducting a pat down search.

6                   MICHELLE ALANIS:       Okay. And that was—and  
7 Navarrete's got the black cap on and he's—can you describe,  
8 does it appear—Inmate Norales, does he have longer hair?

9                   ROD MOORE:               I believe so. Or, he will be  
10 the final one left on the wall. It's hard to decide which one  
11 [inaudible] right now.

12                   MICHELLE ALANIS:       Okay. And what is—at 1:27, what  
13 is Officer Valdez doing in this video?

14                   ROD MOORE:               It looks like he's also patting  
15 down an inmate.

16                   MICHELLE ALANIS:       A different inmate.

17                   ROD MOORE:               A different inmate, yes.

18                   MICHELLE ALANIS:       Okay. So, at about 1:30, Inmate  
19 Norales is getting patted down.

20                   ROD MOORE:               Correct.

21                   MICHELLE ALANIS:       [pause] And, at this juncture,  
22 what's happening at about 1:40?

23                   ROD MOORE:               Mr. Valdez has let his inmate go  
24 and he's standing behind Inmate—or, Officer Navarrete and  
25 they're instructing him to put his hands on the wall. In

1 fact, they're even placing their hands on his arms to tell him  
2 exactly where to put his hands.

3 MICHELLE ALANIS: Okay.

4 ROD MOORE: And then they walk away from  
5 him.

6 MICHELLE ALANIS: [pause] And at this juncture,  
7 at 2:00 in, Inmate Norales was already patted down?

8 ROD MOORE: Correct.

9 MICHELLE ALANIS: Okay. So, as an investigator,  
10 what else are you observing here in this video?

11 ROD MOORE: Well, first thing I see is they  
12 obviously singled out this inmate. They pat him down. They  
13 physically put his hands higher up on the wall. And then they  
14 knowingly and intentionally turned their back on him and walk  
15 away from him. Now, they're at four, five, 10 feet,  
16 respectively away from the inmate. They're just watching him  
17 and it looks like they're talking.

18 MICHELLE ALANIS: And, I'm just going to pause it  
19 here. We're at 2:45. When you said they turn their backs and  
20 walk away from him, why is that of significance to you?

21 ROD MOORE: If-if they turn their backs on  
22 him and he's up on the wall, to me, it would be reasonable to  
23 expect that that Inmate is not a threat or is not being-is not  
24 being non-compliant. He's doing everything that they're  
25 telling him to do.

1 MICHELLE ALANIS: And, why do you—why do you  
2 believe that?

3 ROD MOORE: Because of the degree of  
4 informality that—they pat him down, they put him on the wall  
5 and then they just turn away and walk away from him. That's  
6 not something you would do with an agitated inmate or somebody  
7 that's a threat.

8 MICHELLE ALANIS: And what about—it looks like the  
9 inmates, we're at 2:46, they were still—there's still inmates  
10 exiting the culinary, at this point, right?

11 ROD MOORE: Yes.

12 MICHELLE ALANIS: So, can you explain, they don't  
13 all come out at the same time? Do they kind of come and go as  
14 they please?

15 ROD MOORE: They usually have a time limit  
16 on there. Obviously the ones that get in there first will be  
17 the first to leave. These inmates may have been from another  
18 unit that came in late, or this is the last part of the unit  
19 that came in.

20 MICHELLE ALANIS: Now we're at about 2:59, can you  
21 describe what you see? What's happening with Officer Valdez?

22 ROD MOORE: Valdez appears to—Officer Valdez  
23 appears to be talking and exuding his voice out there, loud  
24 enough for the inmate to hear him. He's waving his arms.  
25 Officer Navarrete is to the right of the inmate. And, Officer



1 Valdez, his hands at this point, start to regularly come back  
2 and forth, back and forth.

3 MICHELLE ALANIS: And that's both of his hands?

4 ROD MOORE: Correct.

5 MICHELLE ALANIS: And, in looking at this video,  
6 we're now at 3:09, who is in closer proximity to the inmate at  
7 this point?

8 ROD MOORE: From this vantage point, it  
9 looks like Officer Navarrete.

10 MICHELLE ALANIS: And at this time, even though  
11 Inmate Norales was patted down at about 1:30 minutes in, he's  
12 still on the wall, correct?

13 ROD MOORE: Correct.

14 MICHELLE ALANIS: And, what just happened there,  
15 to your knowledge? We're at 3:00—I apologize, we're at 3:24,  
16 for the record.

17 ROD MOORE: I don't know if he picked  
18 something up. It looked like it might have been a plastic  
19 baggy with food in it or something that one of the inmates had  
20 left there. He picked it up and tried—I guess, tried to throw  
21 it in the garbage can.

22 MICHELLE ALANIS: Are the inmates provided their  
23 food in a plastic bag?

1                   ROD MOORE:                I believe—I believe so. It's  
2 been a while since I've been on the yard, but I believe  
3 they're—they get a sack lunch at breakfast.

4                   MICHELLE ALANIS:       And, when you're observing this  
5 video as an investigator, the activity that's happening with  
6 inmates leaving and the other inmates on the wall, was there  
7 anything unusual about that?

8                   ROD MOORE:               It's been my experience that,  
9 when you have a lot of inmates going back, you're singled out  
10 as an inmate. You're on the wall. You have officers around  
11 you. Nothing else is going on except the punitive action of  
12 being placed on the wall, singled out. Now you have all the  
13 inmates either jawing back at him or saying something.  
14 Unfortunately, we don't have sound on this camera, but you can  
15 tell by the actions of the inmates, from the first ones that  
16 came out. They're—they're like, this gentleman right here is  
17 looking back, he's either talking to the officers or he's  
18 talking to the inmate.

19                  MICHELLE ALANIS:       Okay. So, at 3:24, you just  
20 pointed to what appears to be, if we start at the top, like at  
21 the 12:00 hour, the third inmate--

22                  ROD MOORE:               Yes.

23                  MICHELLE ALANIS:       --coming down, clockwise?

24                  ROD MOORE:               Uh huh.

25

1 MICHELLE ALANIS: Okay. And you're saying he's  
2 looking back.

3 ROD MOORE: He is.

4 MICHELLE ALANIS: You mentioned that you have this  
5 inmate singled out. Prior to that though, when there were a  
6 few inmates on the wall, was there anything unusual about  
7 inmates being on the wall outside of the culinary?

8 ROD MOORE: No, not at all.

9 MICHELLE ALANIS: Okay. So, that was a standard  
10 procedure as an investigator that you [crosstalk]

11 ROD MOORE: Absolutely.

12 MICHELLE ALANIS: [pause]

13 DANIEL MARKS: [inaudible]

14 MICHELLE ALANIS: Okay. We're at about 3:33. Is  
15 this the movement that you're identifying that Valdez was  
16 doing?

17 ROD MOORE: Correct.

18 MICHELLE ALANIS: And, what did you observe about  
19 this gesture?

20 ROD MOORE: To me, it's a-not knowing the  
21 officer and things like that, to me that is a sign of possibly  
22 getting ready for something or being overly ready for the  
23 inmate to come off the wall. Something like that, but  
24 something-it's a-

25 MICHELLE ALANIS: [inaudible]

1                   ROD MOORE:               It's a movement that to me  
2 shows, you could be possibly ramping up.

3                   MICHELLE ALANIS:       And, just a moment before I  
4 paused it. [pause] Can you tell me the inmate—I see he's  
5 move his head a little bit.

6                   ROD MOORE:               Correct.

7                   MICHELLE ALANIS:       As an investigator, did that  
8 mean anything to you there?

9                   ROD MOORE:               He's talking back to the  
10 officer. Unfortunately we can't hear what he said, but he's  
11 talking back to the officer. Now, with him looking over his  
12 left shoulder, and primarily, that would suggest that he's  
13 most likely talking to Officer Valdez or talking at Officer  
14 Valdez.

15                  MICHELLE ALANIS:       You're talking about the inmate  
16 right now.

17                  ROD MOORE:               Correct.

18                  MICHELLE ALANIS:       I'm just going to—[inaudible] a  
19 little bit here. [pause] I know the Hearing Officer has a  
20 copy of this video, so—and you've seen it already too. So, at  
21 this point, we're at about 7:00 in and it looks like there is  
22 an additional person now. Correct?

23                  ROD MOORE:               Uh huh.

24                  MICHELLE ALANIS:       And, do you know who that is, at  
25 this point, in your investigation?

1                   ROD MOORE:               I-I do not, I cannot remember  
2 the name of that officer.

3                   MICHELLE ALANIS:       Okay but it's an officer that  
4 you see in the picture.

5                   ROD MOORE:               Correct.

6                   MICHELLE ALANIS:       And at 7:00 in, actually we're  
7 at 7:07, who do you see in this video at this point?

8                   ROD MOORE:               You will see Officer Valdez,  
9 Officer Navarrete. Officer Valdez is-has his feet crossed and  
10 he's up against the wall, next to the inmate. Officer Valdez  
11 is behind the inmate and the other officer is behind Officer  
12 Valdez.

13                  MICHELLE ALANIS:       And Inmate Norales is still-his  
14 hands on the wall.

15                  ROD MOORE:               On the wall, that is correct.

16                  MICHELLE ALANIS:       Okay. So, he's been on the  
17 wall, as far as we know in this video, for at least seven  
18 minutes at this point.

19                  ROD MOORE:               That's correct.

20                  MICHELLE ALANIS:       In your experience, did that  
21 appear to be a normal amount of time for the inmate to be on  
22 the wall?

23                  ROD MOORE:               Absolutely not.

24                  MICHELLE ALANIS:       At this point too, [inaudible]  
25 play the video again. Sorry, it looks like every time I pause

1 it, it kind of stalls. [pause] At this point, we're at about  
2 7:30 ,can you tell me what's happening in the upper right hand  
3 corner in this video?

4 ROD MOORE: It's either a group of inmates  
5 coming to the culinary or leaving. I didn't see when it was  
6 moving, what direction they were going.

7 MICHELLE ALANIS: Okay. [pause] To your  
8 knowledge, that's inmate movement in the corner?

9 ROD MOORE: Correct?

10 MICHELLE ALANIS: [inaudible] [pause] Now it  
11 looks like, you said there was another officer in view, what  
12 does that officer do now, we're at about 8:00 in.

13 ROD MOORE: He's looking at the front of  
14 that group, going to wherever they're going. I think at-even  
15 at one point, he flashes the flashlight their direction.

16 MICHELLE ALANIS: Can you describe what's  
17 happening with Valdez at about-we're at about 8:20 in.

18 ROD MOORE: Inmate is still on the wall.  
19 Inmate has his hands up on the wall. And it looks like Valdez  
20 is still primary on the inmate. Now, Officer Valdez, instead  
21 of kind of walking around, he's kind of played it off in what  
22 we call like an interview stance, or a tactical stance.

23 MICHELLE ALANIS: And, what is Officer Navarrete  
24 doing?

25

1                   ROD MOORE:               He's standing there with his  
2 hands down.

3                   MICHELLE ALANIS:       And, he's in close proximity of  
4 Officer Valdez, correct?

5                   ROD MOORE:               Correct.

6                   MICHELLE ALANIS:       I'll fast forward a bit here.  
7 [pause] [inaudible] [pause] We are at about 10:26 in the  
8 video. And at this point, at 10:30, Inmate Norales is still  
9 on the wall, right?

10                  ROD MOORE:               That is correct.

11                  MICHELLE ALANIS:       And, just walk me through what  
12 you're observing at this point, as the investigator.

13                  ROD MOORE:               I'm watching Officer Valdez, his  
14 hand movements and gestures are, he's going to come in there,  
15 push.

16                  MICHELLE ALANIS:       So, we're at 10:54 now. So, we  
17 saw—you saw Officer Valdez's arms?

18                  ROD MOORE:               Yeah, they were more consistent  
19 in going back and forth, back and forth. Officer Navarrete  
20 was up against the wall, leaning—leaning against the wall with  
21 his left shoulder.

22                  MICHELLE ALANIS:       I'm going to back this up to  
23 10:22. [pause] [inaudible] kind of fast. I'm going to slow  
24 it down. [pause] I believe [inaudible] down to, you can kind  
25

1 of walk us through, we're at 10:30 into the video. It's  
2 obviously--

3 ROD MOORE: You have a third officer who is  
4 watching the controlled movement. Officer Navarrete comes in,  
5 towards the wall. Looking down at the ground. Crosses his  
6 feet.

7 MICHELLE ALANIS: What's happening right now? It  
8 looks like--what is Inmate Norales doing?

9 ROD MOORE: Inmate Norales is--it looks like  
10 he's looking backwards. At this point, after almost 11  
11 minutes up on the wall, his--it wouldn't be an assumption, his  
12 arms are getting tired and his--

13 NICOLE YOUNG: Objection. Calls for  
14 speculation. We don't have Norales' testimony and from his  
15 report, it doesn't appear that he ever interviewed Norales to  
16 make that assumption.

17 HEARING OFFICER: I'll sustain it.

18 ROD MOORE: So, his hands are lower, than  
19 when they started out. Officer Navarrete is leaning up  
20 against the wall, it looks like almost with his feet crossed.  
21 His hands are down.

22 MICHELLE ALANIS: So, at this point, we're at  
23 10:43 and you see Officer Navarrete leaning on the wall.  
24 Inmate Norales is still on the wall. It looks like he move  
25



1 his left arm a little bit there but he's now been on the wall  
2 for an additional nine minutes, since the pat down, correct?

3 ROD MOORE: Correct.

4 MICHELLE ALANIS: And, for—you said he probably at  
5 some point was maybe talking about to the officers.

6 ROD MOORE: Correct.

7 MICHELLE ALANIS: You obviously didn't hear that  
8 right?

9 ROD MOORE: Correct.

10 MICHELLE ALANIS: Why do you say he was probably  
11 talking back to the officers?

12 ROD MOORE: He keeps his—his chin keeps  
13 coming back to approximate where his shoulder would be, that  
14 would indicate to me that he's talking to somebody.

15 MICHELLE ALANIS: And, based on your experience as  
16 a correctional officer and investigator, do inmates sometimes  
17 talk back to the officers?

18 ROD MOORE: Oh yeah, all the time.

19 MICHELLE ALANIS: Okay. Is that something that  
20 they encounter frequently in their jobs?

21 ROD MOORE: It's individualized. In my  
22 training and experience, in this situation, the inmate would  
23 be voicing out.

1 MICHELLE ALANIS: I'm just going to play back  
2 here, on the slow mode at 10:43. [pause] So, tell me what  
3 you see happening now at 10:48.

4 ROD MOORE: Officer is still up against the  
5 wall, Navarrete. Valdez comes in, pushes the inmate up  
6 against the wall. Says-puts his mouth towards his-inmate's  
7 right ear. Grabs him around the front of the neck and pulls  
8 him backwards.

9 MICHELLE ALANIS: And, watching this video, did  
10 you see any-anything that Inmate Norales did that would have  
11 resulted with an arm around the neck?

12 ROD MOORE: No.

13 MICHELLE ALANIS: And, in your experience, is that  
14 a technique that is used?

15 ROD MOORE: No, it is not.

16 MICHELLE ALANIS: So, it looks like-we started at  
17 about 10:40 or so, I believe. Valdez approaches the inmate  
18 around 10:50. I'm going to put this back to regular speed.  
19 [pause] So, for the record, it looks like at 10:48 is when  
20 Valdez begins approaching Inmate Norales, correct?

21 ROD MOORE: Correct.

22 MICHELLE ALANIS: And by the time he's on the  
23 ground, it was less than 10 seconds?

24 ROD MOORE: Oh yeah. It was a second or  
25 two.

1 MICHELLE ALANIS: Did you observe any restraints  
2 in this video?

3 ROD MOORE: No, I did not.

4 MICHELLE ALANIS: Do you know where the officers  
5 typically would keep their restraints?

6 ROD MOORE: It would either be in the front  
7 or on their rear hip, left or right.

8 MICHELLE ALANIS: And, during this video, did you  
9 see Officer Valdez reach for his restraints at any point?

10 ROD MOORE: It looked like, once the inmate  
11 was down on the ground and turned him over, it looked like he  
12 grabbed his front pocket area for a pair of restraints, for  
13 handcuffs.

14 MICHELLE ALANIS: But when we were at 10:40 and  
15 did you see any gesturing towards his restraints at that time?

16 ROD MOORE: No, I did not. Both hands were  
17 free.

18 MICHELLE ALANIS: What about Officer Navarrete,  
19 was he doing anything with his restraints?

20 ROD MOORE: No.

21 MICHELLE ALANIS: Okay. Now we're at about 11:35,  
22 it looks like Inmate Norales is on the ground, right?

23 ROD MOORE: Correct.

24

25

1 MICHELLE ALANIS: And, in your observations of  
2 this video, Officer Navarrete was present and in the proximity  
3 of this incident with Inmate Norales?

4 ROD MOORE: Yes, he was.

5 MICHELLE ALANIS: I'll fast-forward here. I think  
6 at this point, Inmate Norales is on the ground. I'll show you  
7 where we're at to the conclusion. So, we approach the end of  
8 the video at 16:00. Inmate Norales, [pause]. Okay, we're at  
9 about 15:14, can you tell me what's happening at this point in  
10 the video?

11 ROD MOORE: It looks like they've called for  
12 assistance or additional officers via the radio and this would  
13 be medical staff to triage the inmate right there.

14 MICHELLE ALANIS: In your experience, is that a  
15 standard procedure for medical to arrive on scene?

16 ROD MOORE: Yes, it is.

17 MICHELLE ALANIS: So, we have medical. I'm just  
18 going to fast-forward now that we've established whose on this  
19 cart. And medical arrived on what appears to be like a  
20 mechanical, like a golf cart, almost?

21 ROD MOORE: Extended Medical Golf Cart.

22 MICHELLE ALANIS: Okay. The video [inaudible].  
23 Can you tell me, Investigator Moore, as part of your  
24 investigation, so you reviewed the entirety of that video,  
25 right?

1                   ROD MOORE:               Numerous times.

2                   MICHELLE ALANIS:       Numerous times. And, what was  
3 your impression from that video?

4                   ROD MOORE:               My first impression was, it was  
5 a—it was excessive force, it was unnecessary force and it  
6 wasn't a move that anybody within the Department of  
7 Corrections is trained to do. And then is what I also did is,  
8 I summoned part of our training staff, a correctional officer  
9 that does the—the DTs, or Defensive Tactics instructing at our  
10 academies and in our IST classes, or In-Service Training.

11                   I didn't give him any names, I didn't give him where  
12 it was, just gave him a couple of seconds. I said, watch  
13 this. What is your impression or interpretation of it. He  
14 watched it and he goes, hmm, okay. Yeah, that never—that's  
15 something we've never trained for or we don't teach. I said,  
16 thank you. That was it.

17                   MICHELLE ALANIS:       And, when you "that's  
18 something", what are you referring to specifically that that's  
19 not what [crosstalk]

20                   ROD MOORE:               The right hand around the neck  
21 and throat area of the inmate.

22                   MICHELLE ALANIS:       As part of your—the  
23 investigation, did you have the opportunity to interview Mr.  
24 Navarrete?

25                   ROD MOORE:               Yes, I did.

1 MICHELLE ALANIS: And, I just want to go through,  
2 what do you recall, is there anything specific that you recall  
3 from the interview with Mr. Navarrete?

4 ROD MOORE: The one thing that sticks out in  
5 there is that, both officers were very adamant that the inmate  
6 was acting out in a way that could be on a scale of 1-10, be  
7 defined as a 10, being non-compliant, being verbally abusive.  
8 Things of that nature. That's what I found very odd to-to  
9 make statements like that.

10 MICHELLE ALANIS: Why did you find that to be odd?

11 ROD MOORE: Well, there's--there's several  
12 reasons. You see Officer Navarrete on both sides of the  
13 inmate, have his feet crossed and leaning up against the wall.  
14 That is not going to be something--if an inmate is at a 10 in  
15 being agitated like they said, then you're not going to be in  
16 close proximity to an inmate that is being like that,  
17 nonchalant with your feet crossed up against the wall.

18 Later on in the interview, or in the video, you have  
19 the third officer with his back to everything. That officer,  
20 if you're at a 10, that officer is going to be keyed in to be  
21 the backup for those two officers that are engaged with the  
22 inmate on the wall.

23 It just didn't--it didn't pass the test of  
24 reasonableness in my opinion. At that time, when I first  
25

1 watched the video. And the totality of everything ended up  
2 with my opinion that it was an excessive force.

3 Now, I don't like to sit back and armchair  
4 quarterback things. I try to put myself in the situation that  
5 the officer's in. So, you can establish more reasonable  
6 expectation. It's really hard—it's very easy to sit back and  
7 watch it go, we should've done this, you should've done that,  
8 at that time.

9 This was not a spontaneous use of force. This was  
10 planned. Second by second by second. Towards the end there,  
11 he was going down. That inmate was going down.

12 MICHELLE ALANIS: In your experience, what is a  
13 spontaneous use of force?

14 ROD MOORE: A spontaneous use of force would  
15 be if they went to handcuff the inmate, who was up on the wall  
16 and as soon as they approached him or went to go put  
17 restraints on him, that inmate would quickly turn on the  
18 inmate—on the officers, then you would have a spontaneous use  
19 of force.

20 MICHELLE ALANIS: So, in the video that we just  
21 watched where Officer Valdez comes up behind the inmate and  
22 appears to put his hands on his back and almost push him a  
23 little bit towards the wall and then put his arm around the  
24 inmate's neck. So, at that point, he's already applying  
25 force, right?

1                   ROD MOORE:               Correct.

2                   MICHELLE ALANIS:       Just prior to that, did you see  
3 the inmate doing anything that would require that type of  
4 response?

5                   ROD MOORE:               No, not at all.

6                   MICHELLE ALANIS:       Do you recall Mr. Navarrete  
7 telling you that the inmate was non-compliant and didn't  
8 listen to orders?

9                   ROD MOORE:               Yes, I remember that.

10                  MICHELLE ALANIS:       Okay. Aside from keeping the  
11 inmate on the wall for that amount of time, in your experience  
12 was there anything that Mr. Navarrete could've done, besides  
13 keeping the inmate there?

14                  ROD MOORE:               Oh yeah. A correctional  
15 officer's job, no matter what rank you're in, is to deescalate  
16 and contain every situation. If an inmate is being verbally  
17 abusive or he's upset about something, things of that nature,  
18 that a correctional officer did—if a senior officer, which I  
19 believe that's what Officer Navarrete was at that point, his  
20 job would've been to deescalate that.

21                  The putting an inmate's hands up against the wall,  
22 singling them out in front of other inmates for that amount of  
23 time, you're going to agitate that inmate. You're not going  
24 to deescalate it. You're going to escalate it. And if the  
25 inmate was verbally abusive and he kept on being verbally



1 abusive, it's because he was singled out and he was put on the  
2 wall for that amount of time. For no other reason than to  
3 just single him out.

4 MICHELLE ALANIS: After interviewing Mr.  
5 Navarrete, in your experience in being in investigations for,  
6 I believe you said 15 years, did you have any opinions  
7 following that interview?

8 ROD MOORE: I believe that what was reported  
9 versus what was in the video, were two different versions,  
10 which led to the false and misleading allegation.

11 MICHELLE ALANIS: And, did you also review Mr.  
12 Navarrete's incident report in this case?

13 ROD MOORE: I did.

14 MICHELLE ALANIS: If I could have you turn to  
15 Exhibit A, NDOC 19. About two-thirds of the way on the page.  
16 Is that the report that you reviewed that Mr. Navarrete  
17 completed?

18 ROD MOORE: Yes, it is.

19 MICHELLE ALANIS: And, what was it about that  
20 report that you felt wasn't accurate?

21 ROD MOORE: The—he reports that Inmate  
22 Norales came off the culinary wall while CO Valdez was  
23 attempting to restrain him, resulting in a spontaneous use of  
24 force. There's a difference between—a big difference between  
25 going in to restrain an inmate, versus going in to control an

1 inmate. If he was going to restrain the inmate, he would've  
2 had his handcuffs out. He would've said, okay, I'm going to  
3 put restraints on you and do it, instead of a little bit of  
4 the shove and then pulling back.

5 MICHELLE ALANIS: So, in reading this report where  
6 it says, CO Valdez was attempting to—I'm sorry, I'll just  
7 start at the beginning. At approximately 0645 hours, Inmate  
8 Norales, #1104257, came off the culinary wall while CO Valdez  
9 was attempting to restrain him resulting in a spontaneous use  
10 of force. So, at this point you're saying, if he was actually  
11 restraining him, he would've had his restraints out.

12 ROD MOORE: Correct.

13 MICHELLE ALANIS: And you had already testified  
14 that you didn't see the restraints out until the inmate was on  
15 the floor.

16 ROD MOORE: That is correct.

17 MICHELLE ALANIS: Did you also interview Officer  
18 Valdez?

19 ROD MOORE: Yes, I did.

20 MICHELLE ALANIS: Was there anything that you  
21 recall from Officer Valdez's interview?

22 ROD MOORE: The inmate was highly agitated.  
23 I believe I said, on a scale of 1-10, would you—how would you  
24 rate this inmate? He said, oh he was a 10.

1 MICHELLE ALANIS: And in your experience, what  
2 does an inmate at a 10 normally appear like?

3 ROD MOORE: If an inmate was at a 10, my  
4 experience says that it wouldn't have lasted that long, to  
5 begin with. And, the inmate would've acted out a lot sooner.

6 MICHELLE ALANIS: When you say, "lasted that  
7 long", you're talking about this video?

8 ROD MOORE: Yeah. That amount of time on  
9 the wall. The inmate would've become violent and acted out  
10 before that time.

11 MICHELLE ALANIS: Following your interview with  
12 Officer Navarrete and Officer Valdez, did you summarize those  
13 interviews?

14 ROD MOORE: I did in my report, yes.

15 MICHELLE ALANIS: Okay. And, just for reference,  
16 if we turn to NDOC 47, which goes to NDOC 53, is that your  
17 summary of your interview with Officer-Senior Officer  
18 Navarrete?

19 ROD MOORE: It is.

20 MICHELLE ALANIS: And, just following that, NDOC  
21 55 to NDOC 61, is that your summary of your interview with Mr.  
22 Valdez?

23 ROD MOORE: [pause] Yes, it is.

24 MICHELLE ALANIS: Okay. And, going back to NDOC  
25 47 where you're talking with Mr. Navarrete. It looks like

1 under Allegation 2, Paragraph 3, Mr. Navarrete told you that  
2 he'd been in search and escort for three months on day but on  
3 graveyard about a year and half, right?

4 ROD MOORE: Correct.

5 MICHELLE ALANIS: Okay. So, he was familiar with  
6 that position?

7 ROD MOORE: That is correct.

8 MICHELLE ALANIS: And it looks like in the  
9 following paragraph, he told you that he worked with Valdez  
10 for approximately a year, right?

11 ROD MOORE: Yes.

12 MICHELLE ALANIS: And, the following paragraph  
13 after that, he identified that Inmate Norales was being non-  
14 compliant and verbally abusive and not listening to orders?

15 ROD MOORE: Correct.

16 MICHELLE ALANIS: [pause] And it looks like  
17 inmate-not inmate. Officer Valdez, looking at Page 55, the  
18 fifth paragraph down, it says, Valdez stated that Senior  
19 Officer Navarrete would be the officer in charge of the four-  
20 man search and escort officers, is that correct?

21 ROD MOORE: That is correct.

22 MICHELLE ALANIS: And so, for search and escort,  
23 is there normally a senior officer assigned to that group?

1           ROD MOORE:           There was in this case, however,  
2 I'm not familiar with the staffing patterns at Southern  
3 Desert, but in this case there was.

4           MICHELLE ALANIS:    Okay. And I see on Page 57,  
5 third paragraph down, Officer Valdez identified the inmate at  
6 being at a 10, is that what you were referencing earlier?

7           ROD MOORE:           That is correct.

8           MICHELLE ALANIS:    And you've already identified  
9 there was a criminal investigation in this case that was  
10 conducted in the South, right?

11          ROD MOORE:           Yes.

12          MICHELLE ALANIS:    And, was that done prior to your  
13 investigation?

14          ROD MOORE:           Yes, I believe so.

15          MICHELLE ALANIS:    Do you know who conducted that  
16 investigation specifically?

17          ROD MOORE:           I believe that was supervisor  
18 Criminal Investigator, David Mulnar [phonetic].

19          MICHELLE ALANIS:    Okay. And, did you review the  
20 criminal investigation report?

21          ROD MOORE:           I did.

22          MICHELLE ALANIS:    Did you incorporate that within  
23 your own internal administrative investigation?

24          ROD MOORE:           I did.

1 MICHELLE ALANIS: In the criminal investigation,  
2 were the inmates interviewed?

3 ROD MOORE: I believe they were.

4 MICHELLE ALANIS: Can I have you turn to NDOC 83?

5 DANIEL MARKS: Your Honor, can we take a short  
6 break at some point, in the morning?

7 HEARING OFFICER: Yeah, sure.

8 MICHELLE ALANIS: We can take one now.

9 HEARING OFFICER: Now is a good time.

10 DANIEL MARKS: The other question, scheduling.  
11 It's almost—I don't know how much longer she has with this  
12 witness. We have people subpoenaed for 1:00, I don't know if  
13 that's realistic. So, do you have any idea, I can call my  
14 office and figure out when my witnesses should show?

15 HEARING OFFICER: Do you guys want to talk about  
16 scheduling when we're off the record, maybe?

17 DANIEL MARKS: Sure.

18 MICHELLE ALANIS: Yeah, we can do that.

19 HEARING OFFICER: All right. Let's take—let's  
20 come back at 10 after, does that sound good?

21 DANIEL MARKS: Great.

22 MICHELLE ALANIS: Yes.

23 HEARING OFFICER: All right, I'm locked out of my  
24 computer, so I have to figure out how to get back into it.

25 MICHELLE ALANIS: Oh God, so are we—

1 HEARING OFFICER: I think we're still on the  
2 record, so don't say anything.

3 MICHELLE ALANIS: Okay.

4 HEARING OFFICER: You don't want on the record.

5 OFF THE RECORD

6 ON THE RECORD

7 HEARING OFFICER: All right. We're back on the  
8 record. How are we doing timewise then?

9 DANIEL MARKS: I just moved the witnesses to  
10 3:00, by counsel's, based on her [inaudible]

11 HEARING OFFICER: Okay. I'm assuming you want to  
12 take a brief lunch, right?

13 MICHELLE ALANIS: Yes.

14 DANIEL MARKS: Yeah, it be an hour for lunch  
15 and I had our people coming, starting at [inaudible]

16 HEARING OFFICER: Okay, awesome. All right. I  
17 think we can continue then with the direct examination of Mr.  
18 Moore.

19 MICHELLE ALANIS: Yes. Investigator Moore, I  
20 think we were—I had just had you turn to NDOC 83. Are you on  
21 that page?

22 ROD MOORE: I am.

23 MICHELLE ALANIS: Okay. And, it looks like, just  
24 to back up a few pages, of completeness here. Starting at  
25 NDOC 0075, can you tell me—we're still within the

1 investigative file, the I-File, but can you tell me what we're  
2 looking at, at this point?

3 ROD MOORE: This is an investigations report  
4 on-done by David Mulnar and James Jones.

5 MICHELLE ALANIS: And this is the criminal  
6 investigation report?

7 ROD MOORE: It is.

8 MICHELLE ALANIS: Okay. And so you have this  
9 included with your file, right?

10 ROD MOORE: I do.

11 MICHELLE ALANIS: And now, turning within that  
12 investigations report, I'm looking at Page 5 of 7, marked NDOC  
13 83. It looks like within here, the inmates, including Inmate  
14 Norales, were interviewed, is that correct?

15 ROD MOORE: That is correct.

16 MICHELLE ALANIS: And did you read and review this  
17 criminal report?

18 ROD MOORE: I did.

19 MICHELLE ALANIS: Okay. And, can you tell me, do  
20 you recall anything specific that Inmate Norales said to-in  
21 this report?

22 ROD MOORE: Not without going into it.

23 MICHELLE ALANIS: Okay. If I could take you to  
24 the third paragraph on that Page--

25 ROD MOORE: Okay.



1 MICHELLE ALANIS: It looks like—

2 NICOLE YOUNG: Objection. I believe all this,  
3 these questions call for hearsay. He didn't interview the  
4 inmates, so I mean, I believe—are you calling Mr. Mulnar  
5 anyway?

6 MICHELLE ALANIS: Well, according to the Hearing  
7 Officer Rules of Procedure, technical rules of evidence don't  
8 apply and hearsay is allowed to come in and this is actually  
9 within Investigator Moore's report. This report. It's  
10 something he reviewed.

11 HEARING OFFICER: I know it's hearsay and so, but  
12 I'll view it in the context of that when I decide the case. I  
13 understand your objection, I'm going to let her move forward  
14 with it.

15 NICOLE YOUNG: Okay.

16 MICHELLE ALANIS: So, Investigator Moore, looking  
17 at the third paragraph here, Inmate Norales, it looks like he  
18 stated that he had been getting singled out and pat searched  
19 for the last couple of—or for the past two weeks by Officers  
20 Valdez and Navarrete, is that correct?

21 ROD MOORE: That's correct.

22 MICHELLE ALANIS: And, did he also note that on  
23 the particular date in question, that there were names being  
24 called? That he was being called names?

25 ROD MOORE: That is correct.

1 MICHELLE ALANIS: And it looks like specifically  
2 he was called "fag" and "bitch"?

3 ROD MOORE: That is correct.

4 MICHELLE ALANIS: And that they told him, I can't  
5 believe no one's beat your ass yet.

6 ROD MOORE: That is correct.

7 MICHELLE ALANIS: And it looks like, Norales even  
8 admits that he responded and also made inappropriate comments  
9 back, right?

10 ROD MOORE: That is correct.

11 MICHELLE ALANIS: And looking toward the end of  
12 the paragraph, Inmate Norales stated that he did nothing to  
13 provoke the use of force?

14 ROD MOORE: Correct.

15 MICHELLE ALANIS: And, the second to last line, it  
16 looks like Inmate Norales stated that he suffers from mental  
17 disorders, right?

18 ROD MOORE: That is correct.

19 MICHELLE ALANIS: Okay. [pause] Are you familiar  
20 with this—do you know the size of Inmate Norales?

21 ROD MOORE: Yes, he's about 5'6", 5'7",  
22 somewhere around there.

23 MICHELLE ALANIS: Okay. Would that be contained  
24 within your report somewhere?

25

1           ROD MOORE:           It would've been either in this  
2 section or in my report specifically, yes.

3           MICHELLE ALANIS:    Okay. And it looks like there  
4 were other inmates interviewed as well. Would you agree with  
5 that in this criminal report?

6           ROD MOORE:           Yes, there was.

7           MICHELLE ALANIS:    Okay. And, if I could draw your  
8 attention to the paragraph after Inmate Norales. It looks  
9 like Inmate Michael White was also interviewed.

10          ROD MOORE:           Correct.

11          MICHELLE ALANIS:    And it looks like he was  
12 actually—the other inmates interviewed, these were other  
13 inmates on the wall at the time, right?

14          NICOLE YOUNG:        Objection, that calls for  
15 speculation. He didn't interview the inmates to know if they  
16 were on the wall or not and this report doesn't state whether  
17 they were on the wall.

18          HEARING OFFICER:    You've got a point there. Do  
19 you know—how would you—do you know if these people were on the  
20 wall or not?

21          ROD MOORE:           No, I do not.

22          HEARING OFFICER:    Okay.

23          ROD MOORE:           Other than speaking with  
24 Investigator Mulnar.

25

1 MICHELLE ALANIS: And, it looks on this paragraph,  
2 it says, Mulnar then attempted to identify inmates portrayed  
3 in the video as witnesses to the incident. So, is it your  
4 understanding that Inmate White was present in the video?

5 HEARING OFFICER: Contextual, I guess, that's a  
6 proper question.

7 ROD MOORE: I'm sorry?

8 MICHELLE ALANIS: Is it your understanding based  
9 on your discussions with Mr. Mulnar in reviewing his report,  
10 that Inmate White was present in that video?

11 ROD MOORE: Yeah, he was in the proximity  
12 enough to hear the verbal exchange, yes.

13 MICHELLE ALANIS: Okay. And he seems to agree  
14 with Inmate Norales that there were comments being made?  
15 Inappropriate comments?

16 ROD MOORE: That is correct.

17 MICHELLE ALANIS: And it looks like he also said,  
18 Navarrete and Valdez were always going at it with Norales?

19 ROD MOORE: Correct.

20 MICHELLE ALANIS: And, same thing with Inmate  
21 Williams. Did he also agree with Inmate Norales with the  
22 statements that were being made?

23 ROD MOORE: To specifically, I'm surprised  
24 nobody's beat your ass yet, statement, yes.

25

1 MICHELLE ALANIS: And it looks like he also  
2 pointed out that it's known that he has some—some mental  
3 issues?

4 ROD MOORE: Correct, amongst the inmates,  
5 yes.

6 MICHELLE ALANIS: And, what about Inmate Jackson?  
7 It looks like that's at the bottom of that report?

8 ROD MOORE: Same thing. I'm surprised no  
9 one has whooped your ass yet because you have a smart ass  
10 mouth.

11 MICHELLE ALANIS: Okay. And, if we actually flip  
12 to 85, Page NDOC 85, it looks like the continuation of Inmate  
13 Jackson's summary. Looking at that first part, it says, it  
14 looks like Inmate Jackson was alleging that African-American  
15 inmates were forced to stand on the wall for extended periods  
16 of time?

17 ROD MOORE: That is correct.

18 MICHELLE ALANIS: Looking at the—when you looked  
19 at the video and looked at the report. We watched the video.  
20 The report says that the inmate was coming—Inmate Norales was  
21 coming off the wall as Valdez attempted to restrain him.  
22 Based on your review, when did you see the inmate coming off  
23 the wall?

24 ROD MOORE: The inmate comes off the wall at  
25 the exact—in an exact response to being—there was an exchange

1 of weight to the back of Inmate Norales, almost like a shove  
2 by one hand, I believe, the left hand, of Officer Valdez. The  
3 inmate reacts to that motion going into the wall, by taking  
4 his hands down. Or, I'm sorry, they come off the wall.

5 MICHELLE ALANIS: When he gets shoved?

6 ROD MOORE: Correct.

7 MICHELLE ALANIS: And what about when Valdez wraps  
8 his arm around the inmate?

9 ROD MOORE: The inmate—I believe the  
10 inmate's hands go towards his front, in a natural reaction to  
11 protect—as one would protect their throat. And then he gets  
12 immediately spun, to where they're face to face as they're  
13 going down.

14 MICHELLE ALANIS: Was there anything else that you  
15 did to complete this investigation?

16 ROD MOORE: I interviewed the two officers.  
17 Reviewed the criminal report. And, spoke with the training  
18 officer.

19 MICHELLE ALANIS: And, I just want to draw your  
20 attention to NDOC 63-65 in your report. It's Pages 12 and 13  
21 of your report.

22 ROD MOORE: Okay.

23 MICHELLE ALANIS: You've labeled this as  
24 Investigator Notes. Is this something you frequently do in  
25 your investigations?

1           ROD MOORE:           Yes, in all of our  
2 administrative reports or case files, you will have a section  
3 in there for investigator notes.

4           MICHELLE ALANIS:    And, you don't actually, at the  
5 conclusion of this report, you—do you render an opinion or  
6 make an adjudication with respect to the allegations?

7           ROD MOORE:           No, we do not.

8           MICHELLE ALANIS:    Okay. So, your role is just  
9 gathering facts and conducting the investigation?

10          ROD MOORE:           Yeah, we do—we conduct the  
11 investigation. We gather all the facts. We submit it to the  
12 adjudicator.

13          MICHELLE ALANIS:    And, would you agree, are the  
14 investigator notes kind of the summary of your investigation?

15          ROD MOORE:           Yes, it's kind of a—a catchall  
16 type scenario. It's a—it could be a synopsis but a little bit  
17 more in depth in a conversation or an action, so to speak,  
18 that's in the body of the report.

19          MICHELLE ALANIS:    Once you were completed with  
20 this investigation, what did you do?

21          ROD MOORE:           I'm sorry?

22          MICHELLE ALANIS:    Once you completed this  
23 investigation, what did you do?

24          ROD MOORE:           I submitted it to Inspector  
25 General Pam Delporto.

1 MICHELLE ALANIS: Okay. And, after Pam Delporto  
2 reviewed it, what happened with it next?

3 ROD MOORE: I believe it went to Warden  
4 Gentry.

5 MICHELLE ALANIS: And, was she the adjudicator in  
6 this case?

7 ROD MOORE: I believe she was, yes.

8 MICHELLE ALANIS: Okay. So, once it went to  
9 Warden Gentry, did you have any further involvement in the  
10 invest-in this case?

11 ROD MOORE: No, I didn't know what happened  
12 to it until I got called for a hearing.

13 MICHELLE ALANIS: Okay. I have no further  
14 questions for Mr. Moore at this time.

15 HEARING OFFICER: Cross.

16 NICOLE YOUNG: Hi Mr. Moore, how are you today?

17 ROD MOORE: Good, how are you?

18 NICOLE YOUNG: I'm good. So, just going back  
19 to your background really quick. When was the last time you  
20 worked in the yard as a corrections officer?

21 ROD MOORE: As a corrections officer,  
22 [pause] 13 and a half years.

23 NICOLE YOUNG: So, you're saying like 2000?

24 ROD MOORE: 2004.

25 NICOLE YOUNG: 2004?



1                   ROD MOORE:               2005.

2                   NICOLE YOUNG:           And, was that about the last  
3 time you restrained an inmate?

4                   ROD MOORE:               Nope.

5                   NICOLE YOUNG:           When was the last time you  
6 restrained an inmate?

7                   ROD MOORE:               [pause] Probably about three  
8 months ago.

9                   NICOLE YOUNG:           Oh. [pause] And then, you also  
10 said that your job as an investigator is to interview the  
11 pertinent witnesses, correct?

12                  ROD MOORE:               Correct.

13                  NICOLE YOUNG:           And, when we went through the  
14 video, maybe it was like, 20 minutes ago, you didn't know who  
15 the third officer in the video was, did you?

16                  ROD MOORE:               I didn't remember his name.

17                  NICOLE YOUNG:           Okay. And, is—would his name be  
18 in your report?

19                  ROD MOORE:               Yes, it is.

20                  NICOLE YOUNG:           As a witness?

21                  ROD MOORE:               No.

22                  NICOLE YOUNG:           Why not?

23                  ROD MOORE:               The allegation in the Internal  
24 Affairs is the excessive force and things of that nature. His  
25 back was to the wall at the time of the use of force and I

1 didn't find it relative to, or pertinent at that point in  
2 time, unless something came up during my interview process to,  
3 I believe it was Wachter, to interview him. And then through  
4 my interview process, anything and everything that he did  
5 wasn't specific to the allegations that the officers were  
6 charged with.

7 NICOLE YOUNG: Okay, but in the beginning of  
8 the video, Officer Wachter does stand with the other officers  
9 and the inmate, correct?

10 ROD MOORE: Correct.

11 NICOLE YOUNG: So, he did hear some of the  
12 interactions between them, correct?

13 MICHELLE ALANIS: Objection, calls for  
14 speculation.

15 HEARING OFFICER: Sustained.

16 NICOLE YOUNG: If he was standing there and  
17 people were talking, he would've heard what those people were  
18 saying, correct?

19 ROD MOORE: If they were loud-

20 MICHELLE ALANIS: Same objection.

21 ROD MOORE: --enough, I'm sorry.

22 HEARING OFFICER: I'm going to overrule at that  
23 point if it was loud enough, they could hear it.

24 ROD MOORE: If they're talking loud enough,  
25 yes.

1 HEARING OFFICER: It's kind of common sense, I  
2 guess. Okay.

3 NICOLE YOUNG: And it would be important to  
4 know what he heard, if he heard anything, correct?

5 ROD MOORE: I didn't find it at the time in  
6 my investigation, no.

7 NICOLE YOUNG: So, you don't think that's  
8 important.

9 ROD MOORE: At the time of my investigation,  
10 at that point, I didn't find it extremely informative based on  
11 Mulnar's report, that I needed to know exactly what he heard.

12 NICOLE YOUNG: And so, when you did your  
13 report, you were—when did you receive Mulnar's investigation?

14 ROD MOORE: It was prior to my interviews.  
15 The exact date, I don't know.

16 NICOLE YOUNG: And that's not noted anywhere in  
17 the file?

18 ROD MOORE: I can't recall if I did that or  
19 not.

20 NICOLE YOUNG: Okay. So, if you could turn to  
21 Exhibit A and it's your report, I believe it starts at Page  
22 41, but we'll start at Page 43.

23 ROD MOORE: Okay.

24 NICOLE YOUNG: And so, on Page 43, you list two  
25 allegations. The first allegation, you say—it's the last like

1 two lines. You say the Senior Officer allowed this  
2 unauthorized use of force without proper intervention,  
3 correct?

4 ROD MOORE: Correct.

5 NICOLE YOUNG: And if you could turn to Page 55  
6 of your report?

7 ROD MOORE: Okay.

8 NICOLE YOUNG: And, here [pause] Sorry,  
9 court's indulgence or Hearing Officer's indulgence. [pause]  
10 It's not Page 55, I'm sorry. [pause] Oh, Page 53, I'm sorry.

11 ROD MOORE: 53?

12 NICOLE YOUNG: Yeah, at the top of 53.

13 ROD MOORE: Okay.

14 NICOLE YOUNG: First sentence, I pointed out  
15 that there was nothing that Navarrete could physical do from  
16 his standpoint due to Valdez's action being so quick. That's  
17 what you stated there, correct?

18 ROD MOORE: I'd have to see, what was the-  
19 [pause]

20 NICOLE YOUNG: And if you turn to Page 51 your  
21 last paragraph-

22 ROD MOORE: Right.

23 NICOLE YOUNG: --you were having Mr. Navarrete  
24 review the-the, I guess, Valdez's takedown.

25 ROD MOORE: Uh huh.

1                   NICOLE YOUNG:           And on Page 53, you make the  
2 comment that, I pointed out that there was nothing Navarrete  
3 could physically do from his standpoint due to Valdez's action  
4 being quick.

5                   ROD MOORE:            Yes.

6                   NICOLE YOUNG:           And then going back to Page 43.

7                   ROD MOORE:            Okay.

8                   NICOLE YOUNG:           So then, based on that, you  
9 believe that the Officer allowed unauthorized use of force  
10 without proper intervention even though you acknowledge that  
11 there was nothing he could do to prevent it?

12                  ROD MOORE:            Under the unauthorized use of  
13 force, there's also a subcategory which is initiating or  
14 causing or allowing a use of force to be conducted. This is a  
15 general overall unauthorized use of force. There's also a  
16 subcategory that that falls into. This—I pointed out that  
17 there was nothing Navarrete could physically do from the  
18 standpoint due to Valdez's actions being quick. That was in  
19 reference to that one to two seconds that Officer Valdez  
20 pushed the inmate into the wall and took him down.

21                  NICOLE YOUNG:           So, assuming Officer Navarrete  
22 did not know that Officer Valdez was going to use force—if he  
23 did not know force was going to be used, when Mr. Valdez goes  
24 to use force, there was nothing Officer Navarrete could've  
25 done to stop it, based on what you say.

1                    ROD MOORE:                    I disagree.

2                    NICOLE YOUNG:                    I mean, you pointed out that  
3 there was nothing he could do because Valdez's actions were so  
4 quick.

5                    ROD MOORE:                    At that split point—obviously,  
6 yeah, there was nothing he could do because it happened so  
7 quick.

8                    NICOLE YOUNG:                    Okay. And then if you could  
9 turn to Page 45. Actually, let's go to Exhibit 1. [pause]

10                    ROD MOORE:                    Oh, I'm sorry.

11                    NICOLE YOUNG:                    Sorry.

12                    ROD MOORE:                    Which page?

13                    NICOLE YOUNG:                    Exhibit 1 and we're going to  
14 start at Page 5.

15                    ROD MOORE:                    Okay.

16                    NICOLE YOUNG:                    So, this report, this is Officer  
17 Navarrete's informational report, correct?

18                    ROD MOORE:                    I believe so, yes.

19                    NICOLE YOUNG:                    And if you turn the page to Page  
20 6, then there's a report by Officer Timothy Knatz [phonetic].

21                    ROD MOORE:                    Okay, yes.

22                    NICOLE YOUNG:                    And a report by Sergeant Willett  
23 [phonetic] on Page 7?

24                    ROD MOORE:                    Yes.

25

1 NICOLE YOUNG: And on Page 8, there's a report  
2 by Officer Valdez?

3 ROD MOORE: Yes.

4 NICOLE YOUNG: And then Page 9, there's a  
5 report by Officer Wachter.

6 ROD MOORE: Yes.

7 NICOLE YOUNG: And Page 10, there's a report by  
8 Dustin Daytwin [phonetic]?

9 ROD MOORE: Yes.

10 NICOLE YOUNG: And then 11 is Officer Valdez's  
11 Use of Force Report, correct?

12 ROD MOORE: Yes.

13 NICOLE YOUNG: Okay. If you could go back to  
14 Exhibit A, that binder. So, Exhibit A, Page 45. Page 45 is  
15 your list of witnesses for your report, correct?

16 ROD MOORE: Correct.

17 NICOLE YOUNG: And you only list Officer  
18 Navarrete and Officer Valdez.

19 ROD MOORE: Correct.

20 NICOLE YOUNG: And you don't list any of those  
21 other witnesses who actually filed reports regarding this  
22 incident?

23 ROD MOORE: No, I do not.

24 NICOLE YOUNG: And you also don't list the  
25 inmate, Mr. Norales.

1                   ROD MOORE:               Correct.

2                   NICOLE YOUNG:           And-but even though all those  
3 witnesses that we just went through, including the inmate,  
4 they're all witnesses to this incident, correct?

5                   ROD MOORE:               No, they're not.

6                   NICOLE YOUNG:           They're not?

7                   ROD MOORE:               No.

8                   NICOLE YOUNG:           The inmate is not a witness?

9                   ROD MOORE:               Well, the inmate could've but I  
10 don't see it a desk sergeant, sitting on a desk could be  
11 witness to something that happened in the culinary.

12                  NICOLE YOUNG:           I'm talking about the inmate  
13 right now. The inmate, he's a witness to the incident,  
14 correct?

15                  ROD MOORE:               Yes, he was.

16                  NICOLE YOUNG:           And, Timothy Knatz, you're  
17 saying he wasn't a witness to what happened?

18                  ROD MOORE:               I don't believe in, relative to  
19 my investigation, he was, no.

20                  NICOLE YOUNG:           Isn't what happens after the  
21 incident, relating to the incident important?

22                  ROD MOORE:               Not in this case, no.

23                  NICOLE YOUNG:           Why not?

24                  ROD MOORE:               There was no-there was no  
25 injuries to indicate that the force continued. Everything



1 that I'm basing my-my investigation on is what was leading up-  
2 the few seconds or minutes beforehand and after use of force.

3 NICOLE YOUNG: So, you made an interesting  
4 comment. You said there was no injuries. So, isn't the-  
5 whether or not there's injuries, isn't that important in an  
6 excessive force investigation?

7 ROD MOORE: Yeah.

8 NICOLE YOUNG: And you know, whatever the  
9 inmate says afterwards, regarding his injuries, wouldn't that  
10 be important in determining whether excessive force was used?

11 ROD MOORE: No.

12 NICOLE YOUNG: No, okay. And then, let's go to  
13 Page 55. [pause] Do you recall-when you interviewed Officer  
14 Valdez, did he tell you that the inmate took extra food?

15 ROD MOORE: I-yeah, I believe that was the  
16 purpose for the contact with Mr. Norales.

17 NICOLE YOUNG: So, the inmate was caught  
18 breaking the rules when he-after he was put on the wall?

19 ROD MOORE: I don't know the culinary rules  
20 there, but normally they're not allowed to take excessive food  
21 out. I don't know what was in the lunch bags at that time.

22 NICOLE YOUNG: But you didn't-you-Officer  
23 Valdez told you the inmate took extra food.

24 ROD MOORE: Yeah, that wasn't part of the  
25 sack lunch, correct.

1 NICOLE YOUNG: But you didn't think it was  
2 important to figure out what he took or anything like that?

3 ROD MOORE: No.

4 NICOLE YOUNG: So, you don't think that in the-  
5 the details of an inmate breaking the rules are important?

6 ROD MOORE: In this situation and the  
7 totality of it, no, not in that realm, no.

8 NICOLE YOUNG: And then, on Page 57, in fact,  
9 multiple times you referenced an inmate looking at watch.

10 ROD MOORE: Uh huh.

11 NICOLE YOUNG: Where do you get that  
12 information about the watch specifically?

13 ROD MOORE: From the video. From the video.

14 NICOLE YOUNG: You see a watch?

15 ROD MOORE: I see him looking at his left  
16 hand, as if he was looking at a watch.

17 NICOLE YOUNG: As if he was looking at watch.  
18 So, you don't know if he was looking at a watch, correct?

19 ROD MOORE: I believe if I see the video  
20 again, on a bigger screen, like I did before, I believe he has  
21 a watch on, yes.

22 NICOLE YOUNG: Did you interview the inmate?

23 ROD MOORE: No.

24 NICOLE YOUNG: So, you could've aske the  
25 inmate, are you-were you wearing a watch, but you didn't.

1                   ROD MOORE:               I could've yeah. But I didn't.

2                   NICOLE YOUNG:           And, you reviewed Mulnar's  
3 investigation report. He doesn't mention a watch, does he?

4                   ROD MOORE:               Don't believe so, but I'd have  
5 to read it.

6                   NICOLE YOUNG:           You're the only one who mentions  
7 a watch.

8                   ROD MOORE:               Okay.

9                   NICOLE YOUNG:           Correct?

10                  ROD MOORE:               Okay.

11                  NICOLE YOUNG:           Now, we're going to go to  
12 Exhibit 8.

13                  HEARING OFFICER:       8 is your video with the  
14 editorial stuff on it.

15                  NICOLE YOUNG:           So, there's—on Exhibit 8,  
16 there's a few videos that are slowed down and it's actually a  
17 split screen so you see the incident as we saw it on the  
18 screen but then there's also a blown up version. So, you can  
19 actually see the detail.

20                  HEARING OFFICER:       Okay. We'll see what we've got.

21                  MICHELLE ALANIS:       I believe it's similar to  
22 Exhibit 9.

23                  HEARING OFFICER:       [crosstalk]

24                  MICHELLE ALANIS:       8 is the one that has the  
25 notations.

1 HEARING OFFICER: All right.

2 NICOLE YOUNG: Not all the videos have

3 [crosstalk]

4 HEARING OFFICER: Do you want me to try to play it  
5 up here, or do you want to play it down—

6 DANIEL MARKS: Whatever is the court's  
7 pleasure.

8 HEARING OFFICER: Well, it's your—I don't want to—

9 MICHELLE ALANIS: I would say that one, because  
10 I'm not necessarily authorized to have that one.

11 HEARING OFFICER: Okay, see if it works. [pause]  
12 I think this is 1995 technology here.

13 NICOLE YOUNG: And then we're going to go to  
14 Clip 8.

15 HEARING OFFICER: Let's see what we've got.  
16 [pause] I was hoping it was just going to pop right up.  
17 Obviously, I was not [inaudible]

18 [crosstalk]

19 HEARING OFFICER: No? [pause]

20 [crosstalk trying to get video to work]

21 HEARING OFFICER: I'll get some assistance.

22 [pause] It started, right, no? [crosstalk] Okay. So, it  
23 should just be. [pause] Where's the pause button? Pause  
24 button, pause button. So, and then if you want. [echoes]  
25 Oh, we don't want that. Are we recording right now? Yeah.

1 SPEAKER: I wanted it on that one but not  
2 this one, if possible, but I don't know if that [inaudible]

3 HEARING OFFICER: You can just drag that over like  
4 that.

5 SPEAKER: Oh, wow, that's amazing.

6 HEARING OFFICER: Now, the hard part is, you  
7 gotta—in order to hit play—

8 SPEAKER: How do you start and stop it?

9 HEARING OFFICER: Bottom left corner, the little  
10 play triangle.

11 SPEAKER: Oh, okay. I see. Okay.

12 SPEAKER: Does it need sound, because  
13 you're going to get some kind of feedback on it.

14 SPEAKER: This one doesn't have sound.  
15 There is one video that does have sound.

16 SPEAKER: Okay. So, what I did here, I  
17 highlighted all 12, it looks like and just opened them all.  
18 So, they should auto-play through all 12. Are you going to do  
19 one at a time, however you want to handle it, that's up to  
20 you.

21 HEARING OFFICER: All right.

22 SPEAKER: As long as you have no sound.  
23 If you have sound, it's going to start doing feedback, so  
24 you'll probably have to turn the volume down or move that  
25 microphone away from the mic and speakers.

1 HEARING OFFICER: All right. Thank you very much.

2 SPEAKER: And then this here is my direct  
3 line, if you want to call me and give [crosstalk]

4 HEARING OFFICER: Yeah, very good. I'll save some  
5 calories running out. Thank you.

6 SPEAKER: You're welcome.

7 HEARING OFFICER: All right. [crosstalk] And,  
8 you can have the mouse, full control of the mouse.

9 NICOLE YOUNG: Okay, thank you.

10 MICHELLE ALANIS: So, on your screen it's just a  
11 list of the-

12 HEARING OFFICER: Yeah. [inaudible]

13 MICHELLE ALANIS: And this is Exhibit 8 that we're  
14 looking at?

15 HEARING OFFICER: Yes.

16 DANIEL MARKS: Would you be able to see it from  
17 there?

18 HEARING OFFICER: Yeah. Yes. [pause] It's  
19 actually clearer [inaudible] [pause]

20 NICOLE YOUNG: So, are those movements right  
21 there, I guess we could go back. Is that what you meant by,  
22 he's looking at his watch?

23 ROD MOORE: [pause] Correct.

24 NICOLE YOUNG: And he does that three times?  
25

1                   ROD MOORE:               I know he does it multiple  
2 times.

3                   HEARING OFFICER:       That's like around 10:44?

4                   NICOLE YOUNG:          Yeah.

5                   HEARING OFFICER:       Point in the video.

6                   NICOLE YOUNG:          And so, if you notice, when he  
7 does look at his watch, so it's 1, that's 2, and that's 3.  
8 So, do you really think it makes sense for an inmate to look  
9 at their watch three times consecutively in like, less than  
10 five seconds.

11                  ROD MOORE:               I couldn't tell you what his  
12 mindset was, what he was looking at. They might have been  
13 talking about the time at that time. They might have been, a  
14 general, specific conversation, I don't know.

15                  NICOLE YOUNG:          And but if the corrections  
16 officers told him to keep his hands on the wall and stop  
17 moving, those three times he takes his hands off the wall,  
18 that would be a violation of their order, correct?

19                  ROD MOORE:               I don't think he came off the  
20 wall.

21                  NICOLE YOUNG:          If he moves his elbow, if he-the  
22 officers are telling him not to move and he's moving like  
23 that, that would be a violation of their order, correct?

24                  ROD MOORE:               There's a-I don't-I don't  
25 believe so. In this sense right here, in almost 11 minutes of

1 having his hands up there like that, if he's going to move his  
2 arms, he's moved his arms many times before this, in some way,  
3 shape or form. And his—his hand may have come off like this,  
4 but I think he was still on the wall and at any—at any point  
5 when he does that, he's not making it a furtive movement.  
6 He's not making an aggressive movement. He's looking at his  
7 wrist. I'm not—I was never convinced that his hand ever came  
8 off the wall.

9 NICOLE YOUNG: But if a corrections officer  
10 gives an inmate an order and the inmate doesn't comply with  
11 it, that would be a violation of their order, correct?

12 ROD MOORE: Correct.

13 NICOLE YOUNG: And you think that taking your  
14 hands off the wall is compliant?

15 MICHELLE ALANIS: Objection, misstates testimony.

16 ROD MOORE: [crosstalk]

17 HEARING OFFICER: Rephrase that one.

18 NICOLE YOUNG: So, you stated that the inmate  
19 took his hands off the wall numerous times throughout the  
20 video just now, correct?

21 ROD MOORE: No, I said, I wasn't—I wasn't  
22 convinced that his hand came off the wall.

23 NICOLE YOUNG: No, I'm just talking about the  
24 entire incident, as a whole, you acknowledge that the inmate  
25 was taking his hands off the wall?



1                   ROD MOORE:               No, I acknowledge that his hand  
2 was moving in some way, shape or form.

3                   NICOLE YOUNG:            Okay. So now let's go to Clip  
4 11, which let me see how to do this.

5                   HEARING OFFICER:        I can do it over here, you want  
6 11?

7                   NICOLE YOUNG:            Yeah.

8                   HEARING OFFICER:        I'm not sure what I'm doing  
9 either, so I'll try it. [pause]

10                  NICOLE YOUNG:            Let's go back to the beginning.

11                  MICHELLE ALANIS:        Are we at the beginning of the  
12 video?

13                  NICOLE YOUNG:            Yeah. So, in the beginning, do  
14 you see that movement right there? An inmate taking his hands  
15 on and off the wall?

16                  ROD MOORE:               Uh huh.

17                  NICOLE YOUNG:            And that's Inmate Norales?

18                  ROD MOORE:               I couldn't tell you right now,  
19 if that was Norales or not.

20                  NICOLE YOUNG:            So, he was told to be put on the  
21 wall. He just put his hands back on--so, that's Norales right  
22 there, correct?

23                  ROD MOORE:               Okay.

24                  MICHELLE ALANIS:        Objection, is that a question?

25                  NICOLE YOUNG:            I said, correct?

1                   HEARING OFFICER:       There was a correct on the end  
2 of it. So, I'm going to allow it.

3                   NICOLE YOUNG:           So, if you just look at that  
4 little window there. He's just put his hands back on the  
5 wall. [pause] So, if you look at the inmate, I guess that's  
6 closest to the front of the video, he's standing still,  
7 correct?

8                   ROD MOORE:             Correct.

9                   NICOLE YOUNG:           And his hands are up high, like  
10 level with his face, correct?

11                  ROD MOORE:             Correct.

12                  NICOLE YOUNG:           And, where are Norales' hands  
13 placed?

14                  ROD MOORE:             At his waist.

15                  NICOLE YOUNG:           And is that the proper position?

16                  ROD MOORE:             I don't know what was ordered on  
17 the inmate. I don't know if this inmate was told, put your  
18 hands up high. I don't know if Norales at that point was just  
19 saying, put your hands on the wall, but he doesn't correct  
20 him, if he did say it.

21                  NICOLE YOUNG:           But you'll notice this inmate,  
22 his hands are up high. These inmates, it's hard to tell but  
23 it seems like they are placed higher than Norales, right?

24                  ROD MOORE:             That's correct.

25

1           NICOLE YOUNG:           So, all the inmates have their  
2 hands up high, except for Norales.

3           ROD MOORE:            Okay, I agree.

4           NICOLE YOUNG:           And now Norales is kind of  
5 bouncing up and down against the wall, or back and forth?

6           ROD MOORE:            Yes.

7           NICOLE YOUNG:           And that's Officer Navarrete pat  
8 searching another inmate?

9           ROD MOORE:            Correct.

10          NICOLE YOUNG:           And that's Officer Valdez  
11 telling them to put his hands higher?

12          ROD MOORE:            Correct. Well, actually they  
13 showed him.

14          NICOLE YOUNG:           And so now his hands are up  
15 high.

16          ROD MOORE:            They're higher, yes.

17          NICOLE YOUNG:           And so now, Officer Navarrete is  
18 pat searching him?

19          ROD MOORE:            Correct.

20          NICOLE YOUNG:           [pause] He just flipped his  
21 hands down the wall during the search?

22          ROD MOORE:            Correct.

23          NICOLE YOUNG:           And then Officer Navarrete told  
24 him to put his hands up higher again? Or showed him how to  
25 put his hands up higher again?

1                   ROD MOORE:               Yes, he placed his left hand up  
2 there, yes.

3                   NICOLE YOUNG:           [pause] And so, he moves his  
4 hands more than three times, at this point, but the three  
5 times represents the amount of times he took his complete  
6 hands off the wall, but they moved his hands up, more times  
7 than the three.

8                   MICHELLE ALANIS:       Objection. Facts not in  
9 evidence. I don't believe we have anything saying that his  
10 hands came completely off the wall.

11                  NICOLE YOUNG:           I can start at the beginning of  
12 the video for you.

13                  MICHELLE ALANIS:       If you'd like.

14                  NICOLE YOUNG:           [pause] Do you see that there?  
15 On/off, on/off?

16                  ROD MOORE:               I don't know what he's being  
17 ordered at that point.

18                  NICOLE YOUNG:           Well, if you're ordered to put  
19 your hands on the wall, aren't you expected to leave them on  
20 the wall?

21                  ROD MOORE:               I don't know if he was ordered  
22 to put his on the wall at that point.

23                  NICOLE YOUNG:           Okay. Let's go toward the end.  
24 See where we are. [pause] I guess it would be closer to the  
25

1 take down. So, the video has counted 11 times already. We  
2 could, I guess watch the whole video, if you would like.

3 HEARING OFFICER: I can do that in my leisure, I  
4 guess. [inaudible]

5 NICOLE YOUNG: Okay. So, now let's, at 10:30,  
6 so we have 1, 2, 3. [pause] And you think that an inmate  
7 taking his hands off the wall, despite orders from his  
8 corrections officers to leave them on the wall, you think  
9 that's compliant behavior by an inmate?

10 ROD MOORE: Was it a legal order? No.

11 NICOLE YOUNG: That was my question.

12 ROD MOORE: I don't think the--

13 NICOLE YOUNG: My question was--my question was,  
14 if the corrections officers tell him to leave his hands on the  
15 wall and the inmate continually takes his hands off the wall,  
16 starting, you know, at the first instance when he's told to be  
17 on the wall, you think that's compliant.

18 ROD MOORE: In the way that he was doing it,  
19 yes, I think the inmate was compliant.

20 NICOLE YOUNG: All right. So now--so, we're  
21 going to go to Page 63, in Exhibit A.

22 ROD MOORE: 63?

23 NICOLE YOUNG: Yes. Are you there?

24 ROD MOORE: Uh huh.

25

1           NICOLE YOUNG:           [pause] So, were looking at  
2 your investigator notes. So, #1, you said that Norales was  
3 left on the wall for approximately 11-14 minutes.

4           ROD MOORE:           Correct.

5           NICOLE YOUNG:           Where do you get that time range  
6 from?

7           ROD MOORE:           From watching the video.

8           NICOLE YOUNG:           So, every time we watched the  
9 video today, the inmate is on the ground by the 11 minute  
10 mark. So, where do you get the additional three minutes?

11          ROD MOORE:           The only thing I can say is from  
12 the video I got, that's why I put approximately 11-14 minutes.

13          NICOLE YOUNG:           So, I guess I'm not clear, is  
14 the video that you got different than the video that opposing  
15 counsel showed you?

16          ROD MOORE:           It shouldn't be, no.

17          NICOLE YOUNG:           So, even in that video, the  
18 inmate is on the ground at let's say at 10:50, 10:55, that's  
19 less than 11 minutes.

20          ROD MOORE:           Correct.

21          NICOLE YOUNG:           So, where do you get the  
22 additional three minutes?

23          ROD MOORE:           I can't answer that.

24          NICOLE YOUNG:           So, that's misleading, isn't it?

25          MICHELLE ALANIS:       Objection.

1           NICOLE YOUNG:           If you say that the inmate is on  
2 the wall for 11-14 minutes—

3           MICHELLE ALANIS:       The report says approximately.

4           HEARING OFFICER:       I think that's a little  
5 argumentative. I'm going to sustain that one.

6           NICOLE YOUNG:           Okay. And the entire video is  
7 like 15, about 15-16 minutes, correct?

8           ROD MOORE:           Correct.

9           NICOLE YOUNG:           And if you watched the whole  
10 video, you would know that it's—he's only on the wall for 11  
11 minutes, correct?

12          MICHELLE ALANIS:       Objection. Misstates facts in  
13 evidence. The video starts with the inmate on the wall.

14          NICOLE YOUNG:           I guess that's a good point.  
15 The video starts with the inmate on the wall. Why doesn't the  
16 video start when the inmate was initially put on the wall?

17          ROD MOORE:           The video that I saw, you see a  
18 line of inmates and it looks like a second or two, right  
19 before Norales is, in some way, shape or form told to face the  
20 wall. Now, whether he was told to put his hands on the wall,  
21 I don't know because his hands didn't go straight up, like  
22 you'd mentioned in the—in the video, but he's maintaining a  
23 stance that's up against the wall. And he's holding something  
24 in his hand. [crosstalk]

25          NICOLE YOUNG:           But that's less than 11 minutes.

1                ROD MOORE:                If you say so, yes.

2                NICOLE YOUNG:            Well, we just watched it.

3                ROD MOORE:                I watched a video with a bunch  
4 of numbers and stuff on it, but yeah.

5                NICOLE YOUNG:            The video that opposing counsel  
6 showed you, that was less than 11 minutes, before the inmate  
7 is on the ground, correct?

8                ROD MOORE:                If you say so, yes. I wasn't  
9 watching the counter.

10               NICOLE YOUNG:            You weren't watching the  
11 [crosstalk]

12               ROD MOORE:                I wasn't watching the counter.

13               NICOLE YOUNG:            I mean, I believe we all stated  
14 it but okay. And then, #2, so you take issue with Officer  
15 Navarrete's comment that the inmate was coming off the wall,  
16 right? That's, I think, the big issue.

17               ROD MOORE:                Based on what he wrote in his  
18 report?

19               NICOLE YOUNG:            Uh huh.

20               ROD MOORE:                Yes.

21               NICOLE YOUNG:            Okay. But Norales took his  
22 hands off the wall, didn't he?

23               ROD MOORE:                Yes.

24               NICOLE YOUNG:            And couldn't that mean he was  
25 coming off the wall?



1                   ROD MOORE:               No.

2                   NICOLE YOUNG:           According to who?

3                   ROD MOORE:               According to the video.

4                   NICOLE YOUNG:           So, the English language, coming  
5 off the wall. Taking your hand, isn't that coming off the  
6 wall? I have my hand on the wall.

7                   ROD MOORE:               Uh huh.

8                   NICOLE YOUNG:           I take it off, it came off the  
9 wall, correct?

10                  ROD MOORE:               In the—I don't think it states  
11 that in the English language or in the English dictionary,  
12 however, is what Inmate Norales was doing, was a reaction. Is  
13 why he took his hands off the wall. It was a reaction from  
14 when he's shoved into the wall.

15                  NICOLE YOUNG:           I'm not talking about that.

16                  ROD MOORE:               You're asking about his hands  
17 coming off the wall.

18                  NICOLE YOUNG:           Correct. So, those--

19                  ROD MOORE:               That was in a direct-go ahead,  
20 I'm sorry.

21                  NICOLE YOUNG:           Those 14 times, I mean, we could  
22 watch the whole video. I don't think the Hearing Officer  
23 wants to watch the whole thing right now, but even in the  
24 beginning of the video, when he's initially put on the wall,  
25 everyone else has their hands up on the wall except him. He

1 takes them off, puts them back on. Takes them off. When he  
2 sees the officer approaching him, puts them back on. So,  
3 that's coming off the wall, isn't it?

4 ROD MOORE: I-yes.

5 NICOLE YOUNG: He broke contact with the wall?

6 ROD MOORE: I can't tell if he broke contact  
7 or not, but I know his hands are moving.

8 NICOLE YOUNG: Okay. But if he broke contact  
9 with the wall, that would mean he came off the wall, correct?

10 ROD MOORE: He would mean he's not touching  
11 the wall any longer.

12 NICOLE YOUNG: Okay. And some people could  
13 phrase that, he came off the wall.

14 MICHELLE ALANIS: Objection, speculation.

15 ROD MOORE: Yes.

16 NICOLE YOUNG: Okay. #4, so in #4, you  
17 mentioned the watch, but you have no evidence there was an  
18 actual watch, correct?

19 ROD MOORE: Left arm in a fashion that  
20 appears he was looking at his watch, at his watch.

21 NICOLE YOUNG: Okay, but you have no evidence  
22 that there was a watch any-[crosstalk]

23 ROD MOORE: No, I do not.  
24  
25

1           NICOLE YOUNG:           Okay. And you think it's okay—  
2 even if there was a watch, you think it would be normal to  
3 check your watch three times in less than five seconds?

4           ROD MOORE:           That could be perfectly normal.

5           MICHELLE ALANIS:       Objection. Relevance?

6           HEARING OFFICER:      I think it's phrased a little  
7 off. Can you clarify that a little bit?

8           NICOLE YOUNG:           Okay. So, if you—so, there's—

9           HEARING OFFICER:      I think the question is, did you  
10 consider that, looking at the watch to be like a compliance or  
11 something that was a cause for concern?

12          MICHELLE ALANIS:       It's been asked and answered  
13 earlier when he was watching the video.

14          HEARING OFFICER:      If you want to ask that, I don't  
15 know.

16          NICOLE YOUNG:           Okay. In #4, you also say—

17          HEARING OFFICER:      I guess not.

18          NICOLE YOUNG:           Oh, sorry. You say both  
19 officers are away from him.

20          ROD MOORE:           Correct.

21          NICOLE YOUNG:           But, Officer Navarrete was  
22 leaning against the wall right next to him, correct?

23          ROD MOORE:           Correct.

24          NICOLE YOUNG:           So, he wasn't actually away from  
25 him.

1 MICHELLE ALANIS: At what time are you talking  
2 about?

3 NICOLE YOUNG: I'm talking about #4.

4 ROD MOORE: Under investigator notes?

5 NICOLE YOUNG: Yeah, I'm talking about #4, in  
6 your investigator notes, you say both officers are away from  
7 him at the time and do not react to the motion. It's the  
8 motion, checking his watch.

9 ROD MOORE: Okay.

10 NICOLE YOUNG: But Officer Navarrete was not  
11 away from him, he was leaning against the wall right next to  
12 him, correct?

13 ROD MOORE: He was to the side. Yes.

14 NICOLE YOUNG: Okay. So, that's kind of  
15 misleading what you're saying?

16 ROD MOORE: No.

17 NICOLE YOUNG: It's not?

18 ROD MOORE: Nope.

19 NICOLE YOUNG: You say both officers are away  
20 from him.

21 ROD MOORE: How far away?

22 NICOLE YOUNG: I don't know. That's--this is  
23 your report, not mine.

24 ROD MOORE: Well, I believe the video backs  
25 up what is stated in #4 is, they're not 100 yards away from

1 him. They're away from him. However, when-based on-based on  
2 other statements, it's relevant to the distance, as far as  
3 where Mr. Navarrete was.

4 NICOLE YOUNG: Okay. And then you say, they do  
5 not react to motion but what if they told him to keep his  
6 hands on the wall and not to move. Wouldn't that be a  
7 reaction to the motion?

8 ROD MOORE: Can you say that again, I'm  
9 sorry.

10 NICOLE YOUNG: You state that they—the officers  
11 do not react to that motion.

12 ROD MOORE: Okay.

13 NICOLE YOUNG: You state that, correct?

14 ROD MOORE: Yes.

15 NICOLE YOUNG: Okay. If the officers told him  
16 to not move and to keep his hands on the wall, that would be a  
17 reaction to the motion, correct?

18 ROD MOORE: Yes.

19 NICOLE YOUNG: Okay. So, that's a misleading  
20 sentence.

21 ROD MOORE: No, it's not.

22 MICHELLE ALANIS: Objection, argumentative.

23 NICOLE YOUNG: It's not a clear sentence of  
24 what happened, correct?

1                   ROD MOORE:                   [pause] This note—again, this  
2 note reflects what is being seen in the video.

3                   NICOLE YOUNG:               But it doesn't—you don't say,  
4 this only reflects what is seen in the video. You don't state  
5 that, do you?

6                   ROD MOORE:                   No, it's not stated in here.

7                   NICOLE YOUNG:               Okay. And then #12 is on Page  
8 65. So, this is Officer Valdez's approach, but just prior to  
9 that approach, the inmate—you phrase it as, he checks his  
10 watch. The officers thought he took his hand off the wall,  
11 but he took his hand off the wall or he checked his watch  
12 three times before Officer Valdez approached, correct?

13                  ROD MOORE:                   Correct.

14                  NICOLE YOUNG:               Okay. And then, #16, you state  
15 there did not seem to be any orders for Norales to submit to  
16 restraints.

17                  ROD MOORE:                   [pause] Correct.

18                  NICOLE YOUNG:               Okay. But what if Officer  
19 Valdez said that he gave that order.

20                  ROD MOORE:                   Okay. Okay.

21                  NICOLE YOUNG:               And, what if Officer Navarrete  
22 said that he heard that order?

23                  ROD MOORE:                   Okay.

24                  NICOLE YOUNG:               And the video has no audio,  
25 correct?

1                   ROD MOORE:               Correct.

2                   NICOLE YOUNG:           So, where do you—why do you  
3 think that your statement there, did not seem to be any orders  
4 for Norales to submit to restraints—how do you know that  
5 without there being any audio in the video, which you could  
6 hear someone saying, submit to restraints?

7                   ROD MOORE:           Based on the physical reactions  
8 on the video, and the reporting, the reporting states that I  
9 went into restrain Inmate Norales. There were no restraints  
10 obtained. There was no restraints grabbed for. At that  
11 point, you're going to say, I'm going to restrain you at that  
12 point. So, he either said it, I'm going to restrain you then,  
13 or he said when they were face to face on the ground. When he  
14 finally had control of him.

15                  NICOLE YOUNG:           Okay. But, like you said,  
16 telling someone to submit to restraints, that's a verbal  
17 order, correct?

18                  ROD MOORE:           Correct.

19                  NICOLE YOUNG:           And you wouldn't hear that on  
20 that video because the video just doesn't have audio because  
21 of how the technology was set up, correct?

22                  ROD MOORE:           Correct.

23                  NICOLE YOUNG:           And so, you essentially believe  
24 a convicted felon over your own corrections officers?

25                  MICHELLE ALANIS:       Objection, argumentative.

1 HEARING OFFICER: It is kind of, you can answer  
2 it.

3 ROD MOORE: Sure. Based on what I saw,  
4 that's not what a correctional officer does.

5 NICOLE YOUNG: Okay. So, let's go to Page 67.  
6 So, in the addendum, you reference a video. What videos did  
7 you review in this case?

8 ROD MOORE: The one that I was shown by  
9 Counsel and the one that was obtained on this case here.

10 NICOLE YOUNG: But there's a second video,  
11 right?

12 ROD MOORE: I have no idea if there's a  
13 second video.

14 NICOLE YOUNG: With audio?

15 ROD MOORE: Unless the shift sergeant or the  
16 institution took one as the medical people were showing up.

17 NICOLE YOUNG: And you didn't think that you  
18 needed to review that video?

19 ROD MOORE: No.

20 NICOLE YOUNG: Okay. Let's review it.

21 HEARING OFFICER: You're going to test my ability  
22 with this thing. All right.

23 NICOLE YOUNG: We'll just—

24 HEARING OFFICER: We'll eject that one.

25 NICOLE YOUNG: Oh it's a different CD.



1 HEARING OFFICER: Right.

2 NICOLE YOUNG: Yeah, it's Exhibit-

3 HEARING OFFICER: I don't know how we got all this  
4 going.

5 MICHELLE ALANIS: I've never seen it done on those  
6 computers either.

7 HEARING OFFICER: No. He was fast too. All the  
8 sudden it just came up.

9 MICHELLE ALANIS: We need his name.

10 HEARING OFFICER: Yeah, I got it.

11 MICHELLE ALANIS: For future reference.

12 HEARING OFFICER: Unfortunately, he's on the side  
13 of the building.

14 DANIEL MARKS: He's in the building though,  
15 isn't he?

16 HEARING OFFICER: Yeah, he just-[inaudible].

17 [pause while setting up video]

18 NICOLE YOUNG: Oh, this is the one with audio  
19 though.

20 HEARING OFFICER: And you want audio too, right?

21 NICOLE YOUNG: Yeah.

22 [pause while setting up video]

23 HEARING OFFICER: Is it playing?

24 NICOLE YOUNG: It's playing, it just has no  
25 audio.

1 HEARING OFFICER: All right. It is playing  
2 though, right?

3 NICOLE YOUNG: Yeah. Oh, you got it.

4 HEARING OFFICER: All right.

5 [video plays]

6 HEARING OFFICER: Sorry.

7 [video plays]

8 HEARING OFFICER: Which Exhibit is this again?

9 NICOLE YOUNG: Exhibit 10.

10 [video plays, inaudible]

11 SPEAKER: --I was on camera and I hadn't  
12 made any threatening moves, whatsoever. [inaudible] Your  
13 officers here, grabbed me by the throat, slammed me down,  
14 [inaudible]. Yeah. [inaudible] Thank you buddy, you  
15 probably paid my son's education. [inaudible] This was  
16 unwarranted. It was completely unwarranted. My hands did not  
17 leave the wall whatsoever. [inaudible] [radio noise]  
18 [inaudible] [laughs] [inaudible]

19 [video portion ends]

20 MICHELLE ALANIS: What's the time on that video?

21 NICOLE YOUNG: I just backed up to-

22 [video plays, inaudible]

23 SPEAKER: Something along the lines of,  
24 you should teach and then something [inaudible]

25 [video plays]

1 NICOLE YOUNG: And, did you hear his laughter?  
2 ROD MOORE: Uh huh.  
3 NICOLE YOUNG: He thought the situation was  
4 funny?  
5 MICHELLE ALANIS: Objection, speculation.  
6 HEARING OFFICER: I think [inaudible]  
7 NICOLE YOUNG: Do you think compliance by an  
8 inmate is a laughing matter?  
9 ROD MOORE: No.  
10 NICOLE YOUNG: I'll pass the witness.  
11 HEARING OFFICER: All right. To you. This is her  
12 copy of this?  
13 MICHELLE ALANIS: Yes.  
14 HEARING OFFICER: I'll give it back to you.  
15 [pause] I'm happy we got that to work. Do you have any  
16 redirect?  
17 MICHELLE ALANIS: Yes, just a little bit of  
18 follow-up. Investigator Moore, what's the purpose of an  
19 inmate being told to put his hands on the wall.  
20 ROD MOORE: It's for safety and security-  
21 [echo]  
22 MICHELLE ALANIS: Are we on the record?  
23 HEARING OFFICER: Yes.  
24 MICHELLE ALANIS: Okay.  
25 HEARING OFFICER: Let me just-[pause]

1                   ROD MOORE:                Okay, I'm sorry. It's for  
2 safety and security of the officer, making the contact with  
3 the inmate.

4                   MICHELLE ALANIS:        Okay. You were asked about  
5 Officer Wachter and the fact that you didn't interview him.  
6 Do you remember that line of questioning?

7                   ROD MOORE:                I do.

8                   MICHELLE ALANIS:        Okay. If I could have you turn  
9 to NDOC 0023.

10                  NICOLE YOUNG:            Is this Exhibit A?

11                  MICHELLE ALANIS:        Exhibit A. [pause] When you're  
12 preparing and conducting your investigation, do you review the  
13 NOTIS report?

14                  ROD MOORE:                Correct, I do.

15                  MICHELLE ALANIS:        Okay. And so, if I have you  
16 look at NDOC 23, it looks like about two-thirds of the way  
17 down, there's a block here that says, Staff Name, Wachter,  
18 David. Do you see that?

19                  ROD MOORE:                I do.

20                  MICHELLE ALANIS:        And, do you see report detail  
21 there?

22                  ROD MOORE:                Yes, I do.

23                  MICHELLE ALANIS:        And, it looks like Officer  
24 Wachter says that he—he heard—at approximately 6:45, while  
25 feeding breakfast, CO Valdez told Inmate Norales, Ricky, with

1 his back number, on the wall, for a random pat search, with  
2 another unit coming to the chow hall, I placed myself in  
3 between the unit and the search taking place behind me. I  
4 then heard a commotion which I turned around and saw CO Valdez  
5 taking the inmate to the ground. So, you read that whole  
6 statement when you did your investigation?

7 ROD MOORE: Yes, I did.

8 MICHELLE ALANIS: And, why did you not interview  
9 Officer Wachter, at that time?

10 ROD MOORE: Based on what I saw in the  
11 video, couple with his report, I didn't think that he had  
12 anything relative to that use of force. He had his—he was  
13 facing away from it.

14 MICHELLE ALANIS: But you did review the statement  
15 that he made.

16 ROD MOORE: Absolutely.

17 MICHELLE ALANIS: Okay. You were asked on Page  
18 NDOC 43 about the allegations of misconduct. Could you tell  
19 me, do you come up with the allegations of misconduct or does  
20 that come from someone else?

21 ROD MOORE: In this particular case, I  
22 believe the Inspector General is the one that put the charges  
23 on there, or the allegations, I should say.

24 MICHELLE ALANIS: There was a line of questioning  
25 about, you mentioned in your summary of interviewing Officer

1 Navarrete, that you said he—you pointed out that there was  
2 nothing he could and I believe that was on Page 53. Do you  
3 remember that?

4 ROD MOORE: I do.

5 MICHELLE ALANIS: And, I'm going to actually—it  
6 looks like the start of that summary, it starts on NDOC 51.

7 ROD MOORE: Correct.

8 MICHELLE ALANIS: So, for completeness here, it  
9 looks like it starts out saying, as we continue our review of  
10 the video, we get to the point in the video where Valdez  
11 touches Inmate Norales' back and reaches around his neck. I  
12 then point out that Inmate Norales hand can still be seen, as  
13 still being on the wall and has not moved his feet. The video  
14 was played again.

15 And then it looks like we get to 53. I pointed out  
16 that there was nothing Navarrete could physically do from his  
17 standpoint due to Valdez's action being quick. When you  
18 reference that there was nothing he could physically do, were  
19 you talking about this specific paragraph where you're  
20 describing Valdez's actions or were you talking about  
21 throughout the entirety of the video?

22 ROD MOORE: The—during the interview  
23 process, we went through the entire video, as slow as we  
24 could. During the interview process. And, what I reference  
25

1 in this sentence right here is the exact time when Officer  
2 Valdez makes physical contact with Inmate Norales.

3 MICHELLE ALANIS: So, basically when Valdez has  
4 his arm coming around the inmate's neck, there was nothing at  
5 that juncture that Officer Navarrete could've done.

6 ROD MOORE: None, it was too quick.

7 MICHELLE ALANIS: Okay. But at this point, we  
8 were at about, like you noted, at approximately 11 minutes in  
9 the video, right?

10 ROD MOORE: Correct.

11 MICHELLE ALANIS: So, prior to that time, were  
12 there things that Officer Navarrete could've done.

13 ROD MOORE: Numerous things he could've  
14 done.

15 MICHELLE ALANIS: What were those things?

16 ROD MOORE: As I mentioned before, our job  
17 in a correctional setting is to deescalate. Not escalate.  
18 When you—when you have an inmate that's put on the wall for  
19 that long of a duration, you're not going to get, for lack of  
20 a better phrase, a chummy inmate, when you go to make contact  
21 with him.

22 If he had excess food, take the food, get his ID  
23 number and go write a list of charges for that infraction. If  
24 he's being—if he's being non-compliant, maybe put him on the  
25 wall. Maybe do a more thorough pat down search. Put him in

1 restraints and take him to the Sergeant's office so a  
2 supervisor can handle it.

3 But to take your—take your time and away from the  
4 culinary, which is the most volatile place in a correctional  
5 setting, in any correctional setting, whether it's a jail or  
6 prison, when you're feeding, that's the most volatile place.  
7 To be able to take that much time for one inmate, for having  
8 just food, that could've—you're taking away two officers sets  
9 of eyes for that culinary. Should've dealt with it right then  
10 and there, either taken him to the Sergeant's office, take his  
11 ID card, get his number, write him up, do what have you, but  
12 there was nothing I could see in that video that that inmate  
13 should've been kept on that wall for that long of a duration.

14 MICHELLE ALANIS: So, if the inmate did in fact  
15 have an extra piece of food or took things out of the  
16 culinary, had contraband, assuming all of that, it still  
17 doesn't justify him being on the wall for 11 minutes, right?

18 ROD MOORE: No, it does not.

19 MICHELLE ALANIS: And, it didn't justify him being  
20 pushed into the wall.

21 ROD MOORE: No, it does not.

22 MICHELLE ALANIS: And, it didn't justify the fact  
23 that Valdez then takes his arm and wraps it and puts it around  
24 his neck and pulls him back.

25 ROD MOORE: No, it does not.



1 MICHELLE ALANIS: You were asked if you had  
2 interviewed Inmate Norales. Do you remember that?

3 ROD MOORE: Yes, I do.

4 MICHELLE ALANIS: But, we had already covered that  
5 the criminal report, you had reviewed that report, correct?

6 ROD MOORE: I did.

7 MICHELLE ALANIS: And that was a part of your  
8 investigative report.

9 ROD MOORE: Correct.

10 MICHELLE ALANIS: Or, investigative file. And,  
11 that criminal report noted that Inmate Norales had been  
12 interviewed, right?

13 ROD MOORE: Correct.

14 MICHELLE ALANIS: So, you already had some  
15 statements from Inmate Norales?

16 ROD MOORE: Correct.

17 MICHELLE ALANIS: [pause] I believe you were also  
18 questioned about and then we saw the video here that the  
19 inmate was kind of mouthing off after the fact in the medical  
20 cart, do you remember that?

21 ROD MOORE: I do.

22 MICHELLE ALANIS: And you were asked about  
23 injuries and so forth.

24 ROD MOORE: Yes.

25

1 MICHELLE ALANIS: Okay. So, along with those  
2 questions and in looking at this video, did the inmate—when  
3 you hear him say things like—you know, it's hard to fully  
4 understand but he said something about—something about  
5 training and being—and played. Do you remember that?

6 ROD MOORE: I do.

7 MICHELLE ALANIS: So, even—let's assume the inmate  
8 says, you got played or your officer got played, or something  
9 to that effect. Does that change your opinion or any—anything  
10 that you reviewed on that tape?

11 ROD MOORE: No, it does not.

12 MICHELLE ALANIS: And, if in fact the inmate did  
13 sort of, I guess, I don't know, bait the officers, does that  
14 justify them responding to whatever verbal statements he's  
15 making?

16 ROD MOORE: No, not at all.

17 MICHELLE ALANIS: Is it common that sometimes the  
18 inmates make statements like that to try to get a rise out of  
19 the officers?

20 ROD MOORE: Continually. It happens all the  
21 time.

22 MICHELLE ALANIS: And, are they trained on—that  
23 that's something they would encounter in their job?

24 ROD MOORE: Yes. There's a class that is  
25 mandated in interpersonal communications. It talks about de-

1 escalation. It talks about being played, being reeled into  
2 situations like this and maintain a professional demeanor at  
3 all times. That's what the interpersonal communication class  
4 is all about.

5 MICHELLE ALANIS: And, whether or not Inmate  
6 Norales sustained injuries, does there have to be an injury in  
7 order for there to be an unnecessary use of force?

8 ROD MOORE: No. Use of force, a proper use  
9 of force that is totally within policy can be very ugly on a  
10 video, but it's within policy. You don't need injuries to  
11 prove excessive force. And, you don't—you don't need, you  
12 know, a bunch of injuries, or I'm sorry, non-existent injuries  
13 to prove that no force was used. So, it's—it's a totality of  
14 the situation but you don't have to have injuries to have  
15 excessive force.

16 MICHELLE ALANIS: So, the fact if Inmate Norales  
17 did not suffer any injuries following the videos that we've  
18 seen, that doesn't change what you observed in the almost 11  
19 minutes on that video.

20 ROD MOORE: No, it does not.

21 MICHELLE ALANIS: [pause] You were asked several  
22 questions about the inmate wearing a watch. Do you remember  
23 that line of questioning?

24 ROD MOORE: I do.  
25

1 MICHELLE ALANIS: And, I believe it was  
2 established we didn't know for sure if he did in fact have a  
3 watch on or not, right?

4 ROD MOORE: Correct.

5 MICHELLE ALANIS: And, if we look at NDOC 57, Page  
6 57, in Exhibit A, the very first line of the last paragraph.  
7 At specific time in the video, just before the use of force,  
8 Norales has both of his hands on the wall and appears to look  
9 at his watch on his left hand. You said, it appears, right?

10 ROD MOORE: Correct.

11 MICHELLE ALANIS: Okay. But you saw him look at  
12 his wrist?

13 ROD MOORE: Correct.

14 NICOLE YOUNG: Objection. I don't think the  
15 video clearly shows what he's looking at. The video is kind  
16 of blurry so you can't tell if he's looking at his wrist, his  
17 hand. The wall.

18 HEARING OFFICER: It speaks for itself. I'll look  
19 at it again. I'm sure, I'll look at it again.

20 MICHELLE ALANIS: And at that point, we had  
21 established, when he's making those, as opposing counsel  
22 pointed out, three gestures of looking—whether it's at his  
23 wrist, his watch or whatever, at his arm—we have established  
24 that that's at almost 11 minutes in the video, right?

25 ROD MOORE: Correct.

1 MICHELLE ALANIS: So, the inmate had been with his  
2 hands on the wall for 11 minutes.

3 ROD MOORE: Correct.

4 MICHELLE ALANIS: And, I believe you had said that  
5 you didn't think his hands come completely off, was that your  
6 testimony earlier?

7 ROD MOORE: Yes, it was.

8 MICHELLE ALANIS: And, is it because you thought--  
9 explain it for me, I don't want to put words in your mouth.

10 ROD MOORE: The--the terminology is come off  
11 the wall. In his actions, it looks like--excuse me. It looks  
12 like he comes off but it doesn't seem like there's--like his  
13 fingers are still on. His palms may have come off, but it  
14 doesn't--it doesn't necessarily say or prove that his hands  
15 came off the wall.

16 In whatever way it was, if his hands came off an  
17 inch or two inches, or what have you, it wasn't in a furtive  
18 movement to strike an officer. It wasn't anything like that.  
19 I'm sure they recognize, he's been up there for 11 minutes and  
20 if they want--you know, 13 times or 11 times, whatever it was,  
21 of the times he comes off the wall. If that's such in a  
22 furtive movement, then why did they wait 13 times for it to  
23 happen. Should've cuffed him up right then and there.

24

25

1 MICHELLE ALANIS: There was some questioning  
2 regarding Page NDOC 0063, with your summary of being on the  
3 wall for approximately 11-14 minutes.

4 ROD MOORE: Uh huh.

5 MICHELLE ALANIS: I just want to clarify that your  
6 statement there says, approximately. Right?

7 ROD MOORE: That's correct.

8 MICHELLE ALANIS: Okay. And from the videos we've  
9 seen, I believe that I had stated, when we were going through  
10 there, that Valdez starts approaching him at 10:48 or 10:50  
11 into the video?

12 ROD MOORE: Correct.

13 MICHELLE ALANIS: So, we're talking about 10  
14 seconds shy of 11 minutes, right?

15 ROD MOORE: Correct.

16 MICHELLE ALANIS: Which would be approximately 11  
17 minutes.

18 ROD MOORE: Yes.

19 MICHELLE ALANIS: And, the video that we see, when  
20 it starts up, it's kind of hard to tell what's going on.  
21 Would you agree with me?

22 ROD MOORE: Yes.

23 MICHELLE ALANIS: Okay. There's several inmates  
24 sort of lined up against the wall.

25 ROD MOORE: Correct.

1 MICHELLE ALANIS: So, when the video starts, it's  
2 not where the inmates are actually walking or exiting out of  
3 that doorway from the culinary, right?

4 ROD MOORE: That is correct. They're  
5 already facing the wall.

6 MICHELLE ALANIS: Okay. Is—does that add to your  
7 approximation?

8 ROD MOORE: Yes, it does.

9 MICHELLE ALANIS: [pause] You were asked about  
10 your summary #4 in your investigator notes that if the  
11 officers had verbally reacted to the motion, that would've  
12 been a reaction, right?

13 ROD MOORE: Correct.

14 MICHELLE ALANIS: And, for reference, I'm looking  
15 at NDOC 63.

16 ROD MOORE: Okay. #4?

17 MICHELLE ALANIS: Yes, #4. So, when you summarize  
18 both officers are away from him at that time and do not react  
19 to the motion, were you referencing a verbal reaction or a  
20 physical reaction?

21 ROD MOORE: The—he does manipulate his arm  
22 in a fashion that, with—I guess my life lessons learned—when  
23 you look at your watch, your elbow kind of comes up and you  
24 twist your—you twist your wrist. That's the motion that he  
25 appeared to be making. And, if the hand comes off the wall

1 and that's a violation of the—of the directive or the order by  
2 the correctional officers, they're in proximity enough that  
3 there's no reaction because they know it's not in a furtive  
4 move. It's not something that he's coming off the wall to  
5 challenge them or to do them harm. Even though in the  
6 reports, they say that he is at a 10 of agitation.

7 HEARING OFFICER: What's the word you're using,  
8 what kind of move is it?

9 ROD MOORE: A furtive move.

10 HEARING OFFICER: How do you spell that?

11 ROD MOORE: I don't know.

12 MICHELLE ALANIS: Affirmative.

13 ROD MOORE: Affirmative.

14 HEARING OFFICER: Affirmative, thank you. There's  
15 furtive and then there's affirmative. I wanted to make sure I  
16 got that right.

17 MICHELLE ALANIS: At least I believe it's  
18 affirmative is what he's saying.

19 ROD MOORE: Right.

20 HEARING OFFICER: Yeah.

21 MICHELLE ALANIS: And so, it looks like, #4 your  
22 kind of summarizing that part. If we look at #11 on your  
23 summary it says that, 10:41 into the video, Inmate Norales  
24 appears to be looking at his watch, right?

25 ROD MOORE: Correct.



1 MICHELLE ALANIS: And so, those are those  
2 movements that he's making where you said there's no reaction.

3 ROD MOORE: Correct.

4 MICHELLE ALANIS: Your next one, #12 says, at  
5 10:48 into the video is when Valdez approaches him.

6 ROD MOORE: Correct.

7 MICHELLE ALANIS: So, seven seconds go by where  
8 nothing is being done, right?

9 ROD MOORE: Correct.

10 MICHELLE ALANIS: There's no physical reaction to  
11 those movements that he made over here, not affirmative but  
12 the movements--

13 ROD MOORE: No, there's not.

14 MICHELLE ALANIS: --looking at his whatever. And  
15 we saw that when he actually does take him down and put his  
16 arm around his neck, that was seconds, right?

17 ROD MOORE: Correct.

18 MICHELLE ALANIS: [pause] You've reviewed the  
19 video for purposes of the allegation of excessive force,  
20 right?

21 ROD MOORE: Correct.

22 MICHELLE ALANIS: But there was also the other  
23 component of the statements.

24 ROD MOORE: Correct, the false and  
25 misleading.

1 MICHELLE ALANIS: Okay. And from looking at all  
2 these videos, it was your position that looking at the video  
3 did not comport to the statements made--

4 ROD MOORE: Correct.

5 MICHELLE ALANIS: --in the incident report, right?

6 ROD MOORE: That's correct.

7 MICHELLE ALANIS: And, specifically #16 of your  
8 summary, at no time did either officer attempt to restrain the  
9 inmate, Inmate Norales, until he was on the ground, on the  
10 sidewalk, right?

11 ROD MOORE: That is correct.

12 MICHELLE ALANIS: And you were asked if they  
13 could've verbally said, I'm going to put you in restraints,  
14 right?

15 ROD MOORE: Correct.

16 MICHELLE ALANIS: And we can't hear that, right?

17 ROD MOORE: Correct.

18 MICHELLE ALANIS: But, in watching that video, do  
19 you believe--did you see Valdez trying to restrain the inmate?

20 ROD MOORE: No.

21 MICHELLE ALANIS: And, when an officer is normally  
22 going to restrain an inmate, since you just did it about three  
23 months ago, how would you normally go about doing that?

24 ROD MOORE: Since both of them were there,  
25 they would both come off at an angle with the inmate. The

1 officer that is to place the restraints on him should tell the  
2 inmate, you know, these are my expectations. I'm going to  
3 restrain you, okay. And then they grab the right hand, the  
4 other officers grabs his left hand and they bring them right  
5 back to the back, so he can be handcuffed.

6 MICHELLE ALANIS: So, when you attempt to restrain  
7 an inmate, you don't approach them and push them into the  
8 wall.

9 ROD MOORE: No.

10 MICHELLE ALANIS: And you don't take their arm and  
11 put it around their neck.

12 ROD MOORE: No.

13 MICHELLE ALANIS: So, when you see Officer  
14 Navarrete saying that Inmate Norales came off the culinary  
15 wall while CO Valdez was attempting to restrain him, resulting  
16 in a spontaneous use of force, you didn't see that in the  
17 video?

18 ROD MOORE: No. That's not there, no.

19 MICHELLE ALANIS: I have no further questions for  
20 him.

21 HEARING OFFICER: Any recross?

22 NICOLE YOUNG: No.

23 HEARING OFFICER: I know that there was three  
24 officers. There were three officers on the scene at various  
25

1 times during the video. Were any of them in a supervisory  
2 position over the others?

3           ROD MOORE:           The position that Officer  
4 Navarrete held was a Senior Officer position. It's not  
5 necessarily a supervisory role, however there is a 5% increase  
6 in pay. Some of that responsibility comes from, we used to  
7 have an FTO program, which is a training program, like a Field  
8 Training Office. It kind of--the Senior Officer kind of took  
9 that role, as mentoring the newer correctional officers and  
10 correctional officers.

11           HEARING OFFICER:   Thank you.

12           ROD MOORE:           Uh huh.

13           HEARING OFFICER:   Thank you very much.

14           ROD MOORE:           You're welcome.

15           HEARING OFFICER:   I think now would be a good time  
16 to take a break.

17           MICHELLE ALANIS:    I--yes, I guess lunch.

18           DANIEL MARKS:       Could we get the schedule--could  
19 you give us a schedule for the afternoon so we can file?

20           HEARING OFFICER:   [crosstalk] We might not get  
21 done today, it looks like. So, I don't know, if we don't, we  
22 don't.

23           DANIEL MARKS:       Do you know the order?

24           MICHELLE ALANIS:    I gave you the best estimate I  
25 can.

1 DANIEL MARKS: No, just give me—could you give  
2 me the order of the witnesses so we know—

3 MICHELLE ALANIS: Oh. So, as of right now, I was  
4 planning on calling Officer Wachter, but I'm not sure.  
5 Officer Wachter, Associate Warden Adams. Warden Howell and  
6 Warden Russell by phone.

7 HEARING OFFICER: Okay.

8 DANIEL MARKS: I just—our people are under  
9 subpoena for 3:00. I'm just going to keep them and hope we  
10 can get time, if we can't, we can't. Hopefully the rest won't  
11 be as long, obviously but we'll see. All right.

12 HEARING OFFICER: It usually works out that way.  
13 We'll find out.

14 DANIEL MARKS: We'll see, okay.

15 HEARING OFFICER: All right. We'll come back at—  
16 you need an hour you think?

17 DANIEL MARKS: Yeah, let's take an hour.

18 HEARING OFFICER: Okay.

19 MICHELLE ALANIS: That's fine.

20 HEARING OFFICER: 12:30.

21 OFF THE RECORD

22 ON THE RECORD

23 HEARING OFFICER: Good afternoon. We're back on  
24 the record in Navarrete v. Department of Corrections. The  
25 Department of Corrections is going to call their next witness?

1 MICHELLE ALANIS: Yes.

2 HEARING OFFICER: All right. Sir, could you  
3 please raise your right hand? Do you solemnly swear that the  
4 testimony you're about to give in this proceeding will be the  
5 truth, the whole truth and nothing but the truth?

6 I do.

7 HEARING OFFICER: Thank you sir.

8 MICHELLE ALANIS: Can you please state and spell  
9 your name for the record, please?

10 DAVID WACHTER: David Wachter. W-A-C-H-T-E-R.

11 HEARING OFFICER: W-A?

12 DAVID WACHTER: C-H-T-E-R.

13 HEARING OFFICER: Thank you.

14 MICHELLE ALANIS: And, Officer Wachter, where area  
15 you employed?

16 DAVID WACHTER: At Southern Desert Correctional  
17 Center.

18 MICHELLE ALANIS: And, that's with Nevada  
19 Department of Corrections?

20 DAVID WACHTER: Yes ma'am.

21 MICHELLE ALANIS: How long have you been employed  
22 with NDOC?

23 DAVID WACHTER: It will be almost five years  
24 now.

25

1 MICHELLE ALANIS: And what is your current  
2 position?

3 DAVID WACHTER: Correctional officer.

4 MICHELLE ALANIS: Was that the same position you  
5 held in October 2016?

6 DAVID WACHTER: Yes ma'am.

7 MICHELLE ALANIS: And, back in October 2016, what  
8 shift did you work?

9 DAVID WACHTER: Dayshift, so 5:00 AM to 1:00 PM.

10 MICHELLE ALANIS: Okay. And, what was your post?

11 DAVID WACHTER: At the time, I was a Sick and  
12 Annual post. So—

13 MICHELLE ALANIS: What does that mean?

14 DAVID WACHTER: Basically, I just covered people  
15 on their days off or if they were called out sick. So, I  
16 covered anywhere on the yard.

17 MICHELLE ALANIS: And that could change every  
18 single day?

19 DAVID WACHTER: Every day.

20 MICHELLE ALANIS: Okay. And, as part of that Sick  
21 and Annual, sometimes were assigned to Search and Escort?

22 DAVID WACHTER: Yes ma'am.

23 MICHELLE ALANIS: And, can you tell me what Search  
24 and Escort does?

25

1           DAVID WACHTER:       Basically, they run the daily  
2 operations of the yard. When we get there in the morning, we  
3 start feeding breakfast and we call out the movement of all  
4 the inmates. After that, we call out—we get gym started and  
5 chapel. Basically we—for lack of a better term, we're almost  
6 like a crossing guard directing traffic on the yard.

7           MICHELLE ALANIS:    Okay. And, you said you call  
8 out for breakfast. What time is breakfast normally served?

9           DAVID WACHTER:       We start at 5:00 in the morning.

10          MICHELLE ALANIS:    What time does it go until?

11          DAVID WACHTER:       Depending on what they're  
12 having, it can go to about 7:00, 7:30, usually.

13          MICHELLE ALANIS:    And, that's not for a single  
14 inmate to sit in there from 5:00 to 7:00, that's for all the  
15 units?

16          DAVID WACHTER:       No, that's—that's for all the  
17 units.

18          MICHELLE ALANIS:    Okay. And, can you tell me what  
19 Search and Escort's role is during the breakfast feeding?

20          DAVID WACHTER:       Once we call out a unit to come,  
21 they come in, form a line, go in the entrance of the breakfast  
22 hall. They get their trays. When they're all done eating and  
23 they come out, we—you know we search, randomly pat search  
24 inmates. We search their sack lunches to make sure they're  
25 not taking anything they're not supposed to take out. We



1 just—we keep it moving. Making sure there's peace, keep the  
2 peace.

3 MICHELLE ALANIS: As Search and Escort, are you  
4 normally located inside of the culinary or outside?

5 DAVID WACHTER: Normally we stand outside, but  
6 we periodically walk in the different chow halls to just check  
7 and make sure everything is running smooth.

8 MICHELLE ALANIS: And, what's your role when  
9 breakfast is completed?

10 DAVID WACHTER: Once breakfast is completed,  
11 then we—we'll get education started and then we'll get the  
12 normal operations of the yard to start.

13 MICHELLE ALANIS: You said the inmates, there'll—  
14 sorry, there will be random checks, right?

15 DAVID WACHTER: Correct.

16 MICHELLE ALANIS: How do you determine—is there  
17 any rhyme or reason to the randomness? Who makes the  
18 decision?

19 DAVID WACHTER: We—we usually do it as a team.  
20 Normally, it will be my turn and I pick every third guy that  
21 comes out. Pull them over to a random search. Some days it  
22 will be every 10<sup>th</sup> guy. It's all just—it's really just random.

23 MICHELLE ALANIS: Okay. And, once you select an  
24 inmate to be searched, tell me about what happens next, what's  
25 that process like?

1           DAVID WACHTER:        So, we'll tell the inmate to get  
2 on the wall. They have to put their hands on the wall.  
3 Spread their legs so we can check on them, make sure they're  
4 not going to make any sudden movements on us. Then we usually  
5 ask, you know, we ask for their ID, ask for their information  
6 so we kind of know who we're dealing with. And then we  
7 conduct our--a pat search on the inmates. We'll go through  
8 their sack lunch. Then, normally we just send them on their  
9 way after that.

10           MICHELLE ALANIS:     You said you look through their  
11 sack lunch. What happens if you determine that they have  
12 something they shouldn't have?

13           DAVID WACHTER:       We will tell them to take that  
14 item out, throw it away. And then we take down their  
15 information normally and give them a write up, Notice of  
16 Charges.

17           MICHELLE ALANIS:     So, let's assume that an inmate  
18 doesn't have anything inappropriate on them, you know, they  
19 don't have any extra food or any other contraband. How long  
20 does that generally take to do a random search?

21           DAVID WACHTER:       Generally from start to finish,  
22 I would say about 3-4 minutes.

23           MICHELLE ALANIS:     And, let's say you find  
24 something on them, with--you know, a piece of food or they have  
25 something extra in their sack lunch--

1           DAVID WACHTER:       After we're all done searching  
2 them after that, then we tell them to throw it away. So, that  
3 could take, sometimes up to an extra minute.

4           MICHELLE ALANIS:     Okay. As a correctional  
5 officer, do you often--do you deal with inmates making verbal--  
6 verbal inappropriate comments?

7           DAVID WACHTER:       All the time.

8           MICHELLE ALANIS:     Is that the nature of your job?

9           DAVID WACHTER:       Yes.

10          MICHELLE ALANIS:     And, sometimes do those verbal  
11 comments escalate a little bit?

12          DAVID WACHTER:       Yes.

13          MICHELLE ALANIS:     And, do the inmates do that to  
14 try to get under your skin a little bit?

15          DAVID WACHTER:       A lot of the time, yes.

16          MICHELLE ALANIS:     And, do they curse at you?

17          DAVID WACHTER:       Yes.

18          MICHELLE ALANIS:     And, are you trained as an  
19 officer that that's something that may happen to you during  
20 your job?

21          DAVID WACHTER:       Yes.

22          MICHELLE ALANIS:     And, are you trained on how to  
23 respond to those types of scenarios?

24          DAVID WACHTER:       Yes.

25

1 MICHELLE ALANIS: And, what-how are you trained on  
2 how to respond to that?

3 DAVID WACHTER: We're trained on, you know,  
4 being able to talk our way out of it. Talk-talk the inmate  
5 down. We call it verbal judo, just being able to talk our way  
6 out of things.

7 MICHELLE ALANIS: Is that something that you're  
8 taught at the Academy?

9 DAVID WACHTER: Yes.

10 MICHELLE ALANIS: And, do you receive additional  
11 training throughout your years?

12 DAVID WACHTER: No.

13 MICHELLE ALANIS: Aside from verbal judo, is there  
14 anything else that you can do to the inmates when they're  
15 getting a little mouthy?

16 DAVID WACHTER: Like I said, if they're on the  
17 wall and they're getting mouthy, we can just place them in  
18 restraints and take them away, down to Operations to talk to  
19 our shift command.

20 MICHELLE ALANIS: And, what happens once they're  
21 down there at shift command?

22 DAVID WACHTER: Shift command, they deal with it  
23 and a lot of times, they just get a time out type thing, just  
24 a time to cool down. Let the cooler heads prevail.

25

1 MICHELLE ALANIS: What about if an inmate's  
2 getting verbal and also you know, what if their hands move a  
3 little bit on the wall?

4 DAVID WACHTER: We tell them to hold their  
5 hands. If you move your hands again, we're going to take it  
6 as a sign of aggression and then we would have to act  
7 accordingly to that.

8 MICHELLE ALANIS: And, by act accordingly, you  
9 said if they're not listening, one of the things you could do  
10 is put them in restraints?

11 DAVID WACHTER: Correct.

12 MICHELLE ALANIS: How do you normally put an  
13 inmate in restraints?

14 DAVID WACHTER: If I'm going to go put an inmate  
15 in restraints, he's already on the wall, I'll have one hand on  
16 his back, so I can feel any movements while my other hand is  
17 taking out my restraints. Then, I will help assist, one hand  
18 at a time, behind his back to place them in restraints.

19 HEARING OFFICER: I had another case involving  
20 handcuffing. Is part of the technique to get the person off  
21 balance in order to gain control over that person's movement?

22 DAVID WACHTER: What we--what we like to do is,  
23 we like to have them spread their legs, so they're not in a  
24 very comfortable or athletic position, so they can't move as  
25 easy.

1 HEARING OFFICER: Okay, thank you.

2 MICHELLE ALANIS: Are any of the techniques that  
3 you're trained on, if an inmate is getting verbally abusive or  
4 maybe not listening to your orders, have you ever been trained  
5 to, as you approach the inmate from behind, kind of push them  
6 into the wall?

7 DAVID WACHTER: That's what we use our hand on  
8 their back for. We put pressure on it so that way we can feel  
9 if he goes to turn, we can feel it before it actually starts  
10 happening, before we can see it. So then we can either know  
11 to back away or if we have to come up closer.

12 MICHELLE ALANIS: And, you're gesturing with one  
13 hand, right?

14 DAVID WACHTER: With one hand, yes, usually with  
15 one hand.

16 MICHELLE ALANIS: Not two hands.

17 DAVID WACHTER: Yeah, usually with one hand.

18 MICHELLE ALANIS: Okay. Do you know Officer Jose  
19 Navarrete?

20 DAVID WACHTER: Yes.

21 MICHELLE ALANIS: And, how do you know him?

22 DAVID WACHTER: We worked with each other.

23 MICHELLE ALANIS: And, do you know Officer Paul  
24 Valdez?

25 DAVID WACHTER: Yes ma'am.

1 MICHELLE ALANIS: And you also worked with him?

2 DAVID WACHTER: Yes.

3 MICHELLE ALANIS: Are you friends with either of  
4 these officers?

5 DAVID WACHTER: At work, we got along great. We  
6 got along at work. We never hung out outside of work or  
7 anything like that.

8 MICHELLE ALANIS: Okay. And you were working on  
9 October 9, 2016?

10 DAVID WACHTER: Yes.

11 MICHELLE ALANIS: Okay. And your shift at that  
12 point was day shift?

13 DAVID WACHTER: Yes ma'am.

14 MICHELLE ALANIS: Do you recall working Search and  
15 Escort that day?

16 DAVID WACHTER: Yes.

17 MICHELLE ALANIS: Do you remember an incident  
18 involving Ricky Norales?

19 DAVID WACHTER: Yes.

20 MICHELLE ALANIS: Can you tell me what happened  
21 that day?

22 DAVID WACHTER: I was—we were feeding breakfast.  
23 I was watching a unit coming up from the dorms, they were  
24 coming up and going into the breakfast hall. I had seen that  
25 Senior Navarrete and Officer Valdez had an inmate on the wall

1 and they were talking to him. So, I placed myself in between  
2 all the other inmates coming up into the chow hall, in that  
3 situation as a buffer.

4 Then I heard a commotion, so I turned around and  
5 noticed Officer Valdez had taken the inmate down to the  
6 ground. Then I realized this—all these other inmates were  
7 coming up. So, I turned back around and told them to get  
8 down. Quit coming towards us anymore, to protect our safety.

9 MICHELLE ALANIS: So, when there was force used,  
10 your back was towards the officers?

11 DAVID WACHTER: Yes.

12 MICHELLE ALANIS: Okay. Did you hear what was  
13 being said between Senior Navarrete and Officer Valdez and  
14 Inmate Norales?

15 DAVID WACHTER: Not that I can recall.

16 MICHELLE ALANIS: And, there's been periods of  
17 time where—there's a video of the incident which I know you've  
18 seen, correct?

19 DAVID WACHTER: Yes ma'am.

20 MICHELLE ALANIS: And, there's a period of time  
21 when you're in their vicinity. Do you recall any of the  
22 comments made at that time?

23 DAVID WACHTER: No, I do not.

24 MICHELLE ALANIS: Is there any particular reason  
25 why maybe you didn't hear anything being said at that time?



1           DAVID WACHTER:       With another unit coming up to  
2 the chow hall, they're always yelling at their buddies, either  
3 in another unit or going into the other chow hall. And we had  
4 other inmates coming out, exiting the dining hall and they're  
5 all loud, talking to their buddies too.

6           MICHELLE ALANIS:    Okay. If I could have you turn  
7 in that Exhibit binder there to Exhibit A, and if you look at  
8 the bottom of the pages, to the right hand corner, there's a  
9 little bate stamp that says, NDOC with some numbers.

10          DAVID WACHTER:       Yes ma'am.

11          MICHELLE ALANIS:    If you could flip to #23.

12          DAVID WACHTER:       Okay.

13          MICHELLE ALANIS:    If we look about two-thirds of  
14 the way down, there's a little block here in this report. It  
15 says, Staff Name: Wachter, David.

16          DAVID WACHTER:       Yes ma'am.

17          MICHELLE ALANIS:    And, that's you, correct?

18          DAVID WACHTER:       Yes.

19          MICHELLE ALANIS:    And the report detail there, is  
20 that a report that you submitted?

21          DAVID WACHTER:       Yes ma'am.

22          MICHELLE ALANIS:    And this is something that you  
23 put into the NOTIS System?

24          DAVID WACHTER:       Correct.

1 MICHELLE ALANIS: And, it looks like basically  
2 what you just told me right now. That you were on Search and  
3 Escort and you, while feeding breakfast, CO Valdez told Inmate  
4 Norales—it says, told Inmate Norales, Ricky, #1104257 on the  
5 wall for a random pat search. Did you hear him tell him to  
6 get on the wall, or was—are you just coming to that conclusion  
7 because you saw him on the wall?

8 DAVID WACHTER: Coming to that conclusion.

9 MICHELLE ALANIS: Okay. And then, you get to the  
10 next part with another unit coming. You placed yourself in  
11 between him and the search taking place. Is that what you  
12 just described to me?

13 DAVID WACHTER: Yes ma'am.

14 MICHELLE ALANIS: And, that's why you're back was  
15 towards them?

16 DAVID WACHTER: Correct.

17 MICHELLE ALANIS: Okay. And then you heard the  
18 commotion, right?

19 DAVID WACHTER: Correct.

20 MICHELLE ALANIS: Is there any reason why you  
21 didn't respond to the commotion?

22 DAVID WACHTER: Senior Navarrete was closer to  
23 the incident than I was.

1 MICHELLE ALANIS: Okay. Do you remember—actually,  
2 have you ever been trained to put your arm around an inmate's  
3 neck?

4 DAVID WACHTER: No, we've never been trained to  
5 do that.

6 MICHELLE ALANIS: Is that a technique that you're  
7 supposed to use as an officer?

8 DAVID WACHTER: No.

9 MICHELLE ALANIS: Do you remember being  
10 interviewed in a criminal investigation in this case?

11 DAVID WACHTER: Yes ma'am.

12 MICHELLE ALANIS: And you were interviewed, I  
13 believe by David Mulnar?

14 DAVID WACHTER: Correct.

15 MICHELLE ALANIS: And, if I could have you turn to  
16 NDOC 85, same Exhibit, different page number.

17 DAVID WACHTER: Okay.

18 MICHELLE ALANIS: Okay. And, I'm looking at the  
19 third paragraph that starts, on October 18, 2016. Are you  
20 there?

21 DAVID WACHTER: Yes ma'am.

22 MICHELLE ALANIS: Okay. So, about six lines down,  
23 the start of the first full sentence there. It says, Wachter  
24 stated that he had viewed the video footage prior to being  
25 interviewed and acknowledged that the inmate had been standing

1 at the wall for an extended period of time. Do you remember  
2 stating that to the investigator?

3 DAVID WACHTER: Yes ma'am.

4 MICHELLE ALANIS: Okay. So, we've seen the video  
5 in this case and the inmate's on the wall for approximately 11  
6 minutes. Is that what you consider to be an extended period  
7 of time?

8 DAVID WACHTER: Yes ma'am.

9 MICHELLE ALANIS: And, I believe you've already  
10 testified that normally a random pat down takes about 3-4  
11 minutes?

12 DAVID WACHTER: Correct.

13 MICHELLE ALANIS: And at most, maybe 4-5?

14 DAVID WACHTER: Correct.

15 MICHELLE ALANIS: And, if I were to tell you that  
16 the pat down was completed at about 1:30, but the inmate  
17 continued to stand on the wall for about another nine or so  
18 minutes. Does that--would you agree that that was an extended  
19 period of time?

20 DAVID WACHTER: Correct, yes, I would.

21 MICHELLE ALANIS: Even if that inmate had violated  
22 policy by having an extra piece of food?

23 DAVID WACHTER: Yes.

24 MICHELLE ALANIS: Looking further down that  
25 paragraph. It says you couldn't hear the conversation, which

1 we've already established. It says, Wachter stated that based  
2 on his review of the video footage, the use of force was not  
3 appropriate. Is that your position?

4 DAVID WACHTER: That is my position, yes.

5 MICHELLE ALANIS: Okay. And, what was  
6 inappropriate about that use of force?

7 DAVID WACHTER: From watching the video, it  
8 didn't look to me like the force was necessary. It didn't—to  
9 me, Officer Valdez was doing—and between him and the inmate,  
10 it didn't look like it was necessary to me.

11 MICHELLE ALANIS: Okay. And, you said it didn't  
12 seem appropriate what Officer Valdez was doing, correct?

13 DAVID WACHTER: Correct.

14 MICHELLE ALANIS: Earlier you said Officer  
15 Navarrete was a little bit closer in proximity, near Officer  
16 Valdez, right?

17 DAVID WACHTER: Correct.

18 MICHELLE ALANIS: As the Senior Officer in that  
19 situation, where there's about 10-11 minutes going by, if  
20 Valdez is doing something inappropriately or keeping the  
21 inmate there too long, could Officer Navarrete could've done  
22 anything?

23 DAVID WACHTER: He could've intervened.

24 MICHELLE ALANIS: How could he have intervened?  
25

1           DAVID WACHTER:           He could've—if he saw that there  
2 was—if the officer was getting really riled up or anything  
3 like that, he could've told the officer to, hey back off, I'll  
4 take over.

5           MICHELLE ALANIS:        Okay. It looks like you also  
6 had mentioned that you had previously told Valdez—you  
7 counseled him on his interactions with inmates, is that right?

8           DAVID WACHTER:           Yes.

9           MICHELLE ALANIS:        And, what do you mean by that?

10          DAVID WACHTER:           There was times that he would  
11 always have to get the last word in, with the inmates. It  
12 doesn't matter if the inmate was complying with what we were  
13 telling him to do or anything, he always—a lot of times, he  
14 had to make a remark and that would make the officer—that  
15 would get the inmate more riled up.

16          MICHELLE ALANIS:        And, you've told him that it's  
17 your job to kind of deescalate and quell these situations?

18          DAVID WACHTER:           Yes.

19          MICHELLE ALANIS:        And, is part of quelling the  
20 situations also intervening or deescalating?

21          DAVID WACHTER:           Yes.

22          MICHELLE ALANIS:        And, is that something that both  
23 Officer Valdez and Officer Navarrete could've done in this  
24 situation?

25          DAVID WACHTER:           Yes, they could have.

1 MICHELLE ALANIS: Is there ever a time where  
2 you're told to—that you can use that arm technique around an  
3 inmate's neck?

4 DAVID WACHTER: No.

5 MICHELLE ALANIS: There's no training on that  
6 technique.

7 DAVID WACHTER: No training on that, not around  
8 the neck, no.

9 MICHELLE ALANIS: And, do you remember in the  
10 video Officer Valdez approaching the inmate and kind of using  
11 both hands and sort of pushing him up against the wall?

12 DAVID WACHTER: Yes.

13 MICHELLE ALANIS: Earlier you talked about that  
14 when you restrain an inmate, you kind of place one hand on  
15 their back to, you know, sort of guide them as you're about to  
16 take one of their arms, I may have the hands wrong here—was  
17 what you saw in that video with both of his hands sort of  
18 pushing the inmate, was that what you were referring to?

19 DAVID WACHTER: No.

20 MICHELLE ALANIS: Okay. When you heard the  
21 commotion, were you surprised by that commotion?

22 DAVID WACHTER: I was.

23 MICHELLE ALANIS: Why were you surprised?

24 DAVID WACHTER: Because I don't recall hearing  
25 anything that made the situation seem like it was agitated.

1 Normally, when you have an agitated inmate, they get pretty  
2 loud and irate.

3 MICHELLE ALANIS: So, if this inmate was being  
4 very verbally abusive and agitated to the point where it  
5 required some sort of force, you believe you would've heard  
6 something?

7 DAVID WACHTER: Yes.

8 MICHELLE ALANIS: And you don't recall hearing  
9 anything?

10 DAVID WACHTER: I don't recall hearing anything.

11 MICHELLE ALANIS: Physically speaking, aside from  
12 hearing, does an inmate, if they're agitated, what would their  
13 physical movements be?

14 DAVID WACHTER: They'd be really fidgety,  
15 normally. They would keep turning their head, keep taking  
16 their hands off the wall.

17 MICHELLE ALANIS: Do you recall the video in this  
18 case?

19 DAVID WACHTER: Yes.

20 MICHELLE ALANIS: There are a couple of times when  
21 you can see Inmate Norales moving his head like this.

22 DAVID WACHTER: Correct.

23 MICHELLE ALANIS: Some have described it as  
24 fidgety.

25 DAVID WACHTER: Yes.



1 MICHELLE ALANIS: From your recollection, I can  
2 play it if you need me to, do you remember Inmate Norales  
3 appearing agitated in this video?

4 DAVID WACHTER: It doesn't look agitated, it  
5 looks more fidgety.

6 MICHELLE ALANIS: Do you—in your opinion, did it  
7 appear that Inmate Norales was posing any physical threat to  
8 the officers?

9 DAVID WACHTER: From the video footage, no.

10 MICHELLE ALANIS: Okay. Can you recall—can you  
11 give me an example of a scenario where you've seen a use of  
12 force?

13 DAVID WACHTER: Yeah. It was an inmate on the  
14 wall and they—when they were putting him on the wall, he  
15 wasn't complying. He just turned around, just cussing at the  
16 officers. When they finally went up to help him place his  
17 hands on the wall, he turned and swung on the officer.

18 MICHELLE ALANIS: The inmate swung.

19 DAVID WACHTER: Yes.

20 MICHELLE ALANIS: Okay. There was no swinging in  
21 this video, right?

22 DAVID WACHTER: Not that I could see.

23 MICHELLE ALANIS: When you say, not that I could  
24 see. From when you saw the video?

25 DAVID WACHTER: Yes, from when I saw the video.

1 MICHELLE ALANIS: Or, because you're not sure,  
2 because you don't remember.

3 DAVID WACHTER: No, from the video.

4 MICHELLE ALANIS: Okay. I don't have any further  
5 questions at this time.

6 NICOLE YOUNG: Okay. So, I think earlier in  
7 your testimony today you said that if you give an inmate an  
8 order to stop moving their hands and you move it again, or if  
9 they move it again, you take it as a sign of aggression and  
10 you act accordingly.

11 DAVID WACHTER: Correct.

12 NICOLE YOUNG: So, when you act accordingly,  
13 what does that--what do you do?

14 DAVID WACHTER: Normally, we go to place them in  
15 restraints. Then, when we feel if he moves or anything, we  
16 usually take them to the ground.

17 NICOLE YOUNG: Okay. But, so even if they're  
18 just--let's say their hands on the wall and they take it off  
19 and take it on, and just go back and forth, it might not be an  
20 overt sign of aggression, but you instruct them, don't do it  
21 again, I'm going to take it as a sign of aggression.

22 DAVID WACHTER: Yes. Yes.

23 NICOLE YOUNG: And, then you put--move into  
24 cuff.

25 DAVID WACHTER: Correct.

1           NICOLE YOUNG:           Okay. And you said, when you go  
2 into cuff them, you put one hand on their back so that you can  
3 feel if the inmate goes to turn.

4           DAVID WACHTER:         Correct.

5           NICOLE YOUNG:           And you said that by putting  
6 your hand on their back and you can feel their turning,  
7 that's—you feel them turning before they actually turn.

8           DAVID WACHTER:         Correct. You can feel the  
9 shoulder blades move before they actually come off because  
10 they have to tense—tense up to come off.

11          NICOLE YOUNG:           And so that tensing motion, if  
12 an inmate did that to you, would you then take that as a sign  
13 of aggression and I guess, increase the level of force?

14          DAVID WACHTER:         Yes.

15          NICOLE YOUNG:           Okay. And, from your memory of  
16 the event, you don't remember what the inmate said to the  
17 officers, do you?

18          DAVID WACHTER:         No, I do not.

19          NICOLE YOUNG:           And, you don't remember what the  
20 officers said to the inmate?

21          DAVID WACHTER:         I do not.

22          NICOLE YOUNG:           So, there's a point in the video  
23 where you come out of the culinary hall and you're standing  
24 with them for maybe a minute, two minutes, not that long, you  
25

1 don't remember anything that happened or what was said in that  
2 moment?

3 DAVID WACHTER: I don't recall.

4 NICOLE YOUNG: Okay. And the video that you  
5 watched, it didn't have any audio?

6 DAVID WACHTER: No.

7 NICOLE YOUNG: Okay. And then, when you're  
8 talking about the use of force in this case, your criticism is  
9 with Valdez's actions and the use of force.

10 DAVID WACHTER: Correct.

11 NICOLE YOUNG: You're not criticizing Officer  
12 Navarrete?

13 DAVID WACHTER: No.

14 MICHELLE ALANIS: Objection, misstates prior  
15 testimony but he answered.

16 HEARING OFFICER: I'm going to overrule the  
17 objection.

18 MICHELLE ALANIS: Okay.

19 NICOLE YOUNG: Then, you said that you were  
20 surprised by the commotion when you turned around and saw what  
21 was going on and you did not hear anything suggesting the  
22 inmate was agitated, correct?

23 DAVID WACHTER: Correct.  
24  
25

1                   NICOLE YOUNG:           But you did make the comment  
2 that, if Officer Valdez was riled up, Officer Navarrete  
3 should've told him to back off?

4                   DAVID WACHTER:        He could have, yes. He could  
5 have intervened.

6                   NICOLE YOUNG:        Okay. But you were in the  
7 vicinity when all this happened, you didn't—from your—what you  
8 saw of Officer Valdez, did you think he was riled up?

9                   DAVID WACHTER:        I did not, no.

10                  NICOLE YOUNG:        You didn't, okay. And, then you  
11 said an agitated inmate is going to be fidgety.

12                  DAVID WACHTER:        Correct.

13                  NICOLE YOUNG:        And is that because—so, let's  
14 say the inmate took extra food out of the culinary and you put  
15 him on the wall for a random pat search and if he's fidgety on  
16 the wall, is that because he broke a rule and he's going to  
17 get caught?

18                  DAVID WACHTER:        Yes.

19                  NICOLE YOUNG:        And you said if they're fidgety,  
20 you're talking about they're moving their head around and  
21 they're taking their hands off the wall.

22                  DAVID WACHTER:        Correct.

23                  NICOLE YOUNG:        So, if Inmate Norales was moving  
24 his head in the video a lot and if he was taking his hands off  
25

1 the wall consistently throughout the video, that's an agitated  
2 inmate and so, correct?

3 DAVID WACHTER: Correct.

4 NICOLE YOUNG: And so, would you then try to  
5 counsel him?

6 DAVID WACHTER: Yes.

7 NICOLE YOUNG: And, would you usually try to  
8 counsel the inmate before going to the next step of putting  
9 him in restraints?

10 DAVID WACHTER: Yes.

11 NICOLE YOUNG: And, why do you want to counsel  
12 them?

13 DAVID WACHTER: You know, we don't want to—I  
14 don't want to have to use the restraints and make the  
15 situation bigger. If I can counsel them and calm the  
16 situation down, then it's been a nice, easy day.

17 NICOLE YOUNG: And, is it better for you to  
18 counsel the inmate because you might have to have interactions  
19 with the inmate the next day and you don't want to--

20 DAVID WACHTER: Yes.

21 NICOLE YOUNG: --build that like, reputation  
22 with an inmate that you don't necessarily know yet?

23 DAVID WACHTER: Yes.

1           NICOLE YOUNG:           Okay. After medical comes, you  
2 went on the cart with the inmate and you went back with him to  
3 the infirmary?

4           DAVID WACHTER:        Yes.

5           NICOLE YOUNG:        Do you remember any of the  
6 comments that Inmate Norales was making?

7           DAVID WACHTER:        Yes, he was saying that, this  
8 situation, officers were going to put his kids through school  
9 and that he got them and he's going to sue them.

10          NICOLE YOUNG:        And, got them, was that—did he  
11 say like, he played them or something like that?

12          DAVID WACHTER:        It's what it seemed like.

13          NICOLE YOUNG:        And, he was also like  
14 threatening a lawsuit?

15          DAVID WACHTER:        Yes.

16          NICOLE YOUNG:        And, was he laughing?

17          DAVID WACHTER:        Yes.

18          NICOLE YOUNG:        So, he thought like the whole  
19 situation was just really funny?

20          DAVID WACHTER:        Yes.

21          NICOLE YOUNG:        And, do you think that  
22 compliance by an inmate is funny?

23          DAVID WACHTER:        No.

24          NICOLE YOUNG:        Does that go to like your safety  
25 at the job?

1                   DAVID WACHTER:       Yes.

2                   NICOLE YOUNG:        We'll pass the witness.

3                   MICHELLE ALANIS:    Officer Wachter, I just want  
4 just a couple of clarifying questions. So, earlier, your  
5 testimony was that the--on your review of the video footage,  
6 the use of force was not appropriate, right?

7                   DAVID WACHTER:       Correct.

8                   MICHELLE ALANIS:    And then I asked you if Officer  
9 Navarrete could've done anything in that situation. You  
10 mentioned a couple of things he could've done.

11                  DAVID WACHTER:       Yes.

12                  MICHELLE ALANIS:    To help prevent this use of  
13 force, right?

14                  DAVID WACHTER:       Correct.

15                  MICHELLE ALANIS:    But then, you said you didn't  
16 have any criticism of what he did.

17                  DAVID WACHTER:       Of what Senior Navarrete did,  
18 no. He could have doesn't mean, you know, could have doesn't  
19 mean we do all the time. We, as the team, we go in and you  
20 know, we trust each other to be able to handle the situation.

21                  MICHELLE ALANIS:    As a Senior, he has a higher  
22 rank than the other officers there, right?

23                  DAVID WACHTER:       Correct.  
24  
25



1 MICHELLE ALANIS: And so, you've already said that  
2 the length of time the inmate was on the wall was lengthy,  
3 right?

4 DAVID WACHTER: Correct.

5 MICHELLE ALANIS: And it seemed to be an excessive  
6 amount of time.

7 DAVID WACHTER: Correct.

8 MICHELLE ALANIS: And, Officer Navarrete is the  
9 one that actually conducted the pat down on Inmate Norales.

10 DAVID WACHTER: Okay.

11 MICHELLE ALANIS: Okay. And just real quick, I'd  
12 rather just play it for you, if I can [inaudible]. I know  
13 it's been some time I would imagine, right?

14 DAVID WACHTER: Yes.

15 MICHELLE ALANIS: And, I'm not going to play the  
16 whole video, just a couple of brief things here.

17 HEARING OFFICER: What Exhibit number?

18 MICHELLE ALANIS: Oh, this is my Exhibit, it's  
19 part of Exhibit A, NDOC 112, I believe.

20 HEARING OFFICER: Which portion of the vide?

21 MICHELLE ALANIS: We're starting at the beginning,  
22 we're at 12 seconds in. Officer Wachter, are you anywhere in  
23 this video right now?

24 DAVID WACHTER: No ma'am.

25 MICHELLE ALANIS: To the best of your ability.

1                   DAVID WACHTER:       No ma'am.

2                   MICHELLE ALANIS:     Okay. Can you tell me who  
3 Officer Navarrete is?

4                   DAVID WACHTER:       Navarrete would be this one  
5 right here, closer to the inmates.

6                   MICHELLE ALANIS:     Okay. And so, at 31 seconds in,  
7 you identified that Navarrete has the black beanie, right?

8                   DAVID WACHTER:       Correct.

9                   MICHELLE ALANIS:     And he's patting down the  
10 inmates right now?

11                  DAVID WACHTER:       Yes.

12                  MICHELLE ALANIS:     Okay. And, where is Officer  
13 Valdez?

14                  DAVID WACHTER:       He's standing back behind him in  
15 the dirt.

16                  MICHELLE ALANIS:     Okay. And, are you saying to  
17 the right of--

18                  DAVID WACHTER:       Yes ma'am.

19                  MICHELLE ALANIS:     [crosstalk] -maybe a trashcan, I  
20 think?

21                  DAVID WACHTER:       Yes.

22                  MICHELLE ALANIS:     Okay. So, are you familiar  
23 enough with Ricky Norales that you can identify him in this  
24 video?

25                  DAVID WACHTER:       Yes.

1 MICHELLE ALANIS: And, which inmate is he?

2 DAVID WACHTER: This one right here.

3 MICHELLE ALANIS: Okay. So, now we're at 1:05 and  
4 you've identified Mr. Norales, it looks like he has longer  
5 hair--

6 DAVID WACHTER: Dreads, yes.

7 MICHELLE ALANIS: --okay, dreads. And so, I think  
8 we're coming up--so, right here at about 1:29, Officer  
9 Navarrete is patting down Inmate Norales, correct?

10 DAVID WACHTER: Yes ma'am.

11 MICHELLE ALANIS: Okay. [pause] And would you  
12 agree with me that right here at 1:57, 1:58, the pat down is  
13 complete?

14 DAVID WACHTER: The pat down is complete.

15 MICHELLE ALANIS: The random--

16 DAVID WACHTER: Yes.

17 MICHELLE ALANIS: Okay. And the random search was  
18 complete.

19 DAVID WACHTER: Correct.

20 MICHELLE ALANIS: And actually, where I paused  
21 this video, both officers are walking away from the inmate,  
22 with their backs towards him.

23 DAVID WACHTER: Yes.

24 MICHELLE ALANIS: If an inmate is a threat to you,  
25 would you have turned around like that?

1                   DAVID WACHTER:       No.

2                   MICHELLE ALANIS:     Okay.  And, at this point if  
3 Inmate Norales did have contraband, extra food on him, what  
4 would normally occur at this point?

5                   DAVID WACHTER:       At this point, with the pat  
6 search being done, tell him to go throw away the extra food.  
7 If it was extra food in the sack lunch.

8                   MICHELLE ALANIS:     Okay.  And then would you send  
9 him on his way?

10                  DAVID WACHTER:       Yes.

11                  MICHELLE ALANIS:     Okay.  And if he was still  
12 getting a little mouthy, I believe you said, that's when you  
13 would tell him that if he doesn't stop, you could restrain  
14 him?

15                  DAVID WACHTER:       Yes.

16                  MICHELLE ALANIS:     Okay.  So, at this point, we're  
17 at about 2:00 in, that's a little bit less than what you  
18 originally estimated, right, for a pat down?

19                  DAVID WACHTER:       Correct.

20                  MICHELLE ALANIS:     Okay.  And, if anything further  
21 needed to be done, at about three minutes, it would've been  
22 complete, right?

23                  DAVID WACHTER:       Correct.

24                  MICHELLE ALANIS:     I'm going to continue to play  
25 it.  [pause]  Let me ask you this, as an officer and you're on

1 this Search and Escort so you regularly do these regular pat  
2 searches, what's the point of putting an inmate on the wall,  
3 once this is done?

4           DAVID WACHTER:       Unless you're going to counsel  
5 him, there's no reason for it.

6           MICHELLE ALANIS:     How long would a counseling  
7 take?

8           DAVID WACHTER:       It depends, you know, on the  
9 inmate trying to get through to them. If he keeps arguing  
10 with you and you're trying to talk to him, then it could go on  
11 for a little bit.

12           MICHELLE ALANIS:     What's a little bit?

13           DAVID WACHTER:       A couple more minutes, probably  
14 at most.

15           MICHELLE ALANIS:     You're not going to counsel him  
16 for 10 minutes, right?

17           DAVID WACHTER:       No. I don't have time for that  
18 in the day.

19           MICHELLE ALANIS:     There's no time for that.

20           DAVID WACHTER:       Yeah.

21           MICHELLE ALANIS:     You have to maintain the safety  
22 and security, right?

23           DAVID WACHTER:       Correct.

1 MICHELLE ALANIS: I'm going to fast-forward here a  
2 bit. We're now at 5:17, do you see yourself in this video  
3 now?

4 DAVID WACHTER: No ma'am.

5 MICHELLE ALANIS: [pause] Okay. We're at 7:30,  
6 are you visible in the video at this juncture?

7 DAVID WACHTER: Yes ma'am.

8 MICHELLE ALANIS: Okay. And, can you identify  
9 yourself?

10 DAVID WACHTER: Standing right here.

11 MICHELLE ALANIS: Okay, so you're the furthest  
12 from the inmate--

13 DAVID WACHTER: Yes ma'am.

14 MICHELLE ALANIS: --in this video? [pause] And  
15 you don't hear anything that's going on at this point?

16 DAVID WACHTER: Not that I recall.

17 MICHELLE ALANIS: And, earlier I think there was  
18 some questioning, there's some inmate movement here.

19 DAVID WACHTER: Correct.

20 MICHELLE ALANIS: Do you know if these guys are  
21 coming towards the culinary or moving away?

22 DAVID WACHTER: They're coming towards.

23 MICHELLE ALANIS: Okay. And now you have, at  
24 8:03, you have your back towards them.

25 DAVID WACHTER: Yes.

1 MICHELLE ALANIS: And is this what you identified,  
2 you were watching these inmates coming up?

3 DAVID WACHTER: Yes ma'am.

4 MICHELLE ALANIS: Okay. So, at this point, we're  
5 8:15, he's been on the wall for those eight minutes and has  
6 been done with the pat search since about 1:40.

7 DAVID WACHTER: Correct.

8 MICHELLE ALANIS: And you—and at this point, we  
9 see Officer Navarrete is close to Officer Valdez, right?

10 DAVID WACHTER: Correct.

11 MICHELLE ALANIS: Okay. So, if Officer Navarrete  
12 conducted the pat search, who normally releases the inmate?

13 DAVID WACHTER: Normally, when they're done with  
14 the pat search, you—you release them.

15 MICHELLE ALANIS: Okay. So, if the later  
16 statements are that Norales isn't listening to the orders of  
17 Valdez, what would've been the purpose of Valdez, I guess, now  
18 coming in after Navarrete already did the pat down?

19 DAVID WACHTER: He could've seen Senior  
20 Navarrete maybe get agitated with the inmate, so he told him  
21 to back off and I'll take over. Could be something the inmate  
22 said to Valdez, so Valdez went to go counsel him.

23 MICHELLE ALANIS: And again, the counseling  
24 should've been completed at this point, right?

25 DAVID WACHTER: Correct.

1 MICHELLE ALANIS: And, I'm going to jump forward  
2 to--oops, I went too far. [pause] I'm now at 10:27, your back  
3 is towards the activity here. Do you see Inmate Norales doing  
4 anything that appears threatening?

5 DAVID WACHTER: Appears threatening, no. He  
6 keeps--he's fidgeting a lot. But--

7 MICHELLE ALANIS: Would you consider that agitated  
8 like you were saying earlier?

9 DAVID WACHTER: No.

10 MICHELLE ALANIS: And now we just saw that take  
11 down. So, he was moving a little bit. There seems to be a  
12 little bit of a pause and then we see Officer Valdez come up.

13 DAVID WACHTER: Correct.

14 MICHELLE ALANIS: So, does this refresh, I know  
15 it's been a while.

16 DAVID WACHTER: Yes.

17 MICHELLE ALANIS: And so, in looking at this,  
18 during that--we're at 10:56 and they're on the ground. If  
19 Inmate Norales is getting verbally abusive or doing anything  
20 inappropriate, there was a 10, almost 11 minute window where  
21 Officer Navarrete could've done something.

22 DAVID WACHTER: He could have, yes.

23 MICHELLE ALANIS: [pause] I don't have anything  
24 further.

25 HEARING OFFICER: [inaudible] any redirect?



1 NICOLE YOUNG: Yes.

2 HEARING OFFICER: Or, any cross?

3 NICOLE YOUNG: So, we're going to go to Exhibit  
4 8 and it's Clip 11 again. You can come over here, we'll watch  
5 it on this screen.

6 DAVID WACHTER: All right.

7 MICHELLE ALANIS: It does feel like they have the  
8 heat on in here.

9 HEARING OFFICER: It's a little hot in here, isn't  
10 it?

11 MICHELLE ALANIS: It's really hot.

12 [crosstalk about temperature in room]

13 MICHELLE ALANIS: They're trying to kill us. I  
14 thought our building was bad at [crosstalk]

15 NICOLE YOUNG: I went from hot, to like really  
16 cold, to hot again, that's crazy.

17 MICHELLE ALANIS: That's the State buildings.  
18 Actually this isn't even a state building, right? No. They  
19 have like other-[crosstalk] Yeah, yeah, yeah, this isn't a  
20 state building, I thought it was.

21 SPEAKER: I think this is a leased office.

22 MICHELLE ALANIS: Yeah, my mistake.

23 [crosstalk, side conversations] [pause]  
24  
25

1           NICOLE YOUNG:           So, Norales, I think we've  
2 established, he's like the inmate in like the gray, with like  
3 the longer hair.

4           DAVID WACHTER:         Correct.

5           NICOLE YOUNG:           So, if you look like in this  
6 window here, you're going to see some hand movement.

7           HEARING OFFICER:       This is 8, we're showing him?

8           NICOLE YOUNG:           Yes.

9           HEARING OFFICER:       And this is like the portion of  
10 it-Clip 11.

11          NICOLE YOUNG:           Yes.

12          HEARING OFFICER:       It shows that, it's on his hand  
13 movements, I [inaudible] the way you have this worked up, for  
14 the record.

15          NICOLE YOUNG:           Yes.

16          HEARING OFFICER:       All right.   Beautiful.

17          NICOLE YOUNG:           So, when you put an inmate on  
18 the wall and you tell them to go on the wall for a random pat  
19 search, are they expected to put their hands on the wall--

20          DAVID WACHTER:         Yes.

21          NICOLE YOUNG:           --at that time?  They're not  
22 supposed to just walk up to the wall and put their hands up  
23 and then take them back down?

24          DAVID WACHTER:         No.

25

1           NICOLE YOUNG:           And, if they take them back  
2 down, after they put their hands up, that's—is that non-  
3 compliance?

4           DAVID WACHTER:        Correct.

5           NICOLE YOUNG:        Okay. So, did you see those  
6 hands move?

7           DAVID WACHTER:        Yes.

8           NICOLE YOUNG:        So, would that be non-compliant?

9           DAVID WACHTER:        Correct.

10          NICOLE YOUNG:        Because his hands are still not  
11 on the wall.

12          MICHELLE ALANIS:     I know we've seen this, but I'm  
13 going to object to the foundation because I don't know that we  
14 can ascertain whose hands are moving, necessarily, with  
15 multiple hands in that vicinity.

16          NICOLE YOUNG:        Well, so the inmate that was  
17 next to Norales just moved and it opens up the view of  
18 Norales—

19          MICHELLE ALANIS:     Now it opens it up.

20          NICOLE YOUNG:        --putting his hands back on the  
21 wall after standing there for a few seconds. [pause] So,  
22 that inmate goes away and then his hands go back on the wall?

23          DAVID WACHTER:        Yes.

24          NICOLE YOUNG:        And is that compliant behavior?

25          DAVID WACHTER:        There, yes.

1 NICOLE YOUNG: To put them back on the wall.

2 DAVID WACHTER: To put them back on the wall.

3 NICOLE YOUNG: But when they weren't on the  
4 wall, that's not compliant.

5 DAVID WACHTER: Correct.

6 NICOLE YOUNG: Did it freeze again? There.  
7 And then, what he's doing now, is that like the fidgety  
8 behavior you were talking about?

9 DAVID WACHTER: Yes.

10 NICOLE YOUNG: And this inmate in front, he has  
11 his hands up high, is that where Norales' hands should be?

12 DAVID WACHTER: Yes.

13 NICOLE YOUNG: So, he has them down low, is  
14 that compliant?

15 DAVID WACHTER: No.

16 NICOLE YOUNG: He's looking back and forth, is  
17 that compliant?

18 DAVID WACHTER: No.

19 NICOLE YOUNG: And then, this officer right  
20 here, is that the one that you—that is Officer Navarrete?

21 DAVID WACHTER: Yes ma'am.

22 NICOLE YOUNG: [pause] And there, they're  
23 telling him to put his hands up higher?

24 DAVID WACHTER: Yes.

25

1           NICOLE YOUNG:           And Officer Navarrete, is he  
2 starting the pat search?

3           DAVID WACHTER:        Yes.

4           NICOLE YOUNG:        Okay. [pause] And he has one  
5 hand on the back, is that to feel if the inmate moves?

6           DAVID WACHTER:        Yes.

7           NICOLE YOUNG:        And then did you see the inmate  
8 slip his hands down the wall?

9           DAVID WACHTER:        Yes.

10          NICOLE YOUNG:        Is that compliant, for an inmate  
11 to do that?

12          DAVID WACHTER:        No.

13          NICOLE YOUNG:        And he continues the search and  
14 then he takes his hand off.

15          DAVID WACHTER:        Correct.

16          NICOLE YOUNG:        And they have to put them up  
17 higher?

18          DAVID WACHTER:        Yes.

19          NICOLE YOUNG:        And so, when an inmate, after  
20 you search them, if they take their hands off before you tell  
21 them they can take it off, that's non-is that non-compliance?

22          DAVID WACHTER:        Yes.

23          NICOLE YOUNG:        So, then would you start  
24 counseling them on what they're supposed to do?

25          DAVID WACHTER:        Yes.

1           NICOLE YOUNG:           Would you immediately let them  
2 go after they've done something like that?

3           DAVID WACHTER:         No.

4           NICOLE YOUNG:           And then queuing up toward the  
5 end. It's going to start here. I'm 10 minutes in. It's  
6 frozen, sorry.

7           HEARING OFFICER:       We can crank it again.

8           NICOLE YOUNG:           Let's see.

9           HEARING OFFICER:       I hope.

10          NICOLE YOUNG:           So, I'm at 10:37. Okay. So,  
11 let's back it up a couple of seconds. [pause] So, Officer  
12 Navarrete, he goes and leans on the wall and then the inmate  
13 is moving his arm.

14          DAVID WACHTER:         Correct.

15          NICOLE YOUNG:           Is that compliant behavior?

16          DAVID WACHTER:         No.

17          NICOLE YOUNG:           So, in that situation, if an  
18 inmate is still moving his arm after you told him not to, is  
19 that when you would go in to restrain him?

20          DAVID WACHTER:         Yes.

21          NICOLE YOUNG:           And so, would you give him the  
22 command or after he does that, if you move again, I'm going to  
23 take it as a sign of aggression and then go into restrain--

24          DAVID WACHTER:         Would've done it at the  
25 beginning.

1 NICOLE YOUNG: Okay.

2 DAVID WACHTER: Tell him, if you go to move your  
3 hands, we'll take it as a sign of aggression.

4 NICOLE YOUNG: Okay. And, that's how you would  
5 normally handle that situation.

6 DAVID WACHTER: Okay.

7 NICOLE YOUNG: We're done with this video, so  
8 you can go back. [pause] And then, when you counsel an  
9 inmate, does that always work?

10 DAVID WACHTER: No.

11 NICOLE YOUNG: And so, there's some situations  
12 where you counsel them and despite your counseling, the  
13 situation still could escalate to--

14 DAVID WACHTER: It could, yes.

15 NICOLE YOUNG: --restraining the inmate or use  
16 of force.

17 DAVID WACHTER: Yes.

18 HEARING OFFICER: [inaudible]

19 NICOLE YOUNG: And then, in a situation where  
20 the inmate is taking their hands off the wall, you tell them  
21 not to, they do it again, and you have to go in to restrain  
22 them, what happens next?

23 DAVID WACHTER: I walk up to them and tell them  
24 I'm placing them in restraints. Put my hand on his back, I  
25

1 get out my restraints and then I'm going to help bring his  
2 arms behind his back to place him in restraints.

3 NICOLE YOUNG: And after you have him in the  
4 restraints, what do you do next?

5 DAVID WACHTER: Then we would escort him--either  
6 have him get on the back of the cart or we would walk him down  
7 to operations.

8 NICOLE YOUNG: And, how far away is operations?

9 DAVID WACHTER: From the dining hall, it's a  
10 good walk. Length wise, I'm not quite positive. It's at the  
11 very front of the prison where the dining hall is almost  
12 towards the back of the prison.

13 NICOLE YOUNG: Okay. And, would you go by  
14 yourself with the inmate or would you take the other officer  
15 with you, to escort the inmate, both of you?

16 DAVID WACHTER: The two of us.

17 NICOLE YOUNG: And, in that situation, how--  
18 about how long does that whole process take? Taking the  
19 inmate to Operations--

20 DAVID WACHTER: To Operations?

21 NICOLE YOUNG: --and then going back to your  
22 post.

23 DAVID WACHTER: Probably a good 10 minutes.  
24  
25



1 NICOLE YOUNG: Okay. And so having like a non-  
2 compliant inmate, it kind of like wastes your time during the  
3 day.

4 DAVID WACHTER: Correct.

5 NICOLE YOUNG: Okay. I'll pass the witness.

6 MICHELLE ALANIS: Just a few follow-ups Officer.

7 HEARING OFFICER: Re-re-direct? All right.

8 MICHELLE ALANIS: Yeah, sorry.

9 HEARING OFFICER: They cut me off [crosstalk]

10 MICHELLE ALANIS: So, we talked about the non-  
11 compliance and all of that. So, you saw different portions of  
12 the video. As he's being what you described as non-compliant,  
13 would you have kept him on the wall then, at that point, for  
14 11 minutes?

15 DAVID WACHTER: If he's non-compliant, I  
16 would've been trying to-to counsel him and if it wasn't  
17 working, I would've placed him in restraints and took him out  
18 of there right then and there.

19 MICHELLE ALANIS: Okay. Because I think you said  
20 that you don't have time to be dealing with keeping him on the  
21 wall for 11 minutes, right?

22 DAVID WACHTER: Correct.

23 MICHELLE ALANIS: And, everything you saw in that  
24 video, did you see any restraints being used?

25 DAVID WACHTER: No.

1 MICHELLE ALANIS: Was that a technique to restrain  
2 the inmate? What you observed on that video?

3 DAVID WACHTER: No.

4 MICHELLE ALANIS: Did it appear to you that  
5 Officer Valdez was restraining him?

6 DAVID WACHTER: No.

7 MICHELLE ALANIS: Let's assume all the worst facts  
8 on Inmate Norales, that he's mouthing off. You saw him  
9 fidgeting. Did that—would that have required a response of  
10 the two hands and the push on the wall?

11 DAVID WACHTER: No.

12 MICHELLE ALANIS: And, what you saw with both  
13 hands, that was not restraining the inmate, right?

14 DAVID WACHTER: Correct.

15 MICHELLE ALANIS: And I think we actually saw,  
16 earlier in the video, when Officer Navarrete is patting him  
17 down, you can see he has one hand on Inmate Norales' back,  
18 right?

19 DAVID WACHTER: Correct.

20 MICHELLE ALANIS: As he's patting him down.

21 DAVID WACHTER: Yes.

22 MICHELLE ALANIS: That's the technique you're  
23 talking about, right?

24 DAVID WACHTER: Yes ma'am.

25

1 MICHELLE ALANIS: Not what we witnessed at about  
2 10:50 into the video.

3 DAVID WACHTER: Correct.

4 MICHELLE ALANIS: That was just a use of force.

5 DAVID WACHTER: Yes.

6 MICHELLE ALANIS: Unnecessary force, right?

7 DAVID WACHTER: Yes.

8 MICHELLE ALANIS: And if I were to describe—if I  
9 said that at approximately 0645 hours, Inmate Norales came off  
10 the culinary wall while CO Valdez was attempting to restrain  
11 him resulting in a spontaneous use of force, does that sound  
12 like an accurate description of what you just saw?

13 DAVID WACHTER: It didn't look like he was  
14 coming off the wall. He was still just moving his hand. It  
15 didn't look like he was trying to come off the wall.

16 MICHELLE ALANIS: Okay. And, did it look like CO  
17 Valdez was attempting to restrain him?

18 DAVID WACHTER: No.

19 MICHELLE ALANIS: And, did that appear to be a  
20 spontaneous use of force?

21 DAVID WACHTER: Yes, it was spontaneous. It's—  
22 we have spontaneous and we have planned use of force. Those  
23 are the two types of use of forces that we go by.

24 MICHELLE ALANIS: Isn't a spontaneous use of force  
25 when there's an emergency situation?

1           DAVID WACHTER:       [pause] Yeah. Yeah, we  
2 consider spontaneous use of force, as the use of forces that  
3 pop up. It wasn't—we weren't planning on doing it. It wasn't  
4 a planned use of force, it just—it happened.

5           MICHELLE ALANIS:     Okay. But, by me stating that  
6 the inmate came off the culinary wall while CO Valdez was  
7 attempting to restrain him, that doesn't sound accurate.

8           DAVID WACHTER:       Correct.

9           MICHELLE ALANIS:     Okay. I don't have anything  
10 further.

11          HEARING OFFICER:     Last shot.

12          NICOLE YOUNG:        Just a couple of questions. So,  
13 when you counsel an inmate, the length of time you counsel  
14 them for, is that a judgment call?

15          DAVID WACHTER:       Yes.

16          NICOLE YOUNG:        And that's just based off of  
17 your experience and the situation you're presented with?

18          DAVID WACHTER:       Correct.

19          NICOLE YOUNG:        And the amount of time someone's  
20 on the wall could vary and the time that someone's on a wall  
21 being counseled could vary from correction officer to  
22 correction officer?

23          DAVID WACHTER:       Yes.

24          NICOLE YOUNG:        Is there a rule saying how long  
25 an inmate can or cannot be on the wall?

1                   DAVID WACHTER:       No.

2                   NICOLE YOUNG:        So, theoretically, you could  
3 have an inmate on the wall for an hour, there's no rule, like  
4 a direct rule saying the inmate can only be on the wall five  
5 minutes.

6                   DAVID WACHTER:       Correct, there's no direct rule.

7                   NICOLE YOUNG:        And, the phrase "come off the  
8 wall", could that mean that the inmate took a hand off the  
9 wall in violation of an order to keep their hands on the wall?

10                  DAVID WACHTER:       Yes.

11                  NICOLE YOUNG:        So, come off the wall, it's kind  
12 of a vague statement.

13                  DAVID WACHTER:       Correct.

14                  NICOLE YOUNG:        Okay. I'll pass the witness.

15                  HEARING OFFICER:    All right.

16                  MICHELLE ALANIS:    I just want to clarify, I read  
17 you that statement and in your general understanding as an  
18 officer, about coming off the wall that doesn't sound like  
19 what you just saw, right?

20                  DAVID WACHTER:       Yeah.

21                  MICHELLE ALANIS:    Okay.

22                  HEARING OFFICER:    All right, thank you very much  
23 for your testimony today.

24                  MICHELLE ALANIS:    Thank you Officer Wachter.

25                  DAVID WACHTER:       Thank you.

1 HEARING OFFICER: You guys are very thorough  
2 today.

3 DANIEL MARKS: Yes, we are.

4 MICHELLE ALANIS: Associate Warden Myra Adams, or  
5 former Associate Warden.

6 HEARING OFFICER: I'm assuming, you're Nicole  
7 Young, right?

8 NICOLE YOUNG: Yes.

9 HEARING OFFICER: Okay, I saw your name—

10 DANIEL MARKS: Sorry, I thought I introduced  
11 her.

12 HEARING OFFICER: You may have. I just—

13 DANIEL MARKS: It's really getting hot. I  
14 mean—

15 HEARING OFFICER: What do you want me to do?  
16 [laughs]

17 DANIEL MARKS: Get some air.

18 HEARING OFFICER: I'll come fan you if you want.  
19 I'll come fan you if you want.

20 DANIEL MARKS: Get some air.

21 HEARING OFFICER: I tried to do that earlier, it  
22 just, it doesn't do anything.

23 DANIEL MARKS: Okay. I can take my jacket off.

24 HEARING OFFICER: Yeah, absolutely. Make yourself  
25 as comfortable—

1 DANIEL MARKS: Can I take my tie off?

2 HEARING OFFICER: Yeah, it's just 78 in here,  
3 that's ridiculous.

4 DANIEL MARKS: Can we do the no-tie rule?

5 [crosstalk about temperature]

6 HEARING OFFICER: Let me—let's not ruin my show  
7 here, you know, I feel kind of weird yelling when I'm only  
8 here once a month.

9 SPEAKER: Maybe one of those girls out  
10 there can—

11 [crosstalk]

12 HEARING OFFICER: It's very warm in here sir.

13 WARDEN ADAMS: A little bit.

14 HEARING OFFICER: If you want to take—I don't know  
15 why. If you want to take your jacket off—

16 MICHELLE ALANIS: I feel like it's getting a  
17 little cooler now.

18 HEARING OFFICER: Did it? All right.

19 MICHELLE ALANIS: Maybe.

20 NICOLE YOUNG: I feel a little air, but not  
21 that much.

22 HEARING OFFICER: All right. Sir, could you raise  
23 your right hand for me? Do you solemnly swear that the  
24 testimony you're about to give in this proceeding will be the  
25 truth, the whole truth and nothing but the truth?

1               WARDEN ADAMS:           Yes sir.

2               HEARING OFFICER:       Thank you. You may proceed.

3               MICHELLE ALANIS:       Can you please state and spell  
4 your name for the record, please?

5               WARDEN ADAMS:           Minor Adams. M-I-N-O-R, A-D-A-  
6 M-S.

7               MICHELLE ALANIS:       And, Mr. Adams, are you  
8 currently employed?

9               WARDEN ADAMS:           No ma'am.

10              MICHELLE ALANIS:       Are you retired?

11              WARDEN ADAMS:           Yes ma'am.

12              MICHELLE ALANIS:       Where were you employed prior?

13              WARDEN ADAMS:           Nevada Department of Prisons and  
14 then Nevada Department of Corrections. A total of 32 years.

15              MICHELLE ALANIS:       A long time. What was your  
16 position when you left the Nevada Department of Corrections.

17              WARDEN ADAMS:           Associate Warden of Operations,  
18 Southern Desert Correctional Center.

19              MICHELLE ALANIS:       How long were you the Associate  
20 Warden of Operations?

21              WARDEN ADAMS:           Four years.

22              MICHELLE ALANIS:       As the Associate Warden of  
23 Operations, what were your general duties?

24              WARDEN ADAMS:           My general duties would be to  
25 review, author, implement policies and procedures for the