

In The
Supreme Court of the United States

WILLIAM R. STEVENSON,
Petitioner,

v.

RANDY CORDOVA, *ET AL.*
Respondents.

On Petition for Writ of Certiorari to the
United States
Court of Appeals for the Tenth Circuit

**BRIEF IN OPPOSITION
APPENDIX VOLUME II
(APPENDICES A-199 THROUGH F-9)**

CRAIG W. CAIN*
JENNIFER L. WHITE
CAIN & WHITE, LLP
1555 Quail Lake Loop, Suite 100
Colorado Springs, CO 80906
(719) 575-0010
(719) 575-0020 (Fax)
CCAIN@CAINWHITELAW.COM
JWHITE@CAINWHITELAW.COM
COUNSEL FOR RESPONDENTS

*Counsel of Record

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ADMINISTRATIVE REGULATION	REGULATION NUMBER	PAGE NUMBER
	150-01	1 OF 25
CHAPTER: Boards		
SUBJECT: Code of Penal Discipline (COPD)		
RELATED STANDARDS: ACA Standards 2-CO-3C-01, 4-4047, 4-4226 through 4-4228, 4-4230 through 4-4233, 4-4235 through 4-4248, 4-4250, 4-4252, 4-4255, 4-4261, 4-4262, 4-4263, 4-4266, 4-4268, 4-4269, 4-4270, 4-4272, and 4-4400	EFFECTIVE DATE: September 1, 2011	
OPR: OOS	SUPERSESSION: 08/15/10	
	REVIEW MONTH: February	
 Tom Clements Executive Director		

I. POLICY

It is the policy of the Department of Corrections (DOC) to provide written guidelines to ensure that offender control and discipline [2-CO-3C-01] [4-4226] [4-4227] are established and maintained, in accordance with the following objectives:

- A. Require individual offender compliance with reasonable behavior standards and limitations.
- B. Ensure the general welfare and safety of all persons living and working within the institution.
- C. Establish and maintain fair disciplinary procedures and practices consistent with case law.

II. PURPOSE

To establish procedures, responsibilities, prohibitions, and sanctions that govern offender conduct at all DOC facilities, or those under contract with the DOC, and establish procedural guidelines to assist prison officials in regulating the conduct of offenders.

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III. DEFINITIONS

- A. **Attempt**: An offender commits an attempt when, with intent to commit an offense, he engages in conduct that tends to effect the commission of such offense. It is an affirmative defense to the charge of attempt that the offender voluntarily abandoned his effort to commit the offense, prior to the discovery of his active participation in the offense(s) or before it is substantially completed.
- B. **Complicity**: An offender may be charged, tried, and convicted of any offense based upon the conduct of another person if, with the intent that the offense be committed, he commands, induces, encourages, procures, or aids the other to commit it. It is an affirmative defense to the charge of complicity that the offender, prior to the commission of the offense, voluntarily withdrew from any active participation in the offense. In any prosecution where the liability of the accused offender is based upon the conduct of another offender, it is no defense that the other offender has been found not guilty, or has not been prosecuted, or has been convicted of a different offense.
- C. **Contraband**: Any item that a DOC employee, contract worker, volunteer, visitor, or offender is not specifically authorized to have in his/her possession; any item that has been altered and/or is being used for other than its intended purpose (this does not include reading materials, refer to AR 300-26, *Offender Reading Material*); any item(s) over the three cubic foot allowable personal property limit; any item listed in the “Consent to Search Authorization”; any item listed in the Code of Penal Discipline; any item listed on the administrative head’s “Declaration of Contraband”; and any item that may threaten the safety and security of a DOC facility, DOC employees, contract workers, volunteers, offenders, or visitors, or any item listed as contraband in an administrative regulation, implementation/adjustment, or operational memorandum.
- D. **Contract Worker**: A person other than a DOC employee who provides services to the DOC under contract, special assignment, or informal agreement (e.g. purchase order). A contract worker includes self-employed persons, sole proprietors, and persons employed by an employer in the private sector, another public entity, or by another agency of the state of Colorado.
- E. **Dangerous Contraband**: A communication device, firearm, knife, bludgeon, or other weapon, device, instrument, material or substance, whether animate or inanimate, which is readily capable of causing or inducing fear of death or physical injury.
- F. **Dangerous Drugs and Paraphernalia**: Alcohol; all controlled substances as listed under Schedules I-V of the Colorado Revised Statutes, 18-8-203(2) through 18-18-207(2); marijuana and marijuana concentrates including all parts of the plant cannabis sativa L; and any volatile substance inhaled for its mood-altering effect, including but not limited to, cleaning fluids, glue, lacquer, petroleum distillates and/or any drug controlled by regulations of federal or state law. This area should also include drug paraphernalia. (Definition should always be that of the most current statutes).
- G. **Date of Discovery**: *The date at which the initiating officer determined an offense has occurred and the identity of the offender to be charged. This is determined by the date that the initiating officer signs the “Notice of Charge(s).”* [4-4233] [4-4238]
- H. **Disciplinary Officer**: A person, or persons, designated by the warden, or the director of Adult Parole, Community Corrections, and Youthful Offender System, whose duty it should be to present the DOC’s case at disciplinary proceedings. Where feasible, this person should be at or above the level of correctional officer III or the equivalent.

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- I. **DOC Employee**: Someone who occupies a classified, full or part-time, position in the State Personnel System (including management profile positions) in which the Department has affect over pay, tenure, and status.
- J. **Executive Director**: Executive director of the Colorado Department of Corrections, or designee. The highest command DOC employee.
- K. **Group Living Team**: A panel comprised of at least two DOC employees or contract workers who should determine informal disposition of charges against the offender.
- L. **Hearing Board**: A three member board comprised of DOC employees and/or contract workers, of which one serves as chairperson of the hearing board.
- M. **Hearing Officer and Chairperson of the Hearing Board**: Any DOC employee or contract worker, at or above the level of correctional officer III, general professional III, or the equivalent, designated by the executive director, or designee, as eligible to be a hearing officer or chairperson of the hearing board for the purpose of administering this code.
- N. **Housing Supervisor/Shift Leader**: The COIII or COIV assigned to supervision of a housing unit or shift.
- O. **Intentionally**: An offender acts intentionally with respect to a result or to conduct described by this code when he knowingly causes that result or engages in that conduct.
- P. **Non-Disciplinary Resolution**: A voluntary alternative to formal Code of Penal Discipline charges, which involves imposition of minor sanctions without a Code of Penal Discipline conviction.
- Q. **Physical Injury**: Any physical injury that creates substantial risk of death or that causes death, serious disfigurement, substantial pain, impairment of health, loss or impairment of any major bodily function, or that requires any medical attention.
- R. **Possess**: To knowingly exercise physical control over an object. Knowledge should be conclusively presumed when an object is found on an offender's person, his clothing, or in plain view. Knowledge should be rebuttably presumed when an object is found anywhere in an offender's cell or in a place where it is likely that only the offender could have placed it. This presumption may be rebutted by evidence that the offender was not responsible for the object's presence. Offenders are presumed responsible for items found in a common area in a multi-occupancy cell. The presumption of responsibility can be rebutted if proven otherwise.
- S. **Preponderance of Evidence**: Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it; that is evidence, which as a whole shows that the fact sought to be proved is more probable than not.
- T. **Probated Sanctions**: Sanctions imposed by the hearing officer or board, which are withheld until a specified time, no greater than 90 days, or in accordance with section IV.E.3.p.3).
- U. **Public Official**: An elected or appointed official of any local, state, or federal entity.
- V. **Reckless**: An offender's conduct is reckless if he performs an act or fails to perform an act, which it is his duty to do, knowing or having reason to know facts that would lead a reasonable person to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.
- W. **Reviewing Supervisor**: Shift commander or housing supervisor, and/or CSS III, Food Service captain, or designee, where infraction occurred.
- X. **Security Items**: Locks, locking systems, windows, vents, telephones, computers, electronic devices, wrist bands, fire and smoke detection and suppression equipment, or other similar items that are used for security/safety.

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Y. **Supervising Officer**: The officer who will oversee the extra duty work done by the offender being disciplined.

Z. **Victim**: As defined in 24-4.1-302(5), CRS, “any natural person against whom any crime (as defined in 24-4.1-302, CRS) has been perpetrated or attempted, UNLESS THE PERSON IS ACCOUNTABLE FOR THE CRIME OR A CRIME ARISING FROM THE SAME CONDUCT, CRIMINAL EPISODE, OR PLAN as crime is defined under the laws of this state or of the United States, OR, IF SUCH PERSON IS DECEASED OR INCAPACITATED, THE PERSON’S SPOUSE, PARENT, CHILD, SIBLING, GRANDPARENT, SIGNIFICANT OTHER, OR OTHER LAWFUL REPRESENTATIVE,” or those registered in the DOC Victim Notification Program.

AA. **Victim Designee**: The victim’s spouse, parent, child, sibling, grandparent, significant other, or other lawful representative.

BB. **Volunteer**: A person approved by Faith and Citizen Programs and the respective facility administrative head/designee to provide services without compensation from the DOC for correctional programs.

CC. **Working Days: Monday through Friday, excluding state recognized holidays. [4-4238]**

IV. PROCEDURES

Masculine gender should also refer to the feminine gender if the context so requires. Whenever the singular is used herein, it should also refer to the plural if the context so requires.

A. **PUBLICATION**: Amendments and/or supplements to this code may be issued at any time by the executive director of the DOC as provided herein. Notice of any amendment and/or supplement to this code should be provided to offenders in a manner determined by the facility warden/director. No amendments and/or supplements should become effective sooner than 15 days after publication and notice to the offenders.

B. JURISDICTION

1. **Offenders Subject to Code**: All offenders in the custody of the executive director of the DOC should be subject to this code. All violations of this code should be punishable as disciplinary violations.
2. **Criminal Prosecution**: In addition to being subject to this code, all offenders in the custody of the executive director of the DOC are subject to all laws of the United States and the state of Colorado. If a violation of this code would also be a violation of a federal, state, or local law, an offender should be subject to the provisions of this code, as well as to the applicable law.

When an offender allegedly commits an act covered by statutory law, the case should be referred to the appropriate local or federal agency for criminal prosecution. [4-4231] Pursuant to CRS 17-1-103.8(2)(a), the case should first be referred to the Office of the Inspector General (OIG). The OIG should pursue case filings and follow-up as necessary.

3. **Relationship to DOC Regulations 600-01 and 600-02**:

- a. All decisions relating to offender classification, removal from population, and placement in administrative segregation should be made in accordance with administrative regulations 600-01, *Offender Classification*, and 600-02, *Administrative Segregation*. In the event that the facts of a particular disciplinary case make it appropriate for a classification officer or board to review a particular case, the disciplinary hearing officer or board may, at its discretion, forward a summary of facts to the classification officer or committee for its review. Such recommendations should not be binding upon the appropriate classification officer or committee.

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In addition, pursuant to administrative regulations 600-01 and 600-02, the appropriate classification officer or committee may review any offender's status without regard to any recommendation from the disciplinary hearing officer or board.

- b. Disciplinary hearing officers or boards should not have any authority to modify, change, or otherwise affect an offender's classification, except through the process of recommending that the classification officer or board review a particular case, as outlined in Section IV.B.3.a.
- C. **DISPOSITION:** Class I and II offenses require a formal hearing. ***All Class III offenses will be handled through the informal disposition procedure, [4-4230]*** unless they are in combination with Class I or II charges resulting out of the same incident.

D. **VIOLATIONS**

CLASS I OFFENSES:*

- (1) **Murder:** An offender commits this offense when he intentionally causes the death of another person. Self-defense should be a defense to a charge of Murder.

If the evidence presented is insufficient to sustain a conviction on a charge of Murder, the hearing officer or board should have the discretion to modify the charge to convict the offender of the offense of Manslaughter or Assault, if such conviction is justified by the evidence presented.

- (2) **Manslaughter:** An offender commits this offense when he recklessly causes the death of another person, or without premeditation, upon a sudden heat of passion caused by a serious and highly provoking act affecting the offender sufficiently to excite an irresistible passion in a reasonable person, causes the death of another person. Self-defense should be a defense to a charge of Manslaughter.

If the evidence presented is insufficient to sustain a conviction on a charge of Manslaughter, the hearing officer or board should have the discretion to modify the charge to convict the offender of the offense of Assault, if such conviction is justified by the evidence presented.

- (3) **Kidnapping:** An offender commits this offense when he seizes; or carries any person from one place to another; or holds a person without his consent with the intent thereby to force the victim or any other person to make any concessions or give up anything of value in order to secure the release of the person under the offender's actual or apparent control.

- (4) **Assault:** An offender commits this offense when he intentionally, or through negligence or recklessness, causes injury to another person, or applies any physical force, offensive substance (such as feces, urine, mucous, blood, saliva), or any other item or hazardous substance against any person, regardless of whether or not injury occurs. Self-defense should be a defense to a charge of Assault.

If the evidence presented is insufficient to sustain a conviction on a charge of Assault, the hearing officer or board should have the discretion to modify the charge and convict the offender of the offense of Fighting or Unauthorized/Incidental Contact, if such conviction is justified by the evidence presented.

- (5) **Escape with Force:** An offender commits this offense when he, by force or threat of force, without proper authority removes himself from the confines of the institution or from official custody while beyond the confines of the institution.

If the evidence presented is insufficient to sustain a conviction on a charge of Escape with Force, the hearing officer or board should have the discretion to modify the charge and to convict the offender of Escape without Force, if such conviction is justified by the evidence presented.

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(6) **Escape Without Force:** An offender commits this offense when, without proper authority, he removes himself from the confines of the institution or fails to return to official custody following temporary leave granted for a specific purpose and for a specified period of limited duration. The hearing officer or board should have the discretion of treating tardiness as Unauthorized Absence, rather than Escape without Force, so long as the offender voluntarily returns from the temporary leave within four hours of his scheduled return time. For an offender on community corrections placement, the hearing officer or board should have the discretion to reduce such Escape without Force charge to Failure to Remain or Return, provided the offender voluntarily returns within 48 hours of the designated return time.

(7) **Engaging in Riot:** An offender commits this offense when he, with two or more persons, participates in conduct that creates danger of damage or injury to property or persons and obstructs the performance of facility functions.

If the evidence is insufficient to sustain a conviction on a charge of Engaging in Riot, the hearing officer or board may have the discretion to modify the charge to convict the offender of the offense of Advocating or Creating Facility Disruption, if such conviction is justified by the evidence presented.

(8) **Inciting to Riot:** An offender commits this offense when he urges or organizes two or more offenders to imminently engage in a riot and such incitement is likely to produce a riot, or once a riot begins, he assumes a position of command or instruction in furtherance of the riot.

If the evidence is insufficient to sustain a conviction on a charge of Inciting to Riot, the hearing officer or board may have the discretion to modify the charge to convict the offender of Advocating or Creating Facility Disruption, if such conviction is justified by the evidence presented.

(9) **Rape:** An offender commits this offense when he/she uses physical force or intimidation upon another person for the purpose of sexual contact of any kind, and,

- (a) He has impaired the power of the other person to apprise or control his conduct by administering or employing drugs, intoxicants, or similar means, or,
- (b) He compels or induces the other person to submit by any misrepresentation such as bartering and extortion or threat of violence, or,
- (c) The other person suffers from mental disease, defect, or inadequacy that is reasonably apparent or known to the accused offender, which, in fact, renders the other person incapable of understanding the nature of his conduct or being aware of the nature of the act committed, or,
- (d) The other person is unconscious or otherwise physically incapable of resisting.

If the evidence presented is insufficient to sustain a conviction on the charge of Rape, the hearing officer or board should have the discretion to modify the charge and to convict the offender of Sexual Harassment or Sexual Abuse, if such conviction is justified by the evidence presented.

(10) **Arson:** An offender commits this offense when he sets fire to, burns, causes to be burned, or by the use of any explosive or combustible device, damages or destroys or causes to be damaged or destroyed, any structure or property.

(11) **Robbery/Extortion:** An offender commits this offense when he uses or threatens the use of physical force or improper pressure upon another person for the purpose of:

- (a) Preventing or overcoming resistance to the taking of property or to the retention thereof immediately after the taking, or
- (b) Compelling the owner of such property or another person to deliver or give up possession of the property.

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If the evidence presented is insufficient to sustain a conviction on a charge of Robbery/Extortion, the hearing officer or board should have the discretion to modify the charge and convict the offender of the offense of Theft or Bartering, if such conviction is justified by the evidence presented.

- (12) **Possession of Dangerous Contraband:** An offender commits this offense when he possesses, uses, has under his control or in his custody any item defined as dangerous contraband. Offenders in possession of any unauthorized Class "A" or "B" tools may be found guilty of this violation.
- (13) **Dealing in Dangerous Drugs:** An offender commits this offense when he sells, gives away, or arranges introduction any quantity of any item defined as dangerous drugs.
- (14) **Possession of Key or Key Pattern:** An offender commits this offense when he possesses a key or key pattern to any lock. A key pattern is any substance upon which the impression of a key is made. This offense should not prohibit possession of keys authorized by the warden/director, or designee.
- (15) **Possession of Escape Paraphernalia:** An offender commits this offense when he has in his possession, in his cell, in his immediate sleeping area, locker, or immediate place of work or other program assignment, or receives from or gives to another offender, or fashions or manufactures, or introduces or arranges to introduce into the facility any escape paraphernalia including, but not limited to:
 - (a) Lock, lock picks, trip wires, locking devices, chain, rope, ladder, tool(s) (Class "A" or "B"), or other items that could be used to effect an escape; and/or,
 - (b) Mask, wig, disguise, or any other means of altering normal physical appearance that would make ready identification of an offender difficult; and/or,
 - (c) Mannequin, dummy, replica of a human body, or any item or device that would cause any offender to be counted as being present at a designated time and place when, in fact, he would be absent, or in any way would aid or abet the escape or walk away of an offender; and/or any,
 - (d) Form of securities, bonds, coins, currency, legal tender, official papers or documents (other than papers or documents relative to judicial or administrative proceedings), unless expressly and specifically authorized by the warden/director, or designee, of the correctional facility concerned; and/or
 - (e) Item of an officer's uniform, civilian clothing, or DOC employee clothing, including badges, buttons, name tags, or items of personal identification, unless expressly and specifically authorized by the warden/director, or designee, of the correctional facility concerned.
- (16) **Tampering with Locks or Security Items:** An offender commits this offense when he, without authorization, locks, unlocks, disables, alters or modifies, in any way, any lock, locking system, or security item within the facility and/or uses any unauthorized lock or security item.
- (17) **Refusal to Submit to Drug Test:** An offender commits this offense when he fails or refuses to submit to any test for the unauthorized use of dangerous drugs requested by any DOC employee or contract worker. This includes tampering, dilution, and or adulteration of urine samples, oral swabs, or hair samples. Refer to AR 300-20, *Offender Drug Screening*, for established time frames.
- (18) **Threats or Intimidation of Public Officials:** An offender commits this offense when he communicates to a public official a determination, scheme, or intent to cause, or to instill, the fear of death, injury, terrorism, or intimidation. Such communication may be verbal, physical, or written.

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(19) **Solicitation of a DOC Employee, Contract Worker, or Volunteer Misconduct:** An offender commits this offense when he attempts or is complicit to an act(s) where he seeks to obtain as by persuasion, intimidation or influence, to entice any DOC employee, contract worker, or volunteer into an unlawful act and/or violation of CDOC policy for any reason.

(20) **Unauthorized Possession of Electronic Communication Device:** An offender commits this offense when he possesses or uses a communication device, to include but not limited to: cell phone, computer, pager, or DTR (digital trunked radio).

(21) **False Reporting to Authorities:** An offender commits this offense when he:

- Makes a report alleging criminal conduct by a DOC employee or any other person, knowing that the allegation is false, untruthful, or misleading; or,
- Makes a report alleging that a DOC employee engaged in conduct that violated DOC policy, knowing that the allegation is false, untruthful, or misleading; or,
- Presents physical evidence knowing that it is forged, fabricated, or fraudulent; or,
- Knowingly provides false or misleading information during the course of an official DOC investigation.

* **Attempt or Complicity** - The charges of complicity and/or attempt may be used in conjunction with any appropriate Class I offense and the hearing officer or board may impose the same penalty prescribed for the substantive offense.

CLASS II OFFENSES:*

(1) **Theft:** An offender commits this offense when he knowingly obtains or exercises control over property or services belonging to someone else, without authorization. Value of property or services should be substantiated by written documentation if restitution is to be sought or ordered as a sanction.

If the evidence is insufficient to sustain a conviction on a charge of Theft, the hearing officer or board should have the discretion to modify the charge and to convict the offender of the offense of Bartering, if such conviction is justified by the evidence presented.

(2) **Damage to Property:** An offender commits this offense when he intentionally or through recklessness, damages, or causes to be damaged any property of another. Value of property should be substantiated by written documentation if restitution is to be sought or ordered as a sanction.

(3) **Bribery:** An offender commits this offense when he offers to confer, confers, or agrees to confer anything of value upon any DOC employee, contract worker, volunteer, or other offenders with the intent to influence that person's or offender's exercise of discretion or other action in any capacity.

(4) **Forgery:** An offender commits this offense when he creates or alters a document with intent to deceive.

(5) **Fraud:** An offender commits this offense when he:

- Through deception, trickery, or false claims, attains anything for personal gain or benefit; or,
- Alters, destroys, conceals, or removes anything with intent to impair its authenticity or availability; or,
- Presents or uses anything that he knows to be false with intent to deceive.

(6.5) **Sexual Abuse:** An offender commits this offense when he has active or passive contact or fondling between his genitals, hand(s), mouth, buttocks, anus, or breast and the genitals, hand(s), mouth, buttocks, anus, or breast of another person. Contact can be with or without clothing being worn by one or both parties.

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(7) **Receiving Stolen Property:** An offender commits this offense when he receives stolen property of another, knowing that it has been stolen or believing that it has been stolen, unless he has notified a DOC employee, contract worker, or volunteer of his knowledge or belief or otherwise made reasonable efforts to restore the property to its owner. Proof that the accused offender acquired stolen property for a consideration far below its economic value or that he was found in possession of recently stolen property will create a rebuttal presumption that it had been stolen. Where the presumption exists, the offender has the burden of proof of showing lawful possession of the property.

If the evidence is insufficient to sustain a conviction on a charge of Receiving Stolen Property, the hearing officer or board should have the discretion to modify the charge and to convict the offender of the offense of Bartering, if such conviction is justified by the evidence presented.

(8) **Possession or Use of Dangerous Drugs:** An offender commits this offense if he possesses or uses any quantity of unauthorized dangerous drugs.

(9) **Possession or Use of Tobacco or Tobacco Products:** An offender commits this offense when he possesses or uses any tobacco (smoking or smokeless) or tobacco products/paraphernalia, including but not limited to, rolling papers, pipes, and lighters.

(10) **Perjury:** An offender commits this offense when he makes a false statement under oath or affirmation or swears or affirms the truth of a statement previously made and does not believe the statement to be true.

(11) **Possession of Syringe or Drug Paraphernalia:** An offender commits this offense when he possesses a syringe or other implement capable of injecting a substance under the skin of any individual, including himself and/or possesses an article, equipment, or apparatus capable of administering a dangerous drug or volatile substance.

(12) **Fighting:** An offender commits this offense when he engages in a physical altercation including, but not limited to: exchange of punches, strikes, shoves, kicks, or any offensive physical contact without authorization from the warden/director, or designee. Self-defense should be a defense to a charge of Fighting.

(13) **Threats:** An offender commits this offense when he communicates a determination or intent (either verbally, physically, or in writing) to injure another person or to commit a crime of violence or an unlawful act presently or in the future, and the probable consequence of such threat(s) (whether or not such consequence, in fact, occurs) is:

- (a) To place another person in fear of bodily injury; or,
- (b) To cause damage to property; or,
- (c) To jeopardize the security of the facility.

(14) **Abuse of Medication:**

- (a) An offender commits this offense when he, in any way, stores, saves, gives away, discards, or throws away, possesses, or removes any prescription medication without authorization or administers the substance to himself or others in a manner other than which was intended by the manufacturer; or,
- (b) An offender commits this offense when he, in any way, gives away any over-the-counter medications or administers the substance to himself or others in a manner other than that which was intended by the manufacturer.

(15) **Interference with Search:** An offender commits this offense when he refuses to allow, obstructs, or hinders in any way, a DOC employee, contract worker, or volunteer in his search of any person, housing unit, or property.

(16) **Advocating or Creating Facility Disruption:** An offender commits this offense when he transmits or attempts to transmit through any form of communication or action, threats, demands, actions, or suggestions that advocate disruption, including STG related activities, or if he actually disrupts operations of any segment of a facility.

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(17) **Inter-Agency Visitation:** An offender commits this offense when he visits another facility without first obtaining authorization from any DOC employee, contract worker, or volunteer at his facility assignment and any facility(ies) he wishes to visit.

(18) **Association:** An offender commits this offense when he:

- (a) While at a community placement facility or non-resident status, associates outside the facility, with a person he knows or has reason to know is a convicted felon or a validated member of a security threat group without first obtaining authorization of an appropriate DOC employee, contract worker, or volunteer, or,
- (b) While assigned to an off-grounds or outside crew, associates with the general public without first receiving authorization.

(19) **Unauthorized Possession:** An offender commits this offense when he has in his possession, in his cell, in his immediate sleeping area, locker, or immediate place of work or other program assignment or fashions, manufactures, introduces or attempts to arrange or arranges to introduce into the facility any item defined as contraband.

Offenses under this subsection should not include unauthorized possession of dangerous contraband, dangerous drugs, key or key pattern, syringes or drug paraphernalia, tattooing/piercing/branding paraphernalia, or escape paraphernalia.

(20) **Tattooing/Piercing/Branding/Mutilation and/or Possession of Tattooing/Piercing/Branding/Mutilation Paraphernalia:** An offender commits this offense when he receives or gives a tattoo/piercing/brand or commits any act of body mutilation/modification or has in his possession any tattooing/piercing/branding/mutilation paraphernalia to include, but not limited to: patterns, ink, needles, piercing jewelry, irons, or altered electrical appliances.

(21) **Count Interference:** An offender commits this offense when he causes or participates in any interference, delay, disruption, or deception with regard to the process of counting part or all of the offender population, including, but not limited to: hanging, fastening, or attaching any sheet, blanket, curtain, drapery, or other material whether transparent or not on any part or all of the front or door of a cell or around a dormitory bed or other immediate sleeping area without the permission of an authorized DOC employee, contract worker, or volunteer.

(22) **Failure to Work:** An offender commits this offense when he:

- (a) Fails to perform work assigned; and/or,
- (b) Fails to report to work; and/or,
- (c) Departs from his appointed place of duty or assignment without authorization.

Medical authorization by a clinical DOC employee or contract worker is a defense to this code violation.

(23) **Gambling:** An offender commits this offense when he plays for money or other things of value at any game including, but not limited to: those played with cards or dice, or bets on the side or hand of those playing, or bets anything of value on the outcome of any observable event or ascertainable happening or organizes or is in possession of any game of chance, lottery, betting pool, betting slips or records, or is in possession of other similar devices.

(24.5) **Sexual Harassment:** An offender commits this non-contact offense when he subjects another person to verbal or written statements or gestures of a sexual or romantic nature, including but not limited to:

- (a) He uses obscene or profane language, makes demeaning references to gender, or derogatory comments about body or clothing, or,
- (b) Makes sexually harassing gestures, or,

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- (c) Makes threats of physical force or improper pressure for sexual acts, or requests for sexual acts, or
- (d) Displays his/her anus, genitals, or breasts (female) to another person, or,
- (e) Masturbates in the presence or direct vision of another person.

(25) **Disobeying a Lawful Order:** An offender commits this offense when:

- (a) He refuses to obey a verbal or written order or instruction given by a DOC employee, contract worker, or volunteer that is reasonable in nature and that gives reasonable notice of the conduct expected; or,
- (b) He violates any special condition(s) of his community placement; or,
- (c) **Harassment of Victim:** An offender commits this offense when he contacts the victim or “victim designee” (as defined in CRS 24-4.1-302 (3)(4)(5)(6)), without written authorization from the courts or DOC employee, in any manner to include writing, phone calls, or personal or direct contact. Violation of restraining orders will be included, unless allowed by the court in writing specifying the exemptions to the restraining order. Attempt and/or complicity may be charged in the case where the offender solicits a third party to make an unauthorized contact.

Violating a posted operational rule is not an offense under this subsection; however, refusing a verbal or written order to comply with a posted operational rule is an offense.

(26) **Bartering, Selling Goods, and Commodities or Services:** An offender commits this offense when he barters, loans, sells, gives, receives, borrows, or buys any item without the prior knowledge and permission of a DOC employee, contract worker, or volunteer including, but not limited to: those items sold in the canteen, clothing, housing furnishings, art and craft items, services, or transfers or attempts to transfer funds from the trust or banking account of one offender to that of another offender and/or when an offender arranges the payment from one offender to another through outside resources without proper authorization. [4-4047]

(27) **Verbal Abuse:** An offender commits this offense when he subjects another person to abusive, offensive, or defamatory language or gestures.

(28) **Operating Motor Vehicles:** An offender commits this offense when he operates any motor vehicle without permission of a DOC employee, contract worker, or volunteer.

(29) **Habitual Class III Convictions:** An offender commits this offense when he receives four or more Class III informal convictions during a six month period.

(30) **Unauthorized Absence:** An offender commits this offense when he, without proper authority:

- (a) Departs from any place where he was directed to remain by a DOC employee, contract worker, or volunteer, or facility regulations; or,
- (b) Is away from his assigned area or is found in an area without authorization from a DOC employee, contract worker, or volunteer of his assigned area.

(31) **Failure to Remain or Return:** An offender commits this offense if he fails to remain within or return, as specified in the limits on his confinement, as established under any community corrections placement, but voluntarily returns within 48 hours of designated return time. If the offender voluntarily returns within six hours of designated return time, the hearing officer or board should have the discretion to reduce such Failure to Remain or Return charge to Unauthorized Absence.

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(32.5) **Unauthorized/Incidental Contact:** An offender commits this offense when he intentionally or through negligence or recklessness makes unauthorized contact with a DOC employee, contract worker, volunteer, or visitor through physical contact with an object or with a non-offensive, non-hazardous material in which no injuries are sustained.

(33) **Misuse of Clinical Services:** An offender commits this offense when he causes the use, or expense, of medical, dental, or mental health care, without good reason, or fails to cooperate with the care without good reason.

* **Attempt or Complicity:** The charges of complicity and/or attempt may be used in conjunction with any appropriate Class II offense and the hearing officer or board may impose the same penalty prescribed for the substantive offense.

CLASS III OFFENSES:

(1) **Failure to Display Name and/or Identification Number and/or Card:** An offender commits this offense when he fails to display his name and/or identification number and/or card in the manner prescribed by the warden/director's written directives.

(2) **Failure to Obtain Permit:** An offender commits this offense when he fails to obtain a permit for any item or activity as prescribed by the warden/director.

(3) **Violating a Posted Operational Rule:** An offender commits this offense when he violates any posted facility rule or regulation of which he has, or through the exercise of reasonable diligence, should have, knowledge. The written report should include the specific operational rule alleged to have been violated.

(4) **Failure to Pay Subsistence:** An offender commits this offense when he fails to pay the subsistence fee(s) or ISP fees.

(5) **Entering Into Contract:** An offender commits this offense when he enters into a contract or engages in any business without the written approval of a DOC administrative head, or designee.

(6) **Littering:** An offender commits this offense when he disposes of any form of trash or waste in any place other than those specifically designated for waste disposal.

(7) **Sanitary Violation:** An offender commits this offense when he:

- (a) Willfully urinates or defecates in other than the facilities provided for such functions, or,
- (b) Willfully fails or refuses to shower at least once a week, or,
- (c) Willfully fails to keep his body, hair, and clothes in as clean, sanitary, neat, and odor-free condition as possible under the circumstances of his particular custody, or,
- (d) Willfully fails to keep his cell or immediate sleeping area clean, odor-free, sanitary, free of trash and debris and available to the visual observation of a DOC employee, contract worker, volunteer, or,
- (e) Intentionally commits acts hazardous to the health of any person within the facility.

(8) **Personal Appearance Violation:** An offender commits this offense when he fails to follow the warden/director's written directives on personal appearance.

E. FORMAL DISCIPLINARY PROCEDURES

1. Hearing Officer/Hearing Board Composition and Authority:

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- a. Disciplinary hearings may be held before either a hearing officer or a three-member board, at the discretion of the DOC. Upon the offender's request, Class I offenses should be heard by a hearing board, if feasible.
- b. For each facility operated by the DOC, the warden, or the director of Adult Parole, Community Corrections, and the Youthful Offender System, should designate an approved list of DOC employee(s) or contract worker(s) who may serve as hearing officers or chairperson of hearing boards for each such facility and such list should be approved by the executive director, or designee. Persons so designated should be at or above the rank of correctional officer III, general professional III, or community parole officer I, II, or the equivalent, and should be trained in the principles of jurisprudence and due process and should be thoroughly familiar with the provisions of this code.
- c. ***The hearing officer and the board should be impartial. [4-4240] A hearing officer should not be directly involved in the incident; [4-4230]*** however, the hearing officer or member of the hearing board may be aware of investigations and information about the incident without being biased. A brief description of involvement should be made a part of the record. No hearing officer or board member should discuss a case to which he is assigned with any other person, except at the hearing on the matter, or after its conclusion.
- d. The hearing officer or board at each facility should have original and exclusive jurisdiction in all disciplinary matters except that Class III offenses should be handled through the informal disposition process, unless they are in combination with Class I or II charges resulting out of the same incident.
- e. The hearing officer or board should administer an oath or affirmation to all parties testifying in a hearing. The hearing officer or board should have the power to compel the attendance of any DOC employee, contract worker, or volunteer. The hearing officer or board should have the power to obtain copies of document(s) held by the DOC for the purpose of conducting a hearing.
- f. DOC employees or contract workers who are formally approved to participate in the mentoring program may participate in the COPD process as a hearing officer. Such DOC employee or contract worker should have completed COPD hearing officer training and may conduct hearings only under direct, on-site supervision of a certified hearing officer at the level of correctional officer III, general professional III, or above. All DOC employees or contract workers participating in the mentoring program as a hearing officer should have prior approval from the associate director of Offender Services.

2. **Detention of Community Facility Offenders:**

- a. An offender assigned to a community facility may be placed and held in a local detention facility (e.g., city or county jail), if required for security purposes upon notification of a charge for a Class I or II violation.
- b. Detention prior to hearing should not exceed ten working days, except upon request for continuance by the offender or approval from the director of Adult Parole, Community Corrections, and the Youthful Offender System for justifiable cause and documented in the record.

3. **Formal Disposition Procedures:**

- a. ***After review of the DOC employee or contract worker's incident report for determination of charges, a "Notice of Charge(s)" will be prepared. [4-4232]***
- 1) ***If a Class I or Class II charge(s) is brought against an offender, appropriate supervisor(s) must begin an independent review, [4-4232]*** as soon as possible, but no later than two working days after the date of discovery of the alleged violation.
- 2) The supervisory review may be delegated to a DOC employee or contract worker at or above the level of correctional officer III or equivalent. The reviewing supervisor may consult with anyone, including the

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offender, during his review. If the reviewing supervisor finds cause to believe that any violation was committed by the offender charged, he should approve the "Notice of Charge(s)."

- b. The initiating officer(s) should be kept informed of all stages of the process as well as final disposition.
- c. Notice of Charge(s):
 - 1) ***The accused should receive a written "Notice of Charge(s)" [4-4233] [4-4236]*** not later than six working days after the date of discovery of the violation, or not later than six working days after the offender has been returned to the facility, if the offender is temporarily absent during the period after discovery, or not later than six working days after the incident is reported, in writing, to the director of Adult Parole, Community Corrections, and the Youthful Offender System, or designee.
 - 2) ***The "Notice of Charge(s)" should contain the place, date, and time of the incident, date of discovery, the name of the initiating DOC employee, contract worker, or volunteer, the citation of the offense charged, a description of the offense that includes any unusual offender behavior and immediate action taken, including use of force, [4-4236] and the witnesses to the offense. [4-4233]*** Copies of all available, relevant, non-confidential, non-repetitious information and/or documentation should be included in, or attached to, the "Notice of Charge(s)." ***The offender should be informed on the notice of the general substance of any confidential information and/or evidence to be used against him without breaching confidentiality. [4-4233] The "Notice of Charge(s)" should notify the offender of the date and time set for the hearing. [4-4238]***
- d. Service and Receipt of "Notice of Charge(s)": ***The "Notice of Charge(s)" should be personally served to the offender [4-4236]*** by DOC employees or contract workers and a copy should be forwarded to the hearing officer or board with a record of the time and date served and the person serving the notice. ***The offender should be served at least 24 hours prior to any disciplinary hearing. [4-4236]*** If an offender refuses to accept his copy of the "Notice of Charge(s)," the serving officer should note such refusal on a copy of the "Notice of Charge(s)." Non-English speaking offenders should be offered assistance by translation or other effective means.
- e. Amendment to "Notice of Charge(s)": If any amendment of the charges or other information on the notice is made, the offender should be informed in writing of the amendment at least 24 hours prior to the hearing, unless waived by offender. The correction of clerical mistakes should not be an amendment and can occur at anytime, and should be made part of the record.
- f. Date and Time of Hearing: ***The hearing should be scheduled to be heard and held no sooner than 24 hours and should not be held later than seven working days after the date of discovery, [4-4238] unless a continuance of the case is granted at the request of the offender, hearing officer, or board for good cause and documented in the record. The hearing may be held within 24 hours with the offender's written consent. [4-4236]*** In community corrections, the hearing should be held within seven working days of the incident reported in writing to the director of Adult Parole, Community Corrections, and the Youthful Offender System, or designee. An offender may request the hearing officer or board to schedule a hearing at the earliest possible time. Priority in scheduling hearings should be given to offenders who have been segregated prior to the hearing. The reporting officer(s) should be notified of the date and time of the hearing.
- g. Removal from Population (RFP) Prior to Hearing:
 - 1) ***An offender who poses an imminent and substantial threat to the security of the institution, other offenders, DOC employees, contract workers, or volunteers, or to himself, may be removed from population prior to hearing. Removal from population prior to hearing should***

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only be ordered by the administrative head, or designee [4-4235] [4-4250] (see AR 600-01, *Offender Classification*, Attachment "A"). Removal from population is a temporary classification action, as detailed in AR 600-01. Immediately following RFP, the shift supervisor shall document, in writing, the circumstances surrounding the incident and the need for pre-hearing RFP. ***Within 72 hours, including weekends and holidays, the warden, or designee, should review the report and determine whether there is a continued need for RFP prior to hearing. [4-4235] [4-4250]***

2) In cases where pre-hearing RFP is found necessary, but the offender is housed at a facility where RFP is not feasible, the offender may be moved to a more secure facility.

h. Burden of Proof/Pleading:

- 1) The DOC should have the burden of proof in all formal disciplinary proceedings under this code to establish guilt, in accordance with the standard of the preponderance of the evidence.
- 2) At the hearing, the offender may plead "not guilty," "guilty," or "guilty with explanation."

i. Evidence:

- 1) The hearing officer or board should admit all reliable, non-repetitious evidence that is probative of the facts of the incident from which the charge arises. The hearing officer or board may exclude irrelevant, incompetent, or unduly repetitious evidence. Hearsay evidence may be admitted through the person to whom the statement was made if such evidence possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Evidence may also be admitted through a sworn, notarized statement. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Physical evidence or replicas thereof may be presented at the hearing upon the hearing officer or board's determination of necessity. Photocopies of physical evidence deemed to be dangerous contraband by the disciplinary officer may be presented at the hearing in lieu of the physical evidence.

2) Offender Evidence: The offender should be permitted to offer explanation, defense, or rebuttal to the charge. [4-4242] An offender's defense should be relevant to the specific charge and may be limited at the discretion of the hearing officer or board.

j. Witnesses:

- 1) ***The offender and the disciplinary officer should have the right to request the testimony of witnesses [4-4242]*** at the hearing, but no offender witness should be required to appear or testify against his will. Testimony may be obtained from witnesses in person, telephonically, or by sworn statement. DOC employees, contract workers, or volunteers should cooperate with all hearing officer requests to testify. ***Witnesses may be limited by the hearing officer or board if their testimony is determined to be irrelevant, incompetent, or unduly repetitious and that determination is documented in the record. The offender may request testimony of persons who witnessed and/or investigated the violations charged, whenever feasible, except when an offender witness refuses to appear or testify. Refusal to testify should be documented in writing by the refusing witness and made a part of the record of the hearing. The hearing officer or board may deny any offender victim as a witness, based on protection of the witness from verbal or physical harassment. Any denial of a witness by the hearing officer, and the reason therefore, should be made part of the record. [4-4242]***

2) Offer of Proof: In situations where the testimony made through an offer of proof (the hearing officer or board asks the offender to summarize what a proposed witness would say, if allowed to testify) is of a sort where further questioning of the absent witness is not necessary, the hearing officer can simply accept the offer of proof as evidence and go on with the hearing without actually calling the witness.

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3) In no event should an accused offender, or his representative, be allowed to question, or to continue addressing questions to a witness, when it appears that the questions are primarily intended to harass the witness or are unduly repetitious or irrelevant.

k. Confidential Informants/Information:

- 1) ***Confidential testimony will only be used when it is determined by the disciplinary officer that public testimony would present danger to the safety of an informant [4-4241]*** or would divulge security sensitive information or operations. Confidential testimony should be taken under oath and recorded on audio tape or by sworn statement in confidence by the disciplinary officer and must be made available to the hearing officer or board prior to the hearing. ***The disciplinary officer should record specific evidence of dangerousness together with the confidential testimony and/or evidence in a separate written record, [4-4241]*** which should not be revealed to the accused offender at any time.
- 2) The accused offender should, however, be informed in the "Notice of Charge(s)" of the general substance of the confidential testimony and/or evidence including the place, date, and time (where known) of the offense(s) alleged.
- 3) The hearing officer, or board, should evaluate the information gathered by the disciplinary officer to determine the reliability of the information and state on the record, either verbally or in a written determination using Attachment "F," "Evaluation to Determine Dangerousness and Reliability of Confidential Information," their grounds for finding the information reliable. The reliability of the informant should be based on the informant having provided reliable information in the past, the information being offered is based on first hand observations, or there is corroboration from another source or through physical evidence showing the reliability of the information. Immunity is not presumed for confidential informants.
- 4) Confidential information that may lead to criminal charges should be coordinated with the Office of the Inspector General. The confidential informant must be advised that confidentiality may not be maintained in a criminal proceeding.

l. Continuance:

- 1) ***The hearing officer or board may grant a continuance for a reasonable period of time for good cause, [4-4239]*** upon the request of the offender or the DOC, or DOC employee or contract worker.
- 2) The offender should receive a hearing at the earliest date practicable. Continuances for offenders segregated prior to hearing should not exceed five working days.
- 3) The offender should receive a hearing within 30 working days of his return to the facility, if absent from the facility prior to the scheduled hearing.
- 4) The reason for any continuance should be stated in the record of the proceeding and the offender and the disciplinary officer should be notified of such continuances at or prior to scheduled hearing. Continuances should be granted for a period of no less than 24 hours.

m. Rights of Offenders at Hearings:

1) Appearances:

- a) The hearing officer or board should conduct the hearing with due regard for the rights of the accused offender. At commencement of the hearing, the offender should be given advisement of his rights to

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remain silent and informed that any statement he makes may be used against him in a criminal proceeding. The offender should be informed of the evidence against him, including the general substance of confidential information as provided above, and afforded the opportunity to present evidence at the hearing.

- b) ***The accused offender will have the right to be present at the hearing. If any person, including but not limited to, the offender, a witness, or the offender's representative, engages in conduct at the hearing that is disruptive or poses a threat to the security of the facility, he may be removed from the hearing and the hearing should proceed in his absence. Such conduct should constitute a waiver of the right to have such person, including the offender, present at the hearing. [4-4241]*** If an offender refuses to attend the hearing, the hearing may proceed in his absence, and the refusal shall be documented by the hearing officer on the record.

2) Representation:

- a) An attorney should not be allowed to represent an offender(s) or be present at the COPD hearing.
- b) ***Offenders may request representation at the time of service of "Notice of Charge(s)." [4-4243]***
- c) ***Offenders who the hearing officer determines on the record are not capable of understanding the proceedings or articulating a defense, should be provided representation by an offender or DOC employee or contract worker. [4-4243]***
- d) **Offenders Who May Represent Other Offenders:** The warden, or the director of Adult Parole, Community Corrections, and the Youthful Offender System, may designate offenders as representatives only at their facility, and such representative should meet the following minimum requirements:
 - (1) Be neither classified as administrative segregation or in punitive segregation.
 - (2) Be housed within the same facility.
 - (3) Not have been convicted of a violation of a Class I or II offense in the last six months.
 - (4) Should have a working knowledge of the COPD, as verified by the hearing officer.
- e) Offender representation of other offenders is limited to the hearing process. An offender representative does not have powers of investigation, discovery, etc.
- f) **Offenders Who May Not Represent Other Offenders:** The warden, or the director of Adult Parole, Community Corrections, and the Youthful Offender System, may remove an offender from eligibility to represent other offenders when he determines that the offender:
 - (1) Demonstrates an inability to work with the code.
 - (2) Demonstrates unduly, disruptive behavior in a hearing before hearing officers or boards.
 - (3) Performs services as an offender representative for any type of compensation (other than authorized offender pay).
 - (4) Demonstrates any other reason which results in an inability to render effective representation.
- g) Failure to request representation at the time of service of "Notice of Charge(s)" should constitute a waiver of representation.

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3) **Waiver of Offender Rights:** *Any right waived by an offender under the code should be documented in the record or on the record [4-4241] and allowed only if the hearing officer or board is persuaded that the offender has made a knowing and voluntary waiver of his right [4-4230] [4-4237] and the waiver is reviewed by the administrative head, or designee. [4-4237]*

n. Record of Hearing:

1) **Recording:** *All hearings should be recorded on audio tape. The tape should be preserved for a minimum of five years from the hearing date, [4-4240]* or until all administrative review is completed or longer, upon reasonable request to the hearing officer or board.

2) All written documentation of the hearing should be maintained, per AR 100-27, *Records Management.*

o. Findings:

1) **Upon completion of the hearing, the hearing officer or board should decide by majority vote the offender's guilt or innocence, as determined by a preponderance of the evidence, [4-4244]** and what disciplinary sanctions, if any, should be imposed. *This shall be based solely on the information obtained in the hearing process, including DOC employee reports, the statements of the offender charged, and evidence derived from witnesses and documents. [4-4244]* The hearing officer or board may also decide to dismiss the charge. This decision should be forwarded to the administrative head, or designee, for final approval. This decision shall remain as part of the permanent record unless expunged. The hearing officer or board should advise the offender of the decision and his right to appeal. At that time, upon request by the offender, the hearing officer or board may, at its discretion, stay the imposition of sanctions pending any appeal of the decision by the offender. The reporting officer(s) should be notified of the decision of the hearing officer or board.

2) If an offender is found guilty of an offense, the hearing officer or board should state on the record, and in the written decision, all reasons for the decision and for the penalty imposed and should specify any aggravating or mitigating factors considered in their written decision. Dissenting votes should be noted on the record. Any dissenting member of a board may state the basis of his opinion on the record. The hearing officer or board should then prepare a written statement of the evidence relied upon.

p. Hearing Officer or Board Authority/Authorized Sanctions:

1) When a hearing officer or board finds that an offender has violated a provision of this code, the hearing officer or board may impose all or any part of the sanctions prescribed for such violation, except as limited herein. In cases where a loss of privileges is imposed, the hearing officer or board should specifically state the extent of the restriction imposed.

2) The hearing officer or board should have the power to suspend any sanction or any part thereof imposed under this code, provided that if a sanction is imposed, it should be imposed within the limitations set forth herein.

3) The hearing officer or board should have the power to probate the sanction or any part thereof provided that the period of probation should be for a definite period of time not to exceed 90 days and the conditions for revocation should be specifically set forth in the "Disposition of Charge(s)." Warnings and reprimands will only apply to Class III violations.

4) Monetary restitution, if imposed as a sanction, should be specified and should be equal to an amount up to, but not exceeding, the cost of any damaged or stolen property or service. If apportioned, collection for restitution should not exceed 50% of any money deposited to the offender's account each month. In all

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cases, an offender should be assured access to items necessary for personal hygiene. Restitution may be ordered on any charge for the value of service or property. The identified specific amount/cost of restitution should be included in the "Disposition of Charge(s)."

- 5) Privileges will be suspended during the period of punitive segregation and should be restored consistent with the offender's classification upon release from punitive segregation. Punitive segregation and loss of privileges should not be used together as a single sanction. Time spent by the offender in segregation due to charged offense, prior to hearing, should be credited toward the satisfaction of any punitive segregation sanctions subsequently imposed for the offense charged.
- 6) Loss of specific privileges, if imposed as a sanction, shall be set forth in the written decision and may include, but not limited to, canteen, movies, television, radio, gymnasium, yard, library, hobby shop, or social visitation including contact visitation. Loss of privileges shall not include work or academic or mental health programs, except when affected by classification or segregation. In cases where a loss of privileges is imposed, the hearing officer or board should specifically state the extent of the restriction imposed.
- 7) Loss of good time, if imposed as a sanction, should be within the maximum range set forth in the tables included in this code. Such sanction should be consistent with AR 950-07, *Sentence Computation*.
- 8) Sanctions should be implemented at the conclusion of the hearing unless a stay of sanctions or probation has been granted.
- 9) Under no circumstances should corporal punishment of any kind be administered to any offender.
- 10) Sanctions should be imposed concurrently for cumulative offenses arising out of the same act and/or incident.
- 11) Sanctions may be suspended by the facility warden should the offender be moved from the facility on out to court status, CMHIP, or extended medical and may then be initiated upon return to complete the unsatisfied portion of the sanction(s) imposed.
- q. **Disposition:** The offender should receive oral notice at the conclusion of the hearing of the hearing officer or board's actions. ***The offender should receive a formal written "Disposition of Charge(s)," which will include the reasons for the disciplinary action [4-4245]*** and evidence relied on, within ten working days of the date of the hearing.
- r. **Final Approval of Formal Disciplinary Actions:** ***Actions taken by the hearing officer or board should be forwarded to the warden/director, or designee, who must review all decisions to assure conformity with administrative regulations. [4-4247]*** The hearing officer or board chairperson shall inform the offender at the conclusion of the hearing that the action is subject to approval or modification by the warden/director, or designee. The warden/director, or designee, may approve, reduce, or modify the decision or reverse the decision and order a new hearing if the warden/director, or designee, determines that the decision was not based on a preponderance of evidence or was based on incomplete information. The warden/director may not increase sanctions.

Private Prison Monitoring Unit: CDOC is obligated to review all COPD convictions of offenders charged by the contractor, per CRS 17-1-203. In the event a hearing officer or board determines an offender has violated provisions of the COPD, the following sequence shall occur:

- 1) The facility warden will review and sign the COPD "Disposition of Charge(s)" for all hearings performed by a private prison hearing officer.
- 2) After warden (administrative head) signature, the facility warden will hold all guilty COPD "Disposition of Charge(s)" for PPMU review.

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- 3) PPMU will review the “Disposition of Charge(s)” for appropriateness to DOC AR 150-01 COPD criteria.
- 4) PPMU will sign, date, and stamp all copies of the “Disposition of Charge(s).”
- 5) PPMU monitors will return all copies of the signed and stamped “Disposition of Charge(s)” to the facility for service and distribution.
- 6) The facility will serve a copy to the offender and obtain offender signature of service, in accordance with AR 150-01, forward the original to the department file, file a copy in the working file, and retain a copy in the hearing case file.
- s. Appeals: At the conclusion of the formal hearing, ***the hearing officer or board should advise the offender of his right to appeal the decision to the warden/director, or designee, within 15 working days after the offender receives the notice of disposition. [4-4248]***
 - 1) The offender will have 15 working days from the day he receives the written formal disposition to outline and forward to the warden/director, or designee, in writing, the basis for the appeal, including any newly discovered evidence. Failure to submit written notice of appeal within the deadline will constitute waiver of the offender’s right to appeal.
 - 2) All appeals are limited to the appeal form. Additional supporting documents may be included by reference. The offender should assume all documents used in the disciplinary hearing process are available to the warden.
 - 3) Upon receipt of the appeal materials, the warden/director, or designee, shall review the case and reverse or remand the hearing officer or board’s decision if he finds any of the following factors:
 - a) A failure to comply with the procedures set forth in this code which substantially undermines the fairness of the process.
 - b) That the decision of the hearing officer or board was not supported by a preponderance of evidence.
 - c) That there has come to light newly discovered substantial exculpatory or mitigating evidence since the hearing.
 - 4) The warden/director, or designee, after reviewing the appeal materials, may modify the hearing officer or board’s decision if he/she finds that the disciplinary sanction was not proportionate to the offense. Modification may include the reduction, suspension, or probation of any part to the sanction imposed. In no case may he increase the severity of the sanctions imposed.
 - 5) ***The appeal should be decided within 30 days of its receipt and a written decision is then promptly forwarded to the offender. [4-4248]*** The warden/director, or designee’s, judgment on such appeal should be final.

Private Prison Monitoring Unit: CDOC is obligated to review all appeals of COPD convictions of offenders charged by the contractor, per CRS 17-1-203. In the event a hearing officer or board determines an offender has violated provisions of the COPD, the following sequence will occur:

- 1) The facility warden will receipt and provide administrative head decision for all offender appeal forms (Attachment “D”) received on all COPD hearings performed by a private prison hearing officer.
- 2) After warden (administrative head) signature, PPMU will review the “Offender Appeal Form” for appropriateness to DOC AR 150-01 COPD criteria.

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- 3) PPMU will sign, date, and stamp all copies of the "Offender Appeal Form."
- 4) PPMU monitors will return all copies of the signed "Offender Appeal Form" to the facility warden.
- 5) The facility will serve a copy of the signed and stamped "Offender Appeal Form" to the offender and obtain offender signature of service in accordance with AR 150-01, forward the original to the department file, forward a copy to the working file, and retain a copy in the hearing case file.
- t. Expungement and Restoration:
 - 1) ***When a conviction is reversed on an appeal, or for administrative reasons, an expungement order should be completed. [4-4246]***
 - 2) When an offender is found not guilty or a conviction is reversed on an appeal, the DOC will attempt to restore the offender to the greatest extent practicable all programs, privileges, and jobs lost during any period where such were suspended or removed as a result of the charges against him. In the event that a particular program, privilege, or job is no longer available, the offender's case manager may obtain for the offender the first available equivalent which opens for which the offender is qualified, when feasible.
 - 3) A record of expunged COPD convictions may be maintained for statistical purposes.
- 4. ***Conditions of Punitive Segregation for DOC Facilities: Offenders are placed in punitive segregation for a rule violation only after hearing by the disciplinary committee or hearing officer. [4-4252]*** The intent of detention of an offender in punitive segregation is disciplinary in nature and will, of necessity, preclude participation in most institutional group activities. Any restriction of the offender's activities beyond those necessitated by the differing nature of the physical facility and surrounding circumstances should be assessed as a result of a disciplinary hearing. ***The maximum period of confinement in punitive segregation should not exceed 60 consecutive days. [4-4255]***

In facilities under control of the DOC, none of the following conditions may be removed as punishment and may only be removed or restricted upon the written notice of the warden/director, after declaration of an emergency or by a physician, employed by or under contract with the DOC, after a finding by him/her of a substantial and immediate danger to the offender's health and safety:

 - a. Regular food portions will be served to offenders in punitive segregation, including special dietary meals, if prescribed, unless the warden/director, or designee, authorizes a special management diet, as prescribed by administrative regulation 1550-04, *Alternative Meal Service in Segregation*.
 - b. Normal health and sanitary conditions should be maintained. All offenders should be provided with normal hygiene items (e.g., toothbrush, soap, etc.). All offenders should be provided with the necessary materials to clean their cells. ***All offenders should be allowed to shower and shave at least three times per week. [4-4262] All offenders should be provided with a complete change of clean clothing three times per week and linens at least once per week. Barbering and hair care services will be made available upon request and based on the needs of the offender. [4-4263] Daily rounds will be made of those offenders in punitive segregation by the housing unit supervisor and by qualified medical DOC employees or contract workers. The presence of medical will be announced and recorded. [4-4400].***
 - c. Appropriate medical or mental health DOC employees or contract workers should be notified immediately of any physical health emergency. ***Clinical Services will be informed immediately when an offender is transferred to punitive segregation. [4-4400] Offenders will be allowed prescribed medication. [4-4261]***

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- d. An installed bunk, mattress, and bed covering adequate for the season should be provided.
- e. A commode, lavatory, and drinking water or frequent escort to such facilities should be provided.
- f. No more than one offender should occupy a punitive segregation cell at one time. If sufficient cells are unavailable necessitating the placement of more than one offender in a cell, the warden/director should take the necessary action and as soon thereafter as is feasible, obtain pertinent instructions from the appropriate director.
- g. ***Every offender in punitive segregation should be afforded at least one hour of exercise per day outside their cells, five days per week, unless security or safety consideration dictates otherwise. [4-4270]***
- h. ***Offenders in punitive segregation should have access to law library materials, religious counseling, books and pamphlets. [4-4268] [4-4269]***
- i. ***Offenders in punitive segregation can write and receive letters on the same basis as offenders in general population. [4-4266]***
- j. ***Unless authorized by the appointing authority/designee, offenders in punitive segregation are allowed limited telephone privileges except for calls related specifically to access to the attorney of record. [4-4272]***

F. INFORMAL DISPOSITION PROCEDURES

- 1. ***An offender who is charged with a violation of a Class III offense should have an informal conference by a group living team, [4-4230]*** unless it is in combination with Class I or II charges resulting out of the same incident or is the result of failed compliance with a non-disciplinary incident resolution.
- 2. ***The offender will receive a written statement supporting the rule violated, prior to the conference. The conference will be conducted within seven working days by a person/team not involved in the rule violation. Offenders may waive their appearance at the conference. [4-4230]***
- 3. The offender will have the right to explain, without presence of witnesses, representation, or introduction of evidence, the facts of the case. The person/team may confer with others at their discretion. Thereafter, the team shall either dismiss the charge or impose minor sanctions.
- 4. **Sanctions:** Upon the finding of guilt, the person/team may impose all or part of the prescribed sanctions. The offender will be provided with a written decision, containing sanctions on a finding of guilt.
- 5. Class III Informal Disciplinary findings are not appealable.

G. NON-DISCIPLINARY INCIDENT RESOLUTION PROCEDURES:

- 1. Non-disciplinary incident resolution procedures should be initiated immediately, but no later than 72 hours after the incident, by the COIII, COIV, or community parole officer (CPO) who has direct knowledge of the incident. Offenders do not have a right to informal resolution.
 - a. The initiating DOC employee, contract worker, or volunteer shall document violations of the COPD, in accordance with IV.F.1., by an offender on an incident report form.
 - b. The COIII, COIV, or CPO will read the incident report(s) and discuss the matter with the initiating DOC employee, contract worker, or volunteer. If the incident is appropriate for non-disciplinary resolution and the initiating DOC employee, contract worker, or volunteer agrees, a conference will be held with the offending offender to determine his willingness to agree to the terms set by the non-disciplinary incident resolution.

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- 1) Non-disciplinary resolution should be considered for any Class III report, unless it is in combination with Class I or II charges resulting out of the same incident.
- 2) Non-disciplinary resolution may be considered for any Class II report.
- 3) Non-disciplinary resolution will not be considered on Class I reports.
2. Upon the agreement of a supervising officer, the COIII, COIV, or CPO will complete the "Offender Non-Disciplinary Incident Resolution" form documenting the offender's extra work assignment or payment of restitution, if applicable. If the offender agrees to pay restitution as the sanction, extra work assignments should be waived in lieu of payment. Maximum sanctions for extra work assignments shall not exceed two hours, per day, for more than ten days. If restitution is applicable, amount of restitution must be made available at the time of the conference with the offender.
 - a. The original is maintained in cell house operations files;
 - b. A copy is forwarded to the COIII, COIV, or CPO and;
 - c. A copy is immediately forwarded to the case manager for inclusion of a notation in the chronological log of the working file. The case manager will review the incident and make any determinations regarding earned time for that month.
3. In exchange for this administrative hearing, the parties agree that a Code of Penal Discipline complaint by service of a "Notice of Charge(s)" will not be filed, provided the imposed sanction of this specific case being addressed is satisfied. The parties further agree that any timelines contained in this AR will be waived.
4. If the offender performs the extra work assignment satisfactorily or signs an account withdrawal slip to pay the required restitution, the supervising officer will document participation on his/her copy of the "Offender Non-Disciplinary Incident Resolution" form and return a copy to the cell house operations office and the case manager.
5. If the offender fails to perform the entire work assignment satisfactorily or fails to pay the required restitution, the supervising officer will document the offender's refusal and return it to the COIII, COIV, or CPO who initiated the document.

The initiating COIII, COIV, or CPO will, no later than one working day, forward the original incident report to the disciplinary officer or cell house group living team, for initiation of the formal COPD process.

6. Non-disciplinary incident resolutions are not appealable.

H. **AUTHORITY OF WARDEN/DIRECTOR TO MODIFY PROVISIONS OF CODE:** In the event that a warden/director desires to modify any provision of this code with regard to facility requirements, such modification should be requested, in writing, to the executive director. No modification to the code should be considered to be authorized until approved by the executive director.

I. **DECLARATION OF EMERGENCY:** In the event an emergency is declared by the executive director of the DOC, the provisions of this code at the affected facility should be suspended for a period of no more than ten working days. The executive director may establish alternative procedures for offender discipline during the suspension.

1. An emergency may be declared only upon a documented and written finding by the executive director that a riot, fire, or other disaster, or the substantial and imminent danger of a riot, fire or other disaster, renders following of standard disciplinary procedures an imminent threat to the safety of offenders, safety of DOC employees, contract workers, or volunteers, the facility for which the emergency is declared, or to the community where the facility is located.
2. The emergency state may be renewed for subsequent periods of five working days by the executive director.

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V. RESPONSIBILITY

- A. The warden of the *Denver Complex should provide to each offender a copy of this code and all changes/revisions thereto and should instruct illiterate offenders, or offenders with a primary language other than English, about the nature and importance of this code when they receive their copies. A signed, dated receipt for the code or any subsequent changes/revisions should be forwarded to offender records. The warden/director, upon reasonable request, should make available to illiterate offenders or offenders with a primary language other than English, a DOC employee, contract worker, or volunteer knowledgeable of the code to discuss with such offenders the provisions of the code; [4-4228]* however, a complete reading of the code to such offenders by the DOC employee, contract worker, or volunteer should not be required. The warden/director should provide all changes/revisions of the code to offenders prior to their effective date.
- B. It will be the responsibility of every warden to ensure their hearing officers have been trained initially and annually.
- C. It should be the responsibility of every offender subject to this code to be aware of its provisions and have an understanding of its requirements.
- D. *It should be the responsibility of the associate directors of Legal Services and Offender Services to review and update the COPD annually. [4-4226] [4-4227]*
- E. The executive director should appoint a designee, in writing, to administer the code.

VI. AUTHORITY

- A. Wolff vs. McDonnell. 418 US539 (1974).
- B. Warden vs. Hill. 472US445 (1985).

VII. HISTORY

May 15, 2009
 June 1, 2008
 May 15, 2007
 February 15, 2006
 July 15, 2005
 July 15, 2004

ATTACHMENTS:

- A. DC Form 150-01A, Notice of Charge(s)
- B. DC Form 150-01B, Disposition of Charge(s)
- C. DC Form 150-01C, Hearing Continuance
- D. DC Form 150-01D, Offender Appeal Form
- E. DC Form 150-01E, Offender Non Disciplinary Incident Resolution
- F. AR Form 150-01F, Evaluation to Determine Dangerousness and Reliability of Confidential Information
- G. AR Form 100-01A, Administrative Regulation Implementation/Adjustments

CLASS I OFFENSES & AUTHORIZED SANCTIONS [4-4255]

OFFENSE	LOSS OF PRIVILEGES (MAX. DAYS)	PUNITIVE SEGREGATION (MAX. DAYS)	LOSS OF GOOD TIME (MAX. DAYS)
1. MURDER	180	60	90
2. MANSLAUGHTER	120	45	60
3. KIDNAPPING	120	45	60
4. ASSAULT	90	30	45
5. ESCAPE WITH FORCE	90	30	45
6. ESCAPE WITHOUT FORCE	90	30	45
7. ENGAGING IN RIOT	90	30	45
8. INCITING TO RIOT	90	30	45
9. RAPE	90	30	45
10. ARSON	90	30	45
11. ROBBERY/EXTORTION	90	30	45
12. POSSESSION OF DANGEROUS CONTRABAND	90	30	45
13. DEALING IN DANGEROUS DRUGS	90	30	45
14. POSSESSION OF KEY OR KEY PATTERN	90	30	45
15. POSSESSION OF ESCAPE PARAPHERNALIA	90	30	45
16. TAMPERING WITH LOCKS OR SECURITY DEVICES	90	30	45
17. REFUSAL TO SUBMIT TO DRUG TEST	90	30	45
18. THREATS OR INTIMIDATION OF PUBLIC OFFICIALS	90	30	45
19. SOLICITATION OF DOC A EMPLOYEE, CONTRACT WORKER OR VOLUNTEER MISCONDUCT	90	30	45
20. UNAUTHORIZED POSSESSION OF ELECTRONIC COMMUNICATION DEVICE	90	30	45
21. FALSE REPORTING TO AUTORITIES	90	30	45

CLASS II OFFENSES & AUTHORIZED SANCTIONS [4-4255]

OFFENSE	LOSS OF PRIVILEGES (MAX. DAYS)	PUNITIVE SEGREGATION (MAX. DAYS)	LOSS OF GOOD TIME (MAX. DAYS)
1. THEFT	60	20	30
2. DAMAGE TO PROPERTY	60	20	30
3. BRIBERY	60	20	30
4. FORGERY	60	20	30
5. FRAUD	60	20	30
6.5. SEXUAL ABUSE	60	20	30
7. RECEIVING STOLEN PROPERTY	60	20	30
8. POSSESSION OR USE OF DANGEROUS DRUGS	60	20	30
9. POSSESSION OR USE OF TOBACCO OR TOBACCO PRODUCTS	60	20	30
10. PERJURY	60	20	30
11. POSSESSION OF SYRINGE OR DRUG PARAPHERNALIA	60	20	30
12. FIGHTING	60	20	30
13. THREATS	60	20	30
14. ABUSE OF MEDICATION	60	20	30
15. INTERFERENCE WITH SEARCH	60	20	30
16. ADVOCATING OR CREATING FACILITY DISRUPTION	60	20	30
17. INTER-AGENCY VISITATION	60	20	30
18. ASSOCIATION	60	20	30
19. UNAUTHORIZED POSSESSION	60	20	30
20. TATTOOING/PIERCING/BRANDING/ MUTILATION AND/OR POSSESSION OF TATTOOING/PIERCING/ BRANDING/ MUTILATION PARAPHERNALIA	60	20	30

OFFENSE	LOSS OF PRIVILEGES (MAX. DAYS)	PUNITIVE SEGREGATION (MAX. DAYS)	LOSS OF GOOD TIME (MAX. DAYS)
21. COUNT INTERFERENCE	60	20	30
22. FAILURE TO WORK	40	15	20
23. GAMBLING	40	15	20
24.5. SEXUAL HARASSMENT	40	15	20
25. DISOBEYING A LAWFUL ORDER	40	15	20
26. BARTERING, SELLING GOODS AND COMMODITIES OR SERVICES	40	15	20
27. VERBAL ABUSE	40	15	20
28. OPERATING MOTOR VEHICLES	40	15	20
29. HABITUAL CLASS III CONVICTIONS	40	15	20
30. UNAUTHORIZED ABSENCE	40	15	20
31. FAILURE TO REMAIN OR RETURN	60	20	30
32.5 UNAUTHORIZED/INCIDENTAL CONTACT	60	20	30
33. MISUSE OF CLINICAL SERVICES	60	20	30

CLASS III OFFENSES & AUTHORIZED SANCTIONS

OFFENSE	CONFINEMENT TO HOUSING UNIT (MAX. DAYS)	AND/OR	EXTRA DUTY (MAX. DAYS)
1. FAILURE TO DISPLAY NAME AND/OR I.D. NUMBER AND/OR CARD	14		14
2. FAILURE TO OBTAIN PERMIT	14		14
3. VIOLATING A POSTED OPERATIONAL RULE	14		14
4. FAILURE TO PAY SUBSISTENCE	14		14
5. ENTERING INTO CONTRACT	14		14
6. LITTERING	7		7
7. SANITARY VIOLATION	7		7
8. PERSONAL APPEARANCE VIOLATION	7		7
Reprimands and warnings may also be imposed as sanctions for Class III offenses.			
*Extra duty may not exceed two hours per day.			

DEPARTMENT OF CORRECTIONS
NOTICE OF CHARGE(S)

FACILITY _____ **CASE NO.** _____

<p>1. OFFENDER NAME</p> <hr/> <p>CURRENT HOUSING UNIT</p> <hr/> <p>2. ALLEGED CHARGES Date _____ Time _____ Location _____ Class Rule Specific Charge (Code of Penal Discipline) Use extra sheets if necessary _____ _____</p> <hr/> <p>3. SUMMARY (Factual Reporting, including who, what, when, where, and how).</p> <hr/> <p>4. CONTRABAND: (Description and disposition. Also including same type information as required in number 3 if not listed.)</p> <hr/> <p>5. NAMES OF WITNESSES TO VIOLATION: (Including DOC employee, contract worker or volunteer) I certify that aforementioned charges and summary are true and correct to my knowledge. The date of my signature reflects the discovery date of the violation.</p> <p>S/ _____ Initiating DOC employee, contract worker, volunteer Date _____ S/ _____ Reviewing Supervisor Date _____</p> <hr/> <p>6. INVESTIGATIONS/PHARMACY REPORT (When required) Date _____ Signature _____ Comments _____</p> <hr/> <p>7. HEARING SCHEDULE: This case is scheduled for: _____ at: _____ Formal Hearing { } Informal Conference { }</p> <hr/> <p>8. SERVING DOC EMPLOYEE/CONTRACT WORKER: You are hereby served with a copy of alleged charges this _____ day of _____ 20____ at _____ (am) (pm). If you desire witnesses, in accordance with the Code of Penal Discipline, please notify the Reviewing Supervisor as soon as possible, but no later than 24 hours prior to scheduled hearing, to avoid a continuance.</p> <p>Signature _____ Print Name _____ Date _____</p> <hr/> <p>9. OFFENDER ACKNOWLEDGMENT: I acknowledge receipt of a copy of the Notice of Charge. I do { } do not { } desire an offender representative. Signature _____ Date _____</p>	
--	--

Distribution: White - Department File Canary - Working File Pink - Warden/Director Gold - Offender

DEPARTMENT OF CORRECTIONS
DISPOSITION OF CHARGE(S)

Informal Conference [] Formal Hearing [] **FACILITY**

OFFENDER NAME: _____ DOC NUMBER: _____ CASE NO. _____

CURRENT HOUSING UNIT: _____ CURRENT CUSTODY LEVEL DESIGNATION: _____

Continuation of hearing: Yes No If yes, describe date/time continued from:

Disciplinary Officer name and position:

FINDINGS OF FACT: (List SPECIFIC evidence relied upon to support finding(s) including the general substance of confidential information and/or evidence.)

Charge(s): _____ Plea: Not Guilty Guilty Guilty w/explanation Finding: Not Guilty Guilty Dismissed

Charge(s): _____ Plea: Not Guilty Guilty Guilty w/explanation Finding: Not Guilty Guilty Dismissed

Offender Representative Requested: Yes No Offender Representative Allowed Yes No Offender Representative Name: _____

Was Confidential Information Used: Yes No If yes, was information determined reliable by Hearing Officer: Yes No N/A

Describe accused offender testimony:

Describe testimony and evidence presented:

Identify all offender witnesses requested:

Briefly describe all called witness testimony, or justification for not allowing requested witnesses:

Briefly describe specific evidence and testimony relied upon to reach finding:

Briefly describe how offender behavior violated COPD:

Other comments (describe any offender rights waived, justification for non-allowance of representation, explanation of extended recess and any other pertinent information):

SUMMARY OF PENALTIES:

Describe any aggravating or mitigating factors considered:

Describe any stayed or probated sanctions:

Description of Penalties Imposed:

Date of sanction start and end; Explanation of Pre-Hearing segregation time credit:

Explanation of monetary restitution imposed / Information relied upon to determine amount imposed:

S/ _____	Chairperson	[TYPED NAME HERE]	Date
DATE OF HEARING	TIME OF HEARING	LOCATION OF HEARING	

COMMITTEE MEMBERS PRESENT

WARDEN/DIRECTOR REVIEW: (Not required for informal) AFFIRM MODIFY REVERSE

COMMENTS:

S/ _____	Administrative Head or Designee	Date
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Offender Acknowledgment: I acknowledge receipt of a copy of this Disposition of Charge.

Name _____	Signature _____	Date
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Distribution: White - Department File Canary - Working File Pink - Warden/Director

Attachment "B"

Page 1 of 1

DC Form 150-01C (Revised 02/97)

**DEPARTMENT OF CORRECTIONS
HEARING CONTINUANCE**

OFFENDER NAME _____	DOC NUMBER _____
CURRENT FACILITY _____	CELL HOUSE/UNIT _____
FACILITY AT TIME OF OFFENSE _____	
Case Number _____ Type of hearing _____	<input type="checkbox"/> Disciplinary <input type="checkbox"/> Administrative Segregation
Your hearing scheduled for _____ Date _____ Time _____	
has been continued until _____ Date _____ Time _____	
for the following reason(s): _____ _____	
CONTINUANCE	
Requested By:	<input type="checkbox"/> Offender <input type="checkbox"/> Disciplinary Officer <input type="checkbox"/> Hearing Officer <input type="checkbox"/> Other: Specify: _____ _____ _____
Hearing Officer	Date
Offender Acknowledgment	Date/Time
Serving Officer	Date/Time

Attachment "C"
Page 1 of 1

**DEPARTMENT OF CORRECTIONS
OFFENDER APPEAL FORM
CASE NO.**

1. Offender Name _____ 2. DOC No. _____

3. Current Facility _____ 4. Facility Initiating Hearing _____

5. Type of Appeal: _____ Disciplinary _____ Classification _____ 6. Date Hearing Held: _____

7. Basis of Appeal (Check the boxes which apply) Please Print. **Be Brief - no additional attachments allowed.**

- PROCEDURES NOT FOLLOWED: (State specifically what procedures were not followed)
- LACK OF SUBSTANTIAL EVIDENCE: (State specifically what evidence was not present in this hearing)
- NEW EVIDENCE: (State specifically what new evidence exists to affect the decision)

Do **NOT** attach additional page. Additional attachments may not be considered.

8. Offender Signature _____ Date _____

RECEIPT BY FACILITY

Appeal Received by: _____

HEARING DECISION (please type)

9. Conviction is: Upheld Reversed Modified Remanded
Explanation: (must respond)

By: _____
Administrative Head _____ Date _____

RECEIPT BY OFFENDER

10. Appeal Decision received by: _____

Witness _____ Date _____

White - Department File Canary - Working File Pink - Time Computation Gold - Offender
Attachment "D"
Page 1 of 1

Offender Non-Disciplinary Incident Resolution

1. I accept non-disciplinary resolution of an incident in which my involvement failed to comply with acceptable standards of offender behavior. I understand that I do not have to accept this resolution, and I have the right to have these alleged infractions heard under the Code of Penal Discipline.

I understand that if I complete the terms of this resolution, Code of Penal Discipline charges will not be brought against me for any known actions arising out of this incident. This is not a conviction under the Code of Penal Discipline and does not affect my cell assignment, work, or hobby privileges. However, I understand that my actions may affect any earned time for the month.

Date of Incident: _____

Description of Incident: _____

Resolution is _____ hours of extra work for _____ days; supervising officer _____
OR \$ _____ restitution for _____, signed by disciplinary officer _____
 (reason restitution is required)

MAXIMUM SANCTIONS WILL NOT EXCEED TWO HOURS PER DAY FOR MORE THAN TEN DAYS.

The supervising officer will schedule and assign the extra work. If the supervisor is unsatisfied with my work and I fail to correct it or if I fail to comply with the terms of this resolution or any instructions from my supervisor, the non-disciplinary resolution will be withdrawn and COPD charges will be filed on the original incident.

I understand and request non-disciplinary resolution of my failure to comply with acceptable standards of offender behavior. I will report to the supervising officer at (time) _____ on (date) _____ or I am willing to sign an account withdrawal slip for the required restitution.

Offender Name (printed) _____ Date _____

Offender Signature _____ DOC No. _____ COIII, COIV, or CPO _____ Date _____

2. Non-disciplinary resolution should be agreed upon by the initiating DOC employee, contract worker, or volunteer.

Name (printed) _____ Signature _____ Date _____

The COIII, COIV, or CPO will ensure that the case manager receives a copy of this document for chronological entry in the offender's working file, will maintain the original document in a unit operations file for statistical reporting purposes, and will forward a copy to the supervising officer.

3. The above offender has completed his extra work for _____ days or has paid the required restitution for satisfactory resolution of this incident.

Supervising Officer _____ Date _____
 Attachment "E"
 Page 1 of 1

AR Form 150-01F (02/15/06)

Department of Corrections

Evaluation to Determine Dangerousness and Reliability of Confidential Information

Information taken by: _____ on: _____ at approximately: _____

Informant: _____ Hearing Date: _____ Case Number: _____

Evidence of Dangerousness:

Confidential Information Relyed Upon:

Reliability of Information: (If and why-past reliability, first-hand observation, corroboration)

Hearing Officer

Date

Attachment "F"
Page 1 of 1

ADMINISTRATIVE REGULATION
IMPLEMENTATION/ADJUSTMENTS

AR Form 100-01A (04/15/08)

CHAPTER	SUBJECT	AR #	EFFECTIVE
Boards	Code of Penal Discipline (COPD)	150-01	09/01/11

(FACILITY/WORK UNIT NAME) _____
WILL ACCEPT AND IMPLEMENT THE PROVISIONS OF THE ABOVE ADMINISTRATIVE REGULATION:

AS WRITTEN NOT APPLICABLE WITH THE FOLLOWING PROCEDURES TO ACCOMPLISH THE INTENT
OF THE AR

(SIGNED) _____ (DATE) _____
Administrative Head

Attachment "G"
Page 1 of 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No: 14-cv-00649-CBS

WILLIAM R. STEVENSON,

Plaintiff,

v.

R. CORDOVA, et al.,

Defendants.

DEPOSITION OF RANDY CORDOVA

PURSUANT TO NOTICE, the above-entitled deposition was taken on behalf of the Plaintiff at the offices of Cain & White, 1555 Quail Lake Loop, Suite 100, Colorado Springs, Colorado, on September 16, 2015, at 9:00 a.m., before Angela Smith, Professional Reporter and Notary Public.

<p>1 APPEARANCES: 2 For the Plaintiff: 3 BRETT LAMPIASI, ESQ. 4 P.O. Box 347 5 Hartfield, Massachusetts 01038 6 (413) 322-8391 7 blampiasi@me.com</p> <p>8 For the Defendants: 9 CRAIG W. CAIN, ESQ. 10 Cain and White, LLP 11 1555 Quail Lake Loop, Suite 100 12 Colorado Springs, Colorado 80906 13 ccain@cainwhitelaw.com</p> <p>14 EXAMINATION INDEX 15 By Mr. Lampiasi Page 4</p>	<p>1 P R O C E E D I N G S 2 WHEREUPON, the following proceedings 3 were taken pursuant to the Colorado Rules of Civil 4 Procedure. 5 * * * * * 6 RANDY CORDOVA, 7 having been first duly sworn to state the whole 8 truth, testified as follows: 9 (Deposition Exhibit 1 was marked for 10 identification.) 11 EXAMINATION 12 BY MR. LAMPIASI: 13 Q Good morning. 14 A Morning. 15 Q My name is Brett Lampiasi. As you 16 probably already know, I represent Mr. William 17 Stevenson. I'm here to ask you questions and get 18 some answers under oath. Okay? 19 A Okay. 20 Q Have you ever had your deposition 21 taken before? 22 A No. 23 Q Us lawyers like to go over some ground 24 rules, mostly so that we understand each other and 25 we create a clean record. Okay. Do you understand</p>
<p>1 EXHIBIT INDEX 2 FOR IDENTIFICATION INITIAL REFERENCE 3 Deposition Exhibit 1 37 4 Responses to Plaintiff's First 5 Request for Admissions 6 Deposition Exhibit 2 66 7 Bates Stevenson-00901-902 8 Incident Report 9 Deposition Exhibit 3 -- 10 Cordova's Responses to Plaintiff's 11 Revised Admissions 12 Deposition Exhibit 4 -- 13 Bates Stevenson-0928 14 Picture of Offender</p>	<p>1 that? 2 A Yes. 3 Q It's important to that end that you 4 answer out loud. We have a tendency in real life to 5 nod, instead of saying yes or no. So if you mean 6 yes, please say yes, and if you mean no, please say 7 no. Understand? 8 A Yes. 9 Q Your attorney might object, it's his 10 job to do that a lot of the times. If he does, I'm 11 still going to ask you to answer the question, 12 unless he directs you not to answer the question. 13 There are some things that could come 14 up that are privileged. I don't want to ask you a 15 question that would elicit an answer that involves 16 information that you told your attorney or 17 vice versa. 18 But other than your attorney directing 19 you not to answer, if there's an objection, pause, 20 and I'll still ask you for an answer. Okay? 21 A Uh-huh. 22 Q I tend to stammer when I ask 23 questions, so I'll just ask for your patience, and 24 let me get the question out before you jump in. In 25 other words, let me finish the question before you</p>

<p>1 give your answer. Okay? 2 A Okay. 3 Q If you don't understand a question, 4 please just ask me to repeat it or rephrase it and 5 I'm happy to do that. Okay? 6 A Okay. 7 Q If you need a break at any time, feel 8 free to take a break. I would just ask that if 9 there's a question pending, that you answer the 10 question before taking a break. Okay? 11 A Uh-huh. 12 Q Yes? 13 A Yes. 14 Q Also, we tend to -- or I tend to refer 15 to the Colorado Department of Corrections as CDOC. 16 If I say CDOC throughout the deposition, will you 17 understand that? 18 A Yes. 19 Q You'll understand that to mean the 20 Department of Corrections? It's just easier than 21 saying that over and over. 22 Also, with Colorado Territorial 23 Correctional Facility, I'll call it CTCF. 24 Do we understand each other on that? 25 A Uh-huh.</p>	<p>6</p> <p>1 A Yes. 2 Q Did you know Mr. Stevenson or had any 3 interactions with Mr. Stevenson prior to the 4 incident? 5 A Not that I recall. 6 Q You don't know anything about whether 7 he was a good inmate -- or good offender or bad 8 offender? 9 MR. CAIN: Objection as to form. 10 You can go ahead and answer that, sir, 11 if you can. 12 A Didn't -- kind of non-existent. I 13 have a thousand offenders there. 14 Q (By Mr. Lampiasi) So he didn't stand 15 out in your mind prior to the incident in any way? 16 A Not that I recall. 17 Q Do you know if he ever filed any 18 grievances against you? 19 A Not that I know of. 20 Q Prior to this deposition, did you 21 review any documents to prepare? 22 A I looked at my incident report. Tried 23 to go over some of the interrogatory questions. But 24 we've been on lockdown since Friday, so my job's 25 been pretty filled in the past few days.</p>
<p>7</p> <p>1 Q I think those are the rules that I 2 wanted to go over and get into some questions. 3 I think I already know your job title. 4 It's captain? 5 A Yes. 6 Q How long have you been captain for? 7 A Since 2007. 8 Q How long have you been with CDOC? 9 A Twenty-two years. 10 Q Before that, did you work in law 11 enforcement? 12 A I was a reserve officer with Pueblo 13 County Sheriff's Department. That's pretty much it. 14 Q Have you ever been sued before? 15 A No. 16 Q You've never been named in any type of 17 lawsuit? 18 A No. 19 Q We're going to talk about the incident 20 that occurred in the 29th of February of 2013, 21 correct? 22 A I think it was '12. 23 Q 2012. I'll refer to that as just the 24 incident. Do we understand each other to mean that 25 particular incident that this lawsuit's about?</p>	<p>9</p> <p>1 Q I understand. Why were you on 2 lockdown? 3 A There's a missing tool. Facility 4 search. 5 Q I understand there are three videos 6 that have been produced that have to do with this 7 incident? 8 A I know there's one from the cell house 9 and the little pal cam. And, I don't know, I guess 10 the other would be down in cell 3, I would assume. 11 Q So from your understanding, there's 12 the vestibule -- 13 A I don't remember everything that was 14 recorded there on it. I remember the audio one, the 15 one that's got audio, and then the one in cell house 16 1, is what I recall. 17 Q That's the cell house, C-E-L-L house? 18 A Yes. 19 Q Do you consider where the incident 20 began to be the vestibule? 21 A Yes. 22 Q Do you refer to it as a vestibule? 23 A Yeah. 24 Q So again, just because we're going to 25 be referring to those videos, I'll call the area</p>

<p>10</p> <p>1 where the incident began the vestibule video. Okay?</p> <p>2 A Uh-huh.</p> <p>3 Q The video that has the audio, can we</p> <p>4 agree to call it the body cam video?</p> <p>5 A That's fine.</p> <p>6 Q And that's what it was, it was an</p> <p>7 officer wearing a body cam, right?</p> <p>8 A Yes.</p> <p>9 Q What are the policies, if any, with</p> <p>10 respect to body cams at CTCF?</p> <p>11 MR. CAIN: Objection as to form.</p> <p>12 Go ahead and answer.</p> <p>13 A The first responders are supposed to</p> <p>14 carry those. Depending if they're broke or not,</p> <p>15 depends on if they do carry them.</p> <p>16 Q (By Mr. Lampiasi) Okay. So I guess</p> <p>17 what I'm trying to get at is, there are body cams</p> <p>18 available for officers to wear, correct?</p> <p>19 A Yes.</p> <p>20 Q Where are they stored?</p> <p>21 A Master control has some. And then the</p> <p>22 living units have one for the responder, whoever is</p> <p>23 the assigned responder for the day.</p> <p>24 Q So each living unit has an assigned</p> <p>25 responder?</p>	<p>12</p> <p>1 whatever they've got to do. If there's a call for</p> <p>2 first responders, they -- if it's a fire alarm, they</p> <p>3 put on scuba gear and respond to the fire.</p> <p>4 Q Do you recall who the first responder</p> <p>5 was that was assigned to the cell house the day of</p> <p>6 the incident?</p> <p>7 A No, it's too long ago.</p> <p>8 Q Do you remember who was wearing the</p> <p>9 body cam that filmed the footage?</p> <p>10 A It was Robles that had it.</p> <p>11 Q Would he -- would just the first</p> <p>12 responder, in general, get a call over the radio,</p> <p>13 and then, as a matter of habit, grab the body cam?</p> <p>14 A It should be on their person.</p> <p>15 Q Okay. So they would keep it --</p> <p>16 A It's a lapel cam. It depends on what</p> <p>17 they have. They try to go to small ones recently,</p> <p>18 but those tend to break. The old ones used to be on</p> <p>19 their lapel.</p> <p>20 Q I want to ask you some general</p> <p>21 questions about tasers and their use at CTCF. Okay?</p> <p>22 A Uh-huh.</p> <p>23 Q Yes?</p> <p>24 A Yes.</p> <p>25 Q Are all CDOC officers at CTCF trained</p>
<p>11</p> <p>1 A Uh-huh. At the morning roll call, I</p> <p>2 assign a responder.</p> <p>3 Q And so what -- do I understand you to</p> <p>4 be saying that the responder has a body cam</p> <p>5 available to them?</p> <p>6 A They're supposed to, yeah. There's a</p> <p>7 lot of broken ones out there. There might be one or</p> <p>8 two that show up. It depends on the given day.</p> <p>9 If a responder is doing an escort,</p> <p>10 they just can't leave the offender in the middle of</p> <p>11 the yard, so they're not going to respond. They</p> <p>12 might tell somebody, hey, I've got to go take</p> <p>13 so-and-so to laundry. So if they call for somebody,</p> <p>14 you need to go.</p> <p>15 It just depends on the scenario.</p> <p>16 Q Bear with me, because I -- although</p> <p>17 I've represented a lot of fellows at different</p> <p>18 facilities, I'm not too familiar with the inner</p> <p>19 workings. So I'm trying to learn a little bit here.</p> <p>20 Does the first responder that you</p> <p>21 assign to these living units have a post that</p> <p>22 they're directed to stay at or do they wander</p> <p>23 around?</p> <p>24 A No, they do their normal job. So if</p> <p>25 they work in Cell 7, they do their normal job,</p>	<p>13</p> <p>1 in the use of tasers or other electronic weapons?</p> <p>2 A No.</p> <p>3 Q Are there certain individuals</p> <p>4 designated to be trained in tasers?</p> <p>5 A No. They're allowed to put in for</p> <p>6 training.</p> <p>7 Q So it's up to individual officers to</p> <p>8 choose whether or not that's a training they want to</p> <p>9 take?</p> <p>10 A Right.</p> <p>11 Q And then they qualify to carry a taser</p> <p>12 in the facility?</p> <p>13 A Yes. They've got to go to training to</p> <p>14 be able to carry -- to check it out; they've got to</p> <p>15 have the training for it. And then they're given a</p> <p>16 chit that identifies them as having been trained.</p> <p>17 Q What was that?</p> <p>18 A A chit. It's a metal piece that has</p> <p>19 their name on it. It's a certain color. So when</p> <p>20 the staff that issue the equipment, if they don't</p> <p>21 have that chit, they're not allowed to check it out.</p> <p>22 That's their check and balance to say that they're</p> <p>23 authorized to carry that weapon.</p> <p>24 Q Okay. So if an officer is authorized</p> <p>25 to carry that weapon when they show up to their</p>

<p style="text-align: center;">14</p> <p>1 shift, do they typically take out the taser for that 2 shift?</p> <p>3 A Yeah. It's for the shift. They check 4 out all their equipment. They check out OC. It's a 5 different color chit that's authorized for like 6 pepper spray. And so they get all their equipment 7 for the morning, radio, handcuffs, keys.</p> <p>8 Q You mentioned OC or pepper spray. Do 9 all officers carry OC spray?</p> <p>10 A That's if they have the training.</p> <p>11 Q Are there some officers that don't 12 carry either the pepper spray or the taser?</p> <p>13 A Yeah. There's definitely ones that 14 don't carry tasers. It's not a training that 15 everybody has.</p> <p>16 Q In other words, are you required to 17 have one or the other on your person?</p> <p>18 A Most people have OC.</p> <p>19 Q When you say "most people," is it a 20 requirement to have OC or a taser, or are you 21 allowed to have neither, as an officer?</p> <p>22 A There's staff that come in that takes 23 a while to get them trained, so they won't have the 24 OC training. There's staff that don't put in for 25 tasers so they don't carry a taser.</p>	<p style="text-align: center;">16</p> <p>1 pepper spray or tasers?</p> <p>2 A I don't know that.</p> <p>3 Q Did you ever ask questions of any of 4 those officers, either during or after the incident, 5 to find out whether they had OC spray, whether they 6 had a taser?</p> <p>7 A No.</p> <p>8 Q A taser is considered an electronic 9 weapon, correct?</p> <p>10 A Electronic immobilization device.</p> <p>11 Q Have you qualified to carry a taser?</p> <p>12 Have you taken the training?</p> <p>13 A I've trained in a React Belt or an 14 Ultron. They're the kind of stuff that was used. 15 Telling my age. It's evolved to a taser. My 16 training was in like the Stun Shield and stuff like 17 that.</p> <p>18 Q You understand how tasers work, 19 though, correct?</p> <p>20 A Uh-huh.</p> <p>21 Q You understand the policies -- well, 22 is there a policy or an administrative regulation 23 that governs the use of tasers for CDOC?</p> <p>24 A Use of force, 300-16, AR 300-16.</p> <p>25 Q And that's Administrative Regulation</p>
<p style="text-align: center;">15</p> <p>1 Q Sure. You're familiar with all of the 2 individuals -- I should say, the officers that 3 responded to the incident?</p> <p>4 A Say that again.</p> <p>5 Q There were several officers that 6 responded to the incident with Mr. Stevenson, 7 correct?</p> <p>8 A Right.</p> <p>9 Q Are you familiar with each of those 10 officers?</p> <p>11 A Pretty much, yeah.</p> <p>12 Q Were all those officers under your 13 command at that time?</p> <p>14 A I run the shift at the facility. I'm 15 the shift commander. They all have their own 16 supervisor for each housing unit that they work. I 17 supervise security at the facility. So I'm the 18 direct supervisor over there. I do evals and stuff 19 over those staff. But each of those other staff 20 have their own lieutenant, their own captains that 21 they're assigned to.</p> <p>22 Q Okay. So you're the big boss?</p> <p>23 A I run the shift.</p> <p>24 Q Do you know whether or not the 25 individuals that responded all had either</p>	<p style="text-align: center;">17</p> <p>1 300-16, just to be clear?</p> <p>2 A Yes.</p> <p>3 Q What does that, if anything, say about 4 the use of tasers?</p> <p>5 A It's just an option. It's a use of 6 force option. Everything -- when we use the use of 7 force, use of force is manifested by the resistance 8 you receive from the offender.</p> <p>9 Staff are -- they have tools that they 10 use, strength techniques such as pressure control 11 techniques. They could use OC.</p> <p>12 Whatever their perception of the 13 totality of the circumstances is how they intervene. 14 If they feel they need to go straight to the taser 15 based on their perception -- you know, if they're in 16 the tower and they see an offender escaping and they 17 feel that they need to take a shot, I can't tell 18 them to take the shot. It's their perception of 19 what they see at that given time of what resource 20 they use as a level of control.</p> <p>21 Q The tasers that are available to 22 officers and that they check out prior to their 23 shift, do you know generally how they operate?</p> <p>24 A No. I haven't had the training.</p> <p>25 Q You understand there are different</p>

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<p>1 modes of operation, correct, with respect to the 2 taser?</p> <p>3 A I don't understand what your question 4 is.</p> <p>5 Q In other words, you can tase somebody 6 for -- you can set a cycle with a taser, for 7 example, if you want to send a five-second volt of 8 electricity into somebody's body, correct?</p> <p>9 A I don't know that.</p> <p>10 Q Okay. So you just have so sense of 11 how --</p> <p>12 A It's a dry stun, meaning that you put 13 it on their person. So I can pull it off at any 14 given time. I would assume that at some point that 15 it goes for a certain amount of time and that's 16 predetermined, I would assume. But I don't know the 17 parameters of that.</p> <p>18 Q Do you believe that you witnessed a 19 taser being used on Mr. Stevenson in this case?</p> <p>20 A Yeah. I seen him put it on his back. I heard it.</p> <p>21 Q With you say you "heard it," was there 22 some type of buzzing?</p> <p>23 A You can hear when the taser is 24 activated.</p>	<p>1 Q You wrote your report, again, very 2 soon after the incident, right?</p> <p>3 A Just depends on the day.</p> <p>4 Q Well, within your shift?</p> <p>5 A By the end of my shift.</p> <p>6 Q And at the time, the events were fresh 7 in your memory, correct?</p> <p>8 A Yes.</p> <p>9 Q And it was important, as a shift 10 commander, or just an officer, in general, to be 11 very detailed in that report, right?</p> <p>12 A Yes.</p> <p>13 Q Part of the reason that you're 14 detailed in that report is because use of force is 15 taken very seriously, right?</p> <p>16 MR. CAIN: Objection as to form.</p> <p>17 A I'm detailed in all of my reports.</p> <p>18 Q (By Mr. Lampiasi) Right, but use of 19 force is something that the Colorado Department of 20 Corrections wants to document, right?</p> <p>21 A Yes.</p> <p>22 Q And requires that those documents be 23 -- those incident reports be detailed, right?</p> <p>24 A Yeah.</p> <p>25 Q And you're familiar with the</p>
19	21
<p>1 Q How many times do you think -- do you 2 know -- let me ask that a different way. I'm sorry.</p> <p>3 A In my report I said --</p> <p>4 Q -- which one of the officers tased 5 Mr. Stevenson?</p> <p>6 A In my -- I reviewed the report and it 7 said Sergeant Espinoza applied the taser.</p> <p>8 Q And you wrote that report very soon 9 after the incident, correct?</p> <p>10 A By the end of my shift.</p> <p>11 Q Okay. And the use of force, this AR 12 we discussed, actually requires you to write a 13 report prior to the end of the shift, correct?</p> <p>14 A Uh-huh. If I've got to stay until 10 15 at the end of the night, I've got to stay there 16 until all of the reports are reviewed and a use of 17 force packet is done.</p> <p>18 Q And the individuals that were involved 19 in the use of force submit their incident report to 20 you, right?</p> <p>21 A Yes.</p> <p>22 Q And that's a requirement, correct?</p> <p>23 A Yes.</p> <p>24 Q And you review those reports, right?</p> <p>25 A Yes.</p>	<p>1 regulation that says that, especially when a taser 2 is used, the individual that uses that taser is 3 supposed to justify its use, correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. So when you wrote this report, 6 while the events were fresh in your head, let's say, 7 that's when you identified Espinoza as the officer 8 that tased --</p> <p>9 A My report was --</p> <p>10 Q Let me just finish the question.</p> <p>11 A I thought you were done.</p> <p>12 Q Yeah. Like I said, I stammer 13 sometimes.</p> <p>14 You identified Espinoza as the 15 individual that you saw tase Mr. Stevenson, correct?</p> <p>16 A Yes.</p> <p>17 Q Do you feel like -- let me ask it in a 18 different way.</p> <p>19 You arrived to the scene of the 20 incident in the vestibule after Mr. Stevenson was on 21 the ground. Do you recall that?</p> <p>22 A Yes.</p> <p>23 Q When you -- and you had to go up some 24 stairs to get to that vestibule, right?</p> <p>25 A Yes.</p>

<p>22</p> <p>1 Q Do you recall what you saw when you 2 came up the stairs?</p> <p>3 A I recall watching the video and seeing 4 what I saw there.</p> <p>5 Q Okay. And when you say "the video," 6 it's the vestibule --</p> <p>7 A Vestibule.</p> <p>8 Q -- video?</p> <p>9 A Uh-huh.</p> <p>10 Q I want to back up for one second. 11 Does CTCF, as a separate institution, have 12 particular guidelines or regs on the use of tasers?</p> <p>13 A Not to my knowledge.</p> <p>14 Q So the use of tasers is regulated by 15 just a general CDOC AR, correct?</p> <p>16 A By policy.</p> <p>17 Q I'm sorry?</p> <p>18 A By policy.</p> <p>19 Q Okay. And I know you mentioned that 20 you're not trained with respect to the tasers that 21 are now being used at CDOC.</p> <p>22 Have you had any training that has 23 educated you on the damage that tasers can inflict 24 on individuals?</p> <p>25 MR. CAIN: Objection as to form and</p>	<p>24</p> <p>1 utilize when they feel -- their perception is that 2 it's necessary. You know, if I'm trying to get a 3 guy to stand up and he's not standing up on his own, 4 mandibular angle pressure points aren't being 5 effective, they've got to be given some sort of 6 tools to assist them.</p> <p>7 Q You mentioned a couple of tools, 8 besides the taser. Can you just, sort of, in your 9 opinion as a shift commander, what the hierarchy 10 of --</p> <p>11 A There's not a level system like that 12 no more.</p> <p>13 Q -- the hierarchy of tools that are 14 available.</p> <p>15 Is there, in your training, a tool 16 that you should try first, before you tase somebody?</p> <p>17 A It's not that. It's the totality of 18 circumstance. It's called a force of option wheel, 19 and they're allowed to go to whatever force they 20 feel necessary at that time.</p> <p>21 Q You mentioned that if somebody is 22 sitting down and they won't stand up, do you think 23 it's reasonable for an officer to tase them?</p> <p>24 MR. CAIN: Objection as to form.</p> <p>25 A Like I said before, it's the staff's</p>
<p>23</p> <p>1 foundation.</p> <p>2 A I don't understand that question.</p> <p>3 What do you mean?</p> <p>4 Q (By Mr. Lampiasi) You understand 5 tasers can be a safety risk, correct?</p> <p>6 MR. CAIN: Objection as to form and 7 foundation.</p> <p>8 A That it's a safety risk.</p> <p>9 Q (By Mr. Lampiasi) That it can harm an 10 individual's health?</p> <p>11 A I never heard of it harming health. I 12 know there's -- you're given locations where to 13 apply it.</p> <p>14 Q And do you know why -- when you say 15 you're given -- the training says that you should 16 apply the taser in certain parts of the body, 17 correct?</p> <p>18 A Right.</p> <p>19 Q And do you know why that is?</p> <p>20 A Honestly, I couldn't say. My training 21 is probably back in '95.</p> <p>22 Q Okay. That's fine. Do you consider 23 tasers a dangerous weapon?</p> <p>24 MR. CAIN: Objection as to form.</p> <p>25 A No. I feel it's a tool for staff to</p>	<p>25</p> <p>1 perception. It's what they feel is necessary. 2 Where I could talk to an offender and maybe get them 3 to comply, another staff member could sit there and 4 talk to them and feel resistance and feel that he 5 needs to get him cuffed at that point, where I might 6 not put him in cuffs. It's up to that staff 7 member's perception.</p> <p>8 I can't answer for their actions and I 9 can't direct them to do stuff such as like, you 10 know -- they got to answer for their actions. So 11 they've got to be able to justify, just like you 12 said before, their use. So they've got to determine 13 why they utilized that tool.</p> <p>14 Q Okay. Going back to the hypothetical, 15 and let's make it a hypothetical of if an individual 16 is sitting on the ground refusing to stand up.</p> <p>17 A Uh-huh.</p> <p>18 Q Would the use of force AR permit that 19 officer to tase the individual to get him to stand 20 up?</p> <p>21 MR. CAIN: Objection as to form.</p> <p>22 A Yes.</p> <p>23 Q (By Mr. Lampiasi) Even if the 24 individual is not posing a specific threat to the 25 tasing officer, if you will?</p>

<p>1 MR. CAIN: Objection as to form.</p> <p>2 A He's giving resistance. Force is</p> <p>3 based on level of resistance. Even if he's passive,</p> <p>4 the staff have given a lawful direct order. They're</p> <p>5 going to carry out the means necessary to carry out</p> <p>6 their order.</p> <p>7 Q (By Mr. Lampiasi) Let's talk about the</p> <p>8 different, as you call them, levels of resistance.</p> <p>9 It's true that CDOC officials or</p> <p>10 officers are trained to look for different levels of</p> <p>11 resistance from offenders, correct?</p> <p>12 MR. CAIN: Objection as to form.</p> <p>13 A Yes.</p> <p>14 Q (By Mr. Lampiasi) And those levels of</p> <p>15 resistance are actually defined, correct, in the AR?</p> <p>16 A Uh-huh.</p> <p>17 Q What are those levels of resistance?</p> <p>18 A Levels of resistance, you have</p> <p>19 psychological intimidation. You have passive</p> <p>20 resistance.</p> <p>21 Q What's passive resistance?</p> <p>22 A Passive, like going limp.</p> <p>23 Defensive resistance.</p> <p>24 Q What's defensive resistance?</p> <p>25 A You're pulling away from me. You're</p>	<p>26</p> <p>1 directive that they're going to be tased or not.</p> <p>2 Q Would actually sending an electrical</p> <p>3 shock through the taser be reasonable in that</p> <p>4 scenario you just gave as an example?</p> <p>5 A That's too broad. You know what I'm</p> <p>6 saying. I can't answer for -- could that happen,</p> <p>7 yes, it could happen. It depends on that staff</p> <p>8 member's perception that it took to that degree.</p> <p>9 You know, there's some staff that they</p> <p>10 could talk an offender to stand up and make a good</p> <p>11 decision based on their own. There's some staff</p> <p>12 that will give the direction, and based on training,</p> <p>13 that they're allowed to go to that next option.</p> <p>14 They're not going to sit there and</p> <p>15 spend 30, 40 minutes talking to the offender.</p> <p>16 They're going to give him a verbal command that's</p> <p>17 lawful and give them what they need them to do. And</p> <p>18 if they don't, they're going to step in and use</p> <p>19 force necessary to control that situation.</p> <p>20 Q Would it be reasonable to not try the</p> <p>21 physical mechanisms --</p> <p>22 A That's based on staff.</p> <p>23 Q -- in the circumstance that we've</p> <p>24 created and talked about where an offender is just</p> <p>25 passive resistance, no physical threats?</p>
<p>27</p> <p>1 not allowing me to escort you. You're giving me</p> <p>2 resistence to anything I'm trying to do.</p> <p>3 Q Okay.</p> <p>4 A You have active aggression, where</p> <p>5 you're screaming and kicking. And then you have</p> <p>6 lethal forces, assault.</p> <p>7 Q Within those defined levels of</p> <p>8 resistence, is it your testimony that a taser might</p> <p>9 be reasonable, given any one of those scenarios?</p> <p>10 A It depends on how -- what's -- what</p> <p>11 the scenario is. Each scenario can change,</p> <p>12 you know. It depends on what the passive resistance</p> <p>13 is, where you're going with the scenario.</p> <p>14 Q Give me a passive resistance scenario</p> <p>15 where an officer would be justified in using</p> <p>16 reasonable force tasing an -- using a taser.</p> <p>17 A That's pretty broad. Could be</p> <p>18 offender sitting down in the dining hall refusing to</p> <p>19 leave the dining hall. We're telling them they've</p> <p>20 got to leave. They're not leaving. We just decide</p> <p>21 we're going to go in there and remove them.</p> <p>22 If they're not standing up, pressure</p> <p>23 points are tried or not tried. They may put a taser</p> <p>24 on their back and give them a direction, you need to</p> <p>25 sit up, stand up and move. And they give them a</p>	<p>29</p> <p>1 MR. CAIN: Objection as to form.</p> <p>2 A Reiterate that.</p> <p>3 Q (By Mr. Lampiasi) Sure. I didn't</p> <p>4 phrase it very well.</p> <p>5 If an offender is, let's say, sitting</p> <p>6 in the chow hall -- we follow each other so far?</p> <p>7 A Uh-huh.</p> <p>8 Q And is showing passive resistance, as</p> <p>9 you've defined it. Understand each other so far in</p> <p>10 this hypothetical?</p> <p>11 A Yes.</p> <p>12 Q The officer's giving him a lawful</p> <p>13 order to leave, right?</p> <p>14 A Uh-huh.</p> <p>15 Q The offender doesn't leave. Okay?</p> <p>16 Would it be reasonable, just given those narrow</p> <p>17 circumstances, for an officer to actually tase and</p> <p>18 shock that individual to get the offender to comply</p> <p>19 with the order?</p> <p>20 A Yeah. I've seen it go that way. I've</p> <p>21 seen -- at that point, this offender's created a</p> <p>22 facility disruption, meaning that my staff have to</p> <p>23 respond to this location. And now he's affected</p> <p>24 operations within that facility. Okay?</p> <p>25 So we've got to control the situation.</p>

<p style="text-align: right;">30</p> <p>1 This offender's got to move at this point. So we 2 can't just leave him there the rest of the day. So 3 they're going to use what they feel necessary to 4 control that situation. They're going to reach the 5 options that they feel is necessary.</p> <p>6 Could he be tased? Yes, he could be 7 tased.</p> <p>8 Q In the scenario we just described?</p> <p>9 A Yes.</p> <p>10 Q You talked about having, quote, 11 unquote, seen it. Describe that scenario that you 12 witnessed where an offender showing passive 13 resistance was tased?</p> <p>14 A It was -- I can't tell you what year, 15 probably '95, '96. Same exact thing I told you, is 16 in day hall at San Carlos, offender wasn't going to 17 leave the day hall, grabbed hold of the table. 18 Shift commander pulled out an Ultron, which is an 19 older version of the taser, put it to his back and 20 gave him verbal directions, or be stunned.</p> <p>21 Q Was that individual actually stunned 22 or was it used as more of a threat?</p> <p>23 A I don't think he was stunned. He 24 stood up. But the shift commander -- I don't think 25 the shift commander had it on his back. Somebody</p>	<p style="text-align: right;">32</p> <p>1 A Yes. 2 Q Describe that scenario, to the best of 3 your recollection. 4 A Offender was being escorted to medical 5 for anatomical, got to the front door area, went 6 limp, went to the ground. Staff gave him 7 directions, gave him pressure points to no avail. 8 They tased him. He stood up and walked the rest of 9 the way. 10 Q Any other example that you can think 11 of? 12 A Huh-uh. 13 Q How many times, at least within CTCF, 14 have you seen offenders actually stunned by a taser? 15 A "Seen"? 16 Q Witnessed, sure. 17 A Probably just those two times. 18 Q And that's in how many years? 19 A Taser didn't get there for the time -- 20 I don't know how long it's been in service with us. 21 Q Roughly how long has it been in 22 service? 23 A I would say that was pretty close to 24 2012 when Territorial got them. 25 Q 2012?</p>
<p style="text-align: right;">31</p> <p>1 else had it on his back and the shift commander had 2 him in an LVR, which is a neck restraint. It's kind 3 of what we call a shoulder pin nowadays. But back 4 then, it was like around the neck, and he gave him 5 the verbal direction that if he didn't stand up -- 6 and the offender chose to stand up at that point. 7 Q Would you agree that that's one of the 8 benefits of carrying tasers for officers, is it can 9 act as a deterrent or, I should say, make offenders 10 comply because they're scared of being stunned, 11 correct?</p> <p>12 MR. CAIN: Objection as to form and 13 foundation.</p> <p>14 A I would assume so. I know I'd 15 probably second-guess my resistance if I was to be 16 stunned, yeah.</p> <p>17 Q (By Mr. Lampiasi) And that's why 18 officers are trained to warn offenders that they 19 could be stunned if they don't comply with an order, 20 correct?</p> <p>21 A Right.</p> <p>22 Q Have you ever seen, in your 23 experience, whether it was with the Ultron or the 24 newer lasers, an offender be stunned when that 25 offender is only showing passive resistance?</p>	<p style="text-align: right;">33</p> <p>1 A Probably. 2 Q Okay. So when this incident occurred 3 with Mr. Stevenson, the use of tasers at CTCF was 4 relatively new? 5 A The taser replaced the Ultron. We had 6 Ultron. 7 Q Okay. But going back to my question 8 regarding how many times you've seen an offender get 9 stunned, whether it was with an Ultron or a taser. 10 A In 2012, we -- I believe we probably 11 got like five, where we had like two Ultrons. It 12 just depends on who checked them out, where they're 13 carried and stuff like that. Nowadays there's more 14 of the tools. 15 Q In the scenario we were discussing 16 about the individual in the chow hall showing 17 passive resistance and not following a lawful order, 18 what other tools in the use of force toolbox could a 19 an officer use, besides stunning that person? 20 A Pressure points. 21 Q What else? 22 A Verbal direction. 23 Q Threatening the use of the taser 24 instead of actually -- 25 A Giving you direction, you need to</p>

<p>1 stand up, you need to turn around and cuff up, you 2 know, think about what you're doing, stuff like 3 that, an OC.</p> <p>4 Q Do you consider OC spray a less 5 aggressive use of force than a taser?</p> <p>6 A It just depends on the totality of the 7 circumstance. I've had staff engaged in an attempt 8 to take a guy down and staff spraying, which 9 affected all the staff in the middle. That probably 10 wasn't the best option during that time with staff 11 engaged there.</p> <p>12 Like I said, it's the totality of the 13 circumstance. I'm not going to pull out OC if I've 14 got a bunch of staff standing around. I'm not going 15 to contaminate or render them kind of helpless -- 16 helpless scenario. So I might step in with an 17 Ultron because it's --</p> <p>18 Q I'm going to move on from the taser 19 topic in just a second. I just have a couple more 20 questions.</p> <p>21 With respect to using a taser on an 22 individual, are there -- and actually stunning them, 23 are there policies with respect to logging that 24 information in a particular database at the 25 facility?</p>	<p>34</p> <p>1 Mr. Stevenson was tased during the incident? 2 A On the video, I heard the nurse say he 3 had six signature marks.</p> <p>4 Q And what do you interpret the six 5 signature marks to mean?</p> <p>6 A To be -- it would be three.</p> <p>7 Q And when you say "it would be three," 8 what do you base that answer on?</p> <p>9 A There's two probes that stick in the 10 body. So every time you activate it, you have two 11 marks.</p> <p>12 Q Bear with me for a minute.</p> <p>13 Mr. Stevenson was served many 14 different requests for admission. So sometimes they 15 get a little confusing. I want to make sure I'm 16 referring to the right one.</p> <p>17 MR. CAIN: We've been at this about an 18 hour, is it all right if we take a little break?</p> <p>19 MR. LAMPIASI: It might.</p> <p>20 MR. CAIN: Thank you.</p> <p>21 (A recess was taken at 9:53 a.m. until 22 10:01 a.m.)</p> <p>23 (Deposition Exhibits 2 and 3 were 24 marked for identification.)</p> <p>25 Q (By Mr. Lampiasi) You have in front of</p>	<p>36</p>
<p>1 A No. What do you mean by "logging"?</p> <p>2 Q Is there a taser log or central spot 3 at CTCF where you go to report that you've stunned 4 somebody?</p> <p>5 A It's just on your incident report.</p> <p>6 Q At CTCF, you have the use of restraint 7 chairs, correct?</p> <p>8 A Yes.</p> <p>9 Q So an alternative to picking somebody 10 up by handcuffs, or just picking an offender up in 11 general and carrying them, you have the option of 12 using a restraint chair, correct?</p> <p>13 MR. CAIN: Objection as to form.</p> <p>14 A That depends on the scenario. Like 15 this scenario was on the fourth floor. Restraint 16 chair is probably 200 pounds of solid metal. It's 17 got little tiny wheels like this (indicating).</p> <p>18 You're not going to be able to get them down the 19 stairwell.</p> <p>20 Q Did you consider the use of a 21 restraint chair at any point during this incident?</p> <p>22 A No.</p> <p>23 Q Are there elevators?</p> <p>24 A No.</p> <p>25 Q How many times do you believe</p>	<p>35</p> <p>1 you what's been marked for the deposition as 2 Exhibit 1. It's entitled Defendant Cordova's 3 Amended Responses to Plaintiff's First Request for 4 Admissions.</p> <p>5 Is that the title on your document?</p> <p>6 A Yes.</p> <p>7 Q Do you recognize this document as the 8 Plaintiff's -- your responses to some requests for 9 admissions that Mr. Stevenson asked for -- or I 10 should say, ask that you answer?</p> <p>11 A Yes.</p> <p>12 Q Now the copy that I was given does not 13 contain your signature, but can you take a look at 14 this and just confirm that these are your responses 15 and that you answered them under oath?</p> <p>16 MR. CAIN: Again, I think for the 17 record, request for admissions are not required to 18 be answered under oath. But certainly, I have no 19 problem with you asking him if those are his 20 answers.</p> <p>21 Q (By Mr. Lampiasi) Let's look at 22 Request 1 on the first page. It says, "Please admit 23 that a taser should not be used against a prisoner 24 who does not reasonably pose a threat to staff or 25 others, who are not resisting with physical force</p>	<p>37</p>

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<p>1 but remain in a limp or prone position."</p> <p>2 I think you've kind of already</p> <p>3 answered that question, that it's the totality of</p> <p>4 the circumstances in this deposition, correct?</p> <p>5 A Correct.</p> <p>6 Q And so is it a fair characterization</p> <p>7 of what you said, that an offender does not have to</p> <p>8 be physically threatening in order to be subject to</p> <p>9 a stunning from a taser?</p> <p>10 A Say that again.</p> <p>11 Q I'll rephrase it. I understand your</p> <p>12 testimony here today to be that an offender -- an</p> <p>13 officer might be justified in tasing, actually</p> <p>14 stunning an offender, even when that offender is not</p> <p>15 threatening that officer with physical harm.</p> <p>16 Do I have your testimony correct?</p> <p>17 A They could utilize that use of force,</p> <p>18 that level of force based on what they feel is the</p> <p>19 totality of the circumstance.</p> <p>20 Q And my question is: They could use</p> <p>21 that level of force -- and I refer to a stunning</p> <p>22 from a taser -- in the absence of an offender being</p> <p>23 physically threatening?</p> <p>24 A In the absence of threats, is what</p> <p>25 you're saying?</p>	<p>1 taser would be appropriate."</p> <p>2 That was your answer?</p> <p>3 A Yes.</p> <p>4 Q When you say that you saw wrestling,</p> <p>5 what do you mean by that?</p> <p>6 A Staff members on the floor attempting</p> <p>7 to put the offender's hands behind his back, telling</p> <p>8 him to put his hands behind his back,</p> <p>9 self-resisting.</p> <p>10 Q You said you saw officers on the</p> <p>11 floor?</p> <p>12 A Right. Staff aren't on the floor</p> <p>13 normally with offenders.</p> <p>14 Q What did you see? Did you see</p> <p>15 Mr. Stevenson wrestling the officers?</p> <p>16 MR. CAIN: Objection as to form.</p> <p>17 A Yes, I see him not trying to comply,</p> <p>18 put his hands behind his back. If staff are giving</p> <p>19 him directives to put his hands behind his back and</p> <p>20 he's keeping his hands underneath his body, that's</p> <p>21 resisting.</p> <p>22 Q (By Mr. Lampiasi) Well, you said he</p> <p>23 was wrestling. And it would be hard for him to</p> <p>24 wrestle, wouldn't you agree, if his hands were</p> <p>25 underneath?</p>
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<p>1 Q Right.</p> <p>2 A Yes.</p> <p>3 Q So physical threats are not a</p> <p>4 requirement -- are not a prerequisite to be subject</p> <p>5 to a stunning by a taser?</p> <p>6 A Yes.</p> <p>7 Q And going back to that request for</p> <p>8 admission, the response is on the second page. I'm</p> <p>9 just going to direct your attention to the third</p> <p>10 line down that says, "While Defendant Cordova would</p> <p>11 hypothetically agree that if an offender is totally</p> <p>12 compliant and not a threat, there would be no --</p> <p>13 A What number are you on? I'm sorry.</p> <p>14 Q I'm on page 2. Top of the page is</p> <p>15 your response, right?</p> <p>16 A Yes.</p> <p>17 Q And you see the third line down, where</p> <p>18 it says "While Defendant Cordova would</p> <p>19 hypothetically agree that if an offender is totally</p> <p>20 compliant and not a threat, there would be no need</p> <p>21 for a taser, Defendant Cordova recalls that in this</p> <p>22 incident, he arrived to see two female staff</p> <p>23 struggling to gain control of an offender who was</p> <p>24 resisting application of restraints, and therefore</p> <p>25 he" -- that means you -- "feels that the use of a</p>	<p>1 A No, sir.</p> <p>2 Q So if his hands were underneath him --</p> <p>3 let me finish my question, please -- how was he</p> <p>4 wrestling, in your words?</p> <p>5 A In my words, when I wrestled in high</p> <p>6 school, basing out is part of wrestling.</p> <p>7 Q Okay. And how was Mr. Stevenson</p> <p>8 basing out? And how do you define basing out?</p> <p>9 A You're not allowing them to control</p> <p>10 your extremities.</p> <p>11 Q And so when you say wrestled, you</p> <p>12 meant he was basing them out from your high school</p> <p>13 wrestling days?</p> <p>14 A If you put your arms out, and you're</p> <p>15 not allowing them to put your arms behind your back</p> <p>16 or you pull them in (indicating) or tuck them under,</p> <p>17 you're not allowing the person to get control of</p> <p>18 your extremities.</p> <p>19 Q I want to just --</p> <p>20 MR. LAMPIASI: Do you mind if I come</p> <p>21 over here?</p> <p>22 MR. CAIN: That's fine.</p> <p>23 Q (By Mr. Lampiasi) So I'll represent to</p> <p>24 you that this is the vestibule video. It's Bates</p> <p>25 stamped up here.</p>
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<p>1 but remain in a limp or prone position."</p> <p>2 I think you've kind of already</p> <p>3 answered that question, that it's the totality of</p> <p>4 the circumstances in this deposition, correct?</p> <p>5 A Correct.</p> <p>6 Q And so is it a fair characterization</p> <p>7 of what you said, that an offender does not have to</p> <p>8 be physically threatening in order to be subject to</p> <p>9 a stunning from a taser?</p> <p>10 A Say that again.</p> <p>11 Q I'll rephrase it. I understand your</p> <p>12 testimony here today to be that an offender -- an</p> <p>13 officer might be justified in tasing, actually</p> <p>14 stunning an offender, even when that offender is not</p> <p>15 threatening that officer with physical harm.</p> <p>16 Do I have your testimony correct?</p> <p>17 A They could utilize that use of force,</p> <p>18 that level of force based on what they feel is the</p> <p>19 totality of the circumstance.</p> <p>20 Q And my question is: They could use</p> <p>21 that level of force -- and I refer to a stunning</p> <p>22 from a taser -- in the absence of an offender being</p> <p>23 physically threatening?</p> <p>24 A In the absence of threats, is what</p> <p>25 you're saying?</p>	<p>1 taser would be appropriate."</p> <p>2 That was your answer?</p> <p>3 A Yes.</p> <p>4 Q When you say that you saw wrestling,</p> <p>5 what do you mean by that?</p> <p>6 A Staff members on the floor attempting</p> <p>7 to put the offender's hands behind his back, telling</p> <p>8 him to put his hands behind his back,</p> <p>9 self-resisting.</p> <p>10 Q You said you saw officers on the</p> <p>11 floor?</p> <p>12 A Right. Staff aren't on the floor</p> <p>13 normally with offenders.</p> <p>14 Q What did you see? Did you see</p> <p>15 Mr. Stevenson wrestling the officers?</p> <p>16 MR. CAIN: Objection as to form.</p> <p>17 A Yes, I see him not trying to comply,</p> <p>18 put his hands behind his back. If staff are giving</p> <p>19 him directives to put his hands behind his back and</p> <p>20 he's keeping his hands underneath his body, that's</p> <p>21 resisting.</p> <p>22 Q (By Mr. Lampiasi) Well, you said he</p> <p>23 was wrestling. And it would be hard for him to</p> <p>24 wrestle, wouldn't you agree, if his hands were</p> <p>25 underneath?</p>
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<p>1 Q Right.</p> <p>2 A Yes.</p> <p>3 Q So physical threats are not a</p> <p>4 requirement -- are not a prerequisite to be subject</p> <p>5 to a stunning by a taser?</p> <p>6 A Yes.</p> <p>7 Q And going back to that request for</p> <p>8 admission, the response is on the second page. I'm</p> <p>9 just going to direct your attention to the third</p> <p>10 line down that says, "While Defendant Cordova would</p> <p>11 hypothetically agree that if an offender is totally</p> <p>12 compliant and not a threat, there would be no --</p> <p>13 A What number are you on? I'm sorry.</p> <p>14 Q I'm on page 2. Top of the page is</p> <p>15 your response, right?</p> <p>16 A Yes.</p> <p>17 Q And you see the third line down, where</p> <p>18 it says "While Defendant Cordova would</p> <p>19 hypothetically agree that if an offender is totally</p> <p>20 compliant and not a threat, there would be no need</p> <p>21 for a taser, Defendant Cordova recalls that in this</p> <p>22 incident, he arrived to see two female staff</p> <p>23 struggling to gain control of an offender who was</p> <p>24 resisting application of restraints, and therefore</p> <p>25 he" -- that means you -- "feels that the use of a</p>	<p>1 A No, sir.</p> <p>2 Q So if his hands were underneath him --</p> <p>3 let me finish my question, please -- how was he</p> <p>4 wrestling, in your words?</p> <p>5 A In my words, when I wrestled in high</p> <p>6 school, basing out is part of wrestling.</p> <p>7 Q Okay. And how was Mr. Stevenson</p> <p>8 basing out? And how do you define basing out?</p> <p>9 A You're not allowing them to control</p> <p>10 your extremities.</p> <p>11 Q And so when you say wrestled, you</p> <p>12 meant he was basing them out from your high school</p> <p>13 wrestling days?</p> <p>14 A If you put your arms out, and you're</p> <p>15 not allowing them to put your arms behind your back</p> <p>16 or you pull them in (indicating) or tuck them under,</p> <p>17 you're not allowing the person to get control of</p> <p>18 your extremities.</p> <p>19 Q I want to just --</p> <p>20 MR. LAMPIASI: Do you mind if I come</p> <p>21 over here?</p> <p>22 MR. CAIN: That's fine.</p> <p>23 Q (By Mr. Lampiasi) So I'll represent to</p> <p>24 you that this is the vestibule video. It's Bates</p> <p>25 stamped up here.</p>

<p>1 Do you just recognize this in 2 general -- 3 A Yes. 4 Q -- as the video you've seen in the 5 past? 6 MR. CAIN: You say it has the Bates 7 stamp number on it, if you wouldn't mind reading 8 that into the record. 9 MR. LAMPIASI: It's identified as 10 Bates 00926-DS2. 11 MR. CAIN: Thank you. 12 (Video recording was played.) 13 Q (By Mr. Lampiasi) I want to just take 14 it back to where it starts. And would you agree 15 that there are two officers -- I think it's 16 Clinkenbeard and Hanson -- surrounding 17 Mr. Stevenson. 18 MR. CAIN: Objection as to form. 19 Q (By Mr. Lampiasi) They appear to be 20 discussing something, correct? 21 A Correct. They're standing there 22 talking to him. They moved over towards the control 23 center once the offender starting coming out of the 24 pod. 25 Q And we're at about 44 seconds into the </p>	42	<p>1 laundry. 2 Q Now, we're playing forward from 3 44 seconds. 4 (Video recording was played.) 5 Q (By Mr. Lampiasi) There appears to be 6 some type of interaction, correct, between the 7 officers and Mr. Stevenson? 8 A Yes. 9 Q And we can agree at this point that 10 Mr. Stevenson puts his hands up, turns around and 11 goes down to the ground. 12 Do you remember that from the video? 13 A You haven't showed me that yet. 14 (Video recording was played.) 15 Q (By Mr. Lampiasi) So Mr. Stevenson 16 puts his hands up at 1:23 on the video, on the time 17 indicator? 18 A Yes. 19 Q And at this point, at 1:31, it looks 20 like one of the officers tries to grab ahold of his 21 arm. Would you agree with that? 22 A Yes. 23 Q What level of resistance was 24 Mr. Stevenson demonstrating, in your opinion, just 25 prior to being grabbed? </p>	44
<p>1 video; would you agree? 2 A Yes. 3 Q Would it be reasonable that they might 4 move Mr. Stevenson away from the rest of the 5 offenders while they were talking to him? 6 A I would assume, yes. 7 Q Do you agree that the video shows they 8 directed him over there? 9 A It appears so, yes. 10 Q It appears that Mr. Stevenson 11 complied, correct? 12 A Yes. 13 Q Now, you'll notice, it looks like 14 that's Clinkenbeard on our right, as we look at this 15 video? 16 A Yes. 17 Q She appears to be wearing gloves. 18 A Correct. 19 Q Do you know why she would be wearing 20 gloves at this time? 21 A No, sir. 22 Q Is that typical? 23 A She could have been shaking down. She 24 could have been pat searching. She could have been 25 doing lots of things. She could have been doing </p>	43	<p>1 A Passive. 2 Q Would you agree, Captain, that he 3 didn't make any physical overt threats to either of 4 the officers? 5 A No. I would say he is. 6 Q Okay. 7 A His behavior is unpredictable. He's 8 not following the staff directives. They told him 9 to cuff up. He puts his hands above his head to 10 resist them. Yeah, the threat level is really high. 11 Q But he didn't make any gestures toward 12 them like he was going to hit them? 13 A Not at this point. 14 Q Or otherwise assault them? 15 A Right there he just did. 16 Q Just tell me where to stop when you 17 think that he physically assaults one of the 18 officers. 19 A I didn't say he assaulted them. 20 MR. CAIN: Object to form. 21 Q (By Mr. Lampiasi) What are you saying 22 he did? 23 (Video recording was played.) 24 A He just turned on staff. Staff was 25 directing him to the wall and he turned to face </p>	45

<p>1 them. Right there, (indicating).</p> <p>2 As he was pulling away, he's showing</p> <p>3 defensive resistance. He's turning towards them in</p> <p>4 a very aggressive manner. His stature is very</p> <p>5 physically fit, and you have two females attempting</p> <p>6 to place him in handcuffs.</p> <p>7 Q (By Mr. Lampiasi) Okay. So this is</p> <p>8 where you would consider that he goes from -- and</p> <p>9 we're at 1:35 --</p> <p>10 A Passive.</p> <p>11 Q From passive to defensive?</p> <p>12 A Uh-huh.</p> <p>13 Q Moving on. He appears to, would you</p> <p>14 agree, go down to the ground with his back towards</p> <p>15 the officer?</p> <p>16 A Yes. And back to passive resistance</p> <p>17 and went to his knees.</p> <p>18 Q So you would agree that his defensive</p> <p>19 resistance lasted only a moment before he went back</p> <p>20 to passive; is that fair?</p> <p>21 A Uh-huh.</p> <p>22 Q So we're paused at 1:41. We'll move</p> <p>23 on.</p> <p>24 A Now, he's back to defensive.</p> <p>25 Q Okay. Where did he get defensive?</p>	<p>46</p> <p>1 being resistant.</p> <p>2 Q Okay. We're paused at 2:03. We'll</p> <p>3 move on.</p> <p>4 A And that's where I would consider</p> <p>5 basing out, where he's just got his arms locked out,</p> <p>6 where he's not allowing them to pull them out.</p> <p>7 Q So at 2:27 on the time indicator,</p> <p>8 that's where he's doing a high school wrestling</p> <p>9 move, you're saying?</p> <p>10 A I'm just saying he's basing out. He's</p> <p>11 not allowing my staff to place restraints on. He's</p> <p>12 utilizing his muscle to not allow them to.</p> <p>13 Q Okay. Now, at 2:32, we see two</p> <p>14 officers in the background coming up the stairs into</p> <p>15 the vestibule, correct?</p> <p>16 A Yes.</p> <p>17 Q And moving the video forward.</p> <p>18 Espinoza is on the left?</p> <p>19 A Yes, sir.</p> <p>20 Q Our left, correct?</p> <p>21 A Yes, sir.</p> <p>22 Q You see that he has an object in his</p> <p>23 right hand?</p> <p>24 A Can't tell -- yes.</p> <p>25 Q Do you recognize that to be a taser?</p>	<p>48</p>
<p>1 A Because he's not allowing staff to</p> <p>2 pull his arm behind his back to be restrained. He's</p> <p>3 pulling away from staff.</p> <p>4 Q Okay. And would you agree that at</p> <p>5 this point, staff is applying physical pressure?</p> <p>6 A They're attempting to place him into</p> <p>7 restraints, yes.</p> <p>8 Q Would you repeat for me what it's</p> <p>9 called when you apply pressure to the head and neck?</p> <p>10 A I don't know what she's doing there.</p> <p>11 She could be doing a mandibular angle. The video is</p> <p>12 not that good -- or if she's just controlling the</p> <p>13 head. I've had offenders rear up and bust the</p> <p>14 staff's nose.</p> <p>15 Q Sure. So it's very important to</p> <p>16 control him here, correct?</p> <p>17 A Uh-huh.</p> <p>18 Q Now, four seconds later, at least from</p> <p>19 the indicator we see in the video, he's now lying in</p> <p>20 a prone position. Would you agree with that?</p> <p>21 A Uh-huh.</p> <p>22 Q And his legs are straight out,</p> <p>23 correct?</p> <p>24 A Uh-huh. Yes. His hand is still</p> <p>25 tucked underneath him, not allowing -- he's still</p>	<p>47</p> <p>1 A Appears to be a taser.</p> <p>2 Q Okay. You don't know when the tasings</p> <p>3 actually occurred, correct?</p> <p>4 A No, sir.</p> <p>5 Q Moving forward. Now, at this point,</p> <p>6 it looks like Officer Hanson is sitting on</p> <p>7 Mr. Stevenson's legs, correct?</p> <p>8 MR. CAIN: What time, for the record?</p> <p>9 MR. LAMPIASI: At 2:53.</p> <p>10 A You have to go back. I can't tell</p> <p>11 where she's sitting.</p> <p>12 Q (By Mr. Lampiasi) At 2:41 she's</p> <p>13 standing up on the right side of the video, correct?</p> <p>14 A Uh-huh.</p> <p>15 Q As it moves forward, you'd agree that</p> <p>16 she sits either on Mr. Stevenson's back, buttock, or</p> <p>17 legs?</p> <p>18 A I call control the legs. But, yeah,</p> <p>19 she's on the legs.</p> <p>20 Q She's using a maneuver that she's</p> <p>21 trained in?</p> <p>22 A I think she's just concerned whether</p> <p>23 the legs -- in any four cell or any type of thing,</p> <p>24 we control the arms and legs. We go to a</p> <p>25 four-point. Staff are assigned to control legs and</p>	<p>49</p>

<p>50</p> <p>1 so forth.</p> <p>2 Q Because you don't want to get kicked?</p> <p>3 A Right. And your size matters, as</p> <p>4 well.</p> <p>5 Q Now, it's paused at 2:54. It appears</p> <p>6 some other individuals are coming up the stairs in</p> <p>7 the background?</p> <p>8 A Yes.</p> <p>9 Q At this point, it's paused at 2:58</p> <p>10 now. Do you see that?</p> <p>11 A Uh-huh.</p> <p>12 Q At this point, Mr. Stevenson, at least</p> <p>13 one of his arms is out to his side, correct?</p> <p>14 A Yes.</p> <p>15 Q Are you one of those individuals</p> <p>16 there?</p> <p>17 A Yes. I'm on the left side.</p> <p>18 Q At 3:01. And in your response to</p> <p>19 request for admission, you say that this is where</p> <p>20 you saw the wrestling.</p> <p>21 A Uh-huh.</p> <p>22 Q Is that what you were referring to</p> <p>23 when you said that Mr. Stevenson was wrestling?</p> <p>24 A Yes. He's actively involved in the</p> <p>25 use of force right there.</p>	<p>52</p> <p>1 A I don't know. I couldn't tell. It</p> <p>2 looks like he based out.</p> <p>3 Q (By Mr. Lampiasi) We could go through</p> <p>4 the whole video, but it would be very aggravating.</p> <p>5 So I'll ask the questions a different way.</p> <p>6 Did you write an incident report in</p> <p>7 this case?</p> <p>8 A Yes.</p> <p>9 Q And you wrote that incident report,</p> <p>10 again, when the accident was fresh in your memory,</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q And you knew that you were obligated</p> <p>14 to write a detailed report, right?</p> <p>15 A I write a report of what I saw.</p> <p>16 Q You said before you always write</p> <p>17 detailed reports?</p> <p>18 A Right.</p> <p>19 Q Based on your observations, right?</p> <p>20 A Yes, of what I saw.</p> <p>21 Q And you didn't write anything in that</p> <p>22 report about Mr. Stevenson punching staff, correct?</p> <p>23 A No, sir.</p> <p>24 Q Or otherwise intentionally striking</p> <p>25 them, correct?</p>
<p>51</p> <p>1 Q So that's what you consider wrestling?</p> <p>2 A Well, yes. When staff are giving</p> <p>3 verbal direction to cuff up and you have yet to get</p> <p>4 him into cuffs, there would be some wrestling going</p> <p>5 on there.</p> <p>6 Q But he doesn't have his arms, at this</p> <p>7 point --</p> <p>8 A I don't think I looked at each area.</p> <p>9 I'm just looking at when you walk up, you know. If</p> <p>10 you walked up on a fight, you're going to say, it's</p> <p>11 a fight. You're not going to say, this guy was --</p> <p>12 had a knife in his hand. You're not going to be</p> <p>13 that engaged.</p> <p>14 Q And you don't know if at that point he</p> <p>15 had already been tased or not?</p> <p>16 A I couldn't say right now.</p> <p>17 Q You would agree that, at least up to</p> <p>18 the point that we stopped at, at 3:01, he either had</p> <p>19 his arms underneath him or out to his side, correct?</p> <p>20 A There was one arm out to the side,</p> <p>21 yes, at the end of where you showed me.</p> <p>22 Q He wasn't using his hands to hit</p> <p>23 staff, correct?</p> <p>24 MR. CAIN: Objection as to form and</p> <p>25 foundation.</p>	<p>53</p> <p>1 A No, sir.</p> <p>2 Q And you watched the video, right?</p> <p>3 A Yes, sir.</p> <p>4 Q And you didn't write anything about</p> <p>5 him assaulting staff because he didn't assault</p> <p>6 staff, right?</p> <p>7 MR. CAIN: Objection as to form and</p> <p>8 foundation.</p> <p>9 A Too far down. I know there's a part</p> <p>10 in that video where they attempt to walk him or pick</p> <p>11 him up, he starts kicking his legs. And that's when</p> <p>12 the backboard is decided to be utilized.</p> <p>13 Q (By Mr. Lampiasi) Did you witness the</p> <p>14 kicking?</p> <p>15 A Well, I seen it on the video. I can't</p> <p>16 say I recall it.</p> <p>17 Q But you didn't write anything about</p> <p>18 him kicking anybody in your report, right?</p> <p>19 A No. Might have been in my use of</p> <p>20 force report.</p> <p>21 Q Assaulting staff would be a serious</p> <p>22 offense, correct?</p> <p>23 A Yes, sir.</p> <p>24 Q And it might even be a criminal</p> <p>25 offense, right?</p>

<p>1 A Yes, sir.</p> <p>2 Q Had he intentionally hit staff, you</p> <p>3 would have written him up for that, right?</p> <p>4 MR. CAIN: Objection as to form.</p> <p>5 Q (By Mr. Lampiasi) Let me rephrase it.</p> <p>6 If an offender hits a member of your staff</p> <p>7 intentionally, he's getting written up, under your</p> <p>8 watch, correct?</p> <p>9 A Yes. If he hits staff, and it's</p> <p>10 observed, that staff is going to document that.</p> <p>11 Q He wasn't charged with -- he wasn't</p> <p>12 written up for wrestling anybody, correct?</p> <p>13 A I do know that. I don't know what</p> <p>14 charges followed him. That's not my area.</p> <p>15 Q You reviewed, as the shift commander,</p> <p>16 the other incident reports because you're obligated</p> <p>17 to, correct?</p> <p>18 A Yes.</p> <p>19 Q And none of the individuals involved</p> <p>20 in the incident, meaning the officers, described</p> <p>21 being assaulted or struck in any way, right?</p> <p>22 A I do not recall.</p> <p>23 Q If they had, that would have gone in</p> <p>24 your report, correct?</p> <p>25 A It probably would go in the use of</p>	<p>54</p> <p>1 Q Do you mind showing me?</p> <p>2 A Sure.</p> <p>3 (Video recording was played.)</p> <p>4 A Right here. Stop resisting, picks up.</p> <p>5 Keep going.</p> <p>6 Q (By Mr. Lampiasi) Just tell me when to</p> <p>7 stop.</p> <p>8 So there's a point, just for the</p> <p>9 record, at 4:37, 4:38, where Mr. Stevenson appears</p> <p>10 to be lifted up?</p> <p>11 A Yes. He refused to walk.</p> <p>12 Q Okay. And at 4:41 he's back on his</p> <p>13 feet, correct?</p> <p>14 A Yes. Uh-huh.</p> <p>15 Q And I believe it's your testimony that</p> <p>16 the kick is coming right up?</p> <p>17 A Uh-huh. Right here he's kicking his</p> <p>18 legs.</p> <p>19 Q All right. So between 4:41 and 4:52</p> <p>20 is where you --</p> <p>21 A I'm saying he's being resistant,</p> <p>22 kicking his legs. I can't attest to what was said</p> <p>23 there. You know what I'm saying? I don't know if</p> <p>24 you're saying he assaulted staff there or --</p> <p>25 Q I'm not saying anything. I was just</p>
<p>55</p> <p>1 force packet. My incident report is documenting</p> <p>2 what I kind of saw. Okay. And then my use of force</p> <p>3 packet is a breakdown of the levels of resistance,</p> <p>4 what the staff did, what they held, who applied</p> <p>5 restraints.</p> <p>6 Q If you had seen in any of the incident</p> <p>7 reports an allegation that Mr. Stevenson</p> <p>8 intentionally struck one of your subordinates, you</p> <p>9 would have brought that to someone's attention,</p> <p>10 correct? Or can an offender just get away with</p> <p>11 intentionally assaulting staff?</p> <p>12 MR. CAIN: Objection as to form and</p> <p>13 foundation.</p> <p>14 A I couldn't answer that. It's kind of</p> <p>15 broad. Sometimes there's a use of force where, like</p> <p>16 I said, they're kicking, not -- being defensive</p> <p>17 resistant -- you know, call an investigator to come</p> <p>18 review it sometimes. But in that one I don't recall</p> <p>19 it being a staff assault. It's just been too long.</p> <p>20 I didn't review it in detail like that.</p> <p>21 Q (By Mr. Lampiasi) Do you recall where,</p> <p>22 generally, in the video or at what point during the</p> <p>23 incident Mr. Stevenson allegedly kicked an officer?</p> <p>24 A It's probably another 30 seconds after</p> <p>25 where you're at right there.</p>	<p>55</p> <p>1 asking you to identify the place on the video where,</p> <p>2 as you allege, you saw Mr. Stevenson kick or try to</p> <p>3 kick staff.</p> <p>4 A He's kicking his legs so staff cannot</p> <p>5 carry him.</p> <p>6 Q Okay. But he's not kicking at staff</p> <p>7 directly, correct?</p> <p>8 MR. CAIN: Objection, form and</p> <p>9 foundation.</p> <p>10 A I believe it's intentional.</p> <p>11 Q (By Mr. Lampiasi) Who was the kick</p> <p>12 directed towards?</p> <p>13 A He's intentionally kicking.</p> <p>14 Q Okay. But was he directing that kick</p> <p>15 at a specific individual?</p> <p>16 MR. CAIN: Objection as to form and</p> <p>17 foundation.</p> <p>18 A I can't attest to what his intentions</p> <p>19 were.</p> <p>20 Q (By Mr. Lampiasi) You'd agree that</p> <p>21 video is helpful, somewhat at least, in determining</p> <p>22 what happens during these use of force episodes,</p> <p>23 correct?</p> <p>24 MR. CAIN: Objection as to form.</p> <p>25 A Yes.</p>

<p>1 Q (By Mr. Lampiasi) It's good to have 2 video, as a shift commander, to go back to, in order 3 to piece together what may have happened, correct? 4 A Yes. 5 Q To that end, you attempted, in this 6 case, did you not, to gather the footage from the 7 different cameras that were present in that 8 vestibule, correct? 9 A Yes. 10 Q In this vestibule, Captain, we're 11 seeing an angle that's up on the wall, correct? 12 A Yes. That was in the control center. 13 Q That's not the only camera in this 14 vestibule, right? 15 A Yes, it is. 16 Q Okay. So the only camera that could 17 possibly capture this vestibule area is the one that 18 captured it? 19 A Yes. 20 Q You recall, do you not, that this 21 episode -- this incident resulted from, fair to call 22 it, a confrontation between Mr. Stevenson and 23 Officer Meyers? 24 MR. CAIN: Objection as to form, 25 foundation.</p>	<p>58</p> <p>1 could be drugs. It could be anything. 2 Q We don't know what was said between 3 Mr. Stevenson and Officer Meyers inside the pod, 4 correct? 5 A I don't recall. 6 Q If we had video, video would capture 7 the interaction between Officer Meyers and 8 Stevenson, correct? 9 MR. CAIN: Objection as to form. 10 A Yeah. 11 Q (By Mr. Lampiasi) There is video in 12 that area, correct? 13 A Yes. 14 Q But that video isn't with us. It 15 was -- what happened to that video? 16 A It's just part of a DVR that probably 17 records over. It's not part of the use of force. 18 I'm expected to download video that 19 pertains to the use of force. The actions inside 20 the pods in passing stuff, if there was a writeup or 21 something like that, maybe there would have been 22 something there that felt necessary. 23 The video that was downloaded was in 24 regards to the use of force showing the levels of 25 resistance and the levels of control.</p>
<p>1 A What I recall is he had something in 2 his possession he was passing between another 3 offender, and staff requested it and then he didn't 4 give it. So they called the staff that were able to 5 talk to him outside of the control room, because he 6 was a control room officer. He was behind glass, 7 unable to take whatever he seen being passed. Pat 8 search, strip search, he's not able to do that, so 9 he called other staff there to intervene that. 10 Q (By Mr. Lampiasi) If an officer is 11 concerned that an offender might have a dangerous 12 weapon, let's say, would an officer turn their back 13 on that offender? 14 MR. CAIN: Objection as to form and 15 foundation. 16 A I don't know that. 17 Q (By Mr. Lampiasi) Would you ever turn 18 your back on an offender that you truly believed had 19 a dangerous weapon or was a physical threat to you? 20 A I wouldn't, no. 21 Q Why wouldn't you? 22 A Why wouldn't I? 23 Q Yeah. 24 A Out of fear. You don't want to be 25 stuck, because you don't know what they have. It</p>	<p>59</p> <p>1 Q So you weren't concerned about what 2 caused the two female officers in the vestibule to 3 tell Mr. Stevenson to cuff up? 4 A It's kind of irrelevant at that point. 5 They were already engaged in the use of force. 6 Later on there could be talk or communication about 7 what happened, why did he do that, why were you 8 trying to cuff him. But that's not -- the use of 9 force was manifested by the resistance. 10 Q So it's your testimony that your job 11 is only to investigate the actual use of physical 12 force and not anything -- 13 A To document. 14 Q I'm sorry -- not anything that may 15 have precipitated it or caused the use of force? 16 MR. CAIN: Objection as to form. 17 A Right. It's to document it. It's to 18 obtain the video that shows the level of control and 19 level of resistance at the time. 20 Q (By Mr. Lampiasi) We don't know what 21 was said between Officer Meyers and Mr. Stevenson 22 that caused the two female officers to demand him to 23 cuff up? We just don't know, right? 24 A I don't know if there's a report on it 25 or not. I don't recall.</p>

<p>1 Q If we had that video, we would know, 2 correct?</p> <p>3 MR. CAIN: Objection as to form and 4 foundation.</p> <p>5 A I don't understand that question.</p> <p>6 Q (By Mr. Lampiasi) The video would show 7 what the interaction was between Stevenson and 8 Officer Meyers that caused other officers to demand 9 that he cuff up?</p> <p>10 MR. CAIN: Objection as to form and 11 foundation.</p> <p>12 A I still don't understand your question 13 on that. Would the video show their interaction, is 14 what you're saying?</p> <p>15 Q (By Mr. Lampiasi) Correct.</p> <p>16 A Yes.</p> <p>17 Q And that would be helpful in the 18 determination of why it was Mr. Stevenson was being 19 asked to cuff up, correct?</p> <p>20 A No. That would be the sergeant's -- I 21 don't think she was acting off of their 22 interactions. It was during her interactions. Her 23 interactions -- she was asking him to see whatever 24 it was, and he was -- he was being resistant to her. 25 And then, when she asked him to cuff up, he felt it</p>	<p>62</p> <p>1 Q (By Mr. Lampiasi) Handcuffs should be 2 applied in at least the one scenario, which is when 3 an officer safety's at issue, correct.</p> <p>4 A It could be officer safety or, like I 5 said prior, if they feel that they're going to 6 strip-search him, or something like that, or they 7 needed to secure an offender.</p> <p>8 There's so many incidents. It could 9 be a pre-issue. There's two offenders engaged in 10 misconduct in a cell, they're going to ask them to 11 step out and place them in cuffs. It's part of 12 practice.</p> <p>13 Q Right, because you're worried that in 14 those circumstances you've described either the 15 offender's safety or an officer's safety might be at 16 risk, right?</p> <p>17 MR. CAIN: Objection as to form.</p> <p>18 A Safety or securing the scene.</p> <p>19 Q (By Mr. Lampiasi) Okay. Do you 20 believe that less aggressive tactics were available, 21 other than stunning Mr. Stevenson with a taser?</p> <p>22 A I can't answer for the staff.</p> <p>23 Q I'm just asking, in your opinion, 24 having investigated and having reviewed the video, 25 do you feel that there were other less aggressive</p>	<p>64</p>
<p>1 wasn't necessary.</p> <p>2 Her perception leads her to believe 3 that he needed to be cuffed up or whatever she feels 4 necessary. If she felt he needed to be 5 strip-searched at that point. Okay?</p> <p>6 Whatever was discussed between her and 7 Meyers, and he felt maybe they passed something and 8 he felt he needed to be strip-searched, well, she's 9 going to place him in cuffs to make sure the 10 integrity of that offender is contained right there, 11 until she could get a male staff to strip him. I 12 don't know the circumstances. It's too broad.</p> <p>13 Q You've been trained in the application 14 of all different types of restraints, correct?</p> <p>15 A Yes.</p> <p>16 Q Including handcuffs?</p> <p>17 A Yes.</p> <p>18 Q And you would agree that the general, 19 well-respected principle is that handcuffs should 20 never be used to punish an offender, correct?</p> <p>21 A Yes.</p> <p>22 Q Handcuffs should be applied in 23 instances where officer safety is in jeopardy, 24 right?</p> <p>25 MR. CAIN: Object as to form.</p>	<p>63</p> <p>1 means of restraining him?</p> <p>2 MR. CAIN: Objection as to form.</p> <p>3 A I think it's up to the staff on their 4 levels of control.</p> <p>5 Q (By Mr. Lampiasi) I'm asking you, 6 having reviewed the video and investigated the 7 incident, in your opinion, were there other means 8 that would have -- that would have worked to --</p> <p>9 A I do not know that.</p> <p>10 MR. CAIN: Objection as to form and 11 foundation.</p> <p>12 If you're done with your question, go 13 ahead and answer, if you can, sir.</p> <p>14 A I don't know what's effective, what's 15 not effective. Okay? I've grabbed real small guys 16 that are way stronger than some of the bigger guys 17 and given more resistance.</p> <p>18 I can't tell you what they felt when 19 they grabbed ahold of that offender. If they felt 20 they put their -- they couldn't move his arm one 21 bit, then yeah, taser is probably their next option.</p> <p>22 Q (By Mr. Lampiasi) Do you think it was 23 reasonable -- and I'll represent Espinoza seems to 24 have tased Mr. Stevenson within seconds of arriving. 25 Do you think that's reasonable?</p>	<p>65</p>

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<p>1 MR. CAIN: Objection as to form. 2 Foundation. 3 A I can't answer for Mr. Espinoza. 4 Q (By Mr. Lampiasi) In your -- 5 MR. LAMPIASI: I'm sorry. I need 6 another second. I've got to get eyedrops. 7 MR. CAIN: Need another break. Sure. 8 We'll go ahead and take another five minutes. 9 (A recess was taken at 10:40 a.m. 10 until 10:40 a.m.) 11 Q (By Mr. Lampiasi) I'm handing you what 12 we marked Exhibit 2. It appears to be an incident 13 report. Actually, it's two separate reports. And 14 they appear to be authored by you. 15 Just a point of clarification, do you 16 know whether those -- let me make a better record. 17 The incident reports are two pages, 18 correct? There's a cover page and then a narrative. 19 A Yes. 20 Q And there's four pages total there. 21 A There's six. 22 Q I don't know why you got six. I gave 23 you an extra one. I'm making it even more 24 confusing. 25 The Bates stamp on the first one,</p>	<p>1 A Negative. 2 Q What is that? 3 A That's my account of what I saw. 4 That's my observations. My summary would be on the 5 use of force packet. 6 Q Okay. And you were one of many 7 individuals who wrote one of these incident reports 8 following the incident, correct? 9 A Yes. 10 Q Within this report, do you recall 11 referring to Mr. Stevenson complaining that the 12 handcuffs were too tight? 13 A I recall at medical and at cell house 14 3. 15 Q And so your testimony, based on your 16 recollection, is that Mr. Stevenson said the cuffs 17 were too tight only two times? 18 A That's what I recall. 19 Q Okay. Have you reviewed the video? 20 And by "video," I mean the body cam video from this 21 incident. 22 A I haven't recently. When 23 Mr. Stevenson started this process on his own, 24 there's the interrogatory questions -- I guess is 25 what they're called -- I looked at it back then, is</p>
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<p>1 A Say that again.</p> <p>2 Q (By Mr. Lampiasi) You understand that</p> <p>3 you risk injuring an offender if you apply handcuff</p> <p>4 restraints on that offender too tight, correct?</p> <p>5 MR. CAIN: Same objections.</p> <p>6 A I think there's some risks of injuries</p> <p>7 when you apply restraints.</p> <p>8 Q (By Mr. Lampiasi) You've heard of the</p> <p>9 pinky rule?</p> <p>10 A Yes, sir. As a rule of thumb, yes.</p> <p>11 Q Well, it's a rule of pinky, more than</p> <p>12 a rule of the thumb.</p> <p>13 But what's your understanding of what</p> <p>14 the pinky rule means, as it relates to application</p> <p>15 of handcuffing?</p> <p>16 A I think it's just a rule of thumb</p> <p>17 that's it's adequately applied.</p> <p>18 Q What I'm getting at is, if you were to</p> <p>19 apply the pinky principle, how would you do that?</p> <p>20 What does it mean?</p> <p>21 A I would say if it's a passive cuff, if</p> <p>22 it's a, hey, step out of your cell, you need to cuff</p> <p>23 up, you're just going to apply the cuffs on and make</p> <p>24 sure they're not too tight and then you put the</p> <p>25 other cuff on, double-lock them so they don't get</p>	<p>70</p> <p>1 tight, correct?</p> <p>2 A I don't know that. I don't recall it.</p> <p>3 Q Once he was placed on the gurney,</p> <p>4 there were further restraints applied as he was</p> <p>5 wheeled in towards medical, correct?</p> <p>6 A No, sir.</p> <p>7 Q Just so the record is clear, what</p> <p>8 restraints, from when he was handcuffed until he was</p> <p>9 stripped out and placed in the segregation cell,</p> <p>10 were applied?</p> <p>11 A He had handcuffs on. He had leg irons</p> <p>12 on. He was transitioned into universal restraints,</p> <p>13 strip-out restraints.</p> <p>14 Q Where were the universal strip-out --</p> <p>15 A Cell house 3, in their holding cell.</p> <p>16 Q Describe the universal restraints and</p> <p>17 how they're applied.</p> <p>18 A Universal restraints are like a belly</p> <p>19 chain, combined with handcuffs. You've got chains</p> <p>20 approximately 10 inches on both side that could be</p> <p>21 tightened up, up against their sides. It allows you</p> <p>22 to transfer out from one restraint system to another</p> <p>23 without you allowing the offender to be totally</p> <p>24 free. Keeps them in the restraints.</p> <p>25 Q Did you ever do the pinky test to</p>	<p>72</p>
<p>1 tighter.</p> <p>2 Q A way to check whether or not, as a</p> <p>3 general rule of thumb, that a handcuff might be too</p> <p>4 tight, and therefore possibly injure somebody, is</p> <p>5 you put your pinky between the steel and the wrist,</p> <p>6 correct?</p> <p>7 A I can't say that that's standard</p> <p>8 practice. That's just kind of like what's discussed</p> <p>9 or taught. But there's not -- it's not like</p> <p>10 mandated.</p> <p>11 And in this incident, they were trying</p> <p>12 to get the cuffs on in any manner they could.</p> <p>13 They're not going to be trying to get them equally.</p> <p>14 They're just trying to get him into the restraints.</p> <p>15 Q Sure. Understandable. Once they --</p> <p>16 referring specifically to this incident,</p> <p>17 Mr. Stevenson was placed in the cuffs, he was then</p> <p>18 placed in further restraints, correct?</p> <p>19 A Leg irons, yes.</p> <p>20 Q Okay. So he was placed in leg irons</p> <p>21 and he had the handcuffs on, and he eventually was</p> <p>22 placed on a gurney, correct?</p> <p>23 A Yes.</p> <p>24 Q And prior to being placed on the</p> <p>25 gurney, he complained about the handcuffs being too</p>	<p>71</p> <p>1 determine whether the cuffs might have been too</p> <p>2 tight on Mr. Stevenson?</p> <p>3 A No, sir.</p> <p>4 Q Once he was in the universal</p> <p>5 restraints, he remained handcuffed behind his back,</p> <p>6 correct?</p> <p>7 A I do not recall.</p> <p>8 Q Let's look at some more video. I'm</p> <p>9 going to show you the video that we're referring to</p> <p>10 as the body cam.</p> <p>11 MR. CAIN: For the record, that's the</p> <p>12 one with sound?</p> <p>13 MR. LAMPIASI: That's the one with</p> <p>14 sound.</p> <p>15 Sorry, bear with me.</p> <p>16 Now, this video does have a Bates</p> <p>17 label. It was produced to me, however, as already</p> <p>18 titled Stevenson video of tasing and excessive</p> <p>19 force. There's a caption that comes up on the video</p> <p>20 that says that.</p> <p>21 I can give the official Bates number</p> <p>22 later.</p> <p>23 MR. CAIN: Okay. That would be fine,</p> <p>24 as long as the captain recognizes it.</p> <p>25 MR. LAMPIASI: We should do that first</p>	<p>73</p>

<p>74</p> <p>1 then.</p> <p>2 Q (By Mr. Lampiasi) Captain, like I</p> <p>3 said, we're referring to this video as the body cam</p> <p>4 video. It's the one with audio. You said you</p> <p>5 reviewed it in the past.</p> <p>6 I'd just ask you to watch this first</p> <p>7 few seconds to see if you can identify it as the one</p> <p>8 that you've seen.</p> <p>9 (Video recording was played.)</p> <p>10 Q (By Mr. Lampiasi) I don't know why --</p> <p>11 that should be normal speed. Would you agree with</p> <p>12 that?</p> <p>13 A Yes.</p> <p>14 Q And, again, for the record, we're</p> <p>15 stopped at one minute. Where in the course of the</p> <p>16 overall incident did this video -- does this video</p> <p>17 start?</p> <p>18 A It starts in the vestibule. Goes to</p> <p>19 medical and then to cell house 3.</p> <p>20 (Video recording was played.)</p> <p>21 Q (By Mr. Lampiasi) Okay. Stopping the</p> <p>22 video at the 1:18 mark, according to this indicator.</p> <p>23 What's going on right now in terms of</p> <p>24 restraining Mr. Stevenson?</p> <p>25 A There's no restraint going on.</p>	<p>76</p> <p>1 A Yes.</p> <p>2 Q What do you interpret that to mean?</p> <p>3 A I'm assuming they're holding something</p> <p>4 and he's telling them not to hold him there and</p> <p>5 he'll tell him to comply.</p> <p>6 Q Based on your observation of looking</p> <p>7 at this video, how is he not being compliant?</p> <p>8 A Well, he's not walking down the stairs</p> <p>9 as the staff directed him to.</p> <p>10 Q But at this point he's on the gurney,</p> <p>11 right?</p> <p>12 A Correct -- he's not on the gurney.</p> <p>13 He's on the backboard.</p> <p>14 (Video recording was played.)</p> <p>15 Q (By Mr. Lampiasi) We're stopped at</p> <p>16 1:41. And you can see straps being applied to</p> <p>17 Mr. Stevenson, correct?</p> <p>18 A Uh-huh.</p> <p>19 Q Yes?</p> <p>20 A Yes.</p> <p>21 Q And are those the straps that are</p> <p>22 attached to the board?</p> <p>23 A Yes, sir.</p> <p>24 Q Do the straps also have the effect of</p> <p>25 immobilizing his arms at that point?</p>
<p>75</p> <p>1 They're applying straps to the backboard, which are</p> <p>2 part of the backboard system, so he doesn't fall off</p> <p>3 the backboard when he's being carried down the</p> <p>4 stairs.</p> <p>5 (Video recording was played.)</p> <p>6 Q (By Mr. Lampiasi) You heard, right</p> <p>7 around the 1:26 mark, where we're stopped, that he's</p> <p>8 asking for the restraints -- the cuffs to be</p> <p>9 loosened, and an officer said, When you comply.</p> <p>10 Did you hear that?</p> <p>11 A I didn't hear the "when you comply."</p> <p>12 I was looking at the cuffs.</p> <p>13 Q You recall that Mr. Stevenson had</p> <p>14 asked for the cuffs to be loosened, right?</p> <p>15 A As I just said, I did not hear that.</p> <p>16 Q You don't recall that?</p> <p>17 A I don't recall it, no.</p> <p>18 (Video recording was played.)</p> <p>19 Q (By Mr. Lampiasi) Did you hear</p> <p>20 Mr. Stevenson say, Let go of my arm?</p> <p>21 And, again, we're stopped at 1:28.</p> <p>22 A Yes.</p> <p>23 Q And right after Mr. Stevenson says</p> <p>24 that, one of the officers seems to say, When you</p> <p>25 comply, correct?</p>	<p>77</p> <p>1 A That wasn't the intention. The</p> <p>2 intention was to make sure he doesn't fall off the</p> <p>3 backboard when he's being carried.</p> <p>4 Q I understand that. But my question</p> <p>5 was: Do the straps also have the effect of keeping</p> <p>6 his hands, which are above his head, restrained?</p> <p>7 A They're not above his head. They're</p> <p>8 on his butt.</p> <p>9 Q I'm sorry. Behind his back?</p> <p>10 A It's going to mobilize him to the</p> <p>11 board. It's going to keep him on top of the board.</p> <p>12 Q In that position, Mr. Stevenson cannot</p> <p>13 move his hands to harm anyone, correct?</p> <p>14 A Correct.</p> <p>15 Q And at that point, the cuffs are still</p> <p>16 tight and have not been adjusted, correct?</p> <p>17 MR. CAIN: Objection as to form,</p> <p>18 foundation.</p> <p>19 A I don't know if they're tight at the</p> <p>20 time, sir.</p> <p>21 Q (By Mr. Lampiasi) Do you see the metal</p> <p>22 against Mr. Stevenson's skin here at 1:42?</p> <p>23 A All cuffs are against their skin.</p> <p>24 Q Well, it's pressing against the skin,</p> <p>25 correct?</p>

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<p>1 A You're seeing from a strap point. 2 You've got to see it from the side. 3 (Video recording was played.) 4 Q (By Mr. Lampiasi) So around this 5 two-minute mark, he's been strapped to the board 6 with his arms behind his back and he's being moved 7 where? 8 A From the fourth floor to the first 9 floor, down the stairs. 10 Q Okay. 11 (Video recording was played.) 12 Q (By Mr. Lampiasi) We're stopped at 13 6:46. Do you know where you're at in the facility 14 at this point? 15 A Appears you're in medical, in an 16 elevator, probably. 17 (Video recording was played.) 18 Q (By Mr. Lampiasi) It appears somebody 19 is sweating like a pig. 20 A (Deponent nods head.) 21 Q Okay. Now, we're at 6:52. Does it 22 appear to you like Mr. Stevenson's on the gurney 23 being wheeled off the elevator? 24 A Yes. 25 Q Okay. And where are his hands?</p>		<p>1 (Video recording was played.) 2 Q (By Mr. Lampiasi) And this is at 8:52. 3 It appears he's in medical at that point? 4 A Yes. 5 Q And his arms are still behind his back 6 while he's on his stomach, correct? 7 A Yes. 8 (Video recording was played.) 9 Q (By Mr. Lampiasi) Now, it appears, at 10 11:14, on the timer, that's Sergeant Sullivan that 11 you can see. 12 Is that a body cam on his left side? 13 A Yes. 14 Q And he was able to utilize that if he 15 chose, in order to film -- 16 A And long as he turned it on. 17 Q Did you ask him if he ever turned it 18 on? 19 A I don't recall. I think this was the 20 only one that was turned on. 21 Q Okay. 22 (Video recording was played.) 23 Q (By Mr. Lampiasi) At 11:10, where it's 24 stopped on the timer, do you hear Mr. Stevenson 25 asking for pictures to be taken?</p>	
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<p>1 A On his back. 2 Q And where is his face? 3 A At the front of the gurney. 4 Q And his arms are completely 5 immobilized, correct? 6 A They're in restraints. 7 Q And he's also handcuffed at that 8 point, right? 9 A Are you talking about immobilized by 10 the straps? 11 Q Right. 12 A Yeah, he's still on the backboard. 13 (Video recording was played.) 14 Q (By Mr. Lampiasi) Let me stop it at 15 7:08 for a second. 16 From the time that he was put on the 17 gurney, up until this point, where he was just taken 18 off the elevator, had he attempted to physically 19 assault staff? 20 MR. CAIN: Objection as to form and 21 foundation. 22 A It doesn't appear so. I don't think I 23 was in the elevator in that time. According to the 24 video, it doesn't look like it. 25 Q (By Mr. Lampiasi) Okay.</p>		<p>1 A Uh-huh. 2 Q Yes? 3 A Yes. 4 (Video recording was played.) 5 Q (By Mr. Lampiasi) Captain, was that 6 you that said, I will get you a camera? 7 A Yes. 8 Q And why did you say that? 9 A Why did I say that? 10 Q Yes. 11 A He was asking that there be pictures 12 taken, and I knew there would be pictures taken, 13 because that's part of the process. I was trying to 14 get him to be compliant. He wasn't compliant. He 15 was telling me he wasn't going to be compliant. He 16 was telling me what he was going to do. 17 (Video recording was played.) 18 Q (By Mr. Lampiasi) Now, this is at 19 11:22. You can see that this is, again, 20 Mr. Stevenson's hands restrained behind his back 21 resting on his buttocks, it looks like, correct? 22 A Yes. 23 Q And you can see, at least on this left 24 cuff, that the metal is up against his skin. Is 25 that a fair interpretation?</p>	

<p>82</p> <p>1 A It appears so, yeah. Uh-huh. 2 Q And it also appears there was some 3 bruising or some type of abrasion? 4 A I don't see no bruising. 5 (Video recording was played.) 6 Q (By Mr. Lampiasi) Now we're at 11:23. 7 And is it fair to say that the cuff is right up 8 against Mr. Stevenson's right arm, right wrist, and 9 pinned against his back? 10 A Anytime offenders' cuffs are behind 11 their back, their shoulders tend to pull the cuffs, 12 yes. 13 Q But my question is: It's right up 14 against his skin? 15 A Yes, it will be like that when they're 16 behind the back. 17 Q And he still has some type of strap 18 around his arm, correct? 19 A They loosen those. There's no straps 20 across it. 21 Q Okay. He can't harm anybody in this 22 position, correct? 23 A Correct. 24 Q Now, going back to that last frame, 25 the way the cuffs are, as you see them, that</p>	<p>84</p> <p>1 A At this point, there's no other 2 restraints right there. Staff carry handcuffs and 3 leg irons. And then in, like, segregation, you have 4 the universal restraints. 5 Q Is it your testimony that those cuffs 6 that were right up against his skin that you saw 7 couldn't have been loosened? 8 A His behavior was not compliant. He 9 was telling me he could not be compliant, and that 10 he could not say what he was going to do. As I told 11 him that we would adjust them once he became 12 complaint, he told me he could not become compliant 13 at that time. It was out of his character. 14 Q So he's being punished for not being 15 compliant? 16 MR. CAIN: Objection as to form. 17 A It wasn't about punishment. First of 18 all, in my years, when an offender has issues with 19 their restraints, like leg irons, that they're 20 having trouble walking, it's real obvious. You see 21 the stress level in their voice. You see how 22 they're talking. 23 All that kind of goes into me 24 evaluating, hey, what's he at. And I'm trying to 25 get compliance so we can move forward, get him</p>
<p>83</p> <p>1 wouldn't pass the pinky test, correct? 2 MR. CAIN: Objection as to form and 3 foundation. 4 Q (By Mr. Lampiasi) As you see it? 5 MR. CAIN: Same objections. 6 A The pinky test, I guess, as you say 7 it, yeah. You're not going to get a pinky in 8 between there, if that's what you're asking. 9 Q (By Mr. Lampiasi) That's what I'm 10 asking. Thank you. 11 (Video recording was played.) 12 A What I need to say on that, as well, 13 as I say, your shoulders, when you have cuffs behind 14 your back, pulls the arms apart. It's natural to 15 pull them apart to where your restraints are going 16 to be tighter in that regard. 17 Q (By Mr. Lampiasi) Sure. In that 18 position, you have the ability and the equipment to 19 put soft restraints around his wrists and switch 20 those out, correct? 21 A "Soft restraints"? We don't have soft 22 restraints. 23 Q You have the ability to put other 24 types of restraints that might not be pressing 25 against his skin like that?</p>	<p>85</p> <p>1 anatomical, get him to his end result. 2 Q Understood. 3 (Video recording was played.) 4 Q (By Mr. Lampiasi) I think we heard -- 5 and we're stopped at 11:46. He's saying, I'm not 6 going to stand up, correct? 7 A Could you go back there. 8 (Video recording was played.) 9 Q (By Mr. Lampiasi) I know you actually 10 asked to go back. Is there something you wanted to 11 clarify? 12 A I didn't hear the first time, when you 13 asked the question, would I attest to what I heard 14 him say. 15 Q Move it up a little bit. Now, at some 16 point, you determined that he needs to go to seg 17 because he's not being compliant in the -- 18 A He went to seg because he was -- he 19 created a facility disruption. His behavior made 20 everybody respond there. He was resistant, in terms 21 of the use of force, yeah. 22 (Video recording was played.) 23 Q (By Mr. Lampiasi) We're at 18:15 or 24 so. Where is he at in the process? 25 A He's outside in the holding -- or the</p>

<p>86</p> <p>1 cell 3 holding cell. 2 (Video recording was played.) 3 Q (By Mr. Lampiasi) Did you hear, 18:45, 4 Hey, nurse, would you ask him to take these cuffs 5 off? 6 A Uh-huh. Standard procedure is that 7 they go in from restraints to strip-out restraints 8 to -- they transition from one restraint system to 9 the other. 10 Q It's not the nurse's job to take off 11 the restraints, correct? 12 A No. 13 (Video recording was played.) 14 THE DEPONENT: You just heard me say 15 about transitioning. 16 Q (By Mr. Lampiasi) I'm sorry? 17 A You just heard me say transition him 18 into the other restraints. 19 Q Okay. And at this point, he's been in 20 the handcuffs that tight for at least 19 minutes of 21 this video, and several minutes of the vestibule 22 video; is that fair? 23 A I don't know when the cam went on, but 24 it says 18:53. 25 (Video recording was played.)</p>	<p>88</p> <p>1 until he gets to his final cell in segregation. 2 Q (By Mr. Lampiasi) No matter how long 3 it took? 4 A Right. Even if they're sprayed with 5 OC, they remain in restraints. 6 (Video recording was played.) 7 Q (By Mr. Lampiasi) Did you hear him say 8 again, at 19:22, for the second time in three 9 seconds, loosen the handcuffs? 10 A Did not hear. Go back. 11 (Video recording was played.) 12 Q (By Mr. Lampiasi) And then he's saying 13 that they're uncomfortable? 14 A At 19:24, I just told him we were 15 going to take him out of those handcuffs. 16 Q But at that point, he's already in the 17 hole, and it doesn't matter whether he's being 18 compliant with the strip search. He doesn't have a 19 choice at the time, correct? 20 MR. CAIN: Objection as to form. 21 A Reiterate that. 22 Q (By Mr. Lampiasi) He doesn't have a 23 choice at that time. He's in the hole and you're 24 asking him to cooperate with the segregation 25 protocol, right, which involves taking off the</p>
<p>87</p> <p>1 Q (By Mr. Lampiasi) At 19:19, did you 2 hear him say, Are you going to loosen the handcuffs? 3 A Yes. 4 Q Would you interpret him as saying, 5 Look, I'll comply when you guys loosen these 6 handcuffs? He's upset that the handcuffs are so 7 tight. 8 A No. I asked him to comply with me, 9 and he said he wasn't going to. He was not going to 10 walk for us. He even said prior, when he's going 11 outside of medical, to another offender, that he 12 made us carry him, that he wasn't going to comply. 13 His whole time he's saying he's going 14 to be non-compliant. So he's not telling me he's 15 being compliant. He's verbalizing, telling me that 16 he's not going to be compliant. 17 Q But he wasn't being physically 18 assaulting, right? He wasn't a risk to himself at 19 that point, right? 20 A He's unpredictable. He's 21 unpredictable. 22 Q If he had not been compliant the whole 23 time, how long would the cuffs have stayed on? 24 MR. CAIN: Objection as to form. 25 A The cuffs would stay on all the way</p>	<p>89</p> <p>1 cuffs? 2 A I don't understand how you're -- 3 Q At 19:29, no matter what, the cuffs 4 are coming off, correct, because he's in the hole? 5 A He'd going to be transitioned into 6 other restraints, yes. 7 Q When you say, are you going to be 8 compliant, you mean with the strip search? 9 A Right, with staff directives. 10 Q Okay. 11 (Video recording was played.) 12 Q (By Mr. Lampiasi) Right around 19:45, 13 he says, You've been resistant to me asking you to 14 loosen the cuffs? 15 A That's what he says, yes. 16 (Video recording was played.) 17 Q (By Mr. Lampiasi) At 19:50, he says, 18 The cuffs are too tight, correct? 19 A Yes. 20 (Video recording was played.) 21 Q (By Mr. Lampiasi) Right around 20 22 minutes, did you hear him say that, You've put the 23 cuffs on this long, you're cutting off my 24 circulation. Did you hear him say that? 25 A Uh-huh. Yes.</p>

<p>90</p> <p>1 Q So in your incident report that you 2 wrote just after all of this went down -- and I 3 respect that it's a stressful -- I can only imagine 4 how stressful this type of thing is -- you said that 5 you only heard him talk about the cuffs being too 6 tight twice, correct?</p> <p>7 A In my conversation, yeah. Once in 8 medical, when I talked to him in conversation down 9 there, I told him to be compliant with his 10 anatomical. And once again in the holding cell, 11 when we're trying to get him to assist with 12 strip-out.</p> <p>13 Not saying that he didn't say it 14 multiple times, but that's the two times that I 15 heard him.</p> <p>16 Q Okay. So your testimony is, all those 17 times we heard him refer to the cuffs being too 18 tight or uncomfortable, you only heard him say 19 something to that effect at least twice? And that's 20 what you wrote in your report.</p> <p>21 A In those areas, yeah. I'm not saying 22 that it's two times, exactly two times. I'm saying 23 that's when I was made aware of it. I was aware of 24 it in medical. I was aware of it in the intake, in 25 cell 3.</p>	<p>92</p> <p>1 sexual in nature, dangerous, contraband, advocate 2 facility disruption, we've got to justify why we 3 placed them in seg. 4 And then, by the next morning, they're 5 reviewed by administrative staff to determine 6 whether the offender stays in seg or not. 7 Q (By Mr. Lampiasi) Just like the 8 administrators and your superiors deserve a detailed 9 version of events, the offender also deserves a 10 detailed versions of event, correct? 11 A To what degree? I'm not 12 understanding. 13 Q You're trying to respect the rights of 14 the offender, as much as you're trying to respect 15 the right of the State of Colorado to handle 16 offenders how they need to handle them, correct? 17 A Yes, sir. 18 Q And you have a constitutional duty to 19 intervene when you see somebody else using excessive 20 force, correct? 21 MR. CAIN: Objection as to form. 22 A If I felt something was excessive, I'd 23 probably intervene or tell them to adjust. If I 24 seen them picking them up by the leg irons, I'd tell 25 them to grab a leg or something like that, yes.</p>
<p>91</p> <p>1 Q These reports are not only for your 2 protection, they're for protection of the offenders, 3 right?</p> <p>4 A Yes.</p> <p>5 Q And you take an oath, just like we do, 6 to protect the Constitution, right?</p> <p>7 A Yes.</p> <p>8 Q And to protect the rights of the 9 people living in prison, right, that have lost their 10 liberty, right?</p> <p>11 A (Deponents nods his head.)</p> <p>12 Q And sometimes offenders do things 13 where they deserve punishment and they deserve to go 14 to the hole, correct?</p> <p>15 A That's not punishment, sir.</p> <p>16 Q Well, sometimes offenders do bad 17 things, correct?</p> <p>18 Q And you've had to write reports 19 describing why they're being sent to the hole, for 20 example, right?</p> <p>21 MR. CAIN: Objection as to form.</p> <p>22 A They're being sent to a status. 23 Usually at my capacity, they're removed from 24 population. It's not considered the hole. The 25 offenders, whatever the behavior it is, whether it's</p>	<p>93</p> <p>1 Q (By Mr. Lampiasi) At some point there 2 were some photos taken of Mr. Stevenson during an 3 anatomical, just after -- well, towards the end of 4 the incident. 5 Is this (indicating) a fair and 6 accurate -- 7 MR. LAMPIASI: Can you see that, 8 Craig? 9 MR. CAIN: Yes, I can. Thank you. 10 Q (By Mr. Lampiasi) Is that a fair and 11 accurate representation of what Mr. Stevenson looked 12 like at the time? 13 A Appears to be. 14 Q And do you recall saying that there, 15 at that time, appeared to be six? 16 A I didn't do the anatomical. I just 17 remember hearing on the video there's -- say six. 18 And Mr. Stevenson questioned her, I thought there 19 was more, can you check again. She said there was 20 six. 21 Q Okay. 22 MR. LAMPIASI: Can we actually mark 23 this. 24 (Deposition Exhibit 4 was marked for 25 identification.)</p>

24 (Pages 90 to 93)

<p style="text-align: right;">94</p> <p>1 Q (By Mr. Lampiasi) At some point, do 2 you recall visiting Mr. Stevenson in segregation? 3 A I do rounds down in seg every day. 4 Q Do you recall him asking -- let me ask 5 this a different way. 6 Do you recall him telling you he 7 thought that he had been tased more than three 8 times? 9 A I don't recall that. 10 Q Do you recall him asking you to 11 arrange for more pictures to be taken of his back? 12 A I don't recall that. We usually don't 13 take pictures or anything like that. We try to 14 document with an anatomical and pictures prior to 15 them going into seg, because we don't know what 16 could happen. You know, if they bang their head or 17 whatever inside there, we want to make sure 18 something is different. 19 Q Were the handcuffs that we saw on the 20 video applied to Mr. Stevenson double-locked? 21 A I don't know. 22 Q You don't know? 23 A I don't know. I don't check 24 restraints. Once staff apply them, I don't go in 25 there and -- it's not a practice that the shift</p>	<p style="text-align: right;">96</p> <p>1 handle? 2 A He's the supervisor. Mostly he 3 does -- he'll do -- I don't know for sure, but I 4 know, just in contact with him, he's done staff -- 5 what do you call that -- like staff issues. 6 Q Internal affairs? 7 A Kind of, yeah, that. And then he's 8 responsible for all the IG that are under him. 9 Q He's not a CDOC employee, correct? 10 A Yeah, he's under the Department of 11 Corrections. 12 Q He is. Okay. But his job is to come 13 in and do a neutral analysis of particular issues, 14 correct? 15 A Right. I'm not saying just him, but 16 the office of -- the OIG's office is responsible, 17 like if an offender says there's excessive use of 18 force, to review. 19 Q In this case, did Mr. Wold investigate 20 the claim of excessive use of force? 21 A Yes, he did. 22 Q What were your interactions with him, 23 if any? 24 A There was none. 25 Q Meaning Mr. Wold?</p>
<p style="text-align: right;">95</p> <p>1 commander goes in and checks the restraints to make 2 sure they're double-locked or any of that. That's a 3 practice they follow. 4 Q But you did say that handcuffs should 5 be double-locked because that would avoid some of 6 the injuries that we talked about before, correct? 7 A Uh-huh. 8 Q Yes? 9 A Yes. 10 Q Did you determine or did you check to 11 see whether or not your staff double-locked these 12 particular handcuffs? 13 A That's not standard practice for me to 14 do that. No, I didn't. 15 Q The answer is, no, you did not, 16 correct? 17 A Yes. 18 Q We're almost done. 19 Do you know who Chief Investigator 20 Alex Wold is? 21 A I know who he is. 22 Q Who is he? 23 A He's the supervisor of the east Canon 24 complex for office of investigations, OIG. 25 Q What type of investigations does he</p>	<p style="text-align: right;">97</p> <p>1 A There was none. 2 Q Do you know who Mr. Wold spoke to 3 about the incident? 4 A The warden. 5 Q Did you talk to the warden about what 6 Mr. Wold said? 7 A The warden -- I think it was the 8 warden that sent me an e-mail that says that he 9 reviewed and everything was manifested by the 10 offender. 11 Q Okay. So Mr. Wold blamed -- 12 essentially, blames Mr. Stevenson, and says that -- 13 A He doesn't blame him. He just says it 14 was a justified use of force, and that staff were 15 justified in their levels of control. 16 Q Fair enough. That was a bad choice of 17 words. 18 I'm handing you a document page. It 19 says page 1 of 2 at the top. And it has MaryAnn 20 Aldridge's name. It appears to be an e-mail chain. 21 And it says from Randy Cordova. And that's you, 22 correct? 23 A Uh-huh. 24 Q And at the bottom, do you recognize 25 the warden's e-mail address?</p>

25 (Pages 94 to 97)

<p>98</p> <p>1 A Where? At the bottom, are you 2 talking?</p> <p>3 Q There appears, at the bottom, to be an 4 e-mail exchange, correct, between the warden and 5 Mr. Wold, which the warden appears to be inquiring 6 into the status of his investigation correct?</p> <p>7 A Yes.</p> <p>8 Q Can you read that out loud, the 9 e-mail.</p> <p>10 A From the bottom?</p> <p>11 Q Yeah, the e-mail from the warden.</p> <p>12 A The first one says, "I'm still 13 reviewing reports and video and have not made a 14 determination on his complaint about this yet, but 15 hope to get it done today, Alex."</p> <p>16 And he replied, Thanks.</p> <p>17 Q And then the next section of the 18 document is a narrative from the IG, Mr. Wold, 19 explaining that he found the use of force justified, 20 correct?</p> <p>21 A Yes, sir.</p> <p>22 Q And the warden writes him back in the 23 next line. He says, Good job.</p> <p>24 A No, she was replying to me. She sent 25 this to me, it said, Please share with staff, great</p>	<p>100</p> <p>1 MR. CAIN: Objection as to form.</p> <p>2 A I don't understand that.</p> <p>3 Q (By Mr. Lampiasi) Well, that's why you 4 write detailed, comprehensive reports, in case you 5 might have to sit in a deposition some day and 6 answer for your actions, right?</p> <p>7 MR. CAIN: Objection as to form.</p> <p>8 A You want to be as detailed as possible 9 because it helps you remember.</p> <p>10 Q (By Mr. Lampiasi) And your incident 11 report didn't help you here to remember that 12 Mr. Stevenson repeatedly told you -- repeatedly told 13 you that the cuffs were too tight and that they were 14 hurting him?</p> <p>15 MR. CAIN: Objection as to form.</p> <p>16 Q (By Mr. Lampiasi) Your report didn't 17 help you remember that, correct?</p> <p>18 MR. CAIN: Objection as to form.</p> <p>19 A I did put it on there.</p> <p>20 Q (By Mr. Lampiasi) Your report said he 21 told you two times. Not two incidents, two times, 22 correct?</p> <p>23 A Two times that he told me. Once in 24 there and once over there. Doesn't mean that he 25 didn't say it repeatedly.</p>
<p>99</p> <p>1 job. She's saying that staff stayed professional. 2 She's real big about making sure that 3 staff is staying professional and everything is good 4 and legit.</p> <p>5 Q So your interpretation of that is that 6 the person saying "good job" is Mary Aldridge?</p> <p>7 A No. It was from the warden. See, 8 what happened was the warden sent it to me saying 9 that Mr. Wold cleared the use of force, that it was 10 justified and that staff were professional. And --</p> <p>11 Q Have you seen any other e-mails 12 between Mr. Wold related to this case and the 13 warden?</p> <p>14 A No. I forwarded it on to MaryAnn 15 Aldridge. She's the legal liaison there.</p> <p>16 Q So you wanted her to know that --</p> <p>17 A No. I knew Mr. Stevenson was -- he 18 was saying excessive use of force, going to sue you, 19 the whole time we were dealing with this. So I told 20 her she needs to keep this, because it's going to 21 come back at some point. She'd probably want this 22 sometime down the road.</p> <p>23 Q Documents sometimes can -- I should 24 say, reports can sometimes come back to haunt you, 25 right, if they're not fully detailed?</p>	<p>101</p> <p>1 Q Okay.</p> <p>2 MR. LAMPIASI: How about just three 3 minutes, so I can make sure I've got what I need and 4 then I think we're, more or less, done.</p> <p>5 MR. CAIN: Sure.</p> <p>6 (A recess was taken at 11:45 until 7 11:54 a.m.)</p> <p>8 Q (By Mr. Lampiasi) Ultimately, there 9 was a disciplinary hearing, as a result of this 10 incident, correct?</p> <p>11 A I assume.</p> <p>12 Q Well, you submitted a verified 13 statement about the incident to the disciplinary 14 hearing board?</p> <p>15 A They possibly called and took a thing 16 on the phone, or something like that. They might 17 have called -- like, I'm the shift commander, so a 18 lot of times if they want any type of testimony, 19 they'll usually get me on the phone and ask some 20 questions or the offender has questions, or 21 something like that.</p> <p>22 Q Do you have reason to doubt that the 23 hearing officer would say that this certified 24 statement, quote/unquote, by Captain Cordova states 25 that on 2/29/12, Inmate Stevenson physically</p>

<p>1 resisted staff, that they were attempting to 2 restrain him. Backup staff were summoned and 3 operations disrupted during the use of force. 4 To control Stevenson, the two officers 5 were injured. One suffered a cut to the hand and 6 the other a scratch to the arm. 7 Does that sound like something you 8 would say and the board might cite? 9 A Yes. 10 Q And do you recall being specific about 11 how the two responding officers were injured? 12 A No, I don't recall that. It could be 13 just -- I've seen, just through application of 14 restraints sometimes where the cuffs will -- I don't 15 know what the deal on it was. 16 Q Were you asked to submit any video? 17 A For? 18 Q To the hearing officer. 19 A I don't send that that way. The 20 disciplinary officer prepares the hearings. 21 Q And if he wanted to see video, would 22 he request that? 23 A Not from me. 24 Q Where would he request it from? 25 A The disciplinary officer is</p>	<p>102</p> <p>1 A That's not usually a request. It's 2 usually just if I feel like, whatever the scenario 3 is -- like, if I'm documenting the use of force, I'm 4 going to have the video of the use of force to show 5 that part of that. 6 And then, if it's maybe an offender 7 gets assaulted, and we review video and we see three 8 offenders going to his cell, we're going to review 9 that and save it. 10 Q And understanding that Sergeant 11 Clinkenbeard was concerned that Mr. Stevenson might 12 have contraband, you didn't feel it was important to 13 determine whether or not that contraband had been 14 left in the pod? 15 A That wasn't my role in the incident. 16 The incident that pertained to me wasn't determining 17 why the use of force happened. Mine was to document 18 the use of force. Okay? 19 We responded to it. The offender was 20 being resistant. Staff took measures they felt 21 necessary to get him there, get him down to seg. 22 A good example is, during the 23 shakedown, some staff spilled some coffee in an 24 offender's cell, water. Went back to his cell, 25 found a mess, became very aggressive at staff.</p>	<p>104</p>
<p>1 responsible for preparing all that stuff. 2 Q Okay. Do you recall whether or not 3 you told the disciplinary officer that there was 4 video of the incident? 5 A No. 6 Q Is that something that you would 7 typically do in a situation like that? 8 A Not normally. Sometimes, like, if I 9 take pictures or something, I'll send like a picture 10 of a shank, because that will get taken and put in 11 our contraband where investigators take it, and it's 12 not there for the COPD part process, so they have 13 some sort of actual picture of the deal. 14 The videos are kept on the Q drive. 15 So if they want to upload it and review it, they can 16 review it on there. 17 Q About those videos, for example, the 18 one that we don't have that would have been in the 19 pod, that would have captured the pod of Meyers' and 20 Stevenson's exchange, how are those videos stored, 21 if you know? 22 A Those aren't stored unless they're 23 downloaded. 24 Q So an officer or official has to 25 request that they be downloaded?</p>	<p>103</p> <p>1 Started challenging staff. He got placed in seg for 2 that. 3 So he's -- you know, I didn't go back 4 and take pictures of the cell and stuff. I went and 5 talked to staff, what happened, to see do we need to 6 remove him from population. We got 150 offenders 7 that could jump in on that same issue, because 8 everybody's cell is being searched, and it could 9 start an uprising. 10 So all of a sudden, all the staff that 11 are trying to do other things have to come focus on 12 this guy. So I'm going to remove him from 13 population and document that fact. Okay? 14 There's housing lieutenants and 15 captains that follow up in areas and are responsible 16 for those staff to ensure that they're communicating 17 and all that stuff. 18 So I don't review all that part. I 19 can't own everybody's else's issues. 20 Q Okay. Why did they order -- why was 21 Mr. Stevenson ordered to cuff up in the first place? 22 A I don't recall. 23 Q Are you concerned about that at all? 24 A Am I concerned about that? 25 Q Yeah.</p>	<p>105</p>

<p>110</p> <p>1 CALDERWOOD-MACKELPRANG, INC. 2 7150 East Hampden Avenue, Suite 303 3 Denver, Colorado 80224 (303) 477-3500 4 5 September 29, 2015 6 7 CRAIG W. CAIN, ESQ. 8 Cain and White, LLP 9 1555 Quail Lake Loop, Suite 100 10 Colorado Springs, Colorado 80906 11 Re: Stevenson v. Cordova, et al. 12 Deposition of: RANDY CORDOVA 13 The deposition in the above-entitled matter is ready 14 for reading and signing. Please attend to this 15 matter by complying with ALL blanks checked below: 16 _____ arranging with us at the number listed below 17 to read and sign the deposition in our 18 office. 19 xxxxxx having deponent read your copy and sign 20 amendment sheets, if any (original signature 21 page enclosed.) 22 _____ reading enclosed deposition, signing 23 signature page and correction sheets, if 24 any 25 xxxxxx within 30 days of the date of this letter by _____ due to trial/hearing date of Please be sure that the signature page and amendment sheets, if any, are signed before a Notary Public and returned to our office. If this matter has not been taken care of within said period of time, the deposition will be filed unsigned pursuant to the Rules of Civil Procedure. Angela Smith, Professional Reporter cc: Counsel of Record</p>	<p>111</p> <p>1 CALDERWOOD-MACKELPRANG, INC. 2 7150 East Hampden Avenue, Suite 303 3 Denver, Colorado 80224 (303) 477-3500 4 5 BRETT LAMPIASI, ESQ. 6 P.O. Box 347 7 Hartfield, Massachusetts 01038 8 Re: Stevenson v. Cordova, et al. 9 Dear Mr. Lampiasi: 10 Enclosed is the deposition of: RANDY CORDOVA 11 Previously filed. Forwarding signature page 12 and amendment sheets. 13 _____ Signed, no changes. 14 _____ Signed, with changes, copy enclosed. 15 _____ Unsigned, notice duly given _____ 16 pursuant to the Rules of Civil Procedure. 17 _____ Not signed, notice duly given _____, 18 since trial is set for _____. 19 _____ No signature required. 20 _____ Signature waived. 21 _____ To be signed in court. 22 _____ Signature pages/amendment sheets to be 23 returned to court on date of trial. 24 _____ Mailed by Certified Mail No. _____. 25 _____ Hand-delivered on approximately _____. Angela Smith, Professional Reporter cc: Counsel of Record</p>
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Randy Cordova

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1 I have read the foregoing transcript of my
2 testimony and have indicated same by my signature.

3 
4 RANDY CORDOVA
5

6 STATE OF COLORADO

7 CITY AND COUNTY OF DENVER

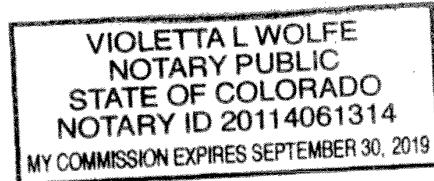
8
9 Subscribed and sworn to before me by the
10 said RANDY CORDOVA, this 4th day of
11 November, 2015.

12 My commission expires: 9/30/19.

13 
14
15 Notary Public
16

17 620 N. Santa Fe Ave, Florence, CO 81226
18 Address

19 Reporter: AS
20 Trial Date: NTD



Amendment to Deposition

Case Number

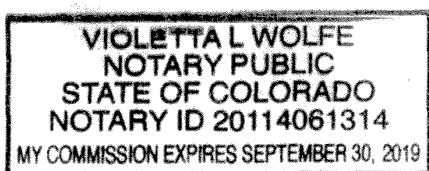
The deponent, Ravay Parooja, wishes to make the following changes in the testimony originally given:

Subscribed and sworn to before me
this 4th day of November, 2015

My commission expires: September 30, 2019

Signature of Defendant

Notary Public Signature



Address: 610 N Santa Fe Ave
Florence, CO 81226

A	B	C
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FILEDUNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 28 2014

JEFFREY P. COLWELL
CLERK

Civil Action No.

(To be supplied by the court)

Plaintiff,

WILLIAM R. STEVENSON,

v.

R. CORDOVA, Captain at Colorado Territorial Correctional Facility in his individual and official capacities;

D. NUNEZ, Captain at Colorado Territorial Correctional Facility in his individual and official capacities;

M. HOLLOWAY, Lieutenant at Colorado Territorial Correctional Facility in his individual and official capacities;

K. TOPLISS, Lieutenant at Colorado Territorial Correctional Facility in his individual and official capacities;

C. WILLIAMS, Lieutenant at Colorado Territorial Correctional Facility in his individual and official capacities;

H. WILLIAMS, Lieutenant at Colorado Territorial Correctional Facility in his individual and official capacities;

K. CLINKENBEARD, Sergeant at Colorado Territorial Correctional Facility in her individual and official capacities;

J. ESPINOZA, Sergeant at Colorado Territorial Correctional Facility in his individual and official capacities;

G. SULLIVAN, Sergeant at Colorado Territorial Correctional Facility in his individual and official capacities;

J. HANSON, Corrections Officer at Colorado Territorial Correctional Facility in her individual and official capacities;

J. SOTO, Corrections Officer at Colorado Territorial Correctional Facility in his individual and official capacities;

J. BUFMACK, Nurse at Colorado Territorial Correctional Facility in her individual and official capacities;

M. BENOVEDEZ, Sergeant at Colorado Territorial Correctional Facility in his individual and official capacities;

V. WOLFE, Grievance Coordinator at Colorado Territorial Correctional Facility in her individual and official capacities;

A. BELL, Case Manager at Colorado Territorial Correctional Facility in his individual and official capacities;

Defendant(s)

PRISONER COMPLAINT

A. PARTIES**1. WILLIAM R. STEVENSON, DOC# 110913**

(Plaintiff's name, prisoner identification number, and complete mailing address)

Colorado Territorial Correctional Facility (CTCF), P.O. Box 1010, Canon City, CO 81215

2. SEE ATTACHED Page 2 A. PARTIES

(Name, title, and address of first defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? X Yes No (CHECK ONE). Briefly explain your answer:

3. SEE ATTACHED Page 2 A. PARTIES

(Name, title, and address of second defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? X Yes No (CHECK ONE). Briefly explain your answer:

4. SEE ATTACHED Page 2 A. PARTIES

(Name, title, and address of third defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? X Yes No (CHECK ONE). Briefly explain your answer:

(If you are suing more than three defendants, use extra paper to provide the information requested above for each additional defendant. The information about additional defendants should be labeled "A. PARTIES.")

B. JURISDICTION

1. I assert jurisdiction over my civil rights claim(s) pursuant to: (check one if applicable)

X 28 U.S.C. § 1343 and 42 U.S.C. § 1983 (state prisoners)

 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (federal prisoners)

2. I assert jurisdiction pursuant to the following additional or alternative statutes (if any):

SEE ATTACHED Page 3 **B. JURISDICTION**

C. NATURE OF THE CASE

BRIEFLY state the background of your case. If more space is needed to describe the nature of the case, use extra paper to complete this section. The additional allegations regarding the nature of the case should be labeled "C. NATURE OF THE CASE."

SEE ATTACHED Page 3 **C. NATURE OF THE CASE**

D. CAUSE OF ACTION

State concisely every claim that you wish to assert in this action. For each claim, specify the right that allegedly has been violated and state all supporting facts that you consider important, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific cases to support your claim(s). If additional space is needed to describe any claim or to assert more than three claims, use extra paper to continue that claim or to assert the additional claim(s). The additional pages regarding the cause of action should be labeled "D. CAUSE OF ACTION."

1. Claim One:

VIOLATION OF EIGHTH AMENDMENT

Supporting Facts:

SEE ATTACHED PAGE 7 **D. CAUSE OF ACTION:**

2. Claim Two:

VIOLATION OF FOURTEENTH AMENDMENT

Supporting Facts:

SEE ATTACHED page 36 D. CAUSE OF ACTION

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? Yes No (CHECK ONE). If your answer is "Yes," complete this section of the form. If you have filed more than one lawsuit in the past, use extra paper to provide the necessary information for each additional lawsuit. The information about additional lawsuits should be labeled "E. PREVIOUS LAWSUITS."

1. Name(s) of defendant(s) in prior lawsuit: **STEVEN BARNES AND JEFFERY DONIGER**
2. Docket number and court name: **DENVER DISTRICT COURT CASE NO'S. 10CV4274 AND 10CV4275**
3. Claims raised in prior lawsuit: **LEGAL MALPRACTICE**
4. Disposition of prior lawsuit (for example, is the prior lawsuit still pending? Was it dismissed?): **WAS DISMISSED**
Due primarily to lack of adequate access to prison law library to meaningfully prosecute.
5. If the prior lawsuit was dismissed, when **06/10/13** was it dismissed and why?
6. Result(s) of any appeal in the prior lawsuit: **CURRENTLY ON APPEAL**

F. ADMINISTRATIVE RELIEF

1. Is there a formal grievance procedure at the institution in which you are confined? Yes No (CHECK ONE).
2. Did you exhaust available administrative remedies? Yes No (CHECK ONE).

SEE ATTACHED page 4 F. ADMINISTRATIVE RELIEF:

G. REQUEST FOR RELIEF

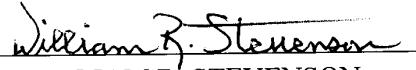
State the relief you are requesting. If you need more space to complete this section, use extra paper. The additional requests for relief should be labeled "G. REQUEST FOR RELIEF."

SEE ATTACHED page 38 G. **REQUEST FOR RELIEF:**

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. *See* 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed on _____
(Date)


WILLIAM R. STEVENSON

Complaint

Complaint

Complaint

A. PARTIES

1. Plaintiff, **WILLIAM R. STEVENSON**, DOC #110913, is and was at all times mentioned herein a prisoner of the State of Colorado in the custody of the Colorado Department of Corrections (CDOC). He is currently incarcerated at the Colorado Territorial Correctional Facility (CTCF) in canon City, Colorado.

2. Defendant **R. CORDOVA** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Captain at CTCF.

3. Defendant **D. NUNEZ** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Captain at CTCF.

4. Defendant **M. HOLLOWAY** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Lieutenant at CTCF.

5. Defendant **K. TOPLISS** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Lieutenant at CTCF.

6. Defendant **C. WILLIAMS** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Lieutenant at CTCF.

7. Defendant **H. WILLIAMS** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Lieutenant at CTCF.

8. Defendant **M. BENOVEDEZ** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Sergeant at CTCF.

9. Defendant **K. CLINKENBEARD** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against her, she was acting under color of state law in her capacity as a Sergeant at CTCF.

10. Defendant **J. EZPANOZA** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Sergeant at CTCF.

11. Defendant **G. SULLIVAN** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Sergeant at CTCF.

12. Defendant **J HANSON** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against her, she was acting under color of state law in her capacity as a Corrections Officer at CTCF.

13. Defendant **J. SOTO** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Corrections Officer at CTCF.

ORIGINAL

14. Defendant **J. BUFMACK** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against her, she was acting under color of state law in her capacity as a Nurse at CTCF.

15. Defendant **V. WOLFE** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against her, she was acting under color of state law in her capacity as a Grievance Coordinator at CTCF.

16. Defendant **A. BELL** is an employee of the Colorado Department of Corrections. At all times relevant to the claims against him, he was acting under color of state law in his capacity as a Case Manager at CTCF.

17. Each Defendant is sued in his/her individual capacities. Plaintiff sues each individual state official in his/her individual capacities for monetary relief. Plaintiff sues each individual state official in his/her official capacities for declaratory, prospective injunctive and punitive damage relief.

B. JURISDICTION:

18. This action raises federal questions under the Eighth and Fourteenth Amendments to the United States Constitution, and under federal law pursuant to 28 U.S.C. Section 2201 and 2202, and 42 U.S.C. 1983 and 1988. Appellant's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 and 2284.

19. This Court has authority to grant the requested damages under 28 U.S.C. Section 1343(3); and attorney's fees under 42 U.S.C. 1988(b).

C. NATURE OF THE CASE:

20. This action involves the use of excessive force in violation of Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment and the Defendants conspiracy to cover up the excessive force, as well as prevent exhaustion. On February 29, 2012, at CTCF, Plaintiff's rights were violated when prison officials used excessive force by excessively tasing him five times in rapid succession; by applying handcuffs more tightly than necessary; by dropping him on his face from approximately 2-3 feet in the air after he was handcuffed, shackled and otherwise subdued; by then pressing his face hard into the floor grinding his teeth on the concrete; by intentionally bending his wrist and pulling his arms while handcuffed and strapped to a back board; and by ignoring his repeated and reasonable complaints about the cuffs being too tight and refusing his requests to loosen the same.

21. As a result, Plaintiff has suffered physical and emotional injury, including but not limited to: Scarring on his back from the taser; cuts, gashes and swelling to his wrists; pain in both wrists, shooting pain in his right hand, numbness and loss of feeling to his left thumb and fingers; feelings of electrical shock; decreased mobility in both wrists, as well as scarring from the handcuffs. He has also suffered two chipped front teeth, lacerations to lower lip, neck strain, as well as recurring nightmares of being shot in the back at close range. In each instance, the force was willful and wanton and objectively unreasonable, and was used intentionally to inflict unnecessary and wanton pain. There was no emergency situation, and there was no threat to anyone's safety. The force was unjustified. The Defendants then conspired to cover up the excessive force and even attempted to have Plaintiff proceeded against for assault with out cause and labeled a high risk offender.

D. CAUSE OF ACTION
(Claims)

22. Although FRCP Rule 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief, the Plaintiff has chose to use the “hightened pleading”standard, and thereby provide the Court with more factually detailed and plausible allegations supported by citation to the record. See *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).

23. Also, because this action is being filed pro se, Plaintiff requests the Court to liberally construe his pleadings. *Hall v. Bellmon*, 935 F.3d 1106 (10th Cir 1991); *Clark v. Oklahoma*, 468 F.3d 711 (10th Cir. 2006); *Hall v. Griego*, 896 F. Supp. 1043 (D. Colo. 1995).

F. ADMINISTRATIVE RELIEF

24. Plaintiff asserts that the grievance procedure at this facility is flawed. Even though Administrative Regulation (AR) 850-04 provides that Step 1 and Step 2 grievances will be responded to within 30 days from the date of receipt by the case manager (See AR850-04(IV)(H)(b), the staff here hardly ever comply with this requirement, as they routinely go beyond the time prescribed. Plaintiff believes that this is done on purpose to get the prisoner to default, so that his claim is later rejected on procedural grounds at Step 3. Plaintiff asks the Court to note the dates on each grievance and note that the time limits established by the Grievance Coordinator at Step 1 and Step 2 were not followed, but exceeded. (See *Ex. 1 – Excessive Force Grievance History*).

25. Although thwarted several different times in his attempt to do so, Plaintiff used the offender grievance procedure and exhausted his administrative remedies by filing his Step 1, Step 2 and Step 3 grievances. The Step 1 was investigated by Capt. Nunez, who denied relief (See *Ex. 2 – Step 1 Grievance and Response*). However, Maj. Lance Miklich granted relief by partially resolving matters at Step 2, and stated: “GRIEVANCE RESOLVED.” (See *Ex. 2 – Step 2 Grievance and Response*).

26. Since the grievance was partially resolved to Plaintiff’s satisfaction, Plaintiff should not have been obligated to appeal. He went to Step 3 because, at the time, he had not received the Step 2 response within the prescribed time, and would have been procedurally defaulted had he not timely proceeded to the next level.

27. In response to the Step 3, the Grievance Officer wrongly found that Plaintiff’s Step 3 grievance was “not in compliance with AR 850-04.” He alleged: ““As stated in the AR “all issues and remedies contained in the original grievance must be incorporated into each subsequent step of the grievance. Failure to renew each element of the complaint and/or requested relief in subsequent steps shall be deemed a waiver of those elements and/or requested remedy.”” You failed to comply with this in your Step 3.” (See *Ex. 5 – Step 3 Grievance*

Response).

28. However, contrary to this finding, Plaintiff *did* comply with the AR's. In compliance with the rules, Plaintiff "*incorporated*" all issues and remedies contained in his original grievance. In both subsequent Steps Plaintiff specifically stated: (1) "Pursuant to AR 850-04(D)(2), I hereby renew and *incorporate* all issues and remedies that were contained in the original grievance; and (2) "Pursuant to AR 850-04 (D)(2), all issues and remedies that were contained in the original grievance are renewed and *incorporated* herein." (See *Exs. 3 and 4 – Step 2 and 3 Grievances*).

29. Black's Law Dictionary, (3rd Edition, 1996), describes "incorporate" as: "To make the terms of another (esp. earlier) document part of a document by specific reference.

30. To the extent Defendants claim that Plaintiff's grievance is procedurally deficient, Plaintiff alleges that Defendants forfeited and waived their right to challenge any procedural deficiency when the facility Grievance Coordinator failed to return the grievance to Plaintiff and request that he "cure any deficiencies and resubmit [the grievance] for processing." Pursuant to AR 850-04 (IV)(B)(1), which provides in part: "Offenders filing grievances that are procedurally deficient may be asked to cure any deficiencies and resubmit for processing; however if the offender refuses to make required changes, it shall be accepted, scanned and automatically assigned a grievance number and denied on procedural grounds." As well, AR 850-04(IV)(F)(2) provides in part: "Grievances not properly submitted as outlined above shall be returned to the offender for proper submission at the facility." Neither of these things happened.

31. Further, the Grievance Officer claims that: "The attached affidavit is not in compliance [with] AR 850-04." Despite this claim, Plaintiff's affidavit is *indeed* in compliance with the AR. The affidavit was submitted as an *exhibit* in support of Plaintiff's claims, which is allowed at the Step 3 level. (See AR 850-04(IV)(C)(1)(b). Moreover, Plaintiff's affidavit is *not* a "continuance of the body of [his] grievance," as the Grievance Officer claims. Again, his affidavit was an *exhibit*, submitted as a sworn statement in *support* of his allegations, which Plaintiff has routinely done in the past at the Step 3 level, without objection.

32. In fact, Plaintiff's Step 3 clearly stated: "And since I have the burden of proof, I submit the attached affidavit *in support of my allegations*." And in the body of his affidavit, Plaintiff specifically stated: "This affidavit is being submitted as corroborating evidence to *provide proof of the allegations* contained in my 3/27/12 Step 1 grievance." (See *Exs. 4 and 4A - Step 3 Grievance and Affidavit*).

33. Ironically, in his own words, the Grievance Officer himself, clearly acknowledges that: "An exhibit... is a separate attachment that *lends support to your claims*." [Emphasis added]. Again, this was exactly

the purpose of the affidavit, and is exactly what the affidavit did, not only in *this case*, but in *previous cases* as well. Therefore, the Grievances Officer's claim is without merit.

34. Regarding exhaustion, it is worthy to note that the Grievance Officer does not certify in his, final response, pursuant to AR 850-04(IV)(G)(1)(C)(2), that Plaintiff has *not* exhausted the grievance process. (See *Ex 5 – Step 3 Grievance Response*). Therefore, Plaintiff has exhausted his administrative remedies.

35. To the extent Defendants wish to challenge exhaustion, Plaintiff will allege and provide evidence of intentional prevention and/or obstruction, as well as detrimental reliance and equitable estoppel, asserting that the Defendants should be estopped from relying on the exhaustion defense due to these and other intentional acts designed to thwart and prevent Plaintiff from exhausting.

D. CAUSE OF ACTION**FIRST CLAIM FOR RELIEF**

42 U.S.C. Section 1983 – Use of Excessive Force & Deliberate Indifference
(Eighth Amendment Cruel & Unusual Punishment Violation)

36. This is a verified complaint which should be treated as an affidavit. Plaintiff makes his factual allegations under penalty of perjury.

The Cause:

37. It all started when Captain (Capt.) Nunez got involved and ordered Property Sergeant (Sgt.) Phol not to return a book to me which had been wrongly taken, lost, ordered replaced and then purchased from Barnes & Nobles. When the book arrived and I went to pick it up from property, I was told by Sgt. Pohl that he had been directed by Capt. Nunez not to give me the book, that I had to either destroy it or mail it out because the Chaplain had no business giving it to me.

38. The book had been given to me along with a letter of authorization by the Chaplain, wrongly taken and misplaced by Case Manager (C/M) McBride, ordered replaced by Administrative Services Manager Mary Ann Aldrich, and purchased by Major Kevin Furton.

39. On February 16, 2012, I approached Capt. Nunez and asked why he had directed Phol to have me destroy or mail out the book. When he stated: “Per policy, the Chaplain had no authority to give you the book,” I explained that I was aware of many inmates who had received both books and letters from the Chaplain, and asked why I was being treated differently. I asked him what specific policy he was referring to so I could look it up. When he would not respond, and continued to ignore my requests, at the end of the conversation I pressed him further to tell me “what policy” he was referring to by providing name and/or number.

40. He then got upset and threatened me with disciplinary action, stating: “You keep it up, you’re on the verge of a write up,” and stared me down as if to dare me to say another word. I replied, “For what! For asking what policy you’re referring to and seek to resolve my grievance and have my book returned?” There was no reason for him to short-stop the book and absolutely no reason for him to threaten me with disciplinary action, other than his desire to retaliate against me for previously filing complaints against staff, some of which he addressed.

41. Due to this misconduct, I prepared two staff conduct complaint alleging denial of equal protection, deprivation of property without adequate procedural due process, and retaliation for exercising my right to seek redress. (See *Exs. 6 and 7*).

42. Here, you will also see that Capt. Nunez was grossly dishonest and deceitful by responding to the complaint of his own misconduct. When I received the grievance and questioned Capt. Selvage [whose name appeared on the grievance] about the content of the response, he informed me that he did not investigate or respond to the grievance, but that Capt. Nunez had answered. The complaint should have been answered by a superior, not by Capt. Nunez, and not by Selvage, who is the same rank as Nunez. (See Exs. 8 and 9 – Letter to Warden Rae Timme dated May 15, 2012, and response to her letter by Major (Maj.) MaCain Hildebrand dated June 18, 2012 – where book was returned and issue “resolved.”).

43. Upon information and belief, Capt. Nunez answered the complaint so he could hide and cover up his misconduct.

44. On the evening of February 28, 2012, I handed fellow inmate Mike Milligan, DOC# 42327, a large manila envelope containing the two complaints for him to read overnight so that he would be aware of my complaints in case something should happen to me as a result of filing them.

45. The following morning, at approximately 7:00 when Milligan returned the envelope, Corrections Officer (C/O) Meyers witnessed the hand-off. He then called me to the control center, accused me of having someone else's legal work, and demanded that I hand him the envelope. After I plainly showed him the two grievances and explained that I would be submitting them to my case manager for processing, he again demanded them and told me that they would be placed in contraband (a room where contraband is stored).

46. Fearing that they would never be filed and would disappear if handed over, I again explained that I was giving them to my case manager; that there was no need or reason for him to take them; and that if he wanted to, he was more than welcome to write me up for disobeying a lawful order. I then left the area and took the complaints up to my cell.

47. On the way back down, I was stopped at the bottom of the stairs by Sgt. Clinkenbeard and C/O Hanson. Clinkenbeard asked me to step out in the hall. Once there, she wanted to know why I had used abusive speech towards C/O Meyers. When asked what she was talking about, she said that C/O Meyers had told her that I used abusive language towards him. I assured her that such was not true and invited her to step into the day hall to ask anyone. I then reminded her that C/O Meyers had just been caught days prior lying about an incident involving me.

48. She wanted to know what was in the envelope. I told her that they were grievances, which I had plainly showed to C/O Meyers. She then said, “turn around and cuff up.” I asked, “for what?” She said, “you're going to seg.” I said “for what!”? She replied, “for causing a facility disruption.” I told her that I did not

disrupt the facility and that I thought she was being unreasonable. She said, "By virtue of my having to stop what I was doing downstairs and come up here to deal with this situation, you disrupted the facility."

49. I then asked to see the shift commander and explained again that I had not disrupted the facility. I told her that I thought she was being unreasonable; that the situation did not call for C/O Meyers to call her; that it did not call for me to go to seg; and that if Meyers felt that I had disobeyed a lawful order, he could have written me up and that would have been the end of the matter.

50. When she told me to "cuff up," I again asked to speak to the shift commander. I was not hostile or aggressive. When I saw C/O Hanson circle behind me and Sgt. Clinkenbeard walk towards me, I raised my arms straight in the air, walked to the corner in front of the control center, knelt down and laid in a prone position face-down on the floor, with my arms beneath me, and waited for someone with authority to arrive. I remained in a limp position and repeatedly stated: "All I want is to talk to a shift commander," as Clinkebeard and Hanson applied pressure techniques to my neck and head area.

The excessive Force:

51. When backup officers arrived [inmate witnesses said it was anywhere between 15-20], including supervisors Lieutenant Holloway, Lieutenant C. Williams, Lieutenant H. Williams and Captain Cordova (all whom had a duty to exercise control of subordinates), instead of someone asking questions to see what was going on, no one asked a single thing. Instead, I was immediately dog-piled by several officers, and since my arms were beneath my body, the weight of the officers trapped them so I could not initially move. In this position I posed no threat or potential threat to the safety of the officers, yet I was tased five times in rapid succession by Sgt. Espinoza and [according to witnesses], by Sgt. Clinkenbeard.

52. During the time I was being tased, various pressure techniques were being applied to my neck and head area by C/O Hanson. Someone kept saying, "quit resisting," when I was not resisting. When I could not breath due to the weight of the officers, I yelled out, "get off me!" Eventually my right arm was freed and cuffed by Sgt. Espinoza, and then my left. The cuffs were slammed on and squeezed extremely tight. I could feel the extra effort. They were applied so tight that they immediately cut deep into my skin, touched bone and quickly cut off circulation. [This was especially painful since I have pre-existing medical problems with my wrists, for which I wear wrist splints, and for which the state will not provide surgery]. During this same time, shackles were placed on my legs. I immediately complained that the handcuffs were too tight, but there was no reply.

53. Sgts. Sullivan and Espinoza wanted me to stand and walk. I again complained that the cuffs were too tight. But again, there was no reply. I said that I would walk if they would loosen the cuffs.

54. At this point, they tried to pick me up. As I was lifted and turned by four different officers, the person on my right, who had picked me up from beneath the arm [who I believed at the time to be Sgt. Sullivan], intentionally let go, dropping me face first to the concrete floor from 2-3 feet in the air. I was not “kicking” my legs, [as Capt. Cordova falsely alleged in his incident report], or otherwise resisting with physical force.

55. As I lay prone on the floor, it was at this time that someone intentionally pressed on the back of my head with both hands, while at the same time, putting their knee on the back of my neck and upper back, applying their full weight, grinding my two front teeth into the floor each time they shifted positions, chipping my teeth, and straining my neck.. [This person was later positively identified as Sullivan by eye witnesses Michael Jones and Michael Jeters, when Plaintiff was released from segregation].

56. When the pressure was let up and I was finally able to speak, I again complained about the cuffs being too tight and requested they be loosened, but again there was no response. They asked again if I would stand and walk. Again, I said that I would walk if they loosened the cuffs.

57. It was at this point that Sullivan stated: “There's no negotiating here,” and that someone else yelled: “You don't dictate to us,” to which I replied: “Fine, you carry me,” and accused them of using the handcuffs as weapons and of violating the pinky rule.

58. Since they refused to loosen the cuffs and I refused to walk as a result, someone suggested that I be carried on the back board. While waiting for the board I looked around to see who I recognized. Aside from Hanson, Clinkenbeard, Sullivan and Espinoza, I noticed Lt's. Holloway, C. Williams and H. Williams, as well as C/O's Moschetti and Plowman. However, inmate witnesses said that between 15-20 officers were actually present.

59. When I asked, “Who is in charge?”, Cordova knelt down and said that he was. I then complained directly to him about the cuffs hurting and being too tight, and asked him, “what ever happened to the pinky rule?”

60. While talking to him, someone was intentionally pulling my arm hard at the elbow, putting additional pressure on my wrists and causing sever pain. I turned around and got a good look at the person's face so I would remember it. I later identified the person as C/O Soto. [I recognized him when I placed in Unit 7 after being released from segregation. He worked in Unit 7]. While he was pulling on my arm, I yelled out in pain and asked Cordova, “Is this how you train your boys to use the cuffs to inflict pain?” He did not respond. Nor did he loosen the cuffs or direct that they be loosened.

61. When the back board arrived, I was picked up and place on it. I was then strapped to the board [at three points] across my back, mid-section and ankles. Upon information and belief, surely, in this position, I could not be considered a threat to the safety of anyone. I again asked that the cuffs be loosened.

62. While lying on the board, someone near the middle was bending my wrists and again causing sever pain. When I yelled, the person released my hand, but later began pulling on my arm near the elbow, continuing to cause pain, just as the person before him had done. Again, I turned to see who the person was and got a good look at his face and noticed he was wearing sergeant bars. When I later identified him to inmates in while in segregation, all agreed that it was Sgt. Benavedez, which was confirmed when I saw him upon my release from segregation.

63. After I was picked up and carried down the stairs, I was placed on a gurney and wheeled to medical. Once at medical, I again complained about the cuffs being too tight and again asked about the pinky rule, which Cordova himself corroborates and acknowledges in his incident report. Cordova asked if I was going to cooperate with the anatomical. I asked if he was going to loosen the cuffs. He again asked if I was going to cooperate. I said that I would cooperate if he would agree to loosen the cuffs and take photographs of my teeth, wrists and back. He agree to take the photos, but did not loosen the cuffs.

64. With respect to his state of mind and knowledge of the cuffs being too tight, he acknowledged in his report that I “*complained the handcuffs were too tight* and there is supposed to be a pinky distance between his wrist and cuffs. I replied he needed to be compliant, staff had to wrestle to get them on and that’s why they were so tight. I asked him to be compliant with the anatomical and *we would adjust them.*” [Emphasis added].

65. Upon information and belief, by making such statements, Cordova provides evidence: (1) that he was *aware* the cuffs were too tight based on my complaints; (2) that he *was or should have been aware* of the substantial risk of harm or injury; and (3) that he *ignored* the substantial risk when he would not immediately adjust the cuffs, thus providing proof that he acted with deliberate indifference to my health and safety and federally protected right to be free from cruel and unusual punishment.

66. Here I was, handcuffed, shackled, strapped to a board, and surrounded at this point by at least 8 male officer, and they still refused to loosen the cuffs. I thought for certain that they were being totally unreasonable. Upon information and belief, in this position, I posed no threat or even a potential threat to anyone, and it would have been so easy for one of the supervisors to loosen the cuffs or direct that they be loosened, but no one took the initiative.

67. Finally, someone suggested that the anatomical be conducted in segregation so that the examination and the strip out could be done at the same time. So off I was wheeled to segregation. Once there, I immediately asked them to remove the cuffs. Cordova again corroborates and acknowledges this in his report, where he stated: "He was asked again if he was going to be compliant with the strip out and he said no and *complained about the cuffs again*. [Emphasis added].

68. Again, upon information and belief, by making such a statement, Cordova provides additional evidence: (1) that he was *aware* that the cuffs were too tight; (2) that he *was or should have been aware* of the substantial risk of harm or injury ; and (3) that he again *ignored* the substantial risk by not immediately removing the cuffs, again providing proof that he *continued* to act with deliberate indifference to my health and safety and my federally protected rights.

69. Since Cordova grudgingly refused to loosen the cuff, I passively refused to participate in the strip out. When I accused them of intentionally misusing the handcuffs as weapons, and threatened to sue, it was then that the cuffs were removed and replaced with more looser fitting ones. It was also at this point that Cordova stated in his report: "I had the cuffs transitioned out utilizing strip out restraints." But of course, this was a little late; the damage had been done.

The Liability:

Unnecessarily tased five times and pressure techniques applied

70. When Sgts. Espinoza and Clinkenbeard tased me five times in rapid succession, and C/O Hanson applied repeated pressure techniques, I was lying prone on the floor requesting to speak to a shift commander. I was not hostile or aggressive. I posed no threat or potential threat to anyone. The excessive tasing and repeated pressure techniques were objectively unreasonable and clearly excessive and was used merely to inflict unnecessary and wanton pain, violating clearly established law.

71. The force used in applying the taser and pressure techniques was not used in a good faith effort to maintain discipline or order, but was used maliciously and sadistically for the purpose of causing pain. This is particularly so since there was no emergency situation and I was surrounded by 15-20 able bodied officers - thereby posing no threat to the safety of anyone.

72. Applying the taser five times was not justified under the circumstances and neither Sgt. Espinoza or Sgt. Clinkenbeard were acting to protect themselves or others, or to serve any legitimate penological interest. There was no legitimate purpose for their conduct. As a result of the excessive tasing and pressure techniques, I suffered unnecessary pain and scarring on my back.

73. Neither supervisor Holloway, C. William, H. Williams or Cordova [who all had a duty to exercise control of their subordinates], bothered to intervene or stop the excessive tasing and unnecessary pressure techniques. They stood by and did nothing. As supervisors, they knew of and disregarded, condoned, and/or approved of the wrongful acts, and failed to exercise control of their subordinates.

As such, they acted with deliberate indifference to my health and safety and with callous indifference to my federally protected right to be free from cruel and unusual punishment.

74. A reasonable person in *each* of the defendants positions would have known that their conduct violated clearly established law.

75. As relevant hereto, *each* defendant was acting in accordance with the unwritten and unconstitutional practice, policy, directive, custom and/or procedure of supervisor/shift commander Capt. Cordova, which violated my known constitutional rights.

76. That upon information and belief, the defendants acted in accordance with the unconstitutional practice, policy, directive, custom and/or procedure of supervisor/shift commander Capt. Cordova, which authorized the defendants to use and condone excessive force against prisoners.

Handcuffed too tightly

77. When Espinoza initially applied the handcuffs he made sure that he forced them on extra tight. They were applied too tight in excess of what was necessary under the circumstances. Applying the cuffs so tightly was objectively unreasonable and clearly excessive and was done merely to inflict unnecessary and wanton pain, violating clearly established law.

78. The force used in applying the cuffs was not used in a good faith effort to maintain discipline or order, but was used maliciously and sadistically for the purpose of causing pain. This is particularly so since there was no emergency situation and since I was surrounded by 15-20 able bodied officers - thereby posing no threat to the safety of anyone.

79. Applying the cuffs so tightly was not justified under the circumstances and Espinoza was not acting to protect himself or others, or to serve any legitimate penological interest. There was no legitimate purpose for his conduct. As a result of the handcuffs being applied so tightly, and because of the refusal to loosen the cuffs, I suffered unnecessary pain, as well as swelling, scratches, cuts, and gashes, resulting in scarring to my wrists, decreased mobility, initial and lingering pain to both wrists, and lasting injury to my hands and

fingers due to nerve damage.

80. After complaining that the cuffs were too tight [which Cordova admits in his incident report that I did twice], neither supervisor Holloway, C. William, H. Williams or Cordova [who all had a duty to exercise control of their subordinates], bothered to check the cuffs to see if they were too tight. They stood by and did nothing. As supervisors, they knew of and disregarded, condoned, and/or approved of the wrongful acts, and failed to exercise control of their subordinate.

81. As such, they acted with deliberate indifference to my health and safety and with callous indifference to my federally protected right to be free from cruel and unusual punishment, and ignored my complaints and requests to loosen the cuffs. Their refusal to check the cuffs, loosen them, or direct that they be loosened aggravated my pre-existing wrist problems.

82. A reasonable person in *each* of the defendants positions would have known that their conduct violated clearly established law.

As relevant hereto, *each* defendant was acting in accordance with the unwritten and unconstitutional practice, policy, directive, custom and/or procedure of supervisor/shift commander Capt. Cordova, which violated my known constitutional rights.

83. That upon information and belief, the defendants acted in accordance with the unconstitutional practice, policy, directive, custom and/or procedure of supervisor/shift commander Capt. Cordova, which authorized the defendants to use and condone excessive force against prisoners.

Dropped on face, face pressed to concrete floor

84. When Sgt. Sullivan dropped me and intentionally pressed my face hard into the concrete floor, I was not “kicking” my legs [as Cpt. Cordova falsely reported in his incident report]. The force used in dropping me and pressing my face into the floor was in excess of what was necessary under the circumstances. Such force was objectively unreasonable and clearly excessive and was used merely to inflict unnecessary and wanton pain, violating clearly established law.

85. The force used in dropping me and pressing my face to the floor was not used in a good faith effort to maintain discipline or order, but was used maliciously and sadistically for the purpose of causing pain. This is particularly so since there was no emergency situation and since I was already subdued, having been handcuffed behind my back; legs shackled; strapped to a back board across my back, mid-section and ankles; and surrounded by 15-20 able bodied officers - thereby posing no threat to the safety of anyone.

86. Dropping me face first and pressing my face into the concrete floor was not justified under the circumstances and Sgt. Sullivan was not acting to protect himself or others or to serve any legitimate penological interest. There was no legitimate purpose for his conduct. As a result of being dropped on my face and having my face pressed hard into the concrete floor, I suffered unnecessary pain, resulting in two chipped front teeth, lacerations to inside lip, and a strained neck..

87. Neither supervisor Holloway, C. William, H. Williams or Cordova made any effort to intervene to prevent the unwarranted force or to temper its severity. They stood by and did nothing. As supervisors, they knew of and disregarded, condoned, and/or approved of the wrongful acts, and failed to exercise control of their subordinate.

88. As such, they acted with deliberate indifference to my health and safety and with callous indifference to my federally protected right to be free from cruel and unusual punishment.

89. A reasonable person in *each* of the defendants positions would have known that their conduct violated clearly established law.

90. As relevant hereto, *each* defendant was acting in accordance with the unwritten and unconstitutional practice, policy, directive, custom and/or procedure of supervisor/shift commander Capt. Cordova, which violated my known constitutional rights.

91. That upon information and belief, the defendants acted in accordance with the unconstitutional practice, policy, directive, custom and/or procedure of supervisor/shift commander Capt. Cordova, which authorized the defendants to use and condone excessive force against prisoners.

Bending wrists, pulling arm, refusing to loosen

92. Directly after I was strapped to the back board in *Unit One*, there was no reason for Capt. Cordova not to adhere to my requests to loosen the cuffs, nor was there reason for C/O Soto to bend my wrist, or for Sgt. Benavedez to pull on my arm, causing severe pain and using the handcuffs as weapons. Nor was there any reason for Capt. Cordova not to loosen the cuffs when requested once I reached *Medical*, and absolutely no reason for him not to loosen them once I was wheeled to *Segregation*.

93. The force used was in excess of what was necessary under the circumstances. Such force was objectively unreasonable and clearly excessive and was used merely to inflict unnecessary and wanton pain, violating clearly established law.

94. The force used in bending my wrist, pulling my arm, and refusing to loosen the handcuffs was not used in a good faith effort to maintain discipline or order, but was used maliciously and sadistically for the purpose of causing pain. This is particularly so since there was no emergency situation and since I was already subdued, having been handcuffed behind my back; legs shackled; strapped to a back board across my back, mid-section and ankles; and surrounded by 8-10 able bodied officers – thereby posing no threat to the safety of anyone.

95. The bending of my wrist, the pulling of my arm, and the refusal to loosen the cuffs was not justified under the circumstances. Neither Sgt. Benevez, C/O Soto, Capt. Cordova, or any other supervisor were acting to protect themselves or others, or to serve any legitimate penological interest. There was no purpose for their conduct.

96. As a result of having my wrist bent and arm pulled, and because of the refusal to loosen the cuffs, I suffered unnecessary pain, as well as swelling, scratches, cuts, and gashes, resulting in scaring to my wrists, decreased mobility, initial and lingering pain to both wrists, and lasting injury to my hands and fingers due to nerve damage.

97. Neither supervisor Holloway, H. Williams or Cordova made any effort to intervene to prevent the unwarranted force or to temper its severity, and neither bothered to check the cuffs to see if they were too tight. They stood by and did nothing. As supervisors, they knew of and disregarded, condoned, and/or approved of the wrongful acts, and failed to exercise control of their subordinates.

98. As such, they acted with deliberate indifference to my health and safety and with callous indifference to my federally protected right to be free from cruel and unusual punishment.

99. A reasonable person in *each* of the defendants positions would have known that their conduct violated clearly established law.

100. As relevant hereto, *each* defendant was acting in accordance with the unwritten and unconstitutional practice, policy, directive, custom and/or procedure of supervisor/shift commander Capt. Cordova, which violated my known constitutional rights.

101. That upon information and belief, the defendants acted in accordance with the unconstitutional practice, policy, directive, custom and/or procedure of supervisor/shift commander Capt. Cordova, which authorized the defendants to use and condone excessive force against prisoners.

Injury:

102. Upon information and belief, even though the physical injuries I sustained were not serious, an Eighth Amendment violation occurred when the prison officials applied force maliciously and sadistically for the purpose of causing pain. The use of excessive physical force against me constitutes cruel and unusual punishment, even though I did not suffer serious injury. Further, the use of force directed at me, was not de minimis for Eighth Amendment purposes, and the extent of my injuries is therefore no basis for dismissal of my complaint.

The Cover up and Justification for the Excessive Force:

103. Upon information and belief, right off the top a cover up began to minimize and hide the true extent of the damage caused, and to justify the excessive force.

The Cover up by Nurse Bufmack:

104. First, there was Nurse Bufmack, who instead of recording that I was tased five times, recorded only three time. Instead of recording that both front teeth were chipped, she recorded only the right front tooth. And instead of recording that I had multiple cuts and deep indentations from the cuffs, she recorded only “superficial abrasions on both wrists.” She did however accurately record that I sustained “indentations” on my ankles from the shackles [which shows that they too were far to tight]; “non bleeding lacerations on lower lip;” and “neck pain.” (See Ex. 10 – First Anatomical Form dated 2/29/12).

The Cover up by Lt. Holloway:

105. Second, there was Lt. Holloway, who, instead of taking photos of all my injuries, took photos of only my wrists and back [which is corroborated and acknowledged by Cordova in his incident report]. His report states: “Medical completed an anatomical and pictures were taken of his wrists and back.” [Emphasis added]. Holloway refused to take additional photos when requested that he do so at my cell.

Uncovering true extent of damage and forced used:

106. On March 1, 2012, during their exercise period in segregation in the cage directly in front of my cell, I showed inmates Sandoval and Horton the taser marks and holes in my back. Each counted ten holes.

107. On this same date, at approximately 9:40 AM, I showed my wrists and back to medical Nurse Mark Rudnick during his rounds, and o C/O Crews, who was escorting him. Each counted ten taser holes in my back. I requested that the anatomical conducted by Nurse Bufmack be corrected and that additional photos of my wrists and back be taken. At this time I also gave Nurse Rudnick a medical kite requesting treatment for my back and wrists, and photos of the injuries after twenty-four hours. (See Ex. 11 Medical Kite dated 3/1/12).

108. On this same day, at approximately 1:20 PM, I showed Lt. Holloway the cuts and

ORIGINAL

indentations on my wrists, and the taser marks on my back. I asked if officers were trained to use the pinky rule when applying handcuff. He acknowledged the rule, but stated: "We don't lock the cuffs until we feel safe." This comment was overheard by inmate Elija Trujillo, who occupied the cell directly next to me. Williams also stated: "If you hadn't resisted, the cuffs wouldn't have tightened up on you." He was assuming, of course, that the cuffs were not initially placed on extremely tight. Which they were. I requested photos. He said that I would have to contact Nunez, who was the acting Major.

109. Also on this same day, I wrote a letter to Marry Ann Aldrich, Administrative Services Manager, informing her of the excessive force, requesting that the anatomical be corrected to reflect that I was tased five time, not three as Nurse Bufmack inaccurately recorded, and requested that additional photos be taken that would accurately reflect my injuries and the true extent of the force actually used. I also requested that she visit to see the injuries for herself.

The cover up by Capt. Nunez

110. On March 2, 2012, at approximately 9:30 AM, I showed Lt. Holloway the cuts and indentations on my wrists and requested additional photos to accurately depict the extent of injuries. I also showed him the marks and holes in my back and stated that a nurse, a C/O and two inmates had all counted ten holes, not six, and requested the anatomical be changed to reflect such, and that additional photos be taken. I also requested that the photos, closed circuit recording and any other images of the incident be preserved. He said that all incidents involving the use of force were automatically saved on DVD.

111. He then left for about five minutes and returned. He told me that "Nunez said that there would be no additional photos or medical exams, that we've done our part, we documented." I responded, "That's a little unreasonable don't you think." He added, "Who's to say that you didn't cause the additional injuries to yourself." I replied, "why would I want to do something like that? It would be a little hard to put four extra holes in my back the exact size of taser prongs, don't you think? Anyone can see they came from the tasers."

112. On this same day, at approximately 12:00 PM, I logged in the legal mail log, as privileged, a kite to Acting Major Nunez. Among other things, I requested that additional photos be taken of my wrists and back, explaining that the original photos were taken when the injuries were fresh and therefore did not accurately depict the full extent of the excessive force and injuries sustained and hat photos taken now (over 24 hours later) would more accurately reflect such. I also requested a photo of my chipped tooth. I further informed him that my back had been looked at by others who all counted a total of ten holes in my back, and requested that the anatomical be corrected to reflect that I was tased five times, not three. I then requested that all photos, closed circuit recordings and video evidence of the incident be preserved, to include Unit 1, medical and segregation. (See Ex. 12 - Reproduced kite to Nunez dated 3/2/12). There was no response.

113. Also, on this day, I turned in a medical kite sealed in an envelope to Nurse Bufmack. I requested that she correct the anatomical she conducted on 2/29/12, explaining that I had now been examined by two nurses, C/O Grooms [forgot C/O Crews], Lt. Holloway, and two inmates, and that all had counted ten holes, and that such should be corrected to accurately show the force used. I also requested additional photos, since the damage was now more pronounced and visible, and that re-examination and additional photos would not be unreasonable. (See *Ex. 13 – Kite to Bufmack dated 3/2/12*).

114. On March 3, 2012, at 9:00 AM, during her rounds, I showed Nurse Bufmack and C/O Grooms my back and explained that two nurses, two correctional officers, a lieutenant, and two inmates had counted ten holes in my back from the taser. I explained that I had sent her a kite. She said she would come later and do another anatomical, but she never came.

115. On March 4, 2012, at 6:00 PM, I asked Lt. H. Williams if inmates were disclosed the use of force reports. He said that he did not know, and that I would have to ask Nunez. At 6:15, he returned to my cell and said, “The use of force reports are confidential and not disclosed to inmates.”

116. On March 6, 2012, at 8:00AM, I asked Lt. Holloway what he knew about the use of force investigation and reports, and whether I would be contacted as part of the investigation and also receive a copy of the report. He said that there would be two investigations, one by the facility and one by the Inspector General, and that I would be contacted as part of their investigation. He stated that he did not know if I would receive a copy of the report, but knew that the Captain was required to provide a summary of all reports.

117. On March 7, 2012, at 9:00 AM, I showed Cordova the scars on my wrists and back. I explained that others had counted ten holes and that I wanted photos and another anatomical to accurately reflect my injuries. After looking and counting ten holes himself, he said that he would have me taken to medical for another anatomical.

118. At 9:15, I was escorted to medical by Sgt. Espinoza and Sgt. Wilson. While there, Cordova told C/O Cordera and C/O Gallegos to see that I received the anatomical. They then escorted me to an examination room.

119. The anatomical was conducted by Nurse Mary Grieb in the presence of Cordera and Gallegos. They all counted ten holes in my back, and I witnessed her record: “Multiple (10) healing marks on back.” Regarding my wrists, I witnessed her record for both wrists: “Healing scratch marks... multiple.” And with respect to my teeth, I witnessed her record: “L front tooth appears small chip out of the distal edge.” I

then witnessed her indicate on the diagram where the marks, scratches and chipped tooth were located. See *Ex. 14 – Second Anatomical Form dated 3/7/12*.

120. Directly after the examination, I submitted a kite to medical records requesting copies of the anatomicals conducted on 2/29 and 3/7. (See *Ex. 15 – Kite to Medical dated 3/7/12*).

121. On March 7, 2012, I logged in the legal mail log, as privileged, a letter to Nunez, requesting that he provide the identification number to the DVD depicting the use of force (as mentioned by Lt. Holloway), the identification numbers to the reports and summaries of the use of force, and the identification number to the photos that were taken. (See *Ex. 16 – Letter to Nunez dated 3/7/12*). Nunez did not respond.

122. On this same day, I received a memorandum from Mrs. Aldrich dated March 6, 2012, responding to my letter of March 1st. She indicated that she had received my letter of March 5th, and that she had immediately notified the shift commander of my complaint of excessive force, and indicated that filing a complaint pursuant to AR 300-16RD was the appropriate avenue for me to lodge a complaint and ask for an investigation. (See *Ex. 17 – Memo from Aldrich dated 3/6/12*).

123. That same evening, I responded to her memorandum, indicating that she had *not* addressed the issue of additional photos to show the damage and force used; that she had *not* addressed the issue of correcting the anatomical to show that I was tased five times; and informed her that *no* photos had been taken of my tooth. The letter was logged and mailed the following day. (See *Ex. 18 – Letter to Aldrich dated 3/7/12*).

124. Twice during the early morning of March 8, 2012, I experienced nightmares that I was shot in the back at close range, and woke up both times in a panic and in a cold sweat. On March 9, 2012, I submitted a kite to mental health, stating: “Having recurring nightmares of being shot in the back 5 times. Not normal. Something ain’t right. Woke up in cold sweat.” (See *Ex. 19 – Medical Kite dated 3/9/12*).

125. On March 12, 2012, at 4:30 PM, just before dinner, I was visited by Aldrich. I showed her my wrists and back, and told her that I would like more accurate photos. She said that I could not get photos or an investigation until I turned in the excessive force complaint. She then said that she had heard that I was picked up by the handcuffs because I would not walk. I explained that such was not true; that I was never picked up by the cuffs, but that they were placed on far too tight from the beginning and they refused to loosen them and that *that* was the reason I would not walk.

126. On March 13, 2012, I logged in the legal mail log, as privileged, a kite to Nunez, stating, “Are you or are you not going to authorize more accurate photos of the injuries to my wrists and back? Or do you not want the obvious to be seen?” (See *Ex. 20* – Kite to Nunez dated 3/12/12).

127. Also on this day, I logged another letter to Aldrich requesting the first and last names of the officers who responded, those who witnessed the use of force, and those who filed reports and summaries, as well as the identification number to the DVD and any reports. (See *Ex. 21* – Letter to Aldrich dated 3/13/12).

128. On March 14, 2012, I was visited by Aldrich and Lt. Fazzino. When I asked about the names of all the people involved, Fazzino said the names would appear in the COPD incident report. When asked about the identification number of the DVD, Aldrich responded that it would be my name and DOC number.

129. On March 15, 2012, I was served with the Notice of Charge(s) and Incident Report written by Captain Randy Cordova, alleging assault and advocating and creating a facility disruption. (See *Exs. 23 and 24* – Notice of Charges and Incident Report Narrative dated 3/15/12).

130. On March 16, 2012, at 10:45 AM, I was again visited by Aldrich and Fazzino. I gave Aldrich my six page use of force complaint, attached to AR 300-16RDD, detailing the use of force, wherein I also requested at page 5 that additional photos be taken which would accurately reflect the damage caused. (See *Ex. 22* – Complaint of Unnecessary, Unreasonable and Excessive Force dated 3/14/12).

131. On March 17, 2012, I submitted a second kite to medical records requesting copies of the February 29th and March 7th anatomicals. (See *Ex. 25* – Medical Kite dated 3/17/12).

132. Also on March 17, 2012, after reading Cordova's report and remembering that I had complained and actually requested the cuffs be loosened more than just four times, I prepared an addendum to the excessive force complaint, which concluded: “In retrospect, it was actually a total of seven times that I complained, and six times that I requested the cuffs be loosened, not the four times I stated at the bottom of page 5 of my complaint.” (See *Ex. 26* – Addendum, Correction of 3/14 Excessive Force Complaint).

*The cover up by Capt. Cordova
(Fabricated and Misleading Incident Report)*

133. Upon reading Cordova's incident report, one ironic thing that I noticed immediately was that the very thing I should have been written up for [disobeying a lawful order – in failing to hand over the two grievances to C/O Meyers], appeared nowhere in the report.

134. I then noticed that Cordova fabricated that I was “resisting staff attempts to get [me] into wrist restraints,” which is *not true* because I laid passively on the floor in a limp position when back up arrived and was dog-piled by several officers, trapping my arms so I could not move, as numerous inmate witnesses will testify to at trial.

135. I then noticed that he minimized the actual number of times I complained and requested the cuffs be loosened; and that he fabricated that I had “kicked [my] legs.”

136. Upon information and belief, this statement was fabricated by Cordova in hindsight [and likely corroborated by other officers] to justify their otherwise unjustified use of excessive force. The Defendants can produce no video footage showing that I kicked my legs, because it never happened. There is a camera in the control center and one in the hall where the incident occurred.

137. I also noticed that he fabricated that they, “placed [me] on the floor.” This also is *not true*. I was not “placed” on the floor, I was dropped face first, as the video footage will show, and as inmate witnesses will testify to at trial.

138. I further noticed that he *admits* his awareness that I complained about the cuffs being too tight on at least two occasions, and that he did not adjust them, stating, (1) “He complained the cuffs were too tight and there is supposed to be a pinky distance between the wrists and cuffs,” (2) “He...complained about the cuffs again,” and (3) “I asked him to be compliant...and we would adjust them.” He also *admits* that pictures were taken only of my “wrists and back” but not of my teeth.

139. Finally, I noticed that he claimed that, “Two staff received injuries as a result of the use of force,” but provides *no* details or allegations as to *how* they were injured, or *what* or *who* caused their alleged injury. (See *Ex. 24 – Incident Report Narrative dated 3/15/12*). In truth, I never touched a staff – not intentional negligently, recklessly or otherwise.

140. Upon information and belief, in use of force situations, where minor injury has occurred, and it was *not* intentional, such injury is considered *incidental*, and does not constitute the offense of assault.

*The cover up by Hearing Officer Lt. Topliss
(Arbitrary and Capricious Finding of Guilt)*

141. According to the Code of Penal Discipline (COPD) [AR 150-01], assault is defined as follows: "An offender commits this offense when he intentionally or through negligence or recklessness, causes injury to another person, or applies any physical force, offensive substance (such as feces, urine, mucous, blood, saliva), or any other item or hazardous substance against any person, regardless of whether or not injury occurs, self defense should be a defense to a charge of assault."

142. Upon information and belief, in order to be found guilty of assault, several elements must be alleged and proven. Here, there was absolutely no allegations in Codova's incident report that indicated that "*I*" caused anyone's injury. Nor was there allegations that I intentionally, negligently or recklessly caused injury. These are necessary elements which make up the COPD offense of assault, yet none were present.

143. In fact, there was no information provided in the report describing *how* the officers received their injury. Cordova's second party report merely stated: "Two staff received injuries as a result of the use of force. He does not say *how, what or who* specifically caused their alleged injury, or how "*I*" specifically caused their injury.

144. Such a vague statement did not provide (1) enough information to defend against, and (2) could not reasonably provide Hearing Officer Topliss enough facts to make an adequate and informed determination of just *how* the alleged injuries occurred, let alone that "*I*" caused them through some intentional, negligent or reckless action. For all I know, they could have been caused by the officers *own* negligent or reckless actions, or caused by a fellow officer . Factual reporting is to include: "who, what, when, where and how." See *Ex. 23 – Notice of Charge(s)* dated 3/15/12).

145. Although the necessary factual allegations and elements were lacking, and the evidence therefore insufficient to sustain a COPD conviction, Topliss nevertheless found me guilty. Upon information and belief, his finding was intentional so as to justify the excessive force, punish me, and give validation to Codova's report. His finding is nothing more than an arbitrary and capricious exercise of authority, as it is devoid of evidentiary support.

146. On March 19, 2012, I submitted a second kite to mental health for help with recurring nightmares. (See *Ex. 27 – Medical Kite* dated 3/19/12).

***Further cover up by Capt. Nunez
(Inadequate and Biased Investigation)***

147. The Step 1 grievance response reveals that Nunez conducted the excessive force investigation in response to my grievance. He states: "I have investigated your claim of excessive force." He may well have

investigated, but never once was I or any of my numerous staff and inmate witnesses interviewed or otherwise contacted as part of his investigation. According to AR 850-04(IV)(G)(1), I am entitled to a 'sufficient investigation.' How could one's claims be investigated, and the investigation be 'sufficient' without ever interviewing the complainant and his witnesses?

148. Upon information and belief, Nunez had *no business* investigating this matter, and should have disqualified himself, because it was *he* who had denied my earlier requests, via Lt. Holloway, to take photos of my teeth, additional photos of my wrists and back, and to conduct a more complete anatomical. (See *Ex. 22 – Page 5 - Complaint of Unnecessary, Unreasonable and Excessive Force* dated 3/14/12)(wherein I stated: "I felt that this too [his denial] was unreasonable, and that my legitimate request was being denied for no other reason than to *hide* the true extent of injury and actual force used.")

149. Further, it was *Nunez* who failed to respond to my March 2, 2012, kite, wherein I also requested photos of my teeth, additional photos of my wrists and back, and a more accurate anatomical (See *Ex. 12 – Kite to Nunez* dated 3/2/12); and when he did not respond, it was *Nunez* that I sent a later kite accusing him of hiding my injuries. (See *Ex. 20 – Kite to Nunez* dated 3/12/12)(wherein I stated: "Are you or are you not going to authorize additional, more accurate photos of the injuries to my wrists and back? Or do you not want the obvious to bee seen.")

150. Upon information and belief, clearly Nunez was not a detached investigator, and therefore could not conduct a fair and impartial investigation. This certainly calls into question the reliability of his reporting, and will call into question the accuracy and reliability of the *Martinez Report* which is required to be prepared by prison officials.

151. He also states that he could "find no evidence to support [my] claims." Yet one obvious claim was that the cuffs were put on too tight and that staff repeatedly ignored my complaints and refused to loosen them.

152. Very clear evidence (the words of Cordova himself) supports this particular claim, as Cordova admits in his incident report that (1) I was "placed...on [a] back board *utilizing all straps*," (2) that I "complained the cuffs were *too tight*," (3) that I "complained [*again*] about the cuffs," and (4) that he told me [by then, after numerous complaints] that if I was compliant with the anatomical, "we would *adjust them*." [Emphasis added].

153. Upon information and belief, surely Nunez was aware of and had access to Cordova's report. And surely Cordova's awareness of the cuffs being *too tight* and his *refusal to loosen them* when I was strapped to a board and no threat to anyone, provides evidence of excessive force, which contradicts Nunez's statement

that he could find “no evidence” of excessive force.

154. In his response, Nunez himself also acknowledges the existence of excessive force when he stated: (1) that the wrist restraints were “*left on*” until [I] was placed in a cell on Removal From Population status,” and (2) “restraints *will not be...adjusted* on an unpredictable, resistive offender until it can be accomplished on a compliant offender in a *safe and secure* fashion.” [Emphasis added]. (See *Ex. 2 – Step 1 Grievance and Response*).

155. Upon information and belief, if I am handcuffed behind my back, legs shackled at the feet, strapped face down in three places to a back board “*utilizing all straps*,” and surrounded by 15-20 able bodied officers, what possible threat could I reasonably pose, or what justification could there be for refusing to “*adjust*” the cuffs when requested. In this position, how much more “*safe and secure*” could the officers feel?

156. Nunez further states, “The application of the wrist restraints during the UOF, were applied to prevent you from *hurting yourself or others*.” [Emphasis added]. (See *Ex. 2*). Upon information and belief, this is hog wash, because at the time that I was tased and cuffed, I was lying face down in a prone position on the floor with my arms beneath me, repeatedly asking to talk to a shift commander, as numerous inmate witnesses will testify to at trial, and who would have told him so had he properly investigated. There was simply *no evidence* that I was attempting to hurt myself or others. He does admit knowing, however, that I was “passive” during the incident.

157. Another one of my claims was that I was tased five times. To this he responds, “Staff members involved in the UOF documented in PCDCIS incident reports you were given three application of the taser and not five. The medical anatomical examination immediately following the incident also indicates that you received three applications from the taser. There is no evidence to support your claim of five applications from the taser.” (See *Ex. 2*).

158. Here, Nunez completely ignores the second anatomical [authorized by Cordova] dated 3/7/12, which was completed before the date of his response. Upon information and belief, to do otherwise, would have been to admit that he was wrong for not authorizing the corrections himself. Nunez knew or should have known that a second anatomical existed, which provided evidence of the five taser applications, as well as the additional chipped tooth.

159. Further, Nunez ignored the claim in my complaint of excessive force that: “Several other officers counted ten holes,” and that the second anatomical was conducted “in the presence of C/O Cordera and C/O Gallegos.” (See *Ex. 22, pages 4 and 5 – Complaint of Unnecessary, Unreasonable and Excessive Force dated 3/14/12*). He also ignored the allegations in my kite to him that: “On 3/1 my back was looked at by a Nurse, a C/O and 2 Inmates – and all seen 5 taser marks and 10 separate holes, not 6.” (See *Ex. 12 – Kite to*

Nunez dated 3/2/12).

160. Upon information and belief, had Nunez conducted a sufficient investigation, he could have determined “who” the staff and inmate witnesses were who counted the ten holes and interviewed them, or could have at least interviewed Cordova, Nurse Grieb, or C/O’s Cordera and Gallegos [who were mentioned by name], and relied on their observation and professional or lay opinions that the holes were *consistent with taser prongs*.

161. Upon information and belief, for obvious reasons Nunez ignored the second anatomical, and never bothered to interview me to determine “who” the staff and inmates were who identified and counted the ten taser holes, because it was to his and the State’s advantage to keep the true extent of the injury and force used hidden.

162. Major Miklich’s statement in his Step 2 grievance responsethat: “Your claim of excessive force was not founded through the review process by our facility or department,” and that Nunez was “factual and accurate” in his responses (See Ex. 2), is belied by the fact that Nunez: (1) ignored, among other things, the very statements of Cordova himself, which clearly establish his awareness of my complaints of the cuffs being too tight and of his refusal to loosen them [despite my posing no threat after being strapped to a board], (2) that he never consulted, and ignored the evidence in the second, more accurate, anatomical report which recorded: “Multiple (10) healing marks on back.” and (3) never interviewed me or otherwise bothered to determine “who” the staff and inmate witnesses were, so he could interview them to ascertain the fact [based on their professional or lay opinions] that all the holes in my back were *consistent with taser prongs*.

163. Again, upon information and belief, Nunez was not independent and detached, and should have disqualified himself from investigating this matter. He has conducted a sham investigation, which will call into question the accuracy and reliability of the *Martinez Report*.

No Investigation by Inspector General Jim West

164. Based on my conversation with Lt. Holloway, I understood that there would be an investigation by the Inspector General’s office. Therefore, when I did not hear from them within a reasonable time, on April 9, 2012, I contacted Inspector General Jim West by letter, wherein I requested whether I would be contacted as part of their investigation; informed him that myself and several witnesses had been anticipating an interview; and asked to be informed of the status of their investigation and intentions regarding interviews. (See Ex. 29 – Letter to West dated 4/9/12). He never responded. Neither myself or witnesses were interviewed.

The Arbitrary and Capricious Exercise of Authority by Topliss

165. On March 19, 2012, I did not attend the scheduled disciplinary hearing. However, I was informed by various segregation staff that I had been found guilty of both assault and advocating and creating a facility disruption. Although not given a copy of the disposition of charge at that time, Topliss, when asked to: “Describe how offender behavior violated COPD:” stated, “Inmate Stevenson directed physical force against and caused injury to another person.” (See Ex. 30 – Disposition of Charge). Topliss made this arbitrary finding despite that lack of factual allegations; the lack of the necessary elements that make up the COPD offense of assault; and despite the lack of any evidence that “I” caused anyone's injury.

Request for Review of Decision by Warden Rae Timme

166. On March 19, 2012, I submitted a written request to Warden Rae Timme, pursuant to AR 150-01(IV)(E)(3)(r), requesting review of the charge, as well as the hearing officer's finding of guilt with respect to the charge of assault. I assured her that I would never assault anyone, intentionally or otherwise; that I was careful not to touch anyone; that I had went to the corner, knelt down, and laid on my stomach with my hands and arms under me; and that I never kicked my legs as alleged in the report. I explained that there was no detail in the report that indicated that I caused any injury nor any description of how the officers were injured; and that there was not enough information contained in the report for the hearing officer to make an informed decision of just how injury occurred, and requested the matter be reversed. (See Ex. 31 – Review of Decision – dated 3/19/12).

167. I was released from segregation on March 29, 2012. That afternoon, I submitted my Step 1 grievance to Case Manager Harding in Unit 5.

168. After I was housed in unit 7, I began checking with Case Manager Bell to learn of the Warden's disposition. Upon learning that there was no mention of the charge or conviction in the computer, I assumed that she had granted my request to reverse the conviction, and had the matter expunged from my record.

169. That being the case, pursuant to AR 150-01(III)(E)(3)(t)(2), I made request to Bell that I be restored my job and restored all back pay from the date I was placed in segregation. He said it wasn't up to him.

170. One morning during the month of April, I spoke with Warden Timme at the Accedemics Building and explained [believing the COPD conviction had been reversed and expunged by her], that since the conviction had been reversed, that I was entitled to my job and to receive back pay from the date I was removed from population and placed in segregation. She agreed and said that she would speak to Bell to arrange it.

171. Apparently, at some point, Bell learned from Aldrich that the COPD conviction had not been reversed. He explained that there had been no disposition; that my request for review to the Warden and the disposition of charge had been misplaced; and that because of this, the conviction would ultimately be reversed. Bell also explained that he had spoke to Warden Timme and that I would be receiving back pay after meeting with him and Aldrich to discuss the matter and calculate the amount.

172. On May 2, 2012, I met with Bell and Aldrich in the South Dining Hall, and, among other thins, discussed and calculated my back pay. During the meeting Aldrich acknowledged that my written request for review; Cordova's incident report; and the disposition of charge(s) had been misplaced.

173. At this time, I expressed complaint that Cordova's report had been intentionally embellished and contained numerous factual omissions and several fabricated and misleading statements, which were purposely made in order to have me proceeded against without cause, which I explained was actionable in federal court because it was nothing more than a continuation of Nunez's retaliation.

174. Aldrich then said that sine it was the "state's fault" that my request to the Warden and the disposition of charge(s) had been misplaced, that she was going to do the "right thing" and reverse the conviction and expunge the matter from my record. She then made the comment: "And you're not going to sue, right?" My understanding of her comment was that I was not going to pursue civil action *against Cordova* relating to his fabricated report and his causing me to be proceeded against, of which we had *just* discussed, so I agreed.

175. When I did not receive a response to Step 1 by Wednesday, May 2, 2012, I decided to give them an extra day. However, on Thursday May 3rd Case Manager Bell was not in his office all day. I assumed that he was at the "Job Board." as case managers usually are on Thursdays.

176. On May 4, 2012, when I went to Bell to check the status of the grievance, he responded: "I thought you said you were not going to sue!" I immediately assured him that I had said no such thing with respect to the *use of force*, and requested to know the status of my grievance. He said that he would check and get back to me.

177. Later that afternoon, Bell explained that the grievance had been submitted and logged but not assigned. I then requested a grievance form and immediately submitted a Step 2.

178. That evening, I signed the Disposition of Charge(s), indicating that the COPD conviction had been reversed. The form stated: "Missed disposition time frame." See *Ex. 30 – Disposition of Charge(s) signed 5/3/12*.

179. Also on May 4th I wrote a letter to Grievance Coordinator, Violet Wolfe, inquiring as to why there had been no response or notification that the 30 day time limit would be exceeded. (See *Ex 31 - Letter dated 5/4/12*). So that there would be a record, I also documented the matter by sending substantially the same letter to Grievance Officer, DeCesaro. (See *Ex. 32 – Letter to Cedeno [meant for DeCesaro] dated 5/7/12*).

180. In response to Bell's comment about 'not suing,' on May 8, 2012, I wrote a letter to Warden Timme, and among other things, explained what had occurred during the meeting with Bell and Aldrich, and clarified that I did not agree not to sue relating to the use of force incident. (See *Ex. 33 – Letter to Warden Timme dated May 8, 2012*).

181. Since this was a sensitive issue, and since defendants had already shown that they would interfere with the grievance process, to protect myself going forward, I decided to make a record of each submission. To that end, with each subsequent grievance I would submit a separate grievance form labeled "Information only," [hereinafter "informational"], indicating that the response was late; the date the previous Step was submitted; the date received by Grievance Coordinator Wolfe; a statement indicating that the 30 day limit had passed; and a statement indicating that I was proceeding to the next level.

182. I explained to Bell what I was doing, and that since DOC had history of not responding in time or of using any excuse to prevent exhaustion, that the purpose of the "informational" was to create a separate unofficial record for the file of how the grievance was being treated. The "informationals" were *not* grievances, and were not to be treated as such. Each form was clearly marked "Information Only," and spoke in the past tense.

183. The Step 1 grievance was assigned to be completed by May 9, 2012. This assignment was actually 11 days *after* the date it was supposed to be due. Since it was submitted to Case Manager Harding on March 29, 2012, a response should have been due no later than April 28, 2012 – or within 30 days. This did not happen.

184. When I did not receive a timely Step 1 grievance response, on May 4, 2012, I prepared a Step 2 and gave it to Bell to be submitted to Wolfe to be logged and entered into the database. (See *Ex. 3 – Step 2 Grievance dated 5/4/12*).

185. The late Step 1 grievance response from Nunez was not received until May 15, 2012, as evidenced by my signature in the "receipt" section. (See *Ex. 2 – Step 1 Grievance Response signed 5/15/12*).

186. The first "informational" was prepared within days of receiving the late Step 1 response. The "informational" was prepared on May 18, 2012, and Bell's signature indicates that he received it on May 21,

2012. (See *Ex. 34 – Step 1 Informational* dated 5/18/12).

187. In the meantime, on June 5, 2012, I received two payroll-credits for my back pay. (See *Ex. 35 Inmate Banking History* dated 6/6/12).

188. When I did not receive a timely Step 2 grievance response, on June 14, 2012 [not June 15th as incorrectly stated in the June 26th letter to Janet Bock Currie and Anthony DeCesaro], I prepared a Step 3 grievance and gave it to Bell to be submitted to Wolfe. (See *Ex. 4 – Step Grievance* dated 6/14/12). However, after Bell noticed the grievance form had been issued by another case manager, bearing the printed name of “S. Cadwallader #4560,” after signing it, *but before dating it*, he returned the form to me along with a blank grievance form and told me to re-write it, which I did, and gave it back to him along with my Sworn Statement that same afternoon. He signed and dated it in my presence and said that it would be turned in that day.

189. The late Step 2 grievance response from Miklich was not received until June 18, 2012, as evidenced by my signature in the “receipt” section. (See *Ex. 3 – Step 2 Grievance Response* signed 6/18/12).

190. The second “informational” was prepared the following day of receiving the late Step 2 response. The “informational” was prepared on June 19, 2012, and Bell’s signature indicates that he received it on June 19, 2012. See *Ex. 36 Step 2 Informational* dated 6/19/12).

191. I did not circle any number or Step at the bottom of the “informationals.” I did not circle such, because they were *not* grievances, as bell was aware. However, Bell, of his own volition, circled the step “2” on the first “informational” (See *Ex. 34 – Step 1 Informational* dated 5/18/12). This is evidenced by his writing. Notice the style of his circles on the Step 2 grievance itself (*Ex. 3*). Clearly, this was his writing, not mine. As for the second “informational”, since I did not circle the step “3” and it is not Bell’s writing, upon information and belief, it is assumed that Wolfe circled it after receiving it.

192. On June 27th, when I approached Bell, he first claimed that I never submitted a Step 3, but only the “informational.” However, after showing him my grievance log; the initial Step 3 bearing his signature and reminding him that he had me rewrite it because it had the name of another case manager; and after reminding him that I had submitted it along with my Sworn Statement; and then after accusing him and Grievance Coordinator Wolfe of intentionally trying to prevent me from exhausting, he suddenly remembered receiving and submitting it.

193. He checked the computer and learned from the dates that the “informational” had been actually logged, and not the Step 3 itself. He said that he would call and have the Grievance Coordinator check the file and get back to me. Later that afternoon, he told me that it was not in the Grievance Coordinator’s file.

194. On July 30, 2012, I received a letter from DeCesaro dated July 26, 2012, which responded to my letter of June 26th, and, among other things, indicated that I had not incorporated all issues and remedies contained in my original grievance; that he had yet to receive a Step 3 from me but only two Step 2's – one labeled as information only; that he would not reconsider the Step 3 because he had no authority to do so; and that he could not reopen any grievance. (See *Ex. 39* – Letter from Grievance Officer DeCesaro dated 7/21/12).

195. Noteworthy is the fact that the Step 1 “informational” was not logged or mistaken as a Step 2 grievance. So why was Step 2 “informational” logged or mistaken as a Step 3 grievance [especially when the Step 2 “informational” was clearly marked (Information Only) and was actually submitted five days *after* the Step 3 was submitted], if not to intentionally prevent me from exhausting.

196. On August 1, 2012, I again approached Bell with DeCesaro's letter and informed him that headquarters had still not received my Step 3, and demanded to know its whereabouts. He again stated that he had submitted it along with the sworn statement to the Grievance Coordinator, and that he did not know where it was.

197. On August 30, 2012, I responded to DeCesaro's letter by including a copy of the first Step 3 grievance which had Bell's signature, as well as including a two-page Sworn Statement describing what happened after the grievance was submitted to Bell, including what I believed happened to the grievance. I stated that if he was concerned about what happened to the grievance that he would investigate that matter himself and respond to my complaint. One thing I mentioned in the Sworn Statement was that: “I cannot be faulted that my Step 3 grievance was not properly scanned and entered into the electronic database, nor can I be faulted that the Grievance Officer responded to the “Informational,” which, incidentally, was submitted 5 days after [6/14], the Step 3 was submitted. And to my knowledge, there was no effort made to locate the Step 3, other than noting that it was not in the facility Grievance Coordinator's file. I believe that it was “purposely” misplaced to prevent me from exhausting my administrative remedies via the grievance process.” See *Ex. 40* – Letter to DeCesaro dated 8/30/12, and Sworn Statement dated 8/30/12).

198. Despite DeCesaro's earlier claim that he would not “reconsider” or “reopen any grievance,” apparently after investigating the matter he changed his mind and did in fact reopen the grievance and actually responded to the Step 3 complaint, as evidenced by his response. (See *Ex. 5* – Letter from DeCesaro dated 9/25/12).

199. Note that although he again found that I [purportedly] failed to renew and incorporate all issues and remedies, this time however, he mentions *nothing* about *not exhausting* “based upon [the] failure to satisfactorily request allowable relief,” as he did in his June 21st response. (See *Ex. 37* – Letter from DeCesaro dated 6/21/12). This time, however he attempts to attack my *affidavit* as not being in compliance with the AR’s, which it clearly is, because it “lends support” to my claims.

Medical attention at last

200. Although I requested to be seen by medical on March 1, 2012, when I did not hear from them within a reasonable time, on April 5, 2012, I began a letter to Dave Tessier, Health Services Administrator, recounting what happened during the incident; describing the injuries received; informing him that I had been waiting for over a month, and that I would like to be seen and examined. (See *Ex. 41* – Letter to Tessier dated 4/5/12).

201. On that date, I was seen by Nurse Practitioner, Bonnie Duran. Among other things, she tested flexibility and mobility of the wrists; ordered X-Rays to detect fractures; EMG if needed; prescribed Prednisone, and Naprosen for pain; and referred me to dental. Also, on the evening of April 5th, I received a message from her indicating that she had discussed my case with the dental department and that I would have to submit a kite to be examined by Dr. Rabel. (See *Ex. 42* – Message from Duran dated 4/5/12).

203. Even though I continue to feel as if I have fractures to the bones in the back of both hands, on April 10, 2012, Rocky Mountain Radiologist, among other things, indicated in their report that “there is no *apparent* fractures or discoloration.”

204. On April 17, 2012, after she conducted a chart review, I received another message from Nurse Duran dated April 15, 2012. This time she informed me that the Radiologist found no fracture in either hand or wrist; encouraged me to take the Naprosen with food; and warned me that if I could decrease the amount of Naprosen as the pain lessened, it would help preserve kidney functions. (See *Ex. 43* – Message from Duran dated 4/15/12).

205. On April 19, 2012, I was seen by the dentist [Dr. Rabel], who restored both front teeth with composite.

Code of Conduct/Ethics prohibits use of excessive force and departing from truth

206. AR 1450-01 [*Code of Conduct*] prohibits certain conduct, and specifically provides: (1) “Excessive physical force or verbal abuse of offenders by DOC employees... will not be permitted, nor will physical/verbal force be used beyond that necessary to control an offender or to enforce legitimate and legal commands;” (2) “DOC employees... shall not bear false witness against... [an] offender;” (3) DOC employees...

shall neither falsify any document nor willfully depart from the truth, either in giving testimony or in connection with any official duties or official investigation;” and (4) “DOC employees... who are involved in or are a material witness to a use of force incident are required to provide a complete factual account of their actions and/or observations of the incident, as outlined in Administrative Regulation 100-07, *Reportable Incidents*.” Additionally, all DOC employees are to be familiar with and comply with the provisions of the AR and have signed a certificate of review and compliance affirming to the departmental code of ethics. (See AR 1450-01-Code of Conduct, Sections (IV) (B)(S)(X) and (JJ)).

Bell's vindictive attempt to have me internally classified as a high risk offender:

207. Upon information and belief, after I accused Bell of intentionally trying to prevent me from exhausting, and after complaining about him in various letters to his superiors, he thereafter took steps to vindictively have me classified as a “high risk offender”.

208. AR 100-07 [*Reportable Incidents*], describes a high risk offender, in part, as “An offender who has displayed or has documentation identifying STG affiliation; history of escape or escape paraphernalia; history of assaultive behavior towards DOC employees...” (See AR 100-07- Reportable Incidents, Section (III) (Q)).

Bell's First attempt:

209. Bell's first attempt to have me classified as a “high risk offender” came on March 11, 2013, when he prepared my Inmate Reclassification Custody Rating. Although knowing that the COPD conviction for assault had been reversed and expunged, he nonetheless gave me 10 points under the category of “HISTORY OF INSTITUTIONAL VIOLENCE” for “Assault/Battery with weapon /serious injury/ against staff/visitor.”

210. In fact, Bell knowingly violated DOC policy. Contrary to AR 600-01 [*Offender Classification*], prior to generating the classification document, he did not “actively engage” me in the classification process through “personal interview.” Not only was I not allowed during the classification review process, per policy, I was not given notice [48 hours in advance] that there would even be a review; nor given the opportunity to “waive” my presence, or even “sign” the classification document, as required by DC Form 600-01C – page 2.

211. Additionally, the AR allows for the offender to “dispute” or “disagree” with the case manager's recommendation and allows him to make a “statement” to the classification committee chairperson prior to him/her making a decision to agree, disagree or modify any override request/recommendation made by the case manager. I was not afforded any of these opportunities. (See AR 600-01- Offender Classification, Sections (IV) (F-J)).

212. When it was rumored that Bell would be retiring in July, suspecting foul play, I requested a copy of every document that he was required to generate to check for accuracy. On May 1, 2013, when he printed the Inmate Reclassification Custody Rating, I immediately noticed that he had scored me at closed custody by giving me the additional 10 points for staff assault.

213. When I brought this to his attention, he told me that he did not do it; that it had to be someone from DOC Headquarters. Of course I did not believe him because I knew that "he" was the person responsible for generating the classification documents. Nonetheless, he said that he would "fix it."

214. On June 26, 2013, believing that he had *no intent* to "fix it" before he retired, I requested Case Manager Willis to provide me with an updated copy. Sure enough, as suspected, there had been no change. (See *Ex. 44 - Reclassification dated 6/26/13*). In July I contacted Ms. Aldrich about the problem, however, when she did not respond, I wrote a letter to Susan Butler at DOC Headquarters requesting her assistance to have the score adjusted and the derogatory information deleted. (See *Ex. 45 - Letter to Butler dated 8/14/13*).

215. On August 26, 2013, Case Manager Jordan corrected the document by deleting the 10 points. On September 9, 2013, he issued me a copy of the corrected document. (See *Ex. 46 - Reclassification dated 9/9/13*).

Bell's second attempt:

216. Because of the damage to my hands and wrists, I cannot workout or grip the steel weight bars without feeling pain and discomfort, therefore, I have been exercising in my cell off and on with a home-made water bag. Several staff were aware of this. However, during a cell search on May 30, 2013, C/O Jantz confiscated the water bag and wrote me up for "Unauthorized Possession."

217. When asked by Jantz and Bell to explain the purpose of the bag, I told them that the bag was used for exercise; that I could not workout with weights due to the damage to my hands and wrists; that I had a 50 pound medical weight restriction [which was changed to 10 pounds without my knowledge] due to my impairments; that staff were aware of the bag and its purpose; and that I had been using a bag off and on in my cell.

218. Bell's second attempt to have me classified as a "high risk offender" came, when, despite the above explanation, he pushed and kept insisting that the bag was "escape paraphernalia;" when he wrote an incident report to that effect; when he influenced Shift Commander Cordova to lock me up; and when he influenced the disciplinary officer to add *his* incident report at the end of C/O Jantz's report – wherein he made the statement: "I then told Stevenson that what I thought I was seeing was a possible start of a dummy making

item,” which formed the basis for the additional charge of “Possession of Escape Paraphernalia.” (See *Ex. 46 – Notice of Charge and Incident Report dated 6/6/13*).

219. When Jantz went to sign her incident report, she noticed that the report from Bell had been added to the bottom of her report, and an additional charge added [which was fraudulent on the part of the disciplinary officer], which, according to her, she was “reluctant” to sign.. (See *Ex. 46 – Notice of Charge and Incident Report dated 6/6/13*).

220. During the disciplinary hearing, I was denied several relevant witnesses, as well as prior disclosure of Bell's report and the supplemental report of C/O Manzanares. On the Disposition of Charge(s), Topliss acknowledged that he relied on the “certified statement of C/O Jantz and supplemental report by C/O Manzanares” to find guilt, despite this non-disclosure. (See *Ex. 47 – Disposition of Charge(s) dated 6/11/13*).

221. After being found guilty, [despite not being disclosed the reports of Bell and Manzanares, or all witnesses being called], I appealed to Warden Timme alleging denial of due process, and stated, among other things, that: “I was denied the report of Lt. Bell. The notice of charge states “According to incident report #633199 written by Lt. Bell...” Well, where's his report? Why wasn't it disclosed? How do I know what he wrote? This is what someone else said he said. Bell's signature is no where to be found. Further, Jantz could not rightfully “certify” Bell's report as “true and correct” when she did not write it... Based on the above the COPD conviction must be reversed and expunged from my record.” (See *Ex. 48 – Offender Appeal dated 7/5/13*).

222. In the end, on July 25, 2013, the COPD conviction was reversed and expunged, because “all aspects of due process were not followed.” However, by then the damage had been done. I was thrown in segregation and classified as a high risk offender. (See *Ex. 48 – Offender Appeal (Hearing Decision Section) dated 7/25/13*).

SECOND CLAIM FOR RELIEF
42 U.S.C. 1983 – Conspiracy to Violate Civil Rights
(Fourteenth Amendment Due Process Violation)

Evidence of cover up:

223. Plaintiff incorporates by reference all paragraphs of this complaint as if fully set forth herein.

224. In furtherance of the violation of my Eighth Amendment right to be free from cruel and unusual punishment, Defendants Cordova, Clinkenbeard, Bufmack, Nunez, Holloway, Topliss, Bell and Wolfe recklessly, knowingly, intentionally, willfully and wantonly conspired with one another, and others, to deprive me of my Eighth and Fourteenth Amendment rights under the United States Constitution, by attempting: (1) to cover up, hide, minimize and otherwise justify the use of excessive force; (2) to manufacture a report to have me proceeded against for assault without cause; (3) to thwart and/or prevent me from exhausting administrative remedies; and (4) to have me labeled a high risk offender.

225. These Defendants recklessly, knowingly, intentionally, willfully and wantonly acted in concert and in various ways, before, during and after the investigation by Nunez of the use of force, and conspired to cover up, hide, minimize and otherwise justify the excessive use of force, as is documented by the grievance responses, and the many pages of reports, memos, and kites.

226. Each defendant recklessly, knowingly, intentionally, willfully and wantonly engaged in overt acts in furtherance of the conspiracy, as described herein:

227. In particular, from the beginning, Defendants Bufmack, Nunez, and Holloway conspired to cover up, hide and minimize the true extent of injury sustained from the excessive force. This is evidenced: (1) by Bufmack's failure to accurately record my injuries; (2) by her failure to return and correct the anatomical after telling me that she would do so on March 3, 2012; (3) by Holloway's failure to take additional photographs of my wrists and teeth as requested; (4) by Nunez's failure to authorize a second more accurate anatomical and additional photographs of my wrists and teeth when requested to do so; and (5) by Nunez's failure to conduct a thorough investigation, or to contact or otherwise include me or named individuals as part of his investigation – all in furtherance of their continuing conspiracy to cover up and hide the violation of my Eighth Amendment rights.

228. Defendants Cordova, Holloway and Clinkenbeard, long before the decision was made to charge me with a COPD violation, in a single minded effort to have me proceeded against without cause for assault, no matter what the evidence, conspired to manufacture the report that I physically resisted; kicked my legs and caused staff injury - all in furtherance of their continuing conspiracy to cover up and hide the violation of my Eighth Amendment rights.

229. Defendants Cordova, Holloway and Clinkenbeard, in their effort to have me wrongly convicted for staff assault, conspired and worked closely together, and necessarily consulted closely with Topliss, sharing information and strategizing, as is evidenced: (1) by the number of visits Holloway made to my cell snooping to see what I intended to do; (2) by the fact that what I should have been written up for [disobeying C/O Meyers' lawful order to hand over the grievances and Sgt. Clinkenbeard's lawful order to cuff up], appears nowhere in the incident report (In fact, there was no write up or incident report from either Meyers or Clinkenbeard, period); and (3) by the disposition reached by Topliss in finding me guilty of staff assault, despite the lack of factual allegations and the necessary elements that make up the COPD offense of assault, and despite the lack of any evidentiary support that "I" caused injury - all in furtherance of their continuing conspiracy to cover up and hide the violation of my Eighth Amendment rights.

230. Defendants Bell and Wolfe, at some point made an agreement and conspired to thwart and prevent me from exhausting the grievance process. This is evidenced: (1) by the Step 1 grievance being held and not assigned to be completed until May 9, 2012, forty-one days *after* it had been submitted, and only *then*, when I inquired about it; (2) by Bell submitting the Step 2 "informational" [which he knew was not a grievance], instead of the actual Step 3 grievance itself; and (3) by Wolfe logging the Step 2 "informational" instead of the Step 3 grievance - all in furtherance of their continuing conspiracy to cover up and hide the violation of my Eighth Amendment rights.

CONCLUSION

231. The use of excessive force and deliberate indifference violated my rights and constituted cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

232. The Defendants continuing conspiracy to cover up, hide, minimize or otherwise justify the use of excessive force violated my rights to due process under the Fourteenth Amendment to the United States Constitution.

233. I have no plain, adequate or complete remedy at law to redress the wrongs described herein. I have been and will continue to be irreparably injured by the conduct of the Defendants unless this Court grants the declaratory and injunctive relief which I seek.

G. REQUESTED RELIEF:

WHEREFORE, Plaintiff respectfully prays that this Honorable Court enter judgment in his favor and against Defendants and award him all relief as allowed by law, but not limited to the following:

- a. Enter an order permanently enjoining the defendants, their agents, servants, employees, or any other person acting in concert with them or on their behalf, and prohibiting them from taking any action to harass, molest, intimidate, or transfer the Plaintiff to another facility or mysteriously loose his legal material for exercising his right to seek redress for violations of his constitutional rights;
- b. Enter an order for the United States Marshals to take possession and custody of the two tasers used, as well as the taser log and count information; the photographs, DVD's and other electronically stored/recoded observation evidence; all E-mails, memorandums, PCDCIS incident reports, use of force reports, supplemental reports, and investigative reports, findings and summaries; all medical and dental reports relating to the incident; and all other evidence associated with the use of force incident and investigation, including the Grievance Coordinator and Grievance Officers files to prevent loss, alteration and/or destruction by defendants; and so the Court can see that there are genuine issues and material that clearly show the constitutional violations Plaintiff alleges;
- c. Enter an order declaring that the defendants acts and omissions described herein violated the Plaintiff's known rights under the Constitution and laws of the United States;
- d. Enter an order awarding Plaintiff compensatory damages in the amount of \$100,000, against each defendant for the pain and suffering at the time, and for the lasting effects he suffers, as well as emotional distress – all suffered as a result of the violation of his Eighth Amendment right to be free from the excessive use of force;
- e. Enter an order awarding Plaintiff punitive damages in the amount of \$150,000, against each defendant, jointly and severally, to deter these and other CDOC officials from using unnecessary and malicious force against prisoners; and for their evil motive and intent and/or their reckless or callous indifference to Plaintiff's health and safety and his federally protected rights; and for their attempt to cover up the excessive force;
- f. Enter an order awarding pre-judgment and post judgment interest at the highest rate;
- g. Enter an order awarding attorney's fees and costs; as well as recovery to Plaintiff of his costs in this suit;
- h. Enter an order granting additional relief as justice requires or the law allows;
- I. Retain jurisdiction of this matter for the purpose of enforcing this Court's order.

PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated this 23 day of February, 2014

William R. Stevenson
 William R. Stevenson, Plaintiff
 Colorado Territorial Correctional Facility
 P.O. Box 1010
 Canon City, CO 81215

ORIGINAL

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged herein are true, except as to matters alleged upon information and belief, and as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Dated this 23 day of February, 2014

William R. Stevenson
William R. Stevenson, Plaintiff
Territorial Correctional Facility
P.O. Box 1010
Canon City, CO 81215

Supporting Cases

Supporting Cases

Supporting Cases

SUPPORTING CASES

EXCESSIVE FORCE:

1 "After incarceration" the Eighth Amendment prohibits "the unnecessary and wanton infliction of pain" on prisoners. *Whitley v. Albers*, 475 U.S. 312, 319 (1986). The "core inquiry for an Eighth Amendment and excessive force claim is "whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. *Hudson v. McMillan*, 503 U.S. 1, 7 (1992). The Tenth Circuit has articulated two "prongs" that a Plaintiff must show to prevail on such a claim: (1) that "the alleged wrongdoing was objectively harmful enough to establish a constitutional violation," and (2) "that the officials acted with a sufficiently culpable state of mind." *Serna v. Colo. Dept. of Corr.*, 445 F.3d 1146 (10th Cir 2006) (citing *Smith v. Cochran*, 339 F.3d 1205, 1212 (10th Cir 2003)(The court can infer malicious, sadistic intent from the conduct itself where "there can be no legitimate purpose" for the officers' conduct).

2 Courts under *Maynard* must balance the need for application of force with the amount of force used. *Mitchell v. Maynard*, 80 F.3d 1433, 1440 (10th Cir. 1996).

The use of excessive physical force against a prisoner may constitute cruel and unusual punishment even when the inmate does not suffer serious injury. Courts are directed to decide excessive force claims based on the nature of the force rather than the extent of the injury. To conclude, as the District Court did here, that the absence of "some arbitrary quantity of injury" requires automatic dismissal of an excessive force claim improperly bypasses this core inquiry. *Wilkins v. Gaddy*, 559 U.S. 34 (2010).

COURT NOT AUTHORIZED TO ACCEPT FINDINGS OF PRISON INVESTIGATION:

3 The Tenth Circuit has held that a "*Martinez*" report is treated like an affidavit, and the Court is not authorized to accept the factual findings of the prison investigation where the plaintiff has presented conflicting evidence. *Green v. Branson*, 108 F.3d 1296 (10th Cir 1997)(citing *Hall v Bellmon*, 935 F.2d 1106, 1111 (10th Cir 1991).

4 Use-of-force investigation was not conducted by detached investigators, which calls into question the reliability. Even when investigation occurs, managing prison officials take no action, impose actions that are inconsistent with the seriousness of the violation, or fail to impose action in a timely manner.....

PLRA'S EXHAUSTION – ADMINISTRATIVE REMEDIES:

5 Under 42 U.S.C. Section 1997(e)(a), exhaustion of administrative remedies is a prerequisite to suit brought by prisoners under 42 U.S.C. Section 1983, and the United States Supreme Court has held that the exhaustion requirement of 42 U.S.C. Section 1997(e) applies to suits seeking monetary damages that are not administratively available. *Hopkins v. Addison*, 36 Fed. Appx. 367 (2002).

6 We have stated that district courts are "obligated to ensure that any defects in exhaustion were not procured from the action or inaction of prison officials" before dismissing a claim for failure to exhaust.

Aquilar-Avellaveda v. Terrell, 478 F.3d 1223, 1225 (10th Cir. 2007). Where prison officials prevent, thwart, or hinder a prisoner's efforts to avail himself of an administrative remedy, they render that remedy "unavailable" and a court will excuse the prisoner's failure to exhaust. *Lyon v. Vande Krol*, 305 F.3d 806, 808 (8th Cir. 2002) (en banc) ("[W]e have held that inmates cannot be held to the exhaustion requirement of the PLRA when prison officials have prevented them from exhausting their administrative remedies."). *Little v. Jones*, 607 F.3d 1245 (10th Cir. 2010).

7 Prison officials may not take unfair advantage of the exhaustion requirement. A remedy becomes unavailable if prison employees do not respond to a properly filed grievance or otherwise use affirmative misconduct to prevent a prisoner from exhausting. *Kaba v. Stepp*, 458 F.3d 678, 684 (7th Cir. 2006).

8 Under Prison Litigation Reform Act (PLRA) a claim rejected by prison grievance on procedural grounds is considered exhausted for purposes of the total exhaustion rule. *Kikumura v. Osagie*, 461 F. 3d 1269 (10th Cir 2006).

9 An inmate has no obligation to appeal from a grant of relief, or a partial grant that satisfies him, in order to exhaust his administrative remedies. *Harvey v. Jordan*, 605 F.3d 681 (9th Cir. 2010).

PLRA'S MENTAL AND EMOTIONAL INJURY – SHOWING OF PHYSICAL INJURY:

10 The PLRA, 42 U.S.C. Section 1997(e), provides in relevant part that a "Prisoner confined in a jail, prison, or other correctional facility" may not bring a federal civil action "for *mental or emotional injury* suffered while in custody without a prior showing of *physical injury*." *42 U.S.C. Section 1997(e)*.

11 Section 1997(e) prohibits claims for money damages, but does not bar declaratory or injunctive relief where prisoner fails to allege or prove the requisite physical injury. *Serna v. Colo. Dept. of Corr.*, 455 F.3d 1146 (10th Cir. 2006)(citing *Perkins v. Kansas Dept. of Corr.*, 165 F.3d 803, 808 (10th Cir 1999)).

12 The United States Supreme Court has rejected the notion that "significant injury" is a threshold requirement for stating an excessive force claim. The core judicial inquiry is not whether a certain quantum of injury was sustained, but rather whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated whether or not significant injury is evident. Otherwise, the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury. *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010).

SUPERVISORY LIABILITY – KNEW OF VIOLATION, CONDONED IT, FAILED TO PREVENT:

13 An inmate has a constitutional right to be secure in her bodily integrity and free from attack by prison guards. *Hovater v. Robinson*, 1 F.3d 1063, 1068 (10th Cir. 1993).

14 A corrections officer bears an affirmative duty to intercede on behalf of an inmate when the officer witnesses other officers maliciously beating that inmate in violation of the inmate's Eighth Amendment rights. *Jones v. Huff*, 789 F. Supp. 526, 535 (N.D.N.Y. 1992).

15 Supervisory state employee is liable for the constitutional violations of subordinates under 42 U.S.C. Section 1983 if he participated in or directed the violations, or knew of the violations and failed to act to prevent them. *Tesoro v. Zavaraz*, 46 F. Supp. 2D 1118 (D. Colo. 1999).

16 To establish supervisor liability under Section 1983, it is not enough for a plaintiff to merely to show a defendant was in charge of other state actors who actually committed the violation, instead, the Plaintiff must establish a deliberate indifference, intentional act by the supervisor to violate constitutional rights." *Serna v. Colo. Dept. of Corr.*, 445 F.3d 1146, 1151 (10th Cir 2006)(citing *Jenkins v. Wood*, 81 F.3d 988, 994-95 (10th Cir. 1996)(quoting *Woodward v. City of Worland*, 977 F.2d 1392, 1399 (10th Cir. 1992).

17 In order to establish a § 1983 claim against a supervisor for the unconstitutional acts of his subordinates, a plaintiff must first show the supervisor's subordinates violated the constitution. Then, a plaintiff must show an "affirmative link" between the supervisor and the violation, namely the active participation or acquiescence of the supervisor in the constitutional violation by the subordinates...In this context, the supervisor's state of mind is a critical bridge between the conduct of a subordinate and his own behavior. Because "mere negligence" is not enough to hold a supervisor liable under § 1983, a plaintiff must establish that the supervisor acted knowingly or with "deliberate indifference" that a constitutional violation would occur. *Serna v. Colo. Dept. of Corr.*, 445 F.3d 1146, 1151 (10th Cir 2006).

18 To establish a supervisor's liability under Section 1983 [plaintiff] must show that "an 'affirmative link' exists between the [constitutional] deprivation and either the supervisors 'personal participation, his exercise of control or direction, or his failure to supervise.'" *Green v. Branson*, 108 F.3d 1296 (10th Cir 1997) (citing *Meade v. Grubbs*, 841 F.2d 1512, 1527 (10th Cir 1988).

DELIBERATE INDIFFERENCE:

19 In the Tenth Circuit "an official or municipality acts with deliberate indifference if its conduct (or adopted policy) disregards a known or obvious risk that is very likely to result in a violation of a prisoner's constitutional rights." *Mitchell v. Maynard*, 80 F.3d 1433, 1442 (10th Cir. 1996)(quoting *Berry v. City of Muskogee*, 900 F.2d 1489, 1491 (10th Cir. 1990).

20 To succeed on an Eighth Amendment claim, a plaintiff must allege facts demonstrating that “the deprivation is sufficiently serious,” and that prison officials acted with deliberate indifference to inmates health and safety.” *Fogle v. Pierson* 435 F.3d 1250, 1260 (10th Cir 2006)(citing *Perkins v. Kansas Dept. of Corr.*, 165 F.3d 803, 809 (10th Cir. 1999).

21 For prison officials to be found liable of deliberate indifference under the Eighth Amendment, the official must know of and disregard an excessive risk to inmate health or safety... Whether a prison official had the requisite knowledge of a substantial risk is a question of fact...and a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.” *Fogle*, (citing *Perkins*, 165 F.3d at 809-10).

22 Deliberate indifference requires that the state official “both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Serna v. Colo. Dept. of Corr.*, 445 F.3d 1146, 1154 (10th Cir 2006)(citing *Verdecia v. Adams*, 327 F.3d 1171,1175 (10th Cir. 2003).

STATE OFFICIALS SUED INDIVIDUALLY:

23 The Supreme Court has held that state officials sued in their *individual capacities* are “persons” within the meaning of 42 U.S.C. Section 1983 and are not absolutely immune from personal liability under Section 1983 solely by virtue of the official nature of their acts. *Hafer v. Melo*, 502 U.S. 21, 30 (1991).

PROSPECTIVE INJUNCTIVE RELIEF AGAINST STATE OFFICIALS:

24 Prospective injunctive relief against state defendants is cognizable under the doctrine in *Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441 (1908), which allows federal courts to entertain suits seeking prospective injunctive relief against state officials. *Hughes v. Colo. Dept of Corr.*, 594 F. Supp. 2D 1226 (D. Colo. 2009)(citing *Chaffin v. Kansas State Fair Brd.* 348 F.3d 850, 866 (10th Cir 2003); *Elephant Butte Irrigation Dist., v. Dept. of Interior*, 160 F.3d 602, 607 (10th Cir. 1998) (“The *Ex Parte Young* doctrine...applies only when the lawsuit involves an action against [individual] state officials, not against the state.”).

COMPENSATORY DAMAGES – EMOTIONAL DISTRESS:

25 We have held that "damages may be awarded for nonpecuniary injury, such as psychological harm, where plaintiff has been deprived of his substantive constitutional rights." *Foster v. MCI Telecommunications Corp.*, 773 F.2d 1116, 1120 (10th Cir. 1985); *Carey v. Piphus*, 435 U.S. 247, 55 L. Ed. 2d 252, 98 S. Ct. 1042 (1978) ("mental and emotional distress caused by the denial of procedural due process itself is compensable under § 1983"); *Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 308-09, 91 L. Ed. 2d 249, 106 S. Ct. 2537 (1986)(Carey stood for proposition that compensatory damages are available under § 1983 for constitutional violations, regardless of whether the constitutional right violated is procedural or

substantive). We concluded above that Miller's amended complaint states a claim for violation of a substantive constitutional right -- the Eighth Amendment right to be free from the use of excessive force. Therefore, if it is determined on remand that Miller's Eighth Amendment rights were violated, then he potentially may recover compensatory damages for emotional distress. *Miller v. Glantz*, 948 F.2d 1562, 1568 (10th Cir. 1991).

DAMAGES – MINOR INJURY:

26 The United States Supreme Court found that prisoner was entitled to damages under Section 1983 for injuries sustained when prison guards kicked and struck him during a transfer to an administrative lock-down unit, even though the injuries sustained by the prisoner were minor. An Eighth Amendment violation occurs when prison officials apply force maliciously and sadistically for the purpose of causing harm. *Hudson v. McMillan*, 503 U.S.1 (1992).

DAMAGES – WHERE WRONGDOING PREVENTS PLAINTIFF FROM SHOWING DAMAGES:

27 In a case where defendant, by his own wrong, has prevented a more precise computation of damages, the jury may not render a verdict based on speculation or guesswork. But the jury may make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly. In such circumstances juries are allowed to act upon probable and inferential, as well as direct and positive proof.

Bigelow v. RKO Radio Pictures, Inc., 327 U.S. 251, 265 (1946).

PUNITIVE DAMAGES – RECKLESS OR CALLOUS INDIFFERENCE:

28 “Punitive damages are available in 1983 actions and are to be awarded only when the defendants conduct is shown to be motivated by evil motive or intent, or when it involves *reckless or callous indifference* to the federally protected rights of others.” *Serna v. Colo. Dept. of Corr.*, 445 F.3d 1146 (10th Cir 2006)(Citing *Jolivet v. Deland*, 966 F.2d 573, 577 (10th Cir, 1992).

29 The focus must be on whether the defendants actions call for “deterrence and punishment over and above that provided by compensatory award.” *Serna v. Colo. Dept. of Corr.*, 445 F.3d 1146 (10th Cir 2006) (Citing *Smith v. Wade*, 461 U.S. 30, 54 (1983); “punitive damages serve a broader function [than compensatory damages]; they are aimed at deterrence and retribution.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

PUNITIVE DAMAGES – INDIVIDUAL OFFICIAL:

30 The fact that municipalities are immune from punitive damages does not mean that individual officials sued in their official capacity are likewise immune. *Youren v. Tintic School Dist.*, 343 F.3d 1296, 1307 (2003 10th Cir. 2003); *Memphis Community School District v. Stachura*, 447 U.S. 299, 306 (1986).

SUMMARY JUDGMENT:

31 To avoid summary judgment a plaintiff is required to satisfy a "heavy two-part burden: (1) "that the defendant's actions violated a constitutional or statutory right" and (2) that the right "was clearly established at the time of the defendant's unlawful conduct." *Medina v. Cram*, 252 F.3d 1124, 1128 (10th Cir. 2001). The plaintiff must show evidence that each defendant violated a constitutional right and that the right was clearly established at the time.

32 In order for a handcuffing claim to survive summary judgment, a plaintiff must offer sufficient evidence to create a genuine issue of material fact that: (1) he or she complained the handcuffs were too tight; (2) the officer ignored those complaints; and (3) the plaintiff experienced some physical injury resulting from the handcuffing. Applying handcuffs so tightly that the detainee's hands become numb and turn blue certainly raises concerns of excessive force. United States Court of Appeals for the Sixth Circuit precedents allow the plaintiff to get to a jury upon a showing that officers handcuffed the plaintiff excessively and unnecessarily tightly and ignored the plaintiff's pleas that the handcuffs were too tight. Allegations of bruising and wrist marks create a genuine issue of material fact with regard to the injury prong. *Morrison v. Bd. of Trs.*, 583 F.3d 394 (6th Cir 2009).

33 "A qualified immunity defense will not succeed in inducing a court to grant summary judgment when 'the facts, considered collectively, present an incomplete picture of the relevant circumstances.'" *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1314 (10th Cir. 2002). Moreover, summary judgment motions "may not be granted on any excessive force claims under 42 U.S.C.S. § 1983 for which any genuine issue of material fact remains -- regardless of whether the potential grant would arise from qualified immunity or from a showing that the officer merely had not committed a constitutional violation." Id 1314.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Case No. 14-cv-00649-CBS

WILLIAM R. STEVENSON,

Plaintiff,

vs.

R. CORDOVA, et al.,

Defendants.

10 Proceedings before CRAIG B. SHAFFER, United States
11 Magistrate Judge, United States District Court for the
12 District of Colorado, commencing at 8:35 a.m., January 9,
13 2017, in the United States Courthouse, Denver, Colorado.

15 WHEREUPON, THE ELECTRONICALLY RECORDED PROCEEDINGS
16 ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED...

18 APPEARANCES

19 BRETT LAMPIASI, Attorney at Law, appearing for the
20 Plaintiff.

21 CRAIG CAIN and JENNIFER WHITE, Attorneys at Law,
22 appearing for the Defendants.

TRANSCRIPT OF AUDIO RECORDED JURY TRIAL - DAY 1

1 doing?

2 A. Yes, sir. I was administering the leg restraints
3 and it appears that he was kicking, that's why we have an
4 officer laying across his legs.

5 Q. So you identified --

6 MR. CAIN: Objection, Your Honor. I just want to
7 make sure he's done with his answer.

8 THE COURT: Yeah. Were you through, Mr. Holloway?

9 Q. (By Mr. Lampiasi) Are you done with your answer?

10 A. Yes. I'm applying leg restraints.

11 Q. So it's your testimony that you in this -- in this
12 video you saw him kicking.

13 A. It -- yes, he's -- he's kicking. That's why an
14 officer is laying over his body right there. He's not just
15 laying there allowing me to place the restraints on his
16 legs. He's resisting.

17 Q. You would agree that at this point, there are
18 seven to eight officers covering Mr. Stevenson?

19 A. Yes.

20 Q. You will also agree that some of the officers are
21 holding his legs down and some of the officers are holding
22 his arms and shoulders down; correct?

23 A. Correct.

24 Q. And they're applying various techniques in their
25 use of force toolbox throughout; right?

1 A. I can't comment on what they're doing.

2 Q. Okay. You were able to get the leg restraints on
3 him?

4 A. Yes.

5 Q. And that helped -- if he were kicking somehow,
6 that would stop him from kicking; correct?

7 A. It reduces the amount of travel his legs have if
8 he's kicking.

9 Q. Leg restraints hold his legs pretty close
10 together; correct?

11 A. There was about a foot to 18 inches between the
12 legs. They can walk with them.

13 Q. So he could kick a couple inches in either
14 direction with shackles around his legs; right?

15 A. Yes.

16 Q. You agree that it took you less than 10 seconds or
17 so to actually get the shackles on if you assume that you
18 were beginning to put them on when you kneeled down and you
19 were done when you stood up?

20 A. Yes, sir.

21 Q. When you put the shackles on his legs, he didn't
22 injure you in any way; right?

23 A. No, sir.

24 Q. No bruises. No nothing. Right?

25 A. No, sir.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
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Plaintiff,

vs.

R. CORDOVA, et al.,

Defendants.

10 Proceedings before CRAIG B. SHAFFER, United States
11 Magistrate Judge, United States District Court for the
12 District of Colorado, commencing at 8:19 a.m., January 10,
13 2017, in the United States Courthouse, Denver, Colorado.

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18 APPEARANCES

19 BRETT LAMPIASI, Attorney at Law, appearing for the
20 Plaintiff.

21 CRAIG CAIN and JENNIFER WHITE, Attorneys at Law,
22 appearing for the Defendants.

TRANSCRIPT OF AUDIO RECORDED JURY TRIAL - DAY 24

1

CROSS-EXAMINATION (cont.)

2 BY MR. CAIN:

3 Q. Mr. Holloway, we are watching what's been referred
4 to as the body cam video before yesterday, and I noticed
5 that towards the end of it, there was a discussion between
6 Mr. -- Captain Cordova and Mr. Stevenson. Do you remember
7 that?

8 A. Yes, sir.

9 Q. Where he was saying something about, can I take
10 you -- you know, take you on your word as a man. I would
11 like to replay that because I thought you had difficulty
12 hearing that.

13 MR. CAIN: Could we play that one more time and
14 maybe at a higher volume?

15 Q. (By Mr. Cain) Okay. Could you hear it that time?

16 A. I couldn't hear Mr. Stevenson. I heard Captain
17 Cordova say your behavior is dictating this.

18 MR. CAIN: Okay. If you could shoot it back one
19 more time and turn it up.

20 Q. (By Mr. Lampiasi) I just want to make sure that
21 your testimony is based on what you're hearing. Okay.

22 A. Yes, sir, I think he's talking about cutting his
23 sweat pants off, that he needs a new pair anyway.

24 Q. Okay. All right. Let's go ahead and continue
25 playing that video.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Case No. 14-cv-00649-CBS

4 WILLIAM R. STEVENSON,
5 Plaintiff,
6 vs.
7 R. CORDOVA, et al.,
8 Defendants.

15 WHEREUPON, THE ELECTRONICALLY RECORDED PROCEEDINGS
16 ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED...

18 APPEARANCES

19 BRETT LAMPIASI, Attorney at Law, appearing for the
20 Plaintiff.

21 CRAIG CAIN and JENNIFER WHITE, Attorneys at Law,
22 appearing for the Defendants.

TRANSCRIPT OF AUDIO RECORDED JURY TRIAL - DAY 3

1 Q. Did you hear my question?

2 A. I beg your pardon? Can you repeat that, please?

3 Q. Sure.

4 You're saying you're seeing scars. Do you
5 remember being deposed on September 15, 2015, in this case?

6 A. Yes.

7 Q. And do you remember telling me then that the scars
8 from this 2012 incident had gone away?

9 A. Well, they weren't visible, visible, you know, as
10 far as -- there was a lot of the welts and cuts and nicks
11 and all that stuff. But as far as scars, you could still --
12 you know, you could see still see where there's scarring.

13 Q. Do you remember telling me, though, in your
14 deposition that the scars from this incident that you're
15 discussing had gone away?

16 A. I may have misspoke on that.

17 Q. Okay. Well, do you think your memory of your
18 scars going away was better back September 15, 2015, than it
19 is today?

20 A. Well, when you just asked me about scarring --

21 Q. My question, though: Do you think your memory was
22 better back in September 15, 2015, as to alleged scars on
23 your wrists from this 2012 incident than it is today?

24 A. At that time I really didn't look or pay
25 attention, sir.

1 Q. So if we go back to the prior photograph, we're
2 going to see a deep cut now.

3 A. A deep indentation, sir.

4 Q. Well, again, the words I'm seeing is deep cut into
5 my skin, touched bone. You do remember writing that;
6 correct?

7 A. Yes.

8 Q. And then do you remember saying deep gashes and
9 cuts? Do you remember that?

10 A. Yes.

11 Q. And I'm just looking for the deep gashes or cuts
12 or cut, cutting deep into my skin to the bone. So that's
13 what I'm asking. Maybe I'm missing something here. If you
14 see something like that, let me know. Okay?

15 MR. LAMPIASI: Objection, Your Honor.

16 THE COURT: On what basis?

17 MR. LAMPIASI: The form of the question.

18 THE COURT: It's leading.

19 MR. LAMPIASI: I understand it's leading, but it's
20 argumentative as well. Harassing.

21 THE COURT: Objection overruled.

22 Q. (By Mr. Cain) You remember my question, sir?

23 A. If you can repeat that.

24 Q. Sure.

25 Can you tell me in the photograph that's up right

1 now, can you point to any deep gashes or cuts to your wrists
2 or deep cuts into your skin which touched the bone?

3 A. I would like to say that at the time that I wrote
4 this report, my wrists looked really, really, really, really
5 bad.

6 Q. That's -- okay.

7 A. And --

8 Q. But, certainly, did your wrist get cut after these
9 photos were taken?

10 A. No, they weren't cut after those, but these
11 pictures don't show all the damage that was done.

12 Q. We're just on cuts and gashes right now, okay, but
13 we don't see any cuts or gashes here.

14 A. I may have misspoke when I said that.

15 Q. In both reports you misspoke. The shorter
16 grievance report or the longer four or five page report. Do
17 you remember doing two of them?

18 A. Yes.

19 Q. About -- they were at least a few weeks apart,
20 weren't they?

21 A. One was, what, February 27, I believe.

22 Q. Well, that would have been before this accident
23 took place. Are you sure about that?

24 A. Pardon me. I can't remember exactly what date but
25 they were some time apart. The second report was the 14th.

1 I remember that.

2 Q. Okay. So based -- at least a week or two apart,
3 based on your memory?

4 A. I don't know how long after I did the grievance
5 that I actually wrote the report.

6 Q. And I'm just saying, do you remember about a week
7 or two after --

8 A. I can't recall. I knew the first day I could
9 recall but I don't recall.

10 Q. But your testimony today is maybe you misspoke in
11 both reports.

12 A. In -- in calling them gashes and cuts. There was
13 nicks and cuts there. In calling them gashes, you know, I
14 was actually trying to refer to the deep indentations
15 because they were there and they lasted for a long time.

16 Q. Okay. But of course you knew what the word
17 indentation was.

18 A. Sure.

19 Q. Okay. And as far as cutting deep into the skin on
20 any of the photos we've seen so far, are there any deep cuts
21 into the skin?

22 A. Not deep cuts into the skin, but there's
23 definitely deep indentations to my wrists caused by the
24 handcuffs here.

25 Q. But as far as the word cuts now, are you taking

1 that word back, you don't want to use that word to describe
2 this anymore?

3 A. Well, these don't show the actual cuts. The skin
4 was broken, you know.

5 Q. Well, let's go to the next -- I'm sorry. I didn't
6 mean to interrupt you.

7 A. No. I was just saying that the skin was actually
8 broken but there was -- they weren't bleeding bad but there
9 was scarring and stuff on my skin so...

10 Q. So they scarred within, what, 15 or 20 minutes of
11 getting the handcuffs off?

12 A. The next couple of days. The next couple of days
13 they were scarred.

14 Q. But these photos were taken just about five, ten
15 minutes after the cuffs were taken off; correct?

16 A. Right.

17 Q. So probably what we are seeing here, you're not
18 going to see scarring at this point. Is that what you're
19 saying?

20 A. Not at this point.

21 Q. I'm back to looking for deep cuts and -- deep
22 cuts. Would you agree that deep cuts would normally bleed?

23 A. I -- I -- I explained that I actually meant deep
24 indentations there.

25 THE COURT: No. You're not answering his

1 Q. And that's a yes?

2 A. Yeah.

3 Q. Yes? I'm sorry. It's the acoustics.

4 A. I said yes, sir.

5 Q. Okay. Thank you, sir.

6 Okay. Now, one of my clients is Mr. Benavidez,
7 and in your testimony earlier you testified that somewhere
8 towards the end of the vestibule film but before the body
9 cam film started when you can't really see it, he pulled on
10 your wrists. Is that -- was that your testimony?

11 A. Yes, that's what's in my complaint too. Yes,
12 that's my testimony.

13 Q. Okay. Did he pull on your wrists any other time
14 during this entire incident shown on either the vestibule
15 cam or the audio cam?

16 A. Initially he bent my wrist, then he pulled on it.

17 Q. That was, kind of, part of the same action?

18 A. Yes, sir.

19 Q. And did you -- and we can't hear it because you've
20 got it situated at the end of the silent tape; correct?

21 A. Well, that's because they didn't have the body
22 camera on is why you can't hear.

23 Q. Okay. And when you claim that he bent your wrist
24 and pulled on it, did you say something?

25 A. I yelled at least three times. I think you asked

1 me that during the deposition, but I did yell out when --

2 Q. And when you yelled out, he stopped doing that;
3 correct?

4 A. I turned around, and I looked him in the face and
5 he stopped.

6 Q. Okay. Do you know if he purposely bent your wrist
7 trying to cause you pain or harm?

8 A. I believe that he did bend my wrist to cause pain
9 and harm because I was already handcuffed and shackled
10 behind my back and I'm surrounded by, what, ten officers.

11 Q. Were they strapping you to the backboard at that
12 time?

13 A. I initially thought that it was at that time but
14 it was while we were on the floor waiting for the backboard
15 to be brought up so...

16 Q. So he just reached down and pulled on your hand.

17 A. Yeah.

18 Q. You're not exactly sure why; correct?

19 A. Yeah, I'm not exactly sure why.

20 Q. But, anyway, regardless of his motives, when you
21 said stop that, he stopped that.

22 A. Temporarily.

23 Q. Okay. Did he do it again?

24 A. He pulled on my elbow after that.

25 Q. Okay. At the same part where -- in the silent

1 **video where we can't hear anything?**

2 A. Yes, sir. While I was laying on the floor and
3 they are holding me down in the -- the live audio video, you
4 can see where I'm on the floor and they are holding me down
5 and it was at that point that I -- that Mr. Benavidez was
6 pulling my wrist and I yelled out at that time and I looked
7 him in his face, it stopped for a while, and then he pulled
8 on my elbow.

9 **Q. So this is a second time he did it?**

10 A. No, that's the first time, right there.

11 Q. Okay. And it's on the audio too? It's on the
12 body cam?

13 A. No, it's showing the transition from the vestibule
14 video to the audio. It's not on the audio cam, but it
15 should have been on the audio cam.

16 Q. Okay. Okay. But you're saying that basically he
17 pulled on your wrist and then your arm kind of in quick
18 succession right after the other?

19 A. Well, after he was bending my wrist, then when I
20 looked back when I yelled out and I looked to see who it
21 was, he stopped. And a few moments later, he was pulling on
22 my elbow continuing to cause pain.

23 Q. Okay. And did you yell at that point?

24 A. I said something to Captain Cordova. I can't
25 recall exactly. But, yes, I did. I complained.

1 Q. Okay. And then your memory is that after you
2 said, hey -- said something, there -- the pulling on the
3 elbow stopped too.

4 A. Can you repeat that, please?

5 Q. Sure.

6 You said pulled on the wrist once and then a
7 second time you're saying pulled on the elbow; correct?

8 A. I said bent the wrist. Bending it against the
9 cuffs and then pulled on the elbow.

10 Q. Okay. Okay. But each time when you said
11 something, the bending and the pulling stopped; correct?

12 A. Yeah. It stopped eventually, yes.

13 Q. And you're not exactly sure why that was being
14 done.

15 A. There was no reason for it to be done.

16 Q. Okay. Do you know why it was being done?

17 A. I believe that it was being done to cause me pain,
18 sir.

19 Q. And when your wrists or elbow were touched, did
20 the pain go off the scale?

21 A. Yeah, it was -- it was painful when he was bending
22 it against the cuffs and it was painful when he was pulling
23 on the elbow.

24 Q. More than a ten?

25 A. I mean, we talk about this, you know. However we

1 want to rate it, it was painful, sir.

2 Q. Okay. And, again, I'm just going by your
3 deposition where you said, if nobody is touching you it's a
4 nine and if somebody is touching you it's off the scale;
5 right?

6 A. Maybe I exaggerated.

7 Q. I'm sorry?

8 A. Maybe I exaggerated about the nine, but off the
9 scale, when you're bending your wrists against the steel and
10 you're pulling on a person's elbow, that's painful.

11 Q. Going back to your grievance report that we talked
12 about, the deep gashes, the deep cuts to the bone, do you
13 remember that?

14 A. Yeah.

15 Q. Were you exaggerating there also, sir?

16 A. Well, when I wrote those reports, I still had the
17 scars and I had --

18 Q. Sir, were you exaggerating then? That's my
19 question.

20 A. I don't want to say that I was -- well, as far as
21 I may have used the wrong words, you know --

22 Q. Twice?

23 A. -- when I put gashes, I really meant indentations.
24 There was no -- a gash, you're correct, it's something that
25 a splayed open, it wasn't that.

1 **Q.** You used the word cuts twice, so you were wrong
2 both times?

3 A. No, I did have cuts. There were cuts there.

4 **Q.** **Deep cuts.**

5 A. Deep indentations but the cuts were --

6 **Q.** **Deep cuts?**

7 A. It left scarring.

8 **Q.** **Not deep cuts.**

9 A. No.

10 **Q.** **That's a no?**

11 A. No.

12 **Q.** **Okay. Thank you.**

13 A. Not deep.

14 **Q.** **All righty. And do you remember officers asking**
15 **you over and over whether you're going to be compliant. Do**
16 **you remember that, sir?**

17 A. Yes.

18 **Q.** **Okay. And do you think you were compliant during**
19 **this incident?**

20 A. Was I compliant? Do I think that I was compliant?

21 **Q.** **Yes, sir.**

22 A. I thought that I was reasonable in asking them to
23 loosen the cuffs.

24 **Q.** **Do you think you're cooperating during this**
25 **incident?**

1 heard me.

2 Q. And do you remember who was near you when you said
3 that?

4 A. They were -- that hallway is not very wide or
5 long. Everyone was crowded around so all those that were --
6 that were present heard me.

7 Q. Okay. Now, you testified earlier in response to
8 Mr. Lampiasi's questions that immediately after this
9 accident, your carpal tunnel symptoms felt worse for a
10 while. Do you remember saying that?

11 A. Yes. Yes. It was intensified.

12 Q. Intensified. And then it went back down; correct?

13 A. I don't want to say it went back down, but as far
14 as the numbness and the tingling and the burning, it
15 intensified, and it was there for -- for a long time.

16 Q. Well, if you said intensified for a while, that
17 implies it went back down afterwards, doesn't it?

18 A. Yeah, that could be. I'm not sure.

19 Q. And also you said that, but eventually it worsened
20 down the road. Do you remember saying that?

21 A. I don't recall exactly saying worsening down the
22 road but...

23 Q. Did your pain eventually worsen down the road in
24 your carpal tunnel type symptoms?

25 A. Yeah, it was more -- more frequent, more intense.

1 **Q.** And did it worsen down the road?

2 **A.** Pain to the point where I needed the surgery, I
3 would say yes.

4 **Q.** Okay. And when did that worsening start? Was
5 that in 2013 or '14?

6 **A.** 2012.

7 **Q.** Okay. Well, again, after this incident you said
8 that your pain, carpal tunnel symptoms, exacerbated for a
9 while, didn't you?

10 **A.** Yeah, it lasted for a while.

11 **Q.** And then it went somewhat back down; correct?

12 **A.** I think we are misspoken here too because I was
13 talking about the bones in my hands being injured for a year
14 and a half or so.

15 **Q.** You sure about that?

16 **A.** Yes, that's what I testified to.

17 **Q.** Okay. And so let's talk about these carpal tunnel
18 issues.

19 Well, let me go back just a little bit to the
20 Bufmack examination. She saw you once, correct, while you
21 were standing up in the segregation, the main room. Do you
22 remember that?

23 **A.** Yes, sir.

24 **Q.** Okay. And she went to do a second anatomical
25 after you were locked in the segregation cell. Do you

1 remember that, sir?

2 A. That was about six to ten minutes later, yes, sir.

3 Q. And you refused that one?

4 A. That's because --

5 Q. Did you refuse that one, sir?

6 A. Yes. Yes.

7 Q. Okay. And also you did not request a medical
8 emergency that day, did you?

9 A. Staff could have requested a medical emergency if
10 they wanted to.

11 THE COURT: Mr. Stevenson, he was asking about
12 what you did or didn't do.

13 A. We can't -- I put in a kite the very --

14 Q. (By Mr. Cain) Sir, that day, did you request a
15 medical emergency that day?

16 A. No, there was --

17 Q. And a medical -- requesting a medical emergency
18 can get you an additional examination; correct?

19 A. A medical emergency at our facility --

20 Q. Sir --

21 A. -- cost \$5 and they don't do nothing.

22 Q. I'm sorry?

23 A. A medical emergency -- when you declare a medical
24 emergency, they charge you \$5 and they don't do nothing for
25 you.

1 THE CLERK: All rise.

2 (The following proceedings were had out of the
3 presence and hearing of the jury.)

4 THE COURT: Please have a seat.

5 Mr. Cain.

6 MR. CAIN: Sir.

7 THE COURT: You wanted to say something.

8 MR. CAIN: Your Honor, I'm going to pass the torch
9 to Ms. White at this point.

10 THE COURT: Okay. Good.

11 MS. WHITE: Your Honor, the Defendants move
12 collectively for a motion for directed verdict.

13 We don't believe that the evidence in the record
14 could properly support a verdict against Defendant
15 Benavidez.

16 Plaintiff has got to prove that Defendant
17 Benavidez maliciously and intentionally bent his wrist and
18 elbows while he was handcuffed. The testimony came in that
19 when he made the complaint, that as soon as he made the
20 complaint, Mr. Benavidez withdrew his hand from him, moved
21 it up.

22 One of the big points is that I think
23 Mr. Stevenson's testimony this morning would suggest that no
24 reasonable juror could find him credible as a matter of law,
25 and so I don't believe Plaintiff has any evidence of

1 noted that the 8th Amendment does not require officers to
2 use the minimum force necessary or even reasonably
3 proportional force but rather requires only that they
4 refrain from malicious and sadistic violence and that they
5 direct their efforts to achieving a sincere penological end.

6 Your Honor is citing from page 30 and specifically
7 the decision in Pena versus Greffet, 108 F.Supp.3d 1030, the
8 decision by the District of New Mexico in 2015.

9 I also noted in my decision the United States
10 Supreme Court's decision in Hudson. The law does not -- I'm
11 sorry, the Tenth Circuit's decision in Sampli.

12 The Tenth Circuit in Sampli specifically noted
13 that a prison guard's use of force against a prisoner does
14 not always constitute a Constitutional violation.

15 I've gone through my notes in great detail.

16 MR. LAMPIASI: Excuse me.

17 THE COURT: The testimony presented to this jury,
18 to the extent it relates to Mr. Benavidez, shows that for
19 much of the time in the upper vestibule when he can actually
20 be identified in the videotape, he's either laying across
21 your client's legs and Mr. Stevenson, that imposed no harm
22 at all, he had already been handcuffed, then the video shows
23 that for much of the following several minutes,
24 Mr. Benavidez is simply standing on the sidelines observing.

25 At some point, the entire group goes down the hall

1 and becomes almost impossible to distinguish one person from
2 another.

3 If under Rule 50, as I must, if I credit
4 Mr. Stevenson's testimony and consider it in a light most
5 favorable to him, there is some testimony from Mr. Stevenson
6 that at some point he's put back down on the floor in
7 conjunction with being placed on the body board.

8 There is testimony from Mr. Stevenson --
9 Mr. Stevenson, I'm not going to tell you again.

10 MR. STEVENSON: I'm sorry, Your Honor.

11 THE COURT: I don't need you to apologize. I need
12 you to stop.

13 Once he is on the ground and they are putting him
14 on a body board, Mr. Stevenson testified today that at some
15 point he felt someone touch and bend his wrist, then he
16 looked up and he saw -- and he shouted or said something,
17 and he looked up and saw Mr. Benavidez. And then if I
18 credit his testimony, Mr. Benavidez let go of his wrist and
19 then touched his arm.

20 Now, Mr. Stevenson again complained and then
21 Mr. Benavidez removed his arm. Mr. Benavidez testified, and
22 it's unrefuted, that there are literally no -- given the
23 size of Mr. Stevenson, it was very difficult to use the
24 hand-holds. To the extent that he had to be strapped to the
25 board, that was going to require some contact.

1 Q. (By Mr. Lampiasi) -- an individual --

2 THE COURT: No. Unless you lay some sort of a
3 foundation that she's an expert, she is not here to be an
4 expert in handcuffing.

5 Q. (By Mr. Lampiasi) When you're going through
6 your -- these -- you've gone through these rounds in
7 segregation at the direction of security staff; right?

8 A. Right.

9 Q. To check for safety of handcuffs?

10 A. Yes.

11 Q. When you do that, what exactly are you looking for
12 in terms of potential issues?

13 A. Skin breakdown, swelling, circulation. If they're
14 having some skin breakdown, we have to put some gauze around
15 it.

16 Q. Why would circulation be a problem?

17 A. Why would circulation be a problem? Because you
18 want to have good circulation to your extremities.

19 Q. And what happens if you don't?

20 A. It could cause damage potentially.

21 Q. Okay.

22 A. Pain.

23 MR. LAMPIASI: I have no further questions, Your
24 Honor.

25 THE COURT: Okay. Redirect?

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3 Case Number 14-cv-00649-CBS

4 WILLIAM R. STEVENSON,

5 Plaintiff,

6 vs.

7 R. CORDOVA, et al.,

8 Defendants.

9
10 Proceedings before HONORABLE CRAIG B.

11 SHAFFER, United States Magistrate Judge, United States
12 District Court for the District of Colorado, commencing
13 at 8:33 a.m., January 12, 2017, in the United States
14 Courthouse, Denver, Colorado.

15

16 WHEREUPON, THE ELECTRONICALLY RECORDED
17 PROCEEDINGS ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED...

18
19 APPEARANCES

20 BRETT D. LAMPIASI, Attorney at Law,
21 appearing for the plaintiff.

22 CRAIG W. CAIN and JENNIFER L. WHITE,
23 Attorneys at Law, appearing for the defendants.

24

25 TRANSCRIPT OF AUDIO RECORDED JURY TRIAL, DAY 4

1 THE COURT: Yes.

2 (Bench conference.)

3 Q. (By Mr. Cain) Okay, sir. The question is:

4 Can you please go through the -- all of the reasons for
5 not immediately acting to have Mr. Stevenson's handcuffs
6 unlocked and loosened upon realizing that that was an
7 issue?

8 MR. LAMPIASI: Same objection, Your Honor.

9 Q. (By Mr. Cain) With specifics, please.

10 THE COURT: Same ruling.

11 MR. LAMPIASI: Same objection.

12 MR. CAIN: So, Your Honor, you're saying he
13 cannot answer that question?

16 MR. CAIN: Sure. Sure. Go ahead, sir.

17 A. Okay, if I understand your question, you
18 want me to tell you the specific reasons why I didn't do
19 it? Well, I did initially check to make sure that the
20 tightness, that factored into my decision, because if
21 they are too tight, you want to give somebody relief.

22 But I also factored in danger -- possible
23 danger to him, because he has acted erratically upstairs.
24 I don't know if he's got a mental health issue or if it's
25 drugs or if he just needs to get out of that cell house.

1 But he is acting erratically and not -- he's not
2 following instruction.

3 And I have -- in my heart believe that he's
4 not going to follow instruction. I believe that proved
5 to be true down in segregation when he -- after he got
6 his -- his way and got his pictures taken, him going back
7 down on the ground and being resistive and having to have
8 another use of force to carry him out of the segregation
9 strip room to his cell and left there and not even come
10 to the door to uncuff.

11 So I think that my reasoning bears itself
12 out. I think he would have been unpredictable if I
13 attempted to release the cuff. And the thing is, when
14 you release the cuff, it unlocks. It doesn't just
15 ratchet. You just don't hit the key just momentarily.
16 You unlock the cuff to adjust it.

17 MR. CAIN: If I could approach, Your Honor,
18 approach the witness to handcuff this --

19 THE COURT: Yes.

20 Q. (By Mr. Cain) If you can go ahead and show
21 us what you mean, sir.

22 A. Well, I'm not going to show, but I'll try.
23 I don't know if you can see it.

24 Q. Just hold it up.

25 A. Yeah, I haven't practiced this or anything,

1 so -- but, see, the cuff just comes open when you hit the
2 key. There is no ratcheting where I can just dial it
3 back a little bit. It's either latched or it's
4 unlatched. And that's just falling open on its own. If
5 there was any pressure on it with him pulling, it would
6 swing open, potentially giving him a weapon or, you know,
7 even hurting himself.

8 So he would be unsecure at that point in a
9 restraint system that's not a restraint system. That --
10 in other words, I wouldn't buy a car that the seat belts
11 were held on by Velcro, you know, and that's what that
12 restraint system that we're talking about, the straps on
13 a backboard, they're just held on by Velcro.

14 Q. Okay.

15 A. And I didn't even look to see if they were
16 all over his arms. There might have been some under his
17 arms. I kind of think they were. And I wanted to return
18 the facility back to normal operation as soon as I could.
19 If I can get him to medical without use of force -- and
20 at that point I believe that we would be able to do a
21 normal anatomical with staff there and, you know, get the
22 facility returned back to normal, get some of those
23 people released to go back to their duties, get some of
24 the people back to Cell House 5 so state transports
25 aren't affected, get some more people in the chow house

1 A. No, sir. If I go to loosen them, there is
2 no ratcheting-down effect. I can't just turn a knob and
3 have them come off one click, two clicks, three clicks.
4 When you go to release cuffs, they unlock. They don't
5 just come down ratchet one thing at all. They're either
6 locked or unlocked.

7 Q. Okay. You ultimately had these strip-out
8 cuffs in segregation, correct?

9 A. Yes, sir.

10 Q. Strip-out cuffs are put on over the
11 offender's handcuffs so that you can safely take off the
12 regular wrist restraints, correct?

13 A. Correct.

14 Q. When you are upstairs in the vestibule, you
15 strap Mr. Stevenson down, correct?

16 A. To the backboard?

17 Q. Right.

18 A. Yes, sir.

19 Q. At that point you knew that his cuffs were
20 too tight, correct?

21 A. No, sir, I didn't know that.

22 Q. You just testified that you knew his cuffs
23 were tight, correct?

24 A. I don't know exactly when I knew his cuffs
25 were too tight. I know that I knew in that yard in

1 (Video played.)

2 MR. CAIN: Stop it a second.

3 Q. (By Mr. Cain) Now, sir, you're saying --
4 was it around the time we're seeing on the video, before,
5 or after, or what's your memory as to when you first
6 heard from Mr. Stevenson that he was having concerns with
7 the tightness of his cuffs, that you remember?

8 A. I can't tell you when I -- I just know I
9 heard it down in the clinic.

10 Q. Okay.

11 A. As my conversation and we start talking
12 about --

13 Q. Okay.

14 A. -- trying to get some compliance.

15 Q. And so what was your response? What was
16 that conversation? What did you do with regard to any
17 responses you may have heard from Mr. Stevenson?

18 A. I heard his concern about the handcuffs,
19 and I addressed him about being compliant with us, being
20 predictable. His behavior was very unpredictable, you
21 know, for a -- a lot of stuff goes through your mind when
22 you're responding and you roll up and you see an offender
23 on the ground wrestling two female staff. It kind of
24 takes -- you want some validation that he's going to be
25 compliant.

1 out that he was complaining of tight cuffs.

2 MR. LAMPIASI: Same objection.

3 THE COURT: Yeah, I'll allow that question.

4 Q. (By Mr. Cain) Go ahead, please.

5 A. The concerns?

6 Q. Yes, sir, potential risks given where you
7 were and what you saw with regard to the straps, the
8 whole situation, sir.

9 A. My concerns are the staff's safety, the
10 nurse's safety. There's other offenders down there. The
11 room is filled with tons of stuff. His --

12 Q. What type of stuff, sir?

13 A. There's -- there's medicine cabinets in
14 there. There's screens in there that he could grab and
15 throw. It's going to turn -- normally when you have this
16 type of offender that's being a little resistant, not
17 trying to follow directives -- you know, he's already
18 been involved in an issue with staff, his anger is
19 towards staff, he even testified that he was trying to
20 punish staff -- you're trying to weigh all this out, Is
21 this a good place to do this?

22 In reality, I was going to do this. On
23 this video you'll see when he tells me he is going to be
24 compliant, Well, let's go ahead and get this done. You
25 see me grab the strap to take him off of the board. I

1 A. Say that again, sir.

2 Q. Yeah. Please describe the importance, if
3 any, of maintaining overall discipline at a prison such
4 as this.

5 MR. LAMPIASI: Objection, Your Honor.

6 THE COURT: Yeah, I -- are you referring to
7 discipline over insubordinates or over the inmates?

8 Q. (By Mr. Cain) I'm sorry. Discipline
9 between inmates and staff, sir.

10 A. Are you -- regarding like following
11 directives?

12 Q. Exactly. Is that an important factor?

13 A. It is very important, sir.

14 Q. Why, with regard to the -- to running this
15 place?

16 A. When you have an offender be defiant, it
17 could turn into something huge. You know, I had -- I had
18 staff confront two offenders about sitting in a --

19 THE COURT: No.

20 Q. (By Mr. Cain) Okay.

21 THE COURT: Let's talk about this case.

22 Q. (By Mr. Cain) Okay.

23 A. Well, I've had incidents where other
24 offenders get involved in it, and it tends to -- to
25 uproar the rest of the offenders.

1 Q. Okay. And how did your actions towards
2 Mr. Stevenson assist or not in maintaining or restoring
3 discipline at the facility?

4 MR. LAMPIASI: Objection, Your Honor.

5 THE COURT: I'll allow that question.

6 A. I'm assuming you're talking about placing
7 into seg and --

8 Q. (By Mr. Cain) Sure. Sure. The entire
9 incident.

10 A. The entire incident?

11 Q. Yes, sir.

12 A. His -- he created a facility disruption.
13 So staff all responded from different areas of the
14 facility leaving other areas vulnerable during those
15 timeframes. His presence in Cell House 1 was disruptive,
16 disrupting normal operations where staff had to be called
17 to intervene him. You can't -- you can't have those
18 disruptions. It distorts the whole day and you want
19 resolution. You want to return back to normal
20 operations. You want to be -- restore control.

21 Q. And with regard to moving Mr. Stevenson
22 from the vestibule to the segregation unit as quickly as
23 possible, how did that assist in maintaining order?

24 A. I'm not understanding the question, so...

25 Q. Okay. Was it -- was it important to try to