

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE REGULATION
ADMINISTRATION BOARD

IN THE MATTER OF:	:
	:
	:
JASPER VENTURES, LLC,	:
t/a CAPITALE	:
1301 K Street, N.W.	:
Washington, DC 20005	: Summary
	: Suspension
Retailer CN, ANC 2F	: Hearing
Case No. 14-251-00045 and	:
14-251-00045(a)	:
License No. 72225	:
	:

Tuesday, February 25, 2014
ABRA Hearing Room
Room 400 South
Reeves Municipal Center
2000 14th Street, N.W.
Washington, DC 20009

The above-entitled matter convened
at 10:24 a.m. before the District of Columbia
Alcoholic Beverage Regulation Administration
Board.

BEFORE:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD C. BROOKS, Member
MIKE SILVERSTEIN, Member
VICTOR RODRIGUEZ, Member
JAMES SHORT, JR., Member

T A B L E O F C O N T E N T S

Witness:	Direct	Cross	Redirect	Recross
Erin Mathieson	14	63	101	103
OFC James Petty	107	114	142	
OFC Maynor Gonzalez	149	169	215	
Ki Jun Sung	218	234	277	276

Exhibits:	Marked	Received
Government 1	21	63
Government 2	59	63
Government 3	61	63
Respondent 1	220	221
Respondent 2	223	233
Respondent 3	230	233
Respondent 4	231	233
Respondent 5	231	233

1 P R O C E E D I N G S

2 10:24 a.m.

3 CHAIR MILLER: Good morning, ladies
4 and gentlemen. I want to welcome you to the
5 Special Meeting of the District of Columbia
6 Alcoholic Beverage Control Board. Today is
7 February 25th, 2014. My name is Ruthanne
8 Miller. I'm the chairperson.

9 Joining me today to my far right is
10 Mr. Donald Brooks. Next to Mr. Brooks is Mr.
11 Nick Alberti, and next to Mr. Alberti is Mr.
12 Victor Rodriguez, and to my left is Mr. Mike
13 Silverstein and Mr. James Short.

14 There are six of us this morning for
15 the conduct of business and three constitute
16 a quorum. Copies of today's hearing calendar
17 and agenda are available at the receptionist
18 desk.

19 The proceedings are being recorded
20 by a court reporter. So if you have any
21 electronic devices, pagers, cell phones or
22 such, please make certain that they are turned

1 off to avoid any interruption of the
2 proceedings.

3 We have one case this morning, which
4 I'm going to call right now. It's a summary
5 suspension hearing, Case No. 14-251-00045 and
6 14-254-00045(a). It's Capitale located at
7 1301 K Street, N.W., License No. 72225 in ANC
8 2F.

9 This case involves a serious
10 altercation between two male patrons inside
11 the establishment. Security personnel carried
12 the aggressor patron outside the
13 establishment, where he ultimately stabbed a
14 member of the Respondent's security personnel.

15 As a result of this incident, the
16 Chief of Police, Kathy Lanier, closed the
17 establishment pursuant to her authority under
18 D.C. Official Code Section 25-827. Chief
19 Lanier submitted a letter to ABRA dated
20 February 17, 2014, seeking revocation of the
21 establishment's ABC license.

22 The Board voted 5 to 2 on February

1 21, 2014, to continue the suspension of the
2 establishment's license. The Respondent
3 requested a hearing on February 21, 2014 under
4 D.C. Official Code Section 25-826(c). Today,
5 the Board will be hearing testimony from the
6 Office of the Attorney General, the Respondent
7 and the respective witnesses.

8 The purpose of the hearing is so
9 that the Board can determine under D.C.
10 Official Code 25-826 whether the operations of
11 the Respondent present an imminent danger to
12 the health and safety of the public. The
13 Board will be announcing its decision at the
14 conclusion of today's hearing.

15 The Board asks that the parties
16 stick the facts and issues related to the
17 incident. The facts and issues are those
18 contained in the summary suspension notice
19 dated February 21, 2014, and the case reports
20 for Investigation Nos. 14-251-00045 dated
21 February 19, 2014, and 14-251-00045(a), dated
22 February 20th, 2014.

1 The Board is only interested in
2 hearing about those matters that can be used
3 to establish whether the establishment is in
4 imminent danger to the health and safety of
5 the public.

6 We will begin this case by hearing
7 the opening statement from the government,
8 represented by Senior Assistant Attorney
9 General Mike Stern, followed by the opening
10 statement of Steve O'Brien on behalf of the
11 Respondent.

12 But before I begin with opening
13 statements, are there any procedural matters
14 that the parties would like to bring to the
15 Board's attention, and I would also ask you
16 first to introduce yourselves for the record.

17 MR. STERN: Michael Stern
18 representing the District of Columbia.

19 MR. O'BRIEN: Stephen O'Brien for
20 the licensee. I'm accompanied by Brian
21 Molloy, my colleague, and Ki Jun Sung, K-I-,
22 second word J-U-N, third word S-U-N-G, who's

1 the managing member of the licensee from the
2 liability company.

3 CHAIR MILLER: Okay, thank you, and
4 are there any procedural matters?

5 MR. STERN: None from the District.

6 CHAIR MILLER: Preliminary matters?

7 MR. O'BRIEN: No ma'am.

8 CHAIR MILLER: Okay. All right.

9 Then let's go forward then with the opening
10 statements, starting with the Office of the
11 Attorney General.

12 GOVERNMENT'S OPENING STATEMENT

13 MR. STERN: Good morning, members of
14 the Board. The evidence that the District
15 will present today will show that on Monday,
16 February 17th, 2014, at approximately 4:00
17 a.m., there was a fight inside the
18 establishment.

19 The security -- the fight lasted for
20 about 11 seconds, excuse me. There will be
21 tape that you will see. The security members
22 intervened. Instead of -- there were -- there

1 was a reimbursable detail of Metropolitan
2 police officers on the scene.

3 The Metropolitan police officers
4 were called. Instead of waiting for the
5 Metropolitan police officers to step inside
6 the establishment from outside, the security
7 members decided to take it on themselves to
8 remove a patron. The patron was carried by
9 his legs and head out to the back of the
10 establishment.

11 The patron had on him a knife, which
12 he managed to get inside the establishment,
13 despite the establishment's security
14 procedures. The patron drew his knife and
15 slashed one of the security guards.
16 Fortunately, the injury was not life-
17 threatening.

18 The incident itself, while very
19 serious, is not the only reason why this
20 establishment presents a danger to the health
21 and safety of the public. It is the manner in
22 which the incident was handled by the security

1 guards. The lack of appropriate training or
2 adherence to that training that the security
3 guards displayed, and the fact that despite
4 whatever procedures may have been in place,
5 the establishment could not assure that
6 weapons were not brought into the
7 establishment.

8 For all these reasons, at the
9 conclusion of evidence, we are going to ask
10 the Board to continue the suspension of the
11 establishment until they comply with certain
12 conditions, which the government will outline
13 at the conclusion of the case.

14 CHAIR MILLER: Okay. Mr. O'Brien.

15 RESPONDENT'S OPENING STATEMENT

16 MR. O'BRIEN: We're very fortunate,
17 and by we I'm including the Board here, that
18 actually show you all footage of what happened
19 throughout, and the footage will establish
20 what the facts are, not the argument of
21 counsel.

22 But I suggest that when the Board

1 looks at the footage, the Board is going to
2 see that indeed an altercation ensued inside
3 the establishment.

4 CHAIR MILLER: Who is that?
5 Somebody is hitting the microphone.

6 MEMBER RODRIGUEZ: My apologies.

7 CHAIR MILLER: Okay.

8 MR. O'BRIEN: An altercation ensued
9 inside of the establishment, that security
10 personnel inside the establishment very
11 quickly separated the parties. Then there's
12 a pause.

13 Maybe the incident is over at that
14 point. But then it reignites, with one of the
15 separated parties attempting to get back into
16 the fray against the other, and security
17 personnel attempting to hold him back.

18 It is then, when the incident
19 reignited, that security personnel picked up
20 the individual who was in the fight and
21 carried him out, not by his head, by his torso
22 and his legs. You'll see on the tape the

1 manner in which he's carried out. I would
2 characterize it as gentle.

3 The reason that -- oh, the
4 Metropolitan Police reimbursable detail had
5 been asked to come inside when the incident
6 first broke out, but the reason they don't
7 wait, security personnel, is because it
8 reignites, and there's a danger of it getting
9 bigger and people getting hurt. MPD had not
10 gotten there yet.

11 They take him gently and place him
12 on the sidewalk. They don't manhandle him.
13 The tape is going to show you the individual
14 outside who had a weapon was not the
15 individual that was carried out. That will
16 become clear. He was a member of that
17 individual's party, but he was not the
18 individual who was carried out.

19 The tape will not show you -- the
20 tape will show that other individual, and you
21 can look for him, because he's wearing a
22 jacket or a sweatshirt that says "Crooks," C-

1 R-O-O-K-S on the back. Watch, if you will,
2 for that individual, because that's the one
3 eventually swings his arm at the security
4 person, who will be here to testify as to what
5 happened, Derek Johnson.

6 He swings his arm at him. Johnson
7 reaches with his hand to block what appears to
8 be a punch coming at him, then realized he's
9 suffered a laceration. He's been cut. The
10 tape will not show you, in our view, what it
11 was that that individual had in his hand.
12 I'll call him "Mr. Crooks," because of his
13 jacket.

14 It was something sharp in his hand,
15 but we don't know what it was. To this day,
16 we don't know what it was. Now those, I
17 believe, are the facts. Officer Gonzalez,
18 who's reimbursable detail all night, he comes
19 in the back door for a few minutes to warm up.

20 The tape will show that security
21 personnel are carrying out the individual
22 involved in the fight. Gonzalez watches them

1 carry him right by him, and then follows them
2 out. But Gonzalez does not intercede, and I
3 believe his testimony will be because they
4 were handling it correctly, "they" meaning the
5 security personnel.

6 Likewise, Gonzalez doesn't see a
7 knife outside. He sees somebody swing. He
8 gets in, separates them. Gonzalez will
9 testify, I believe, that if he had known that
10 that person who had already cut the security
11 person -- if he had known that person had a
12 weapon, he would have drawn his service
13 weapon, his pistol.

14 So there's no indication here that a
15 knife was ever in that fight. Something sharp
16 was used outside, but we could speculate
17 forever what it might be. Was it a key that
18 someone had sharpened from a fine point? Who
19 knows? That would be idle speculation.

20 But again, Mr. Stern can
21 characterize it. I can characterize it. One
22 of the advantages in this case is the tape,

1 and we believe that the conclusion will be
2 that the licensee's personnel acted
3 professionally and responsibly, and that this
4 establishment is by no means an imminent
5 danger to health and safety. Thank you.

6 CHAIR MILLER: Thank you. Okay, Mr.
7 Stern.

8 MR. STERN: Yes. We call
9 Investigator Mathieson.

10 CHAIR MILLER: Good morning.
11 Whereupon,

12 ERIN MATHIESON
13 was called as a witness and, after having been
14 first duly sworn, was examined and testified
15 as follows:

16 CHAIR MILLER: Thank you.

17 DIRECT EXAMINATION

18 BY MR. STERN:

19 Q Can you give us your name and spell
20 your last name for the court reporter?

21 A Sure. First name is Erin, last name
22 Mathieson, M-A-T-H-I-E-S-O-N.

1 Q And are you employed, Ms. Mathieson?

2 A Yes.

3 Q And how are you employed?

4 A I work for the Alcohol Beverage
5 Regulation Administration.

6 Q And were you employed that way on
7 February 17, 2014 at approximately four in the
8 morning?

9 A Yes.

10 Q And at that -- on that date and at
11 that time, did you become involved
12 investigating an establishment known by the
13 trade name Capitale?

14 A Yes.

15 Q And that establishment is located on
16 1301 K Street, N.W.?

17 A Yes.

18 Q Can you tell me first brought
19 Capitale to your attention that evening?

20 A I received a phone call on the ABRA
21 hotline at approximately 4:45 a.m., for a
22 stabbing at Capitale, located at 1301 K

1 Street.

2 Q And what did you do in response to
3 that?

4 A Myself, along with several other
5 investigators, responded to the location.

6 Q Okay, and how did you go about
7 conducting your investigation?

8 A Upon arriving at the location, we
9 spoke with Lieutenant Hargrove from MPD. He
10 advised us that a member of security had been
11 stabbed in the hand by a patron, and further
12 advised that he was gathering information for
13 a possible closure.

14 Q Okay. What was the next step in
15 your investigation?

16 A We spoke with Officer Petty, who was
17 part of the reimbursable detail.

18 Q And what did Officer Petty tell you?

19 A He advised he was standing outside
20 by security at the front door, when he was
21 told by a member of security that they needed
22 assistance with Table 3 inside. He advised

1 that he went inside, but at that time, he
2 observed that I guess security was escorting
3 a patron outside by the rear door.

4 He followed the group outside, where
5 there was a large commotion on the sidewalk
6 area.

7 Q Okay, and what did Officer Petty
8 tell you that he had done next?

9 A Officer Petty advised that he did
10 see a member of security chase someone and
11 tackle him on the sidewalk area.

12 At that time, he heard someone say
13 that -- someone from security say he had been
14 stabbed, and then he further stated that he
15 went over to the security member, who has
16 holding him on the ground, and that security
17 member advised him that that was the suspect,
18 at which time he placed him in handcuffs.

19 Q Did you have an opportunity to speak
20 to an ABC manager?

21 A Yes.

22 Q What was that conversation?

1 A The ABC manager, I believe her name
2 was Ashley Payne, she advised that she was not
3 there --

4 CHAIR MILLER: Can I interrupt you a
5 minute?

6 MEMBER SILVERSTEIN: Can you speak
7 up?

8 CHAIR MILLER: Yes. I was just
9 going to say two things. Ms. Mathieson, if
10 you could speak up a little bit louder and
11 maybe go a little bit slower, we'd catch it
12 all. And also, I believe Mr. Jones has joined
13 us on the dais.

14 MEMBER JONES: Yes, he has.

15 CHAIR MILLER: Yeah, okay.

16 MR. STERN: Yes.

17 CHAIR MILLER: Thank you.

18 BY MR. STERN:

19 Q Did you have an opportunity to speak
20 with any security officers at Capitale?

21 A Yes. I did speak with the head of
22 security, James Burwell.

1 Q Okay, and what was that conversation
2 like?

3 A Mr. Burwell advised that he was at
4 the front door of the establishment when he
5 received a radio call for help at Table 3. He
6 advised that he asked the detail officer to go
7 inside while he remained at the door.

8 Q Okay, and?

9 A Later on, Mr. Burwell further stated
10 that he was told by MPD to stop a man who was
11 running. This was when he was outside, still
12 presumably in the vicinity of the sidewalk
13 area. He said that he chased a man who was
14 running, at which time he tackled him and held
15 him for MPD to arrive.

16 Q Okay. Now was the victim
17 interviewed as part of your -- as part of the
18 investigation?

19 A Yes. I did not conduct the
20 interview, because it was not possible.

21 Q Okay. But you received the
22 information, what the victim said?

1 A Correct.

2 Q And what did the victim tell you?

3 A Well, I also followed up with an
4 interview of my own on the victim, so when I
5 spoke with him, he advised me that he was not
6 wearing a radio at the time of the incident,
7 but was rather inside the location, and
8 described hearing a boom noise coming from the
9 VIP table area.

10 Mr. Johnson, he's the name of the
11 victim, Derek Johnson, he advised that he saw
12 a taller male getting off the floor as he was
13 approaching the area, and he could also see a
14 smaller male, excuse me, being aggressive with
15 the taller male.

16 As he approached the area, Mr.
17 Johnson advised that one of the promoters, his
18 name was Wayne, pointed to the smaller male
19 and identified him as the aggressor. Mr.
20 Johnson also advised that he moved in to
21 separate the men, at which time he decided to
22 remove the smaller male, and the smaller male

1 began tussling with him on what was described
2 as a slippery floor.

3 Q Now did you have an occasion to
4 review a security plan for Capitale?

5 A Yes.

6 Q Okay. I'm going to show you what
7 I'm having marked as Exhibit No. 1, and ask
8 you whether you recognize what that is?

9 (Whereupon, the document referred to as
10 Government Exhibit 1 was marked for
11 identification.)

12 (Witness reviewing document.)

13 THE WITNESS: This would be the
14 security plan for Capitale.

15 BY MR. STERN:

16 Q Now in your review of that security
17 plan, did you find anything in there that
18 would have applied to the circumstances?

19 A Item No. 1(b) states that if there's
20 a physical altercation, security personnel are
21 instructed to intervene with reasonable force,
22 in order to prevent bodily harm without

1 putting themselves at undue risk.

2 Full contact on the part of security
3 personnel is only permitted in the sake of
4 self defense of others or the destruction of
5 property.

6 Q Okay. Did you feel that the
7 Capitale security staff had complied with that
8 portion of --

9 MR. O'BRIEN: I'm going to object to
10 that question. What she feels is not
11 relevant. She's supposed to be testifying to
12 facts, not opinion.

13 CHAIR MILLER: Do you want to
14 rephrase your question, Mr. Stern?

15 MR. STERN: As part of your employ,
16 did you conclude that the security plan --
17 that there was any portion of the security
18 plan which the staff at Capitale had not
19 complied with?

20 MR. O'BRIEN: Objection. It's the
21 same. The investigator's conclusions are not
22 relevant. The conclusions are to be drawn by

1 the Board from the evidence. The investigator
2 should be testifying as to what she saw, what
3 she heard, not giving the Board opinions.

4 MR. STERN: I disagree, Your Honor.
5 I believe the investigator -- one of the
6 investigator's jobs is to determine whether or
7 not there have been any violations, and she
8 has a process for doing that, and that process
9 is put into the report that she writes. I'm
10 asking her what that process was and what her
11 -- why she felt the way she felt.

12 MR. O'BRIEN: There's no question
13 the report is riddled with opinions, okay.
14 But that doesn't mean it's evidence that this
15 Board can make findings on. The Board is the
16 one to draw opinions.

17 CHAIR MILLER: Correct, but I'm
18 going to overrule the objection. The Board is
19 the one who draws the ultimate conclusions,
20 but the investigators make assessment of facts
21 against regulations and assessments, and also
22 draw conclusions. So I think that that's a

1 reasonable question. Go ahead, proceed Mr.
2 Stern.

3 BY MR. STERN:

4 Q Yes, I'm sorry. Do you feel that
5 the security staff had violated that provision
6 of the security plan?

7 A Based upon an interview with two of
8 the security members, Derek Johnson and
9 Quentin Williams I believe his last name was,
10 both advised when approaching the area, there
11 was no active fight. No persons observed
12 punches being thrown.

13 Therefore, the manner in which he
14 was removed in my opinion was a violation of
15 that clause of the security plan.

16 Q Okay. Did you also have a
17 conversation with Mr. Johnson I believe it
18 was, the victim, who regarding any weapons he
19 had on him?

20 A That information was originally
21 obtained by Investigators Opoku and Demby.
22 However, I did follow up with Mr. Johnson in

1 regards to that statement, at which time Mr.
2 Johnson advised me that he did have a knife on
3 him at the time of the incident, and stated
4 that he carries that knife on him at all
5 times, even when he is not working.

6 He further stated that he pulled the
7 knife out at some point during the
8 altercation, and thought about using it, but
9 put it away before anybody saw it.

10 Q Did you have occasion to review
11 video of the incident?

12 A Yes. On the night of the incident,
13 we viewed the video, and then additionally I
14 was provided with a copy of the video.

15 Q Okay. In your supplemental report,
16 you stated that -- you described Right Camera
17 System No. 15. Can you tell me what that was?

18 A Yes. That was a camera angle that
19 showed the VIP area where the altercation
20 initially began inside the establishment.

21 Q Okay, and can you describe for me
22 what it was that you observed on your -- on

1 the video?

2 A Sure. There are three patrons. I
3 described them in the report as A, B and C,
4 who appeared to be in a verbal altercation.
5 Patrons A and B appeared to be friends, and
6 then Patron C was a third party.

7 After the verbal altercation, you
8 can see Patron C push Patron A, at which time
9 Patron B punches Patron C in the face, and
10 then Patron A proceeds to tackle him to the
11 ground, swinging a couple of times.
12 Eventually both Patron C and Patron A end up
13 on the ground, which Patron A on top of Patron
14 C.

15 Q Okay, and how long did this go on?

16 A It was, I think in the time line it
17 was all of -- all of I would say it initially
18 began at 3:59:38, and members of security are
19 observed approaching 3:59:52. So maybe I
20 think that's 14 seconds.

21 Q Okay.

22 A And then I'm sorry, the altercation,

1 I put in my notes, it had lasted 11 seconds
2 before they were separated by other patrons.
3 So then it was 14 seconds for security.

4 Q So they were separated before the
5 security members came on the scene?

6 MR. O'BRIEN: Objection to the form
7 of the question. It's a leading question.

8 CHAIR MILLER: It sounds like a
9 clarifying question. Go ahead, Mr. Stern.

10 BY MR. STERN:

11 Q You said they were separated by
12 patrons?

13 A It appeared to be a patron.

14 Q Had the security people come on the
15 scene yet?

16 A At approximately 11 seconds after
17 the altercation, verbal altercation began, it
18 appeared as though a patron was the one who
19 initially separated the parties, and then
20 approximately like I said 14 seconds
21 afterwards, members of security are observed
22 approaching the area.

1 Q Okay, and what happened --

2 MR. O'BRIEN: May I ask a question
3 just for clarification? It's 11 seconds plus
4 another 14, or 11 plus 3?

5 THE WITNESS: No. Plus 3.

6 MR. O'BRIEN: Thank you.

7 BY MR. STERN:

8 Q And what happens when the security
9 members get there?

10 A The security members approach and
11 you can see one of the security members going
12 towards what appeared to be Patron A, and
13 separating him and pulling him off the VIP, I
14 guess, level. There was like a stair step it
15 looked like, pulling him off that area to the
16 main floor.

17 Q Okay, and then?

18 A Approximately 20 seconds or so go by
19 and that same members of security are observed
20 in a small commotion with Patron A, as they
21 take him from the VIP area.

22 Q Okay. So Patron A -- at that point,

1 is Patron A fighting with Patron C still?

2 A No. The parties were separated.

3 Q Okay. So he's --

4 MR. O'BRIEN: Objection. Any
5 question that begins with "so" is necessarily
6 is a leading question. "So this is the case?"
7 Answer, yes.

8 CHAIR MILLER: Okay.

9 MR. O'BRIEN: I'd like to hear
10 Investigator Mathieson testify instead of Mr.
11 Stern.

12 CHAIR MILLER: Okay, Mr. Stern.
13 That was somewhat of a leading question.

14 MR. STERN: Okay.

15 CHAIR MILLER: Okay.

16 MR. STERN: I do tend to say "so"
17 whether I have leading questions or not.

18 CHAIR MILLER: Right. I don't know
19 about the "so."

20 BY MR. STERN:

21 Q I apologize for that, but the
22 incident, we'll call it, that occurs 20

1 seconds later, can you tell me whether or not
2 Patron C, who is in the original fight, had
3 anything to do with that incident?

4 A It's very difficult to see the video
5 footage. From what I could personally
6 observe, when -- from my own observations,
7 when they had a small commotion with Patron A,
8 initially Patron C was not there -- or Patron
9 C is who you asked?

10 Q Right.

11 A No. Then absolutely not. I'm
12 sorry. I thought you meant the other patron.

13 Q Okay. Patron C is one who had the
14 fight originally with Patron A?

15 A He was the one who was initially
16 punched, yes. He was not in that area, from
17 what I could tell.

18 Q And what did the security guards do
19 at that time?

20 A Approximately four seconds later,
21 again it's difficult to see on the videos.
22 You have to look very closely. But who I

1 believe was the victim, Derek Johnson,
2 security member, is observed grabbing the
3 Patron A around the head and neck area.

4 At which time another security
5 member is observed picking up the feet of the
6 patron, so that he's carried horizontally by
7 his head and feet away from the bar area to a
8 door.

9 Q Okay. I'm going to ask now that we
10 play Camera 15, starting at 3:58 a.m., and ask
11 you to watch that clip of the video please.

12 [VIDEO PLAYED.]

13 MR. MOLLOY: Please direct when you
14 want it to pause.

15 BY MR. STERN:

16 Q Yeah. Why don't we pause right
17 here. Can you tell me where is this incident
18 going to happen?

19 A It will be up here, actually at the
20 staircase.

21 Q Okay, and is that the VIP area?

22 A (no audible response)

1 Q Is there a demarcation that you know
2 of?

3 CHAIR MILLER: Wait. Can I -- can I
4 just ask a --

5 MEMBER SILVERSTEIN: That doesn't
6 help me.

7 CHAIR MILLER: And also it doesn't
8 help the record just to say "up here."

9 THE WITNESS: Okay.

10 CHAIR MILLER: If you can kind of
11 describe it a little better, which corner or
12 I don't know.

13 THE WITNESS: The wall area.

14 MEMBER SILVERSTEIN: Give us a time.
15 If this were --

16 (Simultaneous speaking.)

17 CHAIR MILLER: It's 3:58.

18 MEMBER SILVERSTEIN: Just for a
19 clock, where it would be?

20 THE WITNESS: If it were a clock, I
21 guess --

22 MR. MOLLOY: She needs a pointer.

1 MEMBER SILVERSTEIN: You want to
2 point to it now?

3 MEMBER ALBERTI: You need a pointer?
4 Is it working?

5 MR. MOLLOY: If you hold it down.

6 THE WITNESS: It's not working, but
7 you can see right here.

8 (Simultaneous speaking.)

9 MEMBER JONES: Can you move the
10 mouse cursor to the location? Is that
11 acceptable?

12 MEMBER ALBERTI: Yeah. Can you
13 direct Mister -- whoever's running this
14 machine, can we direct that person to show
15 where she's pointing?

16 CHAIR MILLER: There it is.

17 MEMBER JONES: There's the mouse.
18 It's working.

19 MEMBER ALBERTI: Thank you.

20 BY MR. STERN:

21 Q The mouse where you're talking
22 about?

1 A Yes.

2 Q Okay, and for the record, that's in
3 approximately the two o'clock position. Do
4 you agree with that?

5 A Yes.

6 MR. O'BRIEN: 2:05.

7 BY MR. STERN:

8 Q Okay. Can you also, just for our
9 information, show us where, if you know, where
10 the VIP area is delineated?

11 A It's hard to tell from here, but to
12 my understanding it's a step somewhere, about
13 in this area.

14 Q Okay.

15 A It's difficult to tell. There were
16 some ropes of velvet --

17 CHAIR MILLER: There was some what?

18 THE WITNESS: Ropes. Right now you
19 can't see that.

20 MR. STERN: Okay. 3:58:21. Okay.

21 Can we play this through to three-fifty --

22 excuse me, 3:58:38?

1 MR. MOLLOY: Pause at :38?

2 MR. STERN: Yeah.

3 [VIDEO PLAYED.]

4 BY MR. STERN:

5 Q Okay. Did you see the people
6 becoming involved in the altercation now?

7 A So yes. These three.

8 Q Okay. Has the altercation occurred
9 yet?

10 A No.

11 MR. STERN: Okay. Could you keep
12 playing it now?

13 MR. MOLLOY: Do you know when you'd
14 like me to stop?

15 MR. STERN: Well, 3:59.

16 [VIDEO PLAYED.]

17 MR. O'BRIEN: Hoodies, the latter
18 hoodies. Well, the hoodies.

19 BY MR. STERN:

20 Q Okay. Can you stop it now? Did you
21 see --

22 A No.

1 Q Okay. Keep going, I'm sorry. :38
2 actually.

3 [VIDEO PLAYED.]

4 BY MR. STERN:

5 Q Okay, stop. Is that the altercation
6 you're talking about?

7 A Yeah. If you could see that --

8 MEMBER SILVERSTEIN: Roll that back.

9 THE WITNESS: With his back to the
10 camera, and he shoved the patron on the left.

11 MR. STERN: Okay. So you can play
12 it now.

13 THE WITNESS: And that's when he
14 dropped to the ground, and then this person
15 appeared to come from the VIP area --

16 CHAIR MILLER: Can you speak up
17 again?

18 THE WITNESS: Okay. So the patron
19 who appeared to come from the other part of
20 the VIP area came down and had to pull Patron
21 A, as I described him, off of the guy that was
22 Patron C that was on the ground.

1 MR. STERN: Okay. Can you continue?

2 [VIDEO PLAYED.]

3 THE WITNESS: So then you can see
4 from the rear the young gentleman with the hat
5 on, a member of security.

6 MR. STERN: Okay. Now can you point
7 out where each of the two -- each of the two
8 combatants are?

9 MR. MOLLOY: Would you like me to
10 pause?

11 THE WITNESS: Yeah.

12 BY MR. STERN:

13 Q Yeah.

14 A I believe that's Patron -- the
15 patron that was hit right there. Kind of hard
16 to watch it.

17 MR. MOLLOY: Do I have the cursor in
18 the right spot?

19 THE WITNESS: Yeah. I believe
20 that's him, and then towards that back wall
21 area, I can't tell where he went as I was
22 watching. But he's over there somewhere with

1 Patron A.

2 BY MR. STERN:

3 Q Okay. So they're not directly
4 engaged with each other, or are they directly
5 engaged?

6 A They don't appear to be.

7 Q Okay, thank you. Continue.

8 [VIDEO PLAYED.]

9 MR. STERN: Please tell us to stop
10 when you see the security.

11 MR. MOLLOY: Sorry, that's not what
12 he said.

13 THE WITNESS: I believe that's
14 security right there.

15 BY MR. STERN:

16 Q Point out where he is.

17 A Yes. That gentleman with a patch on
18 his shoulder and the hat. That's the
19 security.

20 MR. MOLLOY: Is the cursor on the
21 right person?

22 THE WITNESS: Yes.

1 MR. MOLLOY: Okay.

2 MR. STERN: Okay, continue.

3 [VIDEO PLAYED.]

4 THE WITNESS: He kind of reaches in
5 and grabs the patron there and pulls him out
6 the VIP area. Then it gets very difficult to
7 ascertain what's happening back there. But
8 you can tell there's a scuffle and then he's
9 picked up.

10 BY MR. STERN:

11 Q Okay.

12 A And then that's when the rest of the
13 area clears out. About 15 to 20 patrons
14 follow them outside.

15 Q Okay, thank you. Did you also have
16 -- there's also a camera system called Right
17 Camera System No. 11. Do you know what that
18 is?

19 A That's just another angle.

20 Q Okay, and did you have an
21 opportunity to observe that?

22 A Yes.

1 Q And can you describe for us what you
2 observed when you saw that camera angle?

3 A Camera angle or Camera 11 is an
4 angle that's on the rear hallway area. So it
5 captures a corner and to the left of that area
6 would be the rear door and to the right would
7 be the entry way into the establishment.

8 Q Okay. I'm going to ask that we play
9 right camera angle -- Camera System No. 11,
10 starting at -- I believe it starts at 3:56.
11 We're going to play it until four o'clock,
12 excuse me, for 42 seconds, which is where I
13 really want to start the questions. Is that
14 the camera angle you're talking about?

15 A Yes.

16 MR. MOLLOY: Is it all right if I
17 try to skip ahead to --

18 MR. STERN: Yes.

19 CHAIR MILLER: Ms. Mathieson, did
20 you say this is a rear entrance exit?

21 THE WITNESS: Yes. So to the left,
22 down that hallway there is the rear exit, and

1 to the right is the interior --

2 MR. STERN: Pause a minute. Pause,
3 yeah, if you could.

4 THE WITNESS: There are some
5 bathrooms in that long hallway as well.

6 BY MR. STERN:

7 Q Okay. So this would be -- well, can
8 you tell us what the relationship is of this
9 angle to the angle we just saw?

10 A The VIP area is against the rear
11 wall. So to the left of this angle.

12 Q That would be about the -- can you
13 tell clockwise where that is?

14 A That would be eleven o'clock.

15 Q Okay, thank you.

16 A And to the right, about two o'clock
17 would be the bar area, and you'll observe the
18 security personnel escorting the patron
19 through this doorway.

20 Q Okay. When you see the security
21 personnel escorting them, can you ask us to
22 stop this again?

1 A Sure. It should be four o'clock at
2 20 seconds.

3 Q Okay.

4 A Actually, it should be 29 seconds.

5 Q Okay. Can you play it now?

6 [VIDEO PLAYED.]

7 THE WITNESS: This is Officer
8 Gonzalez while they were coming out. We'll
9 observe him --

10 MR. O'BRIEN: When you say this?

11 CHAIR MILLER: Yes.

12 MR. O'BRIEN: That person right
13 there. Thank you.

14 MR. MOLLOY: Right in the middle,
15 with the cursor on it.

16 THE WITNESS: So you see he sees the
17 commotion and then here you have -- pause it
18 there -- you have both security members and
19 the patron that they're escorting out, along
20 with the friend of the patron, who's behind
21 them.

22 BY MR. STERN:

1 Q Okay.

2 A And the person carrying -- they're
3 carrying I identified as Patron A, as
4 described in the report, and I identified the
5 person behind him as Patron --

6 MR. O'BRIEN: It's not by the head.
7 It's by the torso.

8 MR. STERN: Okay. Now, okay. Can
9 you play for just a little bit. What's
10 happening here?

11 [VIDEO PLAYED.]

12 THE WITNESS: The rest of the group,
13 which is -- they had mixed with security
14 approximately 20 to 25 people, approximately.
15 But it's a large group that follows everyone
16 out.

17 BY MR. STERN:

18 Q And did you see what Officer
19 Gonzalez did exactly?

20 A He also followed the group.

21 Q Now in terms of distance, can you
22 tell me about from where the table is to where

1 the fight occurred, do you know -- can you
2 approximate the distance?

3 A I couldn't give you that estimate.
4 I don't know. It's from essentially one side
5 of the establishment to the other, but I don't
6 know.

7 Q Okay.

8 CHAIR MILLER: Is this the table
9 you're referring to, is that the one in the
10 video in the front?

11 MR. STERN: Over right here. Like
12 it's the only table I see, but the table on
13 the lower right corner.

14 MR. O'BRIEN: It's the circular
15 table.

16 THE WITNESS: Oh, sorry. I thought
17 you meant the table that was inside the
18 establishment. From that to --

19 BY MR. STERN:

20 Q Where the fight occurred?

21 A Yeah. I still couldn't tell you the
22 approximate distance.

1 Q Can you see where the fight occurred
2 from this angle?

3 A No.

4 Q Do you know whether you could see
5 where the fight occurred from the table?

6 A If I were standing at the table?

7 Q Yeah.

8 A I don't know.

9 Q Okay, thank you.

10 A There were a lot of people inside.

11 Q Okay. We'll go to -- did you also
12 take -- View Right Camera System No. 1?

13 A Yes.

14 Q And what was it that that the view
15 afforded you?

16 A Camera 1 is the view of the rear
17 door that opens to the sidewalk area.

18 Q Okay. From about four o'clock and
19 30 seconds or so, could we play that? I'm
20 going to ask you to watch this and tell me
21 what it is that was significant to you. Play
22 to about 4 and 42 seconds.

1 MR. MOLLOY: 44 seconds.

2 [VIDEO PLAYED.]

3 THE WITNESS: Right here, you see
4 the security member and two patrons, and
5 they're coming out of the door. They're,
6 excuse me, three, appear to be three patrons,
7 and they're coming out the door, obviously
8 tussling a little.

9 BY MR. STERN:

10 Q Okay. Is this when what appeared to
11 be the stabbing took place?

12 A Yes, shortly thereafter.

13 Q Okay. Can you play a little bit
14 further and tell us what you're observing?

15 [VIDEO PLAYED.]

16 THE WITNESS: So, it just happened.
17 So a security member had turned his back to --
18 appeared as though to reenter the
19 establishment. You can see him being shoved
20 slightly from the back.

21 He turned around and pushed one of
22 the patrons, and then you see this patron

1 right here put something in his hand and the
2 security member put his hand up to block it.
3 At which time that patron handed the security
4 member.

5 MR. O'BRIEN: That's not the same
6 guy then.

7 BY MR. STERN:

8 Q Okay. Can you go backwards about
9 ten seconds so we can see that?

10 A It happens very quickly, a matter of
11 seconds.

12 [VIDEO PLAYED.]

13 THE WITNESS: In my report, I didn't
14 include a still photo of the screen shot.

15 MR. O'BRIEN: Oh. He had something
16 in his pocket.

17 BY MR. STERN:

18 Q What happens next? What do you
19 observe next that was relevant to your report?

20 A Well, the scuffle continues. More
21 security members come out. There's a white
22 male security member who's observed and

1 identified as Chris Nash coming out with both
2 his hands up.

3 He is then observed punching the
4 patron, there was a sharp object in his hands,
5 and then other members come out. Eventually,
6 there's a light overhead and turns out and
7 kind of blocks the view of the camera in terms
8 of identifying patrons.

9 Once that clears up, there's
10 approximately 20 or so patrons still outside
11 and so forth, and it's kind of hard to
12 identify --

13 Q Okay. We're going to play that and
14 if you can show where on the tape those things
15 occur.

16 [VIDEO PLAYED.]

17 THE WITNESS: So you can see the
18 security member right there punches him in the
19 face. Then the lights went on.

20 BY MR. STERN:

21 Q Now if you know what's happening
22 right here?

1 A Oh. It's just a group patrons on
2 the sidewalk. Like I said, it's hard to
3 identify who is there.

4 Q Okay, thank you.

5 A It's a bit of a scuffle. Eventually
6 this all clears off the camera.

7 CHAIR MILLER: I just want to ask a
8 question for clarification. Are we seeing
9 outside the rear entrance or the front
10 entrance?

11 THE WITNESS: Yeah, the rear.

12 CHAIR MILLER: The rear entrance,
13 and what street is that?

14 THE WITNESS: K Street.

15 MR. O'BRIEN: Say again?

16 THE WITNESS: K Street.

17 MR. O'BRIEN: Okay, thank you.

18 BY MR. STERN:

19 Q Were there any other portions of the
20 tape that you saw that showed the incident,
21 the violent incident?

22 A (no audible response)

1 Q Now did you review -- have a chance
2 to determine what operating parameters were
3 for the establishment, when they were allowed
4 to be open, when they were allowed to sell
5 beverages, etcetera?

6 A Yes. At the time of our visit, we
7 were unable to view the regular license or the
8 holiday extension license for the
9 establishment.

10 So when I returned to the office, I
11 was able to determine that they were granted
12 a holiday hours extension, which permitted to
13 sell, serve and consume alcoholic beverages up
14 until four o'clock a.m., and also permitted
15 for 24 hour operation.

16 Q Okay. Now did the establishment
17 indicate to you when -- how they -- how they
18 stopped serving alcoholic beverages?

19 A Yes. The manager of the
20 establishment, I'm going to pronounce his name
21 Alexander Zitkovic, he advised me that prior
22 to closing, approximately 15 minutes last call

1 is done, and then drinks would be --

2 Q And that would be what time?

3 A Fifteen minutes prior to closing.

4 Q So on this night, that should have
5 been --

6 A Should have been 3:45 a.m.

7 Q Okay.

8 A And that all alcoholic beverages are
9 pulled at closing, which would have been four
10 o'clock a.m.

11 Q Okay. Now did you have an
12 opportunity in looking at the tapes to
13 determine whether or not there were any
14 alcoholic beverages being drunk at four or
15 after four?

16 A Yeah. There were several camera
17 angles, which showed patrons with what
18 observed to be alcoholic beverages being
19 consumed, and also in their hands.

20 Q Okay. Can we -- did you observe
21 Right Camera System No. 6?

22 A Yes.

1 Q And did you observe any patrons
2 drinking alcoholic beverages after hours on
3 that camera angle?

4 A Yes, well what appeared to be
5 alcoholic beverages.

6 MR. O'BRIEN: Madam Chair, I'm going
7 to object. The Board was very clear that we
8 heard addressing issues here of public health
9 and safety, imminent danger to public health
10 and safety.

11 If the Board should conclude that
12 drinks remaining in patrons' hands a minute or
13 two afterward, notwithstanding the security
14 was obviously otherwise engaged, then that's
15 the subject of the show cause hearing, not
16 grounds to summarily suspend. So the
17 objection's based on relevance.

18 CHAIR MILLER: I would agree. I
19 would sustain the objection, but Mr. Stern,
20 I'll hear what you have to say.

21 MR. STERN: While this isn't the
22 focal point of the summary suspension, how the

1 establishment enforces its rules, especially
2 where the evidence we believe will show that
3 despite the -- despite their presumptive rule
4 that they would not allow dangerous weapons
5 into the establishments, that there was
6 somebody inside with a knife, including a
7 security guard with a knife.

8 I think how lax they are on
9 enforcement rules is relevant to the overall
10 safety and health of the public, and as I say,
11 while this isn't the primary focus, it is
12 certainly one aspect for the Board to
13 consider.

14 CHAIR MILLER: I think it's an
15 extremely minor aspect. I mean the point is
16 there, but the Board is -- really wants to
17 focus on whether there's an imminent hazard
18 now, as a result of how this establishment is
19 operating.

20 So we don't want to hear a lot
21 about, you know, violating the four o'clock
22 rule.

1 MR. STERN: I'm going to have about
2 four minutes of video to play, as well as the
3 testimony which the Board has already heard.

4 CHAIR MILLER: And is there any
5 connection to, in your case, as to what and
6 the incident, or is it just that your point is
7 they weren't following the rules?

8 MR. STERN: Yes. My point is that
9 they don't follow their own rules, so that
10 makes them a danger, and is one of the reasons
11 why someone was able to get in with a knife,
12 and why there is -- what this incident
13 occurred.

14 CHAIR MILLER: Okay, okay. It is
15 established -- I mean she has made the point
16 that in the reports that they weren't
17 violating that rule. All I'm saying is I'll
18 give you maybe a teeny bit of leeway, but we
19 don't want to see a lot of footage about that
20 issue, because that's not going to help us
21 determine, for the most part, whether there's
22 a hazard now, in the way it's operating.

1 MR. STERN: Okay, and okay. If we
2 could play Right System No. 6, starting at
3 about 4:05. I will ask just one or two
4 questions on it.

5 MR. O'BRIEN: Madam Chair, I thought
6 you just ruled that it was not relevant?

7 CHAIR MILLER: I said I would give
8 very little leeway to see, to have him make a
9 small point. But we don't want to spend a lot
10 of time on this. So if it's one or two
11 questions, that's fine. We don't want to
12 spend a lot of time on this.

13 MR. O'BRIEN: One or two questions
14 simply designed to show -- to throw some mud
15 on the licensee, when it's utterly irrelevant
16 to what we're here for in a special session on
17 a Tuesday.

18 CHAIR MILLER: Okay. Mr. Stern has
19 shown that it is a little bit relevant. So
20 we'll hear a very little bit and that will be
21 it.

22 MR. MOLLOY: Sorry, it was Camera 6?

1 MR. STERN: 4:05.

2 MR. O'BRIEN: I hope the Board's
3 aware that we're the ones who are providing
4 the audiovisual services here.

5 CHAIR MILLER: Thank you. They're
6 very good. Thank you.

7 MR. O'BRIEN: Yeah, and I'm half
8 tempted to tell him not to extend the courtesy
9 at this point.

10 CHAIR MILLER: After this point --

11 MR. O'BRIEN: Since the Board has
12 ruled, I'll respect that.

13 CHAIR MILLER: Okay. Make your one
14 point, and that will be it and we'll get
15 beyond this.

16 BY MR. STERN:

17 Q Well, is this the camera angle from
18 which you determined that there were alcoholic
19 beverages being consumed after four o'clock?

20 A Yes. There was some observed on
21 this camera angle.

22 Q Okay. Can we play at 4:05:20 or so,

1 and could you point out why you believe --

2 [VIDEO PLAYED.]

3 THE WITNESS: Sure. To the right of
4 this, at about -- this will be almost three
5 o'clock, there's actually a VIP table that
6 still has bottle service set up on it, and
7 then at about I guess that would be one
8 o'clock, there's a patron currently leaning to
9 the side of the DJ booth, correct. Then that
10 is where you'll first see the champagne, a
11 patron with a champagne glass.

12 MEMBER SILVERSTEIN: Would you
13 repeat what you said?

14 THE WITNESS: Sure. At about one
15 o'clock, there's currently a patron leaning
16 onto the DJ booth area, and it's in that area
17 that you'll observe a patron with a champagne
18 glass, and then about three o'clock it's
19 currently hidden behind this patron right
20 here. That's a VIP table that still has a
21 setup and what appears to be a bottle on it.

22 MR. STERN: Okay.

1 MR. MOLLOY: Go ahead?

2 MR. STERN: Yes please.

3 [VIDEO PLAYED.]

4 THE WITNESS: You can see -- so
5 that's the bottle area again at three o'clock,
6 in which you can see the cranberry and the
7 orange juice and what appears to be a bottle
8 of alcohol. Then there comes the patron with
9 the champagne glass, with what appears to be
10 champagne. Can you see the hands behind the
11 patron.

12 MR. STERN: And then your -- I won't
13 --

14 CHAIR MILLER: Is this your last
15 question?

16 BY MR. STERN:

17 Q Yeah. I'll just -- one more
18 question actually. In your review of the
19 tapes, not having to do -- you can stop this
20 tape. In your review of the tapes, was that
21 an isolated incident, or did it happen -- was
22 it --

1 A I reviewed the tapes up until about
2 4:15, and there were -- this camera angle
3 showed another patron thereafter with what
4 appeared to be an alcoholic beverage, and
5 there was another -- two other camera angles
6 that showed the same.

7 BY MR. STERN:

8 Q Different patrons or the same
9 patron?

10 A Yes, different patrons at different
11 camera angles.

12 CHAIR MILLER: Okay.

13 MR. STERN: Thank you. Now you had
14 some pictures attached to your report. I want
15 to show you what I'll have marked as
16 Government's Exhibit No. 2. Though it says
17 "No. 1" on it, let me change that to No. 2,
18 and tell me if you can identify what that is.

19 (Whereupon, the document referred to as
20 Government Exhibit 2 was marked for
21 identification.)

22 THE WITNESS: It is a photograph of

1 the injury to the victim, Derek Johnson, that
2 was taken by Investigator Opoku, I believe.

3 BY MR. STERN:

4 Q Okay, can you -- what is the
5 relationship of this injury to the incident?

6 A That is the injury he suffered
7 during the incident.

8 Q Okay --

9 CHAIR MILLER: I'm sorry, can you
10 speak up?

11 THE WITNESS: Sorry. That is the
12 injury that he suffered as a result of the
13 incident.

14 MR. STERN: And have you --

15 MR. O'BRIEN: Just for the record,
16 it would probably be a good idea to say who
17 "he" is.

18 CHAIR MILLER: Thank you.

19 THE WITNESS: To clarify again,
20 Derek Johnson.

21 CHAIR MILLER: I didn't mean to ask
22 Mr. O'Brien to testify. But it should be

1 clear for the record. She said that 2 is an
2 injury suffered by Mr. Johnson? Could you
3 just clarify?

4 THE WITNESS: Mr. Johnson suffered
5 one injury to his left hand, which is a
6 laceration about two or three inches, which is
7 photographed in that photograph.

8 CHAIR MILLER: Mr. Johnson is who?

9 THE WITNESS: The security member.

10 CHAIR MILLER: Okay, thank you.

11 MR. STERN: Now I want to show you
12 what I've remarked as Exhibit No. 3 that was
13 in your report, and can you tell me what that
14 relevance is?

15 (Whereupon, the document referred to as
16 Government Exhibit 3 was marked for
17 identification.)

18 THE WITNESS: This is the knife that
19 the security member, Derek Johnson, showed to
20 Investigators Opoku and Demby, excuse me,
21 while at the hospital, and it was subsequently
22 photographed by them.

1 BY MR. STERN:

2 Q Okay. Is that the knife that he
3 indicated he had on him?

4 A Correct, it is.

5 MR. STERN: Thank you. The
6 government would move Exhibits 1, 2 and 3.

7 MR. O'BRIEN: Without objection.

8 CHAIR MILLER: Could you refresh my
9 memory as to what Exhibit 1 is?

10 MR. STERN: The second one is a
11 picture of the injury.

12 CHAIR MILLER: No, Exhibit 1?

13 MR. STERN: Exhibit 1 was the
14 security plan.

15 CHAIR MILLER: Okay. Exhibit 1's
16 the security plan. What is Exhibit 2?

17 MR. STERN: Left hand of the
18 security guard.

19 CHAIR MILLER: Okay.

20 MR. STERN: Exhibit 3 is the knife
21 the security guard indicated he had on him on
22 that night.

1 CHAIR MILLER: Okay. They're all
2 admitted.

3 (Whereupon, the documents identified
4 as Exhibits 1, 2 and 3 were received in
5 evidence.)

6 MR. STERN: Thank you.

7 CHAIR MILLER: Okay.

8 MR. STERN: No further questions of
9 this witness.

10 CHAIR MILLER: Okay. Mr. O'Brien,
11 do you have cross?

12 CROSS EXAMINATION

13 BY MR. O'BRIEN:

14 Q Exhibit 3 is the knife that Derek
15 Johnson had on him, but did not use that
16 night; correct?

17 A Correct.

18 Q For clarification, we've talked
19 about the rear entrance of the establishment.
20 Am I correct that the front entrance and the
21 rear entrance of the establishment are both on
22 K Street?

1 A Correct.

2 Q Okay, and separated maybe 20 feet?

3 A It would say that's fair.

4 Q Is that fair?

5 A Yes.

6 Q Okay, thank you. You stated when
7 you arrived on the scene about 4:45 a.m.,
8 which I guess is 45 minutes after the event?

9 A Correct.

10 Q Lieutenant Hargrove was at the
11 scene, and I understood you to say gathering
12 information for a possible closure?

13 A Correct.

14 Q So Lieutenant Hargrove had already
15 gotten to the point where he wanted to close
16 the place?

17 MR. STERN: Objection.

18 MR. O'BRIEN: What's the grounds for
19 the objection?

20 MR. STERN: One that she can't say
21 what his state of mind was. Two is what he
22 told her was a possible closure. It has

1 nothing to do with whether he wants to close
2 it or not. The question asked whether he
3 wanted to close it.

4 The first one is you can't know what
5 his state of mind is. Two, the foundation was
6 that he had collected evidence for a potential
7 closure.

8 CHAIR MILLER: Do you want to
9 rephrase the question?

10 MR. O'BRIEN: No, I think it's
11 clear.

12 CHAIR MILLER: Okay.

13 BY MR. O'BRIEN:

14 Q And I think Mr. Stern's objection
15 was a fair objection. Officer Petty was one
16 of the two reimbursable detail officers
17 employed by Capitale that night; correct?

18 A Correct, correct.

19 Q And Officer Petty did tell you that
20 security staff asked him to come inside?

21 A Correct.

22 Q And help remove a patron?

1 A Correct.

2 Q And that was in conjunction with the
3 episode that we're discussing; correct?

4 A Correct.

5 Q It was not a different patron at a
6 different time that night?

7 A No.

8 Q Okay. Did Officer Petty tell you
9 what when the scene was outside, in other
10 words, after the security person was cut, that
11 and -- let me rephrase that. I'm drifting
12 around here.

13 Officer Petty told you that he saw a
14 security person tackle a suspect?

15 A Correct.

16 Q Okay. Did he tell you that he had
17 heard Officer Gonzalez yell to the security
18 person to stop the guy who was running away?

19 A He did not indicate that, and nor
20 did I specifically ask that.

21 Q Okay. Did James Burwell tell you
22 that an officer had yelled at him to stop the

1 person running down the sidewalk, and that's
2 why he tackled him?

3 A Yes. Mr. Burwell told me that he
4 was told by MPD to stop a man that was
5 running, and that's when he chased him and
6 tackled him to the ground.

7 Q Now as I understand from your direct
8 testimony, your assessment, I think, was the
9 way we ended up with it, after we talked about
10 a conclusion or an opinion.

11 But your assessment was that the --
12 a patron had stopped the initial altercation,
13 and there was on altercation ongoing when
14 security picked up who we now know -- we now
15 call Patron A and took him out?

16 A Correct.

17 Q So it was your assessment or opinion
18 that because there was no altercation ongoing,
19 there was no reason not to await MPD?

20 A That would be fair.

21 Q Okay. Can we look at Right 15 again
22 please? Ms. Mathieson, it might be helpful of

1 you to step down again.

2 [VIDEO PLAYED.]

3 BY MR. O'BRIEN:

4 Q Stop right there, please. You've
5 identified that person as a patron?

6 A I believed him to be a patron, yes.

7 Q Why do you believe that?

8 A Because I thought I saw him come
9 from the VIP area, and he doesn't appear to be
10 wearing anything that distinguishes him to me
11 as a member of security.

12 Q Okay. Would your assessment have
13 changed if you came to learn that that person
14 who you thought was a patron in fact was
15 security?

16 A My assessment of the reason why I
17 believe -- can you clarify that question?

18 Q Sure. Your assessment is that the
19 whole episode had stopped. The situation --
20 I'm putting a word in your mouth and your head
21 -- calmed down before security picked up the
22 Person A that you're talking about; is that

1 correct?

2 A Yeah. There was no active fight at
3 the time that Patron A was being removed.

4 Q Okay. Let's continue then please,
5 Brian.

6 [VIDEO PLAYED.]

7 MR. O'BRIEN: Now at this point --
8 can you stop please?

9 MR. MOLLOY: Sure.

10 BY MR. O'BRIEN:

11 Q If you go on the -- it's the alleged
12 patron and a security person. Now is he not
13 holding back at that point Person A?

14 A Yes. Someone's being held up.

15 Q Okay. Is that not Person A?

16 A I believe it is.

17 Q Okay. All right. Would you then
18 continue please?

19 MR. MOLLOY: Sure.

20 [VIDEO PLAYED.]

21 BY MR. O'BRIEN:

22 Q Stop please. Is this about the

1 point in time where you believe, Investigator
2 Mathieson, that the altercation is stopped?

3 A No. This wasn't --

4 Q Okay. Let's continue. Would you
5 stop us when you say that the altercation
6 developed?

7 [VIDEO PLAYED.]

8 THE WITNESS: That was who I
9 identified as Derek Johnson, the man with the
10 hat.

11 [VIDEO PLAYED.]

12 BY MR. O'BRIEN:

13 Q Okay. Now stop please. In the last
14 second, did you not see Person A, who's head
15 can still be seen, just his head, right there,
16 struggle with security and break away from
17 their grasp?

18 A I didn't see that.

19 Q Could we back -- would you back up
20 please a little bit?

21 A But this wasn't what I was referring
22 to.

1 Q Now there's A. He's being held by a
2 security person. You see his arm swing?

3 A I see him break free from security,
4 yes.

5 Q Okay. So there is something going
6 on at that point, is there not?

7 A I'd clarify that as an active fight.
8 By active fight, I mean punches being thrown,
9 fight, and this wasn't a beating. It was a
10 little further more.

11 It goes on as they're actually
12 separated, and I based my conclusion, I should
13 add, on the view of the video. It wasn't
14 based solely upon the video. It was also
15 based upon two statements from the --

16 Q I'm sorry.

17 A Who stated when they arrived that
18 there were no punches -- they observed no
19 punches being thrown.

20 Q Continue.

21 [VIDEO PLAYED.]

22 THE WITNESS: Yes, and that's where

1 you observe the other member of security.

2 BY MR. O'BRIEN:

3 Q Do you see a struggle going on?

4 A Yes.

5 Q And did you see an arm just swing?

6 Let's go back a second please.

7 A You can see a motion and a struggle.

8 Q Okay, and do you not see a watch

9 from the arm from Patron A?

10 [VIDEO PLAYED.]

11 BY MR. O'BRIEN:

12 Q Do you see that swing?

13 A You see that appears to me more as
14 though he was trying to escape.

15 Q That didn't look like an overhand
16 punch to you?

17 MR. STERN: Asked and answered.

18 THE WITNESS: It appeared to me as
19 though he was trying to escape someone, the
20 security member who was next to him trying to
21 grab his arm.

22 BY MR. O'BRIEN:

1 Q And it is then, is it not, that
2 Derek Johnson decides that this guy has to go
3 and picks him up?

4 A Yes, and initially there he's being
5 held, and then he's pulled off from the VIP
6 area. The scuffle with him doesn't begin
7 until about there.

8 Q Which scuffle? Another scuffle?

9 A Well, it was described in the
10 statement I took from Derek Johnson, the
11 patron was giving him a difficult time when he
12 was trying to remove him. That didn't occur
13 until once he had gotten already off the VIP
14 area, from what I can observe on the video
15 footage.

16 Q Okay. But you would agree that at
17 the time that Derek Johnson picked up what we
18 now would call Patron A, Patron A was
19 continuing to struggle, and we'll let the
20 Board decide whether he was throwing punches.

21 MR. STERN: Is that a question?

22 BY MR. O'BRIEN:

1 Q Yes. You would agree, would you
2 not, that he was continuing to struggle when
3 Johnson picked him up?

4 A There appeared to be some sort of
5 commotion. I can't say there was a scuffle.
6 I don't believe there were any punches thrown.
7 Again, based upon what I viewed and the
8 statements of the security people who were
9 involved in the situation.

10 But it also appeared as though once
11 he got him to the side, that he was no longer
12 struggling until he was being dragged off of
13 the VIP area, and that's my observation.

14 Q I'm sorry. Say that again.

15 CHAIR MILLER: Yeah, Ms. Mathieson,
16 I want to say you have a tendency to drop your
17 voice, and so we're missing some of it.

18 THE WITNESS: Oh, I'm sorry. So
19 there was the initial scuffle when the
20 security member intervened and then further
21 separated him, Derek Johnson that is, and it
22 appeared as though there was a brief moment

1 prior to him being dragged off of the VIP
2 area, where he was not struggling with
3 security.

4 BY MR. O'BRIEN:

5 Q A brief moment?

6 A Right, and then he was subsequently
7 dragged off of the VIP area onto the main
8 floor and down to the, I guess the bar area,
9 and that's where it appeared the scuffle began
10 again.

11 Q Okay.

12 A To my observations.

13 Q So your observation is that the
14 struggle ended for a brief moment, and then
15 began again?

16 A Correct, correct. I think I
17 outlined that in my observations of the video
18 footage in the report.

19 Q Did you interview Officer Gonzalez?

20 A I did.

21 Q Would you go to that tape please?

22 [VIDEO PLAYED.]

1 BY MR. O'BRIEN:

2 Q Would you identify again Officer
3 Gonzalez?

4 A This appears to him right here.

5 Q It's the second person, the one
6 leaning on the table; correct?

7 A Correct.

8 Q With the skull cap on?

9 A Correct.

10 Q Okay.

11 [VIDEO PLAYED.]

12 BY MR. O'BRIEN:

13 Q Would you agree Officer Mathieson,
14 I'm sorry Investigator Mathieson, that this is
15 the best footage we have of or best footage
16 you've seen of Patron A being carried out?

17 A Correct.

18 Q And would you agree that he's not
19 being carried by the head or neck, that
20 Johnson has his arms wrapped around his torso?

21 A Yes. That was noted in the
22 observations in my reports.

1 Q Okay. Did you see any indication
2 here that he's being manhandled by security,
3 other than being carried?

4 A Now that you mentioned it, security
5 described him as kicking and flailing the
6 entire way out, whereas the officer described
7 him as subdued.

8 MEMBER SILVERSTEIN: Officer
9 described him as --

10 THE WITNESS: Subdued, and with my
11 observations, he's being held in a manner
12 which is not resisting.

13 CHAIR MILLER: Could you repeat
14 that?

15 THE WITNESS: Sure. My observations
16 are he's being held in a manner in which he is
17 not resisting.

18 MR. O'BRIEN: Right. Can we
19 continue please?

20 MR. MOLLOY: Keep playing?

21 [VIDEO PLAYED.]

22 BY MR. O'BRIEN:

1 Q Yeah, keep playing. I'm focusing on
2 Johnson here. Johnson now joins the crowd
3 going outside -- I'm sorry, Gonzalez. I said
4 Johnson. I mean to say Officer Gonzalez joins
5 the crowd going out?

6 A Correct.

7 Q Can we now go to what was it Right 1
8 or Right 2? Right 1.

9 [VIDEO PLAYED.]

10 MR. O'BRIEN: Can you go back just
11 maybe three seconds, and what I'm going to ask
12 you to look for in particular, Investigator
13 Mathieson, is which person was carried out by
14 Derek Johnson.

15 MR. MOLLOY: And I can play it again
16 slightly slower motion.

17 MR. O'BRIEN: Yes, would you?

18 [VIDEO PLAYED.]

19 THE WITNESS: So consistent with
20 what I put in my report, this appears to be
21 Patron A and that appears to be Patron B, and
22 Patron A was the one who was carried out.

1 MEMBER ALBERTI: Can you show that
2 again? Point to that again.

3 MR. O'BRIEN: And slightly even
4 slower.

5 [VIDEO PLAYED.]

6 MEMBER ALBERTI: He's got his hand
7 in his pocket.

8 THE WITNESS: So this --

9 BY MR. O'BRIEN:

10 Q That's where Johnson is trying to go
11 back inside; correct?

12 A That's what this appears, yes.

13 Q That's what it appears, okay. Okay.
14 Continue please?

15 MR. MOLLOY: Do you want to identify
16 the person?

17 MEMBER ALBERTI: Which one is
18 Johnson?

19 BY MR. O'BRIEN:

20 Q Can you determine, Officer
21 Mathieson, which is A and which is B?

22 A It appears to me, based upon their

1 clothing, that this was Patron A and this was
2 Patron B.

3 Q Okay, all right. So after he's
4 pushed, Johnson turns around, okay. Have we
5 missed the swing?

6 [VIDEO PLAYED.]

7 BY MR. O'BRIEN:

8 Q So stop there. Would you agree that
9 this is A and that is B (pointing)?

10 A Yes.

11 CHAIR MILLER: Can you identify it
12 better for the record, like the one on the
13 left or the middle?

14 THE WITNESS: That would be A. The
15 one on the left is B.

16 MR. O'BRIEN: All the way to the
17 right is someone with a skull cap on. That's
18 not what I'm getting at.

19 CHAIR MILLER: Okay.

20 BY MR. O'BRIEN:

21 Q The person I would say in the middle
22 is A, and the person slightly closer to

1 Johnson at that moment is B. Now continue
2 please, and if you would watch very carefully,
3 Investigator Mathieson. Who is it that takes
4 the swing at Derek Johnson? Is it A or is it
5 B?

6 A As I previously stated, it was
7 Patron B. It appears to be Patron B.

8 Q Did I misread your report? I
9 thought it said that Patron A did it?

10 A No. My report should say that it
11 was Patron B.

12 Q Okay. Now you said -- did you use
13 the word "knife"?

14 A In my report, I'd have to read it to
15 see exactly what I used. Maybe I called it
16 "sharp object."

17 Q Can you go back slightly, so we can
18 watch the beginning of the swing, to see what
19 if anything you can see? Right starting now,
20 what is it that you see?

21 [VIDEO PLAYED.]

22 MEMBER ALBERTI: That's a knife.

1 THE WITNESS: There appears to be a
2 sharp object. You could only see it in this
3 video as well, in the hand, the right hand of
4 that patron, and you see the left hand of the
5 security member, Derek Johnson, in the air.
6 Those two subsequently made contact, and a few
7 seconds later you can see Derek Johnson --

8 BY MR. O'BRIEN:

9 Q Okay. Are you saying that you see a
10 sharp object in his right hand, in his right
11 hand now?

12 A It appears to be. That's my
13 observation, and there's during the -- yeah,
14 it's right there in the picture. It might
15 have a different version.

16 Q Better. But you to this day do not
17 know what, if anything, was in his hand; is
18 that correct?

19 A No. I described it in my report as
20 a sharp object. MPD described it as a knife,
21 and a knife was recovered from the area.

22 Q From what area?

1 A From the area on K Street.

2 Q How far from this?

3 A I do not know. I'm not MPD. You'd
4 have to ask them, but they did say that a
5 knife was recovered on K Street, Northwest.

6 Q Didn't they say at 14th and K?

7 A It might have been in that vicinity,
8 yes. They said -- MPD described the knife as
9 being passed around, and then later discarded.

10 MR. O'BRIEN: Those are my
11 questions. I'm finished.

12 CHAIR MILLER: Okay. Board
13 questions? No Board questions.

14 MEMBER ALBERTI: Yeah.

15 CHAIR MILLER: Okay.

16 MEMBER ALBERTI: I just want to make
17 sure I understand the layout here, all right.
18 So when you say "Table 3," you have this
19 diagram, which is Exhibit -- one of your
20 exhibits. It's a diagram of the lounge.

21 THE WITNESS: Yeah. It's in the
22 security plan.

1 MEMBER ALBERTI: It's in the
2 security plan, all right. Where's Table 3 on
3 that?

4 THE WITNESS: I just need a copy of
5 that, if someone can provide it?

6 MR. STERN: I can.

7 THE WITNESS: Yeah. According to
8 the diagram, Table 3 would actually be -- so
9 if you can see the lounge entrance, Table 3 --

10 MEMBER ALBERTI: Lounge entrance is
11 at the bottom of this page to the left.

12 THE WITNESS: Right, on the top
13 left, the lounge entrance, and then at the
14 bottom --

15 MEMBER ALBERTI: Okay, I'm sorry.
16 Would you mark it? Would you mark it where it
17 is? Is that the one that says "lounge
18 entrance"?

19 THE WITNESS: Yes.

20 MEMBER ALBERTI: Okay, but would you
21 mark it for us?

22 THE WITNESS: Sure.

1 MEMBER ALBERTI: Okay, and then mark
2 Table 3 for that, for us there?

3 THE WITNESS: Okay.

4 MEMBER ALBERTI: Okay.

5 THE WITNESS: So the lounge entrance
6 would be up here. That's stated, and Table 3
7 is listed as the corner. Although on the --

8 MEMBER ALBERTI: Okay. So Table 3
9 is at the corner on that same end of the
10 lounge?

11 THE WITNESS: Correct. On the video
12 --

13 MEMBER ALBERTI: Okay, the opposite
14 corner sort of?

15 THE WITNESS: Correct. On the
16 video, it appears as though it's more in the
17 Table 5 area. However, Table 3 was what was
18 here.

19 MEMBER ALBERTI: And where did they
20 carry this person out?

21 THE WITNESS: Where?

22 MEMBER ALBERTI: Yeah, where.

1 THE WITNESS: So it appears as
2 though if you could see this double-lined area
3 beneath the tables?

4 MEMBER ALBERTI: Uh-huh.

5 THE WITNESS: So there's a bar, and
6 I don't know if that represents the bar, but
7 there's a bar area. I guess actually the bar
8 area would be across.

9 MEMBER ALBERTI: Right. The bar is
10 across.

11 THE WITNESS: There would be -- they
12 carried him essentially, from what I could see
13 with the video on here, straight down and then
14 out to this rear.

15 MEMBER ALBERTI: So where it says
16 "Bathrooms, Exit to Patio"?

17 THE WITNESS: Yeah, Correct. That
18 area, and then there's a hallway and I think
19 this might represent the doorway. On the
20 diagram it's kind of difficult to decipher.

21 MEMBER ALBERTI: Okay, I got you.
22 Where's K Street in relationship to this

1 diagram?

2 THE WITNESS: I would presume that K
3 Street would run, I guess, parallel with this
4 row of tables.

5 MEMBER ALBERTI: To what row of
6 tables?

7 THE WITNESS: To the row of VIP
8 tables.

9 MEMBER ALBERTI: You mean Tables 3
10 through 9?

11 THE WITNESS: Yeah. That would be
12 what I would assume, from looking at this --

13 MEMBER ALBERTI: Not on the bar
14 side?

15 THE WITNESS: From what I saw --

16 MEMBER ALBERTI: If you don't know,
17 you can --

18 THE WITNESS: Yeah. I mean from
19 what I saw from the establishment, the tables
20 were running on one side and the bar was
21 running on the other.

22 MEMBER ALBERTI: All right. That

1 gives me some idea.

2 THE WITNESS: But from what I
3 believe would be K Street, it would on the
4 side of the tables.

5 MEMBER ALBERTI: Yeah. Now could
6 you tell from the video at approximately what
7 time they turned the lights on?

8 THE WITNESS: I think I might have
9 noted that. Just give me one second.

10 (Witness reviewing document.)

11 THE WITNESS: I don't think I noted
12 that actually in the -- in the observations,
13 because I was only focusing on four o'clock at
14 after. So I'm not certain what time the --

15 MEMBER ALBERTI: Well, do you know
16 if it was before or after the altercation?

17 THE WITNESS: Yeah. The lights --
18 yeah, the lights were on at the time of the
19 altercation.

20 MEMBER ALBERTI: Okay, great. Thank
21 you. How many people were you -- at the time
22 the altercation occurred, how many people or

1 immediately before that, how many people would
2 you estimate were in the establishment, from
3 the video that you saw?

4 THE WITNESS: From the video
5 footage, I would estimate around 75 to 100.

6 CHAIR MILLER: How many?

7 THE WITNESS: 75 to 100 people.

8 MEMBER ALBERTI: And okay. In the
9 video, and I think I'm not sure what this one.
10 We're at the back door, or not the back door.
11 I'm sorry. We're at the entrance where they
12 carried the person out, all right. There were
13 a lot of people exiting after, behind the guy
14 who was getting carried out.

15 THE WITNESS: Yes.

16 MEMBER ALBERTI: Were all of those
17 security people?

18 THE WITNESS: No. If you would go
19 back to the Camera 15 angle, you can see a
20 large group of what I would say approximately
21 10 to 15 who appeared to be patrons following
22 the group -- the parties being escorted out,

1 following them.

2 On that camera angle number, I
3 believe that's 11, is that correct, on the
4 rear doorway. That's 11. Yes.

5 On Camera 11, you see approximately
6 20 I would estimate people exiting, mixed with
7 security. You can identify some members of
8 security in there as well, but from the first
9 camera angle, it's hard to distinguish for me.

10 MEMBER ALBERTI: So let's go back to
11 the scuffle. In that scuffle, you identified
12 a Person A, B and C?

13 THE WITNESS: Correct.

14 MEMBER ALBERTI: All right. Person
15 A, I think, would you agree that he's the
16 aggressor?

17 THE WITNESS: Correct. Even though
18 Patron B was the one who threw the first
19 punch, Patron A --

20 MEMBER ALBERTI: Patron B threw the
21 first punch?

22 THE WITNESS: Correct.

1 MEMBER ALBERTI: Person A is the
2 person who got carried out?

3 THE WITNESS: Correct.

4 MEMBER ALBERTI: Person C is who?

5 THE WITNESS: Unknown to me. He is
6 just a patron who was on the receiving end of
7 the altercation.

8 MEMBER ALBERTI: Okay, all right.
9 Do you know if he was part of the crowd? Were
10 you able to identify whether or not he was
11 part of the crowd that exited?

12 THE WITNESS: I was not.

13 MEMBER ALBERTI: Okay. I have no
14 further questions at this time.

15 CHAIR MILLER: Okay, others? Mr.
16 Jones.

17 MEMBER JONES: Thank you, Madam
18 Chair. Just for clarification purposes, were
19 you able to observe whether or not the
20 security person that was identified as having
21 a knife ever pulled that knife out?

22 THE WITNESS: I looked for it on the

1 video. However, I was not able to see that on
2 the video.

3 MEMBER JONES: Weren't able to see
4 that at all. Are you aware of whether or not
5 the security person had the knife in while he
6 was on duty?

7 THE WITNESS: Yes. He admitted he
8 did.

9 MEMBER JONES: He did.

10 THE WITNESS: He also admitted to
11 taking it out to myself, as well as
12 Investigators Opoku and Demby. He admitted to
13 taking it out and displaying it, I guess,
14 during the altercation. But he said he didn't
15 use it, and quickly put it away.

16 MEMBER JONES: Okay. In your
17 conversations with him, did he ever
18 acknowledge the fact that whether or not it
19 was appropriate for him to have a knife while
20 he was on duty?

21 THE WITNESS: I did ask him if other
22 members of security carried knives, and he

1 stated that he could not comment on that. He
2 could only speak for himself, and he said the
3 reason he carries it is for self defense. So
4 he to my understanding believed it was
5 appropriate for him.

6 MEMBER JONES: It was appropriate
7 for him to have it while he was on duty?

8 THE WITNESS: Yeah. That was my
9 understanding.

10 MEMBER JONES: Okay. When he
11 acknowledged that he, for lack of a better
12 expression, when he acknowledged he brandished
13 his knife, did he indicate in any way, shape
14 or form why he chose not to use it when he
15 pulled it out?

16 THE WITNESS: Not during my
17 conversation with him. He said he -- during
18 my conversation with him, he said that he, you
19 know, displayed the knife and then put it away
20 before anybody saw it. In the conversation he
21 had with the other investigators, it was
22 reported that he told them he thought about

1 using it, but then did not.

2 MEMBER JONES: Did he provide any
3 feedback as to what prompted him to think
4 about using it? Did he feel threatened?

5 THE WITNESS: Yes. It was my
6 understanding that because he had been
7 stabbed, that's what prompted him.

8 MEMBER JONES: Got it. Okay. So
9 because he had been stabbed, he was going to
10 retaliate in kind?

11 THE WITNESS: He felt threatened.

12 MEMBER JONES: He felt threatened.
13 Okay, thank you. Thank you, Madam Chair.

14 CHAIR MILLER: Okay. I just want to
15 follow up on the conclusion you represented,
16 that the establishment was in violation of
17 Section B of their security plan?

18 THE WITNESS: Yes.

19 CHAIR MILLER: I don't know if you
20 have that in front you?

21 THE WITNESS: Yes.

22 CHAIR MILLER: Okay. Could you just

1 identify what facts that you may have
2 testified to that are --

3 (Simultaneous speaking.)

4 THE WITNESS: --in combination of
5 interviews with the security personnel,
6 Quentin Williams and Derek Johnson, who
7 approached the scene of the initial
8 altercation. They both stated that they did
9 not observe any punches being thrown or
10 described an active fight taking place.

11 When I viewed the video, I did not
12 see an active fight being -- taking place when
13 the suspect was being, or excuse me, when the
14 patron was being escorted out. In addition,
15 MPD had been called to respond inside, and the
16 patron was removed before MPD arrived inside.
17 MPD being stationed outside, it was my
18 understanding that it wouldn't have taken very
19 long for MPD to come to that area of the
20 establishment.

21 So all of those factors combined led
22 me to believe that this was possibly a

1 violation of the --

2 CHAIR MILLER: But what, the
3 carrying out of the --

4 THE WITNESS: Right. Well, the fact
5 that there was no active fight. MPD had been
6 called to respond. Security members described
7 it no active fight.

8 On the video, it seemed as though
9 the situation was under control, and again,
10 MPD had been called and they were not waited
11 for to respond, and then the manner in which
12 the patron was carried out without an active
13 fight or punches being thrown, the manner in
14 which the patron was being carried out was.

15 CHAIR MILLER: Okay.

16 THE WITNESS: I did not consider it
17 -- it's that point in there where it says
18 "intervene with reasonable force." So that to
19 me was why I felt that way. But that's just
20 my opinion.

21 CHAIR MILLER: So that's the part
22 that you don't think it was reasonable force?

1 THE WITNESS: Correct. The manner
2 in which he was carried out, in combination of
3 the events as I described when security
4 arrived on the scene. So there was no active
5 fight. There were no punches being thrown.
6 MPD had been called and MPD was not waited for
7 when he was being carried out.

8 CHAIR MILLER: Okay.

9 THE WITNESS: And then he was also
10 described as being carried out like a rolled
11 up mat, which was essentially how he was being
12 just carried out.

13 CHAIR MILLER: Okay, thank you, and
14 then my other question is, what's called a
15 rear entrance through which he was carried
16 out, that goes to K Street on the same side as
17 -- the rear, is that -- is the rear entrance
18 the same side as the front?

19 (Simultaneous speaking.)

20 THE WITNESS: Yeah. They both let
21 out onto K Street. It's just that one is used
22 as the front entrance, and one is -- I mean

1 you could describe it as -- it's best
2 described as a rear door.

3 CHAIR MILLER: But MPD is also
4 outside that door? I mean the reimbursable
5 detail; is that correct?

6 THE WITNESS: I don't know, I don't
7 know. According to my interviews with them,
8 they were standing at the front of the
9 establishment. So by the front door and one
10 was at the rear. But it would be better asked
11 I think for MPD to clarify that.

12 CHAIR MILLER: Okay, all right.
13 Thank you. Any other Board questions? Mr.
14 Short, yeah.

15 MEMBER SHORT: Good morning,
16 Investigator. You have been investigating how
17 long with ABRA?

18 THE WITNESS: Six years, six years.

19 MEMBER SHORT: Six years. Do you
20 have any history with this particular club?

21 THE WITNESS: I've only ever had one
22 other incident at that location, and it was a

1 few years ago, I believe in 2011. But it was
2 for underaged drinking.

3 MEMBER SHORT: Underaged drinking?

4 THE WITNESS: Correct.

5 MEMBER SHORT: Are you familiar with
6 any other history ABRA has with this
7 establishment?

8 THE WITNESS: I am not.

9 MEMBER SHORT: Thank you.

10 CHAIR MILLER: Okay. Mr. Rodriguez.

11 MEMBER RODRIGUEZ: Good morning, Ms.
12 Mathieson.

13 THE WITNESS: Good morning.

14 MEMBER RODRIGUEZ: The knife, the
15 knife that was used by the assailant, is that
16 the same knife that was found a few blocks
17 away?

18 THE WITNESS: MPD advised that they
19 recovered a weapon that they believed was
20 involved in this incident. I can't comment
21 for certain whether or not it was not. But
22 that was the information that was given to us.

1 MEMBER RODRIGUEZ: Okay. Thank you.

2 THE WITNESS: Sure.

3 CHAIR MILLER: Okay.

4 MR. O'BRIEN: Based on the Chair's
5 questions.

6 CHAIR MILLER: Yes. Questions based
7 on the Board questions.

8 MR. O'BRIEN: Yes.

9 MR. STERN: Actually, maybe I should
10 go first.

11 CHAIR MILLER: Right, and then you
12 have redirect also. You want to go first? Is
13 that what you're saying?

14 MR. STERN: Yes, well.

15 MR. O'BRIEN: Mr. Stern can go
16 first.

17 MR. STERN: And you're supposed to
18 go last.

19 MR. STERN: Well no.

20 CHAIR MILLER: But I thought you
21 went last. It's your redirect. But okay, go
22 ahead.

1 REDIRECT EXAMINATION

2 BY MR. STERN:

3 Q You've said you wrote a report in
4 this matter. I want to show you what's one-
5 two-three-four, page five, six and seven of
6 your report, and ask do you recognize what
7 that is?

8 A That's the investigative history of
9 the club.

10 Q It's the original investigative
11 history, and then you looked up? That's in
12 response to the Board member's question.

13 A Yes, I put it in the report, but I'm
14 not familiar with it.

15 Q Okay. That's the history that's on
16 the records?

17 A Correct. That's the ABRA history.

18 Q Okay. Now can you -- I've checked
19 certain cases in this report. Can you give us
20 the dates and what those cases involved?

21 CHAIR MILLER: What are you asking
22 her?

1 MR. STERN: The cases in the
2 investigative history. I identified certain
3 cases I wanted her to identify to the Board,
4 what the investigative history shows regarding
5 those cases.

6 MR. O'BRIEN: The question today is
7 whether the establishment today is an imminent
8 danger to public health and safety. It's just
9 more throwing mud.

10 CHAIR MILLER: We have the
11 investigative history, Mr. Stern. We can see
12 what's on it. Why does the --

13 MR. STERN: I'm just following up on
14 the Board's question.

15 MR. O'BRIEN: Plus at some point, I
16 might want to show that there's a blatant
17 error in Item No. 1 of the investigative
18 history.

19 CHAIR MILLER: No. The
20 investigative history is in the record, and
21 the Board can --

22 MR. STERN: Then there will be no

1 questions.

2 CHAIR MILLER: Okay.

3 RECROSS EXAMINATION

4 BY MR. O'BRIEN:

5 Q Based on the Chair's questions, did
6 not the second tape we looked at, I think,
7 which is Right 11, show that Officer Gonzalez
8 at the time of this incident was right inside
9 what we're calling the rear door?

10 A Yes.

11 Q And did not Officer Petty tell you
12 that he had been outside the front door when
13 he was asked to come inside?

14 A Yes, yes.

15 Q Okay. If this Board is to find or
16 were the Board to find that at the time of the
17 picking up of Suspect A by Derek Johnson, that
18 there was an ongoing struggle, would you then
19 agree that picking him up and carrying him out
20 was not a violation of their security plan?

21 A In my opinion, reasonable force and
22 the manner in which he was carried out, I

1 would have expected to see a large
2 altercation, possibly him having some sort of
3 a weapon, and had there be a serious injury to
4 another patron inside the establishment, for
5 it to warrant him being carried out, and I
6 would also expect to see while he was being
7 carried out, him continuing to fight security
8 and so forth, and that's just my opinion.

9 Q So is it your position that security
10 should have awaited a serious injury to
11 another patron before taking steps to diffuse
12 the situation?

13 MR. STERN: Objection, objection.

14 CHAIR MILLER: Overruled.

15 MR. STERN: Assumes facts not in
16 evidence.

17 CHAIR MILLER: She said that.
18 Overruled. It sounded like she said that. I
19 think he's verifying, exactly so --

20 MR. O'BRIEN: That's exactly what
21 she said.

22 THE WITNESS: No. I mean I don't

1 know how to clarify that, other than to say I
2 didn't think that was reasonable. There
3 seemed to be no imminent threat to the
4 immediate area, for him to be warranted
5 carried out by his hands and feet, quote-
6 unquote "like a rolled up mat."

7 BY MR. O'BRIEN:

8 Q So it's your position -- let me go
9 back. We do see immediately prior to him
10 being picked up that he is at least struggling
11 with security. We do see that, don't we?

12 A Yes.

13 Q Okay, and we can differ as to
14 whether this arm coming over immediately prior
15 to being picked up is a punch or is just part
16 of an ongoing struggle? We can disagree to
17 that. But should security have waited until
18 it deteriorated further before acting? Is
19 that your position?

20 A That's not what I was saying, no.
21 I'm just saying the manner in which he was
22 removed, by being carried by his head and feet

1 horizontally through the establishment.

2 Q Well you --

3 A And it was described -- as I'm
4 answering the question, it was described by
5 the member of security who was carrying his
6 feet that it appeared as though his friend
7 didn't appreciate the way he was being removed
8 from the establishment, which is what led to
9 the initial verbal altercation followed by the
10 physical altercation out the rear door.

11 Q This is the friend, Patron B?

12 A Correct.

13 Q Who --

14 A Who ended up stabbing the security
15 guard.

16 MR. O'BRIEN: Who ended up stabbing
17 the security guard. So you're saying that
18 perhaps -- I'll take that back. Those are my
19 questions.

20 CHAIR MILLER: Is there any
21 redirect? Okay. Thank you very much.

22 MR. STERN: Thank you.

1 (Witness excused.)

2 CHAIR MILLER: Mr. Stern, do you
3 have another witness?

4 MR. STERN: Yes.

5 CHAIR MILLER: Okay.

6 MR. STERN: The government will call
7 Officer Petty.

8 CHAIR MILLER: Good morning.

9 OFFICER PETTY: Good morning.

10 Whereupon,

11 OFFICER JAMES PETTY

12 was called as a witness and, after having been
13 first duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. STERN:

17 Q Good afternoon -- morning, Officer
18 Petty. Can you give us your name for the
19 record?

20 A James Petty, P-E-T-T-Y. I work for
21 the 1st District of the Metropolitan Police
22 Department.

1 Q Okay. On February 14th at
2 approximately 4:00 a.m., were you familiar
3 with an establishment by the name of Capitale?

4 A Yes.

5 Q And can you tell me what your role
6 at that time in relation to Capitale was?

7 A I was working the reimbursable
8 detail.

9 Q Okay, and was there an incident that
10 occurred at Capitale about that time?

11 A Yes.

12 Q How did you become aware of that?

13 A When a security guard came outside
14 and notified me.

15 Q Okay, and what did you do?

16 A I responded inside.

17 Q Okay, and can you tell me with what
18 sense of urgency you responded inside?

19 A I responded in immediately. Once I
20 got inside, I noticed that they were on the
21 other side of the establishment, going into
22 the outside.

1 Q Okay, and what did you see?

2 A Just people going outside, that's
3 it.

4 Q Okay. Could you see the security
5 guards?

6 A No.

7 Q Okay. Did you follow in that
8 direction?

9 A Yes.

10 Q And what is it -- where did you
11 first see either the security guards or people
12 who came up to you as defendants in this case?

13 A Outside of the door.

14 Q Okay. So what happened?

15 A Once I got outside, I noticed that
16 one of the security guards, his hand was
17 bleeding. Another security guard was standing
18 over a male in the middle of the street, and
19 I went over to assist him, to find out what
20 was going on.

21 Q Okay, and what was -- what did you
22 find out?

1 A Somebody had stated that that was
2 the suspect that did the possible stabbing.

3 Q Okay. Now in the course of these
4 circumstances -- well, when you got out, did
5 you see any knives?

6 A No.

7 Q Okay. Then in the course of your
8 work that evening, did you come to find out
9 that there was a knife?

10 A Yes.

11 Q Okay, and how did you find out there
12 was a knife?

13 A A detective stated that they found a
14 knife maybe an hour after the -- maybe an hour
15 later further down the block.

16 Q Okay, and were you able to see the
17 injury to the Respondents?

18 A No.

19 Q Excuse me, not to Respondent, to Mr.
20 Johnson, the security guard?

21 A No.

22 Q Okay. Can you describe the knife

1 that was found?

2 A I never saw the knife.

3 Q Okay. Was it described to you?

4 A Actually no.

5 Q Okay. But it was a knife?

6 A Yes.

7 Q And did you say that -- well, do you
8 know how long the blade was?

9 A No. I have no idea.

10 Q Okay. So when you got outside, what
11 was going on at the time you went outside?

12 A When I got outside, the altercation
13 was most likely over. Like I said, the head
14 of security was standing over a subject. I
15 went over, placed that subject in handcuffs
16 and that was about it.

17 Q Okay, so --

18 CHAIR MILLER: Sorry. Sometimes,
19 can you speak up a little bit?

20 THE WITNESS: Okay.

21 CHAIR MILLER: That microphone
22 doesn't pick up that well. Thank you.

1 BY MR. STERN:

2 Q From the time you were informed that
3 there was an incident until the time you got
4 outside, how long was that? Estimated I
5 guess.

6 A Under a minute.

7 Q Under a minute, and the altercation
8 was all over by then?

9 A Yes.

10 Q What's the purpose of the
11 reimbursable detail being there?

12 A The reimbursable detail basically is
13 to keep the environment safe after the club
14 lets out. We normally have a lot of
15 altercations after a club is let out.

16 Q Okay, and why is it that -- I mean
17 how is it that a reimbursable detail keeps the
18 area safe?

19 A Presence.

20 Q Presence of the police?

21 A Yes.

22 Q Okay, and is that deemed safer than

1 the presence of security guards?

2 MR. O'BRIEN: Objection. This is
3 asking for the officer to tell the Board what
4 the legislative intent was behind adopting the
5 security reimbursable detail program.

6 MR. STERN: I think the Board knows
7 that.

8 CHAIR MILLER: I'm going to overrule
9 it, just this one question. What's the
10 difference between security or go ahead.

11 BY MR. STERN:

12 Q Well define -- I think you
13 testified, just to go back, that the purpose
14 of having the police there is for the area to
15 be safe?

16 A Yes.

17 Q Is having police there safer than if
18 they just have security guards?

19 A Oh yes.

20 Q Okay, and why is that?

21 A I feel as if they didn't have police
22 officers there, it would be a totally

1 different environment, totally different
2 environment.

3 Q Can you articulate why that is?

4 CHAIR MILLER: So let's have --
5 okay. One more question on this. Go ahead.

6 THE WITNESS: Just in reference to
7 that, it was just there's no police there.

8 MR. STERN: Okay, thank you.

9 CHAIR MILLER: I'm sorry. What was
10 the answer?

11 THE WITNESS: If there were no
12 police at certain clubs, you would have a lot
13 of problems.

14 CHAIR MILLER: Okay.

15 MR. STERN: No further questions.

16 CROSS EXAMINATION

17 BY MR. O'BRIEN:

18 Q Officer Petty, how long have you
19 been a police officer?

20 A Seven years.

21 Q And how often do you, during the
22 seven years, working reimbursable detail?

1 A I think it's safe to say that I work
2 more reimbursable details than anybody in the
3 city. Probably four times a week.

4 Q Okay. Four times a week.

5 A Minimum.

6 Q Okay. How often in the past have
7 you been assigned to work at Capitale?

8 A Ooh, pretty often. Every other
9 Sunday or every Sunday or Thursday.

10 Q In general, do you find the club is
11 responsibly operated?

12 A Yes.

13 MR. STERN: Objection. In general
14 certainly has no relationship to what this
15 incident.

16 CHAIR MILLER: Overruled. It
17 certainly does, because we're going into in
18 general, some of their history and other
19 procedures that they follow or don't follow.
20 It's clearly relevant. Go ahead.

21 BY MR. O'BRIEN:

22 Q I'm not sure if the Board heard your

1 answer. My question was whether speaking in
2 general you find this club to be operated
3 responsibly?

4 A Yes.

5 Q Now going specifically to this event
6 I guess eight days ago, did you observe the
7 club or its personnel doing anything that you
8 saw inappropriate?

9 A No.

10 MR. O'BRIEN: Those are my
11 questions, thank you.

12 CHAIR MILLER: Board questions? Mr.
13 Short.

14 MEMBER SHORT: Thank you, Officer.
15 I would just like to ask one question.

16 THE WITNESS: Yes.

17 MEMBER SHORT: Basically you say you
18 work four times a week at these -- as a RDO?

19 THE WITNESS: Yes. Throughout the
20 city, yes.

21 MEMBER SHORT: Throughout the city.
22 Is this your normal duty hours or is this

1 overtime?

2 THE WITNESS: This is overtime.

3 MEMBER SHORT: So you're working
4 quite a bit of overtime. You get to see a lot
5 of these clubs and they know you and you know
6 them; correct?

7 THE WITNESS: Yes.

8 MEMBER SHORT: Thank you. That's
9 all I want to ask.

10 CHAIR MILLER: Mr. Alberti.

11 MEMBER ALBERTI: Good afternoon,
12 Officer. Just a couple of quick questions.
13 When you talked to the detectives about the
14 knife they found, did they relate to you where
15 they found the knife?

16 THE WITNESS: Yes.

17 MEMBER ALBERTI: And where did they
18 tell you they found it?

19 THE WITNESS: Umm, I think it was
20 eastbound towards 14th and K Street.

21 MEMBER ALBERTI: What was that?

22 THE WITNESS: Eastbound towards 14th

1 and K Street, I think.

2 MEMBER ALBERTI: Eastbound from the
3 establishment?

4 THE WITNESS: Yes.

5 MEMBER ALBERTI: Did they say how
6 far?

7 THE WITNESS: They didn't say how
8 far, but it was inside of a planter.

9 MEMBER ALBERTI: Inside of a
10 planter?

11 THE WITNESS: Yes.

12 MEMBER ALBERTI: Okay, all right.
13 Do you have any idea which planter that might
14 be?

15 THE WITNESS: I believe so, yes.

16 MEMBER ALBERTI: Okay, and based on
17 your speculation as to which planter that is,
18 how far is that from the --

19 THE WITNESS: The corner or the
20 establishment?

21 MEMBER ALBERTI: The establishment.

22 THE WITNESS: Maybe 200 feet.

1 MEMBER ALBERTI: 200 feet. Okay,
2 thank you. You said you placed a subject in
3 handcuffs?

4 THE WITNESS: Yes.

5 MEMBER ALBERTI: Why did you do
6 that?

7 THE WITNESS: I was advised that
8 this was the subject that may have possibly
9 done the stabbing?

10 MEMBER ALBERTI: Okay. So based on
11 that information, you placed this person in
12 handcuffs?

13 THE WITNESS: Yes.

14 MEMBER ALBERTI: Okay. Okay, the
15 last question is you said to Mr. O'Brien that
16 in general -- in response to Mr. O'Brien's
17 question that does this establishment operate
18 responsible in general, you said yes?

19 THE WITNESS: Yes.

20 MEMBER ALBERTI: Why do you have
21 that opinion? Articulate to me exactly the
22 reasons why you come to that conclusion?

1 THE WITNESS: I work in a lot of
2 clubs, and I watch the procedures and the
3 searching of the citizens going into the club,
4 and I watch Capitale compared to the other
5 ones.

6 MEMBER ALBERTI: Okay. So what
7 about the procedures -- what about the
8 procedures of this club?

9 THE WITNESS: They search the
10 females with a wand, and they do a pat-down,
11 protective search of the males.

12 MEMBER ALBERTI: Okay. Is there
13 anything else?

14 THE WITNESS: Everyone ID'd.
15 Everyone is ID'd for age verification, and
16 that's about it.

17 MEMBER ALBERTI: Okay. So there --
18 is there anything that you've observed inside
19 that would lead you to that conclusion?

20 THE WITNESS: Inside of the club?
21 Not inside.

22 MEMBER ALBERTI: Okay.

1 THE WITNESS: Yeah, no.

2 MEMBER ALBERTI: Okay. Thank you.
3 Thank you very much.

4 CHAIR MILLER: Mr. Short.

5 MEMBER SHORT: Again Officer, thank
6 you very much for being so straightforward
7 with us. But I just need to know -- I'd like
8 to ask your history with this club.

9 THE WITNESS: Yes.

10 MEMBER SHORT: Has there ever been
11 any violence before?

12 THE WITNESS: Umm, yes a while ago
13 on Fridays. That was a couple of years ago.

14 MEMBER SHORT: Thank you.

15 CHAIR MILLER: Mr. Silverstein.

16 MEMBER SILVERSTEIN: Thank you for
17 your service, Officer.

18 THE WITNESS: Thank you.

19 MEMBER SILVERSTEIN: You say that
20 you've been working an RDO to this club
21 dozens, perhaps hundreds of times?

22 THE WITNESS: At this particular

1 club?

2 MEMBER SILVERSTEIN: Yes.

3 THE WITNESS: Probably dozens, yes.

4 MEMBER SILVERSTEIN: Regarding the
5 facts of this case and this one night, is
6 there anything that you saw that should be of
7 concern to us regarding the actions or the
8 procedures that were followed that night?

9 THE WITNESS: The only observation
10 that I probably would say is I would wand
11 everyone, and I would wand their feet too.

12 CHAIR MILLER: What? You would wand
13 their feet too?

14 THE WITNESS: Yes.

15 MEMBER SILVERSTEIN: Is there
16 anything regarding the handling of individuals
17 that caused you concern or were those things
18 that you did not see and therefore would
19 rather not comment on?

20 THE WITNESS: The handling? The
21 handling of who?

22 MEMBER SILVERSTEIN: Of anyone. The

1 laying of hands on anyone, the removal of
2 anyone.

3 THE WITNESS: Naw, not -- no.

4 MEMBER SILVERSTEIN: Are you saying
5 that everything was okay or that you didn't
6 see it and weren't -- I'm not sure what the
7 "no" means.

8 THE WITNESS: I just saw -- from
9 what I saw on the video, from when he was
10 being carried out, I didn't have a problem
11 with that.

12 MEMBER SILVERSTEIN: Is there
13 anything about this club, being that you've
14 covered with an RDO dozens of times, that
15 concerns you regrading any imminent threat or
16 danger to the community or to patrons?

17 THE WITNESS: No, no.

18 MEMBER SILVERSTEIN: Would you --
19 you've covered it dozens of times. Is there
20 anything about this club that makes it any
21 better or worse than everything else in the
22 area?

1 THE WITNESS: In the area? This
2 security, they do a pretty good job.
3 Actually, they do a better job than other
4 clubs in the area. Actually, while I was
5 outside, I noticed another altercation at
6 another club when I was standing outside. I
7 called the dispatcher and let them notify that
8 they need to get somebody on it.

9 MEMBER SILVERSTEIN: Why do you say
10 they do a better job?

11 THE WITNESS: Because I actually sit
12 there and watch them.

13 MEMBER SILVERSTEIN: Why do you see?

14 THE WITNESS: I want to quantify
15 that. I see them doing -- like they don't
16 let -- I've worked at other clubs where it
17 depends on if they're a regular. They don't
18 get searched. I see that happening at other
19 clubs, and I tell them, you know, you
20 shouldn't do that. You need to search
21 everybody, I don't care who comes in here.
22 But they don't do that. Other clubs, I know

1 they do allow their regulars to come in
2 unsearched, and they shouldn't do that.

3 MEMBER SILVERSTEIN: So we make the
4 decision whether there's an imminent danger
5 here. Is there anything that you would want
6 to tell us that you think would be helpful in
7 making that decision one way or another,
8 knowing that we're the ones who make the
9 decision?

10 THE WITNESS: The only thing that I
11 would say that everyone needs to be wanded.
12 That's it. I don't see -- there's not too
13 many clubs who actually wand everyone or their
14 feet, but it needs to be done. Of my
15 knowledge of being on the street and seeing
16 things, that's how things get into the club,
17 through their feet.

18 MEMBER SILVERSTEIN: Thank you.

19 CHAIR MILLER: Wow. Mr. Rodriguez.

20 MEMBER RODRIGUEZ: Officer Petty,
21 good morning.

22 THE WITNESS: Good morning.

1 MEMBER RODRIGUEZ: The wandng, was
2 there wandng at the club that night?

3 THE WITNESS: Yes.

4 MEMBER RODRIGUEZ: So how did a
5 security guard have a knife on his person?
6 What happened to the wandng?

7 THE WITNESS: I don't think security
8 personnel is wanded.

9 MEMBER RODRIGUEZ: What's that?

10 THE WITNESS: I don't think security
11 personnel is wanded. Are you talking about
12 the subject that got a knife in there?

13 MEMBER RODRIGUEZ: No. I'm talking
14 about the security guard that was inside the
15 club with a knife. What happened to the
16 wandng there?

17 THE WITNESS: I don't think they --
18 I don't know if they wand their personnel that
19 works there.

20 MEMBER RODRIGUEZ: I just wanted to
21 bring that out, and that is a consideration
22 that I have, since you said everyone should be

1 wanded, right?

2 THE WITNESS: Yeah.

3 MEMBER RODRIGUEZ: Okay. Number
4 two, you've been around the clubs a lot. So
5 you know the culture, you know the situation?

6 THE WITNESS: Yes, I do.

7 MEMBER RODRIGUEZ: Okay. So there
8 seemed to be a group that -- would you
9 consider this situation where there was a
10 group that was maybe a gang or a group that
11 knew each other well? Was the group acting in
12 harmony? There seemed to be, from what I
13 watched, a certain group of people that were
14 -- that seemed to be synchronized.

15 THE WITNESS: I'm not sure about
16 that. I mean a group comes in at a table. If
17 they have a table, I'm pretty sure they all
18 know each other. That's at every
19 establishment.

20 MEMBER RODRIGUEZ: So from the group
21 that exited outside, I noticed that there was
22 a group to the side, and then there was the

1 commotion at the door. Was that -- the person
2 that actually did the stabbing, you said that
3 you handcuffed him, because you suspected him
4 as the assailant, right?

5 THE WITNESS: Yes.

6 MEMBER RODRIGUEZ: What became of
7 that person? Was he charged?

8 THE WITNESS: Yes, he was. He was
9 placed under arrest.

10 MEMBER RODRIGUEZ: Okay. So he was
11 assailant and he was the one with the knife?

12 THE WITNESS: Yes.

13 MEMBER RODRIGUEZ: Did he take the
14 knife inside the club?

15 THE WITNESS: That we don't know.

16 MEMBER RODRIGUEZ: Thank you.

17 CHAIR MILLER: Other questions? Mr.
18 Jones.

19 MEMBER JONES: Thank you, Madam
20 Chair. On the night in question, I'm just
21 trying to get clarification on what you
22 actually observed and witnessed on that night.

1 Not what you saw on the video, but
2 once you got engaged, what did you see? So
3 were you there early enough to see them when
4 they opened up for the evening and they
5 started letting patrons in? Were you there
6 that early?

7 THE WITNESS: No. I'm not sure what
8 time the doors opened, but my arrival time was
9 at 12:30.

10 MEMBER JONES: 12:30, okay. So when
11 you're saying that you're comfortable with how
12 they wand and let people in, are you normally
13 there when they initially let people in, or
14 are you basing that on your observations once
15 you get there after they've been open for a
16 while?

17 THE WITNESS: Basically, most of the
18 time when I get there, a lot of patrons don't
19 really start arriving until one. That's when
20 you get the large rush.

21 MEMBER JONES: Fair enough.

22 THE WITNESS: People just come from

1 everywhere at one.

2 MEMBER JONES: Okay. So you were
3 there early enough to see them and see them
4 actually executing their entrance procedures
5 for pat-downs, wandings, et cetera?

6 THE WITNESS: Yes.

7 MEMBER JONES: Okay. Given that
8 what you observed, given what you observed,
9 would it be possible for someone to have
10 brought a knife into the establishment?

11 THE WITNESS: I believe it's capable
12 of anybody getting a knife in any
13 establishment.

14 MEMBER JONES: Okay. So regardless
15 of what practices they enforce at the front
16 door, whether they wand shoes, crotches,
17 bushes, head, anything, someone's going -- if
18 someone wants to get a knife in, they can get
19 a knife in is what you're talking --

20 THE WITNESS: Yes.

21 MEMBER JONES: Okay. So there's not
22 much they could have done?

1 THE WITNESS: No.

2 MEMBER JONES: Okay. Given that,
3 from the time that you got -- excuse me. How
4 did you get -- how were you made aware of
5 there being an incident or a situation that
6 warranted your attention?

7 THE WITNESS: The head of security
8 came to the front door and advised me and told
9 me that we need you at Table 3.

10 MEMBER JONES: Okay. So the head of
11 security engaged you?

12 THE WITNESS: Yes.

13 MEMBER JONES: You immediately came
14 in. Did you come in alone or did you come in
15 with a partner or an assistant?

16 THE WITNESS: I came in alone.

17 MEMBER JONES: Came in alone?

18 THE WITNESS: Yes.

19 MEMBER JONES: And what did you
20 observe when you came in?

21 THE WITNESS: Once I came inside, I
22 noticed that another security guard told me

1 that they had already gone outside, and I
2 followed.

3 MEMBER JONES: Okay. So that you
4 followed them outside. So as you followed
5 them outside, what did you see once you
6 actually got in contact with the assailant or
7 the individuals, whatever the proper
8 terminology is, what did you actually see?

9 THE WITNESS: Once I got outside, I
10 saw one of the security guards. He was
11 bleeding from his hand. I asked him what
12 happened. He said somebody stabbed me. I
13 noticed the head of security was standing over
14 top of one of the dudes. I immediately went
15 over there to him, and I asked Officer
16 Gonzalez what happened? He was like he may
17 have possibly stabbed somebody, and I placed
18 him in handcuffs.

19 MEMBER JONES: Okay. So when you
20 arrived, Officer Gonzalez was already on the
21 scene, and he was adjacent to a member of the
22 security staff standing over someone that was

1 on the ground?

2 THE WITNESS: Yes.

3 MEMBER JONES: Okay. What was the
4 nature of the individual that was on the
5 ground? Was he unconscious? Was he just
6 scared? Like what was his situation? Can you
7 describe that to me?

8 THE WITNESS: He was -- he was
9 pretty normal.

10 MEMBER JONES: Pretty normal?

11 THE WITNESS: Yeah. He also made a
12 joke with me as well.

13 MEMBER JONES: Okay. So he was
14 pretty comfortable? It wasn't like he was
15 feeling threatened or did he come off as if --
16 to you as if he was resisting in any way?

17 THE WITNESS: No.

18 MEMBER JONES: No. Did you get the
19 impression that he was not resistive because
20 he had been submitted and he had no choice, or
21 he was cooperating?

22 THE WITNESS: I guess he was

1 cooperating.

2 MEMBER JONES: Okay. At that point
3 he was cooperating. Was that -- this
4 individual that was -- was this the individual
5 that you ended up arresting?

6 THE WITNESS: Yes.

7 MEMBER JONES: Okay. Did he
8 indicate in any way, shape or form that he had
9 stabbed, or he was pretty mum at that point?

10 THE WITNESS: Yeah, he did.

11 MEMBER JONES: He did?

12 THE WITNESS: Yes.

13 MEMBER JONES: Okay. So he
14 acknowledged that he had a knife?

15 THE WITNESS: Yes.

16 MEMBER JONES: He acknowledged that
17 he committed an assault with a weapon?

18 THE WITNESS: Basically, what he
19 said to me is he asked me why he was being
20 stopped, and I said because of that knife you
21 had. He said "you're good."

22 MEMBER JONES: Got it, okay. Based

1 on your observations, was it conceivable for
2 this individual to have left from the area
3 where the assault occurred, made it himself to
4 some place where the -- to the location where
5 the weapon was recovered, and then matriculate
6 back to where he was then engaged by security
7 and Officer Gonzalez?

8 THE WITNESS: No.

9 MEMBER JONES: Or do you believe
10 that he handed the weapon off to someone else?

11 THE WITNESS: I believe he handed
12 the weapon off.

13 MEMBER JONES: Okay, thank you.
14 Thank you, Madam Chair.

15 CHAIR MILLER: All right. I just
16 have a few. I just want to clarify or confirm
17 what I thought you said, and that was you
18 didn't think that the establishment did
19 anything wrong with respect to this incident
20 in the way they handled themselves.

21 In particular, I want to ask you
22 about you were called to come into the

1 establishment, that there'd been an
2 altercation. Okay, so number one, I want to
3 ask you, you don't find a problem that they
4 didn't wait for you to eject the patron?

5 THE WITNESS: No. Sometimes,
6 there's not enough time to wait.

7 CHAIR MILLER: Okay, and could you
8 tell us, I think you said you had no problem
9 with their carrying out the belligerent
10 patron?

11 THE WITNESS: No, I didn't have a
12 problem with that.

13 CHAIR MILLER: Okay. Can you
14 elaborate on that at all, why that -- is that
15 reasonable to do in some circumstances, to
16 carry out --

17 THE WITNESS: Compared to when I
18 carried certain subjects out of the club, that
19 was minor, because they don't want to leave.

20 CHAIR MILLER: They're not going to
21 leave on their feet? Is that why they have to
22 --

1 THE WITNESS: They're not going to
2 leave at all.

3 CHAIR MILLER: Okay. With respect
4 to the dangers the club poses or the
5 establishment, we're talking about the fact
6 that a knife could get in, and you said that
7 a knife can get in anywhere, any club. So
8 even if you do the wanding with the feet,
9 which you highly recommend, it's still going
10 to --

11 THE WITNESS: If you do the wanding,
12 that lets the patrons know that they know that
13 something's going on on the inside of the
14 establishment. I have worked at Lux. I'm
15 pretty sure y'all know about that stabbing we
16 had at Lux. I don't know how that knife got
17 in there, because I know they were taking
18 people's shoes off.

19 So I mean how can you stop it?
20 People have so many ways. You have belt
21 buckles, you have medallions that turn into
22 knives. I mean you have -- and these security

1 guards don't have that training. The police
2 do, but the security guards have no idea, no
3 idea.

4 CHAIR MILLER: What training is it
5 that you're referring to? Is it something
6 that the security guards could get and then
7 there would not be this --

8 THE WITNESS: I don't know. They
9 wouldn't get some of the same information that
10 we get in regards to weapons and stuff like
11 that. They wouldn't get that. That's for us.

12 CHAIR MILLER: Okay. But in your
13 view, wandering feet would be a good
14 improvement?

15 THE WITNESS: Yes.

16 CHAIR MILLER: Okay, and did you see
17 -- it doesn't sound like that, but just to
18 confirm, you didn't see any other improvements
19 that this security could use?

20 THE WITNESS: No.

21 CHAIR MILLER: And you didn't have
22 any concern with the way in which the security

1 handled the incident outside the club, with
2 respect to the --

3 THE WITNESS: Actually, they did a
4 good job on the outside of the club. Like I
5 said, the head of security actually caught the
6 suspect who did the incident.

7 CHAIR MILLER: Okay. All right.
8 Any other -- Mr. Alberti.

9 MEMBER ALBERTI: Yeah, Officer. I'm
10 going to go back to the handling of the
11 suspect inside. So your assessment of the way
12 they handled him is only based on the video
13 that you saw today?

14 THE WITNESS: Yeah.

15 MEMBER ALBERTI: Okay. So you
16 didn't talk to anyone, you didn't see it
17 happen; is that correct?

18 THE WITNESS: No.

19 MEMBER ALBERTI: Okay. I'm trying
20 to get a sense of how you're measuring that.
21 Is there a difference between what you would
22 expect an officer to do and what you would

1 expect a civilian to do, in terms of handling
2 a violent situation?

3 THE WITNESS: I've seen other
4 security guards do things where I have had to
5 place them under arrest.

6 MEMBER ALBERTI: So there is a
7 difference?

8 THE WITNESS: Yes.

9 MEMBER ALBERTI: There is a
10 difference, okay. And so your assessment here
11 is that, based on what you would have done or
12 what you think a civilian is allowed to do?

13 THE WITNESS: It would be based on
14 the situation. Like it depends on if I'm
15 handling the situation or not. But I've seen
16 some -- I've seen citizens come out over the
17 security guards heads, in the air. So --

18 MEMBER ALBERTI: No, I understand.
19 But that didn't happen here.

20 THE WITNESS: Right. So I don't
21 know if I would have handled it any
22 differently.

1 MEMBER ALBERTI: If you would have
2 handled it any differently?

3 THE WITNESS: Yeah. I don't know if
4 I would have handled it any differently,
5 trying to get that subject out.

6 MEMBER ALBERTI: What would have
7 been your expectation of a civilian handling
8 that?

9 THE WITNESS: A civilian. Depending
10 on the circumstances, like I said, I've only
11 seen the video of what happened. I wasn't
12 close enough. So --

13 MEMBER ALBERTI: Okay. So you
14 really don't -- you don't have a definitive
15 opinion then, based on what -- based on your
16 knowledge; is that correct?

17 THE WITNESS: Right.

18 MEMBER ALBERTI: All right. Thank
19 you very much.

20 CHAIR MILLER: Okay. Questions on
21 Board questions?

22 REDIRECT EXAMINATION

1 BY MR. STERN:

2 Q Yes, I have just a couple. Have you
3 -- Officer, have you seen the Capitale
4 security plan?

5 A No.

6 Q So your opinion whether they handled
7 it correctly is not based upon reviewing the
8 security plan?

9 A No. This is based on working at
10 other clubs.

11 Q And okay, thank you. Now you were
12 asked earlier, I think by a member of the
13 Board, whether the assailant had gotten a
14 knife in the club, and you said you don't
15 know?

16 A Right.

17 Q Judging from the video you saw, and
18 I'm asking you to assume you believed the
19 assailant when he told you he had a knife,
20 must he have had it in the club?

21 A Looking from the video, I think
22 that's possible.

1 Q And I was a little confused by what
2 you said about wanding. You said that -- do
3 they wand everybody?

4 A No.

5 Q Okay, and who don't they wand?

6 A Males. They do a protective pat-
7 down of the males, and they wand the females.

8 Q Okay.

9 CHAIR MILLER: Could you repeat that
10 latter please?

11 THE WITNESS: They do a protective
12 pat-down of the males, and they wand the
13 females.

14 CHAIR MILLER: Okay.

15 BY MR. STERN:

16 Q And they don't do both for
17 everybody?

18 A No.

19 Q Would it be safer for them to do
20 both for everybody?

21 A I believe so, yes.

22 Q Now you were also asked about

1 generalities, and you said generally the club
2 is well run, and you, I believe, in answer to
3 my questions, you said that the reason why
4 there's reimbursable details is because it
5 cuts down on the danger?

6 A Yes.

7 Q So would you also say generally then
8 this club is dangerous?

9 MR. O'BRIEN: Objection? That is
10 really twisting the --

11 MR. STERN: You were asked generally
12 speaking. He was allowed to answer generally
13 speaking.

14 MR. O'BRIEN: But the predicate for
15 the question --

16 MR. STERN: Oh no, it was. He
17 testified the reason there are reimbursable
18 details is because it decreases the danger.

19 MR. O'BRIEN: Okay. Then let's have
20 the Board declare every single club in
21 Washington dangerous and move on from there.

22 MR. STERN: I guess it's a point of

1 how important it is to speak generally about
2 these things.

3 MR. O'BRIEN: Well, but the question
4 --

5 MR. STERN: When one side is allowed
6 to ask generally, without specifics as to
7 individual things, then it is indicative that
8 how important a generalized question is.

9 CHAIR MILLER: But Mr. Stern, okay.
10 But you can be a little more specific? I mean
11 dangerous? Dangerous what? Dangerous
12 compared to other clubs, dangerous compared to
13 restaurants? Dangerous -- what dangers are
14 they there for?

15 BY MR. STERN:

16 Q Well, not every club has a
17 reimbursable detail; is that right?

18 A No.

19 Q Okay, and the ones that do, they
20 haven't because they're considered more
21 dangerous than others?

22 MR. O'BRIEN: Objection.

1 THE WITNESS: No, that's not true.

2 CHAIR MILLER: That's a leading
3 question.

4 BY MR. STERN:

5 Q Okay. Well, you said you didn't see
6 the injury. Have you seen the picture of the
7 knife that the security guard was handling?

8 A No.

9 Q Is there a law against carrying
10 knives, concealed weapons in the District of
11 Columbia?

12 A It would depend on the size of the
13 blade.

14 Q Okay.

15 CHAIR MILLER: I'm sorry. It would
16 depend on what?

17 THE WITNESS: It would depend on the
18 size of the blade.

19 CHAIR MILLER: Okay, thank you.

20 BY MR. STERN:

21 Q And how big would the blade have to
22 be?

1 A It would have to be either spring-
2 loaded or over three inches.

3 Q Okay. So if the blade is over three
4 inches, then that would be a prohibited weapon
5 over the statute, right?

6 A Yes.

7 Q And that would be illegal for the
8 security guard to handle?

9 CHAIR MILLER: What? If you're
10 going to start being --

11 BY MR. STERN:

12 Q The security guard to carry?

13 A Yes.

14 Q I'm going to show you what's
15 previously put in as Exhibit No. 2, and ask
16 you to take a look at this.

17 CHAIR MILLER: Would someone
18 identify for the record again what Exhibit 2
19 is?

20 BY MR. STERN:

21 Q Well, can you tell me what it is?

22 A It's a knife.

1 Q Okay. Now if you came across a
2 civilian who had that knife in his pocket,
3 would they be arrested for possession of a
4 prohibited weapon?

5 A I can't really tell by the size.
6 Like I normally put it in my hand to determine
7 the size.

8 Q Okay. Do you believe that it is
9 appropriate procedure for security guards to
10 carry weapons on their person?

11 A No.

12 MR. STERN: Thank you. No further
13 questions.

14 MR. O'BRIEN: Nothing.

15 CHAIR MILLER: Okay. Thank you very
16 much. You can be excused. Thank you very
17 much for coming down.

18 (Witness excused.)

19 MR. STERN: Nothing further from the
20 District.

21 CHAIR MILLER: Okay.

22 MR. O'BRIEN: My turn?

1 CHAIR MILLER: Yes.

2 MR. O'BRIEN: I will call Officer
3 Gonzalez.

4 CHAIR MILLER: Okay. Good
5 afternoon.

6 Whereupon,

7 OFFICER MAYNOR GONZALEZ
8 was called as a witness and, after having been
9 first duly sworn, was examined and testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. O'BRIEN:

13 Q Officer, state your full name
14 please?

15 A Excuse me. Officer Maynor Gonzalez.

16 Q Spell your first name for the --

17 A First name is spelled M-A-Y-N-O-R.

18 Last name is G-O-N-Z-A-L-E-Z.

19 Q And Officer Gonzalez, you're a
20 member of the Metropolitan Police Department?

21 A Yes sir.

22 Q And how long have you been a member

1 of the Department?

2 A I have been employed just over six
3 years, sir. I apologize.

4 Q That's okay. How often during those
5 six years have you worked on what is known as
6 the reimbursable detail at nightclubs?

7 A For approximately five years, five
8 and a half years.

9 Q And how often do you -- how many
10 times a week or how many times a month do you
11 undertake that extra duty?

12 A Not quite as much as Officer Petty,
13 but quite often. There's depending on weeks,
14 I can work 24 to 30 hours on a biweekly period
15 at the clubs.

16 Q And how many different clubs in the
17 District would you estimate you've worked at
18 over the years?

19 A Oh, a lot.

20 Q A lot?

21 A Yes.

22 Q More than 20?

1 A Yes, absolutely.

2 Q How often have you been assigned to
3 work at Capitale?

4 A Numerous times.

5 Q Starting when?

6 A Since they were -- before they
7 changed their name, K Street Lounge. When I
8 first came to the Department, after a
9 probationary period, I immediately began
10 working overtime at the clubs.

11 Q Okay. Were you present in the early
12 morning hours of the 9th, I guess it is,
13 right? Yes.

14 MR. MOLLOY: It's the 17th.

15 BY MR. O'BRIEN:

16 Q I'm sorry, the 17th. Were you
17 present the early morning hours of the 17th of
18 February?

19 A Yes sir.

20 Q And what caused you to be present at
21 the club that night?

22 A I was working the overtime with

1 Officer Petty.

2 Q And did you become aware of an issue
3 at the club at approximately 4:00 a.m.?

4 A Yes sir.

5 Q And how did you become aware of
6 that?

7 A From what the video showed, I was on
8 the stool, nursing at that point what was a
9 cold. It turned into a really bad flu. So I
10 was wanting to stay out of the elements.

11 The lights turned on and I came
12 from, you know, from the stool or that corner,
13 and I started to observe but there was too
14 much of a crowd. I saw the guys carrying an
15 individual and people following them.

16 I stepped back or what I thought I
17 stepped back and it just allowed them to get
18 to the door and then I followed.

19 Q So -- I don't want to use the word
20 "so," for fear of an objection.

21 (Laughter.)

22 MR. STERN: Touche.

1 BY MR. O'BRIEN:

2 Q Until you had -- until you saw an
3 individual being carried out, at any time
4 before that had you been aware that there was
5 an incident going on?

6 A No sir.

7 Q Okay. Now could you step down and
8 turn around and look at the monitor please?

9 A Yes sir.

10 Q Okay, now who's the person -- well,
11 can we go back a little bit? I'm sorry, got
12 a little past there.

13 [VIDEO PLAYED.]

14 BY MR. O'BRIEN:

15 Q Am I correct that this is you in the
16 very lower right-hand corner, moving away from
17 the table? Do you know why you're moving away
18 from the table?

19 A Because I started seeing the crowd
20 moving towards where I'm at.

21 Q Okay. Continue please, with the
22 tape.

1 [VIDEO PLAYED.]

2 BY MR. O'BRIEN:

3 Q What do you see -- what did you
4 observe at that moment?

5 A I saw some members of security
6 carrying out this individual.

7 Q Okay. Continue with the tape
8 please.

9 [VIDEO PLAYED.]

10 BY MR. O'BRIEN:

11 Q Stop it here. I see that you're
12 taking no action whatsoever at this moment.
13 Why did you not intercede at this moment?

14 A One, because what I saw firsthand
15 was them carrying -- the first person carrying
16 him around his torso. The other one had
17 grabbed him, had his legs wrapped.

18 The first thing that I assumed from
19 seeing that is that he was out of control. I
20 did not see this part. This is parts of me
21 seeing the video, and I also did not see the
22 altercation.

1 MEMBER SILVERSTEIN: I also did not
2 see --

3 THE WITNESS: I'm sorry sir?

4 MEMBER SILVERSTEIN: You said and
5 you also did not see?

6 MR. O'BRIEN: The altercation.

7 THE WITNESS: The altercation. I
8 did not. I was not informed that that
9 happened inside. I heard the commotion, and
10 that's when I stepped around. Once I saw
11 that, I allowed them to carry the individual,
12 and made -- and that, respectfully, we need
13 persistence sometimes.

14 CHAIR MILLER: I'm missing -- we're
15 missing a couple of words, because I know you
16 still have your cold or something. If you can
17 speak any louder, a little louder?

18 THE WITNESS: Louder?

19 CHAIR MILLER: Okay.

20 THE WITNESS: I did not tell them to
21 put him down. My initial impression he may
22 have been out of control inside. As I told

1 the investigative gentlemen, when I've seen
2 that at other places, it's because this
3 individual is throwing punches uncontrollably
4 or he's kicking.

5 Or he just is not complying to their
6 direction of leaving the club, even by just
7 being held by the arm. These people generally
8 are trying to get away from security and
9 continue their fight with the other person.
10 So I mean to me, this was handled
11 appropriately. I let it go out. Once
12 outside, that's when I intervened.

13 BY MR. O'BRIEN:

14 Q Did you see any indication that the
15 security personnel carrying him were being, in
16 your view, unnecessarily rough with him?

17 A No. What I -- the video aside,
18 firsthand impression, this was appropriate for
19 me. It was helping me, you know, control this
20 individual.

21 Once they put him outside, my --
22 before the other activities happened, my

1 initial reaction was to go outside, interview
2 the security guards, find out what happened.
3 I needed to find out what happened. But it
4 didn't turn out that way.

5 Q Let us continue with the tape here.

6 [VIDEO PLAYED.]

7 BY MR. O'BRIEN:

8 Q Now we see you going down the hall.
9 Did you proceed to the outside?

10 A I did, sir.

11 Q Okay. So let us then go to -- is it
12 6 Right? I'm sorry, 1 Right.

13 [VIDEO PLAYED.]

14 BY MR. O'BRIEN:

15 Q Pause it for a moment. In the tape,
16 we see some individuals in between you and the
17 person being carried, as you disappear from
18 view. Now is that correct?

19 A Yes.

20 Q You were not right at the person?

21 A The video is kind of slow motion at
22 real time. They're actually running behind

1 security, and to not get -- to not put myself
2 in the situation of having this group of
3 people behind me with all my weapons, I
4 allowed them to exit and then proceeded to go
5 outside.

6 Q That's very helpful. Thank you.
7 Continue with the tape please.

8 [VIDEO PLAYED.]

9 BY MR. O'BRIEN:

10 Q Pause the tape right there please.
11 Were you outside yet?

12 A Once -- I was right inside the door,
13 attempting to wiggle my way around the people
14 that were all blocking the doorways. Once I
15 see that, I rush outside.

16 Q Did you actually see that?

17 A I did not see that. I saw punches
18 being thrown at security, and then, you know,
19 that's when I started to a faster pace.

20 Q Continue with the tape please.

21 [VIDEO PLAYED.]

22 BY MR. O'BRIEN:

1 Q Now would you tell us where you see
2 you as you get into the tape? In the lower
3 left-hand corner now.

4 A Yeah. You can see the patch.

5 Q We see the patch on your right
6 shoulder?

7 A I did. I did have that.

8 Q Now at that point, were you aware
9 that a security guard had a cut on his hand?

10 A No sir.

11 Q When did you become aware of that?

12 A If you allow the video to play, once
13 these punches are thrown, the light comes on.
14 But I start to get in between all of them. I
15 put my hands on the individual that turned out
16 to be arrested, put my hand on his chest and
17 then tell him cut this nonsense out, enough.

18 Then that's when Mr. Johnson comes
19 on my right side, and he's like he stabbed me.
20 I turn around. I'm like what are you talking
21 about? He's like "I got stabbed." I looked
22 down at his hand, I see his hand bleeding.

1 Then when I turn away, the
2 individual that I spoke to walked off with
3 another individual, and then I'm like -- I
4 tell him, I refer to him at that point, where
5 is he, where is he, and he was pointing. I
6 approached them by the wall.

7 Q And that was that to the left?

8 A It's this wall right here
9 (pointing).

10 Q Okay.

11 A And you may see that in the video,
12 if you play the video. I start looking
13 towards the security guard, and then I follow
14 two guys to the wall.

15 Q What happens when you get to the
16 wall?

17 A The security members are telling me
18 "they're passing it around, passing it
19 around." I said what are you talking about?
20 Who? Point him out. Then that's where I
21 approach the guys at the wall, the one that
22 did, that subsequently did the stabbing and

1 the individual almost looked like he had him
2 by a bear hug or -- that's the way it appeared
3 to me, pretty fast, the way that things were
4 starting to develop.

5 And then as they are -- security
6 guard members are telling they're passing a
7 knife around, they're passing a knife around,
8 I get over the radio and I call for backup.
9 Then we stopped those guys. I tell security
10 and I ask security please stop that guy. We
11 ended up stopping three individuals that were
12 pointed out by security as being involved in
13 this situation.

14 Q Did you at one point place your
15 hands on the individual who you subsequently
16 arrested, and he broke from your grasp?

17 A Yes, yes, at the wall. At that
18 wall. He actually had his hands behind his
19 back, and the guy that was kind of bear
20 hugging him. I went back to the front and I
21 held him to the wall.

22 I at one point saw three other guys.

1 I turned around and I saw three guys walking
2 towards me. I tell them to back off, and
3 again they walk away from me.

4 Q Okay. How was it if he walked away
5 from you he was eventually apprehended?

6 A They were --

7 Q I'm going to show you here what is
8 marked Right 2, Camera Right 2. The Board has
9 not seen this before. This is a camera from
10 the other angle of the back door, I can
11 represent.

12 [VIDEO PLAYED.]

13 BY MR. O'BRIEN:

14 Q Can you stop it there? I think I
15 saw somebody with a shoulder patch in the
16 lower left, but it just went a frame too far.
17 Backwards so that we can see it. Right there
18 in the lower left, do you know who that is?

19 A That's me.

20 Q No, lower left of the entire
21 picture, where the cursor is?

22 A Let's see this person has, that

1 might be me. That might be -- that may be me
2 separating the guys and telling them enough of
3 this nonsense, and I'm pushing them to the
4 wall.

5 Q Okay. Continue the video.

6 [VIDEO PLAYED.]

7 THE WITNESS: That's another
8 security guard.

9 BY MR. O'BRIEN:

10 Q Do you know who that is being
11 restrained across the picture?

12 A No sir.

13 Q Okay, continue.

14 [VIDEO PLAYED.]

15 THE WITNESS: What I believe is
16 going on over here is me pressing those two
17 guys up against the wall, and Mr. Johnson also
18 telling me I got stabbed. So that's when the
19 information was being conveyed to me, and I
20 was going over the air. From there, it should
21 show that --

22 BY MR. O'BRIEN:

1 Q Yeah, that's what I'm waiting for.

2 A Yeah, where they start running, and
3 this individual --

4 Q Is that individual you've been
5 trying to restrain?

6 A Right. That's where he breaks off
7 from me.

8 Q And what do you do in order to have
9 him stopped?

10 A I'm not sure if this is the
11 individual specifically, where I asked
12 security to stop him. But I did ask security
13 to stop a specific individual that Mr. Johnson
14 pointed out as being involved.

15 Q Okay. Continue with the tape.

16 [VIDEO PLAYED.]

17 THE WITNESS: Yeah, that's -- yes,
18 because they do tackle him. So that is the
19 one that was -- that got away from me, and I
20 asked them to assist me.

21 BY MR. O'BRIEN:

22 Q So you instructed security to stop

1 that particular person?

2 A Yes.

3 Q You can resume your seat. Was that
4 person stopped by security and placed under
5 arrest?

6 A It was -- if that is Mr. Rusty
7 Harrison, yes.

8 Q And who was the arresting officer?

9 A It was me.

10 Q And what happened to that criminal
11 case?

12 MR. STERN: Objection. That can't
13 be relevant, what the U.S. Attorney decides to
14 do with a case.

15 CHAIR MILLER: Mr. O'Brien, how is
16 it relevant?

17 MR. O'BRIEN: If the Board doesn't
18 want to hear it, I'll move on.

19 CHAIR MILLER: Well, do you want to
20 -- what's the point that you're going to --
21 that they helped get the right person? That
22 they what?

1 MR. O'BRIEN: I believe the officer
2 will say why he was told that the charges were
3 dropped.

4 MR. STERN: Again, I don't see the
5 relevance.

6 CHAIR MILLER: Okay, right. But you
7 shouldn't lead the witness, but at least one
8 Board member wants to know the answer. So go
9 ahead. What's the question? What happened to
10 him?

11 MR. O'BRIEN: I don't think that's
12 leading. I simply asked if the person was
13 arrested, and then what happened with the
14 charges.

15 CHAIR MILLER: Okay.

16 THE WITNESS: It was at paper and
17 there was no papered, as they were in need of
18 the video.

19 MEMBER ALBERTI: We can't hear you.

20 THE WITNESS: They were in need of
21 the video. They said -- we took a still
22 picture of his hand, and the U.S. Attorney

1 stated that it was not clear whether that was
2 a knife or what instrument he was holding.

3 CHAIR MILLER: Okay.

4 BY MR. O'BRIEN:

5 Q Did you see anything that night that
6 suggested to you that club personnel security
7 acted inappropriately?

8 A Aside from this incident, or just
9 overall the night?

10 Q No. My question -- okay, let's talk
11 about this incident. In your view, did club
12 personnel handle this appropriately or
13 inappropriately?

14 A I believe it was handled, under the
15 circumstances, as best as possible, and like
16 I stated earlier, if an individual is out of
17 control inside, there's no -- it's actually
18 recommended -- I would recommend it if I was
19 in the position of training, to remove an
20 individual in that manner.

21 It's unfair to think that security
22 should just sit there and allow somebody to

1 just punch them or kick them. They're not
2 supposed to retaliate, they're not supposed to
3 hit back. But I don't see any problem with
4 not allowing somebody to hit you, and I
5 believe that's what they did.

6 Q All right. Were you familiar prior
7 to this evening with Derek Johnson, who's the
8 person who was cut?

9 A By name, no. By face, I've seen him
10 there before.

11 Q Have you had an opportunity to
12 observe his conduct in the past?

13 A In greeting the guys when I begin my
14 shift, mild-mannered, quiet, and I mean these
15 guys are very professional here at this club.
16 They're very serious, to be completely honest.
17 They're very serious and they take things
18 seriously.

19 MR. O'BRIEN: Those are my
20 questions. Thank you.

21 CHAIR MILLER: Okay.

22 CROSS EXAMINATION

1 BY MR. STERN:

2 Q Have you had occasion to review the
3 security plan for Capitale?

4 A No sir.

5 Q So you don't have any clue as to
6 whether or not they followed their security
7 plan?

8 A I am not -- I'm not sure if they did
9 or not.

10 Q Okay, and I think you said that
11 they're not supposed to hit back; is that
12 right?

13 A Right.

14 Q If they did hit back, that would be
15 inappropriate?

16 A I would say so.

17 Q Okay.

18 A And if I may speak though.

19 Q There's not really a question out
20 there.

21 A Okay, okay.

22 MR. O'BRIEN: He should be allowed

1 to complete his answer, Madam Chair.

2 CHAIR MILLER: I'm sorry. You were
3 talking so softly, I couldn't hear what you
4 were saying.

5 THE WITNESS: I apologize. No. I
6 was just going to add to the statement that,
7 you know, they should not punch back. Self
8 defense is self defense, you know, and if it's
9 in a fray, where both parties agree to strike
10 each other, that's one thing.

11 But if you're struck multiple times,
12 I don't see a problem in self defense, up to
13 the point, you know, to keeping it within
14 reason, of course.

15 BY MR. STERN:

16 Q Now did you see the injury to the
17 security guard?

18 A I did, sir.

19 Q Was it consistent with the knife?

20 A I am not a medical personnel.

21 Q Okay. Have you seen other knife
22 wounds?

1 A It was a laceration. That's all I
2 can testify to.

3 Q Okay. Have you seen other knife
4 wounds in the course of your duty?

5 A I've seen puncture wounds, sir.

6 Q Okay. Was this a puncture wounds?

7 A It didn't appear to be a puncture
8 wound.

9 Q And he told you that he had been
10 stabbed?

11 A He did say that he was --

12 CHAIR MILLER: I can't hear you.

13 THE WITNESS: I'm sorry. He did say
14 that.

15 CHAIR MILLER: He stated that with a
16 knife?

17 THE WITNESS: That he -- "I was cut.
18 Yeah, I was cut."

19 CHAIR MILLER: He stated what?

20 THE WITNESS: That he was cut.

21 CHAIR MILLER: Cut, okay. Thank
22 you.

1 MR. STERN: No further questions.

2 Thank you, Officer.

3 CHAIR MILLER: Okay. Board
4 questions. Yes, Mr. Rodriguez?

5 MEMBER RODRIGUEZ: Officer Gonzalez,
6 thank you for your service to the City.

7 THE WITNESS: Thank you, sir.

8 MEMBER RODRIGUEZ: I have a few
9 questions for you. Exhibit 3, we're going to
10 talk about knives. Have you -- are you
11 familiar with knives? Have you seen a lot of
12 knives before?

13 THE WITNESS: A few. I wouldn't say
14 I'm an expert.

15 MEMBER RODRIGUEZ: I'm looking at
16 Exhibit 3. Are you familiar that the knife
17 that the security guard had on him?

18 THE WITNESS: No. I was not aware
19 that he had a knife. I was informed
20 afterwards that he advised that he had a
21 knife, but that was past, the day after.

22 MEMBER RODRIGUEZ: Right.

1 THE WITNESS: I was not aware that
2 there was, you know, aside from the --

3 MEMBER RODRIGUEZ: Right. Is that a
4 normal thing for a security guard to have?

5 THE WITNESS: I don't know if I can
6 answer that honestly. I will say it's not
7 abnormal for citizens to carry pocket knives.

8 MEMBER RODRIGUEZ: Right. But now
9 we're talking about a security guard working
10 an establishment that has to guarantee the
11 safety of the patrons.

12 THE WITNESS: If I answer that
13 honestly, most of the time I am unaware that
14 they have them, because we're not required to
15 search the security. It wouldn't be my
16 responsibility to know that they have knives.
17 I'm being honest. I'm trying to be unbiased.

18 MEMBER RODRIGUEZ: Would you say
19 that the establishment, the security guards
20 work in conjunction with you? Is that -- was
21 there a lot of cooperation?

22 THE WITNESS: Yes, and it's

1 generally that way. They have other incidents
2 where they will advise us to please respond
3 inside. There's times that we need them, and
4 it's also, you know, it's a safety issue for
5 us as well.

6 We're going into a crowd. At least
7 in civil disturbance training, we don't go
8 into crowds. It's just a safety issue. So
9 we, under these circumstances which are
10 similar, you have hundreds of people that can
11 collapse on you as a police officer, I mean
12 numbers and unless I call the dispatcher for
13 additional units, I kind of have to rely on
14 the security to assist me.

15 MEMBER RODRIGUEZ: Was there any
16 gang activity out there?

17 THE WITNESS: I was not aware of
18 that, sir.

19 MEMBER RODRIGUEZ: Not aware, from
20 your experience. It was just a bunch of
21 people and they got a little rowdy. But there
22 was not an organized gang activity.

1 MEMBER RODRIGUEZ: I don't know if
2 it was. What I will say is generally when
3 parties, you know, you have a party of five or
4 ten and it's happened where their friends will
5 intervene and not allow a person to be
6 arrested, and they have had to subsequently be
7 arrested as well.

8 MEMBER RODRIGUEZ: From your
9 experience, how much experience do you have in
10 working with clubs?

11 THE WITNESS: I've been working
12 since I got out of probation. So that's --
13 we're five and a half years now.

14 MEMBER RODRIGUEZ: Okay. So, and
15 I'm going to use "so" in my questioning.

16 MR. O'BRIEN: You may, sir.

17 MEMBER RODRIGUEZ: Okay, and that is
18 -- and that is there's a question about
19 whether the knife was taken inside the
20 establishment. You know, I kind of think if
21 somebody had a knife, and there was an
22 altercation, why wasn't it used inside? But

1 it was used outside.

2 So the question comes up is -- and
3 you were in the milieu. You were inside the
4 fracas. You were in the middle of the whole
5 thing. Was this knife handed down to
6 somebody?

7 THE WITNESS: Initially or after the
8 stabbing?

9 MEMBER RODRIGUEZ: Before and after
10 the stabbing.

11 THE WITNESS: Before, I'm not sure.
12 That would be -- I would be assuming that.
13 After the stabbing, I witnessed people
14 rubbing, you know, their hands behind their
15 back, the guy kind of bear hugging him, Mr.
16 Johnson also stating they're passing it off
17 and guys running off.

18 MEMBER RODRIGUEZ: Right.

19 THE WITNESS: So that, you know,
20 that did happen and that's why we stopped
21 three people that we thought were involved,
22 and then we recognized them on the video, and

1 that's how we made the decision that night.

2 MEMBER RODRIGUEZ: Okay, Officer.

3 Thank you.

4 THE WITNESS: Thank you, sir.

5 CHAIR MILLER: Mr. Silverstein.

6 MEMBER SILVERSTEIN: Yeah, and thank
7 you for your service, Officer regarding the
8 facts of this case, where you were, what you
9 saw, what you did. Was there anything that
10 you saw that regarding the actions and the
11 procedures followed by the licensee, that
12 gives you concern?

13 THE WITNESS: Umm, I would agree
14 with Officer Petty, wandng. You know, just
15 making sure that individuals are not carrying
16 anything inside.

17 MEMBER SILVERSTEIN: Okay. Let's be
18 specific. What would you recommend be
19 changed?

20 THE WITNESS: Wanding males.

21 MEMBER SILVERSTEIN: Wanding both
22 male and female?

1 THE WITNESS: And females.

2 MEMBER SILVERSTEIN: Total body
3 including --

4 THE WITNESS: I would. I mean yes.

5 MEMBER SILVERSTEIN: Okay.

6 THE WITNESS: I mean they have
7 ladies working at the door. There's no reason
8 why a lady can't search another lady, and the
9 males, you know, we do a safety pat-down, you
10 know, just place, take your hand up to the
11 crotch.

12 MEMBER SILVERSTEIN: Was there
13 anything they did wrong, that in any way
14 jeopardized the safety of patrons or the
15 public? Where did they fall short?

16 THE WITNESS: I did not see the
17 incident inside firsthand. Judging from the
18 video, it appeared that they immediately
19 separated the parties that were fighting. You
20 know, they maybe attempt to have the situation
21 squashed, if I might say, and Officer Petty
22 was informed to come inside, and I think they

1 took appropriate action.

2 Once it got out of hand, they
3 removed the individual. So under that, you
4 know, if you see it through those eyes, at
5 least that's the way I'm judging the
6 situation, I believe that they helped
7 themselves handle it as best as possible.

8 MEMBER SILVERSTEIN: How is --
9 you've done a number of RDOs at a number of
10 places. How does their security compare to
11 other places in the City, and especially in
12 that downtown central business district area?

13 THE WITNESS: Their appearance is
14 professional. Some are not.

15 MEMBER SILVERSTEIN: Wait. Some are
16 not, meaning some --

17 (Simultaneous speaking.)

18 THE WITNESS: They wear suits. They
19 wear black suits. At other establishments,
20 they wear civilian clothes, regular civilian
21 clothes, regular, just rather regular clothing
22 attire. I have observed them turn people away

1 that do not have their IDs. If they don't
2 have their driver's license, you can't come
3 in, and I've seen them do that. I'm sorry.

4 MEMBER SILVERSTEIN: Help me out
5 with this, though. If they're professional,
6 if they're good, if they're this, they're
7 that, how did this guy have a knife on him?

8 THE WITNESS: That's a good
9 question, sir. I wish I could explain that.
10 You know, Officer Petty stated earlier in his
11 testimony that if somebody wants to, I guess,
12 hide or bring something into an establishment
13 --

14 MEMBER SILVERSTEIN: I'm talking
15 about the guard.

16 THE WITNESS: Oh, the guard?

17 MEMBER SILVERSTEIN: Yeah.

18 THE WITNESS: How did he have one?

19 MEMBER SILVERSTEIN: Yeah.

20 THE WITNESS: I'm not sure, sir.

21 That would be up to their policy and their
22 managers. That's something that they have to

1 handle internally.

2 MEMBER SILVERSTEIN: You've been
3 there dozens of times over the years. Did you
4 ever see anything like that previously? Do
5 you have any reason to believe that this was
6 something that he or other guards had done
7 previously?

8 THE WITNESS: No sir.

9 MEMBER SILVERSTEIN: You just don't
10 know. You don't know one way or another?

11 THE WITNESS: From my times working
12 there and my observations, they have not --
13 this has not happened before. Other than
14 that, I can't speak other than that.

15 MEMBER SILVERSTEIN: Is there
16 anything that you could help us with in terms
17 of making this place, other than wanting,
18 making this place less of an imminent danger?
19 We have to make this imminent danger standard.

20 You heard the question before, and
21 is there anything that you could help us with
22 on that, say hey, this is something you've got

1 to look at, or this is something that both
2 sides have to work at, based on your
3 experience as a police officer on RDO who's
4 had to diffuse all of these situations in many
5 different evenings?

6 THE WITNESS: Frankly sir, unless
7 all security in the city is required to go
8 through training, that would be the only, you
9 know, appropriate security training for
10 working --

11 MEMBER SILVERSTEIN: Wandering and
12 training, you're saying?

13 THE WITNESS: I mean training
14 period. But then we'd have to, you know.

15 MEMBER SILVERSTEIN: I'm sorry, I'm
16 having trouble.

17 THE WITNESS: We'd have to extend
18 that, you know, enforce that across the board
19 to, you know, to all establishments. But I
20 mean from that evening, I mean this is a group
21 of guys and it's not -- I don't know -- I
22 don't know them by name, so this is not a

1 personal friendship thing.

2 MEMBER SILVERSTEIN: Right.

3 THE WITNESS: This is my opinion, my
4 professional opinion, is that they handled it
5 as best as possible. I don't -- I mean the
6 wanding, Officer Petty, you know, stated that
7 earlier. Aside from that, I mean people can
8 -- you know, you can search somebody head to
9 toe, and they'll get over the rails.

10 That security member will turn
11 around and start searching somebody else.
12 That person that you just searched can go to
13 another area and then just have somebody else
14 pass it to him, and nobody observe them.

15 So it's very difficult to really
16 have a grasp as to, you know, for everybody
17 not bringing something, some type of
18 contraband. You know, somebody will sneak
19 something in at times.

20 MEMBER SILVERSTEIN: Thank you for
21 your service, Officer, and thanks for your
22 expertise.

1 THE WITNESS: Thank you, sir.

2 CHAIR MILLER: Mr. Short.

3 MEMBER SHORT: Thank you, Officer
4 Gonzalez. Again, as everybody else has stated
5 for your service to the City. I am new to the
6 Board, and I just would like to know the RDO
7 detail. Can you, for me and for the Board,
8 tell us how it's established, where you're
9 supposed to be posted, were you posted
10 properly on that evening?

11 First of all, just tell us -- first
12 of all tell us what the RDO detail is. I know
13 it's two people; correct?

14 THE WITNESS: Yes.

15 MEMBER SHORT: Are you supposed to
16 be together, or one in the front and one in
17 the back? Just tell me how that works?

18 THE WITNESS: No. Well, I mean as
19 far as officer security, I mean you want to
20 remain together.

21 MEMBER SHORT: For officer safety,
22 you want them together?

1 THE WITNESS: For officer safety.
2 If we're going to go inside, we want to stay
3 inside.

4 MEMBER SHORT: Okay.

5 THE WITNESS: You know, we are
6 required to be in and show presence and be
7 posted outside.

8 MEMBER SHORT: Outside of the
9 establishment?

10 THE WITNESS: Outside, yes, where
11 patrons can see us coming in. Our vehicle's
12 out front. Like I mentioned earlier, I'm
13 very sick. So I was wanting to stay out of
14 the element, and that's why I was inside that
15 exit door.

16 That is my, you know, my reason. I
17 have to live with that if that's an issue.
18 But we do, you know, it's for presence. To
19 show presence, show the patrons that there's
20 officer presence there, and generally it works
21 psychologically as a deterrence, you know.
22 People are less inclined to do something

1 stupid.

2 MEMBER SHORT: Okay, all right. On
3 the video, we could see that you were not
4 feeling well and inside leaning on the table.
5 Were you ever in danger doing that?

6 THE WITNESS: I'm sorry?

7 MEMBER SHORT: Were you ever in
8 danger? Would it involve some danger with you
9 being inside of the club? We saw also the
10 group of men follow, 15 or 20 guys follow the
11 security guys out. You, not to have your
12 weapon taken from behind, followed behind
13 them?

14 THE WITNESS: Correct.

15 MEMBER SHORT: And then some more
16 people came. So I mean --

17 THE WITNESS: I was not. I mean I
18 don't like having people behind my back.

19 MEMBER SHORT: I understand.

20 THE WITNESS: That's one of the
21 reasons why when I separated the group, the
22 guys -- once outside, I separated them and I

1 kind of --

2 I wouldn't say I pushed, because I
3 didn't -- I escorted the two guys to the wall,
4 and I looked back. His friends were coming at
5 me, and that's why he gets away, because I
6 looked back. It's just safety, safety. I try
7 to keep that in mind.

8 MEMBER SHORT: That's why I asked
9 the question about your danger, yourself being
10 in danger, because if something happens to
11 you, then you can't help the patrons, you
12 can't help the security guards. It's just --
13 then everything's out of control, and some of
14 them could even be stabbed.

15 THE WITNESS: Once that happened, I
16 immediately went -- I came in over the air and
17 I asked for additional units, and I asked them
18 to respond what we call Code 1, you know,
19 expedite.

20 MEMBER SHORT: Okay. Thank you very
21 much.

22 THE WITNESS: Yes sir.

1 CHAIR MILLER: Okay. Mr. Jones, do
2 you have a question?

3 MEMBER JONES: Yes.

4 CHAIR MILLER: Yes. Okay, go ahead.

5 MEMBER JONES: Thank you, Madam
6 Chair. Officer Gonzalez, quick question for
7 you. Regarding the -- were you working there
8 with Officer Petty?

9 THE WITNESS: Yes.

10 MEMBER JONES: Okay. So the two of
11 you were a pair, if you will?

12 THE WITNESS: Yes.

13 MEMBER JONES: Okay. Officer Petty
14 indicated that he -- the head of the security
15 informed him of there being an incident at
16 Table 3. Is there -- do you have any
17 understanding of why the head of security went
18 to Officer Petty as opposed to coming to you,
19 when you were actually in the establishment?

20 THE WITNESS: My assumption to that
21 would be that he was out front and so was
22 Officer Petty.

1 MEMBER JONES: The head of security
2 was out front, and Officer Petty was out front
3 as well?

4 THE WITNESS: Yes.

5 MEMBER JONES: Okay.

6 THE WITNESS: Or he was radioed to
7 his ear piece that there was an altercation
8 inside, and to bring the detail.

9 MEMBER JONES: Got it. At any
10 point, were you informed of there being a
11 situation, altercation, outside of you
12 visually observing someone being carried out
13 for an unknown reason?

14 THE WITNESS: I heard it. I heard
15 it.

16 MEMBER JONES: You heard there being
17 an altercation.

18 THE WITNESS: I was not directly
19 informed.

20 MEMBER JONES: You heard there was
21 an altercation going on?

22 THE WITNESS: Well, you can -- I

1 heard it from where I was standing or leaning
2 on the stool.

3 MEMBER JONES: Yes.

4 THE WITNESS: The lights turned on,
5 and I heard commotion not related to somebody
6 having a good time. So it was, you know, it
7 was different people raising their voices.

8 I wouldn't say screaming. People
9 were raising their voices. It sounded
10 different, so it caught my attention, and then
11 you know, that's when I kind of walked in, you
12 know, to try to get a direct view. Then I saw
13 the guys. But no, I was not, never directly
14 informed of that.

15 MEMBER JONES: Okay, and when the
16 security members were bringing the individual
17 out, they were carrying him out, were you of
18 the understanding that they were aware that
19 you were positioned there at that point in
20 time, or do you feel as though they didn't
21 expect you to be there, and they acted in
22 accordance with the lack of expectation of you

1 being there?

2 THE WITNESS: I would say that at
3 least four guys saw me there that night. So
4 I could not say that they did not -- they, as
5 you say, that they acted without expecting to
6 be --

7 MEMBER JONES: Okay. The reason why
8 I asked, because it looked -- from the video,
9 it looked as if they -- and don't take this
10 the wrong way, but it almost as if they looked
11 at you and disregarded your presence there.

12 They didn't even seem to pause or
13 skip a beat. They immediately seemed to head
14 towards the exit door. They didn't seem to
15 stop to consult you for your feedback,
16 guidance, as to what would be most supportive,
17 based on your expectation of what needed to
18 happen.

19 So my curiosity was raised, based on
20 what your understanding of your role there, as
21 you communicated it to the establishment that
22 evening, because it didn't appear as if they

1 had engaged you.

2 Is that a fair characterization?

3 Did they not engage you as they were bringing
4 the individual out, or was that something that
5 I missed in the video?

6 THE WITNESS: I don't remember if
7 they did. I know that if I felt that what I
8 saw was inappropriate, I'd stop it.

9 MEMBER JONES: Okay.

10 THE WITNESS: And you know, I
11 allowed it, because they were helping me.

12 MEMBER JONES: Okay, understood. In
13 the video, it appears that there was a
14 security member -- so we know the initial
15 individual that was being carried out was
16 being carried out by two security people,
17 based on what you testified to. Is that --
18 did I characterize that correctly?

19 THE WITNESS: Say that again. I'm
20 sorry.

21 MEMBER JONES: The individual that
22 was being carried, when he was leaving the

1 establishment, being carried out of the
2 establishment, there were two security members
3 that were doing the carrying?

4 THE WITNESS: Yes.

5 MEMBER JONES: Okay. There also
6 appeared to be another individual that was
7 roughly in the middle at the torso of the
8 individual being carried out, who did not
9 appear to be actually carrying?

10 THE WITNESS: No. He was wanting to
11 -- he was trying to force that guy off of
12 security. He was trying to free the guy from
13 security. That turned out to be the guy that
14 did the stabbing.

15 MEMBER JONES: Okay.

16 THE WITNESS: If you see, if you
17 watch the video, as he was leaving, he was --
18 I believe Mr. Johnson was holding the torso.
19 From what I saw in the video, what I was able
20 to recognize, he was holding the video. That
21 gentleman that we're speaking of turned out to
22 be the defendant that was arrested. He was

1 trying to free the individual being carried.

2 MEMBER JONES: Okay. At any time,
3 did it appear as if that individual that was
4 standing and walking out on his own power,
5 trying to free the individual that was being
6 carried, did it appear, based on your
7 observation, that he was in any way dangerous,
8 that he should have been subdued or restrained
9 himself because of the actions he was engaging
10 in?

11 THE WITNESS: Not initially.

12 MEMBER JONES: Not initially, okay.
13 As the tape progressed and time moved on,
14 there were several individuals that were
15 leaving out of the establishment, following
16 the individual that was being carried. At one
17 point, it appeared as if there was an
18 individual that had a walkie-talkie strapped
19 to his backside, and he appeared to make
20 contact with you in the video.

21 Do you remember at any point in time
22 being made -- anybody making contact with you?

1 THE WITNESS: Somebody pushed my arm
2 out the way?

3 MEMBER JONES: Pushed you back a
4 little. Right, yes. Pushed your arm out of
5 the way.

6 THE WITNESS: I remember internally
7 taking exception to that.

8 MEMBER JONES: Okay, all right. I
9 had a question regarding that. What was your
10 exception to that?

11 THE WITNESS: That being in full
12 uniform, if you see MPD patches, that you
13 shove a police officer.

14 MEMBER JONES: Okay. Do you recall
15 whether or not that was a security member, or
16 was that a member of the crowd, or you had no
17 recollection?

18 THE WITNESS: I have no
19 recollection. Even by the video, it didn't
20 appear that they were wearing a suit. It
21 almost looked like there was light colors.

22 MEMBER JONES: Light clothes.

1 THE WITNESS: Tan clothes or
2 something.

3 MEMBER JONES: Tan clothing,
4 correct.

5 THE WITNESS: It appeared that way.

6 MEMBER JONES: Appeared that way,
7 okay.

8 THE WITNESS: See the video.

9 MEMBER JONES: If that was a member
10 of the security staff and they handled you in
11 that way, would you have --

12 THE WITNESS: Oh, absolutely.

13 MEMBER JONES: You'd have a problem
14 with that?

15 THE WITNESS: Or anybody.

16 MEMBER JONES: Anybody. But if it
17 was a member of the security staff --

18 THE WITNESS: Anybody handling a
19 police officer, whether it's me or not, there
20 should be an eyebrow raised.

21 MEMBER JONES: Understood. Would
22 your expectation be higher or lower for a

1 member of security versus a general Joe Blow
2 citizen in terms of handling you in that way?
3 Would your expectation be that security
4 wouldn't handle you that way, moreso than a
5 regular citizen?

6 THE WITNESS: Yeah. I would like to
7 think that they have more sense.

8 MEMBER JONES: You'd like to think
9 that security would have more sense. Okay,
10 thank you. Not that my opinion matters, but
11 I probably agree. Okay. I know that we don't
12 have control of the video system, so we're at
13 the behest of the licensee now.

14 MR. MOLLOY: Would you like to see
15 now?

16 MEMBER JONES: Yes. Would you be
17 willing to play video, I think it's Camera 11,
18 which is the exit footage, I believe?

19 MR. MOLLOY: No problem.

20 [VIDEO PLAYED.]

21 MEMBER JONES: And Officer Gonzalez,
22 when we get to that video, there's a point --

1 okay. So I don't know exactly what the time
2 markers are, but it's after -- shortly after
3 the individual was being carried out.

4 MEMBER SHORT: 3:59.

5 MEMBER JONES: 3:59. Okay thank
6 you, Board Member Short. So just to be clear,
7 Officer Gonzalez, you're in the bottom right-
8 hand corner, and you're leaning against the
9 table; Correct?

10 THE WITNESS: Yes sir.

11 MEMBER JONES: Okay.

12 [VIDEO PLAYED.]

13 MR. MOLLOY: Board Member Jones, if
14 you'd like to tell me when to pause?

15 MEMBER JONES: I will. And now,
16 Officer Gonzalez, you just stepped away from
17 the table. Pause right here, sir. Thank you.
18 There's an individual whose eyes are very
19 highlighted by the light or blazing by the
20 light.

21 That's the individual that I was
22 trying to describe earlier, that appeared to

1 be disruptive in the process of this
2 individual being carried out.

3 Okay, and that's the individual that
4 you're indicating ended up being the
5 individual that was arrested?

6 THE WITNESS: I believe so.

7 MEMBER JONES: You believe so?

8 THE WITNESS: If that's the same
9 individual that hits the door, and is
10 continuing to try to release the guy?

11 MEMBER JONES: Yes.

12 THE WITNESS: That was the one
13 identified as being injured.

14 MEMBER JONES: Understood. Thank
15 you very much, and Mr. Molloy, would you be
16 able to play that slowly going forward?

17 MR. MOLLOY: Yes.

18 MEMBER JONES: Slow play? Thank you
19 very much.

20 [VIDEO PLAYED.]

21 MEMBER JONES: Now pause right here,
22 sir. There's an individual right here that's

1 a very large individual. Officer Gonzalez,
2 you're starting to walk towards the exit.
3 There's a very large individual here, and this
4 very large individual appears to be a light-
5 skinned gentleman with a scruffy beard in
6 here, with light-colored clothes on.

7 As you -- as we play this forward,
8 if you look at his back, I just want to
9 confirm whether or not you see something
10 hanging off of his back belt.

11 [VIDEO PLAYED.]

12 MEMBER JONES: Pause. Now see, this
13 would be some type of radio device that is
14 hanging off the back of this gentleman's belt.
15 Do you concur with that assessment?

16 THE WITNESS: (no audible response)

17 MEMBER JONES: What would be your
18 estimation of the individual that would have
19 that type of device in the establishment?
20 Would you consider him to be part of the
21 security staff, or would you consider him to
22 be some Joe Blow citizen? Yes, you would

1 consider him to be part of security staff?

2 THE WITNESS: (no audible response)

3 MEMBER JONES: Okay. So if you
4 continue to play slowly.

5 [VIDEO PLAYED.]

6 MEMBER JONES: Does it appear as if,
7 from your observation of the video, that he
8 pushed you back a little bit?

9 THE WITNESS: If I answer that
10 honestly?

11 MEMBER JONES: Yeah, just based on
12 your observation.

13 THE WITNESS: He's attempting to run
14 towards the door.

15 MEMBER JONES: He's what?

16 CHAIR MILLER: You need to talk
17 louder.

18 THE WITNESS: He's attempting to run
19 towards the door. Excuse me, I'm sorry.

20 CHAIR MILLER: I know, I'm sorry.

21 MEMBER JONES: He's attempting to
22 run towards the door.

1 THE WITNESS: Whether he knew and
2 I'm not excusing it. But whether he knew it
3 was an officer or not, I don't know.

4 MEMBER JONES: Understood.

5 THE WITNESS: But the motion that I
6 saw was somebody trying to hurry.

7 MEMBER JONES: Got you, okay. So
8 you would not have considered that to be as
9 much of an affront --

10 THE WITNESS: The first one where --

11 MEMBER JONES: Right, the first one.
12 Yes, right. What we just observed right there
13 --

14 THE WITNESS: That one?

15 MEMBER JONES: That one.

16 THE WITNESS: Right. He was just
17 trying to --

18 MEMBER JONES: Not a major issue for
19 you. Fair enough. Okay, thank you. That's
20 all I wanted from you. Thank you very much,
21 and I just had one other question. If you had
22 -- were you here when you heard the testimony

1 from Investigator -- excuse me, yes
2 Investigator Mathieson, where she indicated
3 that the security guard acknowledged that he
4 had pulled out his knife.

5 THE WITNESS: I heard the testimony.

6 MEMBER JONES: You heard that
7 testimony?

8 THE WITNESS: Yes.

9 MEMBER JONES: If you had observed
10 with your own eyes a security officer
11 brandishing a knife, would you have been
12 compelled to arrest that individual for
13 assault? I need you to -- just for the
14 recorder, I need you to say it.

15 THE WITNESS: Yes.

16 MEMBER JONES: Yes?

17 THE WITNESS: If there's criminal
18 intent, yes. I wouldn't have a choice.

19 MEMBER JONES: Okay. Thank you very
20 much. Thank you, Madam Chair.

21 CHAIR MILLER: Okay. I want to
22 follow up on that. Is it that the security

1 officer would only have to pull out the knife,
2 or would he have to actually be attacking
3 somebody with the knife?

4 THE WITNESS: I would have to -- I
5 would have to read. I would have to read over
6 D.C. Code as it pertains to the threat of
7 using the knife.

8 MEMBER SHORT: Would you speak up
9 again? We can't --

10 THE WITNESS: I would have to read
11 over D.C. Code as it relates to the threat of
12 pulling out the knife. Had he, and this is
13 assumption, he had not have -- had he not been
14 stabbed, and he just pulls out the knife, his
15 information would have been -- I would have --
16 obviously, I would have ordered him to drop
17 it.

18 I would have gathered his
19 information. I would have called an official
20 in, a detective, and then we'd, you know,
21 handle that investigation appropriately. But
22 you know, that's not what happened.

1 CHAIR MILLER: Okay, and the
2 security guards that help you outside, the
3 police officers have weapons, but the security
4 personnel do not have any weapons right?

5 THE WITNESS: Weapons as an OC
6 firearmed, the baton, the metal baton. No,
7 they don't.

8 CHAIR MILLER: Okay. So if they're
9 putting themselves in a similar risk without
10 any weapons?

11 THE WITNESS: Yes.

12 CHAIR MILLER: Okay. So I'm just,
13 you know, trying to understand the security
14 person who said that he had the knife for self
15 defense, perhaps having some fear of those
16 circumstances. But with respect to again,
17 trying to stop any knives from coming into the
18 establishment, I think we heard that the
19 establishment currently does pat-downs and
20 wands some, but not all?

21 THE WITNESS: Well, they wand the
22 females for liability issues.

1 CHAIR MILLER: They wand the
2 females.

3 THE WITNESS: I would presume that's
4 liability issues, and then the males, pat-down
5 the males.

6 CHAIR MILLER: So but the pat-down
7 -- is the pat-down better or worse as far as
8 effectiveness, compared to the wanding?

9 THE WITNESS: Well, the wanding is
10 going to identify any metal objects. Whether
11 it's a belt buckle, a key chain or, you know,
12 anything. It's going to draw their attention
13 to it.

14 CHAIR MILLER: Okay. So when you
15 make a recommendation about wanding everyone,
16 would you still recommend then that they
17 continue the pat-downs?

18 THE WITNESS: Of the males, yes.

19 CHAIR MILLER: Of the males, okay.
20 Okay. I don't have any other questions.

21 MEMBER ALBERTI: I do.

22 CHAIR MILLER: Mr. Alberti.

1 MEMBER ALBERTI: Good afternoon,
2 Officer Gonzalez, and thank you for your
3 service.

4 THE WITNESS: Good afternoon.

5 MEMBER ALBERTI: Okay. Real quick
6 question. So you've been -- you've worked
7 this security detail dozens of times here?

8 THE WITNESS: Yes sir.

9 MEMBER ALBERTI: Okay. Is that at
10 closing time, where do people usually exit?
11 Do they use -- what exits do they use?

12 THE WITNESS: Both.

13 MEMBER ALBERTI: They use both
14 exits, okay, all right. In hindsight, were
15 you -- are you -- this isn't hindsight. Are
16 you at all concerned the fact that, you know,
17 they carry a guy out and there's a lot of
18 people following him.

19 THE WITNESS: Right.

20 MEMBER ALBERTI: You know, knowing
21 what you know now, is that of concern to you?

22 THE WITNESS: It was, and I even

1 mentioned it to Officer Petty.

2 MEMBER ALBERTI: Was there concern
3 to you at the time, before you --

4 THE WITNESS: At the time, I did not
5 know that a sharp object was involved, and I
6 went home and played the scenario in my head.
7 It's like would I have drawn my weapon?
8 There's a large crowd and I have to keep that
9 in mind. I probably may not have. I probably
10 would have wrestled the guy.

11 But that's also putting me in
12 danger, because there's a large crowd and, you
13 know, I'm waiting for backup. You know, so
14 these are circumstances. Like I mentioned
15 earlier, we have to rely on the security
16 personnel. They're essentially our backup,
17 until other police members arrive.

18 MEMBER ALBERTI: So is it safe to
19 say, and I'm going out on a limb. Is it safe
20 to say that you would have felt more
21 comfortable if they're carrying somebody out.

22 There's a fight. They're carrying

1 somebody out. If they -- if security had
2 attempted to keep back as many people from
3 exiting as possible and directed them to the
4 other exit, would you have felt more
5 comfortable?

6 THE WITNESS: I would. That's --

7 MEMBER ALBERTI: That's a yes?

8 THE WITNESS: Absolutely.

9 MEMBER ALBERTI: Okay, thank you.
10 You talked about people being bear-hugged and
11 somebody passing something around outside.
12 What were the terms of -- and you said the
13 staff was alerting you to the fact that
14 something was being passed around?

15 THE WITNESS: Right.

16 MEMBER ALBERTI: What was the terms
17 that they used? What were the words that were
18 being used?

19 THE WITNESS: "I got cut, I got
20 cut." "The knife was on the floor, he picked
21 it up." "That guy picked it up and, you know,
22 that sort of thing."

1 MEMBER ALBERTI: Oh they actually
2 said there was a knife on the floor, and then
3 pointed to a guy and said "that guy picked it
4 up"?

5 THE WITNESS: Yeah.

6 MEMBER ALBERTI: You actually heard
7 the staff say that?

8 THE WITNESS: That's why we stopped
9 more than one person.

10 MEMBER ALBERTI: Okay. I'm just
11 trying to understand.

12 THE WITNESS: Yes, yes. Yes sir.

13 MEMBER ALBERTI: So to your
14 knowledge, staff saw a knife?

15 THE WITNESS: Umm, yes.

16 MEMBER ALBERTI: Okay. Thank you.
17 All right. Can we go to, and I don't want to
18 spend a lot of time on this, but I think
19 Camera 1, and I want to go to the point where
20 the guy gets -- where the patron gets punched,
21 and Jim, just before that. So I want Officer
22 Gonzalez to see that. I want him to identify

1 someone.

2 MR. MOLLOY: Camera 1.

3 MEMBER ALBERTI: I think it was
4 Camera 1.

5 MR. MOLLOY: Camera 1 by the front
6 door?

7 MR. O'BRIEN: Is out on the
8 sidewalk?

9 MEMBER ALBERTI: Right, right.
10 They're going out on the sidewalk, and there's
11 someone in the middle of that who gets -- the
12 patron gets punched by a security guard. I
13 think we all know that, right? It's just a
14 question of whether it was justified or not,
15 right?

16 MR. MOLLOY: May I also suggest you
17 can see it from Camera 2, at an angle that
18 could be useful.

19 MEMBER ALBERTI: All right, right.
20 I just -- right. I just want him, Officer
21 Gonzalez to see this. And Officer Gonzalez,
22 I'm showing this to you because I want you to

1 identify this guy if you can, the guy who gets
2 punched.

3 MR. MOLLOY: Would you prefer in
4 slow?

5 MEMBER ALBERTI: Yeah, that might be
6 good, once you get to that point for Officer
7 Gonzalez to see.

8 [VIDEO PLAYED.]

9 THE WITNESS: Okay. There they are
10 again. Pow.

11 MEMBER ALBERTI: Okay. So the guy
12 who got punched. Can you identify him?

13 THE WITNESS: That's the individual
14 that I arrested.

15 MEMBER ALBERTI: Pardon?

16 CHAIR MILLER: I can't hear you.

17 THE WITNESS: That's the individual
18 I arrested.

19 MEMBER ALBERTI: That's the
20 individual you arrested, okay. Thank you.
21 That's what I wanted to know. I have no
22 further questions. Thank you, Officer

1 Gonzalez.

2 CHAIR MILLER: Any other Board
3 questions?

4 MEMBER RODRIGUEZ: I have one last
5 question.

6 CHAIR MILLER: Okay, Mr. Rodriguez.

7 MEMBER RODRIGUEZ: Officer Gonzalez,
8 the guy that got punched, why did the other
9 guy punch him?

10 THE WITNESS: From what I saw in the
11 video?

12 MEMBER RODRIGUEZ: Yeah.

13 THE WITNESS: Because he lunged.

14 MEMBER RODRIGUEZ: Because he walked
15 over there to him and punched him.

16 THE WITNESS: From what I saw, I
17 could see him either punching or still having
18 that instrument in his hand --

19 MEMBER RODRIGUEZ: He was trying to
20 disarm him?

21 THE WITNESS: Trying to puncture
22 someone else. From the video. From what I

1 just saw, that's what it appeared to me.

2 MEMBER RODRIGUEZ: So he's trying to
3 disarm the guy with his punch?

4 THE WITNESS: I'm not sure what his
5 intention was, but from what I saw in the
6 video, the guy -- the individual arrested, Mr.
7 Harrison, he shoved somebody and then does
8 like this again. Then the Caucasian
9 individual is observed punching him.

10 MEMBER RODRIGUEZ: Okay. No more
11 questions.

12 CHAIR MILLER: Any other Board
13 questions?

14 (No response.)

15 CHAIR MILLER: Okay. Questions on
16 Board questions, any?

17 MR. STERN: Nothing from the
18 government. Oh, I think --

19 REDIRECT EXAMINATION

20 BY MR. O'BRIEN:

21 Q Just one question. The footage that
22 Mr. Jones sitting at the end had you go

1 through, as you start -- the tape shows that
2 the individual is carried out by two security.
3 A number of people go behind, and you
4 explained you didn't want to be in the middle
5 of that group?

6 A Correct.

7 Q Okay, and then you brush up against
8 a white -- a large white male with what looks
9 to be his radio on his back. Did you make eye
10 contact with that person at all?

11 A No sir.

12 Q All right.

13 A I was paying attention to the
14 individual that was carried, and what then
15 ensued.

16 Q Okay. Do you have any reason to
17 believe that that person that you came into
18 that contact with recognized that you were a
19 police officer?

20 A I'm not sure, and I didn't -- I can
21 also fairly state that the event, that outside
22 out of the video, I wasn't too concerned about

1 it. I was paying attention to it.

2 Q You were not concerned about the
3 contact?

4 A I was paying attention to what was
5 going on outside of the door.

6 MR. O'BRIEN: Thank you. That's all
7 I have, Madam Chair.

8 CHAIR MILLER: Okay. Thank you very
9 much.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 MR. O'BRIEN: Do you need a
13 signature?

14 CHAIR MILLER: Do you have any other
15 witnesses?

16 MR. O'BRIEN: Probably yes.

17 CHAIR MILLER: You're looking at the
18 clock.

19 MR. O'BRIEN: Well, I'm wondering if
20 you want to take a --

21 CHAIR MILLER: Maybe yes.

22 (Simultaneous speaking.)

1 CHAIR MILLER: How many witnesses do
2 you have left?

3 MR. O'BRIEN: Possibly two.

4 CHAIR MILLER: Possibly two, okay.
5 We can take a short -- do we want to take a
6 short break?

7 MEMBER JONES: Let's take a five
8 minute break do we can go to the bathroom, and
9 we can come back and finish.

10 MR. STERN: I was not going to
11 phrase it exactly that way, but thank you.

12 CHAIR MILLER: Does anybody need
13 more than five minutes?

14 MR. STERN: No.

15 CHAIR MILLER: Okay, all right.
16 We'll get back in five minutes.

17 MR. STERN: Thank you.

18 MR. O'BRIEN: Thank you.

19 (Whereupon, a short recess was
20 taken.)

21 CHAIR MILLER: Good afternoon.

22 Whereupon,

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 KI JUN SUNG

was called as a witness and, after having been first duly sworn, was examined and testified as follows:

 DIRECT EXAMINATION

 BY MR. O'BRIEN:

 Q State your full name please.

 A Ki Jun Sung.

 Q And spell your name?

 A K-I, J-U-N, S-U-N-G.

 Q And what is your relationship to Capitale?

 A I'm the managing member of the LLC.

 Q Were you personally present at the time of the episode we've been discussing today?

 A No.

 Q What can you tell us about your employee Derek Johnson?

 A After the incident, I looked into how long he'd been with us and who had interviewed him, and how we ended up

1 interviewing him. He had come in for an
2 interview with the previous manager. He was
3 at that time employed as a security guard at
4 CVS for several years.

5 He had interviewed and was fairly
6 articulate, seemed very calm and professional.
7 So we conducted a reference check on him and
8 he was given a solid recommendation and so we
9 hired him, and this was back in September of
10 2013.

11 MR. O'BRIEN: I'm going to show you
12 what I've marked as Exhibit No. 1. I call it
13 L-1 for Licensee 1 for identification. Could
14 you tell the Court what that is?

15 (Whereupon, the document referred to as
16 Respondent Exhibit 1 was marked for
17 identification.)

18 THE WITNESS: This is the resume for
19 Derek Johnson that was submitted as part of
20 his application for a job at Capitale.

21 MR. O'BRIEN: Move No. 1.

22 CHAIR MILLER: Sorry, any objection?

1 Okay.

2 MR. STERN: Relevance objection.

3 CHAIR MILLER: Oh, okay, relevance.

4 MR. O'BRIEN: To show the licensee
5 undertook reasonable measures before it
6 employed this individual as a security guard.

7 CHAIR MILLER: Objection?

8 MR. STERN: We're not charging --
9 they're not charged with failure to adequately
10 hire.

11 CHAIR MILLER: Okay. I think
12 there's an issue with respect to this security
13 guard. This is the one that had the knife;
14 correct?

15 MR. O'BRIEN: The one that had but
16 did not use the knife.

17 CHAIR MILLER: Yes, correct. Okay.
18 So I think it's relevant. I'll admit it.

19 MR. O'BRIEN: There's multiple
20 copies there.

21 CHAIR MILLER: Okay. So that's
22 Respondent's Exhibit No. 1.

1 (Whereupon, the document identified
2 as Respondent Exhibit 1 was received in
3 evidence.)

4 BY MR. O'BRIEN:

5 Q After you hired Derek Johnson in
6 September of 2013, did you have any reason at
7 all, up to the night in question, to question
8 his suitability for employment?

9 A No.

10 Q Any complaints about him?

11 A None.

12 Q Were you aware that Mr. Johnson
13 apparently carried a knife routinely?

14 A No.

15 Q Have you inquired of other members
16 of your ownership and management staff as to
17 whether anyone had any knowledge that Mr.
18 Johnson might have been carrying a knife from
19 time to time?

20 A I didn't speak to everyone, but I
21 spoke to our manager, our night time manager,
22 and I did speak to other security, to see if

1 they had known, and no one knew.

2 Q Did you watch -- I assume you did;
3 you were here -- the portion of Camera 11 that
4 was replayed for Mr. Jones' request?

5 A Yes.

6 Q That showed a large white man next
7 with what appeared to be a radio on his back?

8 A Yes.

9 Q Next to Officer Gonzalez? Did you
10 see that?

11 A Yes, yes.

12 Q All right. Are you able to
13 determine whether he was an employee, a
14 security employee or not?

15 A I've been told that he is a member
16 of our security staff.

17 Q Could we go to -- actually, let's
18 start here. Can we go to Camera 15 at
19 approximately 3:59:05? An investigation of
20 what happened on February 17th and in
21 preparation for this hearing, have you studied
22 the camera footage?

1 A Many, many times.

2 Q Can you do it by just one second,
3 without going too far?

4 MR. MOLLOY: Oh sure.

5 THE WITNESS: It is very difficult
6 to see that.

7 MR. O'BRIEN: I understand that.
8 Okay, leave it at -- this appears to be one
9 second off. But I'm going to show you what
10 we're going to mark as Licensee No. 2.

11 (Whereupon, the document referred to as
12 Respondent Exhibit 2 was marked for
13 identification.)

14 THE WITNESS: I was able the second
15 time.

16 MR. O'BRIEN: Would you come down
17 from the stand?

18 (Pause.)

19 BY MR. O'BRIEN:

20 Q I see some red -- I'll represent to
21 the Board that this Exhibit No. 2 is a still
22 of what's on the screen at the moment. Now

1 you've got some red circling here. Could you
2 tell the Board what that is?

3 A Okay. We have what Investigator
4 Mathieson identified as Patron or Customer A
5 to the left, and we have what all the
6 witnesses so far has identified as the
7 assailant, who was ultimately arrested.

8 Q And where is the assailant?

9 A Right here, to the right.

10 Q Okay. Now can we start in just a
11 moment the video, with particular attention to
12 Patron B, the assailant, and can you first
13 tell the Board what happens as the footage
14 rolls with respect to him?

15 MR. MOLLOY: Would you like it in
16 slow time or real time?

17 MR. O'BRIEN: Slow time, please.

18 [VIDEO PLAYED.]

19 THE WITNESS: So that was Customer A
20 punched Customer C, and then he -- Customer B
21 walking over and he's on the top of him, and
22 then eventually you'll the see the back of the

1 shirt.

2 BY MR. O'BRIEN:

3 Q Stop please. Now what have you got
4 there, and what is our footage there, 5-0?

5 A It's right there.

6 Q Can you go two seconds more? Okay.
7 We're at :54. I want :52 here.

8 MR. MOLLOY: Okay. I'll go back
9 before it and play it and pause it.

10 BY MR. O'BRIEN:

11 Q Okay, right. What have you circled
12 in red on this still from where we are on the
13 tape?

14 A That is what was previously
15 identified as the Customer B, who you referred
16 to earlier, because of the letter across the
17 back of his shoulder.

18 Q Can that lettering be clearly read
19 on this?

20 A It's a little fuzzy, but that's how
21 I read it.

22 Q Now has -- we may have gone a little

1 too far for my next question. Has the
2 individual who Investigator Mathieson
3 identified as a patron first to separate them
4 come into play?

5 A Yes.

6 Q Okay. Can we go back just a tiny
7 bit then? We want to identify that first.

8 [VIDEO PLAYED.]

9 MR. O'BRIEN: Now have you -- all
10 right. Stop please, and put the cursor on
11 that person?

12 MR. MOLLOY: Cursor, there. If you
13 follow the cursor.

14 THE WITNESS: Yes, okay.

15 BY MR. O'BRIEN:

16 Q Have you been able to identify if
17 that was a patron?

18 A No. That's actually one of our
19 security team who was stationed at what we
20 call a back door. He's stationed at one of
21 the platforms, and his name is Walter Bayoh.
22 His last name is B-A-Y-O-H.

1 Q Okay, thank you. Can we go to
2 Camera 11 please? No, I'm sorry. Can we go
3 to Camera 2, and can we get up to about
4 4:01:51?

5 [VIDEO PLAYED.]

6 MR. O'BRIEN: You can stop right
7 there at :50. Now would you play it slowly
8 please? And stop please.

9 MR. MOLLOY: Just a bit? Okay.

10 BY MR. O'BRIEN:

11 Q We're one second off. We're at :51
12 seconds as opposed to :52. What do you see in
13 that still photograph circled?

14 A That's Customer B again.

15 CHAIR MILLER: What, excuse me? Can
16 you hear him?

17 CR Could you get yourself closer to
18 a microphone?

19 CHAIR MILLER: That's in order to be
20 captured by the court reporter.

21 MR. O'BRIEN: All right. I think we
22 now can just let the tape run, which will

1 establish that that's the person who was
2 stopped by security.

3 [VIDEO PLAYED.]

4 BY MR. O'BRIEN:

5 Q All right, that's fine. Thank you.
6 You can resume -- you can resume the stand.
7 We've heard talk about a front door and a back
8 door?

9 A Yes.

10 Q Is it accurate what we've heard,
11 that both front on K Street?

12 A That's correct.

13 Q Okay, and how far apart are they?

14 A Approximately 50 feet.

15 Q I'm going to show you -- I'm going
16 to start at this right. You're familiar, are
17 you not, with the security plan that was in
18 place on the night of February 17th?

19 A Yes.

20 Q Okay. As a result of experiences
21 from that night, what changes have you made to
22 your security plan?

1 A We've explicitly stated that
2 security is not to have anything that could be
3 considerably used as a weapon.

4 Q All right, and what other changes
5 have you made?

6 A Specifically to enforce our entry
7 point detection to include wandling.

8 Q Of whom?

9 A Of customers.

10 Q Could you -- I'm going to show you
11 what's -- I did not mark these -- I marked,
12 Madam Chair, the first of these as number two,
13 the first of these poster boards. I did not
14 mark the rest.

15 CHAIR MILLER: Okay.

16 MR. O'BRIEN: If the Board wants --

17 CHAIR MILLER: The rest of what?

18 The boards?

19 MR. O'BRIEN: I think I showed a
20 total of three of them.

21 CHAIR MILLER: Okay.

22 MR. O'BRIEN: Maybe I should start

1 to mark those now.

2 MP Whichever you prefer.

3 MR. STERN: I'm not going to object.

4 CHAIR MILLER: Okay.

5 MR. O'BRIEN: All right. That was
6 Licensee 2. This is Licensee 3.

7 (Whereupon, the document referred to as
8 Respondent Exhibit 3 was marked for
9 identification.)

10 CHAIR MILLER: Okay.

11 MR. O'BRIEN: And this is Licensee
12 4, and since the witness used these, we
13 probably should move them into evidence.

14 (Whereupon, the document referred to as
15 Respondent Exhibit 4 was marked for
16 identification.)

17 CHAIR MILLER: Okay. So is that 1
18 through 4?

19 MR. O'BRIEN: Well, number 1 was
20 Derek Johnson's resume?

21 CHAIR MILLER: That's right.

22 MR. O'BRIEN: Which has already been

1 admitted, I believe.

2 CHAIR MILLER: Okay.

3 MR. O'BRIEN: L-2, L-3 and L-4 are
4 blow-ups for stills, if you will, of footage.

5 CHAIR MILLER: Okay.

6 MR. O'BRIEN: I'm now going to mark
7 as No. 5 a document I'm going to hand to the
8 witness and ask him to explain what that is.

9 (Whereupon, the document referred to as
10 Respondent Exhibit 5 was marked for
11 identification.)

12 THE WITNESS: This is our revised
13 security plan.

14 BY MR. O'BRIEN:

15 Q All right. Could you -- yes. Okay.
16 Could you describe to the Board where the
17 changes have been made?

18 A Roman numeral II, subparagraph
19 letter B. "On an event by event basis,
20 security personnel will conduct pat-downs and
21 magnetic wand scans of patrons at the
22 entrance."

1 Q Why do you say on an event-by-event
2 basis?

3 A There are events where clearly you
4 don't need to perform pat-downs, and would be
5 inappropriate. For instance, we have an event
6 where the Israeli Ambassador for the U.N. is
7 coming for a private reception this Saturday.

8 We've had a reception for federal
9 judges. Those are events where we wouldn't do
10 pat-downs, and it would be highly
11 inappropriate to do so.

12 Q All right. What other change was
13 made to the security plan?

14 A Roman numeral IV, security personnel
15 will carry radios to assist with communication
16 and flashlights, and the change would be
17 "security personnel will not carry weapons of
18 any kind while working."

19 MR. O'BRIEN: I'm going to move No.
20 5.

21 CHAIR MILLER: Okay. So I'm not
22 sure whether I admitted 2, 3 and 4, so at this

1 point I'll admit 2, 3, 4 and 5.

2 (Whereupon, the documents identified
3 as Respondent Exhibits 2, 3, 4 and 5 were
4 received in evidence.)

5 MR. O'BRIEN: Thank you.

6 CHAIR MILLER: Okay.

7 BY MR. O'BRIEN:

8 Q How seriously did you take this
9 event?

10 A Very seriously. I was very
11 concerned, and I immediately started talking
12 to everyone that worked that night who had any
13 knowledge of what happened, and then reviewed
14 the footage.

15 Q You've been closed under summary
16 suspension. You were closed over the weekend?

17 A Yes.

18 Q How many individuals could not work
19 last weekend because of the closure?

20 A We employ approximately 25 to 30
21 people each night.

22 MR. O'BRIEN: Those are my questions

1 of Mr. Sung.

2 CHAIR MILLER: Okay. Cross?

3 CROSS EXAMINATION

4 BY MR. STERN:

5 Q Yes, yes sir. When you hired Mr.
6 Johnson, did you ask if he carried a knife?

7 A No, I did not.

8 Q And I gather since it's now
9 forbidden, you found that inappropriate?

10 A Yes, absolutely.

11 Q Has he been disciplined?

12 A We have not taken any action yet,
13 but he did express -- he did express his
14 regret, and we are probably going to let him
15 go.

16 CHAIR MILLER: You are what?

17 THE WITNESS: We are probably going
18 to let him go.

19 BY MR. STERN:

20 Q Now I'm going to ask you -- tell you
21 what my issue is on one of these things on
22 your security plan, and you tell me if I'm

1 right or wrong.

2 You say "On an event-by-event basis,
3 security personnel will pat-down -- will
4 conduct pat-downs and magnetic wand scans of
5 the patrons at the entrance." So if you
6 decide not to do it one day, you don't have to
7 do it?

8 A Yes.

9 Q Okay. So basically the security
10 plan then ways you will conduct pat-downs and
11 magnetic wand scans when you feel like it?

12 A Not when I feel like it, but when we
13 feel that it's necessary and reasonable.

14 Q Based solely on your discretion, not
15 on any plan? There's nothing written as to
16 when you're going to do it or when you're not
17 going to do it?

18 A That's correct, because there's just
19 too many different types of functions and
20 events that we do. We have speed dating,
21 where I don't think doing a pat-down is
22 appropriate. We have private receptions all

1 the time, where I don't think it's
2 appropriate.

3 Q Did you hear the testimony of the
4 last officer who testified regarding his
5 feeling that it was inappropriate if security
6 personnel hit back at respondents who might
7 push them?

8 A Yes, I heard that exchange.

9 Q Do you agree with that?

10 A There were many statements that he
11 made. I agree with some and not others.

12 Q Okay. Do you think -- the security
13 plan says "Physical contact on the part of
14 security personnel is only permitted in the
15 sake" -- in the case of, I assume it means --
16 "of self defense, defense of others or the
17 destruction of property." Is that correct?

18 A That's what it says.

19 Q Okay. Does that allow security
20 personnel to, for lack of a better word,
21 return fire if they're pushed?

22 A If they're pushed?

1 Q Yes.

2 A Depends on the nature of the push
3 and the circumstances.

4 Q So again, the security plan doesn't
5 seem to address it specifically. It will be
6 up to the individual to determine on a case to
7 case basis?

8 A I think it's for the ABRA Board to
9 determine if there's been reasonable force
10 used.

11 Q Well, that's after the fact. But
12 I'm talking about in terms of training your
13 security staff, they get to decide on a case-
14 by-case basis?

15 A We go through -- we go through
16 training, and we run through a lot of
17 scenarios under which security is expected to
18 not do anything.

19 Q I guess that doesn't really answer
20 my question, though. My question was then
21 they have to decide for themselves, on a case-
22 by-case basis?

1 A Absolutely.

2 Q Thank you. Does the training that
3 you provide to security staff include
4 deescalations training?

5 A I'm not familiar with that word.

6 Q Okay. Is there any training on how
7 to contain an aggressive person without having
8 to forcibly touch them?

9 A We tell them to try to communicate
10 as much as possible, and to try prevention
11 first and foremost. So yes, physical contact,
12 especially when that would be considered a use
13 of force, is a measure of last resort.

14 Q When there's no other alternative
15 available?

16 A Correct.

17 Q Would that be true of removal of
18 patrons as well? It's a last resort when
19 there's no other -- forcible removal, I should
20 say, of patrons is a last resort when there's
21 no other alternative available?

22 A I think the better phrasing would be

1 if there is an imminent threat to someone
2 else's safety, then you can remove. But we
3 advise against deploying that tactic first.

4 It's only if someone else is in
5 danger, whether it's another employee or
6 another customer, and it has to be imminent,
7 then they can remove that person.

8 Q And why weren't you doing -- well,
9 you now dictated that you'll do magnetic scans
10 and wand scans and pat-downs when you decide
11 to do them. Why weren't you doing them both
12 in the past?

13 A We weren't doing them because we
14 felt it to be repetitive. Initially, when we
15 first opened and we started doing wands, they
16 were creating just almost every single person
17 that we wanded, it was creating a false
18 positive.

19 Q Well, have you decided now that it's
20 not repetitive?

21 A Well, I think Officer Petty's right.
22 We should wand especially shoes. I think

1 that's a good suggestion, and since he's
2 suggesting it, I'm happy to comply. But the
3 reason we weren't doing it before, to answer
4 your question, is because you would get a
5 false positive.

6 So it's just simply better to
7 examine their buckle belt, because it's going
8 to go off. So we've trained our security to
9 examine it, to make sure they're not hiding
10 anything, and that that belt buckle itself is
11 not a weapon, for instance.

12 Q Do you have any knowledge of how
13 this gentleman got a knife inside your club?
14 The assailant, I should say, not the security
15 guard.

16 A I'm not sure that he had a knife,
17 but if it was a knife, I do not know how he
18 got it in.

19 Q But you're not disputed that the
20 members of your security staff said that they
21 saw a knife outside?

22 A I am disputing it. I spoke to all

1 the security that had any knowledge of that
2 incident or observed anything, and none of
3 them said they saw a knife.

4 Q So the officer was making it up?

5 A I'm not sure.

6 Q And you saw the tape of how the
7 injury occurred; right?

8 A Yes.

9 Q Did there seem to be any time when
10 he could have went from inside the club to get
11 a knife someplace, to then slash at the
12 security guard?

13 A Again, I'm not going to agree with
14 your characterization that it was a knife.

15 Q Okay. Did you make an incident of
16 this -- an incident log of this incident?

17 A Our manager did, yes.

18 Q Did you bring that with you?

19 A No, but we submitted it to Ms.
20 Mathieson.

21 MR. STERN: Okay. Thank you. No
22 other questions.

1 CHAIR MILLER: Okay. Are there
2 Board questions? Mr. Brooks.

3 MEMBER BROOKS: (off mic) Yes.
4 Thank you Madam Chair. Mr. Sung, were you the
5 person who was directly responsible for hiring
6 Mr. Johnson?

7 THE WITNESS: No.

8 MEMBER BROOKS: Who was?

9 THE WITNESS: Our former manager.
10 He's no longer with us.

11 MEMBER BROOKS: Okay. Did you
12 review his resume when he was hired?

13 THE WITNESS: No. I don't recall.
14 I may have. I may have. I don't recall. I
15 screen a lot of emails where resumes are
16 forwarded, but I don't specifically remember
17 reviewing this resume.

18 MEMBER BROOKS: Okay, and looking at
19 his resume, he has no experience in night club
20 security?

21 THE WITNESS: No night club, no.

22 MEMBER BROOKS: CVS, to me, hardly

1 equates to being on the security staff at a
2 nightclub, and I think that might be at the
3 root of some of the problem.

4 THE WITNESS: Possibly. But we
5 don't -- we also train individuals, regardless
6 of how much experience they have once they
7 join our staff.

8 MEMBER BROOKS: Oh, he received
9 training on night club procedures?

10 THE WITNESS: Yes, yes.

11 MEMBER BROOKS: Okay, and he was
12 hired in September 2013?

13 THE WITNESS: That's correct.

14 MEMBER BROOKS: So he's been on the
15 staff maybe six months?

16 THE WITNESS: Correct.

17 MEMBER BROOKS: Thank you, Madam
18 Chair.

19 CHAIR MILLER: Thank you. Others?
20 Yes, Mr. Short.

21 MEMBER SHORT: Good afternoon, Mr.
22 Sung. I understand you said that you're going

1 to wand on conditions, certain conditions, and
2 I heard you mention something about foreign
3 dignitaries. I know you remember 9-1-1, 9/11,
4 and we know we have a lot of terrorists that
5 follow certain embassies and certain
6 dignitaries around.

7 So on a night that you have certain
8 ambassadors there, maybe you wouldn't wand,
9 and somebody could bring a bomb in. Is that
10 a possibility?

11 THE WITNESS: I can't deny that
12 that's a possibility.

13 MEMBER SHORT: I have no more
14 questions.

15 CHAIR MILLER: Others? Mr.
16 Rodriguez.

17 MEMBER RODRIGUEZ: Mr. Sung, you
18 said that you might consider letting go of a
19 staff person who had a dangerous weapon in
20 your establishment without your knowledge,
21 that you might consider it. Frankly, I'm not
22 satisfied with that, that you might consider

1 it.

2 It does not convince me, and I'd
3 like to walk out of here feeling that you will
4 make a decisive decision not to have personnel
5 like that in your establishment. That's all
6 I have to say.

7 THE WITNESS: Thank you, sir. It's
8 something that we haven't discussed yet,
9 because we -- I've been preparing for this
10 hearing. But I have no problems letting him
11 go. If that's your request, I will absolutely
12 abide by it.

13 CHAIR MILLER: Okay. I have just a
14 couple of questions. One is I understood your
15 reservation about the events, when you
16 described certain events you wouldn't justify
17 wandering. It would be inappropriate. But are
18 you able to articulate the events that would
19 require wandering, that would be appropriate?

20 THE WITNESS: I think events where
21 we don't necessarily know. If it's members --
22 if it's a party that's going to attract people

1 from the members of the general public, then
2 I think it's appropriate to take these
3 measures, to do pat-downs and to wand.

4 CHAIR MILLER: So of your events
5 throughout a year, like what percentage do you
6 wand in general now?

7 THE WITNESS: I would say the
8 majority of them we do. We perform pat-downs
9 and wands.

10 CHAIR MILLER: Okay, and do you have
11 any written description of the training that
12 you provide your security personnel?

13 THE WITNESS: We have a more
14 detailed security manual. Yes, we do.

15 CHAIR MILLER: You have a more
16 detailed security manual than the plan that's
17 been submitted?

18 THE WITNESS: Correct, correct.

19 CHAIR MILLER: Do you -- who does
20 the training for your personnel?

21 THE WITNESS: Sometimes I conduct
22 them. Other times, one of the managers

1 conducts them.

2 CHAIR MILLER: Where do you get your
3 information from?

4 THE WITNESS: Where do I?

5 CHAIR MILLER: Where do you draw
6 your information from for the training?

7 THE WITNESS: For the training.
8 Well, I've attended training from other
9 security professionals, and also just I've
10 been in this industry for 15 years now. So
11 just based on experience, and also just my
12 understanding of the law, as to what a
13 security person can and cannot do and what's
14 advisable, from my conversations with MPD.

15 CHAIR MILLER: Okay, and so but do
16 you have training materials?

17 THE WITNESS: We have a security
18 manual, yes.

19 CHAIR MILLER: You use the security
20 manual for your training? Is that it?

21 THE WITNESS: We also have multiple
22 choice questions, where we have the security

1 staff take them and then we discuss the
2 answers afterwards, why an answer is correct
3 or incorrect. We do role playing. We have a
4 pretty extensive training for our security
5 personnel.

6 CHAIR MILLER: Okay. Other
7 questions, Board questions?

8 MR. STERN: Nothing from --

9 CHAIR MILLER: Oh, I'm sorry, finish
10 the Board questions? I'm sorry, let's back
11 up. I thought I was -- I thought everybody
12 had asked who wanted to. Go ahead, Mr. Jones.

13 MEMBER JONES: Thank you, Madam
14 Chair. In terms of your training and security
15 procedures, as well as your security plan, can
16 you speak to or articulate what your
17 procedures are related to exiting the
18 establishment for closing the establishment,
19 how you handle patrons leaving at closing
20 time?

21 THE WITNESS: There's a lot of
22 procedures that take place when we're getting

1 ready to close. The lights come on anywhere
2 from 15 to 30 minutes before we close. The
3 last call is made anywhere from 15 to 30
4 minutes before we close.

5 We communicate with the DJ to wind
6 down the music. Security is moved in during
7 the course of the night from being somewhat
8 split evenly between being at the front of the
9 house to being inside the house. Security is
10 asked to roam more when exiting, when there's
11 going to be a mass exiting.

12 It just depends on the night,
13 because sometimes by the time we're closing,
14 the club is fairly empty. So it will take
15 care of itself. Other times, a good bulk of
16 the crowd is not going to leave until the last
17 song is played. So every -- each situation is
18 handled differently.

19 But in the case where you have a lot
20 of people still inside the club, then we make
21 sure to get all the drinks off the tables and
22 off the bar.

1 MEMBER JONES: Okay, and in the
2 situation where -- so you are responsible for
3 -- you and another manager is responsible for
4 conducting the training of your security
5 staff?

6 THE WITNESS: That's correct.

7 MEMBER JONES: Okay. What is the
8 training protocol as it relates to having an
9 individual removed from the establishment, and
10 how was that applied in this particular
11 instance?

12 THE WITNESS: As I testified before,
13 security should not use force, and that
14 includes carrying somebody out, unless there's
15 been -- there is an imminent danger to either
16 another employee or another customer's safety.

17 So in this instance, I reviewed the
18 tape and our security initially separated the
19 two gentlemen who were involved in the fight.
20 Patron A seemed to calm down but he didn't.
21 He continued to struggle. He tried to get
22 past the security, and then he either swung a

1 fist or jerked one of his arms violently, and
2 at that time, it was appropriate to take him
3 out.

4 MEMBER JONES: Okay, and concerns
5 with your protocol, what was supposed to have
6 -- what should have happened, in terms of the
7 other individual, I think we called him B,
8 based on your testimony earlier? B seemed to
9 be nipping at the heels or right at the
10 process of the individual who was being
11 carried.

12 In my view of the tape, he seemed as
13 if he was in a position to potentially create
14 harm. I'm trying to make an assessment from
15 how you conduct your training what should have
16 happened in that instance, assuming your
17 perspective is similar to mine, that that
18 individual was in a position to create harm?

19 If your position is something other
20 than, then I'd like to hear you speak to that.

21 THE WITNESS: It really depends on
22 the context and what happened, what actually

1 happened. We don't know if Customer B is
2 saying, yelling profanities to security while
3 he's walking along with his friend presumably,
4 or whether he's telling his friend "Calm down,
5 I got you. We'll take care of this outside."
6 We don't know.

7 But if you're going to assume that
8 he was being hostile, that he was adding fuel
9 to the fire, then yes, some measure. It may
10 have been advisable to take some measure with
11 Customer B as well. But from my review of the
12 footage, he was not involved in the
13 altercation inside, Customer B, Mr. Crooks,
14 and I didn't see him assault anyone or
15 threaten anyone.

16 He was walking along. He may have
17 been animated, but he didn't show -- what he
18 ultimately did, which was to attack our
19 security outside.

20 MEMBER JONES: Okay. So just to
21 clarify, you're saying that -- okay. I'll
22 make a statement and ask a question based on

1 that statement.

2 Based on my review of the tape
3 footage, where you had the poster boards put
4 up, where the incident first initiated, it
5 appeared to me as if the Subject A and Subject
6 B both threw punches at one point.

7 THE WITNESS: I didn't see that, no.

8 MEMBER JONES: You did not see that.

9 Okay.

10 THE WITNESS: You mean inside?

11 MEMBER JONES: Inside.

12 THE WITNESS: Yeah no. I didn't see
13 Customer B involved in that altercation,
14 throwing a punch. The only punch I recall
15 seeing is outside.

16 MEMBER JONES: Okay, and that what

17 --

18 MR. O'BRIEN: We can review the tape
19 quickly.

20 MEMBER JONES: I don't know if I
21 want to spend the time on it. I know what I
22 saw, so I'm concerned that what he's saying

1 here. So that's my -- all right, thank you.

2 Thank you, Madam Chair.

3 CHAIR MILLER: Okay. Others, Mr.

4 Alberti?

5 MEMBER ALBERTI: I saw, I clearly
6 saw both individuals throwing punches inside.

7 You may have missed it --

8 THE WITNESS: I apologized. I
9 missed it then.

10 MEMBER ALBERTI: --but trust us. I
11 don't know if that will change your opinion of
12 any of the questions I asked, but it's
13 clearly, and if you doubt me, we can go back.
14 But I really don't want to.

15 Let's talk about -- I mean let's go
16 back there, since we're talking about that.
17 You identified a Mr. Boyh, B-O-Y-H or B-O-Y
18 something, B-O-Y-H is it?

19 THE WITNESS: B-A-Y-O-H.

20 MEMBER ALBERTI: B-A-Y-O-H, okay.
21 Bayoh, okay. I'm not sure I pronounced it
22 right, but that individual you identified.

1 How did you identify him?

2 THE WITNESS: Other security. I
3 asked when I was reviewing the video tape, my
4 other security guys who is this, and they said
5 "Well, that's Buck. He was stationed at the
6 back door."

7 MEMBER ALBERTI: All right. Was
8 Buck wearing any distinctive clothing?

9 THE WITNESS: All of our security
10 wear -- they should be wearing black suits.

11 MEMBER ALBERTI: So I can't
12 remember, but Mr. Bayoh, was he wearing a
13 black suit there?

14 THE WITNESS: You can't tell from
15 the camera. He looks like he's wearing a coat
16 on top of a suit, yes.

17 MEMBER ALBERTI: You have told us
18 that in your security plan, you're going to
19 make it clear that none of your security staff
20 will have -- will be allowed to carry anything
21 that could be used as a weapon; is that
22 correct?

1 THE WITNESS: Yes.

2 MEMBER ALBERTI: Your security plan
3 doesn't say what the consequences will be if
4 they are found to have, in the possession of
5 weapons while on duty; is that correct?

6 THE WITNESS: That's correct.

7 MEMBER ALBERTI: Do you plan on
8 articulating that to your employees?

9 THE WITNESS: Yes.

10 MEMBER ALBERTI: And what will those
11 consequences be?

12 THE WITNESS: My policy's always
13 been if there is a violation of an important
14 provision of any of our policies, then they
15 will be terminated.

16 MEMBER ALBERTI: And does this fall
17 into the category of an important provision?

18 THE WITNESS: Yes, it does.

19 MEMBER ALBERTI: And where will this
20 be articulated to the employees?

21 THE WITNESS: We will make sure that
22 it is communicated to them, and we will

1 include it in our security manual that they
2 have to review.

3 MEMBER ALBERTI: You didn't bring a
4 copy of the security manual with you? I'm not
5 sure what the timing of this will be or
6 whether it will matter, but I think it will be
7 useful for the Board to have a copy, and I'll
8 let the Chair deal with that later.

9 But that would be my desire, for the
10 Board to have a copy of that manual. Just so
11 we know that if we did request it, how long
12 would it take for us to get a copy?

13 THE WITNESS: I don't see why we
14 can't get it to you first thing in the
15 morning.

16 MEMBER ALBERTI: Okay, great. What
17 about other training materials? Could we get
18 copies of those if we requested them?

19 THE WITNESS: Sure.

20 MEMBER ALBERTI: Who does the
21 training?

22 THE WITNESS: Any of the owners and

1 right now we only have one manager that has
2 security experience. He used to be head of
3 security, so he would also perform the
4 training.

5 MEMBER ALBERTI: So by any of the
6 owners, that means who?

7 THE WITNESS: That would mean
8 myself, my partner David Chung, and well, we
9 used to have an owner but he's gone now. So
10 it would just be David and myself.

11 MEMBER ALBERTI: David and yourself,
12 okay. What qualifications do you have to
13 train?

14 THE WITNESS: Just that I've been in
15 the industry for 15 years. I've studied the
16 law of reasonable force. I am an attorney.
17 I've been to seminars where security training
18 was provided. We had a security training last
19 year conducted by a security expert from Las
20 Vegas. That was fairly extensive, and my
21 conversations with detective in MPD.

22 I've spoke to Sergeant Duncan a

1 couple of years ago, who headed up -- one of
2 his concerns was security violence on patrons.
3 I've spoken to him on several occasions. I
4 feel that I understand security fairly well,
5 as it relates to night clubs.

6 MEMBER ALBERTI: And who wrote the
7 training manual?

8 THE WITNESS: It's been a
9 collaborative effort. It's been an evolving
10 document. I certainly had a hand in it. My
11 partners over the years have had a hand in it,
12 as well as managers of security.

13 MEMBER ALBERTI: When was the last
14 time it was reviewed and updated?

15 THE WITNESS: I'm going to say right
16 before we reopened as Capitale.

17 MEMBER ALBERTI: I want to go back
18 to this nebulous description of when you'll
19 have -- when you'll use wanding and when you
20 won't. I'll just go right out there. I'm
21 tempted to tell you, if you don't tell me very
22 specifically when you'll do it and when you

1 won't, because unless I see it in there, I
2 can't be comfortable.

3 I'm just telling you where I'm at.
4 I can't be comfortable with a nebulous idea of
5 when it happens and when it doesn't. Unless
6 it's very specific and laid out, so that
7 there's a clear line of when you do it and
8 when you don't, I'm not going to be
9 comfortable.

10 And, you know, I don't know what the
11 timing here would be, but you know, you might
12 rather do it than have me do it, obviously
13 with that.

14 One of the concerns I have when I
15 watched this video was as the person was being
16 carried out through that hallway, back
17 hallway, they had a lot of interested patrons
18 following.

19 I'm guessing from your testimony and
20 Officer Gonzalez's testimony, that no one had
21 any idea of what those people following the
22 patron out, what their involvement was, what

1 their intent was, what their interest was. I
2 don't think there was time, from what I'm
3 hearing.

4 So is this normal? Is this a normal
5 procedure where, you know, you're carrying out
6 an aggressor. You had a reason to pick him
7 up, all right. There were other people
8 involved in that scuffle, and you just let
9 everybody follow them out the door. Is that
10 a normal procedure?

11 THE WITNESS: Well, it's not every
12 day. It's a very infrequent occurrence, where
13 someone has to be carried out. But I do -- I
14 share your concern.

15 MEMBER ALBERTI: I understand. I
16 understand that. But when it happens, does
17 your security plan or your training manual
18 address that?

19 THE WITNESS: Not specifically.
20 There's so many variations to what can happen.
21 But what you should know is that of the 15
22 people that exited the club after the

1 incident, when the gentleman was being carried
2 out, I counted at least five to six security
3 that was part of that group.

4 MEMBER ALBERTI: Okay. So there's
5 ten other patrons.

6 THE WITNESS: Sure, sure. I think
7 it's --

8 MEMBER ALBERTI: Are you missing my
9 point here? You're lucky that -- I mean you
10 can consider yourself luckily there wasn't a
11 riot outside, because those people were part
12 of -- wanted to engage in what happened to a
13 friend of theirs.

14 You know, it didn't happen in this
15 case, but the potential is there. And are you
16 -- am I understanding you correctly, that your
17 procedures do not address that at all?

18 THE WITNESS: Ideally, you don't
19 want a mass exit.

20 MEMBER ALBERTI: Pardon?

21 THE WITNESS: Ideally, you don't
22 want a mass exit of people, if you assume that

1 their interest is in getting involved in a
2 scuffle outside. So I agree with you, that
3 you don't want that happening, if that is in
4 fact what happened.

5 MEMBER ALBERTI: All right. Let's
6 go to one of the procedures. Big crowd that
7 night.

8 THE WITNESS: I'm sorry?

9 MEMBER ALBERTI: Big crowd that
10 night. What's your capacity?

11 THE WITNESS: I believe it's 250
12 plus.

13 MEMBER ALBERTI: What's your
14 estimate of how many people were there that
15 evening, on the portions of the video that we
16 saw, before the guy was carried off?

17 THE WITNESS: Maybe 125 people, 150
18 people.

19 CHAIR MILLER: How many?

20 THE WITNESS: 125 to 150 would be my
21 eyeball estimate.

22 CHAIR MILLER: Thank you, okay.

1 MEMBER ALBERTI: For a crowd that
2 size, what are your closing procedures?

3 THE WITNESS: Well, as I testified,
4 we turn on the lights. We slow down the
5 music. We call last call. We start making
6 sure the drinks are off the tables in the bar,
7 and then we --

8 MEMBER ALBERTI: I'm not
9 understanding something you said. Well, it's
10 not clear to me. You said all drinks off the
11 table before you close, I think, was close to
12 what your exact words were?

13 THE WITNESS: Correct.

14 MEMBER ALBERTI: Before we close.
15 What's close mean?

16 THE WITNESS: On this date, closing
17 would be 4:00 a.m.

18 MEMBER ALBERTI: 4:00 a.m.?

19 THE WITNESS: Yes.

20 MEMBER ALBERTI: You weren't there,
21 so did you ask your staff when the last call
22 was made that evening?

1 THE WITNESS: I did. I asked my
2 manager who was there when last call was made.
3 He said it was at least at 3:45.

4 MEMBER ALBERTI: 3:45. We did see
5 people putting their coats on at about shortly
6 before four. But would you -- you saw the
7 videos, right? People were not gathering --
8 the first I saw people gathering their coats
9 was past 3:55; is that correct?

10 THE WITNESS: We were at capacity
11 that night, so many people had left already.

12 MEMBER ALBERTI: I just asked you
13 how many people just before this guy was
14 carried off? You saw the videos. How many
15 people would you estimate were there at that
16 point?

17 THE WITNESS: About 125 is what I
18 testified to.

19 MEMBER ALBERTI: Okay, correct. So
20 there was 125?

21 THE WITNESS: Yes.

22 MEMBER ALBERTI: A lot of people had

1 left, all right. You still had 125.

2 THE WITNESS: Yes sir.

3 MEMBER ALBERTI: All right, and it's
4 now past 3:55, right?

5 THE WITNESS: Yes sir.

6 MEMBER ALBERTI: Were the lights on?
7 I couldn't tell.

8 THE WITNESS: Yes, they were.

9 MEMBER ALBERTI: Lights on. Was the
10 DJ playing?

11 THE WITNESS: I don't know.

12 MEMBER ALBERTI: There were drinks
13 on the table, though, up until the end, from
14 what I saw; isn't that correct? You saw the
15 video.

16 THE WITNESS: I don't remember
17 looking for drinks. I'm not going to dispute
18 it, because I don't -- I wasn't looking for
19 them.

20 MEMBER ALBERTI: But if there were
21 drinks, then that part of your closing
22 procedure was not followed that evening?

1 THE WITNESS: I agree.

2 MEMBER ALBERTI: All right. How
3 long does it take for 125 people to exit
4 typically? Once you tell -- once you make it
5 clear that -- how do you make it clear that
6 you've got to get out now? How do you do
7 that?

8 THE WITNESS: Typically, it's when
9 the music stops.

10 MEMBER ALBERTI: How do they know?

11 THE WITNESS: How do you know when
12 the music --

13 MEMBER ALBERTI: How do they know
14 that that's when they have to leave? I mean,
15 you know, quite frankly I've been in clubs
16 when the music stops and I want to linger and
17 have my drink and not leave right away. How
18 do you know -- how do you tell them -- sorry.
19 How do you -- I'm sure I'm not different than
20 a lot of people.

21 So yes. How do you tell them -- I
22 mean I know how I've been signaled to leave.

1 But how do you tell people that you've got to
2 leave now?

3 THE WITNESS: Well, we actually want
4 people to leave slowly. We don't want -- we
5 don't want to dump 125 to 150 people on the
6 sidewalk. So that's why we turn on the
7 lights. That's why we tell the DJs to slow it
8 down.

9 (Simultaneous speaking.)

10 THE WITNESS: --turn off the music,
11 and then there's nothing going on, and we ask
12 the security to walk through, and we ask them
13 to politely speak to the customers, that they
14 should make their way out.

15 (Simultaneous speaking.)

16 MEMBER ALBERTI: All right. With
17 125 people there, how long do you think it
18 would take to clear the club?

19 THE WITNESS: My experience, because
20 I used to actually work these nights.

21 MEMBER ALBERTI: Yeah.

22 THE WITNESS: It does not take too

1 long, 10 to 15 minutes.

2 MEMBER ALBERTI: Ten to fifteen
3 minutes, not too long, okay. Thank you. So
4 that procedure should have started, in your
5 estimation, at 4:50 (sic) at the latest;
6 right?

7 THE WITNESS: 4:50.

8 MEMBER ALBERTI: I mean 3:50 at the
9 latest, right?

10 THE WITNESS: No. I actually don't
11 mind customers being inside the club after the
12 music's off, the lights are on.

13 MEMBER ALBERTI: I have a question.

14 THE WITNESS: Right.

15 MEMBER ALBERTI: You said that it
16 takes 10 to 15 minutes for you to clear the
17 club?

18 THE WITNESS: Yes.

19 MEMBER ALBERTI: Assuming, now this
20 is an assumption. Assuming that your desire
21 is to have everybody out the door and have the
22 tables cleared at four o'clock, assuming that

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THE WITNESS: No, that's not true.

MEMBER ALBERTI: Pardon?

THE WITNESS: That's not true.

MEMBER ALBERTI: What's not true?

THE WITNESS: That we want everyone out of the club by 4:00 a.m. necessarily.

MEMBER ALBERTI: Oh. But it is true that you want the tables cleared by 4:00 a.m.?

THE WITNESS: Yes. We want all the alcohol removed from the tables and the bar, and out of the customers' hands.

MEMBER ALBERTI: So about what time do you want everyone out?

THE WITNESS: It depends. If there's -- if we're at capacity at 4:00 a.m., then we don't necessarily want to dump 200 people out onto the sidewalk precisely at 4:00 a.m. We would prefer a slow exit.

MEMBER ALBERTI: Okay, very good. I think I got my answer. I have no further questions.

1 CHAIR MILLER: Okay. Others?

2 MR. O'BRIEN: May I make an
3 observation?

4 CHAIR MILLER: Mr. O'Brien, do you
5 have something you need to -- you wanted to
6 say.

7 MR. O'BRIEN: Something I wanted to
8 say, yes. This was extended hours, holiday
9 weekends, and a 24 hour operation of the club
10 was authorized on this evening.

11 CHAIR MILLER: Okay.

12 MEMBER ALBERTI: I didn't ask about
13 this evening, Mr. O'Brien. I asked about in
14 general.

15 MR. O'BRIEN: I'm sorry. I thought
16 -- I'm sorry. I thought you were talking
17 about this evening.

18 MEMBER ALBERTI: Well, Mr. Sung
19 seemed to be talking about in general. He
20 kept talking about, you know.

21 MR. O'BRIEN: Okay. I thought there
22 was a factual confusion.

1 CHAIR MILLER: Okay. So in any
2 event, on this particular night when the
3 incident took place was the 24 hours operation
4 for a club serving alcohol. Okay, Mr. Short.

5 MEMBER SHORT: I just want to ask,
6 is that on file, the copy of the application
7 and approval of that 24 hours? Is it on file?

8 MEMBER ALBERTI: It would be in our
9 records.

10 MEMBER SHORT: Okay, I just asked.

11 CHAIR MILLER: I just have a little
12 follow-up on the training. How often do you
13 do the training?

14 THE WITNESS: We do the training any
15 time someone new is hired.

16 CHAIR MILLER: So when there's a new
17 hire, you do training for everybody or just
18 for the new person?

19 THE WITNESS: No, no, no. For that
20 individual.

21 CHAIR MILLER: Okay.

22 THE WITNESS: They're given the

1 security manual to read, and then they come to
2 work. The manager goes over the procedures
3 with him, and then they're not put to work
4 right away. So if we have -- on a given night
5 we have 15 security, we have a new guy
6 starting, he will be the 16th.

7 He will be training, and we will
8 observe him, we will talk to him. Then when
9 we feel comfortable that he's ready, then he
10 will be put into the rotation.

11 CHAIR MILLER: So that's kind of an
12 on-the-job training?

13 THE WITNESS: Correct.

14 CHAIR MILLER: Okay. But you don't
15 have a specific like class or program?

16 THE WITNESS: We have at least
17 annually, at least once a year, we have a
18 meeting with all the security. Typically, it
19 takes more than one, because not everyone can
20 come at the same time.

21 But we have a meeting where we
22 review all the procedures, and usually there's

1 many more, where we call meetings, because we
2 feel like we've gone through the club and
3 we've seen security not do their job properly,
4 and if we see that it's a chronic situation,
5 then we'll call a meeting.

6 But at least once a year we've had
7 -- and we've had professionals come in and
8 conduct these training courses as well.

9 CHAIR MILLER: So at least once a
10 year, there's a refresher of training, okay.

11 THE WITNESS: Right, yes.

12 CHAIR MILLER: And that's for all
13 the security?

14 THE WITNESS: Yes.

15 CHAIR MILLER: Okay, thank you.

16 Okay, Mr. Rodriguez.

17 MEMBER RODRIGUEZ: Mr. Sung, so once
18 in a while there may be a commotion and you're
19 ready to deal with it, but do you -- when you
20 -- do you serve champagne in your club?

21 THE WITNESS: Yes.

22 MEMBER RODRIGUEZ: And what kind of

1 utensils do you use to serve your champagne?

2 THE WITNESS: Champagne glasses.

3 MEMBER RODRIGUEZ: Are they glass?

4 Are they made out of glass?

5 THE WITNESS: It depends on the
6 event. If it's a private reception, then
7 we'll use glassware. If it's open to the
8 general public, we use polycarbonate champagne
9 glasses.

10 CHAIR MILLER: You use what kind?

11 THE WITNESS: Polycarbonate,
12 plastic.

13 CHAIR MILLER: Polycarbon glass,
14 okay. Okay. Any other questions?

15 (No response.)

16 CHAIR MILLER: All right. Other
17 questions on Board questions?

18 REXCROSS EXAMINATION

19 BY MR. STERN:

20 Q Yeah. I actually just have the one.
21 You were talking about the suits. We noticed
22 somebody in a, it looked like a sweater

1 carrying a radio on his back, leaving the
2 establishment through the back door on one of
3 the spots. Was that a security guard?

4 A I was told that he is, yes.

5 Q Okay, and do you have any idea why
6 he wasn't wearing a black suit?

7 A I don't, I don't.

8 Q So there's nothing in the security
9 plan that tells people how to identify the
10 security guards?

11 A Not in the security plan, no.

12 Q Or what they're supposed to be
13 wearing or anything like that?

14 A Not in the security plan, no.

15 MR. STERN: Okay, thank you.

16 CHAIR MILLER: Yes, Mr. O'Brien.

17 REDIRECT EXAMINATION

18 BY MR. O'BRIEN:

19 Q Mr. Rodriguez asked you a very
20 direct question, as to what the employment
21 status of Derek Johnson is, and I'm not sure
22 that your answer was quite clear.

1 A He is terminated as of this hearing.

2 MEMBER RODRIGUEZ: Thank you very
3 much, counsel.

4 MR. O'BRIEN: Those are my
5 questions.

6 CHAIR MILLER: Okay. Thank you very
7 much.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 CHAIR MILLER: Do you have another
11 witness?

12 MR. O'BRIEN: We do not.

13 CHAIR MILLER: Any other documents?

14 MR. O'BRIEN: I think all of the
15 exhibits have been moved.

16 CHAIR MILLER: Okay, good.

17 MR. STERN: There is one more. May
18 we do this jointly? I was wondering whether
19 we would want to move the videos that were
20 shown into evidence?

21 MR. O'BRIEN: Oh yes, yes, the
22 videos.

1 CHAIR MILLER: Okay, as whose
2 exhibit?

3 MR. O'BRIEN: Joint exhibits.

4 CHAIR MILLER: Joint Exhibit No. 1.
5 Okay.

6 (Whereupon, the document referred to as
7 Joint Exhibit 1 was marked for identification
8 and received in evidence.)

9 MR. O'BRIEN: Joint Exhibit No. 1,
10 and it consisted of Camera 16, Camera 11,
11 Camera 1 --

12 MR. STERN: Fifteen actually.

13 MR. O'BRIEN: I'm sorry. Was it 15?

14 MR. STERN: 15, 11, 1.

15 MR. O'BRIEN: And then in our case,
16 we also showed footage from Camera No. 2.

17 MR. STERN: Right.

18 CHAIR MILLER: Okay. So then
19 there's no redirect, is there?

20 MR. STERN: No.

21 CHAIR MILLER: Okay. Then we are
22 ready for closing.

1 MR. STERN: Thank you.

2 GOVERNMENT'S CLOSING ARGUMENT

3 MR. STERN: The government submits
4 that this establishment is a danger, imminent
5 danger to the health and safety of the public,
6 and that it should remain closed. I'll give
7 further details on that.

8 First, as to the Officer's testimony
9 that nothing was going wrong, I think that the
10 Board has to take that with a grain of salt.
11 Neither of the officers saw the security plan.
12 Neither of the officers actually saw the
13 original assault inside, and neither of the
14 officers saw the stabbing that occurred
15 outside.

16 So to the extent that they reach any
17 conclusions, it is only secondhand
18 conclusions, and while they carry some weight,
19 I would suggest to the Board that they don't
20 carry great weight, especially about -- their
21 answers were directed to, apparently because
22 they have not seen the security plan, towards

1 what an officer would do, as opposed to what
2 the security guard was supposed to do, based
3 on the security plan or the security book that
4 we don't have a copy of that was discussed.

5 So I would caution first, as to the
6 officers' testimony, that they should carry
7 little weight outside of the facts, as to what
8 their conclusions are.

9 There were two incidences here, two
10 extended incidences here. The government
11 believes the facts show and the evidence shows
12 that the first incident which occurred inside,
13 two patrons seemed to attack a third patron.

14 He was knocked to the ground, didn't
15 seem to get up through the entire incident.
16 One of the other patrons was then cornered by
17 the -- someone we found to be -- found out was
18 a security guard. We did not know that prior
19 to today.

20 The incident stopped. Until the
21 security guard starts putting hands and trying
22 to hold the respondent, then he starts to

1 struggle. The government believes that the
2 evidence shows that he was trying to squirm
3 away from being held, and that was the arm
4 movement that we see on the screen.

5 All of that occurred because the
6 security guard wasn't well-versed, wasn't
7 trained well enough in how to calm down a
8 situation after it occurred, when everything
9 is stopped. Take that into -- take that with
10 the fact that there was an officer outside who
11 was already called to come inside, and the
12 security guard handled this incorrectly.

13 As the officer testified, when an
14 officer shows up, people tend to act
15 differently than if a security guard is
16 holding him. He was squirming and trying to
17 get away from the security guard. But if it
18 had been an officer, there might have been a
19 different result.

20 In any event, that's one of the
21 reasons we have officers on these reimbursable
22 details.

1 Then the security guards, two of
2 them, pick up the individual. Now I saw the
3 pictures of the individual leaving. The Board
4 can draw its own conclusions. The government
5 would submit that that individual was not
6 actively trying to get away.

7 He was being held and carried out
8 like an animal, and he reacted like an animal,
9 which is expected. That's the wrong way to
10 approach a patron of your establishment. You
11 don't pick him up by the top and bottom, carry
12 him off the floor and basically heave him out
13 the door.

14 He took offense to that. That's
15 another reason why the second incident began.
16 But almost as importantly, the Board has to
17 look at the tape, especially the tape from
18 Camera System No. 1. Camera System No. 1 we
19 will see what happens, and hopefully the Board
20 will recall this, is the security guard puts
21 him down outside, turns his back as though
22 he's going back into the establishment, and he

1 gets pushed.

2 His reaction to that was to turn
3 back around push back at the person who pushed
4 him. That's what causes, starts the second
5 incident to escalate. That's completely the
6 opposite of how he's trained, and in fact,
7 both the owner of the establishment and the
8 police officers who had testified, that's not
9 what you're supposed to do.

10 You're not supposed to hit back at
11 someone who just pushes you. He wasn't in
12 imminent danger of great bodily harm. He was
13 facing -- he was right at the door about to go
14 back in. He got pushed from behind and
15 decided to charge out after this guy.

16 Add that to the other lapses that
17 the establishment had on this night. Security
18 guard is carrying a dangerous weapon. They're
19 not wanding and patting down all the people
20 who come in. Some manages to get a knife
21 inside and, you know, this hide and seek, oh
22 I'm not going to admit it was a knife is sort

1 of silly.

2 Establishments come in here and
3 would have the Board believe that oh, it's a
4 tremendous coincidence that less than a block
5 away there's a knife found, when someone has
6 his hand slashed, and you could see that the
7 manner in which the person was swinging at him
8 was swinging to slash his -- as though
9 slashing a knife.

10 Additionally, the testimony of the
11 officer, who has no reason to lie in those
12 circumstances, that it's the security guards
13 who tell him there's a knife on the floor. So
14 people saw a knife right there when it
15 happened, and there's no time, looking at the
16 pictures again. There's virtually no time
17 between when he is taken out of the
18 establishment and when he sees it.

19 In fact, if you look, the
20 government's position is if you look closely,
21 you will see him go into his pocket, and
22 that's when he pulls out what turns out to be

1 the knife that slashed.

2 So they allowed a patron in the
3 establishment with a knife. They had a
4 security guard in the establishment with a
5 knife. The security guards didn't handle the
6 first incident in breaking the up the Correct
7 way, and they didn't handle the second
8 incident once the people were outside the
9 correct way.

10 All of those things show that the
11 establishment is a danger, and part of the
12 reason they're a danger is they rely on this
13 security plan, even this new security plan.
14 It virtually says nothing. It basically says
15 the establishment will do whatever it wants,
16 whenever it wants, and that's the extent of
17 the security we're going to provide.

18 That's not appropriate, and until
19 -- what the District would ask to happen is
20 that this establishment remain closed until
21 two very important things happen.

22 A new security plan is submitted,

1 which addresses specific about when they're
2 going to do the wanding and pat-downs, when
3 they're going to close, how they're going to
4 do closing procedures, what the security staff
5 is going to wear, what the appropriate level
6 of force is, without some vague generalities
7 that they have in here.

8 The only thing the Board can
9 prosecute in terms of doing a security
10 agreement is what they submitted. So they
11 submitted something that is as flimsy as the
12 two pieces of paper that it's written on, and
13 we suggest that that adds to the dangerousness
14 of this establishment.

15 We'd ask that they be asked to
16 submit new security plan, and that all of the
17 security people in the establishment be
18 retrained pursuant to that plan, and pursuant
19 to the generally accepted guidelines that the
20 Board recognizes for training of security
21 guards by a third party independent person
22 rather than an owner, whose real -- and I

1 don't mean this in a disparaging way, whose
2 real concern is only how fast can I get them
3 out on the floor so I can make more money.

4 A third party person who presents a
5 training for security officers real interest
6 is how well can I train these people, because
7 that's my livelihood. We'd ask for those two
8 things to do, that we come back here and I
9 don't know how long this is going to take. I
10 would suggest two weeks is appropriate, and
11 that the establishment remains closed until it
12 can get this done.

13 Let me just also one other thing.
14 This whole concept that there are some events
15 that don't need security, that don't need
16 wandering and pat-downs. I don't know. I went
17 to the Nationals Park once when the President
18 was there. Everybody there got patted down
19 and went through magnetic viewing, and that
20 was the President.

21 So I don't believe that there are
22 any events that are so important that you

1 can't ask somebody to step through a metal,
2 one of those metal -- automatic wandling
3 things, or that they can't be wanded and
4 patted down for weapons, especially in the
5 City of Washington, where we are one of the
6 number one terrorist targets in the country if
7 not the world.

8 So for all those reasons, we'd ask
9 that the establishment remain closed, and that
10 the Board order, prior to the next hearing,
11 that those two things be accomplished.

12 CHAIR MILLER: Sorry. Prior to the
13 next hearing?

14 MR. STERN: Yes. I'm going to ask
15 for a continued status date, from which they
16 can come in with a revised security plan that
17 meets the approval of ABRA, who will review it
18 for them, and that before that time, they also
19 have engaged a third party training staff to
20 train all security on appropriate security
21 measures, especially in dealing with conflict
22 resolution.

1 CHAIR MILLER: Okay, thank you. Mr.
2 O'Brien.

3 RESPONDENT'S CLOSING STATEMENT

4 MR. O'BRIEN: I find counsel's
5 analogy to Nationals Park interesting. They
6 have a particular event where they're
7 concerned about security, a visit by the
8 President. So everyone is wanded. But for a
9 routine baseball game, where there's no
10 specific reason to be concerned about
11 security, they don't wand.

12 Nationals Park is doing the same
13 thing that this club is doing on an event by
14 event basis. I heard talk of the Israeli
15 Ambassador. I heard talk of -- I'm not sure
16 if it was a reception for federal judges.

17 I understand the desire for
18 certainty and rigid standards. But that's not
19 a practical matter. There has to be an
20 assessment as we go, or as the licensee goes,
21 as to when it's necessary.

22 Now if the licensee continues to

1 make bad judgments, then we're talking about
2 the fitness for the licensee to remain a
3 licensee. But to simply say no matter what
4 the nature of your event, every single event
5 you've got to wand and check the purses of
6 everybody coming in is simply not practical
7 and it's not reasonable.

8 I'm trying to come up with other
9 examples. I was about to say suppose there's
10 a lawyer's meeting, but then again I
11 understand enhanced security would probably be
12 demanded. But I could come up with a million
13 examples. You have to call them as you see
14 them.

15 I find it very interesting that my
16 good friend Mr. Stern denigrates this present
17 security plan, as if it's a piece of garbage,
18 and totally overlooks the fact that this plan
19 was submitted to the Board and approved on
20 August 9th of 2013.

21 Now does that mean it couldn't be
22 made better, especially based on subsequent

1 experiences? No, it doesn't mean that. But
2 this was a plan that was prepared and
3 submitted, and it was deemed okay by the Board
4 six months ago.

5 In specific response to Mr. Jones'
6 question -- in specific response to Mr. Jones'
7 questioning of Mr. Sung regarding the start of
8 the altercation inside, I saw the same thing
9 that apparently two Board members did. Mr.
10 Sung may not have seen it, but I saw in fact
11 Man A, who is also known as Mr. Crooks, push
12 or start.

13 There's a reaction from Man C and
14 then Man A goes berserk, okay. But we see
15 that in hindsight. Staff did not see that,
16 and thus when we question whether staff should
17 have kept Man B out of the hallway while they
18 were taking Man A out, the staff did not have
19 benefit of knowing that Man B had been
20 involved in the altercation.

21 At that moment, they know him as a
22 passive bystander. It's only with the benefit

1 of hindsight that we see that Man B was also
2 deserving of some security attention. Now as
3 to security attention, Mr. Stern and I see two
4 different things.

5 There's a scuffle. Security
6 intervenes very quickly, and I think
7 effectively too. They push Man A away out
8 into the back of our camera range, and there
9 does seem to be a pause. Somebody else is
10 helping Man C off the floor. There does seem
11 to be a pause when the situation may have
12 calmed down.

13 But then what I see on that screen
14 is Man A acting up and acting real bad,
15 clearly struggling with security, and I
16 suggest throwing a punch. At that point is
17 when the decision was made, we've got to put
18 him out before somebody else gets hurt.

19 Now it's easy to say in hindsight
20 well, it would have been better to wait for
21 MPD to arrive. Well, maybe it would have been
22 better, or maybe Man A would have hurt

1 somebody. We'll never know.

2 But what we do know is this is an
3 onsite at the moment judgment call that has to
4 be made, and you've had -- neither Petty nor
5 Gonzalez saw the scuffle start. But both of
6 them told you they watched the tape, and both
7 of them told you that they thought the actions
8 of the staff were reasonable.

9 Now ultimately it's your judgment,
10 the Board's, not theirs. Likewise, Gonzalez
11 watches them carry the guy through. They're
12 not manhandling him, they're not beating him,
13 and I know this Board has seen any number of
14 cases where the security guards are the
15 aggressors.

16 That's not what's going on here.
17 They're trying to get the guy out and diffuse
18 the situation as quickly as possible. Was it
19 a good thing in hindsight for 15 people, five
20 of whom may have been security guards, to go
21 rushing out right behind him?

22 Probably not. But what was security

1 supposed to do? Stop them from leaving? You
2 can't stop somebody from leaving an
3 establishment. Were they supposed to have
4 another phalanx of security guards get in
5 between them and hold them back? That's not
6 practical.

7 I was called about this case I guess
8 last Monday or Tuesday by the client, and we
9 immediately went to the tapes and started
10 gathering facts and all, and it was a punch in
11 my gut when I found out that the security
12 guard himself had carried a knife that night.

13 That changed the complexion of the
14 case entirely in my view. But is that
15 acceptable? Under no circumstances is it
16 acceptable. Did management know about it?
17 Clearly not.

18 But the evidence is also clear that
19 the only way anybody seems to know about this
20 is that the security guard in the hospital
21 tells the agency investigators he has it and
22 shows it to them, so they can take a

1 photograph of it.

2 Mr. Johnson says he took it out, and
3 I believe the testimony was, through Officer
4 Mathieson, thought better of it. The fact
5 that the security guard carried a knife really
6 has nothing to do whatsoever with what
7 happened in the club that night, nothing at
8 all. It's what happened in the club that
9 night that the Board has to evaluate, in order
10 to determine whether this club remains in
11 imminent danger to public health and safety.

12 I'm suggesting to you, with a great
13 deal of conviction, that -- let me go back a
14 step. Everything is relative. This Board,
15 especially the Board members who have been
16 here for a long time, have seen any number of
17 different factual circumstances, no two of
18 which are ever quite identical.

19 I'm not saying that there is an
20 acceptable level of inappropriate conduct.
21 That may be a double negative, but hopefully,
22 I think Mr. Jones at least follows me.

1 What happened here this night would
2 not have been remarkable but for the fact that
3 Mr. Crooks, Man B, who has already initiated
4 the whole thing, as Mr. Jones inside, pulls a
5 weapon out of his pocket, and we have the
6 security guard, who I submit did nothing wrong
7 and did nothing excessive to contribute to
8 this event, is the one who ends up cut.

9 And under those circumstances, I
10 don't think the Board reasonably can come to
11 the conclusion that based on the events here
12 that night, that this establishment is today
13 or tomorrow an imminent danger to public
14 safety.

15 Now again we learn -- we all learn
16 from experiences, and I don't think that Mr.
17 Stern's suggestions regarding further beefing
18 up of the security procedures, security manual
19 or a retraining course, I don't think those
20 are unreasonable suggestions.

21 I think given that we know things
22 can happen, that we saw them happen here,

1 there's some reason to them. But I don't
2 think it's grounds for keeping this business
3 closed and keeping people out of work.

4 So I would suggest that a reasonable
5 alternative here would be for the Board to
6 lift the summary suspension and schedule the
7 matter for a status hearing say in two weeks
8 or three weeks, one month, whatever is
9 appropriate, and have the licensee report back
10 to the Board at that time what it's done with
11 respect to beefing up the written procedures
12 and getting a refresher round of security
13 training.

14 I will note that the Board has taken
15 that middle road in other cases, and even
16 though the summary suspension is lifted, say
17 okay but we're going to have a status hearing,
18 because we want to have some follow-up, to
19 make sure that we're progressing in the right
20 direction.

21 I urge upon the Board that that
22 would be the appropriate way to proceed here.

1 CHAIR MILLER: Okay. So what I
2 think our procedure will be at this point is
3 we have said that we would give you an answer
4 today. So therefore, the Board will go into
5 executive session, to closed session to
6 discuss the matter, and then we will come back
7 and let you know.

8 MR. O'BRIEN: Madam Chair?

9 CHAIR MILLER: Yes.

10 MR. O'BRIEN: May I -- I had in my
11 note to mention one thing. Mr. Stern, not
12 unfairly, made reference to the investigative
13 history here of this establishment, and Item
14 No. 1 on the investigative history dates back
15 to October 8, 2012, almost a year and a half
16 ago, and it says it's an ADW, assault with a
17 deadly weapon.

18 But then if you read the
19 disposition, the Board issued an order with a
20 \$500 fine and a nine-day suspension from a
21 previous case carried over. I've got a very
22 clear recollection of that case.

1 It was not an ADW at all. It was
2 use of an unapproved trade name, and it was
3 the cases in which I argued to the Board,
4 eloquently I thought but ultimately
5 unpersuasively, that this is like somebody on
6 parole who runs a stop sign.

7 Has he broken the law? Can you
8 revoke his parole? Yeah, you can, but is it
9 really disproportionate to running a stop
10 sign? I don't know if the Board remembers
11 that. But that's what this -- yes, Mr. Stern
12 was here.

13 MR. STERN: I do remember that
14 argument.

15 MR. O'BRIEN: And that's what this
16 is. It's no ADW.

17 CHAIR MILLER: This is No. 1?

18 MR. O'BRIEN: Number one.

19 CHAIR MILLER: Yeah, okay. Yeah, I
20 remember this case.

21 MR. O'BRIEN: There's no question
22 that there's a lengthy investigative history

1 here. But there's also no question when you
2 look at that in context, there's been a couple
3 of years here where there's been no issues, no
4 serious issues with respect to this club. So
5 I wouldn't want a "where there's smoke there's
6 fire" influence.

7 CHAIR MILLER: Okay.

8 MR. O'BRIEN: Thank you very much
9 for allowing me to --

10 CHAIR MILLER: Well you had
11 reference before that you had a correction to
12 make, so that's what you were --

13 MR. O'BRIEN: Did I mention that
14 before? I thought I mentioned it to the
15 staff. I didn't recall if I --

16 CHAIR MILLER: You actually did, and
17 then forgot.

18 MR. O'BRIEN: Not unusual.

19 CHAIR MILLER: That's important to
20 note here. Okay. So all right now. I'm
21 going to read the instructions and call the
22 vote to go into closed session.

1 As Chairperson of the Alcoholic
2 Beverage Control Board for the District of
3 Columbia, and in accordance with Section 405
4 of the Open Meetings Amendment Act of 2010, I
5 move that the ABC Board hold a closed meeting
6 for the purpose of seeking legal advice from
7 our counsel in Case Nos. 14-251-00045 and No.
8 14-251-00045(a), per Section 405(b)(4) of the
9 Open Meetings Amendment Act of 2010 and
10 deliberating upon this case for the reasons
11 cited in Section 405(b)(13) of the Open
12 Meetings Amendment Act of 2010. Is there a
13 second?

14 MEMBER BROOKS: Second.

15 CHAIR MILLER: Mr. Brooks has
16 seconded the motion. I'll now take a roll
17 call vote on the motion, now that it's been
18 seconded. Mr. Brooks.

19 MEMBER BROOKS: I agree.

20 CHAIR MILLER: Mr. Alberti.

21 MEMBER ALBERTI: I agree.

22 CHAIR MILLER: Mr. Rodriguez.

1 MEMBER RODRIGUEZ: I agree.

2 CHAIR MILLER: Ms. Miller agrees.

3 Mr. Silverstein.

4 MEMBER SILVERSTEIN: I agree.

5 CHAIR MILLER: Mr. Short.

6 MEMBER SHORT: I agree.

7 CHAIR MILLER: Mr. Jones.

8 MEMBER JONES: I agree.

9 CHAIR MILLER: It appears that the
10 motion has passed by 7-0-0 vote. I hereby
11 give notice that the ABC Board will recess
12 this proceeding and hold a closed meeting in
13 the ABC Board conference room, pursuant to the
14 Open Meetings Amendment Act of 2010, and then
15 we will return to tell and explain our
16 decision. So you may take a short break as
17 well.

18 MEMBER ALBERTI: Or a long one. Or
19 a long one.

20 (Whereupon, the Board adjourned to
21 closed meeting session.)

22 CHAIR MILLER: Okay. The Board is

1 back on the record after having discussed what
2 it had heard in the hearing today regarding
3 the suspension issues, and we are ready to
4 articulate our decision in this case, which
5 will be written up by tomorrow and upon
6 approval of the Board we will sign tomorrow,
7 and given the order, as I'll articulate, we
8 will find that the imminent danger will be
9 addressed.

10 So we anticipate that the
11 establishment will be open tomorrow, after we
12 sign this order, and here are the conditions
13 under which we are making this decision, and
14 this will be in the order.

15 Number one, that the establishment
16 institute a policy which should be in its
17 security plan, that all security personnel
18 will be informed that they cannot carry
19 weapons on duty, and they will be terminated
20 immediately if they are found to have such a
21 weapon, and they will not be allowed to be
22 hired at any establishment owned by the same

1 owner.

2 That all patrons will be wanded on
3 Thursday through Sunday for events starting at
4 ten o'clock p.m., that security personnel will
5 be wanded as well at the beginning of their
6 shift, and that this -- that they will
7 maintain a log reflecting this wanding.

8 That four, that there will be a
9 training for all security by a third party
10 every six months, and that -- and before any
11 new hire may begin work.

12 Five, that there will be a status
13 hearing in two weeks on March 12th, and that
14 the establishment will submit by March 7th,
15 for the Board's consideration, the security
16 manual that was referenced today at the
17 hearing, and current training materials, and
18 an identification of who will be the third
19 party -- who will conduct the third party
20 training.

21 Also, that they will submit on March
22 7th a security plan that's beefed up, that

1 sets forth closing procedures, that also
2 contains the provision regarding informing all
3 personnel about the policy of not carrying
4 weapons, and that also sets forth de-
5 escalation procedures.

6 And the licensee should be prepared
7 to discuss the issues and respond to questions
8 concerning the security plan, the training,
9 closing procedures, the matters that I've just
10 identified. So under those conditions, the
11 Board will review the order tomorrow and be
12 prepared to lift the suspension.

13 MR. O'BRIEN: I'm sorry, your voice
14 tailed off. Be prepared to --

15 CHAIR MILLER: I'm saying under
16 these conditions, the Board will review the
17 order tomorrow, we come on Wednesdays, and
18 after preparing -- reviewing how it's written,
19 making sure that it does reflect the Board's
20 conditions, we will be prepared to sign it
21 tomorrow.

22 Under that condition, then, the

1 establishment will be able to open.

2 MR. O'BRIEN: Okay, thank you.

3 CHAIR MILLER: We haven't voted on
4 this yet, but that is what is going to be in
5 the order. We can vote on it today. Did you
6 need to ask a question?

7 MR. O'BRIEN: You said there was a -
8 - that a hearing in two weeks?

9 CHAIR MILLER: Yes.

10 MR. O'BRIEN: Two weeks from today,
11 okay.

12 CHAIR MILLER: It's March 12th.

13 MR. O'BRIEN: Okay. So you'll have
14 all these dates in the order too, but March
15 7th is when we want you to submit the written
16 material, so we have a chance to review them,
17 and then we may have a dialogue with you all
18 on those provisions.

19 MR. O'BRIEN: Very well.

20 CHAIR MILLER: Okay. Anything else
21 anyone wants to add before we vote on this?

22 (Pause.)

1 CHAIR MILLER: Two things. One is
2 this order has not yet been finalized, and so
3 therefore we're going to see a written order
4 and then vote on it again on the final order.
5 But I want to ask if there's any -- if you
6 have any objections to these conditions, and
7 whether you consent -- first of all whether
8 the establishment consents to these
9 conditions?

10 MR. O'BRIEN: We have no objection
11 to any of them.

12 CHAIR MILLER: Okay.

13 MR. STERN: I don't think I get to
14 make an objection.

15 CHAIR MILLER: Okay, all right. So
16 that being said, I think we can take a vote on
17 the order as articulated, and tomorrow we can
18 do another vote on the written order. I move
19 that we approve the order that I articulate.
20 Do I have a second?

21 MEMBER BROOKS: Madam Chairman?

22 CHAIR MILLER: Yes. You have a show

1 cause. Thank you very much. I forgot that
2 one. Okay, and the final is that yes, we will
3 be forwarding this case to OAG for show cause.
4 Thank you very much, Mr. Brooks. Okay. Is
5 there objection to that, Mr. O'Brien?

6 MR. O'BRIEN: Well, in the words of
7 the famous Mr. Stern, I don't think I have a
8 bug on it.

9 CHAIR MILLER: Okay. It's not a
10 condition like the other ones. Okay, all
11 right. Any other comments? Is there a
12 second?

13 MEMBER SILVERSTEIN: Second.

14 CHAIR MILLER: Okay. Mr.
15 Silverstein seconded the motion. All those in
16 favor say aye?

17 (Chorus of ayes.)

18 CHAIR MILLER: All those opposed?
19 All those abstaining?

20 (No response.)

21 CHAIR MILLER: The motion passes, 7-
22 0-0.

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MR. O'BRIEN: Thank you.

CHAIR MILLER: Thank you very much.
Okay. So that concludes the business for
today, so the Board is adjourned.

(Whereupon, at 4:16 p.m., the
meeting was concluded.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Capitale

Before: DC ABRA

Date: 02-25-14

Place: Washington, DC

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