

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
Nevada)

Electronically Filed
May 11, 2021 12:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX VOL. II OF VII

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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 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 8
3 day of October, 2019, pursuant to NRCF 5(b) and Administrative Order 14-2, I electronically
4 transmitted a true and correct copy of the above and foregoing **RESPONDENT'S REPLY TO**
5 **POINTS AND AUTHORITIES** by way of Notice of Electronic Filing provided by the court
6 mandated E-file & Serve system, to the e-mail address on file for:

7 Jose Navarrete
8 5917 Pearlie May Ct.
9 North Las Vegas, Nevada 89081
Email: Josem.navarrete57@gmail.com
Respondent

10 And

11 AARON D. FORD
12 Attorney General
MICHELLE DI SILVESTRO ALANIS
13 Deputy Attorney General
State of Nevada
Email: malanis@ag.nv.gov
14 AKaheaku@ag.nv.gov
15 *Attorneys for Petitioner*

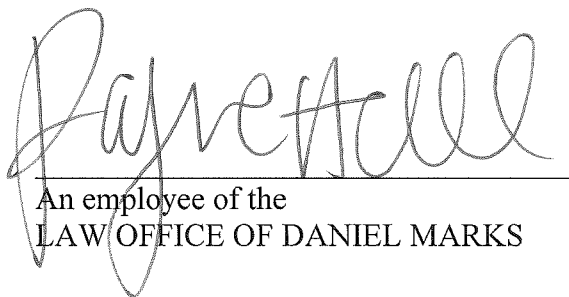
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18 
19 An employee of the
20 LAW OFFICE OF DANIEL MARKS
21
22
23
24

EXHIBIT 1

ORIGINAL

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08/09/2013 01:57:54 PM


CLERK OF THE COURT

1 ORDR
2 LAW OFFICE OF DANIEL MARKS
3 DANIEL MARKS, ESQ.
4 Nevada State Bar No. 002003
5 ADAM LEVINE, ESQ.
6 Nevada State Bar No. 004673
7 530 South Las Vegas Blvd., Suite 300
8 Las Vegas, Nevada 89101
9 (702) 386-0536; FAX (702) 386-6812
10 Attorneys for Petitioner-Employee

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA
14

15 DERLAND BLAKE

Case No.: A-13-675446-J
Dept. No.: XVI

16
17 Petitioner-Employee,
18 v.

19 STATE OF NEVADA DEPARTMENT
20 OF CORRECTIONS, and DEPARTMENT
21 OF ADMINISTRATION DIVISION OF
22 HUMANRESOURCES MANAGEMENT,

Date: 07/23/13
Time: 9:00am

23 Respondents- Employer
24
25

ORDER REGARDING MOTION FOR ADJUDICATION OF ATTORNEY'S LIEN

26 Respondents Motion for Adjudication of Attorney's Lien having come before this Court for
27 hearing on July 23, 2013 at 9:00 AM, and Petitioner being represented by Adam Levine, Esq. of the
28 Law Office of Daniel Marks, and Respondent Department of Corrections being represented by Chief
29 Deputy Attorney General Linda C. Anderson, and the court having reviewed, and having heard the
30 arguments of counsel;

31 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Respondent Nevada
32 Department of Corrections shall pay to the Law Office of Daniel Marks for Petitioners back pay award
33

1 forty-five percent (45%) of the gross amount the back pay plus costs in the amount of four hundred
2 twenty-eight dollars and seventy-five cents (\$428.75).

3 IT IS FURTHER ORDERED ADJUDGED AND DECREED that after payment to the Law
4 Office of Daniel Marks any withholdings required by Federal law will be deducted.

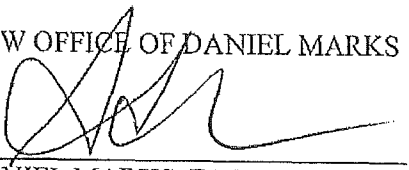
5 IT IS FURTHER ORDERED ADJUDGED AND DECREED that after payment to the Law
6 Office of Daniel Marks and any withholdings required by Federal law, the remaining balance if any
7 shall be paid to Nevada PERS pursuant to NRS 286.4375.

8 DATED this 7th day of July, 2013

9
10 
DISTRICT COURT JUDGE JEROME T. TAO

11 *for* TIMOTHY C. WILLIAMS

12 Respectfully Submitted by:

13 LAW OFFICE OF DANIEL MARKS
14 

15 DANIEL MARKS, ESQ.

Nevada State Bar No. 002003

16 ADAM LEVINE, ESQ.

Nevada State Bar No. 004673

17 530 S. Las Vegas Blvd., Ste. 300

Las Vegas, Nevada 89101

Attorney for Petitioner

Derland Blake
18
19
20
21
22
23
24
25

EXHIBIT 2



CLERK OF THE COURT

1 ORDER
LAW OFFICE OF DANIEL MARKS
2 DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
3 ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
4 610 South Ninth Street
Las Vegas, Nevada 89101
5 (702) 386-0536; FAX (702) 386-6812
Attorneys for Respondent Brian Ludwick

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9
10 STATE OF NEVADA ex rel, ITS
DEPARTMENT OF CORRECTIONS

Case No.: A-16-741032-J
Dept. No.: XXVII

11 Petitioner,

12 v.

13 BRIAN LUDWICK, an individual; THE
14 STATE OF NEVADA ex rel; ITS
DEPARTMENT OF ADMINISTRATION
15 PERSONNEL COMMISSION, HEARING
OFFICER,

16 Respondents.
17 _____ /

18 **ORDER ADJUDICATING ATTORNEY'S LIEN**

19 This matter having come on for hearing on the 13th day October, 2016 at 9:30 a.m. on
20 Respondent's Motion for Adjudication of Attorney's Lien; with Petitioner being represented by,
21 Michelle Di Silvestro Alanis, Deputy Attorney General of the Office of the Attorney General and
22 Respondent Brian Ludwick appearing through Adam Levine, Esq. of the Law Office Of Daniel Marks;
23 the Court having reviewed the pleadings and having heard argument of counsel;

24 ///

State of Nevada, ex rel its Dept. of Corrections v. Ludwick
Case No. A-16-741032-J
Dept. XXVII

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Adjudicate Attorney's Lien is GRANTED. The State of Nevada Department of Corrections shall withhold from Ludwick's back pay award the sum of Eight Thousand Four Hundred Seventy Dollars and Thirty Cents (\$8,470.30) and pay that amount directly to the Law Office of Daniel Marks.

The Court finds that an analysis under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) is unnecessary as this matter does not involve a fee award by the court, but rather an agreed-upon contractual amount between the attorney and client. However, based upon information provided in the Reply Brief, if the court were to conduct a *Brunzell* analysis the court would find the sum of \$8,470.30 reasonable based upon factors set forth in that case.

The Court further finds that the priority of payment or deductions from the back pay award shall be as follows: (1) withholdings mandated by federal law; (2) payment of the \$8,470.30 to

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State of Nevada, ex rel its Dept. of Corrections v. Ludwick
Case No. A-16-741032-J
Dept. XXVII

the Law Office of Daniel Marks pursuant to the attorney's fees lien under NRS 18.015; (3) the amounts required to be deducted or withheld by State statute for State entities such as PERS's; and finally (4) any voluntary withholdings authorized by Brian Ludwick.

DATED this 25 day of October, 2016.

Nathan L. All
DISTRICT COURT JUDGE DC

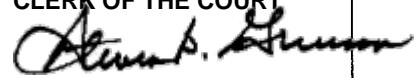
Respectfully submitted by:

LAW OFFICE OF DANIEL MARKS

OFFICE OF THE ATTORNEY GENERAL

[Signature]
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Respondent Brian Ludwick

[Signature]
ADAM PAUL LAXALT, Attorney General
MICHELLE DI SILVESTRO ALANIS, ESQ.
Deputy Attorney General
Nevada State Bar No. 010024
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Petitioner



LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
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office@danielmarks.net
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 012659
nyoung@danielmarks.net
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536: FAX (702) 386-6812
Attorneys for Respondent Jose Navarrete

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel, DEPARTMENT
OF PUBIC SAFETY,

Case No.: A-19-797661-J
Dept. No.: XVI

Petitioner,

v.

Date of Hearing: 10/16/19
Time of Hearing: 9:00 a.m.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel; its
DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

RESPONDENT'S SUPPLEMENTAL AUTHORITIES

COMES NOW Respondent, Jose Navarrete, by and through undersigned counsel Daniel Marks,
Esq. of the Law Office of Daniel Marks and hereby files Respondent's Supplemental Authorities.

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1 The grounds for Respondent's Supplemental Authorities are set in the following Memorandum
2 of Points and Authorities.

3 DATED this 14 day of October, 2019.

4 LAW OFFICE OF DANIEL MARKS

5 

6 DANIEL MARKS, ESQ.

7 Nevada State Bar No. 002003

8 NICOLE M. YOUNG, ESQ.

9 Nevada State Bar No. 12659

610 South Ninth Street

Las Vegas, Nevada 89101

Attorneys for Respondent Jose Navarrete

10 **MEMORANDUM OF POINTS OF AUTHORITIES**

11 **I. INTRODUCTION**

12 Counsel for NDOC contends that the State can deduct mitigation wages from the terminated
13 employee. This is contrary to Nevada Law.

14 NRS 284.390(6) provides that if the hearing officer determines that the dismissal,
15 demotion or suspension was without just cause as provided in NRS 284.385, the action
16 must be set aside and the employee must be reinstated, with full pay for the period of
dismissal, demotion or suspension.

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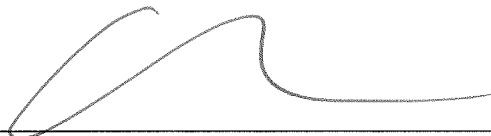
24 ////

1 **II. CONCLUSION**

2 In conclusion, Plaintiff believes there is adequate cash to pay the attorney's lien, with or without
3 the mitigate issue being resolved in Mr. Navarrete's favor. However, the plain language of the statute
4 provides for "full pay for the period of dismissal." Full pay means full pay and there should be no
5 deductions from the full gross pay Mr. Navarrete is entitled to.

6 DATED this 14 day of October, 2019.

7 LAW OFFICE OF DANIEL MARKS

8 
9 _____

10 DANIEL MARKS, ESQ.
11 Nevada State Bar No. 002003
12 NICOLE M. YOUNG, ESQ.
13 Nevada State Bar No. 12659
14 610 South Ninth Street
15 Las Vegas, Nevada 89101
16 Attorneys for Respondent Jose Navarrete

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 14
3 day of October, 2019, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically
4 transmitted a true and correct copy of the above and foregoing **RESPONDENT'S SUPPELEMTAL**
5 **AUTHORITIES** by way of Notice of Electronic Filing provided by the court mandated E-file & Serve
6 system, to the e-mail address on file for:


7 Jose Navarrete
8 5917 Pearlie May Ct.
9 North Las Vegas, Nevada 89081
Email: Josem.navarrete57@gmail.com
Respondent

10 And

11 AARON D. FORD
12 Attorney General
MICHELLE DI SILVESTRO ALANIS
13 Deputy Attorney General
State of Nevada
Email: malanis@ag.nv.gov
14 AKaheaku@ag.nv.gov
15 *Attorneys for Petitioner*

16
17 

18 An employee of the
19 LAW OFFICE OF DANIEL MARKS
20
21
22
23
24



LAW OFFICE OF DANIEL MARKS
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Nevada State Bar No. 002003
office@danielmarks.net
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(702) 386-0536: FAX (702) 386-6812
Attorney for Respondent Jose Navarrete

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel, DEPARTMENT
OF CORRECTIONS,

Case No.: A-19-797661-J
Dept. No.: XVI

Petitioner,

v.

Date of Hearing: October 10, 2019
Time of Hearing: 9:00 a.m.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel; its
DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

ORDER FROM OCTOBER 10, 2019 HEARING

This matter having come on for hearing on the 10th day of October, 2019, on Respondent's Motion for Adjudication of Attorney's Lien; Petitioner State of Nevada appearing by and through its counsel, Michelle Di Silvestro Alanis, of the Attorney General's Office; and Respondent Jose Navarrete appearing by and through his counsel Daniel Marks, Esq., of the Law Office of Daniel Marks; the Court having reviewed the papers and pleadings on file, having heard the arguments of counsel, and good cause appearing:

////

JAN 14 2020

1 THE COURT HEREBY FINDS that on September 18, 2019 a Notice of Attorney Lien in the
2 amount of 33 1/3% of Navarrete's gross back pay and benefits, including but not limited to PERS
3 contributions was mailed via Certified Return Receipt Requested to the Attorney General's Office and
4 Mr. Navarrete, who received it on September 19, 2019.

5 THE COURT CONCLUDES, AS A MATTER OF LAW, that under Nevada law, a perfected
6 attorney's lien takes priority and is superior to the lien of a general creditor. As noted by the Nevada
7 Supreme Court:

8 "...[A] perfected attorney's lien attaches to the net judgment that the client
9 receives after all setoffs arising from that action have been paid. Once a
10 net judgment is determined, then the attorney's lien is superior to any later
11 lien asserted against that judgment. *See United States Fidelity &*
12 *Guarentee v. Levy*, 77 F.2d 972 (5th Cir. 1935) (attorney's lien is superior
13 to offset from a claim arising out of a different matter from which the
judgment arose); *Cetenko v. United California Bank*, 30 Cal.3d 528, 179
Cal.Rptr. 902, 638 P.2d 1299 (1982) (attorney's lien is superior to that of
another creditor who obtained a lien on the same judgment); *Haupt v.*
Charlie's Kosher Market, 17 Cal.2d 843, 112 P.2d 627 (1941) (attorney's
lien is superior to that of third-party judgment creditor)."

14 *John W. Muije, Ltd. v. A.N. Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

15 In *Michel v. Eighth Judicial Dist. Court ex rel. Cty. Of Clark*, 117 Nev. 145, 149-50, 17 P.3d
16 1003, 1006 (2001), the Nevada Supreme Court reiterated priority of attorney's liens over other liens,
17 even statutory liens, and set forth the public policy for giving attorney's liens priority:

18 "...[P]ersons with meritorious claims might well be deprived of legal
19 representation because of their inability to pay legal fees or to assure that
20 such fees will be paid out of the sum recovered in the latest lawsuit. Such
a result would be detrimental not only to prospective litigants, but to their
creditors as well."

21 Lastly, NRS 18.015 sets forth the procedures required for perfection and enforcement of an
22 attorney lien.

23 ////

24 ////

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that in light of the authority set
2 forth above, Respondent's Motion requesting adjudication of his counsel's attorney's lien in the amount
3 of \$32,468.82, which is 33 1/3% of his gross back pay and benefits, including PERS contributions,
4 prior to any repayment to PERS or other withholding, is GRANTED.

5 DATED this 22nd day of January, ²⁰²⁰~~2019~~.

6 
7 DISTRICT COURT JUDGE 

8 Respectfully submitted:

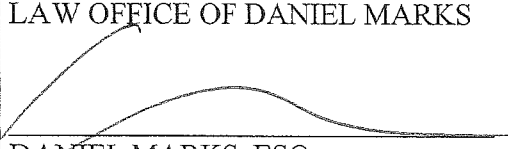
Approved as to form and content:

9 DATED this 13 day of January, 2019.

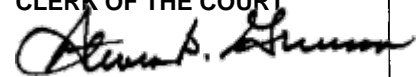
DATED this ____ day of January, 2019.

10 LAW OFFICE OF DANIEL MARKS

NEVADA ATTORNEY GENERAL'S OFFICE

11 
12 DANIEL MARKS, ESQ.
13 Nevada State Bar No. 002003
14 NICOLE M. YOUNG, ESQ.
15 Nevada State Bar No. 012659
16 610 S. Ninth Street
17 Las Vegas, Nevada 89101
18 *Attorneys for Respondent/Employer*

MICHELLE Di SILVESTRO ALANIS, ESQ.
Deputy Attorney General
Nevada State Bar No. 10024
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorney for Petitioner/Employer



**TROA
APPEALS OFFICE
2200 S. Rancho Drive Suite 220
Las Vegas NV 89102
(702) 486-2527**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel. its DEPARTMENT
OF ADMINISTRATION, PERSONNEL
COMMISSION, HEARING OFFICER,

Respondents.

Case No.: A-19-797661-J
Dept. No.: 16
ROA No.: 2000026-MG

TRANSMITTAL OF RECORD ON APPEAL


TO: STEVEN GRIERSON, Clerk of the above-captioned Court:

Pursuant to NRS 233B.131, the transmittal of the entire Record on Appeal, in accordance with the Nevada Administrative Procedure Act (Chapter 233B of the Nevada Revised Statutes), is hereby made as follows:

1. The entire Record herein, including each and every pleading, document, affidavit, order, decision and exhibit now on file with the Appeal Office, at 2200 S. Rancho Drive Suite 220, Las Vegas, Nevada 89102, under the Nevada Industrial Insurance Act, in the above-captioned action, including the court reporter's transcripts if available, of the testimony of the Appeal Officer hearing.

2. This Transmittal.

DATED this 14th day of August, 2019.


Zoe McGough, Legal Secretary
An Employee of the Hearings Division

**DOC001
00001**

JA 0266

1 ROA
2 APPEALS OFFICE
3 2200 S. Rancho Drive Suite 220
4 Las Vegas NV 89102
5 (702) 486-2527

6 DISTRICT COURT
7
8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA ex rel. its)
10 DEPARTMENT OF CORRECTIONS,)
11)
12 Petitioner,)
13 vs.) Case No.: A-19-797661-J
14) Dept. No.: 16
15 JOSE MIGUEL NAVARRETE, an individual;) ROA No.: 2000026-MG
16 STATE OF NEVADA ex rel. its DEPARTMENT)
17 OF ADMINISTRATION, PERSONNEL)
18 COMMISSION, HEARING OFFICER,)
19 Respondents.)

20 RECORD ON APPEAL IN ACCORDANCE WITH THE
21 NEVADA ADMINISTRATIVE PROCEDURE ACT

22 JOSE MIGUEL NAVARRETE
23 5917 PEARLIE MAY CT
24 N LAS VEGAS NV 89081

25 DANIEL MARKS ESQ
26 LAW OFFICE OF DANIEL MARKS
27 610 S NINTH ST
28 LAS VEGAS NV 89101

JAMES DZURENDA, DIRECTOR
DEPARTMENT OF CORRECTIONS
3955 WEST RUSSELL ROAD
LAS VEGAS NV 89118

MICHELLE DI SILVESTRO ALANIS, SENIOR DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
555 EAST WASHINGTON AVE STE 3900
LAS VEGAS NV 89101

CHRISTINA LEATHERS, HUMAN RESOURCES MANAGER I
NEVADA DEPARTMENT OF CORRECTIONS
3955 W RUSSELL RD
LAS VEGAS NV 89118-2316

DOC002
00002

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Appeal No.: 1713379-MG

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ROA NUMBER: 2000026-MG
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NEVADA STATE PERSONNEL COMMISSION

BEFORE THE HEARINGS OFFICER

FILED

JUL 31 2019

APPEALS OFFICE

In the Matter of:

JOSE MIGUEL NAVARRETE,
Petitioner-Employee

vs.

DEPARTMENT OF CORRECTIONS,
Respondent-Employer

Appeal No.: 1713379-MG

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

APRIL 16, 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

DOC003

Transcribed By: Jaime Caris, Always On Time

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I N D E X

<u>EXAMINATION</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Mark Tansey	44	52	55	57
Paul Lunkwitz	61	79	91	
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Dean Willett	136	144	150	
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P R O C E E D I N G S

HEARING OFFICER: All right. We are back on the record for the second day of hearing in the matter of Jose Miguel Navarrete v. Department of Corrections. We have Mr. Marks here along with his assistant—

DANIEL MARKS: Nicole Young.

HEARING OFFICER: I don't know why I forget her name all the time.

NICOLE YOUNG: Oh, that's okay.

HEARING OFFICER: Attorney Nicole Young. Mr. Navarrete's here. For the State we have—

MICHELLE ALANIS: Michelle Alanis.

HEARING OFFICER: Michelle Alanis.

MICHELLE ALANIS: And—

JERRY HOWELL: Jerry Howell.

HEARING OFFICER: Jerry Howell, okay great.

DANIEL MARKS: There's another Nicole Young that does employ—that works for Greg [inaudible] so, just in case you don't freak out [crosstalk]

HEARING OFFICER: I'll try to narrow it down and [crosstalk]

NICOLE YOUNG: We're similar age.

DANIEL MARKS: Similar age and height, so.

NICOLE YOUNG: [crosstalk]

1 HEARING OFFICER: So, how are we going to start
2 today? Who-what's going to happen today. I forgot where we
3 left. Are you guys still on your case in chief?

4 MICHELLE ALANIS: Yes, we're still on our case in
5 chief and Warden Howell is my next witness.

6 HEARING OFFICER: Okay, awesome. Is he live or is
7 he on the phone?

8 MICHELLE ALANIS: No, he's here. This is
9 [crosstalk]

10 HEARING OFFICER: Oh, he's here, I'm sorry. See,
11 I have a bit of an allergy issue right now. So, I'm kind of
12 clogged up.

13 MICHELLE ALANIS: I think we all do.

14 HEARING OFFICER: Yeah. So, I can't hear very
15 well.

16 DANIEL MARKS: Do you have enough coffee?

17 HEARING OFFICER: I might need something stronger
18 than that, but all right, very good.

19 MICHELLE ALANIS: I don't have anything
20 [inaudible] I don't even have coffee to offer you. All right,
21 Warden Howell.

22 HEARING OFFICER: Yeah, I'd prefer you testify up
23 here. So. All right sir, can you raise your right hand? Do
24 you swear that the testimony you're about to give in this
25

1 hearing will be the truth, the whole truth and nothing but the
2 truth?

3 JERRY HOWELL: I do.

4 HEARING OFFICER: Thank you sir. Ms. Alanis, you
5 may proceed.

6 MICHELLE ALANIS: Thank you. Warden Howell, can
7 you please state and spell your last name for the record,
8 please?

9 JERRY HOWELL: Jerry Howell, H-O-W-E-L-L.

10 MICHELLE ALANIS: And, where are you employed?

11 JERRY HOWELL: Southern Desert Correctional
12 Center.

13 MICHELLE ALANIS: And that's with Nevada
14 Department of Corrections.

15 JERRY HOWELL: Yes.

16 MICHELLE ALANIS: How long have you been employed
17 with NDOC?

18 JERRY HOWELL: Since June of 2006.

19 MICHELLE ALANIS: Okay. So, we're looking at
20 almost 13 years, right?

21 JERRY HOWELL: Yes.

22 MICHELLE ALANIS: What is your current position?

23 JERRY HOWELL: I'm the Warden at Southern
24 Desert.

25

1 MICHELLE ALANIS: How long have you been the
2 Warden at Southern Desert?

3 JERRY HOWELL: About 14 months.

4 MICHELLE ALANIS: Okay. And you said you've been
5 with NDOC for almost 13 years. Where did you work prior to
6 that?

7 JERRY HOWELL: I worked for the State of
8 Michigan, Department of Corrections for 28 years.

9 MICHELLE ALANIS: And, what was the last position
10 that you held for State of Michigan?

11 JERRY HOWELL: I was the State Deputy Division
12 Administrator.

13 MICHELLE ALANIS: And, prior to becoming the
14 Warden at Southern Desert, what position did you have just
15 prior to that?

16 JERRY HOWELL: I was the Associate Warden at
17 High Desert for eight years.

18 MICHELLE ALANIS: Okay. As the Warden of Southern
19 Desert, what are your duties?

20 JERRY HOWELL: I have broad oversight of the
21 entire operation. I have responsibility for the budget, the
22 operations of the facility, including maintenance, food
23 service. I provide oversight for the medical department, even
24 though I'm not a direct report—they're not direct reports of
25 mine. I oversee the prisoner population, the prisoner

1 programs, prisoner work assignments, the classification of the
2 prisoners.

3 MICHELLE ALANIS: And, today are you also
4 testifying on behalf of the appointing authority?

5 JERRY HOWELL: Yes.

6 MICHELLE ALANIS: Can you tell me, do you know Mr.
7 Jose Navarrete?

8 JERRY HOWELL: Yes, I do.

9 MICHELLE ALANIS: And, how-how do you know him?

10 JERRY HOWELL: In 2008, I was Associate Warden
11 at Southern Desert and Officer Navarrete was a custody officer
12 there. I was there for two years and he was there the whole
13 time.

14 MICHELLE ALANIS: And, how did you first learn of
15 the incident that we're here for today?

16 JERRY HOWELL: The Pre-Disciplinary Officer,
17 Perry Russell, worked at High Desert and I worked there at the
18 time. He asked me, what I thought about—he showed me a video
19 of some officers and a prisoner. He said, what do you—that's
20 how I learned of it.

21 DANIEL MARKS: Your Honor, I'm going to object.
22 He—as I understand it, unless they can lay some foundation—
23 because I understand he was not Southern Desert at the time of
24 the incident. He was not in the chain of command and I don't
25 think he was involved in the decision to terminate. If he was

1 involved in the consultation of the Pre-Term Hearing, then
2 that goes to the Pre-Term Hearing, which we all know about
3 Pre-Term Hearings, you're looking at this de novo.

4 So, unless he's got some firsthand knowledge, he
5 obviously can sit there as the company representative, you
6 know, the representative for the State, but I think there's
7 got to be some foundation if he's going to give substantive
8 testimony.

9 HEARING OFFICER: So, let me make sure you, your
10 objection is what again?

11 DANIEL MARKS: I don't think there's going to
12 be foundation for anything that you're going to decide. I
13 think he was not in the chain of command. I'm not sure what
14 he's here to do because he was not the Warden at the time at
15 Southern Desert. My understanding is, he didn't make any
16 decisions, from the records that we've been given. So, if
17 he's just like an additional Pre-Term Hearing type person,
18 then it's cumulative we already heard from Russell the last
19 time, in the Pre-Term Hearing, as you know, under *O'Keefe*,
20 this is de novo.

21 HEARING OFFICER: No, I-

22 DANIEL MARKS: The Pre-Term Hearing is
23 irrelevant.

24 HEARING OFFICER: I'm aware of that. I'm aware of
25 that.

1 DANIEL MARKS: So, I'd like some foundation for
2 where they're headed.

3 HEARING OFFICER: Ms. Alanis?

4 MICHELLE ALANIS: Well, I mean, I think I was
5 laying the foundation there. It sounds like he's objecting to
6 the entirety of his testimony and we've barely gotten into it.
7 I asked how he first learned of this incident and I was trying
8 to lay the foundation of how he first learned of the incident
9 and that's what he was stating.

10 HEARING OFFICER: Correct.

11 MICHELLE ALANIS: He was stating that he was the
12 Pre-Disciplinary Hearing Officer, he simply said, he was asked
13 to review the video. Now, with respect to whether or not he
14 was in a decision-making authority, he is the current Warden.
15 He is responsible and again, I haven't been able to get to
16 these questions, but as the current Warden, he is still
17 responsible now for any discipline that has come out of that
18 institution.

19 If you were to rule that it gets reversed, obviously
20 this employee comes back to his institution. So, he can
21 simply talk about the SOC that he has inherited as the current
22 Warden of this facility and whether or not he supports the
23 same discipline. And talk about the charges on there.

24 DANIEL MARKS: I think that's—I don't think
25 that's cumulative and that's irrelevant. I don't think they

1 can use him to say, oh I reviewed it, I think it's great. I
2 think you have—it's a de novo review. I think—we have—we have
3 to look at the underlying people who made the decision and
4 then under *O'Keefe*, you have a de novo review. I'm really
5 concerned if he—I thought Perry Russell testified that he
6 didn't consult with anyone and it was a clean Pre-Disciplinary
7 Hearing, which is a 14th Amendment Right to and now he just
8 testified that he consulted with Perry Russell. I think that
9 may very well taint, under *Loudermill*, the Pre-Disciplinary
10 process.

11 I don't want him to now be saying, oh I think that
12 was great when, you know, that's just calling somebody off the
13 street. It's not relevant under *O'Keefe* unless he had
14 something to do with the decision-making.

15 MICHELLE ALANIS: Under *O'Keefe*, you're making a
16 de novo review but we still have to discuss why these are
17 serious allegations and why NDOC made the recommendations.
18 Now, the Warden at the time made the recommendation, but
19 again, he is the current Warden and would have to support
20 whether or not he—

21 HEARING OFFICER: I understand—I understand your
22 objection.

23 MICHELLE ALANIS: --supports—
24
25

1 DANIEL MARKS: We conceded—I don't think we
2 contested in—our position is he did not violate those rules.
3 I'm not sure we're fighting that—

4 HEARING OFFICER: Who violated what rule?

5 DANIEL MARKS: We're saying that Jose Navarrete
6 did not do what he's accused of doing.

7 HEARING OFFICER: Right.

8 DANIEL MARKS: You know, so I'm not sure where
9 she's going. Because we're litigating this under—under
10 [inaudible]

11 HEARING OFFICER: I understand your objection.
12 Let's see where we go. I'm going to let it go forward.

13 DANIEL MARKS: All right.

14 HEARING OFFICER: But I do understand your point.

15 DANIEL MARKS: Okay.

16 HEARING OFFICER: I'm not—I assume he's going to
17 come in and say, everything was wonderful that was done.

18 DANIEL MARKS: Right. And this is [crosstalk]

19 MICHELLE ALANIS: I mean, quite frankly, if he's
20 going to—we've disclosed Warden Howell as a witness, as the
21 current Warden and that he would talk about the facts of this
22 case and the serious—

23 HEARING OFFICER: And, I think you have a right to
24 do that. I think you have the right to do that.

25

1 MICHELLE ALANIS: Right. So, if we're going to
2 start objecting, well then I guess I'm going to need a
3 continuance to get—if he wants me to call Warden Gentry and
4 subpoena her. If he wants me to get all these other people,
5 you know, trying to make this, in the interest of time, this
6 is the current Warden.

7 DANIEL MARKS: Okay, well you've already
8 overruled my objection.

9 HEARING OFFICER: I did, I did.

10 MICHELLE ALANIS: I'm just wrapping—because he
11 said, depending on how this goes. So, since you raised the
12 objection, I'm laying it out there.

13 HEARING OFFICER: And, I think he has the right to
14 express the view of the—of the Respondent, that's the whole
15 situation. So, I agree.

16 MICHELLE ALANIS: Okay. So, Warden Howell. So,
17 you said you saw the video. And my next question to you was
18 going to be, are you familiar with the SOC against Mr.
19 Navarrete? The Specificity of Charges?

20 JERRY HOWELL: Yes. Yes.

21 MICHELLE ALANIS: And, if I could have you turn to
22 Exhibit C in that book. Are you at Exhibit C?

23 JERRY HOWELL: Yes.

1 MICHELLE ALANIS: Okay. So, the entirety of
2 Exhibit C, it's kind of hard to see here, but it's NDOC 116
3 and it goes to NDOC 178. Do you recognize Exhibit C?

4 JERRY HOWELL: The cover letter and the
5 specificity, yes.

6 MICHELLE ALANIS: Okay. And, if I can have you
7 actually turn to NDOC 117.

8 JERRY HOWELL: Okay.

9 MICHELLE ALANIS: And, looking at the very bottom
10 of this page, is your signature anywhere on this page?

11 JERRY HOWELL: No.

12 MICHELLE ALANIS: Okay. And, who is the Warden
13 that signed this Specificity?

14 JERRY HOWELL: Jo Gentry.

15 MICHELLE ALANIS: Okay. And, you've already
16 testified that you became the Warden of Southern Desert, I
17 believe you said about 14 months ago?

18 JERRY HOWELL: Yeah, it was February.

19 MICHELLE ALANIS: February of 2018, right?

20 JERRY HOWELL: Yes.

21 MICHELLE ALANIS: And, did you—so, you've taken
22 Warden Gentry's position at Southern Desert, correct?

23 JERRY HOWELL: Yes.

24 MICHELLE ALANIS: And, have you assumed her role
25 and responsibilities as Warden?

1 JERRY HOWELL: Yes.

2 MICHELLE ALANIS: And, as part of that, of those
3 responsibilities, is that the pending disciplinary matters?

4 JERRY HOWELL: Yes.

5 MICHELLE ALANIS: And so, now have you had the
6 opportunity to review this SOC as the current Warden of
7 Southern Desert Correctional Center?

8 JERRY HOWELL: Yes.

9 MICHELLE ALANIS: And, if I could have you turn to
10 the next page, NDOC 118.

11 JERRY HOWELL: Okay.

12 MICHELLE ALANIS: Would you agree that on this
13 page, the specificity outlines the violations of misconduct
14 for Mr. Navarrete, I'm sorry if I keep saying it wrong.

15 JERRY HOWELL: Yeah, it's 118-119.

16 MICHELLE ALANIS: Okay. And, starting with—so, it
17 looks like on this specificity, under NAC 284.650 that one of
18 the charges was dishonesty, right?

19 JERRY HOWELL: Yes.

20 MICHELLE ALANIS: And then there's also a
21 corresponding AR violation under false or misleading
22 statements, right?

23 JERRY HOWELL: Yes.

24 MICHELLE ALANIS: All right. Can you tell me, in
25 looking at these two violations, NAC 284.650(10) and then AR

1 339.07.9, False and Misleading Statements; how—why do you feel
2 as the current Warden of Southern Desert, why are these
3 charges listed?

4 DANIEL MARKS: Your Honor, I'm going to object,
5 there's no foundation. He can't try to make a better case
6 when he wasn't there. And, I don't think—

7 MICHELLE ALANIS: He's not making a better case.

8 DANIEL MARKS: The issue is, did or did he
9 violate, we're not at Part 2 regarding O'Keefe, Part 2
10 [inaudible]

11 MICHELLE ALANIS: These are not bifurcated
12 hearings. We still have to prove all steps of O'Keefe.

13 HEARING OFFICER: Maybe the question was—

14 DANIEL MARKS: But, how if you've got no
15 foundation.

16 HEARING OFFICER: Maybe the question was a little
17 bit oddly worded. Why are the charges there? I mean, he
18 didn't—

19 MICHELLE ALANIS: I guess—

20 HEARING OFFICER: He didn't draft the document,
21 so.

22 MICHELLE ALANIS: Okay. So, maybe what did Mr.
23 Navarrete do that constituted these violations?

24 HEARING OFFICER: All right.
25

1 DANIEL MARKS: The stuff is in evidence. In
2 other words, this is a different type of process than court.
3 This is all in evidence. I don't think we're contesting the
4 foundational document. I have it in opening, contested a
5 foundational documents, other than obviously procedural issue,
6 but I don't think this witness can add anything to the case.

7 I don't think we're saying that it's not a serious-
8 alleged serious violation. I don't think we're saying-we're
9 saying it didn't happen it, he didn't do it. That's in my
10 opening. So, we're trying it under Part 1. I don't think
11 this witness, with all due respect, adds anything to the
12 documents in evidence.

13 MICHELLE ALANIS: Right. He's saying he didn't do
14 anything and I'm about to ask him, did he violate these
15 charges.

16 DANIEL MARKS: But how can he do that if he
17 wasn't there?

18 HEARING OFFICER: I mean, if it was like, if it
19 was truly cumulative, I'd agree with you Mr. Marks, but I
20 think that they're entitled to have a witness come in and
21 testify as to the position of the DOC. And I think that's
22 basically what he's doing here.

23 DANIEL MARKS: Okay. Even though he wasn't
24 there.

25

1 HEARING OFFICER: Well, the weight of it is the
2 weight of it. You know and I understand your position, you
3 want me to look at the time-

4 DANIEL MARKS: He's obligated by law to defend
5 them. I don't think as the Warden he can come in and say, oh
6 I reviewed this-

7 HEARING OFFICER: We're all under oath, I'm sure
8 he can say whatever he thinks is right-

9 DANIEL MARKS: All right.

10 HEARING OFFICER: --I'm sure, and whatever is
11 true. So, I'm going to let them go through this witness-

12 DANIEL MARKS: Okay.

13 HEARING OFFICER: --on behalf of--he's giving the
14 position of the DOC with respect to the charges and I think
15 they have a right to do that.

16 DANIEL MARKS: But he shouldn't be allowed to
17 do a closing argument, another closing. He's got to have some
18 accommodation for his testimony.

19 MICHELLE ALANIS: He's doing [crosstalk]

20 HEARING OFFICER: Okay. Let's see where we go.
21 I'm going to overrule the objection, go on.

22 MICHELLE ALANIS: Okay.

23 HEARING OFFICER: Please proceed.
24
25

1 MICHELLE ALANIS: Warden Howell, can you tell me
2 what Officer Navarrete did to constitute violations of
3 dishonesty and false or misleading statements under the AR.

4 DANIEL MARKS: And I'll just reserve my
5 objection. I'm not going to reargue it, I just—I don't think
6 that's proper in light of this. I don't think they can prove
7 their case through somebody who wasn't there. He since is the
8 Corporate Representative. The documents are in evidence.
9 We're not objecting under some, you know, evidentiary
10 objection, hearsay or anything. It's in evidence. He can't
11 make a better case for them, it's there.

12 HEARING OFFICER: And I totally hear what you're
13 saying.

14 DANIEL MARKS: Okay.

15 HEARING OFFICER: But I'm going to let her go
16 forward with the witness.

17 DANIEL MARKS: All right.

18 HEARING OFFICER: Go on ahead.

19 MICHELLE ALANIS: Same question, do you need me to
20 repeat it?

21 JERRY HOWELL: Yes. Sorry.

22 MICHELLE ALANIS: Can you please tell me what
23 Officer Navarrete did that constituted dishonesty or false
24 and/or misleading statements under the AR?

25

1 JERRY HOWELL: In reading the investigation and
2 the specificity and the findings, it indicated that—and then I
3 watched the video here, it indicated that there was a use of
4 force that was egregious, strictly prohibited and that the
5 actions taken by an experienced senior officer, at the time of
6 the incident and further, in the reporting of it, that he did
7 in fact file a report. His report had a glaring omission of
8 the—of the violation. I mean, they have an obligation to
9 report violations, every employee does. And that—and that the
10 whole scenario, based on—I mean, based on his interview, that
11 he acknowledges that he knew these things were not permitted
12 and he acknowledged that in this interview document.

13 MICHELLE ALANIS: So, I just want to make sure,
14 when you say there was a “glaring omission of the violations”,
15 what specifically are you referring to?

16 JERRY HOWELL: To reach around a prisoner from
17 the back and grab him in a chokehold.

18 MICHELLE ALANIS: And so, it's your opinion that
19 that should've been presented in the report?

20 DANIEL MARKS: Objection, leading, suggesting.

21 HEARING OFFICER: It's kind of a summary, so I'll
22 overrule.

23 DANIEL MARKS: You're letting him do a closing
24 argument. He's commenting on the evidence. He said something
25 about, in his interview, that's just commenting on the

1 evidence. I move to strike that. In other words, he can't
2 make their case better through this witness.

3 MICHELLE ALANIS: Opposing counsel keeps arguing
4 that we're here for just this de novo part and I think he's
5 completely confused as to the fact that we still have to
6 present our case and all aspects of *O'Keefe*. This isn't a
7 closing argument. It's simply talking about Step 1, did he
8 engage in the misconduct, as well as Steps 2 and 3, is this
9 serious and what NDOC's position was on the good of the public
10 service. That all comes out in this testimony. These aren't
11 bifurcated hearings. We don't determine Step 1 first.

12 HEARING OFFICER: I've been a lawyer for a long
13 time and I think I can separate first party witnesses,
14 firsthand witnesses versus other types of witnesses. And I
15 think I can certainly weigh the testimony, as opposed to
16 people who were there, people who made the decisions and
17 people who were giving summary of the position of the DOC,
18 based upon the documentation. I think they're entitled to do
19 this.

20 DANIEL MARKS: Okay.

21 HEARING OFFICER: And, ultimately, I think it does
22 help narrow the issues for everything. Ultimately, it creates
23 a record. I don't see it as a closing argument, necessarily.
24 So, I'm going to let you go forward with it. To make the
25 record.

1 MICHELLE ALANIS: Okay. Warden Howell, so you
2 just said that the omission you felt was the fact that it was
3 missing any description of the chokehold or the arm around the
4 neck, correct?

5 JERRY HOWELL: Yes.

6 MICHELLE ALANIS: Okay. And, if I could have you
7 turn to Exhibit A. Specifically, NDOC 19. Are you at that
8 page?

9 JERRY HOWELL: Yes.

10 MICHELLE ALANIS: Okay. So, we're looking at
11 Officer Navarrete's report here. What was your—in reviewing
12 this report, there's a statement in there that, when Inmate
13 Norales came off the wall, he was resisting and both he and CO
14 Valdez—I'm sorry, I'm going to back up.

15 At approximately 0645 hours, Inmate Norales with his
16 back number, came off the culinary wall while CO Valdez was
17 attempting to restrain him, resulting in a spontaneous use of
18 force. In reviewing that sentence of the report, what was
19 your opinion on that?

20 JERRY HOWELL: There again, it's—it's not what
21 he said, it's what he doesn't say. He admitted to critical
22 parts of this whole thing.

23 MICHELLE ALANIS: And, what about the fact of,
24 that they were restraining the inmate.
25

1 JERRY HOWELL: There again, there's a
2 tremendous omission.

3 MICHELLE ALANIS: Did you--

4 JERRY HOWELL: In this paragraph, he does not,
5 as is required, say how-how did you attempt to restrain him or
6 why were you attempting it? I mean, I watched the video seven
7 or eight times here, at no time did they have restraint
8 equipment out that would indicate that they were attempting to
9 restrain the prisoner.

10 So, the-how did you grab him? I grabbed by my right
11 arm on his left arm--all those descriptors are not there. It's
12 just a blanket thing, this is what happened. It's almost--
13 it's--there's a lot of things that aren't here that should be
14 here.

15 MICHELLE ALANIS: So, you stated that there's a
16 lot of things missing. So, those are the omissions, but is it
17 also your position then, I think I heard you say, you don't
18 believe that they were restraining the inmate at the time, as
19 stated in this report.

20 DANIEL MARKS: Objection, leading. The report
21 is in evidence.

22 HEARING OFFICER: Well, he just--he said it, I'm
23 going to overrule it.

24 MICHELLE ALANIS: Warden Howell, can you tell me
25 what Officer Navarrete did to constitute the violations on the

1 SOC for the unnecessary use of force, the violation of AR 339,
2 regarding use of force.

3 JERRY HOWELL: The use of force regulation
4 requires that you do not use unnecessary or unwarranted force.
5 It also says that you will not permit the use of unnecessary
6 or unwarranted force.

7 MICHELLE ALANIS: And, in this case, is it your
8 opinion that Officer Navarrete permitted the use of force?

9 JERRY HOWELL: Yes.

10 MICHELLE ALANIS: And he was the Senior Officer in
11 this incident. As a Senior Officer, is it your position that
12 he has that greater obligation to prevent the use of force?

13 DANIEL MARKS: Objection, leading.

14 HEARING OFFICER: You were kind of leading there.
15 Just saying.

16 MICHELLE ALANIS: Sorry. Could you expand for me
17 why you believe he permitted the use of force?

18 JERRY HOWELL: Officer Navarrete was assigned
19 as the Lead S&E which means that he's a Senior Lead Officer
20 over the S&Es on that shift, for that day. He would direct a
21 lot of their activities. He would tell them where to go, you
22 know, go get this prisoner, do this, stand by this chow. He
23 would lead their activity.

24 He also is in a position to train the other S&Es.
25 As an experienced officer, it is his duty and all of our duty

1 to ensure that we don't violate the rules of the institution
2 or the rights of the prisoners.

3 So, his obligation to his fellow S&Es is higher
4 because he, as a lead officer, he's supposed to direct them.
5 But it's every person who works there responsibility to ensure
6 that we don't have unnecessary use of force or that we do
7 things that are harmful to the prisoners. I mean, our whole
8 mission is to oversee their safety and the safety of our
9 staff.

10 So, you know, as the lead officer, his obligation is
11 to the S&Es and to direct them and lead them. So, yes.

12 MICHELLE ALANIS: And, was there a recommendation
13 of discipline made on the specificity of charges?

14 JERRY HOWELL: [pause] Is that under C?

15 MICHELLE ALANIS: Yes, Exhibit C. #117.

16 JERRY HOWELL: Yes.

17 MICHELLE ALANIS: And, what was the
18 recommendation?

19 JERRY HOWELL: Terminated from state service.

20 MICHELLE ALANIS: And, as the current Warden of
21 Southern Desert, do you concur with the recommended—

22 DANIEL MARKS: Object—I'm going to object.
23 It's irrelevant.

24 MICHELLE ALANIS: He's also testifying on behalf
25 of the appointing authority.

1 HEARING OFFICER: Overruled. Given his status of
2 what he's testifying, on behalf of the Respondents.

3 JERRY HOWELL: Given the substantiate charges,
4 yes, that is the recommended discipline for those charges.

5 MICHELLE ALANIS: And, when you say recommended
6 discipline, what are you referring to?

7 JERRY HOWELL: That the egregiousness of the
8 charge, the Class V violation, would warrant a recommendation
9 of termination.

10 MICHELLE ALANIS: So, the Class V Violation,
11 you're referring to the NDOC's, are you talking about the
12 disciplinary chart?

13 JERRY HOWELL: Yes.

14 MICHELLE ALANIS: And for a Class V violation,
15 what is normally the discipline for a first time offense?

16 JERRY HOWELL: I believe it's termination.

17 MICHELLE ALANIS: Okay.

18 HEARING OFFICER: Is there a range or is that it?

19 JERRY HOWELL: Yes, that's it. That's the
20 minimum and the maximum.

21 MICHELLE ALANIS: Warden Howell, can you tell me
22 why you believed the-in addition, I understand you said it was
23 a Class V violation, why specifically is a false and
24 misleading report so egregious, like you stated?

25

1 JERRY HOWELL: Well, the staff for the
2 Department and that includes the correctional officers and
3 supervisors, that our statements, our written statements, our
4 spoken—they have to be believed. So, if we jeopardize that,
5 if we lose credibility in our writings or speak, then our
6 effectiveness would go to zero. We—when an officer writes a
7 report, we take it on its face it's true. That's the way we
8 have to operate. We have to believe that they are truthful.
9 That they haven't omitted anything. That they haven't added
10 things that weren't there.

11 So, our whole disciplinary system is based on the
12 fact that the officers are credible and truthful.

13 MICHELLE ALANIS: And, having an officer that's
14 not truthful, how does that effect you as the Warden?

15 JERRY HOWELL: Well, it damages the whole
16 workforce. It damages our whole workforce.

17 MICHELLE ALANIS: You said, workforce?

18 JERRY HOWELL: Yeah. It makes it very hard for
19 the custody staff to do their officers. If the prisoners
20 believe that they're untruthful, if they're not going to tell
21 the truth about what happens. It makes the job very difficult
22 for them. If they believe our motive is more than to uphold
23 the rules and the regulations of the prison and maintain the
24 safety and order of the prison, if we have an agenda other
25 than that, we will lose credibility with the prisoner. Then,

1 if the Hearing Officers or whoever these documents go to, if
2 we've lost credibility with them, then it would be a very,
3 very difficult task.

4 MICHELLE ALANIS: And, why is the violation of the
5 excessive force so egregious?

6 JERRY HOWELL: Because we are charged with
7 overseeing the wellbeing and the safety of the prisoners, as
8 well as the staff and the public. If the prisoner body
9 believed that we are abusive or we used unwarranted force or
10 that we do things physically or otherwise to them, that they
11 believe has a purpose other than to enforce the rules or
12 maintain the safety, it could cause the prisoners to be—to
13 react violently because they think you're going to do
14 something to me, so I'm going to do it first. It makes it a
15 very apprehensive situation for all the other staff.

16 MICHELLE ALANIS: Who made the final decision to
17 terminate Mr.—Officer Navarrete?

18 JERRY HOWELL: The final decision to terminate
19 an employee is the Director's.

20 MICHELLE ALANIS: Is that who signed the cover
21 letter that you referenced earlier?

22 JERRY HOWELL: Yes.

23 MICHELLE ALANIS: You already referenced the NDOC
24 Chart of Discipline. So, Officer Navarrete's termination was
25 in line with this disciplinary matrix.

1 JERRY HOWELL: Yes.

2 MICHELLE ALANIS: Can you tell me why Officer
3 Navarrete—he didn't have any other—there's been testimony that
4 there was no—I'm sorry, it was in opening that there was no
5 prior discipline. Why was no progressive discipline needed
6 here for Officer Navarrete?

7 JERRY HOWELL: Because of the—the nature of the
8 charges, both charges, extremely serious.

9 MICHELLE ALANIS: And, was the—did the termination
10 serve the good of the public?

11 JERRY HOWELL: [pause] The good of--

12 MICHELLE ALANIS: Or the good of the State,
13 basically?

14 JERRY HOWELL: Yes.

15 MICHELLE ALANIS: And why do you believe that?

16 JERRY HOWELL: As I stated previous, it is a
17 foundation of correctional work, peace officer work that the
18 officers who are carrying out these duties are believable,
19 that they're credible and that they're honest. They're going
20 to act in the best interest, as I said, of the prisoners and
21 the staff and the public. So, they're believability is
22 paramount.

23 MICHELLE ALANIS: I have no further questions at
24 this time.

25 HEARING OFFICER: Mr. Marks.

1 DANIEL MARKS: Yes. Warden, you understand the
2 incident happened October 9, 2016, correct?

3 JERRY HOWELL: Yes.

4 DANIEL MARKS: And, October 9, 2016, you were
5 not employed at Southern Desert Correctional Facility,
6 correct?

7 JERRY HOWELL: That's correct.

8 DANIEL MARKS: You were not in the chain of
9 command that made the decision, correct?

10 JERRY HOWELL: No, I was not.

11 DANIEL MARKS: You were not the warden that
12 made the decision.

13 JERRY HOWELL: No, I was not.

14 DANIEL MARKS: The way it works is, there's a
15 recommendation to the Warden, the makes the decision before it
16 goes to the Director, correct?

17 JERRY HOWELL: Yes.

18 DANIEL MARKS: And the Warden at that time was
19 Jo Gentry, correct?

20 JERRY HOWELL: Yes.

21 DANIEL MARKS: So, she actually made the
22 decision, correct?

23 JERRY HOWELL: Yes.

24 DANIEL MARKS: And then it went—it was kicked
25 upstairs and the Director, obviously signed it, correct?

1 JERRY HOWELL: Yes.

2 DANIEL MARKS: Now, are you familiar with the
3 documents that—in the book you have?

4 JERRY HOWELL: I have some familiarity with
5 them, yes.

6 DANIEL MARKS: Okay. Why don't you turn to
7 Exhibit C, specifically Page 117.

8 JERRY HOWELL: Okay.

9 DANIEL MARKS: Do you have that?

10 JERRY HOWELL: Yes.

11 DANIEL MARKS: That's the Specificity of
12 Charges signed by Jo Gentry, correct?

13 JERRY HOWELL: Yes.

14 DANIEL MARKS: And that's her—you recognize her
15 handwriting?

16 JERRY HOWELL: Yes.

17 DANIEL MARKS: Now, in that, it says, proposed
18 actual—in the middle of the page, it says, proposed actual
19 effective date 4/5/17 and it's crossed off, 4/21/17, correct?

20 JERRY HOWELL: Yes.

21 DANIEL MARKS: And that's because it was going
22 to be—that 4/5 was before the Pre-Term Hearing was even set,
23 correct?

24 MICHELLE ALANIS: Objection--

25 JERRY HOWELL: I don't know.

1 MICHELLE ALANIS: Relevance?

2 DANIEL MARKS: So, you don't know why those
3 dates were changed?

4 JERRY HOWELL: No, I don't.

5 DANIEL MARKS: Okay. But did you talk to Perry
6 Russell about the video before he made the Pre-Term Hearing
7 decision, before the Pre-Termination Hearing?

8 JERRY HOWELL: Yes. He showed me the video.

9 DANIEL MARKS: So, you discussed the case?

10 JERRY HOWELL: No.

11 DANIEL MARKS: He asked for your opinion and
12 your input.

13 JERRY HOWELL: He-what he asked me is if I knew
14 the officers because I had worked there. I said, yes I know
15 Officer Navarrete, the other person, I did not know.

16 DANIEL MARKS: Okay. But he discussed,
17 obviously, that case before the Pre-Term Hearing with you,
18 correct?

19 JERRY HOWELL: That was part-yes, that was part
20 of the discussion.

21 DANIEL MARKS: Okay.

22 JERRY HOWELL: I didn't-I didn't.

23 DANIEL MARKS: Okay. Did you know Jose had had
24 no prior discipline?

25

1 JERRY HOWELL: I knew that when he worked for
2 me, that he didn't. I don't know anything other than that.

3 DANIEL MARKS: So, you didn't know anything in
4 the next 10 years.

5 JERRY HOWELL: No.

6 DANIEL MARKS: Okay. Let's look at the next
7 page, Page 118. This is part of the specificity, correct?

8 JERRY HOWELL: Yes.

9 DANIEL MARKS: [inaudible] attach the
10 specificity and the specificity is supposed to be true and
11 correct, right?

12 JERRY HOWELL: Yes.

13 DANIEL MARKS: It's certainly supposed to have
14 the same credibility as the reports that the officers made,
15 correct?

16 JERRY HOWELL: Yes.

17 DANIEL MARKS: And if there's something untrue,
18 you think that would fall into false or misleading or
19 dishonest statements, if there's things untrue in the
20 specificity?

21 JERRY HOWELL: If you want my opinion--

22 MICHELLE ALANIS: Objection, foundation.

23 JERRY HOWELL: --I think it would go to intent.

24 DANIEL MARKS: So, false or misleading always
25 goes to intent, whether it's knowing intent or not.

1 MICHELLE ALANIS: I'm going to object--

2 DANIEL MARKS: Is that correct?

3 MICHELLE ALANIS: --relevance.

4 JERRY HOWELL: Yes.

5 DANIEL MARKS: This is very relevant. It's in
6 evidence. I can ask anything about any document in evidence.
7 But, let's get right to it--

8 HEARING OFFICER: I'm going to overrule the
9 objection, it's cross-examination at this point.

10 DANIEL MARKS: At the bottom of Page 118, this
11 is from the Warden, I guess, Jo Gentry, it says, while
12 supervising the evening dinner meal, Senior Officer Navarrete
13 and Officer Paul Valdez ordered Inmate Norales to place his
14 hands on the wall. We know it wasn't the dinner meal. So,
15 that's a false statement, isn't it?

16 JERRY HOWELL: [pause] It's incorrect, yeah.

17 DANIEL MARKS: Excuse me?

18 JERRY HOWELL: I said, it's an incorrect
19 statement.

20 DANIEL MARKS: It's false. Right? You don't
21 know if it's knowing or not. You didn't talk to the Warden
22 about why she thought it was the dinner meal.

23 JERRY HOWELL: Correct.
24
25

1 DANIEL MARKS: And you didn't talk to Jose
2 regarding this incident, about whether his statement was
3 knowingly false, correct? You didn't talk to him.

4 JERRY HOWELL: No.

5 DANIEL MARKS: Okay. And you had nothing to do
6 with the discipline in this case, other than talking to Perry
7 Russell prior to the Pre-Term Hearing, correct?

8 JERRY HOWELL: Correct.

9 DANIEL MARKS: And you're here as the State
10 Representative because you're the current Warden, correct?

11 JERRY HOWELL: Yes.

12 DANIEL MARKS: Okay, that's all I've got.

13 HEARING OFFICER: Do you have any redirect?

14 MICHELLE ALANIS: I have just one or two follow-up
15 questions.

16 HEARING OFFICER: Okay.

17 MICHELLE ALANIS: Warden Howell, you were just
18 asked about the statement in here of the evening dinner meal,
19 in the specificity of charges, do you remember that?

20 JERRY HOWELL: Yes.

21 MICHELLE ALANIS: And, would you agree with me
22 that the specificity of charges, this isn't prepared or put
23 into NOTIS, correct?

24 DANIEL MARKS: Objection, leading, irrelevant.
25

1 MICHELLE ALANIS: It is relevant if you're trying
2 to—

3 HEARING OFFICER: What do you mean by that
4 question?

5 MICHELLE ALANIS: I'm sorry, the Nevada Offender
6 Tracking Information System, the SOC doesn't go into NOTIS?

7 JERRY HOWELL: No.

8 MICHELLE ALANIS: Okay. This isn't—the SOC isn't
9 used by the Wardens or the Associate Wardens at the time of an
10 incident occurring, right?

11 DANIEL MARKS: Objection. It's not used? Why
12 are we here then, I mean, you're not using it?

13 MICHELLE ALANIS: I'm saying it's not used at the
14 time of the incident. The time. When that incident occurred
15 on October 9, 2016. NDOC is not looking at this summary, are
16 they?

17 JERRY HOWELL: No.

18 MICHELLE ALANIS: Okay. And, this statement in
19 the specificity of charges, as you—would you agree, it's a
20 brief summary of facts?

21 JERRY HOWELL: Yes.

22 MICHELLE ALANIS: But it has no—it's not the
23 document to report a use of force at NDOC, right?

24 JERRY HOWELL: No, it's not.
25

1 MICHELLE ALANIS: Okay. I don't have anything
2 further.

3 DANIEL MARKS: I just have one clarification.
4 Your familiar with use of force documents, as Warden?

5 JERRY HOWELL: Yes. Yes.

6 DANIEL MARKS: You're familiar that there's an
7 actual use of force document, correct?

8 JERRY HOWELL: Yes.

9 DANIEL MARKS: And the document Jose filled out
10 was not the use of force document, correct?

11 JERRY HOWELL: Yes.

12 DANIEL MARKS: Is that right sir?

13 JERRY HOWELL: I think that's right, yes.

14 DANIEL MARKS: Okay, thank you. No further
15 questions.

16 HEARING OFFICER: That it?

17 MICHELLE ALANIS: I don't have anything else.

18 HEARING OFFICER: Awesome. Thank you sir.

19 [pause] Does the State have any further witnesses or is that
20 it?

21 MICHELLE ALANIS: We have disclosed Officer
22 Navarrete but in the interest of time, I'd like to reserve—I'd
23 prefer to just cross him if he's getting called in their case
24 in chief, but if he does not, then I reserve the right to, I
25 guess, call him should that not happen.

1 HEARING OFFICER: Yeah. I'm assuming Mr. Marks is
2 going to call him, right?

3 DANIEL MARKS: Yeah. Yeah. Yeah.

4 MICHELLE ALANIS: Okay. Then, I'll just reserve
5 my questions for cross.

6 HEARING OFFICER: That makes sense.

7 DANIEL MARKS: Do they rest then?

8 MICHELLE ALANIS: Then we rest at this time.

9 HEARING OFFICER: Okay, good.

10 DANIEL MARKS: Then, Your Honor, before I put
11 on my case, I make a motion to dismiss on the 90-day Rule. I
12 think they have the burden of proof. However you view the 90-
13 day Rule, they have the burden of proof by a preponderance of
14 the evidence, good cause.

15 Arguably, some people might say, I think [inaudible]
16 they had to prove good cause to the authority to get it and
17 it's a paperwork issue. Giving them the benefit of the doubt
18 and the totality of why we're having a hearing, I feel like
19 they theoretically could've proven or attempted to prove good
20 cause here and to clean it up and come up with some reason
21 that would be good cause, like you move in court and say,
22 here's my good cause, they never did it. They just—they
23 didn't even attempt to do it.

24 So, here's the issue. If the Legislature wanted it
25 to be automatic—we joke about the Legislature a lot but I

1 think they easily could've said, you can get one 30-day, 60-
2 day or 90-day extension. We know that because for instance,
3 in the Supreme Court, you pretty much get a free 30-day
4 extension. You just say, I want 30 days, you get it.

5 If you want to amend or you want it—in the Supreme
6 Court, you want more than 30 days, you've got to have a reason
7 and you got—and that reason has to be good cause. Normally we
8 all have gotten extensions, we all know what that is.

9 Actually, it's supposed to unpredictable, something outside of
10 the normal just being busy, but we know sometimes, you know,
11 Courts will be lenient on it, but you have to at least make a
12 showing of good cause.

13 Their only attempt at good cause was it's with the
14 AG. I think every specificity goes to the AG. That doesn't
15 even attempt to show it's unpredictable. Just being with the
16 AG, they didn't say, even if we're busy. We don't think busy
17 is enough. They didn't even say that we're busy, we're in a
18 jury trial, you know. We had to argue Supreme Court. They
19 didn't come up with the any of the normal 100 excuses that
20 lawyers use all the time. They treated it like it's
21 automatic.

22 I don't like these procedural things, but they
23 totally, totally don't even attempt to come up with all the
24 things that lawyers do every day as to what good cause would
25 be in either District Court or the Supreme Court. They

1 treated it like it's a rubber stamp automatic and clearly, by
2 the virtue of the actual plain words of the statute, it's not.
3 Otherwise, it wouldn't say for good cause. It would just say,
4 you get a 90-day extension.

5 You get one free 90-day extension after that, you
6 need good cause. Or, after that, like Supreme Court always
7 says, all right, we're giving you this extension that's your
8 last extension absent unforeseen and extreme events or
9 something—they're trying to let you know, not just sort of the
10 good cause that we just sort of liberally construe.

11 They didn't come in here and try to clean it up.
12 They were on plenty of notice that we were raising this issue.
13 They didn't come in and bring anybody to show, all right, you
14 know, maybe we didn't really allege good cause at the time,
15 let's try to clean it up with good cause. They didn't do
16 anything.

17 So, under that statute, their case should be denied,
18 Your Honor. And everything's got to be by preponderance.
19 They've got to show good cause by preponderance. That's under
20 *Nassari*, everything has got to be more likely than not,
21 otherwise it's a legal absurdity if it's less than.

22 HEARING OFFICER: I'd rather, I'd rather brief—I
23 think there was an argument that I'm not even entitled to
24 review that.

25 MICHELLE ALANIS: That's correct.

1 HEARING OFFICER: That was part of it. So, I did
2 read their response.

3 DANIEL MARKS: No, but I think in [inaudible]

4 HEARING OFFICER: Well, I'm going to hear what
5 they have to say too, I understand.

6 DANIEL MARKS: No, [inaudible] you ruled that
7 way, I think another Hearing Officer did in *Haycox*. I don't
8 know why they can't come up with good cause. I mean, as
9 lawyers, this happens all the time in court, what's your
10 cause? When you amend, when you need an extension. Good
11 cause is in NRCP, you know, very, very often. This isn't an
12 obscure legal concept. They're saying it's with lawyers, the
13 AG, so you would think they'd be able to come up with some
14 good cause. They just blatantly didn't and don't want to.

15 HEARING OFFICER: I'm sorry I interrupted, I want
16 to hear the State's position on this.

17 MICHELLE ALANIS: Your Honor, this is a non-issue,
18 okay. NRS 284.387 says that we may request an extension of
19 60-days from the Administrator of DHRM to serve this-to
20 complete our investigation and serve the discipline. That is
21 exactly what NDOC did.

22 He keeps saying that there's no good cause, well if
23 we look at the Request for Extension on the form prescribed,
24 it says that the specificity of charges is currently under
25 review by the Attorney General's Office.

1 Now, Counsel keeps wanting to say that there was no
2 good cause, that section wasn't left blank. There was a
3 reason in there. Pursuant to NRS 284.385, NDOC is required to
4 consult with the Attorney General's Office before dismissing,
5 demoting or suspending a permanent classified employee.

6 So, we have listed—NDOC has listed a reason for the
7 extension. It was sent to the Administrator of DHRM and the
8 best part is, the Administrator granted the request. So, we
9 had a granted request for extension, which extended the time
10 to serve. That extended the time to now, March 20, 2017 and
11 Mr. Navarrete was served with the Specificity of Charges on
12 March 16, 2017.

13 So, the extension was granted. There's nothing to
14 prove here. We don't have to prove good cause on an extension
15 that was granted. Like you've already pointed out, it's not
16 for the Hearing Officer to determine if good cause existed.
17 Nowhere in the statutory framework does it say that Hearing
18 Officers are to determine whether or not there was good cause
19 presented to Peter Long, the Administrator of DHRM. That's
20 for the Administrator of DHRM to determine. If he doesn't
21 believe there's good cause, then certainly he can say, I don't
22 like this reasoning, send it back to the NDOC and tell them
23 that you need to list a different reason or reject it. Or
24 whatever but that didn't happen here.

1 He approved the extension and sent it back to NDOC.
2 If we were now at the point where we have to litigate good
3 cause at these hearings, what is the purpose of requesting the
4 extension? It completely makes—the Legislative intent, it
5 would make no sense to be able to request for an extension if
6 they're simply going to come in here and then question the
7 extension itself and the fact that it's been granted.

8 There was no issue with this. It is a non-issue.
9 It was granted. NDOC is in compliance with NRS 284.387. It
10 was served timely. The timeline is not in dispute, it's just—
11 to me, it's just a completely ridiculous argument to be made.
12 It's not for this Hearing Officer to decide.

13 In fact, we actually included in an Exhibit one of
14 the—the Second Judicial District has even ruled on this issue
15 and said, it's not for the Hearing Officer to determine. The
16 extension was granted. We included that in Exhibit I. You
17 know, *Haycox*, there were a couple of other cases listed,
18 *Haycox*.

19 The part that they're relying on is not—it was mere
20 dicta. It was a reconsideration order, that is not what is at
21 issue here. Here, we have a request for an extension, it was
22 granted. The SOC was served. There was nothing to prove in
23 this hearing because it's a non-issue.

1 We have it all briefed in our supplemental pre-
2 hearing statement if I've missed any of my arguments that I've
3 made there, but—

4 HEARING OFFICER: Right. Well, I'm not going to
5 dismiss the case. Obviously, I'm going to consider your
6 arguments [crosstalk]

7 DANIEL MARKS: Okay. We're saying they need
8 good cause. What they're admitting is—

9 HEARING OFFICER: At this point.

10 DANIEL MARKS: --the AG's Office is part of the
11 process. That's not an unforeseen—we define what good cause
12 is for extensions, unforeseen, not in the normal course of
13 business. They're conceding it's in the normal course of
14 business. It's been briefed. I think the [inaudible] case,
15 the *Haycox* case, one of those, you have—all right, then we
16 preserve that for your decision.

17 HEARING OFFICER: You did and I'll seriously
18 consider all the issues on both sides.

19 DANIEL MARKS: All right, then let me see—all
20 right. Let me see if my first witness is out there. [pause]

21 HEARING OFFICER: You guys are making me work
22 today. Making me think today. [pause]

23 MICHELLE ALANIS: Are we still on the record?

24 HEARING OFFICER: Are we? We're still on the
25 record? Yeah.

1 MICHELLE ALANIS: I think he's having a
2 discussion.

3 HEARING OFFICER: Well, I don't think this mic
4 will pick up anything will it? I don't know, maybe it will.
5 [pause]

6 DANIEL MARKS: Our first witness is Mark
7 Tansey.

8 HEARING OFFICER: Hi. The witness chairs are over
9 here. Could you raise your right hand for me? Do you
10 solemnly swear that the testimony you're about to give in this
11 proceeding will be the truth, the whole truth and nothing but
12 the truth

13 MARK TANSEY: I do.

14 HEARING OFFICER: All right sir, thank you very
15 much. Can you state and spell your name for me?

16 MARK TANSEY: Mark Tansey, M-A-R-K, T-A-N-S-E-
17 Y.

18 HEARING OFFICER: Okay, thank you sir.

19 DANIEL MARKS: And, where are you currently
20 employed?

21 MARK TANSEY: Clark County.

22 DANIEL MARKS: And, what's your job there?

23 MARK TANSEY: As an officer.

24 DANIEL MARKS: What type of officer?
25

1 MARK TANSEY: Code enforcement, public
2 response office.

3 DANIEL MARKS: Okay. Prior to that, were you
4 employed as a police officer?

5 MARK TANSEY: I was.

6 DANIEL MARKS: And, where was that?

7 MARK TANSEY: Oklahoma.

8 DANIEL MARKS: Okay. And prior to that, were
9 you employed at NDOC?

10 MARK TANSEY: Yes sir.

11 DANIEL MARKS: Okay. And, what jobs did you
12 have at NDOC?

13 MARK TANSEY: Mine was a Sergeant. As a
14 Sergeant, I had desk duty. I was responsible for the
15 assignment of position. I also had the position of Officer
16 and I was assigned to the visiting and also, as a Sergeant, I
17 was in charge of the yard on afternoon shift.

18 DANIEL MARKS: [crosstalk]

19 MICHELLE ALANIS: I'm going to object to this
20 witness. I raised this before we got started, but this
21 witness is completely irrelevant to this case. He's not
22 involved in the incident. His name is nowhere mentioned in
23 any of the reports or any of the statements or any of the
24 evidence. He wasn't involved in the discipline. As Counsel
25

1 has, you know, pointed out with the current Warden, he really
2 just is completely irrelevant to this case.

3 DANIEL MARKS: He's going to testify regarding
4 use of force standards out there as a Sergeant. He's going to
5 testify regarding these--the report [crosstalk]

6 MICHELLE ALANIS: And the use of force, in his
7 experience, he's not even with NDOC.

8 DANIEL MARKS: But he was, he was a Sergeant.

9 MICHELLE ALANIS: Right. And, the best part is,
10 he wasn't even at the same facility with the Employee at the
11 time.

12 HEARING OFFICER: Well, you know, I'm--

13 DANIEL MARKS: He was at [crosstalk]

14 HEARING OFFICER: I'm a believer that both sides
15 should be able to put their cases on. So, I haven't heard
16 much from this witness yet. So, let's--

17 DANIEL MARKS: It's going to be short.

18 MICHELLE ALANIS: Okay.

19 HEARING OFFICER: --let's continue and see where
20 we go.

21 DANIEL MARKS: Just tell--as a Sergeant, where
22 you at High Desert?

23 MARK TANSEY: Yes.

24

25

1 DANIEL MARKS: Okay. And, do you believe that
2 High Desert and Southern Desert, they have the same use of
3 force policy?

4 MARK TANSEY: Yes.

5 DANIEL MARKS: And the same reporting policy--
6 writing report policy?

7 MARK TANSEY: Yes.

8 DANIEL MARKS: As a Sergeant at--and, what year
9 were you a Sergeant at High Desert?

10 MARK TANSEY: First time was approximately
11 2012 and the second time was approximately 2014-2016.

12 DANIEL MARKS: So, you were there, this
13 incident was 2016. So, you were at this sister institution,
14 High Desert, not Southern Desert, is that right?

15 MARK TANSEY: Correct.

16 DANIEL MARKS: Okay. And you're familiar with
17 the use of force policies?

18 MARK TANSEY: Yes.

19 DANIEL MARKS: As a Sergeant, did you supervise
20 the yard?

21 MARK TANSEY: Yes.

22 DANIEL MARKS: As a Sergeant, did you have
23 reports written on use of force?

24 MARK TANSEY: Yes.

1 DANIEL MARKS: As a Sergeant, did you supervise
2 the correction officers and the senior correction officers on
3 the Search and Escort missions?

4 MARK TANSEY: Yes.

5 DANIEL MARKS: And, did you have an opportunity
6 to review the video in this case?

7 MARK TANSEY: Yes.

8 DANIEL MARKS: Okay. In your opinion, do you
9 believe there was an excessive use of force?

10 MICHELLE ALANIS: I'm going to object--

11 MARK TANSEY: No.

12 MICHELLE ALANIS: --as to the relevance. Again, I
13 mean--

14 [crosstalk]

15 MICHELLE ALANIS: He had no decision-making power.

16 DANIEL MARKS: He was a--he was a Sergeant.

17 MICHELLE ALANIS: Who cares? He wasn't the
18 Sergeant on shift.

19 DANIEL MARKS: That's right. That's right but
20 you got--he was a Sergeant and I think you can lay a foundation
21 that he was familiar with the use of force policy and the
22 reporting policies.

23 HEARING OFFICER: So, are you suggesting he's
24 almost like an expert witness?

25 DANIEL MARKS: Correct.

1 MICHELLE ALANIS: That's not how he was disclosed,
2 quite frankly, so I'm going to object to any line of him being
3 an expert witness.

4 HEARING OFFICER: Well, no, I'm just saying,
5 that's how he's being proffered, I'm not making any other
6 comments about it.

7 MICHELLE ALANIS: What they disclosed is that Mr.
8 Tansey is a former Sergeant and will testify that Jose
9 followed all proper procedures—

10 DANIEL MARKS: Right.

11 MICHELLE ALANIS: --regarding the incident.

12 HEARING OFFICER: I'm going to let them—I'm going
13 to let them present their case. So—

14 DANIEL MARKS: Okay. Did you have an
15 opportunity to review the video?

16 MARK TANSEY: Yes.

17 DANIEL MARKS: Do you believe that Jose
18 permitted excessive force or used excessive force?

19 MARK TANSEY: No.

20 DANIEL MARKS: Okay. And, can you explain why
21 you don't think there was excessive force?

22 MARK TANSEY: The force I saw used, the minute
23 that the threat was diminished, it quit.

24 DANIEL MARKS: Could you explain that for the
25 Hearing Officer?

1 MARK TANSEY: When the inmate started to be
2 aggressive, the officer who took him to the ground and was
3 cuffing him, the secondary officer, the senior officer then
4 came to assist him when the situation was under control, all
5 use of force stopped.

6 DANIEL MARKS: Do you think the senior officer,
7 which was Jose, the secondary officer couldn't have stopped
8 the officer who tussled to the ground with the inmate?

9 MARK TANSEY: No.

10 DANIEL MARKS: Okay. And is that because the
11 incident happened so quickly?

12 MARK TANSEY: Excuse me?

13 DANIEL MARKS: Is that because the incident
14 happened so quickly?

15 MARK TANSEY: Correct.

16 DANIEL MARKS: Now, in your experience, is
17 cuffing up considered an excessive use of force?

18 MARK TANSEY: No.

19 DANIEL MARKS: Okay. Now, you read the report,
20 correct, by Jose Navarrete? We showed you the report that's
21 in evidence?

22 MARK TANSEY: Yes.

23 DANIEL MARKS: Okay. Had you reviewed reports
24 by correction officers in your job as a Sergeant?

25 MARK TANSEY: Yes.

1 DANIEL MARKS: And you're familiar with how
2 much detail, generally, was required to put in reports, in the
3 NOTIS System?

4 MARK TANSEY: Yes.

5 DANIEL MARKS: You're familiar with how long
6 the reports were supposed to be?

7 MARK TANSEY: Yes.

8 DANIEL MARKS: Do you believe the report in
9 this case complied with the procedures and policies that you
10 were familiar with when you were a Sergeant?

11 MARK TANSEY: Yes.

12 DANIEL MARKS: And, when you read the report
13 after reviewing the video, did you believe the report was
14 false and misleading, based on the standards and custom
15 practice at—

16 MICHELLE ALANIS: Objection, relevance.

17 DANIEL MARKS: --in your experience?

18 HEARING OFFICER: I'm going to overrule it?

19 MARK TANSEY: No.

20 DANIEL MARKS: Okay. And do you want to
21 explain why?

22 MARK TANSEY: The report was clear and concise
23 for what the senior officer did.

24 DANIEL MARKS: Okay. I have no further
25 questions.

1 MICHELLE ALANIS: Mr. Tansey, you weren't at
2 Southern Desert on October 9, 2016, correct?

3 MARK TANSEY: Correct.

4 MICHELLE ALANIS: And in fact, you weren't even
5 working at Southern Desert Correctional Center during that
6 timeframe, right?

7 MARK TANSEY: Correct.

8 MICHELLE ALANIS: The only time you worked at
9 Southern Desert Correctional Center was November 2012 to
10 January 2013? Does that sound about right?

11 MARK TANSEY: That's when I was an instructor
12 at the Academy. The Academy is considered part of Southern
13 Desert.

14 MICHELLE ALANIS: Okay. So, were you actually
15 ever even assigned to Southern Desert Correctional Center?

16 MARK TANSEY: No.

17 MICHELLE ALANIS: Okay. And so, because you
18 weren't even working at Southern Desert at that time, you
19 didn't witness this incident, right?

20 MARK TANSEY: Correct.

21 MICHELLE ALANIS: Okay. And, you weren't the
22 Sergeant on duty.

23 MARK TANSEY: Correct.

24

25

1 MICHELLE ALANIS: And so, none of the officers,
2 Officer Valdez and Officer Navarrete didn't have to report to
3 you, following this incident.

4 MARK TANSEY: Correct.

5 MICHELLE ALANIS: And, you didn't have to—while I
6 understand you may have reviewed the report now, you never
7 reviewed any of the reports entered into NOTIS at the time of
8 this occurrence, right?

9 MARK TANSEY: Correct.

10 MICHELLE ALANIS: And, you didn't review anything
11 here with respect to the discipline that we're here for today,
12 right?

13 MARK TANSEY: Correct.

14 MICHELLE ALANIS: You didn't interview any of the
15 witnesses involved in this incident?

16 MARK TANSEY: No.

17 MICHELLE ALANIS: You didn't review the evidence
18 and make a recommendation on the discipline?

19 MARK TANSEY: No.

20 MICHELLE ALANIS: And, as a Sergeant, you
21 probably, typically don't review these matters and prepare
22 Specificity of Charges, correct?

23 MARK TANSEY: As a Sergeant, yes, I did.

24 MICHELLE ALANIS: At High Desert?

25 MARK TANSEY: Correct.

1 MICHELLE ALANIS: But you didn't do any in this
2 particular case.

3 MARK TANSEY: Correct.

4 MICHELLE ALANIS: You weren't involved in the
5 discipline of Officer Valdez?

6 MARK TANSEY: No.

7 MICHELLE ALANIS: And you weren't involved in the
8 discipline of Officer Navarrete?

9 MARK TANSEY: No.

10 MICHELLE ALANIS: And, as an NDOC Officer and
11 Sergeant, you were never trained to put your arm around an
12 inmate's neck, right?

13 MARK TANSEY: Would you ask-ask that again?

14 MICHELLE ALANIS: You were never trained to use
15 the tactic of placing your arm around an inmate's neck,
16 correct?

17 MARK TANSEY: Yes, we were.

18 MICHELLE ALANIS: You were trained to put your arm
19 around an inmate's neck into a chokehold?

20 MARK TANSEY: Correct.

21 MICHELLE ALANIS: Who trained you?

22 MARK TANSEY: The Defensive Tactics
23 Instructors.

24

25

1 MICHELLE ALANIS: And, you stated that the inmate
2 was aggressive, right? That was your statement, that the
3 inmate got aggressive?

4 MARK TANSEY: Correct.

5 MICHELLE ALANIS: But you would agree with me that
6 the inmate wasn't facing Officer Valdez when he was pushed
7 into the wall, right?

8 MARK TANSEY: He was not.

9 MICHELLE ALANIS: Okay. And, the video doesn't
10 depict any sudden movements by the inmate, right?

11 MARK TANSEY: Correct.

12 MICHELLE ALANIS: Okay. And there was no
13 physical—he didn't make any—he didn't throw any punches or
14 kicks or anything to that effect in the video, right?

15 MARK TANSEY: I did not see any.

16 MICHELLE ALANIS: Okay. I don't think I have
17 anything further.

18 DANIEL MARKS: I just have a few follow-ups.
19 As an Instructor at the Academy, you were trained in the use
20 of force, correct?

21 MARK TANSEY: Correct.

22 DANIEL MARKS: You were trained in restraining
23 inmates?

24 MARK TANSEY: Correct.

25

1 DANIEL MARKS: You were trained in report
2 writing?

3 MARK TANSEY: Correct.

4 DANIEL MARKS: And you did—you were doing this
5 training, correct?

6 MARK TANSEY: Correct.

7 DANIEL MARKS: Okay. And you understood the
8 difference between a use of force report and just a witness to
9 [inaudible], there's two different forms?

10 MARK TANSEY: Correct.

11 DANIEL MARKS: All right. And, if an inmate is
12 non-compliant, on the wall, when they're being searched, an
13 officer has the right to cuff up an inmate, correct, and bring
14 them to the Sergeant.

15 MARK TANSEY: Correct.

16 DANIEL MARKS: And you were the Sergeant that
17 would then get those inmates, correct?

18 MARK TANSEY: Correct.

19 DANIEL MARKS: And then you would what, talk to
20 the inmate?

21 MARK TANSEY: I would talk to the inmate and I
22 would talk to the officers involved to see what the situation,
23 the incident was, what occurred, what led up to it, the
24 particulars of the incident.

25

1 DANIEL MARKS: And everyone knows when they do
2 reports, they're on video and there's a video that goes along
3 with the report, correct?

4 MARK TANSEY: Correct.

5 DANIEL MARKS: Nothing further.

6 MICHELLE ALANIS: Just maybe one question. Mr.
7 Tansey, if you could look at that binder next to you, Exhibit
8 D. [pause] Are you there?

9 MARK TANSEY: I am.

10 MICHELLE ALANIS: Are you familiar with this
11 Exhibit?

12 MARK TANSEY: The AR 405?

13 MICHELLE ALANIS: Yes.

14 MARK TANSEY: Yes.

15 MICHELLE ALANIS: Okay. And you would agree with
16 me though, that the entire AR of use of force, there's nowhere
17 in there that describes that you should be placing your arm
18 around the inmate's neck, right?

19 MARK TANSEY: [pause] I do not see anything
20 in there.

21 MICHELLE ALANIS: And you would agree with me that
22 force is to be proportionate to the threat, right?

23 MARK TANSEY: Force should be above the
24 threat, so you can bring the inmate into compliance.
25

1 MICHELLE ALANIS: So, you're saying force does not
2 need to be proportionate to the threat?

3 MARK TANSEY: No, it is not to be the same.
4 You are to use more aggressive to bring the inmate, the
5 individual into compliance.

6 MICHELLE ALANIS: Can I have you turn-in that same
7 Exhibit, please look at, on the bottom right hand corner,
8 there's little bate stamps, it should say NDOC 181. [pause]

9 MARK TANSEY: Okay.

10 MICHELLE ALANIS: And, if I could draw your
11 attention to, about two-thirds of the way down, 405.03, when
12 force may be used. Are you there?

13 MARK TANSEY: Yes.

14 MICHELLE ALANIS: #2 says, force will be
15 proportionate to the threat exhibited by the inmate and the
16 force will decrease as the threat is lessened. Did I read
17 that correctly?

18 MARK TANSEY: You did.

19 MICHELLE ALANIS: Okay. I don't have any further
20 questions.

21 DANIEL MARKS: I have one on that. Your Honor,
22 Mr. Hearing Officer, could you go to three pages down, 184.
23 First of all, this AR is dealing with when you use force, not
24 so much the exact force you use, correct, in terms of the
25 technique.

1 MARK TANSEY: Correct.

2 DANIEL MARKS: And if you go to 184, in the
3 middle of the page where it's 405.05, and less lethal force,
4 physical force, hands on. So, isn't physical force/hands on,
5 that's part of less lethal, correct?

6 MARK TANSEY: Correct.

7 DANIEL MARKS: And it says, physical force may
8 be used to subdue unruly inmates, to separate inmates
9 fighting, in defense of self or others. It also may be
10 employed to move inmates who fail to comply with lawful
11 orders? Do you see that?

12 MARK TANSEY: Yes.

13 DANIEL MARKS: So, when you tell an inmate, put
14 your hands above your head on the wall and be compliant and
15 they keep taking their hands off the wall and are not
16 compliant, you can cuff them up and bring them to the
17 Sergeant, can't you?

18 MARK TANSEY: Correct.

19 DANIEL MARKS: And that happens pretty
20 frequently, doesn't that happen every day out there?

21 MARK TANSEY: Yes.

22 DANIEL MARKS: And then it says, includes
23 certain self-defense or inmate control techniques or strikes
24 to areas of the body unlikely to result in serious physical
25 injury. So, you're allowed to use defensive tactics or

1 tactics to bring an inmate under control, as long as you don't
2 hurt the inmate, correct?

3 MARK TANSEY: Correct.

4 DANIEL MARKS: The key is hurting the inmate,
5 isn't that right, not so much how you do it?

6 MARK TANSEY: Correct.

7 DANIEL MARKS: All right, that's all.

8 MICHELLE ALANIS: I don't have anything further.

9 HEARING OFFICER: Great, thank you sir.
10 Appreciate your testimony.

11 MARK TANSEY: Yes sir.

12 DANIEL MARKS: I'll call our next witness. One
13 other short witness and then maybe we can take a break.

14 HEARING OFFICER: That's perfect. I was just
15 thinking of that.

16 DANIEL MARKS: Thank you. [pause] You're in
17 the hot seat. Nicole is going to examine you.

18 HEARING OFFICER: Sir, can you please raise your
19 right hand for me? Do you solemnly swear that the testimony
20 you're about to give in this hearing will be the truth, the
21 whole truth and nothing but the truth?

22 PAUL LUNKWITZ: I do.

23 HEARING OFFICER: Thank you. Can you state and
24 spell your full name for me?

25

1 PAUL LUNKWITZ: Yes. Paul Lunkwitz, last name
2 is L-U-N-K-W-I-T-Z.

3 HEARING OFFICER: L-U-N-K-W-I-T-Z?

4 PAUL LUNKWITZ: Yes sir.

5 HEARING OFFICER: Okay, very good. Mr. Marks, you
6 may proceed.

7 DANIEL MARKS: Ms. Young is going to—

8 HEARING OFFICER: Ms. Young, you may proceed.

9 NICOLE YOUNG: Good morning.

10 PAUL LUNKWITZ: Morning.

11 NICOLE YOUNG: How are you?

12 PAUL LUNKWITZ: Good.

13 NICOLE YOUNG: So, you're currently a
14 Corrections Officer for NDOC, right?

15 PAUL LUNKWITZ: Yes ma'am.

16 NICOLE YOUNG: And, how long have you worked
17 there?

18 PAUL LUNKWITZ: June 5th will be 19 years.

19 NICOLE YOUNG: And, what's your current
20 position?

21 PAUL LUNKWITZ: Correctional Officer.

22 NICOLE YOUNG: How many prisons have you worked
23 at in the 19 years you've been there?

24 PAUL LUNKWITZ: Two prisons and also central
25 transportation.

1 NICOLE YOUNG: And, which two prisons?

2 PAUL LUNKWITZ: Southern Desert Correctional
3 Center and High Desert State Prison.

4 NICOLE YOUNG: And, what units have you worked
5 in, just during the 19 years that you've worked there?

6 PAUL LUNKWITZ: Without trying to be too
7 general, just—I mean, all of it pretty much. I can't think of
8 one type of unit that I haven't worked in at one point or
9 another. The only ones I can think of actually is the Dorms
10 at Southern Desert, because they weren't there when I worked
11 there.

12 NICOLE YOUNG: So, you haven't worked at the
13 dorms, is that what you're saying?

14 PAUL LUNKWITZ: At the dorms, yeah.

15 NICOLE YOUNG: At Southern, okay--

16 PAUL LUNKWITZ: Right.

17 NICOLE YOUNG: Have you worked in Search and
18 Escort?

19 PAUL LUNKWITZ: Yeah.

20 NICOLE YOUNG: And, what duties are included in
21 that assignment?

22 PAUL LUNKWITZ: You escort inmates from here to
23 there, wherever they need to be escorted. You also would
24 conduct searches, security protocol. Usually conduct feeding.
25 Depending on the yard—High Desert is set up a little bit

1 differently, like the culinary gun post calls chow, but as far
2 as controlled movement is concerned, you're usually
3 responsible for that and overseeing chow.

4 NICOLE YOUNG: And--

5 MICHELLE ALANIS: I'm going to object to this
6 witness, same as the other one. It's the same--this witness is
7 irrelevant to this case. Same thing. He's not involved in
8 the incident. He's not involved in the discipline. His
9 employment with the officers, or his employment at Southern
10 Desert, I think was minimal. I just don't see what he's
11 adding to this--to this case. It doesn't--we've talked about
12 the de novo, did the conduct occur? Well, certainly this
13 witness isn't going to establish that.

14 HEARING OFFICER: I know, but I really think that
15 it's important that I allow, as far as what their case is on,
16 so I'm going to let them proceed.

17 NICOLE YOUNG: You mentioned searches in the
18 Search and Escort assignment, are you familiar with the random
19 searches that occur?

20 PAUL LUNKWITZ: Yeah.

21 NICOLE YOUNG: And--

22 PAUL LUNKWITZ: Well, there's many different
23 kinds of random searches, so.

24 NICOLE YOUNG: What kinds of random searches
25 are there?

1 PAUL LUNKWITZ: Random searches are cell
2 searches inside units where you pick certain numbers and you
3 go [inaudible] randomly search those particular cells for
4 contraband. Then you've got random searches of inmates
5 themselves, coming and going from chow or going and from work
6 assignments, so to speak.

7 NICOLE YOUNG: And, what is the purpose of any
8 random search in a prison?

9 PAUL LUNKWITZ: Primarily to control the flow of
10 contraband.

11 NICOLE YOUNG: And, what kind of contraband are
12 you looking for?

13 PAUL LUNKWITZ: You know, prison made weapons.
14 Items that they're not allowed to have. If they're leaving
15 work, they're not allowed to bring, you know, materials that
16 are supposed to be for work back to the cells with them, or
17 extra food from the chow hall, stuff of that nature.

18 NICOLE YOUNG: And, when you're doing a random
19 search of an inmate coming out of the chow hall against the
20 wall, what is the position that you want the inmate to take
21 for the random search and if you could just kind of show us, I
22 guess, against the wall.

23 PAUL LUNKWITZ: Oh, okay. You typically--well,
24 you typically would have them put their hands on the wall and
25 perform a search, in this manner. They would be in this

1 position here, hands above the shoulders. Looking at the
2 wall, not turning. With their hands on the wall.

3 NICOLE YOUNG: And, why is it important that
4 their hands be above their shoulders?

5 PAUL LUNKWITZ: It's generally to maintain a
6 position advantage where they have a little bit less
7 opportunity or leverage to push off the wall, to spin and you
8 know, take away that position of advantage that an officer
9 maintains while conducting the search.

10 NICOLE YOUNG: And, if the inmates hands are,
11 let's say, chest level, what's the concern for you as an
12 officer?

13 PAUL LUNKWITZ: Well, multiple concerns. 1, if
14 they're at the chest level, at this point right here, it's
15 obviously much easier to push off the wall. If you're
16 attempting to restrain them or so on and so forth.

17 2, if you're standing behind them, you can't see,
18 maybe necessarily what they're doing with their hands
19 immediately. They reach for a weapon or something of that
20 nature, which is why you want to be able to see them up above
21 here. Again, to maintain your position of advantage.

22 NICOLE YOUNG: So, if an inmate, when you put
23 them on the wall for a search, takes their hands off the wall
24 or has their hands chest level or not above their shoulders,
25 is that something that you're going to talk to the inmate

1 about and counsel them regarding what the rules are and what's
2 expected of them?

3 PAUL LUNKWITZ: Absolutely. It's done both
4 prisons, the same way. I mean, their hands go above the wall.
5 I mean, they're hands come off the wall, you tell them, hey
6 keep your hands on the wall. That's—that's just a general,
7 you know, practice that happens at either prison.

8 NICOLE YOUNG: And, can you allow an inmate to
9 engage in that type of conduct, either taking their hands off
10 the wall or moving their hands down the wall during the
11 search. Is that something that you need to counsel them and
12 make them understand that that's not allowed before you let
13 them go?

14 PAUL LUNKWITZ: Yeah, you would—I mean, you
15 would maintain that throughout the—whatever point—whatever
16 amount of time you have them on the wall, you would maintain
17 that, you need to keep your hands on the wall. In some cases,
18 you would put their hands on the wall for them. I've seen
19 that happen many times because they are failing to comply with
20 orders.

21 One of the reasons we can use force as officers is
22 to gain compliance with orders. So, I've seen that happen
23 countless times.

24 NICOLE YOUNG: But you won't just like, let's
25 say you do a search, they take their hands off during the

1 search. You wouldn't just say, okay you can go now, you'd
2 make sure you counseled them and told them they're not allowed
3 to do that.

4 PAUL LUNKWITZ: I would. And, also, if-
5 depending on their behavior, but yeah, if they're-they're
6 taking their hands off the wall repeatedly or they're not
7 following orders, then you would counsel them on their
8 behavior, yeah.

9 NICOLE YOUNG: Because if you don't counsel
10 them, could it then be a problem for another officer?

11 PAUL LUNKWITZ: Absolutely.

12 NICOLE YOUNG: And, are you familiar with
13 NODC's use of force policies?

14 PAUL LUNKWITZ: Yes.

15 NICOLE YOUNG: Are you familiar with the use of
16 force hearings?

17 PAUL LUNKWITZ: The use of force hearings have
18 come about while I was on Central Transportation. So, I'm
19 familiar with them to a degree. I've never participated in
20 one.

21 NICOLE YOUNG: Okay.

22 PAUL LUNKWITZ: But I do know that they occur.
23 Because I haven't had a use of force in-well, I did on Central
24 Transportation, but those-like I said, they came about after I
25

1 was already in a position on graveyard and you get limited
2 exposure on graveyard.

3 NICOLE YOUNG: And then, you're familiar with
4 the policies regarding restraining inmates?

5 PAUL LUNKWITZ: Yes.

6 NICOLE YOUNG: And, are you familiar with when
7 you restrain an inmate, if the inmate is non-compliant? Or,
8 do you restrain an inmate if they're non-compliant, in any
9 situations?

10 PAUL LUNKWITZ: Yeah, there can be many
11 situations where they're non-compliant, where you're going to
12 restrain them because you are--again, you're going to always
13 try to maintain the most advantageous position you can. If
14 they're refusing to follow orders, then obviously you would,
15 you know, you would restrain them to avoid any other issues.
16 There are issues that can arise both directions.

17 NICOLE YOUNG: And, are you familiar with any
18 report writing that has to be done?

19 PAUL LUNKWITZ: Yes.

20 NICOLE YOUNG: And, what do you include in a
21 report, typically?

22 PAUL LUNKWITZ: It depends on the type of
23 report.

24 MICHELLE ALANIS: Objection, relevance, foundation
25 for this case.

1 HEARING OFFICER: Yeah, I think what—that's a good
2 objection. Sustained. You need to rephrase it.

3 NICOLE YOUNG: As a corrections officer, do you
4 write reports?

5 PAUL LUNKWITZ: Yes.

6 NICOLE YOUNG: And, do you write reports as a
7 witness to an incident?

8 PAUL LUNKWITZ: Yes.

9 NICOLE YOUNG: Do you write reports if you
10 witness a use of force?

11 PAUL LUNKWITZ: Typically, yeah.

12 NICOLE YOUNG: And, if you use force, is there
13 a separate report that you have to write?

14 PAUL LUNKWITZ: Correct.

15 NICOLE YOUNG: And, are you familiar with what
16 is supposed to be included in these reports?

17 PAUL LUNKWITZ: Yes.

18 NICOLE YOUNG: And, you've worked for NDOC for
19 19 years, have you been writing reports for NDOC during those
20 19 years?

21 PAUL LUNKWITZ: Yes.

22 NICOLE YOUNG: And, what are you required or
23 what are you supposed to include in a report as a witness to
24 an incident?

25

1 PAUL LUNKWITZ: Typically as a witness, I mean,
2 you—I don't understand what you're saying for a use of force,
3 if you're involved or not involved?

4 NICOLE YOUNG: Just if you're a witness to any
5 incident that happens at a prison, what do you typically
6 include in your report?

7 PAUL LUNKWITZ: You would, I guess, primarily
8 what you did and what your response was to a particular
9 incident. As a witness you would—I guess you would be writing
10 an informational, or an O28, which would be your perception of
11 how things occurred and what took place.

12 NICOLE YOUNG: And so, it's based on—so, the
13 report you write is based on your perception, that's what you
14 said?

15 PAUL LUNKWITZ: Yeah, I don't know if there's
16 any other way--

17 NICOLE YOUNG: And you can't write--

18 PAUL LUNKWITZ: --to write a report.

19 NICOLE YOUNG: --the report based on someone
20 else's perception.

21 PAUL LUNKWITZ: Right, correct.

22 NICOLE YOUNG: And, how long are these reports,
23 typically?

24 MICHELLE ALANIS: Objection, relevance.

25 HEARING OFFICER: Well--

1 MICHELLE ALANIS: I don't think there's any
2 foundation that there's any relevance to the reports at issue
3 in this case or that he had any involvement with the reports
4 in this case. He wasn't even at the prison when the reports
5 were written for this case.

6 HEARING OFFICER: I think the question is a little
7 bit overbroad and vague.

8 NICOLE YOUNG: Okay. Have you reviewed the
9 video of the incident that took place in this case?

10 PAUL LUNKWITZ: Yes.

11 NICOLE YOUNG: And, in that video, do you
12 believe that Officer Navarrete used excessive force?

13 PAUL LUNKWITZ: No.

14 NICOLE YOUNG: And, why do you say no?

15 PAUL LUNKWITZ: Because he did—I mean, he did a
16 textbook assist of restraining an inmate. He didn't even—he
17 didn't even start any involvement until the inmate had already
18 resisted and had been taken to the ground. He flipped the
19 inmate over, assisted in flipping him over and assisted in
20 placing restraints on him. I don't know how much more minimal
21 it could get.

22 NICOLE YOUNG: And, do you—from your review of
23 the video, do you believe that Officer Navarrete permitted
24 excessive force?

25 MICHELLE ALANIS: Objection, foundation.

1 HEARING OFFICER: I'm going to let him answer.

2 PAUL LUNKWITZ: I'm sorry, can you repeat the
3 question?

4 HEARING OFFICER: You can answer that.

5 NICOLE YOUNG: Do you believe he permitted
6 excessive force?

7 PAUL LUNKWITZ: Well, I don't know that
8 excessive force was used. Further, I don't know what he
9 could've done to prevent the use of force from where he was
10 standing in relation to the inmate and the other officer.

11 NICOLE YOUNG: And, why do you say that?

12 PAUL LUNKWITZ: Well, because in fluid
13 situations like that, use of force, you know, they happen at
14 the drop of a hat. If you're—you know, you're not directly in
15 contact with the inmate, I don't know what control you could
16 have over the situation or I guess, if you want to go there
17 with the officer, I don't know what you could do to stop that
18 from happening once it starts because it's, like I said, a
19 fluid situation.

20 NICOLE YOUNG: So, you're not—so, do you think
21 that there was anything that Officer Navarrete could've done
22 to intervene, to stop Officer Valdez when he went into
23 restrain the inmate and take the inmate down?

24 MICHELLE ALANIS: Same objection. His opinion is
25 not relevant to the discipline at issue.

1 HEARING OFFICER: That's true but I'm going to
2 overrule.

3 PAUL LUNKWITZ: No, I don't believe he could've
4 done anything further than what he did. Which I believe was
5 100% minimal.

6 NICOLE YOUNG: And, as a corrections officer,
7 are you expected to intervene in that type of a situation, to
8 prevent Officer Valdez from taking the inmate down to the
9 ground?

10 PAUL LUNKWITZ: Are you permitted to intervene
11 to stop--

12 NICOLE YOUNG: Are you expected to intervene?

13 PAUL LUNKWITZ: Oh, in a use of force you're
14 expected to intervene, but not to the level of stopping an
15 officer from use of force incidents, spontaneous like that.

16 NICOLE YOUNG: And, when you say your--

17 PAUL LUNKWITZ: I guess I'm not really fully
18 understanding the question.

19 NICOLE YOUNG: Okay. You're saying you're
20 expected to intervene and when you're saying you're expected
21 to intervene, is that what you're saying, Officer Navarrete
22 did, you know, when he ran over and helped Valdez flip the
23 inmate over and then restrain the inmate?

24 PAUL LUNKWITZ: Correct. Once the use of force
25 starts, you are expected to assist in applying the most--the

1 minimal amount of force necessary to gain control of the
2 situation. You're expected to do that as part of your job.
3 As far as the part before that, I don't know what else he
4 could've done. It appeared to me, without any audio that he
5 was speaking to the inmate, that he was talking to him. I
6 would guess in the manner he was speaking to him, he was
7 trying to diffuse the situation. Again, with no audio, I
8 can't—

9 MICHELLE ALANIS: Objection, speculative.

10 HEARING OFFICER: Sustained.

11 PAUL LUNKWITZ: Okay.

12 NICOLE YOUNG: Okay. If you could turn to
13 Exhibit 1 in that binder there and go to Page 5.

14 HEARING OFFICER: You're looking at Exhibit 1?

15 PAUL LUNKWITZ: Exhibit 5.

16 NICOLE YOUNG: Yes. Exhibit 1, the first
17 Exhibit, first tab.

18 PAUL LUNKWITZ: Okay.

19 NICOLE YOUNG: And have you reviewed—this is
20 Officer Navarrete's report, have you reviewed this report
21 before?

22 PAUL LUNKWITZ: Give me a second please.

23 HEARING OFFICER: Where are you now?

24 NICOLE YOUNG: Exhibit 1.

25 HEARING OFFICER: Okay.

1 NICOLE YOUNG: Page 5.

2 HEARING OFFICER: All right.

3 MICHELLE ALANIS: I have a-

4 HEARING OFFICER: I don't have 5, mine start at
5 31.

6 MICHELLE ALANIS: I think it's because they have
7 like, two sets of numbers.

8 DANIEL MARKS: There's two sets of numbers.
9 It's the fifth page down [crosstalk]

10 HEARING OFFICER: All right, thank you. I want to
11 make sure I'm on the right page, that's all.

12 DANIEL MARKS: It's his report, our client's
13 report.

14 HEARING OFFICER: Okay. Maybe I have the wrong-
15 let me look at another copy of that one.

16 DANIEL MARKS: Could I approach? It's not-I
17 think the date stamp is different. Can I approach, I'll show
18 you.

19 HEARING OFFICER: Well, these are Exhibits A,
20 though-that's A through-

21 NICOLE YOUNG: Not in that binder, Dan.

22 HEARING OFFICER: It's not in that binder.

23 [crosstalk]

24 HEARING OFFICER: I'll get it. I'll get it.

25 DANIEL MARKS: It's Exhibit 1. So, it's 1.

1 HEARING OFFICER: I'll find it. So, it must be
2 over here. As I tear it apart, let me see. [pause] All
3 right. [pause] Yeah, this looks better. Now I have it.
4 Thank you.

5 NICOLE YOUNG: Are we all ready?

6 HEARING OFFICER: Yeah, I got the page, thank you.

7 NICOLE YOUNG: So, did you just review the
8 contents of this report?

9 PAUL LUNKWITZ: Yes.

10 NICOLE YOUNG: And, from this report, is this—
11 what's your opinion of the contents of this report? Is this
12 like the—are the reports—are the contents of this report
13 standard?

14 MICHELLE ALANIS: Objection, relevance. I mean,
15 again, this witness is not involved in reviewing this report
16 and determining if any discipline should issue. At this
17 point, we could call every officer that works at, you know,
18 any prison. He wasn't even at Southern Desert. He had no
19 responsibility in reviewing this report.

20 HEARING OFFICER: I understand. What was the
21 question again?

22 NICOLE YOUNG: Are the contents of this report
23 standard for a correction officer to include?

24 MICHELLE ALANIS: His opinion.

25 HEARING OFFICER: I'll listen to it.

1 PAUL LUNKWITZ: Yes.

2 NICOLE YOUNG: And is the length of this report
3 standard?

4 PAUL LUNKWITZ: In relation to what he-what the
5 video showed and what took place, I believe that this report
6 accurately reflects what took place and I guess, fulfills
7 requirements to explain what happened.

8 NICOLE YOUNG: And so, comparing this statement
9 or this report to the video, do you believe there's any false
10 statements in the report?

11 PAUL LUNKWITZ: No.

12 NICOLE YOUNG: Why not?

13 PAUL LUNKWITZ: I don't, there's no-I mean, from
14 him writing this from his perspective, you know, he was
15 standing there and then the inmate and the officer came off
16 the wall, went to the ground. So, I'm not really seeing
17 anything that doesn't reflect that in the report.

18 NICOLE YOUNG: And, do you think that there's
19 anything in this report that's misleading?

20 PAUL LUNKWITZ: No.

21 NICOLE YOUNG: And, do you believe that Officer
22 Navarrete knowingly created a false or a misleading report?

23 PAUL LUNKWITZ: No.

24 NICOLE YOUNG: And, why do you say no?
25

1 PAUL LUNKWITZ: I mean, like I said, it appears
2 to reflect accurately what happened in the video, to me.

3 NICOLE YOUNG: And in your experience as a
4 corrections officer, do inmates ever try to get corrections
5 officers in trouble?

6 PAUL LUNKWITZ: Absolutely.

7 NICOLE YOUNG: And, how do they try to get
8 corrections officers in trouble?

9 MICHELLE ALANIS: I'm going to object.

10 PAUL LUNKWITZ: They write false reports.

11 MICHELLE ALANIS: As to the relevance. We've
12 already established some of this testimony with the other
13 witnesses.

14 HEARING OFFICER: We did, however, you know, you
15 did have the Warden come in and testify about things that he
16 wasn't directly involved in. I think I need to give them the
17 same opportunity to some extent. So, I'm just trying to make
18 it an even playing field here and we are talking about a
19 termination. So, I do want to let them present their case.

20 NICOLE YOUNG: So--

21 PAUL LUNKWITZ: Inmates will try to write
22 grievances that are inaccurate. That are flat out false.
23 That are, you know, completely erroneous charges that have,
24 you know, no basis in reality. They don't get any punishment
25

1 for lying on a grievance. So, they're open to say whatever
2 they want. Then we have to respond to those.

3 NICOLE YOUNG: Do you know why they do that?

4 PAUL LUNKWITZ: They try to get us in trouble.
5 I mean, they don't like things, the way things go down
6 sometimes and if you don't give someone enough toilet paper
7 when it's standard issue, they exception to that and they
8 write a grievance that you violated PRIA. I mean, they do
9 these types of things all the time.

10 NICOLE YOUNG: Okay. We'll pass the witness.

11 MICHELLE ALANIS: Officer Lunkwitz, you work at
12 High Desert State Prison, right?

13 PAUL LUNKWITZ: Currently, yes.

14 MICHELLE ALANIS: Okay, but when you worked at
15 Southern Desert Correctional Center, it was for about a year?

16 PAUL LUNKWITZ: No, it was four and a half
17 years.

18 MICHELLE ALANIS: Okay, but it was not in 2016,
19 correct?

20 PAUL LUNKWITZ: That's correct.

21 MICHELLE ALANIS: And, you weren't employed at
22 Southern Desert on October 9, 2016, right?

23 PAUL LUNKWITZ: That's correct.

24 MICHELLE ALANIS: And, you didn't work with
25 Officer Navarrete at Southern Desert Correctional Center?

1 PAUL LUNKWITZ: That's not true.

2 MICHELLE ALANIS: You didn't work with him in
3 2016, right?

4 PAUL LUNKWITZ: In 2016, no.

5 MICHELLE ALANIS: Okay. And you didn't work with
6 Officer Valdez in 2016 at Southern Desert?

7 PAUL LUNKWITZ: Not that I'm aware of, no.

8 MICHELLE ALANIS: And, you didn't witness the
9 incident on October 9, 2016?

10 PAUL LUNKWITZ: Nope, I just reviewed the video.

11 MICHELLE ALANIS: But you didn't review the video
12 at the time, right?

13 PAUL LUNKWITZ: Excuse me.

14 MICHELLE ALANIS: You didn't review the video at
15 the time, right?

16 PAUL LUNKWITZ: At the time that it happened?

17 MICHELLE ALANIS: Yeah.

18 PAUL LUNKWITZ: No.

19 MICHELLE ALANIS: You didn't review it the
20 following day or two days later?

21 PAUL LUNKWITZ: I'm not sure at what point I
22 reviewed it.

23 MICHELLE ALANIS: Okay.

24 PAUL LUNKWITZ: But at some point, I reviewed
25 it.

1 MICHELLE ALANIS: But you wouldn't have had any
2 purpose of reviewing it if you were at High Desert, right?

3 PAUL LUNKWITZ: In relation to my job
4 description, no, but in relation to helping an officer out or
5 trying to point him in the direction of a representative or
6 something, then yeah, I may have done something in that
7 regard.

8 MICHELLE ALANIS: Okay. But for purposes of
9 reviewing the video or writing a report at the time this
10 incident happened, you weren't involved at that time.

11 PAUL LUNKWITZ: Oh no. No ma'am.

12 MICHELLE ALANIS: And, you weren't involved having
13 this video or this incident investigated, right?

14 PAUL LUNKWITZ: No.

15 MICHELLE ALANIS: And you didn't interview any of
16 the witnesses or conduct any investigation yourself, right?

17 PAUL LUNKWITZ: No.

18 MICHELLE ALANIS: And you didn't prepare a
19 specificity of charges in this case, right?

20 PAUL LUNKWITZ: Nope.

21 MICHELLE ALANIS: You didn't adjudicate the case
22 or sustain the allegations, right?

23 PAUL LUNKWITZ: Nope.

24

25

1 MICHELLE ALANIS: You only reviewed the video or
2 the reports in preparation to assist Officer Navarrete in
3 appealing his discipline, correct?

4 PAUL LUNKWITZ: Like I said, I'm not sure at
5 what point I first reviewed the video, but if I had reviewed
6 the video, I'm sure it would be in some relation to what you
7 asked me, it probably would've been related to that.

8 MICHELLE ALANIS: Okay. And as an Officer for
9 NDOC, you're trained in the various tactics that you use with
10 inmates, correct?

11 PAUL LUNKWITZ: Yes.

12 MICHELLE ALANIS: And, you would agree with me
13 that, placing your arm around an inmate's neck, that's not one
14 of the tactics that you're trained on at NDOC, correct?

15 PAUL LUNKWITZ: I don't believe Navarrete did
16 that at all.

17 MICHELLE ALANIS: I'm not asking what Mr.
18 Navarrete did. I'm asking, have you been trained to put your
19 arm around an inmate's neck in a chokehold type position?

20 PAUL LUNKWITZ: Have I been trained to do that?
21 No, I have not been trained to do that.

22 MICHELLE ALANIS: Okay. And that's not a part of
23 NDOC's training?

24 PAUL LUNKWITZ: No, not the training.
25

1 MICHELLE ALANIS: And you would agree with me that
2 a Correction Officer's job is to try to deescalate a situation
3 with inmates?

4 PAUL LUNKWITZ: Yeah, that's part of our job.

5 MICHELLE ALANIS: And, if you counsel an inmate, I
6 believe you said you can take-contact or take him to the
7 Sergeant, right?

8 PAUL LUNKWITZ: If you-I'm sorry, I don't
9 understand.

10 MICHELLE ALANIS: If an inmate is not complying,
11 you can counsel the inmate, right?

12 PAUL LUNKWITZ: You can counsel the inmate,
13 yeah.

14 MICHELLE ALANIS: And if-after counseling, if that
15 doesn't work, you can contact the Sergeant right?

16 PAUL LUNKWITZ: I mean, yeah, anything is
17 possible. You could do that.

18 MICHELLE ALANIS: Or you could even take the
19 inmate to the Sergeant's Office, right?

20 PAUL LUNKWITZ: Yes, you could do that.

21 MICHELLE ALANIS: Okay.

22 PAUL LUNKWITZ: But typically, if you did that,
23 you would restrain the inmate before you took him to the
24 Sergeant's office. You don't-you're not going to just say,
25 hey non-compliant inmate, come with me to the Sergeant's

1 office. You're going to take control of the situation and
2 then, whatever goes on from there, yeah, you may end up in a
3 Sergeant's office. You may end up in the hole in Unit A.

4 MICHELLE ALANIS: But, you don't typically—you
5 talked about a routine—you randomly search the inmates in
6 Search and Escort, right?

7 PAUL LUNKWITZ: Correct.

8 MICHELLE ALANIS: Okay. And you would agree me
9 with that when you pat down the inmate, you showed us the
10 position, you search them for contraband and that whole
11 process takes what, a couple of minutes?

12 PAUL LUNKWITZ: You can't really put a time
13 limit on it?

14 MICHELLE ALANIS: Does it take 10 minutes?

15 PAUL LUNKWITZ: Sometimes.

16 MICHELLE ALANIS: To search?

17 PAUL LUNKWITZ: No, not to do the actual search.

18 MICHELLE ALANIS: Oh, okay.

19 PAUL LUNKWITZ: But to complete the whole--

20 MICHELLE ALANIS: I'm talking about--

21 PAUL LUNKWITZ: --interaction.

22 MICHELLE ALANIS: --to actually search the inmate,
23 it takes a couple of minutes, right, if that?

24 PAUL LUNKWITZ: Possibly. It depends.

25 MICHELLE ALANIS: Okay.

1 PAUL LUNKWITZ: If you—if you put an inmate on
2 the wall and there's a bunch of inmates around, you might wait
3 until they leave, before you actually start the search but
4 putting him on the wall is part of that random search process.

5 MICHELLE ALANIS: Okay. From the time you put an
6 inmate on the wall and search him, you would agree that that's
7 about a couple minute process.

8 PAUL LUNKWITZ: No, I would not agree with that.
9 Because you can—like I just said, you can put the inmate on
10 the wall and you can let all the inmates walking around you go
11 by before you actually conduct the search. So, no I would not
12 agree that that's a couple of minutes.

13 MICHELLE ALANIS: Once you search the inmate,
14 would you agree that it's then a couple of minutes to pat down
15 and search the inmate?

16 PAUL LUNKWITZ: No, because that's a
17 generalization and you can't do that with every situation.
18 You can't say, it's only a couple of minutes with this
19 particular inmate or that one. It's going to be—it's going to
20 vary depending on the situation.

21 MICHELLE ALANIS: Okay. That's fine. You talked
22 about report writing. If an officer is placing an inmate in a
23 chokehold, would you—should that be reported?

24 PAUL LUNKWITZ: I don't understand, what of you
25 mean?

1 MICHELLE ALANIS: If an officer puts his arm
2 around an inmate's neck and pulls him back in a chokehold
3 position, should that be reported in an incident report?

4 PAUL LUNKWITZ: I mean, from-from-are you saying
5 from a witness perspective?

6 MICHELLE ALANIS: I'm saying from any perspective.

7 PAUL LUNKWITZ: From a perspective of--

8 MICHELLE ALANIS: If that occurred, should that be
9 in a report?

10 PAUL LUNKWITZ: If you're talking about that the
11 officer-you know that the officer did it intentionally, it
12 didn't just happen as a result of actions.

13 MICHELLE ALANIS: I'm not asking about intent.
14 I'm asking about if an officer puts his arm around an inmate's
15 neck and pulls him back, should that be reported?

16 PAUL LUNKWITZ: Like I said, it-your perspective
17 is that he was attempting to restrain the inmate--

18 MICHELLE ALANIS: I'm--

19 PAUL LUNKWITZ: Listen, I'm trying to answer
20 your question but you keep interrupting me.

21 MICHELLE ALANIS: No, I'm not-[crosstalk]

22 PAUL LUNKWITZ: If I-if the officer put his arm--
23 if a different officer put his arm around someone's neck or
24 his arm ended up around someone's neck, then i would imagine
25 that officer would explain as to how that took place. That's

1 not necessarily my job to explain how his arm ended up in that
2 position.

3 MICHELLE ALANIS: I didn't ask you to explain
4 though and I think that's where were--

5 PAUL LUNKWITZ: I think you did. You asked me--

6 MICHELLE ALANIS: So, I'll use your--I'll use your
7 description. Let me ask the question.

8 NICOLE YOUNG: Objection, argumentative.

9 HEARING OFFICER: No. I'm going to let her go
10 forward.

11 PAUL LUNKWITZ: Okay.

12 MICHELLE ALANIS: You witness a situation where
13 another officer puts his arm around an inmate's neck. You
14 witness it. I'm not asking you to speculate as to the intent
15 or why it was put around. You saw it with your eyes, saw an
16 arm go around an inmate's neck, should it be reported?

17 PAUL LUNKWITZ: Yes. By that officer that did
18 that. That would be his responsibility.

19 MICHELLE ALANIS: That's not what I asked you.
20 I'm asking you if you witnessed that, should it be reported?
21 Should you report it?

22 PAUL LUNKWITZ: Again, I'm answering your
23 question by saying that if I'm writing the report based on
24 what I did in the situation, I don't have a responsibility to
25 report that officer and what he did because he is going to

1 explain what he did and how it got to that point. I'm not
2 going to substitute my judgment for what he did and why. I'm
3 going to report what I did in the situation.

4 MICHELLE ALANIS: So, you wouldn't describe what
5 you saw.

6 PAUL LUNKWITZ: I-I-yeah, I would describe what
7 I saw, but what he did and his actions, that's not my
8 responsibility to report.

9 MICHELLE ALANIS: I guess I'm confused. So, if
10 you see his actions, you're kind of contradicting yourself.
11 You say you're not going to report what another person's
12 actions are but then you're also saying you're going to report
13 what you saw.

14 NICOLE YOUNG: Objection, assumes facts not in
15 evidence. She's assuming that some witness saw a chokehold.

16 MICHELLE ALANIS: It's a hypothetical question.
17 His entire testimony, quite frankly is-

18 HEARING OFFICER: Well, where are we-what's the
19 last question?

20 MICHELLE ALANIS: I just want to know, if he
21 witnesses seeing another officer put his arm around an
22 inmate's neck, is he going to report it?

23 HEARING OFFICER: I think he said he's going to
24 put down what he saw. Is that right?

25

1 PAUL LUNKWITZ: I mean, I would put down what I
2 saw, but I'm also saying that it would be the officer who did
3 that responsibility to report it. I'm reporting what I did.

4 MICHELLE ALANIS: That's fine.

5 PAUL LUNKWITZ: And if you put down what you
6 saw, which was a use of force taking place, after the inmate
7 came off the wall, or some combination of that, then I think
8 you are reporting what you saw, but you're leaving it up to
9 that officer to report his actions and what he did.

10 MICHELLE ALANIS: You don't--

11 PAUL LUNKWITZ: I'm not--let me put it this--maybe
12 this would be a better--I'm not going to assume that that
13 officer put his arm around an inmate--

14 MICHELLE ALANIS: That's--it doesn't--that wasn't
15 the question.

16 PAUL LUNKWITZ: --in an attempt to choke him.

17 MICHELLE ALANIS: I didn't ask you to assume that
18 he was putting an arm--

19 PAUL LUNKWITZ: Well, you're asking me a
20 hypothetical question--

21 MICHELLE ALANIS: I'm asking you--

22 PAUL LUNKWITZ: The officer put his arm around
23 his neck, that's assuming that that's what he did. What he
24 intended to do. Your question is based on intent.

25 MICHELLE ALANIS: I'm not asking to assume.

1 PAUL LUNKWITZ: When you say, a chokehold, you
2 are.

3 MICHELLE ALANIS: Officer Lunkwitz.

4 HEARING OFFICER: Uh, uh, uh, take it easy. Uh,
5 uh, uh.

6 DANIEL MARKS: Shouldn't he be allowed to
7 answer without being [crosstalk]

8 HEARING OFFICER: It's questions and answers, so
9 you can't interrupt each other. So, if you have a question,
10 ask it and then he can answer it.

11 DANIEL MARKS: But can he finish his answer
12 because she's [crosstalk]

13 HEARING OFFICER: I don't know where we are
14 anymore, I got lost.

15 MICHELLE ALANIS: It doesn't—at this point, it
16 doesn't matter. He said he would report what he saw.

17 DANIEL MARKS: Right but he was in the middle
18 of saying something and she cut him off.

19 HEARING OFFICER: All right, I missed it. So,
20 anyways, let's go back to regular decorum, if we can.
21 [laughs] That's my fault, if it [inaudible]

22 MICHELLE ALANIS: Officer Lunkwitz, I don't
23 remember if I asked you this question, but you weren't
24 involved in making a recommendation on the specificity of
25 charges, correct?

1 PAUL LUNKWITZ: No, I was not.

2 MICHELLE ALANIS: Okay. And you didn't make a
3 determination with respect to Officer Navarrete--

4 PAUL LUNKWITZ: No, I did not.

5 MICHELLE ALANIS: and any discipline that he
6 faced, right?

7 PAUL LUNKWITZ: No, I did not.

8 MICHELLE ALANIS: Okay. You were not involved in
9 that process whatsoever.

10 PAUL LUNKWITZ: Again, no, I did not, was not.

11 MICHELLE ALANIS: Okay. I don't have anything
12 further for him.

13 HEARING OFFICER: Okay.

14 NICOLE YOUNG: Officer Lunkwitz, in your 19
15 years of experience as a corrections officer, when you think
16 of excessive force, what do you think of?

17 MICHELLE ALANIS: I'm going to object.

18 HEARING OFFICER: Now, no. I don't want to go--

19 MICHELLE ALANIS: To relevance.

20 HEARING OFFICER: I don't want to go there.

21 NICOLE YOUNG: I think we'll pass.

22 HEARING OFFICER: Okay, you're done? All right,
23 thank you very much for your testimony today.

24 PAUL LUNKWITZ: You're welcome, thank you.
25

1 HEARING OFFICER: And now, we're going to take a
2 break.

3 MICHELLE ALANIS: Yes.

4 HEARING OFFICER: [pause]

5 DANIEL MARKS: How long is the break?

6 HEARING OFFICER: Oh, I don't know, you want to go
7 to 11:00, is that too long?

8 DANIEL MARKS: No.

9 OFF THE RECORD

10 ON THE RECORD

11 HEARING OFFICER: So, in any event, we are back on
12 the record in Case #1733, excuse me, 1713379. Jose Miguel
13 Navarrete v. DOC. Mr. Marks, you're calling your next
14 witness?

15 DANIEL MARKS: I'm calling Jose Navarrete.

16 HEARING OFFICER: All right sir, could you please
17 raise your right hand? Do you solemnly swear that the
18 testimony you're about to give in this hearing will be the
19 truth, the whole truth and nothing but the truth?

20 JOSE NAVARRETE: I do.

21 HEARING OFFICER: Thank you, please be seated.

22 DANIEL MARKS: State your name.

23 JOSE NAVARRETE: Jose Navarrete.

24 DANIEL MARKS: Okay.

25 JOSE NAVARRETE: J-O-S-E, N-A-V-A-R-R-E-T-E.

1 DANIEL MARKS: Okay. And, where did you grow
2 up, what part of the US?

3 JOSE NAVARRETE: Originally from California, the
4 Bay Area.

5 DANIEL MARKS: And, is that where you went to
6 high school?

7 JOSE NAVARRETE: Yes, it was, in San Mateo,
8 California.

9 DANIEL MARKS: And, where—did you go to college
10 at all?

11 JOSE NAVARRETE: Yeah, I attended San Francisco
12 State University.

13 DANIEL MARKS: For how many years?

14 JOSE NAVARRETE: About three years.

15 DANIEL MARKS: Did you receive a degree?

16 JOSE NAVARRETE: No, I didn't.

17 DANIEL MARKS: Okay. And, what were you
18 studying at that time?

19 JOSE NAVARRETE: That time it was international
20 business.

21 DANIEL MARKS: Okay. And, when did you come to
22 Las Vegas, what year?

23 JOSE NAVARRETE: It was July of 2007.

24 DANIEL MARKS: When did you start at NDOC?

25 JOSE NAVARRETE: May 5, 2008.

1 DANIEL MARKS: Why don't you talk a little
2 about the history of your jobs at NDOC? For instance, were
3 you always employed at Southern Desert?

4 JOSE NAVARRETE: Yes, my whole career, my eight
5 and a half year career there was all Southern Desert.

6 DANIEL MARKS: So, your first job was what?

7 JOSE NAVARRETE: Well, I—May 5, 2008, that was
8 the start of the eight week Academy.

9 DANIEL MARKS: Okay.

10 JOSE NAVARRETE: Once we graduated that, then I
11 was a Correction Officer Trainee for one year. After that
12 year, I passed the Standards and became a regular correction
13 officer.

14 DANIEL MARKS: Right.

15 JOSE NAVARRETE: At that point, I decided to
16 really engage myself in the rules and regulations and know
17 what was about—what the prisons was about. In 2013, I
18 promoted to Senior Correction Officer.

19 DANIEL MARKS: Now, first on the Academy,
20 during the eight week Academy, do you learn techniques for
21 restraining prisoners?

22 JOSE NAVARRETE: We definitely do.

23 DANIEL MARKS: And, do you use defensive—do you
24 also learn defensive techniques?
25

1 JOSE NAVARRETE: Yeah, that goes hand-in-hand,
2 the restraining and defensive tactics.

3 DANIEL MARKS: When you got on the yard, did
4 you find that real life was a little different than maybe in
5 the Academy?

6 JOSE NAVARRETE: It definitely is. I mean, now
7 you're inside with 2,000 plus convicted felons, as opposed to
8 an Academy with 20-30 people that are wanting to be correction
9 officers.

10 DANIEL MARKS: So, in terms of take downs and
11 restraint, is real life and custom and practice in the job
12 different than just sort of what you learned in the Academy?

13 JOSE NAVARRETE: Yeah, it definitely is. I mean,
14 in the Academy or in any defensive tactics situation or class,
15 it's way easier. I mean, you're just going step by step and
16 you're with the inmates complying or if it's not complying,
17 you're not really resisting that much, as opposed to being in
18 the prison and every situation is very different. Even with a
19 non-compliant inmate.

20 DANIEL MARKS: What about report writing, were
21 you taught how to write reports in the Academy?

22 JOSE NAVARRETE: Yes, we went over that.

23 DANIEL MARKS: Are you also, have on the job
24 training in what's expected in a report, once you're on yard?

25

1 JOSE NAVARRETE: Yeah. Every year we go through
2 a refresher, what they call, just to stay up with POST
3 Standards.

4 DANIEL MARKS: And, how many reports do you
5 think you wrote in your career at NDOC?

6 JOSE NAVARRETE: Hundreds, I don't-over 100
7 maybe.

8 DANIEL MARKS: When you got to the yard, I
9 mean, from the Academy and you got to the prison, you write-
10 you start writing reports.

11 JOSE NAVARRETE: Correct.

12 DANIEL MARKS: Do you-I assume you talk to your
13 Sergeant about what's in a report?

14 JOSE NAVARRETE: Yeah, Sergeant or Lieutenant,
15 depending on whose the shift command at the time and whose
16 there.

17 DANIEL MARKS: Okay. And you get a feel for
18 what has to go in the report?

19 JOSE NAVARRETE: Definitely, I do.

20 DANIEL MARKS: Okay. Now, talk a little about
21 the difference between a Senior Correction Officer because we
22 heard some testimony that as a Senior, you're not actually a
23 direct supervisor of a correction officer.

24 JOSE NAVARRETE: Correct. They talk about being
25 a training officer but there's no program that they actually

1 have in putting us through training or anything to be an
2 actual training officer. So, the only difference between a
3 correctional officer and a senior correctional officer really
4 is a 5% pay increase.

5 DANIEL MARKS: Okay. Now, they talk about
6 being a lead for the day. Can you explain a little bit, in
7 general, what that means?

8 JOSE NAVARRETE: Yeah. They--the lead--Search and
9 Escort Lead Officer is typically a senior officer.

10 DANIEL MARKS: Right.

11 JOSE NAVARRETE: And then you have three senior--
12 or, three correction officers that fill in the other three
13 spots. That can--

14 DANIEL MARKS: Go ahead, I'm sorry.

15 JOSE NAVARRETE: That can vary day-to-day, you
16 can have two correction or two senior correction officers,
17 three senior correction officers, on S&E at a day. It just--it
18 depends on staffing.

19 DANIEL MARKS: When you were the Senior and you
20 have not Senior kind of working with you, is there meetings or
21 discussion about, hey this is the plan for the day, this is
22 what we're going to do, that kind of thing?

23 JOSE NAVARRETE: Yeah, definitely. We have to
24 talk. I mean, we're a team so, I mean, we're working
25 together. So, we definitely have to talk about that.

1 DANIEL MARKS: So, when they say you're a Lead,
2 what was your experience being a Lead Search and Escort—or,
3 what did that mean, as a Lead?

4 JOSE NAVARRETE: That my Sergeant would relay any
5 information that he wanted us to accomplish during that day.

6 DANIEL MARKS: Like, could you give an example
7 to the Hearing Officer, so he knows.

8 JOSE NAVARRETE: Like, be more observant of
9 contraband coming out of the culinary.

10 DANIEL MARKS: Okay. And then you would tell
11 the other correction officers, hey my Sergeant said, we've got
12 to look for contraband today, we've got to enforce that rule
13 more stringently, something like that?

14 JOSE NAVARRETE: Yes. I would relay it. Or,
15 sometimes, I mean, when we muster, when we get to work, the
16 Sergeant will give us our duties, our missions to accomplish
17 throughout the day.

18 DANIEL MARKS: But you didn't directly
19 supervise the other correction officers, correct?

20 JOSE NAVARRETE: No.

21 DANIEL MARKS: Okay. Now, you had performance
22 reviews at NDOC?

23 JOSE NAVARRETE: Yes.
24
25

1 DANIEL MARKS: And, we put those in our binder,
2 which should be right next to you. I think it's Exhibit 6 and
3 Exhibit 7, which is in evidence.

4 JOSE NAVARRETE: Okay.

5 DANIEL MARKS: Did you always meet standards?

6 JOSE NAVARRETE: Yes, I did.

7 DANIEL MARKS: And that was—I think we put in
8 Exhibit 6, which is the evaluation of March of 2015, you met
9 standards, correct?

10 JOSE NAVARRETE: Correct.

11 DANIEL MARKS: And then, Exhibit 7, was for
12 March of '16?

13 JOSE NAVARRETE: Correct.

14 DANIEL MARKS: And, if you go to Exhibit 6 and
15 you just count, I think the third page in at the bottom, you
16 were—you worked as an acting shift sergeant on several
17 occasions?

18 JOSE NAVARRETE: Yes, I had.

19 DANIEL MARKS: And they say you performed quite
20 well.

21 JOSE NAVARRETE: Yes.

22 DANIEL MARKS: They said your work ethic has
23 improved and you maintain a professional attitude.

24 JOSE NAVARRETE: Correct.

1 DANIEL MARKS: So, as a shift sergeant, any
2 unruly or non-compliant inmates would be brought to you for
3 counseling?

4 JOSE NAVARRETE: Correct.

5 DANIEL MARKS: Okay. And, if you go to Exhibit
6 7, the last page under the comments.

7 JOSE NAVARRETE: Okay.

8 DANIEL MARKS: It says, he-meaning you-is
9 relied upon to organize and ensure completion of inmate
10 rollups, inmate ID cards, random zone searches. He assists in
11 training of staff new to the shift and it said, his work ethic
12 is continually improving, maintains a professional attitude in
13 uniform. Do you see that?

14 JOSE NAVARRETE: Yes, I do.

15 DANIEL MARKS: Had you received any discipline
16 in your eight and a half years?

17 JOSE NAVARRETE: Never.

18 DANIEL MARKS: And, when you were making NDOC
19 Corrections a career?

20 JOSE NAVARRETE: Yes, I was.

21 DANIEL MARKS: Did you hope to ultimately move-
22 apply and ultimately move up to a Sergeant position?

23 JOSE NAVARRETE: Yes, before this incident, I
24 actually had a DICTA test for Sergeant.

25

1 DANIEL MARKS: And, I assume you're familiar
2 with use of force and not using excessive force on inmates,
3 correct?

4 JOSE NAVARRETE: Correct.

5 DANIEL MARKS: And you had never used excessive
6 force on an inmate, is that right?

7 JOSE NAVARRETE: Correct, never.

8 DANIEL MARKS: Okay. And, had you been in an
9 incident where inmates had attacked you?

10 JOSE NAVARRETE: Yes.

11 DANIEL MARKS: Can you tell the Court when that
12 happened?

13 JOSE NAVARRETE: It was, I think roughly a year
14 after I started. I was on the special response team and we
15 were clearing out a unit to go to breakfast and we were going
16 to search that whole unit. We've given that unit five minutes
17 to gather their stuff and to get out of the inmate. One
18 inmate was aggressive. Another CO had opened the door to his
19 cell and once that door came open, the inmate kept on arguing
20 and then just attacked me and put me in a chokehold. We went
21 down.

22 DANIEL MARKS: Now, when they talk about a
23 chokehold, can you show the Judge what a chokehold actually
24 is?

25

1 JOSE NAVARRETE: It will be arm around the neck
2 and then you'll have the other arm right here, where you can
3 gain control and squeeze, so you can take the—the air away
4 from the person.

5 DANIEL MARKS: So, the chokehold has a definite
6 meaning in law enforcement.

7 JOSE NAVARRETE: Yes.

8 DANIEL MARKS: Okay. And, we'll come back to
9 that later when we watch the video.

10 JOSE NAVARRETE: Okay.

11 DANIEL MARKS: Now, how—what happened to you?
12 How did the inmate get—how did you get out of the chokehold?

13 JOSE NAVARRETE: Luckily enough the whole Special
14 Response Team was there. So, once they saw that, they were
15 able to come to my aid. Get the inmate off. And, I was able
16 to go home.

17 DANIEL MARKS: And, do they use—did they have
18 to use pepper spray or batons or just use hands?

19 JOSE NAVARRETE: One used a baton, but mainly it
20 was hands-on, just like using your limbs.

21 DANIEL MARKS: Okay. And, when you say you're
22 on the Special Response Team, is that considered an elite
23 unit?

24 JOSE NAVARRETE: Yes.

25

1 DANIEL MARKS: And, what does that do, what is
2 the Special Response Team?

3 JOSE NAVARRETE: The Special Response Team is
4 used for emergency situations. Like if you have a riot, you
5 have an uncontrollable prison, you've had race issues, between
6 black, white, Hispanic, whatever it may be, you're going to
7 call your Special Response Team to come in, do searches, talk
8 to the inmates because they're more knowledgeable with them.

9 DANIEL MARKS: Now, in October 2016, I think
10 you had moved back to dayshift from graveyard.

11 JOSE NAVARRETE: That's correct. I was graveyard
12 for a year and a half before I moved back to dayshift.

13 DANIEL MARKS: And, what are the hours of
14 dayshift at that time?

15 JOSE NAVARRETE: Dayshift is 5:00 AM to 1:00 PM,
16 at that time.

17 DANIEL MARKS: And, what was the significance
18 of moving back from grave to day, as it related to your job?

19 JOSE NAVARRETE: Well, the biggest significance
20 is that, prison is a revolving door. So, when you go to
21 graveyard, you have minimal contact with the inmates. You
22 know, they're sleeping. So, you kind of lose the environment
23 of the prison, how it runs day to day. You don't have this
24 rapport with the inmates anymore. You don't know who they
25 are.

1 DANIEL MARKS: Because they're sleeping.

2 JOSE NAVARRETE: Correct.

3 DANIEL MARKS: So, is it a harder job on
4 dayshift?

5 JOSE NAVARRETE: It definitely is, because
6 obviously you have everybody out, up and about, walking
7 around. So, it definitely is.

8 DANIEL MARKS: Now, when you went back to day,
9 is it important then to get to know the inmates and know who
10 you're dealing with?

11 JOSE NAVARRETE: It definitely is. It makes your
12 job a lot easier. You can communicate better with the inmate
13 population.

14 DANIEL MARKS: And, is that important, the
15 communication?

16 JOSE NAVARRETE: Oh, it definitely is. I mean,
17 if you're trying to enforce rules with somebody that doesn't
18 know you, they might think that you're coming off too strict
19 or too rude and as opposed to somebody you kind of gained a
20 rapport with, they know where you're coming with and they have
21 more of an understanding and they listen more.

22 DANIEL MARKS: Is enforcing rules and
23 regulations important as part of your job?

24 JOSE NAVARRETE: It's one of the most important
25 rules that we have.

1 DANIEL MARKS: And, why is that?

2 JOSE NAVARRETE: If we don't enforce rules then
3 you basically or you don't basically, you let the inmates run
4 the asylum. And it goes from the smallest rule to the biggest
5 rule because if you let one small rule go, that inmate sees
6 that, oh I can get away with anything else. And if there's
7 other inmates around, they kind of see, okay, we can get away
8 with more infractions.

9 DANIEL MARKS: Give me an idea of a small rule.

10 JOSE NAVARRETE: Just getting on the wall. Being
11 in position when you're placed on the wall and not being in
12 the right position, maybe just lowering your hands a little
13 bit. Being kind of passive.

14 DANIEL MARKS: What about the food issue? It
15 sounds kind of mickey mouse, someone took food out of the
16 culinary, what's the big deal about food?

17 JOSE NAVARRETE: The big thing with food is, 1,
18 they can take back food and make what's called Pruno and its
19 prison made alcohol. That in itself, I mean, is a big factor.
20 You're going to be dealing with somebody that's inebriated.
21 You're not going to want that. Second, they can use that to
22 barter. Now, if they don't pay up, now that it becomes
23 fights, you know, between races, between a bunch of inmates.
24 So, it may seem small but it can become a big issue.

25

1 DANIEL MARKS: Now, when you were attacked, did
2 that teach you anything about officer safety and security?

3 JOSE NAVARRETE: Yeah, it definitely did. I
4 mean, it just hit home more. It made it a little bit more
5 real that, you know, you always think that it could happen,
6 but until it actually does happen, that's when it becomes, you
7 know, really real.

8 DANIEL MARKS: Now, why do you do random
9 searches at the prison?

10 JOSE NAVARRETE: That's to prevent the
11 distribution of contraband throughout the yard.

12 DANIEL MARKS: What type of contraband is that?

13 JOSE NAVARRETE: You're talking from like, food
14 out of the culinary, drugs, prison made weapons, to notes that
15 are meant to communicate between gangs in the prison.

16 DANIEL MARKS: Why do you not want notes to
17 communicate?

18 JOSE NAVARRETE: Well, I mean, if-usually we try
19 to keep most of the unites kind of separate, so they don't
20 intermingle as much. So, when you have gang members in
21 different units, they have to communicate a certain way. So,
22 if they want to put out a hit, hey let's meet at the culinary,
23 I'll pass you this note. This gang leader said, you know, you
24 guys have to do a hit on this guy and it's things of that
25 nature.

1 DANIEL MARKS: How prevalent are prison made
2 weapons at the prison?

3 JOSE NAVARRETE: They're all over the yard. All
4 over the yard. They're under rocks. They're inside the
5 cells. They're under their mattresses. Just everywhere.

6 DANIEL MARKS: So, it sounds like, in terms of
7 staffing, how many guards like—in October 2016, how many
8 correction officers are there versus how many prisoners are in
9 the yard?

10 JOSE NAVARRETE: You mean like a ratio?

11 DANIEL MARKS: Yeah.

12 JOSE NAVARRETE: Probably and I'm kind of, I
13 think going low on it, but 1:100, 100:1, I mean.

14 DANIEL MARKS: So, you were outnumbered
15 tremendously.

16 JOSE NAVARRETE: Definitely. Yes.

17 DANIEL MARKS: And, what kind of stuff do you
18 have to protect yourself? You have handcuffs. What else do
19 you have?

20 JOSE NAVARRETE: Handcuffs? I guess you could
21 use the flashlight if that comes to it. If it comes to dire
22 need.

23 DANIEL MARKS: You have no--

24 JOSE NAVARRETE: Pepper—we had—well, not pepper
25 spray, it's called OC.

1 DANIEL MARKS: OC Spray. You had guns, right?

2 JOSE NAVARRETE: No. The only place that we had
3 weapons on the yard was in the middle of the yard on the gym
4 roof.

5 DANIEL MARKS: The tower.

6 JOSE NAVARRETE: Yeah, which I mean, you have a
7 shotgun that's not—it wouldn't make sense to even use the
8 shotgun because it wouldn't—it would be futile because of the
9 amount of yards from the culinary.

10 DANIEL MARKS: So, you've got—you basically
11 have your hands and OC spray to protect yourself.

12 JOSE NAVARRETE: Correct.

13 DANIEL MARKS: And you have handcuffs.

14 JOSE NAVARRETE: Correct.

15 DANIEL MARKS: And, can handcuffs be used
16 against you as a weapon?

17 JOSE NAVARRETE: Definitely, it can. I mean, if-

18 -

19 DANIEL MARKS: How-how is it a—could it be used
20 against you?

21 JOSE NAVARRETE: If you're going to restrain an
22 inmate and he's non-compliant and you haven't gained control
23 of him, before restraining him, he might turn on you, he might
24 try to fight you and then in that happening, you might lose

25

1 your cuffs or he might grab them. Then, in turn, now he's
2 hitting you with them.

3 DANIEL MARKS: So, let's—let me ask you a
4 couple of other questions before we get to the incident. Did
5 you receive awards from the prison?

6 JOSE NAVARRETE: Yeah, the month prior, I was the
7 Employee of the Month, in September.

8 DANIEL MARKS: And, what was that based on?

9 JOSE NAVARRETE: Just my demeanor, my attitude,
10 my professionalism. The way I did my job.

11 DANIEL MARKS: And, your demeanor is pretty
12 low-key. Was that your demeanor at the time, three years ago?

13 JOSE NAVARRETE: Definitely was.

14 DANIEL MARKS: And, could you explain why
15 that's a good demeanor to have for working in a prison?

16 JOSE NAVARRETE: It's just instead of coming off,
17 you know, aggressive, the calm demeanor just lets the inmates
18 open up to me and be more receptive to what I'm trying to tell
19 them. Especially when I'm telling them about the rules and
20 regulation of the prison.

21 DANIEL MARKS: So, you try to use—did you try
22 to use more psychology counseling?

23 JOSE NAVARRETE: Yeah because just—if I go
24 aggressive with the inmate, then I'm matching him. So, I want
25

1 the inmate to match my demeanor, which is calm, so we can
2 deescalate, you know, whatever situation is happening.

3 DANIEL MARKS: And, that—you seem very calm.
4 That was your demeanor even in the prison?

5 JOSE NAVARRETE: Yes.

6 DANIEL MARKS: Okay. So, just explain what—I
7 think the Hearing Officer has heard this, but what—explain
8 what Search and Escort, what you do, in that detail on October
9 2016.

10 JOSE NAVARRETE: Search and Escort is, you
11 monitor inmate movement. We do day-to-day operations. So,
12 you know, we get them to work, to their programs, to
13 education. We do random searches. We're first responders to
14 any situation that arises, emergencies, and things of that
15 nature.

16 That day in particular, we were informed to crack
17 down on any contraband coming out of the culinary because of
18 that week, we had numerous incidents between black and white
19 inmates and we had a bunch of fights that happened, which
20 resulted in a partial lockdown that weekend.

21 DANIEL MARKS: Is the prison, with Southern
22 Desert, always short-staffed also?

23 JOSE NAVARRETE: At that time, it was.

24 DANIEL MARKS: And, how did that affect your
25 job?

1 JOSE NAVARRETE: Well, if you see—during that
2 incident, the S&E, the Search and Escort Team is supposed to
3 be a team of four. Throughout the whole video, you only
4 really see Officer Valdez and myself and then for a short
5 moment, a couple of minutes or so, you see Officer Wachter.
6 Our fourth officer was pulled to go into the gun bubble in the
7 culinary chow hall which sits in the middle of two chow halls.
8 So, in case something happens, they have a shotgun that's non-
9 lethal.

10 DANIEL MARKS: And, does that also affect your
11 decision-making regarding cuffing up and inmate and taking
12 them to the Sergeant, the shift commander?

13 JOSE NAVARRETE: Oh, it definitely does, I mean,
14 because if you're dealing with a non-compliant inmate and you
15 have to restrain them and you have to escort them to shift
16 command, now you're taking away two officers to do this. And,
17 in doing that—so, if I did that, then I would either leave
18 myself, Officer Valdez or Officer Wachter by themselves with
19 running the whole chow which is, you know—our job is safety
20 and security of the institution, that's not safety and
21 security at that point.

22 DANIEL MARKS: Because then it's going to be
23 what, like 500:1 or something.

24 JOSE NAVARRETE: Yeah. Yes.
25

1 DANIEL MARKS: Okay. Then, also, before we get
2 to the incident, I think—wasn't there an assistant shift
3 commander that your Sergeant wasn't actually on duty that
4 shift?

5 JOSE NAVARRETE: Yeah, we had a senior that was
6 acting sergeant and then Sergeant Willett [phonetic] became
7 the shift command.

8 DANIEL MARKS: But was Sergeant Willett on duty
9 that day shift?

10 JOSE NAVARRETE: Yes.

11 DANIEL MARKS: But then there was an acting.

12 JOSE NAVARRETE: Yeah, Senior Knatz [phonetic] at
13 the time.

14 DANIEL MARKS: At the time of the incident.

15 JOSE NAVARRETE: Yes.

16 DANIEL MARKS: Is that because Willett would've
17 come in later that day?

18 JOSE NAVARRETE: No, what happened was, the—
19 whoever the other Sergeant or Lieutenant was didn't come in
20 that day, we were short staffed so they pulled from wherever
21 they could pull from. From any position.

22 DANIEL MARKS: So, Willett became acting
23 lieutenant?

24 JOSE NAVARRETE: Correct.

25

1 DANIEL MARKS: Okay. So, the person that was
2 your immediately supervisor was acting.

3 JOSE NAVARRETE: Correct.

4 DANIEL MARKS: And that Knatz.

5 JOSE NAVARRETE: Correct.

6 DANIEL MARKS: And he's in the video with
7 audio, correct?

8 JOSE NAVARRETE: Yeah, at the end, when he
9 responds with medical.

10 DANIEL MARKS: Okay. So now, let's talk about
11 the incident that morning. You obviously recall the day.
12 You've seen the video now thousands of times probably,
13 correct?

14 JOSE NAVARRETE: Right.

15 DANIEL MARKS: And you recall the day of
16 October 9, 2016, correct?

17 JOSE NAVARRETE: Yes, I do.

18 DANIEL MARKS: Was that just a normal day to
19 you?

20 JOSE NAVARRETE: Other than us being on partial
21 lockdown, yeah.

22 DANIEL MARKS: Okay. And your job that morning
23 was what?

24

25

1 JOSE NAVARRETE: Again, it was normal Search and
2 Escort duties but specifically during morning chow to crack
3 down on the contraband.

4 DANIEL MARKS: So, for morning chow you escort
5 the inmates to the culinary.

6 JOSE NAVARRETE: Yeah, we'll visually escort them
7 from—we'll see them coming out of their units. So, we
8 visually escort them.

9 DANIEL MARKS: Right. And then do you watch
10 them when they're in the culinary?

11 JOSE NAVARRETE: Yeah, most of the time we stand
12 outside and we have windowpanes we can look inside and that's
13 where we'll see them. Sometimes we step in for a little bit
14 but for the main part we—we stay outside.

15 DANIEL MARKS: And, do you see people putting
16 extra food in their bags?

17 JOSE NAVARRETE: Every day.

18 DANIEL MARKS: And the bag is the sack lunch
19 they're given for lunch.

20 JOSE NAVARRETE: Yeah, it's a clear-like, if you
21 go the grocery store and you go to get vegetables or fruit,
22 it's that clear bag that you would put it in.

23 DANIEL MARKS: So, you can see extra food.

24 JOSE NAVARRETE: Yeah, definitely.

25

1 DANIEL MARKS: Just from your experience and
2 training, you know what their lunch consists of.

3 JOSE NAVARRETE: Yeah, it's not that much. It's
4 like, four pieces of bread, a piece of vegetable and either
5 bologna or like, peanut butter.

6 DANIEL MARKS: So you can see if there's extra
7 food.

8 JOSE NAVARRETE: Definitely can.

9 DANIEL MARKS: And you've already explained why
10 food is a big deal. What type of inmates were you dealing
11 with on October 2016 at Southern Desert?

12 JOSE NAVARRETE: You're dealing from the lowest
13 felony, that could be like, I would think like DUI causing
14 substantial bodily harm to murderers, rapists, with life
15 without parole.

16 DANIEL MARKS: So, life without parole. So, to
17 have nothing to lose.

18 JOSE NAVARRETE: Correct.

19 DANIEL MARKS: Because they're there forever.

20 JOSE NAVARRETE: Yeah, you just run the whole
21 gamut. We have every kind of felon that you can think of.

22 DANIEL MARKS: Now, why do you put inmates on
23 the wall? We'll get to this incident, but in general, why do
24 you put inmates on the wall?

25

1 JOSE NAVARRETE: There's numerous reasons.
2 First, obviously it's to prevent the distribution of
3 contraband but at the same time, especially for me, coming
4 back to dayshift, I get to know the inmate. So, I get their
5 ID. I know where they live. I have a short conversation with
6 them and—it's weird to say but you start a relationship. You
7 know, you get to know them and that way, your job becomes a
8 little bit easier.

9 DANIEL MARKS: Now, they're talking about some
10 of their witnesses, oh you're putting people on the wall as if
11 that's a bad thing. Is that a common part of your job?

12 JOSE NAVARRETE: Yeah, that's throughout the day
13 that we do it. It's not just during morning feeding. It's—
14 it's throughout the day.

15 DANIEL MARKS: And, what about random searches?

16 JOSE NAVARRETE: Again, throughout the day.
17 It's--

18 DANIEL MARKS: So, it's not like a citizen on
19 the street, you need a terry pat down. This is a prison,
20 right?

21 JOSE NAVARRETE: No, yeah, exactly.

22 DANIEL MARKS: And therefore in a prison, you
23 can search anytime, anywhere, anyplace, correct?

24 JOSE NAVARRETE: Correct.
25

1 DANIEL MARKS: And, is that considering your
2 hassling them or is that what you're supposed to do?

3 JOSE NAVARRETE: No, we're told this on a daily
4 basis that it's—it's part of our job.

5 DANIEL MARKS: So, when you listen to their
6 witnesses, they're making it sound like it's a citizen on the
7 street and you've got to go up to him and do a terry pat down—

8 MICHELLE ALANIS: Objection, misstates—

9 DANIEL MARKS: --and you can't put them on the
10 wall for that long. Is that realistic in a prison?

11 HEARING OFFICER: I'm not sure the form of that
12 question was appropriate, Mr. Marks, but it was nicely worded.

13 DANIEL MARKS: Thank you.

14 HEARING OFFICER: I think you might want to change
15 the wording of that a little bit.

16 DANIEL MARKS: Okay. Could you explain—in
17 sitting here the first day, we heard a lot of their witnesses
18 made it sound that, almost like we were in the outside. Like,
19 if somebody says to me, put your hands on the wall and it
20 shouldn't be for so long. Can you just give the Hearing
21 Officer, just a feel of what's going on at Southern Desert and
22 what you're supposed to be doing?

23 JOSE NAVARRETE: Like I said, you're dealing with
24 convicted felons. You're dealing with murderers, rapists,
25

1 people with battery charges and you have to approach in a
2 different manner.

3 DANIEL MARKS: But are you putting them on the
4 wall to hassle them or is that your job?

5 JOSE NAVARRETE: No, it's our job. I mean, it's-
6 for every two to three that you put on the wall, you're going
7 to get two or three of them with contraband. They-they always
8 try. They're always pushing the system. They're always
9 pushing the limits and it's-like I said, it's part of our job
10 to-to search.

11 DANIEL MARKS: So, are you searching people
12 just to hassle them?

13 JOSE NAVARRETE: No, like I-it's part of our-part
14 of that position's job title. Search.

15 DANIEL MARKS: Right and is there any time
16 limit of people on the wall?

17 JOSE NAVARRETE: No.

18 DANIEL MARKS: Meaning, this person was on the
19 wall for 10 minutes, some of their witnesses were acting like,
20 wow this is so long they're on the wall, is that realistic?

21 JOSE NAVARRETE: Yeah, it's realistic. And, like
22 it's been said before, every situation is different. So,
23 there might be a guy that's put on the wall for a minute.
24 There might be a guy that's three minutes, five minutes, 10
25

1 minutes. It just varies with that situation. You can never
2 say, okay this is going to be just one minute.

3 DANIEL MARKS: Are you sitting there timing it?

4 JOSE NAVARRETE: Definitely not.

5 DANIEL MARKS: Are you looking at your watch?

6 JOSE NAVARRETE: No. No.

7 DANIEL MARKS: Now, did you have—in this
8 situation, was there any—or, before we get to this situation.
9 Is there any—did you ever discriminate and put people on the
10 wall or hassle people based on race or ethnicity?

11 JOSE NAVARRETE: Not at all. Never.

12 DANIEL MARKS: Okay. And, I think there's some
13 evidence about getting inmates to be compliant when they're on
14 the wall. Can you explain to the Hearing Officer what that
15 means?

16 JOSE NAVARRETE: Well, when you're telling
17 somebody to get on the wall, they know that it's going to be
18 for a pat search. What you want them to do is obviously be
19 compliant, get in that position. If they're not doing that,
20 then it kind of just raises the hairs on the back of your neck
21 and it just kind of lets you know, maybe, this inmate is going
22 to try something. He has something. He's fidgety, there's
23 something wrong.

24

25

1 DANIEL MARKS: And, what—when somebody's
2 fidgety, taking their hands off the wall, not being in the
3 position, turning their head, what does that tell you?

4 JOSE NAVARRETE: It's telling me that they're not
5 wanting to listen to the directives that we're giving them and
6 that there might be something else or something that he might
7 be wanting to do.

8 DANIEL MARKS: And, why could you not—could you
9 just say go and leave it for another officer?

10 JOSE NAVARRETE: No, we can't pass the buck. I
11 mean, our job, especially as Search and Escort is to—if a
12 situation arises, is to deal with that situation. It's to
13 counsel inmates, just like our—we're correctional officers. I
14 can't let an inmate that's non-compliant that says he's not
15 going to follow the rules, go to a unit, to another officer
16 and become that officer's problem. Then I'm not doing my job.

17 DANIEL MARKS: Now, in turn, how do you decide
18 who is going to be on the wall that day?

19 JOSE NAVARRETE: That day, it was—we just kind of
20 take turns and Valdez—Officer Valdez was the one picking them
21 out that day.

22 DANIEL MARKS: And, was it random?

23 JOSE NAVARRETE: Yes.

24 DANIEL MARKS: And, once the person is on the
25 wall, what's your procedure, what do you say?

1 JOSE NAVARRETE: Procedure is, well, I tell them,
2 you know, it's—we're going to pat search you and they—most of
3 them know what to do and if they don't then we instruct them
4 on how to be on the wall.

5 DANIEL MARKS: And, you can see on the video, I
6 think you put their hands high or you put Norales' hands high.

7 JOSE NAVARRETE: Correct.

8 DANIEL MARKS: Is that standard?

9 JOSE NAVARRETE: Yes and that's for our safety.

10 DANIEL MARKS: And, in terms of counseling,
11 how—how do you do counseling at the wall?

12 JOSE NAVARRETE: At the wall, like I said, I just
13 want them—it's just like the pat search. They're going to be
14 on the wall, hands up, not moving, facing forward and I'm
15 talking to them in a calm demeanor, just like you saw in the
16 video. Explaining them—explaining to them the rules,
17 regulations and just everything.

18 DANIEL MARKS: Why do you do it at the wall as
19 opposed to somewhere else?

20 JOSE NAVARRETE: Well, at that point, it's
21 because first we were doing the pat search and then the inmate
22 was non-compliant the whole time. So, I'm going to keep him
23 on the wall to counsel him.

24 DANIEL MARKS: Okay.

25

1 JOSE NAVARRETE: If it was a situation where I
2 saw an inmate walking and he did something minor, it would
3 probably be kind of a face-to-face type of thing. It just—it
4 depends on the situation.

5 DANIEL MARKS: But is it safer for you if it's
6 not face-to-face?

7 JOSE NAVARRETE: It definitely is.

8 DANIEL MARKS: Okay. You don't go in the
9 culinary normally do like, coffee with inmates.

10 JOSE NAVARRETE: No and we definitely wouldn't
11 even do a pat search inside the culinary because you're having
12 200 plus inmates in there. You don't want—you're turning your
13 back to 200 inmates.

14 DANIEL MARKS: So you have to always be
15 concerned about officer security, number one.

16 JOSE NAVARRETE: Definitely.

17 DANIEL MARKS: All right. Regarding Inmate
18 Norales. Did you have any prior dealings with him?

19 JOSE NAVARRETE: None at all.

20 DANIEL MARKS: Did you—how was he chosen to be
21 on the wall?

22 JOSE NAVARRETE: Randomly. Officer Valdez chose
23 him.

24 DANIEL MARKS: Was he singled out as far as you
25 know?

1 JOSE NAVARRETE: No.

2 DANIEL MARKS: Did you ever hear Officer
3 Valdez, before this incident, speak negatively about Norales,
4 as if he was being targeted?

5 JOSE NAVARRETE: Not at all.

6 DANIEL MARKS: Were you targeting Officer [sic]
7 Norales for like, extra scrutiny or treatment?

8 JOSE NAVARRETE: Inmate Norales, no. Not at all.

9 DANIEL MARKS: Okay. Would you do that?

10 JOSE NAVARRETE: No, not at all.

11 DANIEL MARKS: All right. So, we're going to
12 get into the videos. I want to start with Exhibit 8.

13 HEARING OFFICER: Okay.

14 DANIEL MARKS: If we can approach. And, Your
15 Honor, just because it's been two weeks since the last
16 hearing, these are short clips, not going to do the whole
17 video.

18 HEARING OFFICER: Right.

19 DANIEL MARKS: What I'd thought we'd do is,
20 watch the short clip and then I would have my client explain
21 and answer some questions, that way we're not talking while
22 we're watching. And, it should be short.

23 HEARING OFFICER: Okay.

24 DANIEL MARKS: Since it's been two weeks.
25

1 HEARING OFFICER: There's a laptop over there, but
2 that's not--

3 MICHELLE ALANIS: That's mine.

4 DANIEL MARKS: That's the State's we can't
5 touch it.

6 HEARING OFFICER: Okay.

7 DANIEL MARKS: We were going to put it in here.

8 HEARING OFFICER: Sure, that's fine. I might need
9 some help in getting this together.

10 [crosstalk while setting up video]

11 HEARING OFFICER: That's what I'm looking at.

12 [crosstalk] I think you were good last time on getting this
13 together. It must be your relative youth compared to the rest
14 of us. I should be able to do that, I'm sorry. I appreciate
15 your help. All right. [pause]

16 DANIEL MARKS: If you could do [inaudible]

17 SPEAKER: Okay, what clip do you want
18 first?

19 DANIEL MARKS: So, I believe we were going to
20 do Clip 1.

21 HEARING OFFICER: Oh, I've got it on my thing,
22 good. Awesome. [pause] All right, it stopped. [pause]

23 DANIEL MARKS: So now, I was going to play it
24 again and let--so, why don't you tell us what's going on.

25 JOSE NAVARRETE: So--

1 DANIEL MARKS: Start—you can start [pause]

2 JOSE NAVARRETE: What you're seeing is now,
3 everybody's been selected, who Officer Valdez picked out and
4 they've been told to get on the wall. So, we have, I want to
5 say, probably five inmates on the wall. I'm instructing them
6 that I'm going to start my pat searches.

7 This inmate, if you see—this black inmate, in the
8 beginning, he's in the position that I want. This inmate as
9 well. He has his hands, you know, high above. This inmate
10 does too. Hard to see, but at this point, Inmate Norales
11 doesn't have contact with the wall.

12 Right there, you see him—you see me approach and he
13 takes him off and then places them off because he thinks I'm
14 approaching him. Once he notices—when I play—once he notices
15 that I'm pat searching the inmate next to him, he removes his
16 hand from the wall. Right there.

17 I continue my pat search. Obviously I don't notice
18 what Inmate Norales did. As soon as I'm done, he notices it
19 and puts his hand, kind of like, waist/chest high.

20 DANIEL MARKS: Do you see it looks like his
21 head's turning--

22 JOSE NAVARRETE: Yeah, he's turning. I was going
23 to get to that.

24 DANIEL MARKS: Okay, sorry.
25

1 JOSE NAVARRETE: He starts to look left and
2 right. He's bouncing off the wall. His hand comes off the
3 wall. He just keeps on bouncing, kind of trying to gauge,
4 where I'm at, probably where Officer Valdez is at. And this
5 is just basically, I mean, all non-compliance. He's not
6 listening to anything.

7 If you look at the other inmates that are not
8 moving, they're in the position that we want.

9 DANIEL MARKS: So, for instance, Inmate #1,
10 right here--

11 JOSE NAVARRETE: Correct.

12 DANIEL MARKS: --because that's the correct
13 position.

14 JOSE NAVARRETE: That's what we want.

15 DANIEL MARKS: Looking down or looking at the
16 wall.

17 JOSE NAVARRETE: Correct. Not turning, not
18 bouncing off the wall. Not taking their hands off. Not
19 completely taking them off.

20 DANIEL MARKS: When an inmate is bouncing,
21 turning, is that concerning to you?

22 JOSE NAVARRETE: It definitely is. It--to me,
23 it's them gauging, hey is the officer going to tell me what to
24 do, am I going to be able to get away with a little bit more
25 and then, at some point, attack.

1 DANIEL MARKS: Can it also be a sign
2 [inaudible] something like contraband?

3 JOSE NAVARRETE: It definitely can. It could be
4 a sign of nervousness that they're hiding weapons, drugs, any
5 kind of contraband. [pause] He's still continuously looking
6 left and right. Bouncing off the wall. His right hand is
7 going off and on the wall. [pause] He just—everybody else is
8 complying with what they're supposed to do except Inmate
9 Norales.

10 DANIEL MARKS: Okay. Now I want to go to Clip
11 2. [pause] [inaudible] [pause] Okay so, let's run in Clip
12 2. So, you're in the black hat, right?

13 JOSE NAVARRETE: Right. That's me. That's
14 Officer Valdez. Officer Valdez [inaudible] pat search him,
15 the first inmate. I'm about to start my pat search on Inmate
16 Norales.

17 DANIEL MARKS: Where are his hands?

18 JOSE NAVARRETE: You can see—right now, they're
19 pretty much where they need to be. The only thing that I
20 don't like at this time is that he's turning. He's looking at
21 Officer Valdez and he's engaging or trying to engage Officer
22 Valdez. He's saying, "fuck you", "you only want to touch us",
23 "you're a faggot", "why don't you come fuckin' touch me".

24 So, he looks like he's complying, but verbally
25 abusive at this point, towards Officer Valdez. And he's still

1 looking at him, he's still talking to him. Officer Valdez
2 finishes the pat search and if you can see at this moment,
3 back it up. He drops his--his drops his hand or hands. Right
4 there. Now he's chest high. I didn't notice that.

5 At this point, I'm done with the pat search. I
6 haven't instructed Inmate Norales to be able to go back to his
7 unit or to get off the wall. He proceeds to drop his right
8 arm off the wall, which I then instructed him, not only
9 verbally but I made contact with him, placed his hands up and
10 told him this is where they need to be. I'm continuing to
11 tell him, just the rules and regulations and what I expect of
12 him while he's on the wall.

13 DANIEL MARKS: Now, can you explain his non-
14 compliance? Was it verbal? Was it a combination of verbal
15 and physical?

16 JOSE NAVARRETE: It was a combination of both.
17 You know, verbally towards Officer Valdez saying, fuck you, I
18 don't have to listen to you guys, you guys-or, you're a
19 faggot, you just want to fuckin' touch me. And then the other
20 non-compliance is him dropping his--both hands, lower on the
21 wall. Then eventually, taking them off the wall.

22 DANIEL MARKS: What were you telling Norales at
23 this time?

1 JOSE NAVARRETE: To look forward, not to move, to
2 stop being verbally abusive. To have his hands where they
3 should be.

4 DANIEL MARKS: Okay. The next clip we're going
5 to do is Clip 4.

6 HEARING OFFICER: 4?

7 DANIEL MARKS: [pause]

8 JOSE NAVARRETE: All right, so in this clip, I'm
9 again, still telling him that he shouldn't be facing-looking
10 at me. Telling him to face forward. At the same time, giving
11 him the calm demeanor, again, so he could kind of match my-my
12 demeanor and I'm letting him kind of just say what he wants to
13 try to let him say his side and calm him down.

14 Then you see Officer Valdez approach. Inmate
15 Norales at that time—there's a windowsill that you can't see
16 there and Valdez picks up Inmate Norales' sack lunch. He
17 checks what's in it right there and then throws it away.

18 DANIEL MARKS: So, does that tell you—did he
19 say anything, there's contraband, or there's extra food?

20 JOSE NAVARRETE: Yeah, I mean, he said something
21 about eggs or something.

22 DANIEL MARKS: Which he's not supposed to have.

23 JOSE NAVARRETE: No, it wasn't part of the sack
24 lunch. If you alter the sack lunch in any which way, it's
25 contraband.

1 DANIEL MARKS: Okay. And that's because you're
2 not supposed to--can you explain to the Hearing Officer about
3 whether you can take food out because it looks kind of--
4 throwing it away--

5 JOSE NAVARRETE: Right, again, so when you go in,
6 you get a tray for breakfast in the morning. Whatever is on
7 that tray, you have to eat. You can't take out of the
8 culinary. At the same time, they give you a sack lunch for
9 lunch. Now, you can't add anything to it either. So--

10 DANIEL MARKS: So, if you had something, what
11 are you trained to do?

12 JOSE NAVARRETE: We usually, you know, take it
13 away, throw it away and give them a whole new sack lunch.
14 That's just for health reasons. Depending on the situation,
15 we either counsel and let the inmate go or we counsel and
16 write up [crosstalk]

17 DANIEL MARKS: And that's discretionary.

18 JOSE NAVARRETE: Correct.

19 DANIEL MARKS: Okay. Now, we have the
20 [inaudible]. [pause] So, this is part--

21 HEARING OFFICER: Oh, I'm sorry.

22 DANIEL MARKS: This is part of--this is a new
23 disc, but it's part of the original one, but it's [crosstalk]

24 HEARING OFFICER: That was just Exhibit 8, which
25 the clips.

1 DANIEL MARKS: Right. This is going to be 11.

2 HEARING OFFICER: Exhibit 11, all right.

3 DANIEL MARKS: It's a split screen but it's the
4 original video. [pause]

5 NICOLE YOUNG: [inaudible]

6 DANIEL MARKS: First of all, is there anything
7 about Valdez's demeanor, with his arms? Is that--there was
8 some criticism that waving his arms is some--what about Valdez
9 and the arms?

10 JOSE NAVARRETE: That's just him. I mean, you
11 can talk him--

12 MICHELLE ALANIS: Objection, speculation.

13 JOSE NAVARRETE: --just in any situation, he's
14 doing that.

15 DANIEL MARKS: There's foundation. He worked
16 with him and talked to him.

17 HEARING OFFICER: He did work with him, so he can
18 explain that.

19 DANIEL MARKS: Explain, when would he move his
20 arms?

21 JOSE NAVARRETE: At any moment of the day.

22 DANIEL MARKS: When he talked about--

23 JOSE NAVARRETE: Just talking to you--

24 DANIEL MARKS: --his family, would he do it?

25 JOSE NAVARRETE: Yeah.

1 DANIEL MARKS: When he talked about [crosstalk]

2 JOSE NAVARRETE: Talking about his niece, talking
3 about sports, anything.

4 DANIEL MARKS: So, that—you didn't see that as
5 an aggressive--

6 JOSE NAVARRETE: No. And especially, he wasn't
7 yelling, he wasn't cursing, he wasn't doing anything negative
8 to the inmate, besides counseling him.

9 DANIEL MARKS: But he was waving his arms, you
10 didn't see [inaudible]

11 JOSE NAVARRETE: Not at all.

12 DANIEL MARKS: --based on your experience
13 working with him.

14 JOSE NAVARRETE: Not at all.

15 DANIEL MARKS: Because he could be talking
16 about football and be doing that. It's like a nervous tick.

17 JOSE NAVARRETE: Correct, yeah.

18 DANIEL MARKS: All right. Now, let's play
19 this. Can you explain what you're seeing there?

20 NICOLE YOUNG: [inaudible] I just put it back.

21 JOSE NAVARRETE: Do you want me to play it and
22 then talk about it?

23 DANIEL MARKS: Yeah, why don't you play it.

24 NICOLE YOUNG: Because we're just doing, it's
25 from 5:30 to 6:00, we're just looking at 30 seconds.

1 DANIEL MARKS: Seconds.

2 HEARING OFFICER: Okay.

3 DANIEL MARKS: So, just play it and we'll talk
4 about it. [pause]

5 JOSE NAVARRETE: All right, so what's interesting
6 about this part of the clip is, well first of all, Valdez is
7 still giving him instructions, counseling. He's continually
8 saying, fuck you, I'm not going to listen. I don't need to
9 listen to your rules.

10 If you see this inmate right here, right here. He
11 comes out and he notices the situation and he starts to tell
12 Inmate Norales, hey you need to listen to the officers, calm
13 the fuck down—in his words, calm the fuck down and they'll let
14 you go back to the unit.

15 What makes it more interesting is that, prior—like,
16 two weeks prior—

17 MICHELLE ALANIS: Objection, foundation. None of
18 this is in his reports and what this inmate did two weeks
19 prior, it was not the inmate at issue, it's irrelevant.

20 DANIEL MARKS: Right, but he's allowed to say
21 what's going on. It's in a video that it's in—that they
22 produced, why can't he explain it?

23 HEARING OFFICER: I don't think there's anything
24 objectionable right now. Go on ahead.

25

1 JOSE NAVARRETE: Two weeks prior, I had that
2 inmate on the wall. He was more aggressive. He was shaking.
3 He was more verbally abusive than Inmate Norales and I was
4 able to use the same tactics that I used with Norales to calm
5 him down and actually build a rapport with him and come to an
6 understanding, both of us.

7 So, you'll see him, just walking, he's talking to
8 the inmate. You see Norales, you know, turn and face him and
9 Norales is just saying, fuck that, I'm not listening to these
10 bitch ass fools. [pause]

11 DANIEL MARKS: Now, you could've let him go at
12 this point, but why did you not?

13 JOSE NAVARRETE: No, I couldn't let him go.

14 DANIEL MARKS: And, explain why.

15 JOSE NAVARRETE: Again, he's non-compliant. We
16 haven't resolved the issue. He continually says that he's not
17 going to follow the rules and regulations so, that's why he's
18 not let off the wall.

19 DANIEL MARKS: Okay. We're going to go back
20 then to Exhibit 8. Do you want to take a lunch break now and
21 come back at 1:15?

22 HEARING OFFICER: Is now a good time? Is that
23 what you're telling me?

24 DANIEL MARKS: Yeah, it would be good.

25

1 HEARING OFFICER: All right. Let's do that. You
2 okay with that everybody? Lunch is always a good idea, right?

3 DANIEL MARKS: Yeah.

4 HEARING OFFICER: I'm always pro-lunch.

5 DANIEL MARKS: You need some coffee.

6 HEARING OFFICER: I know. I'm paying very close
7 attention.

8 DANIEL MARKS: Okay. All right.

9 [crosstalk]

10 HEARING OFFICER: I've seen this video a few
11 hundred times myself, you know, now, but-

12 DANIEL MARKS: [crosstalk] and then we'll come
13 back and deal with Willett, it's going to be short and then
14 I'll finish my client and we'll be good to go.

15 HEARING OFFICER: Okay, they'll do the cross and
16 we'll go from there.

17 DANIEL MARKS: Yeah.

18 HEARING OFFICER: That sounds great.

19 DANIEL MARKS: All right. Thanks a lot.

20 HEARING OFFICER: We'll go off the record.

21 OFF THE RECORD

22 ON THE RECORD

23 HEARING OFFICER: We're back on the record in Case
24 #1713379-MG. We're going to interrupt the direct examination
25 of Mr. Navarrete to take a witness kind of out of order. He's

1 sitting in the witness chair right now. Could you raise your
2 right hand, please? Do you solemnly swear that the testimony
3 you're about to give in this hearing will be the truth, the
4 whole truth and nothing but the truth?

5 DEAN WILLETT: Yes.

6 HEARING OFFICER: Thank you. Can you please state
7 and spell your full name for me, please?

8 DEAN WILLETT: Dean Willett, W-I-L-L-E-T-T.

9 HEARING OFFICER: W-I-L-L-E-T-T?

10 DEAN WILLETT: Yes.

11 HEARING OFFICER: Very good, thank you sir. Mr.
12 Marks, you may proceed.

13 DANIEL MARKS: Mr. Willett, where are you
14 employed? Where are you employed?

15 DEAN WILLETT: Department of Corrections.
16 Southern Desert.

17 DANIEL MARKS: Okay. Does he have to speak
18 into the mic so it's recorded?

19 HEARING OFFICER: Yeah, that would help. Yeah.
20 Since we're trying to make a record.

21 DANIEL MARKS: So, can you move the mic, I know
22 it's uncomfortable, but—

23 HEARING OFFICER: I'm assuming these are high-tech
24 mics that are going to capture everything he says.
25

1 DANIEL MARKS: So, you're employed at Nevada
2 Department of Corrections?

3 DEAN WILLETT: Yes, as a Lieutenant. Yes.

4 DANIEL MARKS: And, how long have you been
5 employed as an NDOC Lieutenant?

6 DEAN WILLETT: About a year--11 years and a
7 half.

8 HEARING OFFICER: Okay.

9 DANIEL MARKS: Okay. And, did you start as a
10 correction officer?

11 DEAN WILLETT: Per se, yes.

12 DANIEL MARKS: Okay. And, did you get promoted
13 up the chain?

14 DEAN WILLETT: Yes sir.

15 DANIEL MARKS: And, what institution are you
16 employed at, now?

17 DEAN WILLETT: Southern Desert Correctional
18 Center.

19 DANIEL MARKS: Okay. So, you're a Lieutenant
20 at Southern Desert.

21 DEAN WILLETT: Yes.

22 DANIEL MARKS: Okay. And you know Jose
23 Navarrete?

24 DEAN WILLETT: Yes.
25

1 DANIEL MARKS: And, in October of 2016, what
2 was your title? What was your rank? Were you a Sergeant?

3 DEAN WILLETT: At that time, it was a Sergeant,
4 yes.

5 DANIEL MARKS: Okay. And in October 2016,
6 October 9, 2016, were you a shift commander so to speak at
7 approximately 6:00 in the morning on October 9th?

8 DEAN WILLETT: I believe so, yes.

9 DANIEL MARKS: And, do you recall the day of
10 the week that was?

11 DEAN WILLETT: I don't believe Admin came in
12 that day, so it should've been probably a Saturday or Sunday.

13 DANIEL MARKS: Okay, it was a Sunday. So,
14 Admin meaning, there was no warden, associate warden.

15 DEAN WILLETT: There was nobody, yes.

16 DANIEL MARKS: So, you were the highest ranking
17 person running the prison.

18 DEAN WILLETT: Correct.

19 DANIEL MARKS: And, the person directly under
20 you was, I think a Senior Correction Officer, that was an
21 acting Sergeant.

22 DEAN WILLETT: I believe he was on the desk
23 with me and I believe it was Senior Knatz, which is a
24 Sergeant, as we're speaking now.

25

1 DANIEL MARKS: Okay. But at the time, he was
2 Senior Correction Officer [crosstalk]

3 DEAN WILLETT: Yes.

4 DANIEL MARKS: Okay. And, you had an
5 opportunity to—as the shift commander on the incident
6 involving Jose Navarrete to review the video at some point,
7 correct?

8 DEAN WILLETT: Correct, yes.

9 DANIEL MARKS: Did you review it at or about
10 the time of the incident? You know, around that day? Did you
11 [crosstalk]

12 DEAN WILLETT: After—after the initial
13 incident, yes.

14 DANIEL MARKS: Okay, but around October 9,
15 2016, you reviewed it.

16 DEAN WILLETT: It would—yes, I would've done
17 that as part of my process before I would've wrote my summary
18 statement.

19 DANIEL MARKS: Okay. And, did you believe that
20 Jose either used or permitted to use excessive force?

21 DEAN WILLETT: No, I did not.

22 DANIEL MARKS: Okay. And, you reviewed Jose's
23 report?

24 DEAN WILLETT: Yes, all reports.
25

1 DANIEL MARKS: Okay. And that report that Jose
2 wrote that day was similar to reports he had written several
3 times or many times in the past?

4 DEAN WILLETT: Yes.

5 DANIEL MARKS: And, do you believe he knowingly
6 made a false statement in that report?

7 DEAN WILLETT: I don't believe he attempted to,
8 no.

9 DANIEL MARKS: Do you believe he attempted to
10 mislead?

11 DEAN WILLETT: No, he did not.

12 MICHELLE ALANIS: Objection, speculation.

13 DANIEL MARKS: He reviewed his report--

14 HEARING OFFICER: Sustained.

15 DANIEL MARKS: --who else--

16 MICHELLE ALANIS: He said, sustained.

17 DANIEL MARKS: He--there--he's there, okay. Did
18 you overrule the objection?

19 HEARING OFFICER: Well, I actually sustained it,
20 because he doesn't know anyone else's state of mind. So--

21 MICHELLE ALANIS: Right.

22 HEARING OFFICER: I guess that's a correct
23 statement.

24

25

1 DANIEL MARKS: Okay. You reviewed the report.
2 Jose sent you a copy of the report before he put it on the
3 NOTIS, N-O-T-I-S, correct?

4 DEAN WILLETT: Correct.

5 DANIEL MARKS: And that's your standard
6 operating procedure, correct?

7 DEAN WILLETT: Correct.

8 DANIEL MARKS: And you sent it back and told
9 him, hey he could put it on NOTIS, correct?

10 DEAN WILLETT: After a review, yes.

11 HEARING OFFICER: Okay.

12 DANIEL MARKS: Okay. So, based on that, you
13 didn't think it was false or misleading or you wouldn't have
14 let it go unnoticed, correct?

15 DEAN WILLETT: Correct.

16 DANIEL MARKS: Okay, because it's your neck
17 that's out there too, right?

18 DEAN WILLETT: Correct. We—we—after we read
19 the report, our main objective when we read the report to make
20 sure it's—flows, that it's written properly, not stup—you
21 know, I can't really put any other words, but it's—makes sense
22 and its grammar's correct, best to our knowledge.

23 DANIEL MARKS: Were you consulted by the Warden
24 regarding the termination of Jose?

25 DEAN WILLETT: No sir.

1 DANIEL MARKS: Even though you were the head in
2 chief person that day?

3 DEAN WILLETT: I didn't know nothing that went
4 on after I wrote the report.

5 DANIEL MARKS: Okay. And, you don't think he
6 should've been terminated.

7 DEAN WILLETT: No, I do not think so.

8 MICHELLE ALANIS: Objection, relevance.

9 DANIEL MARKS: Judge.

10 HEARING OFFICER: Yes.

11 DANIEL MARKS: He's in the chain of command.
12 Okay. The Warden wasn't there, correct?

13 HEARING OFFICER: I'm going to overrule the
14 objection.

15 DEAN WILLETT: Correct.

16 DANIEL MARKS: The Associate Warden wasn't
17 there when this happened, correct?

18 DEAN WILLETT: Correct.

19 DANIEL MARKS: You were there, correct?

20 DEAN WILLETT: Yes.

21 DANIEL MARKS: And you had an opportunity, if
22 you wanted, to talk to Jose, correct?

23 DEAN WILLETT: I had [crosstalk], yes.

24 DANIEL MARKS: And he wasn't evasive or hiding
25 anything from you, was he?

1 DEAN WILLETT: No.

2 DANIEL MARKS: After the incident, didn't he go
3 back to his normal duties?

4 DEAN WILLETT: After they wrote the reports and
5 everything, yes, they went, continued feeding.

6 DANIEL MARKS: And, no one asked you what you
7 thought. You never--nobody in a high-level [crosstalk]

8 DEAN WILLETT: No.

9 DANIEL MARKS: --management of the prison said,
10 hey what's going on, what do you think? They didn't want your
11 opinion at all, correct?

12 DEAN WILLETT: Correct. Correct.

13 DANIEL MARKS: Okay.

14 HEARING OFFICER: Okay.

15 DANIEL MARKS: So, the people that made the
16 decision were not at the prison the day of the incident and
17 didn't want input from you or Sergeant Knatz who were actually
18 there.

19 DEAN WILLETT: I cannot say anything about
20 anybody else but for myself, I was not asked about anything.

21 DANIEL MARKS: All right. And you're here
22 pursuant to a subpoena?

23 DEAN WILLETT: Yes sir.

24 DANIEL MARKS: And you also testified at the
25 criminal trial pursuant to a subpoena?

1 DEAN WILLETT: Yes sir.

2 DANIEL MARKS: And you're here—okay. I'll pass
3 the witness.

4 MICHELLE ALANIS: Lieutenant Willett, did you
5 review the video and the report together?

6 DEAN WILLETT: Not first seeing them, no. I
7 read the report, they gave me the report. I read the report.
8 Noting was wrong with it. It seemed legit. However you want
9 to say it. They submitted it. I looked at the video, I
10 watched the video. Then I wrote my report.

11 MICHELLE ALANIS: But you didn't necessarily watch
12 the video and review his report at that same time.

13 DEAN WILLETT: Right, I--

14 MICHELLE ALANIS: Right?

15 DEAN WILLETT: No, because—when they write the
16 report, that's their report.

17 MICHELLE ALANIS: I understand.

18 DEAN WILLETT: If I—if I see something wrong,
19 technically if I tell them, you can't have this, you have to
20 change it this way, I'd be in fault for falsifying any kind of
21 documents or whatever they submit to me, is what they submit.
22 I don't tell them how to change it. I saw their—I saw that
23 and then when I was able to get the video, because the video
24 is not online. It's not—I can—from my computer hook, I have
25 to visually get an MP—I have to get a way—get it downloaded to

1 review it because that computer is so self-contained. It's
2 not connected to the internet or anything.

3 So, then I got the video. I watched the video. I
4 don't go--well, the video he takes 10 steps and Navarrete said
5 he only took five. I don't--that's not my concern. I look at
6 the video and see if I saw anything that was abnormal or
7 anything wrong with it. And Senior Officer Navarrete did not
8 do anything wrong. He saw his--his subordinate, I guess you
9 could say, because he was a Senior and that was an officer,
10 had a use of force with an inmate and he assisted him with
11 that inmate.

12 He approached the inmate. He did his job, what he
13 did. He restrained him without using any excessive force or
14 anything else. No extra kicking or stuff. So, when I saw the
15 video, I didn't see nothing wrong with the video or what they
16 did.

17 MICHELLE ALANIS: That's a little bit more than
18 what I had asked, but okay.

19 DEAN WILLETT: Well, ma'am, you asked--

20 MICHELLE ALANIS: I understand, it's okay.

21 [pause] Lieutenant Willett, if an officer--if an officer has
22 placed in a position where he uses his arm around the inmate's
23 neck and pulls him back, as depicted in the video, do you
24 believe that that--

25 DEAN WILLETT: [crosstalk]

1 MICHELLE ALANIS: Let me finish my question. Do
2 you believe that that needs to be report?

3 DEAN WILLETT: Well, if you watch the video,
4 his original arm goes on the lower place of his shoulder, when
5 he's trying to grab him. The inmate twists and then he put--
6 then his arm comes around his neck. That's what I saw in the
7 video. Because I asked--

8 MICHELLE ALANIS: Okay. That was not my question.

9 DEAN WILLETT: I asked--

10 DANIEL MARKS: Could--Your Honor, could--

11 DEAN WILLETT: But I asked--

12 DANIEL MARKS: --you please allow him to
13 finish.

14 HEARING OFFICER: Well, I thought he was.

15 DANIEL MARKS: He wasn't, he still was
16 explaining it.

17 HEARING OFFICER: Okay, go on.

18 DEAN WILLETT: That's what I did ask Officer
19 [inaudible] about. I asked him about that certain spot of the
20 video, because that was the only question I had. He said, he
21 tried to grab him around here and it slipped up and went
22 around his neck.

23 HEARING OFFICER: Now, on the other hand, you need
24 to listen to the questions to make sure you're [crosstalk]

25 DEAN WILLETT: Okay, I'm just--

1 HEARING OFFICER: It's a two-way street, but
2 that's fine.

3 MICHELLE ALANIS: Okay. And your motioning to
4 your left, but he actually came on the inmate's right.

5 DEAN WILLETT: Well, from the video camera, it
6 shows him standing here and then he came on this—he would've
7 been grabbing the inmate, I believe it was on this side.

8 DANIEL MARKS: Left side, he's pointing to.

9 HEARING OFFICER: Right, that's correct.

10 DEAN WILLETT: This side, the original arm is
11 placed here and then it slipped up.

12 MICHELLE ALANIS: So, I guess, let me rephrase my
13 question to you. If an officer uses that tactic, that
14 technique of placing an arm around an inmate's neck, would you
15 expect that to be written in a report?

16 DEAN WILLETT: I believe it was written in a
17 report.

18 MICHELLE ALANIS: Would you expect also the
19 witnesses who observed that to write that in a report?

20 DEAN WILLETT: You expect sometimes, yes.

21 MICHELLE ALANIS: Okay. Should it be in the
22 report?

23 DEAN WILLETT: Should and is—we're going right
24 back to the same question--

25 MICHELLE ALANIS: No, I'm asking--

1 DEAN WILLETT: --no, you're going right—I can't
2 answer your question because—

3 HEARING OFFICER: It's a hypothetical question.
4 It's not—

5 DEAN WILLETT: Hypothetical, it should be, yes.

6 MICHELLE ALANIS: Okay. And, again, your
7 involvement in this incident, you were the—at the time, the
8 Sergeant on duty, acting Lieutenant, for that—that day,
9 correct?

10 DEAN WILLETT: Well, yeah.

11 MICHELLE ALANIS: But you were not involved in the
12 investigation process of this case, right?

13 DEAN WILLETT: Only investigation I was
14 involved in is—I don't see the incident report, but that's the
15 only type of investigation it is. I don't see you have the—
16 the actual book we make of the incidents.

17 MICHELLE ALANIS: Okay. Let me re--

18 DEAN WILLETT: No, that's what—you're asking
19 me—that's the only thing I investigate is those questions on
20 that packet.

21 MICHELLE ALANIS: Okay.

22 DEAN WILLETT: That's what I'm trying—that's
23 the only investigations I do on the—was ever on that packet.

24 MICHELLE ALANIS: And, once you have reviewed the
25 reports made by the officers and completed the packet that

1 you're referencing, your involvement at that point ended,
2 correct?

3 DEAN WILLETT: Correct, yes ma'am.

4 MICHELLE ALANIS: Okay. You were not involved in
5 the investigation--

6 DEAN WILLETT: No ma'am.

7 MICHELLE ALANIS: --handled by the IG's Office,
8 right?

9 DEAN WILLETT: No ma'am.

10 MICHELLE ALANIS: You didn't adjudicate this
11 matter with the allegations--

12 DEAN WILLETT: Correct.

13 MICHELLE ALANIS: --of misconduct, right? And,
14 you didn't review or provide any input into the specificity of
15 charges.

16 DEAN WILLETT: Correct.

17 MICHELLE ALANIS: Okay.

18 DEAN WILLETT: Can I ask you something ma'am?

19 MICHELLE ALANIS: No.

20 DEAN WILLETT: Okay.

21 MICHELLE ALANIS: Only we get to ask the
22 questions.

23 DEAN WILLETT: No, no, I was just--to clarify--
24 just to clarify.

25 MICHELLE ALANIS: He can--he can follow with you.

1 DEAN WILLETT: Okay.

2 MICHELLE ALANIS: If he wants to.

3 DEAN WILLETT: Okay.

4 MICHELLE ALANIS: [pause] I don't have any
5 further questions at this time.

6 DANIEL MARKS: I have a couple of questions,
7 Your Honor. Lieutenant, if you saw a chokehold that you
8 thought violated policy, you obviously could report that up
9 your chain of command, correct?

10 DEAN WILLETT: Correct, yes.

11 DANIEL MARKS: And you could take disciplinary
12 action including sending the officers home that day, if you
13 thought they—if someone kicked or hit someone in the face or
14 used excessive force, you could take immediate action as the
15 shift commander, correct.

16 DEAN WILLETT: Correct, yes.

17 DANIEL MARKS: So, you didn't think there was
18 excessive force, in the incident?

19 DEAN WILLETT: No, I did not think it was.

20 DANIEL MARKS: And you believed that Officer
21 Valdez attempted to take the inmate down, you pointed to your
22 left shoulder. As he unartfully did that, he wound up
23 tussling on the ground.

24 DEAN WILLETT: Yes.

25

1 DANIEL MARKS: You didn't think he used a
2 chokehold.

3 DEAN WILLETT: No, I do not think so.

4 DANIEL MARKS: And you told that—you told
5 Associate Warden Adams you didn't think there was excessive
6 force, correct?

7 DEAN WILLETT: Correct. Correct.

8 DANIEL MARKS: And Adams decided to do whatever
9 he did, correct?

10 DEAN WILLETT: Correct, yes.

11 DANIEL MARKS: All right. And, when you think
12 of excessive force, you think of kicking, hitting in the face,
13 hitting against the wall—

14 MICHELLE ALANIS: Objection, relevance.

15 DANIEL MARKS: --using pepper spray
16 unnecessarily, using a baton unnecessarily, is that right?

17 DEAN WILLETT: Correct.

18 HEARING OFFICER: It's kind of—I sustained the
19 objection, but whatever.

20 DANIEL MARKS: You did?

21 HEARING OFFICER: Kind of, yeah.

22 DANIEL MARKS: Well, shouldn't you know what
23 excessive force is in the prison?

24 HEARING OFFICER: His definition—what he generally
25 thinks excessive force is?

1 DANIEL MARKS: Yeah.

2 HEARING OFFICER: I don't know, does that have a
3 lot of relevance?

4 MICHELLE ALANIS: It's not relevant.

5 DANIEL MARKS: [crosstalk] there's nothing in
6 the book that defines excessive force. Shouldn't we know from
7 the head person the day of the incident who was there, what's
8 excessive force?

9 HEARING OFFICER: Okay.

10 MICHELLE ALANIS: Actually the AR can-

11 DANIEL MARKS: No, it doesn't define it.

12 MICHELLE ALANIS: --it says, proportionate.

13 DANIEL MARKS: But it doesn't define it.
14 Shouldn't we know he thinks of as excessive force.

15 HEARING OFFICER: Okay, so that's the question.
16 You're asking him what he thinks typically constitutes
17 excessive force in the prison.

18 MICHELLE ALANIS: I still think it's irrelevant.
19 His opinion is irrelevant.

20 HEARING OFFICER: Let's hear it.

21 DANIEL MARKS: You can answer.

22 DEAN WILLETT: What they did fell within the
23 confines of-

24 HEARING OFFICER: Well, no, that wasn't the
25 question. What kind of things-

1 DANIEL MARKS: What's excessive? [crosstalk]

2 DEAN WILLETT: Excessive, just going by what
3 the AR says. They use enough force to put the inmate in
4 complaint—I mean, in compliance. They didn't use any excess.
5 They didn't have to do anything other—the inmate [inaudible]
6 it appears they gave the inmate the command to surrender and
7 he put his hands back, done. No extra force was necessary,
8 which is kicking or doing extra punching or going across more
9 than they're authorized to do.

10 DANIEL MARKS: Okay. I think that answers it.
11 And, generally cuffing up an inmate is not considered
12 excessive force.

13 DEAN WILLETT: No, it's not.

14 DANIEL MARKS: That's a judgment call, correct?

15 DEAN WILLETT: For the safety of the officers,
16 yes.

17 DANIEL MARKS: Okay. I'll pass the witness.

18 MICHELLE ALANIS: I don't have anything.

19 HEARING OFFICER: All right, no further.

20 MICHELLE ALANIS: No.

21 HEARING OFFICER: All right, well thank you
22 Lieutenant Willett. We appreciate your testimony today.

23 DEAN WILLETT: No problem.

24 DANIEL MARKS: You can leave.

25 DEAN WILLETT: Thank you.

1 DANIEL MARKS: Thank you. Be safe. Thanks a
2 lot.

3 HEARING OFFICER: Is—

4 DANIEL MARKS: I'll call Jose Navarrete back to
5 the stand.

6 HEARING OFFICER: Back.

7 DANIEL MARKS: If he could take a position by
8 the video.

9 HEARING OFFICER: Yes, please yes.

10 DANIEL MARKS: We're now back to Video 8,
11 Exhibit 8, Clip 5. [pause]

12 HEARING OFFICER: All right. Let me give you the
13 mouse back and the—oh, this is it. We have Exhibit 11 in
14 there, you want 8?

15 NICOLE YOUNG: Yes. And then if I could get
16 that copy.

17 HEARING OFFICER: Okay.

18 [crosstalk while setting up video]

19 HEARING OFFICER: Okay, we're on Exhibit 11 and
20 now we're going back to 8.

21 DANIEL MARKS: Correct, to stay in
22 chronological order.

23 HEARING OFFICER: And, just to tell the record
24 what we're doing here, we're going back to the direct
25 examination by Mr. Marks of Mr. Navarrete. [pause]

1 DANIEL MARKS: For your notes, Exhibit 8, Clip
2 5.

3 HEARING OFFICER: Okay.

4 DANIEL MARKS: So, we'll play it, like we did
5 in the morning and then we'll have [crosstalk]

6 HEARING OFFICER: Okay.

7 DANIEL MARKS: [pause]

8 JOSE NAVARRETE: All right. So, what you're
9 seeing is Officer Wachter coming out of the chow hall. Pretty
10 sure it's empty at this time and he had just called another
11 unit, a dorm unit, coming from this area over here in the
12 right corner, right upper corner. Inmate Norales at this time
13 is just agitated. He's slapping his hand on the wall.
14 Looking back and forth.

15 Officer Valdez is just again, instructing him on the
16 rules and regulations, letting him know that this could be a
17 daily occurrence, not just-just with any officer in general,
18 that he can be pulled over and searched and just to expect it.

19 At this moment, Norales is just laughing and saying,
20 fuck you guys, I'm not fuckin' listening. You guys are a
21 fuckin' joke. I sit down on the windowsill to again, try to
22 get him to match my demeanor. To try to calm him down.
23 There's a cooling off technique, I'm trying to just let him
24 cool off. Let him calm down.

25

1 And then, he continually looks left, looks right.
2 Moving his hands a lot. Always continually just saying, I'm
3 not going to listen, you guys can fuck off. Then I
4 eventually, I get up and you see me walk kind of towards,
5 around Valdez because I see the next unit coming up for
6 breakfast.

7 DANIEL MARKS: The next clip would be Clip 8.

8 HEARING OFFICER: Okay. [pause]

9 JOSE NAVARRETE: Here again, you see Inmate
10 Norales not looking straight ahead. Continues with his verbal
11 abuse and I go to lean on the wall with my left shoulder. At
12 that point, you already see Inmate Norales start to move his
13 left arm and hand off the wall.

14 The reason I'm doing this, again, just like when I
15 was sitting on the wall, to match—to have him match my
16 demeanor. I'm trying to deescalate this whole time. This
17 whole 10 minutes, I'm trying to give him ample opportunity to
18 correct his behavior, to reassess the situation, so we don't
19 have to go hands on with him.

20 DANIEL MARKS: And, why would you not want to
21 go hands on?

22 JOSE NAVARRETE: Again, that's like the last
23 resort that we want to—we want to do. At that time, like I
24 said, we were on partial lockdown. So, the tension was pretty
25

1 high at that point. Again, he's moving his left arm and hand
2 off the wall. Three times.

3 DANIEL MARKS: Okay. Then we're going to go to
4 Exhibit 9, which is the full video but we're going to start at
5 10:45, which is going to show the takedown by Valdez.

6 HEARING OFFICER: Clip 9?

7 DANIEL MARKS: No, we're going to Exhibit 9,
8 sorry.

9 HEARING OFFICER: Exhibit 9, all right. [pause]
10 There's that. Exhibit 9 is the whole event you said?

11 DANIEL MARKS: Right. We're going to start at
12 10:45. It's the whole video, but we're going to start for
13 this purpose at 10:45.

14 HEARING OFFICER: Right, I got it. [pause] And
15 this is a slowed down version?

16 DANIEL MARKS: Yeah. [pause] I think you can
17 pause it right there. So, can you explain through here,
18 what's going on?

19 JOSE NAVARRETE: So, right now, Officer Valdez is
20 giving Norales instructions not to move. He does it more than
21 once, especially after he's moving his hands off the wall
22 three times. He's telling him that if he does it again, he's
23 going to take it as an act of aggression, act accordingly.
24 Inmate moves his hand that third and last time and that's when
25 you see Officer Valdez move in and while he's moving in, he

1 tells the inmate that he's going to restrain him. So, that's—
2 moves his hand. [pause] He's giving him the instructions.
3 Inmate Norales is still saying, fuck you, fuck off. He's
4 giving the instruction that he's going to restrain him and
5 we're going to see Inmate Norales cock his elbow, push off and
6 that's where Officer Valdez has to push the inmate into the
7 wall to gain control of him. Then he goes over with his right
8 arm, to attempt to restrain him but because the inmate is
9 resisting, he's tensed up, he has to—he has no other ability
10 but to go down with him, so he reaches around. What I saw, at
11 that moment in that split second was him reaching around,
12 grabbing his shoulder and then they turned and they go to the
13 ground. [pause] And then, here, you see Inmate Norales
14 resisting, he almost jumps back at this moment. And then he
15 decides to go in at this point.

16 So, there was multiple points where he was non-
17 compliant, not listening to orders, not listening to
18 directives that Valdez was giving him.

19 DANIEL MARKS: Now, was that take down a
20 chokehold in your experience?

21 JOSE NAVARRETE: Not at all. That was a
22 redirection or an attempt at redirection which you're taught
23 in defense tactics [crosstalk]
24
25

1 DANIEL MARKS: Can you show the difference on
2 me as to what would be a chokehold and what Officer—and what
3 did—his hands were like this and he was kind of turning.

4 JOSE NAVARRETE: So, Officer Valdez came—a
5 chokehold would've been like this and like this, sorry. But
6 what Officer Valdez did was come around, grab him and they
7 turned.

8 DANIEL MARKS: So, it looks like it's coming
9 around and that but it's not.

10 JOSE NAVARRETE: Correct.

11 DANIEL MARKS: But you know from your
12 experience what a chokehold is if you want to use a chokehold.

13 JOSE NAVARRETE: Right.

14 DANIEL MARKS: And from your experience, this
15 is not a chokehold.

16 JOSE NAVARRETE: Correct. I know one, I mean, I
17 know it from both sides. From being applied to and applying
18 myself.

19 DANIEL MARKS: So, you didn't feel, in your
20 opinion, that this was a chokehold.

21 JOSE NAVARRETE: Not at all.

22 DANIEL MARKS: In may have been an inartful
23 takedown, it wasn't the prettiest takedown.

24 JOSE NAVARRETE: Correct.

25 DANIEL MARKS: But it wasn't a chokehold.

1 JOSE NAVARRETE: And then, like I was saying,
2 every use of force is different. The amount that the inmate
3 resists is different, so you can teach a technique and once
4 you're there, it's not going to happen, step-by-step how
5 you're taught.

6 DANIEL MARKS: Now, the other issue is, they
7 said, well Valdez didn't take out his handcuffs. Why would
8 Valdez not take out his handcuffs?

9 JOSE NAVARRETE: Well, we're taught multiple
10 techniques on restraint. There's not just one technique.
11 When you have a non-compliant inmate, you want to gain control
12 of that inmate before you reach for your handcuffs. If you
13 reach for your handcuffs before you're dealing with that non-
14 compliant inmate, that set of handcuffs can become a weapon
15 against you. I mean, in this case, maybe Officer Valdez
16 couldn't even have taken him down if he had the restraints
17 already out.

18 DANIEL MARKS: Now, based on your experience
19 and training, at the split second Officer Valdez was going to
20 cuff up the inmate, could you have stopped Officer Valdez?

21 JOSE NAVARRETE: Not at all.

22 DANIEL MARKS: And, why would you not stop him?

23 JOSE NAVARRETE: Just like you said, it was split
24 second, so there was nothing I can do.
25

1 DANIEL MARKS: And, are you taught to stop
2 officers if you think they're acting legitimately?

3 JOSE NAVARRETE: Not at all.

4 DANIEL MARKS: Would that cause more security
5 problems if you're fighting with another officers?

6 JOSE NAVARRETE: It definitely will. Yeah. It
7 causes big concern, especially when inmates are around.

8 DANIEL MARKS: Because it's you, Valdez and
9 Wachter looking the other way.

10 JOSE NAVARRETE: Correct.

11 DANIEL MARKS: And that's it, in that whole
12 yard.

13 JOSE NAVARRETE: Correct.

14 DANIEL MARKS: So, if you got into a fight with
15 Valdez because you thought he used too much force, basically
16 the place has got one guy.

17 JOSE NAVARRETE: Correct.

18 DANIEL MARKS: And that's an absolute security
19 nightmare, correct?

20 JOSE NAVARRETE: Correct. That and, Inmate
21 Norales being non-compliant, aggressive, agitated as he is, if
22 I start fighting with Officer Valdez then he might just join
23 me, fighting him.

24

25

1 DANIEL MARKS: All right. Now, if you saw
2 somebody kick or hit or something like that, would that be
3 excessive?

4 JOSE NAVARRETE: Yeah.

5 DANIEL MARKS: And, would that be something you
6 definitely would put in a report if you saw like, clear
7 hitting or kicking?

8 JOSE NAVARRETE: Definitely would. And, not only
9 that, I would intervene at that point.

10 DANIEL MARKS: For clear kicking or hit.

11 JOSE NAVARRETE: Correct.

12 DANIEL MARKS: But in this scenario, you felt
13 you had to restrain the inmate and call for essentially back-
14 up, correct?

15 JOSE NAVARRETE: Definitely. Just because he was
16 non-compliant the whole time, resisting. He resisted the
17 restraint.

18 DANIEL MARKS: Now, there was some criticism of
19 you of having the inmate on the wall, they said 15 minutes,
20 but we think it was a little under 11. Can you explain why
21 the inmate was on the wall that long?

22 JOSE NAVARRETE: Definitely. There's multiple
23 reasons. First, in a situation with Search and Escort, if you
24 have a problem, the first instinct should never be, let me
25 call Sergeant or let me take this inmate to a Sergeant. We're

1 there to deal with the situation. We're there to correct the
2 behavior. I wanted to build a rapport with this inmate that I
3 didn't know. I wanted to counsel him. I didn't want to pass
4 the buck. I didn't want to leave or let him go back to his
5 unit where he was agitated already, saying that he wasn't
6 going to listen to the rules and let another officer deal with
7 him when it could start another fight with the officer or
8 another inmate because he's so agitated.

9 Another reason is because we were so short staffed,
10 again I said, if we were to restrain him and he was going to
11 comply with the restraints two of us would have to physically
12 walk him down to Operations. So, you're talking about a 4-5
13 minute walk to the other side of the prison, of the
14 institution. Then we have to stay with that inmate until the
15 Sergeant and/or Lieutenant is done talking to them and figures
16 out what he's going to do with them. So, that can-can vary
17 from like 10-20 minutes, of the whole situation happening and
18 getting resolved. In that time, you're left with one officer
19 watching 300-500 inmates depending on how many inmates are-how
20 many culinary halls we have running.

21 DANIEL MARKS: Did you consider cuffing up an
22 inmate a use of force?

23 JOSE NAVARRETE: No.

24 DANIEL MARKS: Now, in this incident, was the
25 inmate physical hurt?

1 JOSE NAVARRETE: No.

2 DANIEL MARKS: After the incident, what did you
3 do? Did you do your report right away?

4 JOSE NAVARRETE: No. I had to finish the feeding
5 at the culinary chow and after that was done, we got food
6 ready to do in-house feedings for Unit 5 and 6, which I then
7 completed. Then, after that, that's when I was able to sit
8 down and write my report which was like, roughly four hours
9 later or something like that.

10 DANIEL MARKS: Now, if this was such a major
11 incident, would—in your experience, could you have been
12 removed from the yard immediately if someone thought you
13 really used excessive force?

14 JOSE NAVARRETE: Yes.

15 DANIEL MARKS: And, essentially just been taken
16 off duty.

17 JOSE NAVARRETE: Yeah, I would—yeah, I'd be taken
18 to Operations. We would have a conversation and we'd go from
19 there.

20 DANIEL MARKS: So, at the time of the incident,
21 was it con—in your mind, did you think this was a big deal or
22 a major incident? In your experience?

23 JOSE NAVARRETE: Not at all. I thought it was a
24 normal use of force. Normal takedown. [inaudible]

25

1 DANIEL MARKS: Correct. And, people are cuffed
2 up almost every day.

3 JOSE NAVARRETE: Every day.

4 DANIEL MARKS: So, you didn't consider this out
5 of the ordinary.

6 JOSE NAVARRETE: Not at all.

7 DANIEL MARKS: And you had been there eight and
8 a half years.

9 JOSE NAVARRETE: Yes.

10 DANIEL MARKS: Okay. Now, when you did your
11 report, did you get together with Valdez and somehow do the
12 same report?

13 JOSE NAVARRETE: Not at all. I wrote my own
14 report.

15 DANIEL MARKS: Did you try to cover something
16 up on what Valdez did?

17 JOSE NAVARRETE: Not at all.

18 DANIEL MARKS: In your opinion, I understand
19 you didn't think Valdez used excessive force. Correct?

20 JOSE NAVARRETE: Correct.

21 DANIEL MARKS: But even if he did use excessive
22 force, could you have done anything differently?

23 JOSE NAVARRETE: Not at all.

24

25

1 DANIEL MARKS: Okay. And normally, would you
2 put in your report what you perceived knowing there's a video
3 and higher ups would decide what Valdez did?

4 JOSE NAVARRETE: Correct.

5 DANIEL MARKS: You wouldn't—if it wasn't clear
6 cut, you wouldn't necessarily say, in my opinion Valdez used
7 excessive force, that's not normally your job.

8 JOSE NAVARRETE: Not at all. I'm supposed to
9 write what I do in my reports and about the incident. When
10 Valdez wrote his report, he has two reports. He has a Use of
11 Force report and an O28. If you look at that, his Use of
12 Force is very detailed. The O28 is more of a summary of what
13 happened.

14 DANIEL MARKS: And you know there are cameras,
15 correct?

16 JOSE NAVARRETE: Correct, yeah.

17 DANIEL MARKS: Were you trying to hide
18 anything?

19 JOSE NAVARRETE: Not at all.

20 DANIEL MARKS: And, you weren't trying to cover
21 up for Valdez?

22 JOSE NAVARRETE: Not at all.

23 DANIEL MARKS: And, did you send your report to
24 your Sergeant before you put it on the NOTIS system?

25 JOSE NAVARRETE: Yes, I emailed it to him.

1 DANIEL MARKS: Okay. And, how many reports of
2 that nature, not a use of force, but just the 028, how many do
3 you think you did over the eight and half years?

4 JOSE NAVARRETE: Over 100 probably.

5 DANIEL MARKS: And, if somebody wanted changes,
6 did you have times where people said, you've got to add this—
7 not tell you what to say, but just say, for higher up or for
8 legal reasons, you got to put more meat on the bones, you've
9 got to put more stuff in there.

10 JOSE NAVARRETE: Yeah, a few times where they had
11 that conversation with me and we have the ability to have an
12 addendum to our report.

13 DANIEL MARKS: And, were you told in this
14 incident they needed more facts or more information?

15 JOSE NAVARRETE: Not at all, not once.

16 DANIEL MARKS: So, when you did your report,
17 was this really just a garden variety day?

18 JOSE NAVARRETE: It definitely was. At least, I
19 thought.

20 DANIEL MARKS: Okay. Now, I have to—I want to
21 show you a couple of Exhibits, so if you could return to the
22 hot seat. I want to show you Exhibit 6 in the big book,
23 Exhibit C, I'm sorry. So, it's in the big book, Exhibit C.
24 It's bates stamped 121 at the bottom. And, is the Code of
25 Ethics for NDOC Correction Officers 33901(1)–

1 HEARING OFFICER: What page are you on again sir?

2 DANIEL MARKS: 121.

3 HEARING OFFICER: Thank you.

4 JOSE NAVARRETE: Yes.

5 DANIEL MARKS: I'm just going to call your
6 attention to a couple of these that I think apply.

7 Specifically Subsection 3. Are you familiar with the
8 maintaining mutual respect and professional cooperation?

9 JOSE NAVARRETE: Yes, I am.

10 DANIEL MARKS: And what does that mean to you
11 in terms of your dealings with Valdez?

12 JOSE NAVARRETE: It's just, you have to deal in a
13 professional manner and not go outside the scope of your
14 duties.

15 DANIEL MARKS: Meaning, could you have stopped
16 Valdez, in front of the inmate?

17 JOSE NAVARRETE: No, because I mean, he wasn't
18 doing anything wrong. He wasn't doing anything excessive.
19 So, no, there was no-no reason to stop him.

20 DANIEL MARKS: And then #4, employees shall-
21 employees meaning you-shall be firm, fair and consistent in
22 the performance of their duties.

23 JOSE NAVARRETE: Correct.

24 DANIEL MARKS: Is that something you kind of
25 live by in your work at NDOC?

1 JOSE NAVARRETE: It definitely is. It's one of
2 the first things we're taught in the Academy. It's driven
3 into us.

4 DANIEL MARKS: And, do you think you acted
5 firm, fair and consistent in this case?

6 JOSE NAVARRETE: I do. I definitely do. I
7 maintained my composure. I gave the inmate ample opportunity
8 to correct his behavior and this is the way I deal with every
9 other inmate. So, it's very consistent.

10 DANIEL MARKS: Then it says, employees should
11 treat other with dignity, respect, compassion and provide
12 humane custody and care, void of all retribution, harassment
13 or abuse. Do you believe you followed that?

14 JOSE NAVARRETE: I definitely do.

15 DANIEL MARKS: Okay. Now, if you go to Exhibit
16 D, Page 405.

17 JOSE NAVARRETE: Exhibit D or B?

18 DANIEL MARKS: I have it as Exhibit D.

19 HEARING OFFICER: D.

20 DANIEL MARKS: AR 405, Page 179, sorry. That's
21 the Administrative Use of Force policy, you're familiar with
22 that, correct?

23 JOSE NAVARRETE: Yes.

24 DANIEL MARKS: And, if you look—and there's
25 definitions, correct?

1 JOSE NAVARRETE: Yes, there is.

2 DANIEL MARKS: Now, I have noted that there's
3 passive compliance measures.

4 JOSE NAVARRETE: Correct.

5 DANIEL MARKS: Do you see that?

6 JOSE NAVARRETE: Yes.

7 DANIEL MARKS: And it talks about technique
8 strategy used by staff to gain compliance, control of an
9 inmate without forcible, physical contact.

10 JOSE NAVARRETE: Right.

11 DANIEL MARKS: Were you doing that?

12 JOSE NAVARRETE: I definitely was, I was--

13 DANIEL MARKS: Can you elaborate?

14 JOSE NAVARRETE: I was counseling him. I was
15 using a technique that, it's in our policies of pulling off,
16 so kind of walking away, letting him reassess the situation.
17 Like I said, being in the calm demeanor that I was, I was
18 hoping that he would match it. So, I think that was another
19 passive compliance measure.

20 DANIEL MARKS: Okay. Did you do everything to
21 avoid cuffing him up and bringing him to the Sergeant?

22 JOSE NAVARRETE: I did.

23 DANIEL MARKS: Okay. Let's go to Exhibit 1,
24 Page 5 which is your notice, report. And you call it an O28,
25 is that right?

1 JOSE NAVARRETE: Yes. Okay.

2 DANIEL MARKS: So, I think the two issues are—
3 Your Honor, are you there? It's Exhibit 1, Page 5.

4 HEARING OFFICER: I'm getting there. Yes.

5 DANIEL MARKS: Okay. So, generally it's—you
6 type it yourself into the NOTIS system, correct?

7 JOSE NAVARRETE: Correct.

8 DANIEL MARKS: And, is this generally the
9 length that you've been trained and historically has been
10 accepted at the institution?

11 JOSE NAVARRETE: Yes, that's correct.

12 DANIEL MARKS: And, in other words, is this
13 what you have done on a regular basis in the eight and a half
14 years?

15 JOSE NAVARRETE: It has been.

16 DANIEL MARKS: Okay. Now, the two issues that
17 I think you're being criticized for is when you say, Norales
18 came off the culinary wall while Valdez was attempting to
19 restrain him, resulting in a spontaneous use of force. First
20 of all, is it a term of art, spontaneous versus planned?

21 JOSE NAVARRETE: It is what, I'm sorry?

22 DANIEL MARKS: A term of art, meaning in the
23 prison, there's either spontaneous or planned, is that right?

24 JOSE NAVARRETE: Yes.

25

1 DANIEL MARKS: So, is that why you used the
2 word "spontaneous"?

3 JOSE NAVARRETE: Correct.

4 DANIEL MARKS: That's a word that you guys use,
5 right?

6 JOSE NAVARRETE: Yes.

7 DANIEL MARKS: It wasn't planned force.

8 JOSE NAVARRETE: Not at all.

9 DANIEL MARKS: Why did you use the word "coming
10 off the wall", what were you intending to explain?

11 JOSE NAVARRETE: Well, in the video, you can see
12 Inmate Norales take his left hand off the wall, cock his elbow
13 and at the same time, he moves his head and body. That's when
14 Valdez pushes him back into the wall. So, that whole motion
15 was him coming off the wall.

16 DANIEL MARKS: And, at the time, did you think
17 you needed to add more detail?

18 JOSE NAVARRETE: Not at all. I figured that
19 Officer Valdez's Use of Report would be detailed enough to
20 show that.

21 DANIEL MARKS: So, Officer Valdez would say
22 they were cursing, he was non-compliant, I tried to cuff him
23 up. He would give all those details.

24 JOSE NAVARRETE: Correct.

25

1 DANIEL MARKS: And again, you sent this to
2 Lieutenant Willett and he said, file this actually.

3 JOSE NAVARRETE: Correct, yes.

4 DANIEL MARKS: Okay. And no one said, hey we
5 need more information or more meat on the bones?

6 JOSE NAVARRETE: Not at all, not once.

7 DANIEL MARKS: Were you intending to knowingly
8 mislead anyone with this?

9 JOSE NAVARRETE: Not at all.

10 DANIEL MARKS: Is there a reason why you didn't
11 detail the method that Valdez brought the inmate to the
12 ground? In other words, they're saying, oh it's a chokehold,
13 it's so obvious it's a chokehold, in your opinion, did you see
14 a chokehold when you watched it in real-time?

15 JOSE NAVARRETE: No, like I said, it's—you're
16 talking about split seconds, so what I saw was his arm come
17 over, grab the shoulder and then pull, redirect him.

18 DANIEL MARKS: From your experience and
19 training, I think you used it on me, is there a difference
20 between what Officer Valdez did and what you would think is a
21 chokehold?

22 JOSE NAVARRETE: What I did to you was a
23 chokehold. What Officer Valdez did was not—it was a takedown.

24 DANIEL MARKS: But you can see the difference.

25 JOSE NAVARRETE: Definitely can.

1 DANIEL MARKS: So, to you, this was an inartful
2 takedown but not a chokehold.

3 JOSE NAVARRETE: Correct, yeah.

4 DANIEL MARKS: What about the fact that there
5 was some distance from the wall to where Valdez and the inmate
6 wound up? What was the significance of that?

7 JOSE NAVARRETE: That in and of itself just shows
8 the amount of resistance that the inmate was giving off. If
9 he was not resisting and he was compliant, then they would've
10 literally fallen to the ground right in front of the wall, not
11 10 feet, 15 feet away.

12 DANIEL MARKS: Okay. Now, you were aware that
13 the inmate suffered no injuries, he said he was okay,
14 ultimately.

15 JOSE NAVARRETE: Right.

16 DANIEL MARKS: And, is that significant in
17 terms of whether excessive force is used?

18 MICHELLE ALANIS: Objection, relevance,
19 foundation. I don't think we have anything establishing what
20 the injury necessarily [crosstalk] excessive force.

21 DANIEL MARKS: Yeah, it's in evidence, it's
22 Exhibit—all right, then let's go to Exhibit 2. It's in
23 evidence.

24 HEARING OFFICER: It was a good objection.

25 DANIEL MARKS: Exhibit 2.

1 MICHELLE ALANIS: So, I take it's overruled?

2 HEARING OFFICER: No, sustained because he's going
3 to change it.

4 MICHELLE ALANIS: Okay.

5 HEARING OFFICER: He's going to go to Exhibit 2.

6 DANIEL MARKS: Did you review Exhibit 2 which
7 is the medical report?

8 JOSE NAVARRETE: Yes.

9 HEARING OFFICER: I would've made the same
10 objection if I were you. Where are we now?

11 DANIEL MARKS: Exhibit 2.

12 JOSE NAVARRETE: Exhibit 2.

13 HEARING OFFICER: I've read this, correct. This
14 is the hospital records.

15 DANIEL MARKS: Page 2 of Exhibit 2.

16 HEARING OFFICER: Yeah, I read it.

17 DANIEL MARKS: Where it says, no injuries in
18 the middle of the page.

19 JOSE NAVARRETE: Correct.

20 DANIEL MARKS: So, if someone used excessive
21 force, theoretically, as being stipulated, they were excessive
22 force that at least it would be an issue of potential
23 injuries?

24 JOSE NAVARRETE: Yeah, there—

25 MICHELLE ALANIS: Objection. Speculation.

1 HEARING OFFICER: You know, I don't understand.
2 Is injury necessary have to be associated with excessive force
3 or not, I don't know the answer to that.

4 DANIEL MARKS: No, but it's another indication
5 that it was--

6 HEARING OFFICER: Well, yeah, it's a factor of
7 course, like everything else.

8 DANIEL MARKS: It's a factor, yeah, nothing is
9 dispositive. If you look down at the page, it says, denies
10 pain or injury.

11 HEARING OFFICER: But, see that's more of an
12 argument, I would think rather than something he can--

13 MICHELLE ALANIS: Yeah, it's legal argument.

14 HEARING OFFICER: --if there's really--if it
15 doesn't matter, it doesn't matter.

16 DANIEL MARKS: Okay. All right, but it's in
17 evidence. All right. Okay. Then, in conclusion, do you
18 think you permitted the use of excessive force?

19 JOSE NAVARRETE: Not at all.

20 DANIEL MARKS: And, do you think you knowingly
21 filed a false and/or misleading report?

22 JOSE NAVARRETE: Not at all.

23 DANIEL MARKS: Okay. Are you asking the
24 Hearing Officer to reverse the termination?

25 JOSE NAVARRETE: I definitely am.

1 DANIEL MARKS: And to reinstate you with all
2 back pay and benefits?

3 JOSE NAVARRETE: Yes.

4 DANIEL MARKS: Okay. I'll pass the witness.
5 Your Honor, I think for housekeeping, I want to make sure that
6 Exhibit 8 and Exhibit 11 are in evidence.

7 HEARING OFFICER: According to—which ones are we
8 talking about?

9 DANIEL MARKS: 8—

10 MICHELLE ALANIS: Exhibit 8 was withheld and my
11 objection at the time was, it was unclear who had made all the
12 notations on there and I don't know that that's been
13 established.

14 DANIEL MARKS: We're using it as demonstrative.

15 HEARING OFFICER: I don't even remember the
16 notations that were on there. Are there notations on there?

17 MICHELLE ALANIS: Yeah, there's like a counting of
18 what they're alleging is him coming off the wall. There's
19 various clips. I know #8 has notations on it.

20 DANIEL MARKS: But we've shown it. We've used
21 it. We're all aware [crosstalk]

22 HEARING OFFICER: I think that there's been enough
23 showing that it depicts the incident that occurred. We're
24 going to admit it, with your objections noted of course.

25 DANIEL MARKS: And then, 11 we showed you.

1 HEARING OFFICER: And, any objection to 11? I
2 believe that's just a copy of the whole event.

3 MICHELLE ALANIS: I don't think I had-

4 DANIEL MARKS: Right, it's a copy of
5 [crosstalk]

6 MICHELLE ALANIS: --an objection.

7 HEARING OFFICER: It is in slow-motion though?

8 DANIEL MARKS: It's slow motion.

9 MICHELLE ALANIS: I think 8 is the one I was
10 objecting to.

11 DANIEL MARKS: Oh, 11 is just showing the
12 people-

13 NICOLE YOUNG: The split screen.

14 DANIEL MARKS: --the split screen of people
15 coming out.

16 NICOLE YOUNG: It's the entire video.

17 DANIEL MARKS: It's the entire video but we
18 showed the split screen of people coming out, the inmate
19 talking to the other inmate.

20 HEARING OFFICER: Any problem with that?

21 MICHELLE ALANIS: It's probably the same objection
22 but I understand you're going to let it-

23 HEARING OFFICER: I think it should come in.
24 Yeah, I do.

25 MICHELLE ALANIS: --in.

1 HEARING OFFICER: So, I'm going to let it in.

2 DANIEL MARKS: Okay, thank you.

3 MICHELLE ALANIS: Are you ready for me to--

4 HEARING OFFICER: I am, ma'am. If you're ready
5 I'm ready.

6 MICHELLE ALANIS: All right. Mr. Navarrete, are
7 you currently employed?

8 JOSE NAVARRETE: Yes.

9 MICHELLE ALANIS: Where are you employed?

10 JOSE NAVARRETE: 24/7 In Touch.

11 MICHELLE ALANIS: I'm sorry, 24?

12 JOSE NAVARRETE: 24/7 In Touch.

13 MICHELLE ALANIS: What is that?

14 JOSE NAVARRETE: It's a call center type
15 business.

16 MICHELLE ALANIS: How long have you been employed
17 there?

18 JOSE NAVARRETE: About a month and a half now.

19 MICHELLE ALANIS: Did you have any employment
20 prior to that?

21 JOSE NAVARRETE: Nope.

22 MICHELLE ALANIS: And, what's your hourly wage
23 there?

24 JOSE NAVARRETE: \$14.00 an hour.

25

1 MICHELLE ALANIS: Okay. And, let's see here.

2 When you were employed with NDOC, you would agree you were
3 required to be familiar with the Administration Regulations?

4 JOSE NAVARRETE: Yes.

5 MICHELLE ALANIS: And, if I could have you turn to
6 Exhibit E in the book.

7 JOSE NAVARRETE: Okay.

8 MICHELLE ALANIS: And this is the Administrative
9 Regulations Acknowledgement that you signed?

10 JOSE NAVARRETE: Correct.

11 MICHELLE ALANIS: Okay. And, you acknowledged on
12 this document that it's your responsibility to read and
13 familiarize yourself with the regulations, right?

14 JOSE NAVARRETE: Correct.

15 MICHELLE ALANIS: And that's including AR 339 the
16 Code of Ethics and Employee Conduct?

17 JOSE NAVARRETE: Yes.

18 MICHELLE ALANIS: And you understood that this
19 regulation governs causes for disciplinary action?

20 JOSE NAVARRETE: Yes.

21 MICHELLE ALANIS: And it governs on duty conduct?

22 JOSE NAVARRETE: Yes.

23 MICHELLE ALANIS: And you understood that AR
24 339.07.09, False and Misleading Statements, a violation of
25 that would be a Class V offense?

1 JOSE NAVARRETE: Yes.

2 MICHELLE ALANIS: And you understood that a Class
3 V offense calls for a dismissal?

4 JOSE NAVARRETE: Yes.

5 MICHELLE ALANIS: And you understood that a first
6 offense of a Class V offense could lead to a dismissal,
7 correct?

8 JOSE NAVARRETE: Yes.

9 MICHELLE ALANIS: And that's with even a good
10 record, good evaluations, right?

11 JOSE NAVARRETE: Yes.

12 MICHELLE ALANIS: And, same with AR 339.07.17, the
13 Use of Force or Permitting the Use of Force, you understood
14 that that was a Class IV to V offense?

15 JOSE NAVARRETE: Yes.

16 MICHELLE ALANIS: And, same thing with that, with
17 a Class IV offense, you understand that the penalties go up to
18 a dismissal for the first offense, right?

19 JOSE NAVARRETE: Right.

20 MICHELLE ALANIS: And again, if it's considered a
21 Class V, that would be a dismissal on the first offense,
22 right?

23 JOSE NAVARRETE: Correct.
24
25

1 MICHELLE ALANIS: And, as a correctional officer,
2 you were required to sign your Employee Work Performance
3 Standards?

4 JOSE NAVARRETE: Yes, I was.

5 MICHELLE ALANIS: And, if you could flip to
6 Exhibit F. Is this the work performance standards that you
7 signed?

8 JOSE NAVARRETE: Yes, it is.

9 MICHELLE ALANIS: Okay. And, this governs all the
10 job elements, job duties that you have at your job as a
11 correctional officer?

12 JOSE NAVARRETE: Yes.

13 MICHELLE ALANIS: Okay. And if I could have you
14 look at Job Element #1. Very first bullet point. You
15 understood that you needed to comply with the Administrative
16 Regulations and DOC procedures for control on inmate
17 activities, right?

18 JOSE NAVARRETE: Right.

19 MICHELLE ALANIS: And also, the second to last
20 bullet, you understood that you need to submit written
21 documentation of any deficiencies.

22 JOSE NAVARRETE: Right.

23 MICHELLE ALANIS: Okay. And if I could have you
24 flip the page and look at Job Element #2, Training. And, just
25

1 for clarification, this is your Work Performance Standards as
2 a Senior Correctional Officer, right?

3 JOSE NAVARRETE: Correct.

4 MICHELLE ALANIS: Okay. So, the job element there
5 is serve as a lead worker for subordinate officers and provide
6 on the job training to subordinate officers on duties of
7 assigned areas. You understood that that was one of you
8 required duties, correct?

9 JOSE NAVARRETE: Correct.

10 MICHELLE ALANIS: And, looking at Job Element #3,
11 your legal responsibilities. You understood that you needed
12 to report and document all violations, right?

13 JOSE NAVARRETE: Correct.

14 MICHELLE ALANIS: And, same thing with Job Element
15 #10, you had to maintain a good work ethic.

16 DANIEL MARKS: There is no #10.

17 MICHELLE ALANIS: Job Element #10, the category is
18 Work Ethic.

19 DANIEL MARKS: Okay, got it.

20 MICHELLE ALANIS: I'm sorry, did you say-you did
21 acknowledge the work ethic duty?

22 JOSE NAVARRETE: Yes.

23 MICHELLE ALANIS: Okay. And looking at Job
24 Element #13, Professionalism. You acknowledged that you must
25

1 display a professional demeanor at all times when interacting
2 with staff and inmates, right?

3 JOSE NAVARRETE: Right.

4 MICHELLE ALANIS: And, if I could have you turn to
5 Exhibit J.

6 JOSE NAVARRETE: Okay.

7 MICHELLE ALANIS: Is it in there, actually. I
8 know we had some issues with certain documents.

9 JOSE NAVARRETE: What is that you're looking for?

10 HEARING OFFICER: A-H are admitted, J and L are
11 under seal, right?

12 JOSE NAVARRETE: That's the 405 OP?

13 MICHELLE ALANIS: Yes, OP 405, okay. I just
14 wanted to make sure because I couldn't remember if we fixed
15 that problem of some of the copies not being in there. So,
16 you acknowledged that you were familiar with Operational
17 Procedure 405, right?

18 JOSE NAVARRETE: Correct.

19 MICHELLE ALANIS: And that was part of your job
20 responsibilities?

21 JOSE NAVARRETE: Yes.

22 MICHELLE ALANIS: Okay. And, you would agree that
23 under 405.02, looking at Page NDOC 310, the amount of force
24 which is reasonable depends upon the circumstances of the
25 particular incident?

1 DANIEL MARKS: Could you tell him where he's
2 looking?

3 JOSE NAVARRETE: Correct, I--

4 MICHELLE ALANIS: NDOC 310 is the bate stamp and
5 I'm looking at Section 405.02, Amount of Force.

6 DANIEL MARKS: Okay, so that's a whole
7 sentence.

8 MICHELLE ALANIS: All right, let me read you the
9 whole sentence and you tell me if you understand this
10 Operational Procedure. Employees are authorized to use as
11 much force as is reasonably necessary to perform their duties
12 and to protect themselves from harm. However, the amount of
13 force which is reasonable depends upon the circumstances of
14 the particular incident. You would agree, you understood that
15 Operational Procedure?

16 JOSE NAVARRETE: Yes.

17 MICHELLE ALANIS: Okay. And you understood that
18 the force to be used needed to be proportionate to the threat?

19 JOSE NAVARRETE: I mean, it doesn't say
20 proportionate, it just says depends on the--

21 MICHELLE ALANIS: I believe that's in--sorry, I'm
22 jumping around. That was in the AR, we can turn to that one
23 too.

24 JOSE NAVARRETE: Like it says, it depends on the
25 circumstances of the particular incident.

1 MICHELLE ALANIS: If I could have you turn to
2 Exhibit D, Page NDOC 181.

3 JOSE NAVARRETE: Okay.

4 MICHELLE ALANIS: And, you were also—as a
5 Correctional Officer, you're familiar with AR 405, correct,
6 the Use of Force AR?

7 JOSE NAVARRETE: Yes.

8 MICHELLE ALANIS: Okay. So, looking at Page NDOC
9 181, Section 405.03, When Force May Be Used. I'm looking at
10 #2, you would agree with me that this AR says that force will
11 be proportionate to the threat exhibited by the inmate--

12 JOSE NAVARRETE: Correct.

13 MICHELLE ALANIS: --and the force will decrease as
14 the threat is lessened, right?

15 JOSE NAVARRETE: Correct.

16 MICHELLE ALANIS: And, as a correctional officer,
17 you were also familiar with OP 407?

18 JOSE NAVARRETE: Which is?

19 MICHELLE ALANIS: That's the Use of Restraints.
20 Handcuffs and restraints.

21 JOSE NAVARRETE: Yes.

22 MICHELLE ALANIS: Okay. And, just for reference,
23 that's in Exhibit K. And you are familiar with that
24 Operational Procedure, right?

25 DANIEL MARKS: Can you let him get there?

1 JOSE NAVARRETE: Yes.

2 MICHELLE ALANIS: Okay. And, if I could have you
3 flip to Exhibit L. Were you familiar with the Post-Order-is
4 that Exhibit L, the Post-Order?

5 JOSE NAVARRETE: For Search and Escort, yes.

6 MICHELLE ALANIS: Yes, you were familiar with this
7 Post-Order?

8 JOSE NAVARRETE: Yes.

9 MICHELLE ALANIS: And this is the specific order
10 for your unit, for this position in Search and Escort, right?

11 JOSE NAVARRETE: For that position, yeah, at that
12 time, yeah.

13 MICHELLE ALANIS: Correct, at that time. And, if
14 we could turn to NDOC 334, the second page there. You would
15 agree that--

16 JOSE NAVARRETE: The second page?

17 MICHELLE ALANIS: Sorry, the second page of that
18 same Exhibit, NDOC 334, the second page of the post-order.

19 JOSE NAVARRETE: Uh huh.

20 MICHELLE ALANIS: I'm looking at Staffing, #1, a
21 Senior Correctional Officer is assigned to that post. You
22 would agree, there's always a senior correctional officer
23 assigned?

24

25

1 JOSE NAVARRETE: Not always. It depends on the
2 day. Sometimes there could be just a group of—team of
3 correction officers.

4 MICHELLE ALANIS: On the day in question, you were
5 the senior correctional officer assigned to Search and Escort?

6 JOSE NAVARRETE: On the day in question, yes, I
7 was.

8 MICHELLE ALANIS: Okay. And you were in the A
9 position?

10 JOSE NAVARRETE: Correct.

11 MICHELLE ALANIS: And, flipping to NDOC 336 of
12 that same Exhibit. Then, this governs that you should conduct
13 yourself in a professional manner at all times when dealing
14 with staff and inmates. I was looking at #3.

15 JOSE NAVARRETE: Yes.

16 MICHELLE ALANIS: Okay. And you also understood
17 that looking at #4, you would comply with all rules,
18 regulations and orders of the institution?

19 JOSE NAVARRETE: Correct.

20 MICHELLE ALANIS: And, if we look at #5, last
21 bullet point, you also acknowledge and understood that you
22 would avoid turning minor problems into major confrontations?

23 JOSE NAVARRETE: That's correct.

24 MICHELLE ALANIS: And if I could have you flip to
25 NDOC 340. Under #7, Searches. It looks like the fourth dark

1 bullet point, where it starts random searches, do you see
2 where I'm at?

3 JOSE NAVARRETE: Yes.

4 MICHELLE ALANIS: Okay. And you would agree with
5 me that this post-order, you understood that you were—random
6 searches will be conducted on inmates, their property and the
7 premise without harassing or agitating the inmates, right?

8 JOSE NAVARRETE: Correct.

9 MICHELLE ALANIS: And if we flip to—I'm sorry,
10 before I have you flip, on Page 346, looking at Section H.09,
11 Use of Force. You agree with me that this governs and says,
12 use of force, of any kind, will be restricted to the minimum
13 degree necessary to regain control or to repel attack/assault
14 by a resisting inmate, pursuant to the AR and OP?

15 JOSE NAVARRETE: Correct.

16 MICHELLE ALANIS: And you're to make every attempt
17 to reason with an inmate, including a show of force prior to
18 any physical confrontation?

19 JOSE NAVARRETE: Yes.

20 MICHELLE ALANIS: And, secondly that same use of
21 force says, if an inmate refuses to comply, the shift
22 supervisor will be notified and appropriate back-up obtained.
23 Do you see that part?

24 JOSE NAVARRETE: Yes, I do.

25

1 MICHELLE ALANIS: Okay. And you understood that
2 rule?

3 JOSE NAVARRETE: Yes.

4 MICHELLE ALANIS: And, looking at Exhibit M. Do
5 you have that one?

6 HEARING OFFICER: For some reason I said, N is not
7 admitted. I don't know why.

8 MICHELLE ALANIS: M. It's M.

9 HEARING OFFICER: M, okay. Sorry.

10 MICHELLE ALANIS: Like, Michelle.

11 DANIEL MARKS: N was objected to and you
12 sustained.

13 MICHELLE ALANIS: N was the grievance.

14 HEARING OFFICER: Okay.

15 DANIEL MARKS: [crosstalk]

16 HEARING OFFICER: Sorry, M.

17 MICHELLE ALANIS: Are you on Letter M?

18 JOSE NAVARRETE: Yes.

19 MICHELLE ALANIS: Okay. And, this is the post-
20 order that you have to sign for your position, right?

21 JOSE NAVARRETE: Yeah, the signature sheet for
22 it, yeah.

23 MICHELLE ALANIS: The signature sheet. And this
24 is actually for the date in question, October 9, 2016?

25 JOSE NAVARRETE: Yes, it is.

1 MICHELLE ALANIS: And, do you see your signature
2 on this page?

3 JOSE NAVARRETE: Second to the last.

4 MICHELLE ALANIS: Okay. And you worked with
5 Officer Valdez for about year, right?

6 JOSE NAVARRETE: Yeah, but not just Search and
7 Escort, just off and on, so cumulative.

8 MICHELLE ALANIS: Okay, but you were familiar with
9 him.

10 JOSE NAVARRETE: Somewhat.

11 MICHELLE ALANIS: I know you describe yourself as
12 pretty calm, right?

13 JOSE NAVARRETE: Yes.

14 MICHELLE ALANIS: But Officer Valdez wasn't as
15 calm, right?

16 JOSE NAVARRETE: He was.

17 MICHELLE ALANIS: But he's been described as
18 riling up the inmates?

19 JOSE NAVARRETE: Not to me.

20 MICHELLE ALANIS: He hasn't been described as such
21 to you? Is that what you're saying?

22 JOSE NAVARRETE: Yeah. I mean, Officer Wachter
23 put it in invest-or, in his interview but that was the only
24 one. I've never had a Sergeant, Lieutenant or I've never
25 witnessed it myself that he would need counseling for it.

1 MICHELLE ALANIS: Okay. But you would agree that
2 Officer Wachter noted that he would get the inmates riled up.

3 JOSE NAVARRETE: Yes.

4 MICHELLE ALANIS: And, I believe you said on the
5 day in question, you were short-staffed, right?

6 JOSE NAVARRETE: That's correct.

7 MICHELLE ALANIS: And so, you were trying to get
8 the inmate to comply by counseling him, right?

9 JOSE NAVARRETE: Correct.

10 MICHELLE ALANIS: Kind of talking to him.

11 JOSE NAVARRETE: Correct.

12 MICHELLE ALANIS: Trying to calm him down.

13 JOSE NAVARRETE: Trying to deescalate.

14 MICHELLE ALANIS: Okay. But, at nowhere during
15 the almost 11 minutes that you interacted with the inmate, you
16 never contacted the shift sergeant, right?

17 JOSE NAVARRETE: No.

18 MICHELLE ALANIS: And you didn't personally
19 attempt to restrain the inmate at that—at any time, right?

20 JOSE NAVARRETE: I did not.

21 MICHELLE ALANIS: Okay. And, very early on in the
22 video, we can see the inmate that you just described. He was
23 kind of—his arms weren't in the right place and he seemed to
24 be a little fidgety, right?

25

1 JOSE NAVARRETE: A bunch of stuff. Hands came
2 off--

3 MICHELLE ALANIS: I'm talking about the very early
4 portion of the video.

5 JOSE NAVARRETE: Yeah.

6 MICHELLE ALANIS: Like, the first minute and a
7 half.

8 JOSE NAVARRETE: The first minute of the video,
9 you see his hands not-completely off the wall.

10 MICHELLE ALANIS: Okay, but you didn't attempt to
11 restrain him at that time, right?

12 JOSE NAVARRETE: No, I did not.

13 MICHELLE ALANIS: Okay. And you didn't contact
14 the Sergeant at that time.

15 JOSE NAVARRETE: No.

16 MICHELLE ALANIS: And, I believe your testimony
17 was, you didn't want to contact the Sergeant-or, I'm sorry,
18 you didn't want to restrain the inmate and take him to the
19 Sergeant because that would leave not enough officers in that
20 vicinity, right?

21 JOSE NAVARRETE: It would create a security
22 issue.

23 MICHELLE ALANIS: Okay. But, if you have a non-
24 compliant inmate, you could put him in restraints at that
25 time, right?

1 JOSE NAVARRETE: It would be—you could've.

2 MICHELLE ALANIS: And, once you get him in
3 restraints, you could contact the shift sergeant, right?

4 JOSE NAVARRETE: Well, yeah. Once he would be in
5 restraints, if he complied, then yeah, definitely we would
6 contact the shift sergeant and let him know that we're coming
7 down with one in restraints.

8 MICHELLE ALANIS: But couldn't the shift sergeant
9 also come to you?

10 JOSE NAVARRETE: It depends on the situation. If
11 it's just him and the Sergeant is off doing something else,
12 then there always has to be one either Sergeant or Lieutenant
13 in the Operations Building.

14 MICHELLE ALANIS: But you don't know how many of
15 them were there at that very moment because you didn't call
16 the shift sergeant, right?

17 JOSE NAVARRETE: Correct.

18 MICHELLE ALANIS: But if they're both sitting at
19 the desk and you say, hey, Sergeant, I've got this inmate in
20 restraints, I can't leave right now, can you come to me, he
21 can come out there, right?

22 JOSE NAVARRETE: It's possible.

23 MICHELLE ALANIS: And in fact, that Sergeant did
24 respond afterwards, right? He came to the scene.

25

1 JOSE NAVARRETE: He did and he was—he had to
2 escort the nurse because there was no medical officer in
3 there.

4 MICHELLE ALANIS: And by medical officer, you mean
5 a correctional officer assigned to medical?

6 JOSE NAVARRETE: Yes.

7 MICHELLE ALANIS: Okay. And so, but Sergeant
8 Knatz?

9 JOSE NAVARRETE: Knatz.

10 MICHELLE ALANIS: Knatz, I believe was his name,
11 that's who was on duty at the time, right?

12 JOSE NAVARRETE: Correct.

13 MICHELLE ALANIS: Okay. And he did show up
14 afterwards.

15 JOSE NAVARRETE: Yes, he did.

16 MICHELLE ALANIS: Okay. And, you—I believe you
17 testified that you're trying to get to know these inmates
18 because you were newer to the dayshift, right?

19 JOSE NAVARRETE: That's correct.

20 MICHELLE ALANIS: And was it your normal practice
21 to—when you have an inmate on the wall to keep them on the
22 wall for about 11 minutes to get to know them?

23 JOSE NAVARRETE: It depends on the situation.
24 It—it has. I've had multiple inmates around that time, I've
25

1 had them shorter. Again, it just depends on the inmate and
2 how they react to the situation.

3 MICHELLE ALANIS: Despite the fact that you were
4 finished with your search at about--

5 JOSE NAVARRETE: He was still not--

6 MICHELLE ALANIS: 1:40 in.

7 JOSE NAVARRETE: --still non-compliant. He was
8 verbally saying that he wasn't going to follow rules. So,
9 that in itself is very concerning.

10 MICHELLE ALANIS: And so you then proceeded to
11 Counsel him for about another eight minutes.

12 JOSE NAVARRETE: Counsel, let him cool off.
13 Cooling off technique that is in-that is taught by us. Yeah.

14 MICHELLE ALANIS: But you would agree, your
15 cooling off technique, according to you wasn't working, right?

16 JOSE NAVARRETE: No.

17 MICHELLE ALANIS: So, you could've at some point
18 restrained him, gotten the restraints and contacted your shift
19 sergeant.

20 JOSE NAVARRETE: Like I said, every situation is
21 different. Every situation is handled differently. There's
22 not one way of going about it. So, if I'm able to talk to the
23 inmate and hopefully get him to understand, then there's no
24 reason for me to call my shift sergeant or shift command.

25

1 It's my job, it's my duty to counsel and correct inmate
2 behavior.

3 MICHELLE ALANIS: But you also just acknowledged
4 that the Operational Procedures and your duties in that
5 position require you to contact the shift sergeant when
6 they're not compliant, right?

7 JOSE NAVARRETE: It is, but it's not—I mean, if
8 we were going to contact the shift command for every non-
9 compliant inmate, then we would be—the Sergeant or Lieutenant
10 would be on the phone the whole day. So, it's—it's case-by-
11 case.

12 MICHELLE ALANIS: If I could have you turn to NDOC
13 131. I'm not sure, I believe that's Exhibit C. Are you on
14 NDOC 131?

15 JOSE NAVARRETE: Okay.

16 MICHELLE ALANIS: And actually, I believe your
17 testimony, you just kind of repeated it, you said that he—the
18 inmate—Inmate Norales came off the wall a lot? Right?

19 JOSE NAVARRETE: Correct.

20 MICHELLE ALANIS: Okay. When you were interviewed
21 in this investigation, you would agree that you said, when the
22 inmate looked at his wrist or watch, whatever that—whatever
23 motion he did where he looks at his left wrist, you told the
24 investigator it was slight, do you remember that?

25

1 DANIEL MARKS: Can you let him look at his
2 statement?

3 JOSE NAVARRETE: Where is that at?

4 MICHELLE ALANIS: 1, 2, 3, 4, 5, 6, 7 paragraphs
5 down.

6 DANIEL MARKS: Your Honor, okay. This is
7 alleged statement that he gave to an investigator. He should
8 be able to look at the totality of that.

9 MICHELLE ALANIS: We have the audio in evidence
10 too, if you want to listen.

11 DANIEL MARKS: He should be able to look at it.

12 HEARING OFFICER: So, what do you want him to do?

13 DANIEL MARKS: Just give him a second to look
14 at it.

15 HEARING OFFICER: Please, look at it, yeah.

16 DANIEL MARKS: In context.

17 JOSE NAVARRETE: Okay.

18 MICHELLE ALANIS: So, you would agree that you
19 told the investigator that it was slight, the movement, that
20 Inmate Norales did.

21 JOSE NAVARRETE: When looking at his left arm, or
22 when he was moving his left arm.

23 MICHELLE ALANIS: It was slight, right?

24 JOSE NAVARRETE: It was slight but it was still
25 coming off. Slight or not.

1 MICHELLE ALANIS: Okay. But that was—that was the
2 last movement he made before Officer Valdez approached him,
3 right?

4 JOSE NAVARRETE: I don't believe so. I believe
5 that's when he's going like this.

6 MICHELLE ALANIS: Right--

7 JOSE NAVARRETE: That's what I'm talking about.

8 MICHELLE ALANIS: --when the inmate--when the
9 inmate-Navarrete was--

10 JOSE NAVARRETE: I'm not—I'm not talking about
11 the moment where he took his arm off, cocked his elbow and
12 turned, I'm not talking about that one. I'm talking about the
13 moment right before that.

14 MICHELLE ALANIS: Well, we obviously see different
15 things in the video, but in this sentence here, Navarrete was
16 shown when the inmate looks at his left arm and states, "it
17 was slight, but he did come off the wall", that's the sentence
18 I'm referring to. So, you agree, the movement, when he looked
19 at his wrist, was slight. Right?

20 JOSE NAVARRETE: I'm kind of confused at what
21 point you're talking about. Was it right before the takedown?

22 MICHELLE ALANIS: Uh huh.

23 JOSE NAVARRETE: Or was it--

24 MICHELLE ALANIS: I'll play that portion of the
25 video for you on that laptop. [pause]

1 HEARING OFFICER: What Exhibit are we looking at
2 now? For the record?

3 MICHELLE ALANIS: Good point, except I've
4 forgotten. I believe this is Exhibit A and this is the--what
5 we've labeled as NDOC 112. It's the video of the incident.

6 HEARING OFFICER: Okay.

7 MICHELLE ALANIS: Thank you. [pause] So, do you
8 see the movements right there.

9 JOSE NAVARRETE: Right.

10 MICHELLE ALANIS: That's what we've described, I
11 believe your counsel described that as three times?

12 JOSE NAVARRETE: Uh huh.

13 MICHELLE ALANIS: [pause] So, for a reference
14 point now, when you were telling the investigator, when he
15 looked at his wrist, the movement was slight, right?

16 JOSE NAVARRETE: Right.

17 MICHELLE ALANIS: That's the reference point that
18 I'm making.

19 DANIEL MARKS: Right, but do you want to put
20 the time in, so we know it's different than during the
21 takedown?

22 MICHELLE ALANIS: Sure. The time when he's
23 looking at his wrist, I have it at approximately 10:45.
24 Actually, it looks like it starts prior to that. It starts at
25 about 10:38 with the last look at 10:45.

1 HEARING OFFICER: Okay.

2 MICHELLE ALANIS: And then he actually approaches
3 him at the 10:50 mark. So, you would agree that about five
4 seconds passed before Officer Valdez approaches the inmate.

5 JOSE NAVARRETE: Correct.

6 MICHELLE ALANIS: From the last time that he
7 looked at his wrist.

8 JOSE NAVARRETE: From the last time, I don't-
9 [pause]

10 MICHELLE ALANIS: So, we're at 10:34. Start
11 looking at about 10:38, 10:39. There's the third one at 10:45
12 and at 10:50 is when he has his hands on his back, right?

13 JOSE NAVARRETE: Correct.

14 MICHELLE ALANIS: So, that last-that was the last
15 movement, right? Before he started to walk towards the
16 inmate.

17 JOSE NAVARRETE: Correct.

18 MICHELLE ALANIS: And you would agree with me that
19 there's no defensive tactic that NDOC trains you on where you
20 would initiate with an arm around the neck, right?

21 JOSE NAVARRETE: Yeah, we're not taught
22 chokeholds.

23 MICHELLE ALANIS: I'm not talking about
24 specifically a chokehold because I realize that it seems like
25 we're kind of using that phrase now. I'm just talking about,

1 you would agree that NDOC doesn't train you on using a defense
2 tactic of taking your arm and putting it around the inmate's
3 neck and pulling back.

4 JOSE NAVARRETE: No.

5 MICHELLE ALANIS: You would agree with me that
6 that's different than a chokehold though, what I just
7 described, right?

8 JOSE NAVARRETE: Yes.

9 MICHELLE ALANIS: Because I believe it was your
10 testimony and demonstration that a chokehold, you then use
11 your other arm as well, right?

12 JOSE NAVARRETE: Correct.

13 MICHELLE ALANIS: Okay. But that's not a tactic
14 that you're taught?

15 JOSE NAVARRETE: No, around the neck, no.

16 MICHELLE ALANIS: But that's what was used here,
17 right?

18 JOSE NAVARRETE: No, it wasn't. It was around
19 the chest and shoulder.

20 MICHELLE ALANIS: It's your testimony that Officer
21 Valdez's arm was around the inmate's chest?

22 JOSE NAVARRETE: Yeah, when it all first started,
23 it came around the chest and it came up here. Now, maybe
24 during the whole takedown it goes up, but it's because of the
25 resistance but when he initially starts, he starts right here.

1 With the resisting, with the pushback from the inmate, your
2 hand can go—your arm can go up, can go down, you—you never
3 know.

4 DANIEL MARKS: The record should reflect, he
5 was pointing to his left shoulder, just so the record is
6 clear.

7 HEARING OFFICER: Correct.

8 MICHELLE ALANIS: So, it's your testimony that
9 when you're approaching an inmate, to what you're saying is
10 restraining him, you would take your right arm and wrap it
11 around the inmate's chest?

12 JOSE NAVARRETE: No. What was happening is, he
13 told the inmate that he was going to restrain him. When he
14 pushes up against him, to gain control because he had come off
15 the wall, he goes to hook his right arm, but because the
16 inmate is resisting, pushing back, tensing up, he has to go
17 around and grab that shoulder.

18 MICHELLE ALANIS: And, you're motioning with your
19 left arm, as if it's placed against the inmate's back. Is
20 that--

21 JOSE NAVARRETE: That's just how--

22 MICHELLE ALANIS: That's just the motion that
23 you're doing?

24 JOSE NAVARRETE: That's just how I do it, so it's
25 just pure nature of me doing it.

1 MICHELLE ALANIS: Okay. But that's not what's
2 actually in the video. He's not using his left arm across the
3 inmate's back, right?

4 JOSE NAVARRETE: Right.

5 MICHELLE ALANIS: He actually approached him and
6 used both hands. And sort of pushed the inmate back into the
7 wall.

8 JOSE NAVARRETE: What your taught as well, with a
9 non-compliant inmate.

10 MICHELLE ALANIS: I just want to make sure—I'm not
11 asking what your taught, I want to make sure that what you
12 were just motioning and describing, that's not what we see in
13 the video.

14 JOSE NAVARRETE: Right, Valdez uses his hands.

15 MICHELLE ALANIS: Okay. So, he used both hands
16 and approached the inmate from the back, that way.

17 JOSE NAVARRETE: Yeah. Yes.

18 MICHELLE ALANIS: And then used his right arm.

19 JOSE NAVARRETE: Yes.

20 MICHELLE ALANIS: And when I say, "right arm", I'm
21 also motioning that it's swinging around the inmate, right?

22 JOSE NAVARRETE: Yes.

23 MICHELLE ALANIS: And, I believe you said that—you
24 described all the movements that the inmate was doing and how
25 you perceived that to be non-compliant and threatening, right?

1 JOSE NAVARRETE: Correct.

2 MICHELLE ALANIS: But, you were threatened but
3 then you turned your back on the inmate, correct?

4 JOSE NAVARRETE: Correct.

5 MICHELLE ALANIS: And that was immediately after
6 you were done patting him down. You turned around and walked
7 away, right?

8 JOSE NAVARRETE: I think so.

9 MICHELLE ALANIS: I can show you if you need me
10 to. I don't want you to think or guess.

11 JOSE NAVARRETE: Yeah, that's fine.

12 MICHELLE ALANIS: [pause] Same Exhibit B, 112.

13 NICOLE YOUNG: Is it Exhibit B or Exhibit A?

14 MICHELLE ALANIS: Oh—

15 HEARING OFFICER: It's A.

16 MICHELLE ALANIS: Is it A?

17 HEARING OFFICER: Yeah.

18 MICHELLE ALANIS: I believe you're right. It is.
19 This is what happens when we have to in between. Let me—yes,
20 Exhibit A, sorry.

21 HEARING OFFICER: Just give me the time that
22 you're at.

23 MICHELLE ALANIS: [pause] I'm going to
24 approximately 1:58. Right now, we're at 1:--oops, sorry. We
25

1 were estimated there. Starting at 1:50, we can see Officer
2 Navarrete conducting his search.

3 JOSE NAVARRETE: I'm actually done with the
4 search at that time.

5 MICHELLE ALANIS: You're done with the search and
6 then you start to walk away, slightly before 1:58, you would
7 agree with me, right?

8 JOSE NAVARRETE: No, I wouldn't. Well, the way
9 that you're explaining it now, the way that you explained it
10 before, I didn't immediately turn around. What I did, when I
11 was done with the pat search, I noticed his hands went down,
12 so I instructed him and I physically placed them where they
13 needed to be and then I turned and walked away, while Officer
14 Valdez was right behind him.

15 MICHELLE ALANIS: But you would agree that you
16 testified earlier that all those movements you felt were
17 threatening, right?

18 JOSE NAVARRETE: Correct.

19 MICHELLE ALANIS: Okay, but then you turned around
20 with your back towards the inmate and walked away, correct?

21 JOSE NAVARRETE: Right, because I have other
22 duties.

23 MICHELLE ALANIS: Okay. Your testimony is that
24 this inmate had been not compliant all this time, right?

25 JOSE NAVARRETE: Right.

1 MICHELLE ALANIS: And I have this paused at 1:58,
2 would you agree with me that both you and Officer Valdez have
3 your backs turned, walking away from the inmate?

4 JOSE NAVARRETE: Yes.

5 MICHELLE ALANIS: And that's not the only time you
6 turned around and walked away from the inmate, right?

7 JOSE NAVARRETE: Probably not. Like I said,
8 there's many duties that I have. I have inmates still in the
9 culinary. Inmates leaving the culinary.

10 MICHELLE ALANIS: Okay.

11 JOSE NAVARRETE: Inmates coming up to the
12 culinary, so yeah.

13 MICHELLE ALANIS: All right. And then even when
14 all the inmates are gone, [inaudible] you still proceed to
15 turnaround, look away and walk away from the inmate, correct?

16 JOSE NAVARRETE: I agree.

17 MICHELLE ALANIS: Okay. In fact, I think at about
18 6:49 in, you walk away again but at that time, there's no
19 other inmates around.

20 JOSE NAVARRETE: Okay.

21 MICHELLE ALANIS: You would agree with me that if
22 there's a lot of threat to you, if there's a physical threat,
23 are you going to turn your back and walk away from the inmate?

24 JOSE NAVARRETE: Like I said, in every-every
25 situation is different. What I was doing was trying to calm

1 him. If he sees me not getting agitated and me being calm,
2 then if it takes that then yeah.

3 MICHELLE ALANIS: But if you're concerned for your
4 safety, would you turn around and walk away?

5 JOSE NAVARRETE: It depends on the level that
6 he's giving off.

7 MICHELLE ALANIS: Today you had a lot of
8 recollection of all the phrases that the inmate was saying.
9 He said, fuck you and you're a faggot and all—I can't remember
10 all of them, but that was at least two of the phrases I
11 believe you said, do you remember that testimony?

12 JOSE NAVARRETE: Uh huh, yes, I do.

13 MICHELLE ALANIS: Okay. But you didn't include
14 any of that in your report, correct?

15 JOSE NAVARRETE: Correct.

16 MICHELLE ALANIS: And, I don't even believe that
17 you used those phrases when you were interviewed, right?

18 JOSE NAVARRETE: I can't recall, I mean that
19 interview was two and a half years ago.

20 MICHELLE ALANIS: But the interview would've been
21 closer in time to the incident, correct?

22 JOSE NAVARRETE: Yeah.

23 MICHELLE ALANIS: And you would agree with me that
24 you've been trained that you can't use force for verbal
25 communication or verbal threats, right?

1 JOSE NAVARRETE: Correct.

2 MICHELLE ALANIS: And you would agree that any
3 force would need to be proportionate to the threat.

4 DANIEL MARKS: Asked and answered, like three
5 times.

6 HEARING OFFICER: Sustained.

7 MICHELLE ALANIS: I believe you testified earlier
8 that you felt that this was a normal use of force, right?

9 JOSE NAVARRETE: Correct.

10 MICHELLE ALANIS: But it was also your testimony
11 that it is not a tactic to put your arm around the inmate's
12 neck, right?

13 DANIEL MARKS: Asked and answered.

14 HEARING OFFICER: Well, she's—

15 DANIEL MARKS: You just talked about—

16 HEARING OFFICER: She's leading somewhere, so I'm
17 going to overrule the objection.

18 MICHELLE ALANIS: Right.

19 JOSE NAVARRETE: Can you ask it again, I'm sorry.

20 MICHELLE ALANIS: Okay. The first part was, you
21 said that this was a normal use of force and you said, yes,
22 right?

23 JOSE NAVARRETE: Right.

24

25

1 MICHELLE ALANIS: My second question was, you also
2 testified that putting your arm around the inmate was not a
3 tactic that you were trained on by NDOC, right?

4 JOSE NAVARRETE: When you asked, it was around
5 the neck. I said, around the neck is not taught.

6 MICHELLE ALANIS: Okay. And so, if-if the
7 officer's arm is around the inmate's neck, is that a normal
8 use of force?

9 JOSE NAVARRETE: In this case it, to me, the arm
10 wasn't around the neck.

11 MICHELLE ALANIS: And you had testimony about
12 writing a report of this incident, right?

13 JOSE NAVARRETE: Correct.

14 MICHELLE ALANIS: Okay. And I believe you said
15 that you didn't include certain information because you
16 thought Officer Valdez would include information in his
17 report, right?

18 JOSE NAVARRETE: Right, the-the use of force
19 report is a more detailed report, where mine is just a summary
20 kind of, informational.

21 MICHELLE ALANIS: But as an officer, you're
22 obligated to a true and accurate report, right?

23 JOSE NAVARRETE: Which I did, yes.

24 MICHELLE ALANIS: I'm just asking, is your
25 obligation to write a true and accurate report?

1 JOSE NAVARRETE: Yes.

2 MICHELLE ALANIS: And you would want your report
3 to include as much information as you possibly could, right?

4 JOSE NAVARRETE: Yeah, I mean, depends on the
5 incident. And what—I mean, because when we're talking about
6 the use of force, and I was told to write the report, I was
7 writing about how that use of force happened, why it happened
8 at that moment. I didn't talk to the inmate the whole entire
9 time, so I just wrote what I saw in that moment.

10 MICHELLE ALANIS: Okay, so you just said, it's
11 your responsibility to write the how and the why and so—right,
12 that was your testimony just now, how and why, right?

13 JOSE NAVARRETE: Yes.

14 MICHELLE ALANIS: Okay. So, how the use of force
15 happened. Would you agree with me that what you've been
16 describing today throughout the 11 minutes of the video is how
17 it happened?

18 JOSE NAVARRETE: Yeah.

19 MICHELLE ALANIS: Okay. And that would include
20 the alleged verbal abuse by the inmate?

21 JOSE NAVARRETE: Right.

22 MICHELLE ALANIS: And all the statements that he
23 told you, fuck you and you're a faggot and I'm not gonna
24 listen and I'm not gonna comply, that's part of the how,
25 right? Or, the why? Maybe both?

1 JOSE NAVARRETE: Yeah, in hindsight, if I knew it
2 was going to get to this point, then yeah, I would've done it
3 from the beginning of him being put on the wall to the very
4 end which would've been like a three page report, probably.

5 MICHELLE ALANIS: But it would've contained
6 details, right?

7 JOSE NAVARRETE: Yes.

8 MICHELLE ALANIS: Okay. And you would agree that
9 the how and why of this use of force would also be the
10 description of the use of force, right?

11 JOSE NAVARRETE: Right. Which is coming from
12 Valdez's report, use of force report.

13 MICHELLE ALANIS: So, it's your position that as
14 the Senior Officer, who witnessed this, you don't need to
15 describe the actual use of force that occurred?

16 JOSE NAVARRETE: I did describe the use of force
17 that occurred. I said that he came off the wall, he resisted.
18 And they went down. So, I did describe--

19 MICHELLE ALANIS: But you didn't describe what
20 you're describing today.

21 DANIEL MARKS: You just cut him off. He's got
22 to be able to finish.

23 JOSE NAVARRETE: I'm describing the actual use of
24 force, what you're wanting me to describe or asking, I think
25 is everything prior.

1 MICHELLE ALANIS: No, I'm asking you why you
2 didn't include and describe all the things that you're
3 describing today?

4 JOSE NAVARRETE: At the time, I didn't feel that
5 I needed it. I thought that what I put in my report was just
6 fine.

7 MICHELLE ALANIS: So, it's your position that
8 whatever—the one sentence that you have listed in there was
9 sufficient to describe the use of force that occurred.

10 JOSE NAVARRETE: Yes and like I said before, if I
11 needed more information, Sergeant or Lieutenant would've let
12 me know and I could've added more information at the time.

13 MICHELLE ALANIS: And you understand that I'm not
14 asking you to give your opinion on what occurred, but just
15 describe the facts of what you saw.

16 JOSE NAVARRETE: Right.

17 MICHELLE ALANIS: Okay. And as an officer, you
18 understand you have your own obligation to write a report of
19 incidents that take place at the prison, right?

20 JOSE NAVARRETE: Yes. Yes.

21 MICHELLE ALANIS: And you can't rely on what
22 another officer may write in his report, right?

23 JOSE NAVARRETE: Not at all.
24
25

1 MICHELLE ALANIS: And I believe there was some
2 testimony about the distance, once the use of force occurred,
3 that Officer Valdez and the inmate fell back, right?

4 JOSE NAVARRETE: Correct.

5 MICHELLE ALANIS: But you would agree that when
6 you're putting your arm around the inmate and pulling back,
7 you're going to fall back, right?

8 JOSE NAVARRETE: It wasn't really just back, it's
9 a redirection. So, it's almost like a circular movement that
10 you do. So, you wouldn't end up 10-15 feet back. You would--
11 if you do it right and the inmate is not resisting like he
12 was, you're going to go to the ground. You're not going to
13 end up 10-15 feet behind you.

14 MICHELLE ALANIS: But you would agree with me in
15 watching the video that when the inmate actually--his hands
16 fully come off the wall, at that point, Officer Valdez's arm
17 is around his neck, right?

18 JOSE NAVARRETE: I don't know, I don't believe
19 so, I'd have to see it again.

20 MICHELLE ALANIS: Same Exhibit. I'm going to 10--

21 HEARING OFFICER: This is Exhibit A.

22 MICHELLE ALANIS: Exhibit A, 112. [pause]
23 Starting at 10:40. Actually, [inaudible]. You see that when
24 his hands come off--

1 JOSE NAVARRETE: I don't think they're around his
2 neck. I think it's around his shoulder and chest.

3 MICHELLE ALANIS: When that use of force is
4 occurring, Valdez has to use force because of these alleged
5 verbal threats, how come you were leaning against the wall?

6 JOSE NAVARRETE: Again, like I stated earlier,
7 it's to hopefully have that inmate match my demeanor, that
8 calm demeanor. I'm hoping that he's going to do that. Like
9 I've said before too, I've done that with numerous inmates and
10 it's worked.

11 MICHELLE ALANIS: So, at this point, at
12 approximately 11 minutes in the video with the inmate on the
13 wall, Officer Valdez starts approaching because he believes he
14 needs to use force and you believe you need to lean against
15 the wall and do nothing in the same circumstance.

16 JOSE NAVARRETE: Well, he's—he's not thinking
17 he's going to use force right away. He's going to restrain
18 him. So, and he tells the inmate that he's going to restrain
19 him, once he starts walking towards him.

20 MICHELLE ALANIS: Are you--

21 JOSE NAVARRETE: So, he's to going there to just
22 thrown him down on the ground.

23 MICHELLE ALANIS: And, is part of your training to
24 restrain an inmate, does that include approaching the inmate
25 with both hands and pushing them into the wall?

1 JOSE NAVARRETE: When an inmate is coming off the
2 wall like Norales was, yes.

3 MICHELLE ALANIS: My question is, when you're-when
4 you go to restrain an inmate, do you approach with both hands
5 and push the inmate into the wall.

6 DANIEL MARKS: This is like the third time he's
7 answered.

8 HEARING OFFICER: Well-

9 DANIEL MARKS: Before he answered [crosstalk]

10 HEARING OFFICER: I'm not sure he answered the
11 question necessarily. So, just try it one more time, so I
12 can--

13 JOSE NAVARRETE: Again, it depends on the
14 situation. If you have an inmate, like Inmate Norales, then
15 yeah, you will approach like that.

16 MICHELLE ALANIS: And, if the inmate is not
17 actually coming off the wall, because I realize it's your
18 opinion that he was coming off the wall when he comes up
19 behind him. Let's assume he's not coming off the wall, would
20 it have been-are you trained to approach the inmate with both
21 hands and push them into the wall?

22 JOSE NAVARRETE: No, if he's compliant then, no
23 you wouldn't approach that way.

24

25

1 MICHELLE ALANIS: Even if he's not compliant and
2 just using verbal words, are you trained to approach him and
3 push him into the wall?

4 JOSE NAVARRETE: Yeah. I mean, because you're
5 gaining control of that inmate. You want them off balance so
6 that they don't have a tactical advantage on you.

7 MICHELLE ALANIS: So, if an inmate is mouthing off
8 and you go into restrain him, it's appropriate to push him
9 into the wall with both hands.

10 JOSE NAVARRETE: It's—what you're doing, it's not
11 like your pushing his face into the wall, you're pushing his—
12 his torso up into the wall, so he's off balance.

13 MICHELLE ALANIS: Are you trained as an officer to
14 use a chokehold?

15 DANIEL MARKS: Objection, asked and answered.

16 MICHELLE ALANIS: I was asking him about the arm
17 around the neck.

18 HEARING OFFICER: Go ahead.

19 MICHELLE ALANIS: He's distinguished two different
20 things.

21 HEARING OFFICER: I know the answer but go on
22 ahead.

23 JOSE NAVARRETE: No.

24 HEARING OFFICER: All right.
25

1 DANIEL MARKS: Can we ask them to stop the
2 frivolity.

3 HEARING OFFICER: Right, it sounds like they're
4 having an awfully good time in the Hearing Room.

5 MICHELLE ALANIS: Officer Navarrete, you don't
6 want to work as a correctional officer anymore do you?

7 JOSE NAVARRETE: Yes, I do.

8 DANIEL MARKS: That's not true. Relevance.
9 We're here because it's for wrongful termination. He wants
10 his reinstatement and back pay. That's why we're here. That
11 was his career. He did eight and a half years. Why is she
12 crossing him that he doesn't want to work there.

13 MICHELLE ALANIS: Because he's made statements
14 that he doesn't want to be in law enforcement.

15 DANIEL MARKS: Who--

16 JOSE NAVARRETE: That was--

17 DANIEL MARKS: It's irrelevant. That's totally
18 irrelevant.

19 MICHELLE ALANIS: [crosstalk]

20 DANIEL MARKS: This is argument [crosstalk]

21 HEARING OFFICER: Why is it relevant, do you know?

22 MICHELLE ALANIS: Well, I mean, we're here for his
23 disciplinary appeal but it doesn't appear that he really wants
24 to work there.

25

1 DANIEL MARKS: He wants to, he just testified
2 he wants to.

3 HEARING OFFICER: What was the question again?

4 MICHELLE ALANIS: You don't really want to work as
5 a corrections officer.

6 HEARING OFFICER: I'll let that—let that go, you
7 can answer that question, overruled.

8 JOSE NAVARRETE: I do want to be a corrections
9 officer.

10 MICHELLE ALANIS: And you want to be in law
11 enforcement?

12 JOSE NAVARRETE: Yes.

13 MICHELLE ALANIS: May I approach and play a video?

14 HEARING OFFICER: What video are you playing?

15 MICHELLE ALANIS: It's just public video, an
16 interview that he gave to the paper, making statements that he
17 doesn't want to work as a law enforcement officer.

18 DANIEL MARKS: It's not—it wasn't produced in
19 the case. It's not in evidence.

20 MICHELLE ALANIS: It's rebuttal.

21 DANIEL MARKS: It wasn't in the pre-hearing—you
22 got to give me the evidence, you know, every case I've had
23 people pull out stuff. It's just so improper. We don't pull
24 out things [crosstalk]

25

1 MICHELLE ALANIS: It's his own statements, to a
2 public--

3 DANIEL MARKS: It doesn't matter. It doesn't
4 matter, you've got to list Exhibits. You've got to list
5 stuff.

6 MICHELLE ALANIS: I didn't know what he'd say.

7 HEARING OFFICER: Well, theoretically.

8 DANIEL MARKS: He probably was sick of it at
9 the time involving a criminal trial, but we're here for his
10 job back.

11 HEARING OFFICER: #1, you know, I practice law in
12 the [inaudible] all the time, as a trial attorney and you're
13 supposed to divulge everything, including your impeachment
14 evidence. I don't really see that much relevance to it
15 anyways, so I'm going to cut you off on that.

16 MICHELLE ALANIS: Okay.

17 HEARING OFFICER: I don't see it.

18 MICHELLE ALANIS: I don't think I have anything
19 further at this time.

20 DANIEL MARKS: I just have a really short
21 redirect, Your Honor. If I can--if I can do that.

22 HEARING OFFICER: Yes.

23 DANIEL MARKS: So, it's in Exhibit L, which is
24 the confidential Search and Escort post-order and specifically
25 opposing counsel asked you about NDOC 340.

1 JOSE NAVARRETE: Okay.

2 DANIEL MARKS: And, halfway down the page is a
3 bullet point. Random searches will be conducted on inmates,
4 their property and the premise they occupy without harassing
5 or agitating the inmates. Do you believe you complied with
6 that policy?

7 JOSE NAVARRETE: I definitely did. Like I said,
8 it was counseling, my calm demeanor, giving him the chance to
9 voice his opinions.

10 DANIEL MARKS: Now, why--they're showing you
11 turning around and walking away, I'm not in the book now, I'm
12 just--

13 JOSE NAVARRETE: Right.

14 DANIEL MARKS: --they showed you turning around
15 and walking away, what was your--what were you trying to do
16 when you turned around and walked away from the inmate?

17 JOSE NAVARRETE: Just get away from him trying to
18 argue with both of us. Just trying to calm him down.
19 Deescalate.

20 DANIEL MARKS: Well, when you use the term,
21 when you say an inmate is not compliant and his hand came off
22 the wall three times. You can--when you say that you'll
23 consider that a threat, you're considering that meaning you
24 have the ability to cuff up an inmate who is not complying.

25 JOSE NAVARRETE: Correct.

1 DANIEL MARKS: Is that right?

2 JOSE NAVARRETE: Correct.

3 DANIEL MARKS: But it's your discretion as when
4 you do it.

5 JOSE NAVARRETE: Yes.

6 DANIEL MARKS: If you do it too soon, you're
7 going to create another security problem, you're going to be
8 in the Sergeant's office every day.

9 JOSE NAVARRETE: Definitely.

10 DANIEL MARKS: If you do it too late,
11 obviously, you know, you could have some other problems. So,
12 it's a judgment call.

13 JOSE NAVARRETE: Yeah, definitely is and like I
14 said, it's—you're there for sometimes 16 hours a day. So,
15 you're going to see these inmates on a day-to-day basis, so
16 you need to build a rapport with them, you need to build that
17 relationship with them.

18 DANIEL MARKS: All right. Let's go back to
19 Exhibit L. Counsel asked you about Page 346. She was talking
20 about one section. It says, use of force.

21 JOSE NAVARRETE: Yes.

22 DANIEL MARKS: Do you see under H.09?

23 JOSE NAVARRETE: Yes.

24 DANIEL MARKS: You want to read that to
25 yourself and then I'll ask you a question. [pause]

1 JOSE NAVARRETE: Okay.

2 DANIEL MARKS: Do you see, did you read that to
3 yourself?

4 JOSE NAVARRETE: Yes.

5 DANIEL MARKS: Does that appear to apply, not
6 to this type of situation, but to repel and talk an assault or
7 attack of a resisting inmate?

8 JOSE NAVARRETE: Correct.

9 DANIEL MARKS: Because it talks about a show of
10 force prior to any physical confrontation--

11 JOSE NAVARRETE: Right.

12 DANIEL MARKS: That's more what happened to you
13 where they could show pepper spray or a baton, right?

14 JOSE NAVARRETE: Right.

15 DANIEL MARKS: that doesn't apply to this
16 situation, does it?

17 JOSE NAVARRETE: Right.

18 DANIEL MARKS: And then she says, oh you
19 should've notified the shift supervisor and appropriate back
20 up. That's not this type of situation with Norales, is it?

21 JOSE NAVARRETE: Not at all. They were notified
22 once the use of force happened.

23 DANIEL MARKS: But this is where there's like
24 a--an attack, an assault, more of a serious incident, isn't
25 that--where you need backup officers, correct?

1 JOSE NAVARRETE: Correct, yes.

2 DANIEL MARKS: It's not every time someone's

3 not compliant, you call the Sergeant to come out, right?

4 JOSE NAVARRETE: That's correct.

5 DANIEL MARKS: Because the Sergeant is supposed

6 to be in their admin office, not going out to the scene every

7 time.

8 JOSE NAVARRETE: Correct.

9 DANIEL MARKS: Correct? And, cuff ups happen

10 all the time, right?

11 JOSE NAVARRETE: Every day.

12 DANIEL MARKS: Okay. All right, I think that's

13 it. That's all I have.

14 HEARING OFFICER: All right. Do you have

15 anything? Anything—I don't know where we are. Re-re-re-

16 cross? I don't think we're that far.

17 MICHELLE ALANIS: No, I think we're okay.

18 HEARING OFFICER: Okay. All right, then the

19 witness may be excused?

20 DANIEL MARKS: Yes.

21 HEARING OFFICER: Very good, thank you.

22 DANIEL MARKS: That's all the witnesses we

23 have, Your Honor. I don't know if we can take a short break—

24 MICHELLE ALANIS: Yes, please.

25 DANIEL MARKS: And then do closing.

1 HEARING OFFICER: I think that makes sense. Are
2 all the Exhibits—they're good, I think they are.

3 DANIEL MARKS: Yeah, I think they're all good.
4 Did you have anything else? I think the Exhibits are good.
5 If we can take 10—

6 HEARING OFFICER: Okay.

7 DANIEL MARKS: --and then do closing.

8 HEARING OFFICER: We'll go off the record. We'll
9 do it at 10 after, is that cool? Take a 10 minute break.

10 DANIEL MARKS: Yeah, that's—

11 HEARING OFFICER: All right.

12 OFF THE RECORD

13 ON THE RECORD

14 HEARING OFFICER: We're back on the record in Jose
15 Navarrete v. Department of Corrections. I guess we're going
16 to do brief closings and you may proceed.

17 MICHELLE ALANIS: Okay. Hearing Officer, there's
18 substantial evidence that NDOC properly dismissed Mr.
19 Navarrete based upon just cause and for the good of the public
20 service. The standard to guide this Hearing Officer is the
21 standard set forth in *O'Keefe* which starts with, did the
22 conduct occur?

23 What we have here, the facts show that on October 9,
24 2016, Senior Officer Navarrete, was assigned to Search and
25 Escort on the dayshift. He was working with Officer Valdez,

1 an officer that he had worked with for about a year off and
2 on.

3 According to Officer Wachter, Officer Valdez's
4 interactions with the inmates was negative and caused them to
5 get riled up. Certainly, if Officer Wachter noticed this
6 behavior, Senior Officer Navarrete would also be familiar with
7 his partner's personality.

8 Officers at NDOC do randomly conduct searches on
9 inmates, that's standard. We are not disputing that. It
10 appears that a random search was conducted that day, outside
11 of the culinary. However, the facts also show that this may
12 have not been a random search and that it may have also been
13 premeditated. A premeditated use of force.

14 If we look at the investigator's report, which NDOC
15 83 is the bates number, Norales stated that he was being—I'm
16 sorry, Norales may have been placed on the wall and not have
17 been random. Inmate Norales had stated to the investigator
18 that he had been singled out for pat searches and—

19 DANIEL MARKS: Your Honor, they never called
20 Norales, I mean, that's like double, triple hearsay. They
21 never called Norales—

22 MICHELLE ALANIS: It's in evidence. The
23 investigative--

24 DANIEL MARKS: They never called that
25 investigator.

1 MICHELLE ALANIS: --report is in evidence.

2 DANIEL MARKS: But it's double hearsay.

3 HEARING OFFICER: I understand what you're saying.

4 MICHELLE ALANIS: Hearsay is allowed, it's in the
5 Hearing Officer Rules and Procedures.

6 DANIEL MARKS: This is double hearsay. This is
7 what he--

8 MICHELLE ALANIS: It doesn't matter.

9 DANIEL MARKS: --said to another guy, I think
10 Molnar who never testified.

11 HEARING OFFICER: I understand, but it is in
12 evidence so she can properly comment on it.

13 MICHELLE ALANIS: The entire investigative report
14 is in evidence.

15 HEARING OFFICER: Right. So, she argue that.

16 MICHELLE ALANIS: In that investigative report
17 that's admitted into evidence, we have the statements of three
18 inmates who have corroborated the other inmate's statement
19 that this was premeditated. Inmate White said Valdez and
20 Navarrete were always going at it with Norales. Inmate
21 Jackson stated that the staff were targeting African-American
22 inmates and forcing them to stand on the wall.

23 The video shows that Inmate Norales doesn't get
24 aggressive. He's not getting aggressive with these officers.
25 He's facing the wall for approximately 11 minutes with his

1 hands and arms elevated for at least those 11 minutes. His
2 hands may move a little bit, but he is on the wall with his
3 arms raised for about 11 minutes.

4 The evidence shows that Inmate Norales is 5'6", 150
5 pounds with mental issues. During this video, we can see
6 Officer Valdez get increasingly agitated and swing his arms
7 and making movements that increase in frequency and he gets
8 faster and faster. During this time, Officer—Senior Officer
9 Navarrete watches the whole thing and doesn't do what he's
10 been trained to do and acknowledged as his duty as a Senior
11 Officer. He should be deescalating, intervening when
12 necessary, telling his partner to cool off or even walk away
13 from the situation if he's getting agitated.

14 There are several times—we heard from Officer
15 Navarrete that the inmate is making all these verbal
16 statements and he's feeling threatened. Yet, several times in
17 the video, you see Officer Navarrete turn his head or walk
18 away from the inmate. If he felt so threatened, why at about
19 1:58 in would both Officer Valdez and Officer Navarrete turn
20 around and walk away from an inmate that's so threatening.

21 Then again, at about 3:20 in, he turns his head away
22 from the inmate. Then at about 6:49 in, he walks away again.
23 At 7:40, he walks away again. At 10:09, he walks away again.
24 At about 10:30, they both look away. So, if the inmate is so
25

1 threatening to him, he wouldn't have turned his back on that
2 inmate.

3 We heard from an investigator, a fellow correction
4 officer, a former Associate Warden, another Associate Warden
5 who is now a Warden and current Warden of Southern Desert.
6 All of these individuals said that there was no reason to keep
7 this inmate on the wall and what they saw was a violation of
8 policy and procedure.

9 Senior Officer Navarrete was—had a higher rank than
10 Officer Valdez and should have taken the appropriate steps to
11 release that inmate. There was no reason to keep him on there
12 after the search was completed. He could've walked away or
13 released him at about two minutes into the video. If he was
14 verbally abusive, we heard that there's several techniques
15 that he could've done. He could've restrained the inmate. He
16 could've restrained him and then walked him to the Sergeant's
17 office to get written up. He could've restrained him and then
18 called the Sergeant to approach if they didn't have enough
19 staff. There were several techniques that could've been done.

20 The video clearly shows that at the time of the
21 attack, the inmate did not come off the wall. The last
22 motions that the inmate makes is when he looks at his left
23 wrist and that's at approximately 10:45 in. It's not until
24 five seconds later that Officer Valdez pushes the inmate into
25 the wall. Then puts his arm around the inmate's neck. This