

Capital Reporting Company
ABRA - Love Des, LLC 11-07-2012

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DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD
MEETING

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IN THE MATTER OF: :
 :
Love Des, LLC :
t/a Love :
1350 Okie Street, NE : Show Cause
Retailer CN : Hearing
License No. 84726 :
ANC 5B :
Case No. 12-251-00100 :
Allowed the Establishment to be :
Used for an Unlawful or :
Disorderly Purpose, Failed to :
Comply With Security Plan :
-----x

November 7, 2012

The Alcoholic Beverage Control Board met in the
Alcoholic Beverage Control Hearing Room, Reeves
Building, 2000 14th Street, N.W., Washington, D.C.,
Ruthanne Miller, Chairperson, presiding.

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1 PRESENT

2

3 RUTHANNE MILLER, Chairperson

4 NICK ALBERTI, Member

5 DONALD BROOKS, Member

6 HERMAN JONES, Member

7 CALVIN NOPHLIN, Member

8 MIKE SILVERSTEIN, Member

9

10 ALSO PRESENT

11 MICHAEL STERN, OAG

12 JABRIEL SHAKOOR, ABRA

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David Bailey 77

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

2 11:17 a.m.

3 CHAIRPERSON MILLER: Good morning. The next
4 case on our calendar is 12-251-00100. It's the Love
5 establishment located at 1350 Okie Street, N.E.,
6 License No. 84726, in ANC 5B. And this is a show cause
7 hearing. Would the parties introduce themselves for
8 the record and also be sure to sign in on the sheet?
9 Did you get that? I'm sorry. Could you please? Yeah.

10 MS. LATIMER: Tina Latimer, manager.

11 CHAIRPERSON MILLER: Okay.

12 MR. SMOTHERS: Dean Smothers, Love Nightclub.

13 MR. BAILEY: David Bailey, Love Nightclub.

14 CHAIRPERSON MILLER: Mr. Bailey, what's --
15 you're head of security?

16 MR. BAILEY: Yes, ma'am.

17 CHAIRPERSON MILLER: Okay. Thank you. Okay.
18 Are there any preliminary matters?

19 MR. STERN: Yes, there are. I guess you --
20 first of all, I spoke with Ms. Latimer. She's the
21 manager. She will be faxing to the Board this
22 afternoon authority to act on behalf of the owner --

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1 written authority. The parties have also discussed an
2 offer in compromise, which we hope the Board will
3 accept.

4 The establishment will pay a fine of \$9000
5 within 60 days. That will be distributed as \$3000 for
6 each of the three cited violations. They will also
7 employ a reimbursable detail of four officers for four
8 hours per night on Friday and Saturday nights, which
9 actually are Saturday and Sunday mornings, 12:00 to
10 4:00. And that will -- what the government has reached
11 --

12 CHAIRPERSON MILLER: Do you know the hours in
13 particular or just any four hours?

14 MR. STERN: Well, it'll be 12:00 to -- we are
15 expecting 12:00 to 4:00. We have agreed on that.
16 It'll of course be up to the police department to be
17 able to schedule that.

18 CHAIRPERSON MILLER: Oh, I see. Okay.

19 MR. STERN: So pending police approval, it'll
20 be 12:00 to 4:00 or some reasonable activity around
21 that time. The police didn't actually schedule this.

22 CHAIRPERSON MILLER: Okay. So what I

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1 understand the offer in compromise to be is a fine of
2 \$9000, which is \$3000 for each violation to be paid
3 within 60 days. And the establishment will also employ
4 reimbursable detail, consisting of four officers for
5 four hours Friday and Saturday night. And let me just
6 ask this one question. That -- when would that start,
7 as soon as the next weekend?

8 MR. STERN: As is -- the range of our
9 quotation is 30 days because that's what the police
10 have informed us it takes them to process and get
11 somebody out there. But --

12 CHAIRPERSON MILLER: Okay. Okay. Ms.
13 Latimer, so I know you're speaking on behalf of the
14 establishment but you are going to get authority
15 confirmed by fax this afternoon; is that correct?

16 MS. LATIMER: Yes.

17 CHAIRPERSON MILLER: All right. So I
18 repeated the offer in compromise that Mr. Stern
19 represented. Is that your understanding of the offer
20 in compromise and do you agree to that?

21 MS. LATIMER: (Indicating yes)

22 CHAIRPERSON MILLER: And do you also

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1 understand that that waives your right to a hearing?

2 MS. LATIMER: Yes.

3 CHAIRPERSON MILLER: Okay. Do Board members
4 have questions on this offer in compromise? Well, I
5 have a question and that being that just based on the
6 investigative report that I have read, it raises
7 concerns about the behavior of the security personnel
8 of Love. And I would like to know if those personnel
9 are still employed by Love and/or if any other changes
10 have been made to the security to address that -- the
11 allegations of the investigative report.

12 MS. LATIMER: Those employees in question are
13 not employed by Love.

14 CHAIRPERSON MILLER: I'm sorry, could you
15 speak --

16 MS. LATIMER: They are not employed.

17 CHAIRPERSON MILLER: How many are you
18 referring to?

19 MS. LATIMER: With these questions, I would
20 defer them to --

21 CHAIRPERSON MILLER: Mr. Bailey?

22 MR. BAILEY: Well, first of all, the first --

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1 the gentleman -- the security personnel that was
2 accused of assaulting a patron --

3 CHAIRPERSON MILLER: Uh-huh.

4 MR. BAILEY: -- I would like the Board to
5 know that he did report the young lady came in there
6 testified that she was intoxicated and she was unaware
7 of who actually hit her, she expressed that's what she
8 thought had happened but the charges against him were
9 dropped. Since then, he was -- he was terminated for
10 other reasons. But the other person -- the other
11 security personnel who was both -- who was an SPO
12 involved in handcuffs has also left our staff as well.

13 CHAIRPERSON MILLER: He was an SPO that what
14 happened?

15 MR. BAILEY: The gentleman who was involved
16 in the handcuffing incident was -- he left the
17 establishment as well.

18 CHAIRPERSON MILLER: Okay. And has there
19 been any other changes in the security plan or any
20 guidelines for behavior for security personnel?

21 MR. BAILEY: I mean, I have instructed my
22 security -- I mean, although, there are SPOs who have

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1 in their ratio -- they don't -- a lot of them come in
2 straight from their jobs as SPOs -- let them know to
3 have nothing other than a flashlight inside of the
4 establishment.

5 CHAIRPERSON MILLER: Okay.

6 MR. BAILEY: And also in regards to the third
7 incident with there was the young lady that said that
8 security did not do anything. They actually did have
9 people down in the detox area. The young lady never
10 came down to -- had left and did not come to identify
11 the person that we had. And the--

12 CHAIRPERSON MILLER: Okay. Yeah. So we
13 don't want to get too much into the merits of the case.

14 MR. BAILEY: Okay.

15 CHAIRPERSON MILLER: But I -- just before
16 considering, you know, not getting into the merits, I
17 wanted to just have an understanding whether -- what
18 was happening with the particular personnel. So thank
19 you. I appreciate that. Mr. Alberti?

20 MR. ALBERTI: Ms. Miller, can get the names
21 of the individuals for the record? There's no --

22 CHAIRPERSON MILLER: Sure.

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1 MR. BAILEY: Brian Short (ph) and I need a
2 second.

3 CHAIRPERSON MILLER: Okay.

4 MR. BAILEY: Okay. Gary Matthews (ph).

5 MR. ALBERTI: Gary what?

6 MR. BAILEY: Matthews.

7 MR. ALBERTI: Matthews. Okay. Thank you.

8 CHAIRPERSON MILLER: Okay. Are there other
9 questions, Board members? Okay. Then I'm going to
10 move approval of the offer in compromise of \$9000 fine,
11 \$3000 for each offense, to be paid within 60 days and
12 then the employment of reimbursable detail of four
13 officers for four hours, Friday and Saturday nights, to
14 be arranged with the MPD as to the exact hours, but
15 approximately from 12:00 to 4:00.

16 And that would be in place as soon as it can
17 be arranged with MPD and Mr. Stern represented that
18 would be within 30 days. And I'm moving this primarily
19 because I think the reimbursable detail factor
20 addresses my concern about safety for the public. And
21 then there is a fine here as well.

22 So do I have a second on this?

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1 MR. SILVERSTEIN: Second.

2 CHAIRPERSON MILLER: Okay. Mr. Silverstein
3 has seconded. Does someone want -- any Board members
4 want to speak to the motion?

5 MR. ALBERTI: I would like to.

6 CHAIRPERSON MILLER: Okay. Mr. Alberti.

7 MR. ALBERTI: I will be dissenting on this
8 motion. It appears from the allegations in the report
9 there was complete mayhem that night. We had three
10 incidents occur of that night. Each of them involved
11 egregious acts by security personnel. That conveys to
12 me not that there was some rogue security officer who -
13 - if that happens, it conveys to me that there is an
14 atmosphere and a lack of training and a lack of proper
15 messaging sent to the staff about what behavior will be
16 accepted by staff.

17 And it's management's responsibility to do
18 that. And based on what I've seen in this -- in this
19 report, I don't see management stepping up to the plate
20 and having the proper management control over their
21 staff and setting the right atmosphere. And that's
22 important, especially in an establishment this large.

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1 I would accept nothing less than many days of
2 suspension here and possibly a higher fine.

3 This is -- this is completely unacceptable
4 behavior of the management. It's completely
5 unacceptable.

6 CHAIRPERSON MILLER: Others? I would say
7 that -- just to speed it up, there are some very
8 serious allegations in here but they are still
9 allegations. And they're not stated facts at this
10 point.

11 MR. ALBERTI: No. But they're removing all
12 liability with the OIC. I will point that out.

13 CHAIRPERSON MILLER: Okay. Mr. Silverstein?

14 MR. SILVERSTEIN: I would like to associate
15 myself with the concerns of Board Member Alberti. But
16 I will be voting differently and that is because I
17 believe that the agreement for a reimbursable detail is
18 so in the public interest and is so necessary that it
19 will be the determinative factor in my vote. That
20 said, there's disconnect in my own reasoning here,
21 because what happened didn't happen outside, but it
22 happened inside.

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1 And it was egregious and horrific. And if
2 anything like this happens again or anything similar to
3 this happens, there will be very, very serious
4 penalties. It -- or I believe that there should be.
5 And I hope that we can move forward. I hope that the
6 fine, as minimal as it is considering the offense, and
7 the RDO will provide an element of public safety that
8 has been lacking. And based solely on that, I will
9 vote, "Yes." But I'm deeply, deeply troubled.

10 The primary obligation of any establishment
11 is to ensure the safety of patrons from the
12 establishment's people first. And there was a terrible
13 failure here. And it's very troubling. Madam Chair?

14 CHAIRPERSON MILLER: Okay. Thank you.
15 Anybody else? Okay, then. There's been a motion to
16 approve the OIC that's been seconded. All those in
17 favor, say aye?

18 MR. SILVERSTEIN: Aye.

19 CHAIRPERSON MILLER: Aye. All those opposed?

20 MR. ALBERTI: Opposed.

21 MR. JONES: No.

22 CHAIRPERSON MILLER: Then the vote is 2-2-0

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1 and the motion fails for lack of majority. Are you
2 prepared now then to go forward to hearing, Mr. Stern?

3 MR. STERN: Yes.

4 CHAIRPERSON MILLER: Okay.

5 MR. STERN: Thank you, Members of the Board.

6 The government's evidence today will show that on
7 February 19th, 2012 Investigator Shakoor of the
8 Alcoholic Beverage Regulation Authority reported to
9 Love Nightclub for -- to investigation some incidents
10 that occurred. When he got there, he spoke to
11 witnesses and he determined that there was an incident
12 where a female patron was attacked in the club and she
13 received no assistance whatsoever in breaking up the
14 fight or assisting her by the security guards of Love.

15 She saw them there but they did not intervene
16 to assist her. And that -- this is both a violation of
17 their security agreement and is cause to determine that
18 they allowed an unlawful or disorderly act to occur in
19 their club. In addition, he learned of another
20 incident where some unruly male patrons were taken to
21 the detox room and they were handcuffed and kept there.

22 This also is a violation of Love's security

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1 plan wherein that the security plan, it specifies that
2 no one shall be kept in the detox center without --
3 against their will. And this was clearly done in this
4 instance by chaining to -- excuse me -- chaining a
5 patron to a railing. At the conclusion of the case,
6 the government will ask the Board to find that Love
7 committed three violations, the first violation being
8 allowing a disorderly or unlawful establishment, the
9 second two violations being two different violations of
10 the security plan.

11 CHAIRPERSON MILLER: Thank you. Ms. Latimer,
12 I'm sorry I didn't go into an explanation of the order
13 of procedure, which I should do. You're not as
14 familiar as Mr. Stern. Okay. The first part is
15 opening statements. Mr. Stern just gave an opening
16 statement. It's not required but what it does is just
17 give your overview of what your case is going to be.

18 And Mr. Stern has the burden of proof, so he
19 goes first. And then he will call his witnesses. And
20 he'll ask questions. And you can cross and we can ask
21 questions. Then you'll call your witnesses. And then
22 there'll be closings.

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1 MS. LATIMER: Thank you.

2 CHAIRPERSON MILLER: Okay. So if you would
3 like to make an opening statement, feel free to do so.

4 MS. LATIMER: (Inaudible) --

5 CHAIRPERSON MILLER: Is Mr. -- okay. Is one
6 of you going to take the role of presenting the case?
7 Is that you, Mr. Smothers, or is that --

8 MR. SMOTHERS: That would be me, Dean
9 Smothers. I'm the owner.

10 CHAIRPERSON MILLER: Oh, okay. Go ahead then.

11 MR. SMOTHERS: Okay. Responding to the
12 allegations made on February the 19th, 2012, the first
13 case --

14 CHAIRPERSON MILLER: Can I just say one
15 thing? Just make sure you understand because I know
16 you don't practice before the Board to -- this is just
17 a -- just -- it's not testimony. It's not evidence.

18 MR. SMOTHERS: Okay.

19 CHAIRPERSON MILLER: You'll get a chance to
20 put on your case. What it is, it's just saying an
21 overview of, you know, "My case is going to show that
22 we didn't do this or we did do this or" -- just kind of

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1 tell us in general --

2 MR. SMOTHERS: Okay.

3 CHAIRPERSON MILLER: -- what you're going to
4 tell us --

5 MR. SMOTHERS: Right. And --

6 CHAIRPERSON MILLER: -- but don't give us the
7 meat. Yeah.

8 MR. SMOTHERS: And we're here to explain what
9 happened on that night. And we'll show that --

10 CHAIRPERSON MILLER: Okay.

11 MR. SMOTHERS: -- in this case, the first one
12 presented, where a young lady was allegedly attacked
13 and held against her will, that we did act in
14 accordance to our security plan and we did act in the
15 best interest of public safety.

16 CHAIRPERSON MILLER: Good. Thank you very
17 much. Okay. So Mr. Stern, your first witness? Oh,
18 how many witnesses do you have on hand?

19 MR. STERN: Just one.

20 CHAIRPERSON MILLER: Just one. And do you
21 have any witnesses?

22 MR. SMOTHERS: Yeah. Yes.

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1 CHAIRPERSON MILLER: Okay.

2 MR. SMOTHERS: Head of security, Mr. Bailey.

3 CHAIRPERSON MILLER: Mr. Bailey? Okay. And
4 if you -- one of you also could testify if you -- if
5 that's part of your evidence? Okay. All right.

6 MR. STERN: Mr. Bailey should perhaps --

7 CHAIRPERSON MILLER: You want Mr. Bailey --
8 okay. There is what's called a rule on witnesses,
9 whereas -- Mr. Stern is invoking that -- whereas if
10 your witness is going to testify on something that, you
11 know, another witness is going to testify on, such as
12 the investigator, that he step out of the room so that
13 he doesn't hear that testimony. So because he's
14 requesting that, I'm going to have to ask you, Mr.
15 Bailey, to step out. Just Mr. Bailey. There you go.

16 MR. BAILEY: (Inaudible) I'm aware of the
17 procedures and I'm just trying to (inaudible) --

18 CHAIRPERSON MILLER: Okay. You need a minute
19 to talk to him before you go? Okay. Okay. It's just
20 for this witness.

21 Okay, Mr. Shakoor. Do you swear to tell the
22 truth, the whole truth, nothing but the truth?

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1 MR. SHAKOOR: I do.

2 CHAIRPERSON MILLER: Thank you.

3 MR. STERN: Good morning. Could you give us
4 your name and spell your last name for the court
5 reporter, please?

6 MR. SHAKOOR: First name is Jabriel. My last
7 name's Shakoor. That's S-H-A-K-O-O-R.

8 MR. STERN: And are you employed, Mr.
9 Shakoor?

10 MR. SHAKOOR: I am.

11 MR. STERN: And how are you employed?

12 MR. SHAKOOR: I'm employed as an investigator
13 for the Alcoholic Beverage Regulation Administration.

14 MR. STERN: And were you employed as such on
15 Sunday, February 19th, 2012?

16 MR. SHAKOOR: I was.

17 MR. STERN: And on that date did you have
18 occasion to become acquainted with a club called Love?

19 MR. SHAKOOR: I did.

20 MR. STERN: Okay. Can you tell me what
21 brought Love to your attention?

22 MR. SHAKOOR: I was actually responding to a

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1 noise complaint actually to the establishment. When I
2 arrived on the scene, I made my way to the entrance.
3 And as I got there, I observed a female patron exiting
4 the front doors with blood coming from her nose and
5 mouth and yelling and screaming that she had been beat
6 up and attacked.

7 MR. STERN: Okay. And would you describe her
8 demeanor?

9 MR. SHAKOOR: She was pretty frantic.

10 MR. STERN: Okay. And what happened after
11 that?

12 MR. SHAKOOR: While I was there, she came out
13 and she continued to say that a security guard did not
14 help her or did not assist her while this was going on.

15 MR. STERN: Did she say what the
16 circumstances were?

17 MR. SHAKOOR: She said that she was attacked
18 by a group of girls while inside.

19 MR. STERN: Okay. And how -- what led her to
20 believe that she was not being assisted by security?

21 MR. SHAKOOR: She claims that she approached
22 security, I think, two or three times and they just

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1 pushed her away. So that was her statement.

2 MR. STERN: Okay. And did you speak to
3 anyone else about that particular instance?

4 MR. SHAKOOR: At the moment, like I said, she
5 was not being attended to so I went and notified the
6 police officers who were on the scene. And they began
7 doing an investigation at the time.

8 MR. STERN: Okay. And what happened after
9 that?

10 MR. SHAKOOR: After that, a second group -- a
11 group of girls then exited who also complained and said
12 that they were involved in an altercation, this time
13 with a security guard.

14 MR. STERN: Now, were they involved with the
15 same first person you saw?

16 MR. SHAKOOR: No. They said this was a
17 complete, separate incident. It was about three girls.
18 They had notable -- noticeable scars and scratches on
19 their legs and arms. And a third girl, who was
20 involved in this group also, had a very large lump on
21 her forehead over her eye.

22 MR. STERN: Based on your observation, did

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1 they appear to be fresh injuries or older injuries?

2 MR. SHAKOOR: No, these were brand-new
3 injuries. They were clearly injured within a few
4 minutes.

5 MR. STERN: Okay. And can you describe what
6 they said occurred that caused their injuries?

7 MR. SHAKOOR: They said that a large melee
8 took -- broke, I believe, on the second floor of the
9 establishment, I think where the performance of the --
10 performance was supposed to take place at. They said
11 that security start pushing people away from the stage
12 or off of the stage. At that time they said they were
13 trying to assist one of their friends and the security
14 guard punched one of them.

15 MR. STERN: Okay. Did you speak to any of
16 them about whether or not other security guards were
17 visible at the time?

18 MR. SHAKOOR: They said it was very dark and
19 they couldn't see anybody else really. But they said
20 that one security guard was who they were engaged with
21 and he was attacking them.

22 MR. STERN: Okay. Did you speak to a Ms.

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1 Wyche (ph), who was a witness to this?

2 MR. SHAKOOR: Yes, I believe I did.

3 MR. STERN: Okay. Did she tell you anything
4 about whether she had seen any security guards?

5 MR. SHAKOOR: Let me find her testimony.

6 MR. STERN: If you don't recall, I can
7 refresh your recollection.

8 MR. SHAKOOR: I have it here. Yes. This was
9 the first victim actually --

10 MR. STERN: Okay.

11 MR. SHAKOOR: -- who had -- was bleeding from
12 her mouth and nose. She stated that she bumped into an
13 unknown male patron while on the second floor. She
14 stated that an unknown female patron then engaged her
15 in a physical altercation. She stated that the female
16 patron then punched her face twice along with another
17 group of female friends. She said a security person
18 was visible but did not intervene to stop the fight.

19 She stated that she crawled away after being
20 knocked down. She said after she did get away, she did
21 notify a security guard of what happened. She said
22 that the security guard instructed her not to leave and

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1 did not assist her. She stated that the group of
2 female patrons later observed her again and attacked
3 her for a second time in view of the security guard.

4 She said she couldn't understand why the
5 security guard did not stop the altercation when it was
6 clearly in view of -- when it was clearly in their
7 view.

8 MR. STERN: Okay. Now, did you speak to
9 anybody else about other incidents?

10 MR. SHAKOOR: Yes. I spoke with the other
11 complainants.

12 MR. STERN: Okay. What was the other
13 incident that you spoke about?

14 MR. SHAKOOR: The other incident was the
15 second group of girls I observed that were coming
16 outside.

17 MR. STERN: Other than those group of girls,
18 was there any other instance that night?

19 MR. SHAKOOR: Yes, the incident that took
20 place in the detox room where the patrons were
21 handcuffed.

22 MR. STERN: Okay. And did you speak to --

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1 what did you find out occurred during that instance?

2 MR. SHAKOOR: I was actually notified of this
3 third incident by the Detective Stanley Farmer. And I
4 was able to speak with a complainant there, a Jeffrey
5 Turner McNeil (ph). He stated that he was involved in
6 an altercation while on the first floor of the
7 establishment with an unknown male patron. Mr. McNeil
8 stated that the security guard responded and separate
9 himself and the unknown male patron.

10 He stated that he was taken to the detox area
11 and then handcuffed. He also stated that his brother-
12 in-law was enraged at the security guards for
13 handcuffing him and started another altercation in the
14 detox area with the security guards.

15 MR. STERN: When you -- when you say he was
16 handcuffed, can you describe how the handcuffs were
17 applied?

18 MR. SHAKOOR: I do have photos of it
19 specifically. Specifically, he was handcuffed walking
20 into the detox area. So the security guard handcuffed
21 himself to the patron.

22 MR. STERN: Okay. And did he remain

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1 handcuffed to the security guard?

2 MR. SHAKOOR: Well, there were, again, two
3 patrons who were handcuffed. The first one was a first
4 complainant who came downstairs handcuffed. He was
5 actually very calm. They sat him down and they
6 unhandcuffed him. The second one who came down, he was
7 highly aggressive. They handcuffed him to a railing on
8 the stairs. And he remained there. Okay. And as this
9 was going on, he became more and more enraged and
10 became engaged in an altercation with a security guard.

11 He is seen on the camera handcuffed to the
12 railing, pulling -- trying to pull away and swinging
13 wildly at security guards.

14 MR. STERN: Were either of these patrons free
15 to leave while they were handcuffed?

16 MR. SHAKOOR: No, they were not. It was
17 clear that they were handcuffed to the railing and they
18 could not leave.

19 MR. STERN: Okay. Did you -- in the course
20 of your investigation did you attempt to retrieve video
21 footage?

22 MR. SHAKOOR: Yes. I was able to view

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1 footage and get a hold of it.

2 MR. STERN: Okay. And were there any issues
3 regarding the video footage?

4 MR. SHAKOOR: Just the time was off about an
5 hour or so at the time.

6 MR. STERN: Okay. Thank you. That's all the
7 questions I have for right now.

8 CHAIRPERSON MILLER: Mr. Smothers, when
9 you're ready you can cross-examine Mr. Shakoor.

10 MR. SMOTHERS: I don't -- Good. Okay. I
11 just want to ask you a couple of questions in regards
12 to the first incident. You said you passed the young
13 lady on the way out. You passed the young lady -- the
14 young lady passed you? You were on your way into the
15 club?

16 MR. SHAKOOR: No, no. First I walked up to
17 speak with management.

18 MR. SMOTHERS: Uh-huh.

19 MR. SHAKOOR: The girl came out of the
20 establishment. She had some bleeding from her mouth
21 and her nose.

22 MR. SMOTHERS: Okay. And she suggested that

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1 she'd been assaulted inside of the club, correct?

2 MR. SHAKOOR: That's correct.

3 MR. SMOTHERS: Okay. Now, how -- what steps
4 did you take to determine whether her allegations were
5 correct or incorrect?

6 MR. SHAKOOR: First I notified the police
7 department who was there because --

8 MR. SMOTHERS: Uh-huh.

9 MR. SHAKOOR: -- Because they are the ones to
10 identify an assailant and therefore, make an arrest.

11 CHAIRPERSON MILLER: Mr. Shakoor, can you
12 speak up a little louder? Speak up a little louder or
13 closer to the --

14 MR. SHAKOOR: No problem.

15 CHAIRPERSON MILLER: -- microphone?

16 MR. SHAKOOR: I said I --

17 CHAIRPERSON MILLER: I didn't catch the last
18 thing you said.

19 MR. SHAKOOR: Immediately I saw that she was
20 not being assisted to so I went and got the police
21 officers when they're on scene and notified them of the
22 situation so that they could get him immediately.

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1 CHAIRPERSON MILLER: Thank you.

2 MR. SMOTHERS: Okay. Were there any arrests
3 -- were there any arrests made?

4 MR. SHAKOOR: I believe they made one arrest.
5 I'm not sure what time.

6 MR. SMOTHERS: Are we aware of who that was?

7 MR. SHAKOOR: No, I'm not aware of who it
8 was.

9 MR. SMOTHERS: Was it a Love personnel?

10 MR. SHAKOOR: I believe it was a security
11 person -- was a --

12 MR. SMOTHERS: For the record, no one at Love
13 was arrested that night. Did she inform you of what
14 floor this occurred on?

15 MR. SHAKOOR: I believe it was multiple
16 floors. I can re-check the report real quick.

17 MR. SMOTHERS: Well, I'm talking specifically
18 of where the incident took place.

19 MR. SHAKOOR: She said she was on the second
20 floor actually.

21 MR. SMOTHERS: Okay. She was on the second
22 floor. Did she indicate to you the manner in which

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1 things happened? Did she indicate that security was
2 actually -- asked her to stand there while they went to
3 -- or asked her to point out who assaulted her? Did
4 she --

5 MR. SHAKOOR: No. She didn't go that much
6 into detail. She said that she went to a security
7 guard and informed them of the incident. And the
8 security guard didn't assist her?

9 MR. SMOTHERS: Okay. Well, what I'm trying
10 to actually ascertain is how you got your facts or if
11 you investigated while you were there. That's what I'm
12 trying to figure out. So she had told you it was on
13 the second floor. Were you able -- was she able to
14 point out to you who might have assaulted her?

15 MR. SHAKOOR: No, she didn't point it out to
16 me.

17 MR. SMOTHERS: Did you observe the video
18 while you were there?

19 MR. SHAKOOR: Not that night. I went back
20 and looked at it.

21 MR. SMOTHERS: Did you look at it later?

22 MR. SHAKOOR: Yes, we did.

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1 MR. SMOTHERS: Okay. And did you see her
2 being assaulted by anyone -- anybody -- any security at
3 Love Nightclub?

4 MR. SHAKOOR: No, we couldn't make it out.
5 It was very dark on the second floor.

6 MR. SMOTHERS: While you're there, are you
7 able to determine who's security and who's not besides
8 the people in the front?

9 MR. SHAKOOR: Could you be more specific with
10 that?

11 MR. SMOTHERS: Would you believe that it'd be
12 -- would you think that it would be easy to have
13 somebody as security confused with somebody that's not
14 security?

15 MR. STERN: Objection.

16 MR. SMOTHERS: Can you -- can you walk into
17 the club and is every -- here's a question. Does
18 everybody in Love Nightclub have, "Security," on their
19 chest?

20 MR. SHAKOOR: No, they don't.

21 MR. SMOTHERS: They don't. So then it would
22 be possible for someone to assume that somebody's

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1 security when they're not?

2 MR. SHAKOOR: That's possible, yes.

3 MR. SMOTHERS: It's possible. Okay. And
4 again, there's no arrest made of any personnel that
5 worked at Love Nightclub that night that you are aware
6 of?

7 MR. SHAKOOR: Like I said, I'm not aware of
8 that. I'm not a police officer.

9 MR. SMOTHERS: Okay. Okay. And we went
10 through the incident, which was the handcuffing issue.

11 MR. SHAKOOR: Uh-huh.

12 MR. SMOTHERS: Okay. Speaking on the
13 incident where the gentleman was handcuffed, you have
14 his name, right?

15 MR. SHAKOOR: No, I don't have the names.
16 Oh, the second victim? Yes.

17 MR. SMOTHERS: Well, excuse me, Board. I
18 want to go back to the first incident.

19 CHAIRPERSON MILLER: But do you want the
20 answer to that question or not?

21 MR. SMOTHERS: Oh, well, it's the handcuffing
22 incident --

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1 MR. STERN: The answer?

2 MR. SMOTHERS: Yeah, I actually want to go
3 back because I forgot one important thing about the
4 first incident, which was the young lady who was
5 leaving the venue.

6 CHAIRPERSON MILLER: Okay.

7 MR. SMOTHERS: Okay. Did she -- did she
8 inform you that she was leaving against the nightclub
9 security's direction?

10 MR. SHAKOOR: What she indicated was that the
11 security guard told her to stay there.

12 MR. SMOTHERS: Correct.

13 MR. SHAKOOR: Okay.

14 MR. SMOTHERS: Did she inform you why they
15 told her to stay there?

16 MR. SHAKOOR: No, she did not.

17 MR. SMOTHERS: No. For the record, they
18 informed her to stay there --

19 CHAIRPERSON MILLER: Wait, wait. I just
20 wanted to tell you -- I'm cutting in here a little bit
21 because your role here is to ask questions. And then
22 you'll get a chance to testify and put your statements

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1 on the record.

2 MR. SMOTHERS: Okay.

3 CHAIRPERSON MILLER: Okay.

4 MR. SMOTHERS: Thank you.

5 CHAIRPERSON MILLER: Okay.

6 MR. SMOTHERS: The handcuffing incident, you
7 said you did not have his name for the record?

8 MR. SHAKOOR: I apologize about that. I do
9 have his name.

10 MR. SMOTHERS: Oh, you do have his name.
11 Okay. Did he inform you of why he was handcuffed?

12 MR. SHAKOOR: No, he did not actually. When
13 I spoke with him, he was actually surprised to find out
14 that they could not be handcuffed. He believed, I
15 guess, that they had the authority to do that.

16 MR. SMOTHERS: Did he appear to be
17 intoxicated to you?

18 MR. SHAKOOR: I couldn't say that from the
19 video.

20 MR. SMOTHERS: Did he appear to be over 21?

21 MR. SHAKOOR: I couldn't say that from the
22 video.

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1 MR. SMOTHERS: Okay. Did he appear to be
2 unruly?

3 MR. SHAKOOR: The first -- Mr. McNeil, no, he
4 did not. He was the calmer of the two patrons.

5 MR. SMOTHERS: We're talking about the
6 gentleman that was handcuffed?

7 MR. SHAKOOR: Both were handcuffed.

8 MR. SMOTHERS: Uh-huh.

9 MR. SHAKOOR: The second one was his brother-
10 in-law, I believe -- was handcuffed to the railing.

11 MR. SMOTHERS: Right.

12 MR. SHAKOOR: Correct.

13 MR. SMOTHERS: Okay. Do you believe he was
14 being verbally aggressive? Was he being verbally
15 aggressive?

16 MR. SHAKOOR: There's no audio on the tape so
17 I couldn't tell you that.

18 MR. SMOTHERS: And how long were you in his
19 presence while he was handcuffed?

20 MR. SHAKOOR: I didn't observe him that night
21 at all. I was made aware of it after by the detective
22 by some footage, got a statement from the detectives...

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1 MR. SMOTHERS: Were there any arrests made in
2 that case?

3 MR. SHAKOOR: Not that I'm aware of.

4 MR. SMOTHERS: Are you aware that MPD was on
5 the scene during that case?

6 MR. SHAKOOR: Yes, I notified them.

7 MR. SMOTHERS: I have no further questions.

8 CHAIRPERSON MILLER: Okay. Board question?
9 Mr. Brooks?

10 MR. BROOKS: Yeah, thank you, Madam Chair.
11 Mr. Investigator, were you able to see any video?

12 MR. SHAKOOR: Yes, I was.

13 MR. BROOKS: Okay. You were able to see.
14 And did you see any altercation at that time?

15 MR. SHAKOOR: No, I wasn't. But other -- the
16 three incidents that occurred, I saw the victims as
17 they came out, but I was unable to actually identify
18 the altercation on the video footage.

19 MR. BROOKS: Okay.

20 MR. SHAKOOR: That was in part due to the
21 statements from the complainants. I wasn't able to
22 identify a specific time. And again, where it happened

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1 at on the second floor, it was very, very dark. All
2 you see is black and a mass of people.

3 MR. BROOKS: Okay. Do you have any idea of
4 how many cameras that they have at Love?

5 MR. SHAKOOR: It was approximately 80
6 cameras, I believe.

7 MR. BROOKS: Eighty?

8 MR. SHAKOOR: Approximately, yeah.

9 MR. BROOKS: Okay. And are any of those
10 infrared cameras that you know of?

11 MR. SHAKOOR: Possibly some maybe, but I
12 couldn't tell you definitely.

13 MR. BROOKS: So if a camera was infrared,
14 would it show that particular scene that you could not
15 make out because it was so dark?

16 MR. SHAKOOR: Yes. It would show more of it.

17 MR. BROOKS: Okay. Okay. And you indicated
18 that you saw someone being handcuffed or was in
19 handcuffs?

20 MR. SHAKOOR: That's correct.

21 MR. BROOKS: You did? Okay. And from the
22 security plan of Love, is that permitted?

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1 MR. SHAKOOR: It doesn't say specifically
2 that they -- that -- it doesn't mention handcuffs at
3 all but that was an issue I took up later when I spoke
4 with management. I spoke with Mr. Smothers. I spoke
5 with Ms. Latimer, another manager, Warren Green, and a
6 head of security, Mr. Bailey, specifically about the
7 handcuffs. Is that -- were they company policy, a
8 manager's policy or just a security guard had that?

9 All the managers, including Mr. Smothers,
10 stated that they did not -- did not at all use
11 handcuffs, except to have security move -- said that
12 the security guards do carry handcuffs, flashlights and
13 air pistols.

14 MR. BROOKS: Okay. So handcuffs is a part of
15 their equipment then?

16 MR. SHAKOOR: According to the head of
17 security.

18 MR. BROOKS: According to what you heard.
19 Okay. Thank you, Madam Chair.

20 CHAIRPERSON MILLER: Thank you, Mr. Brooks.
21 Others? Mr. Alberti?

22 MR. ALBERTI: Hi, Investigator Shakoor.

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1 Let's talk about the cameras first. I missed your
2 answer. Mr. Brooks asked you how many cameras they had
3 and what was your answer?

4 MR. SHAKOOR: Approximately 80.

5 MR. ALBERTI: Eighty?

6 MR. SHAKOOR: Correct.

7 MR. ALBERTI: Okay. And again, tell me why
8 you -- with 80 cameras you couldn't see any of --
9 anything?

10 MR. SHAKOOR: On the footage that was
11 recovered on the second floor, it was almost pitch
12 black.

13 MR. ALBERTI: Oh, because they're not
14 infrared cameras?

15 MR. SHAKOOR: I couldn't tell you that
16 they're not infrared cameras.

17 MR. ALBERTI: Oh, but --

18 MR. SHAKOOR: But what the picture picked up
19 was pretty much pitch black.

20 MR. ALBERTI: Okay.

21 MR. SHAKOOR: And you have some strobe
22 lighting. But it -- you couldn't make it out.

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1 MR. ALBERTI: Okay. Do you know how many
2 security people were there that evening?

3 MR. SHAKOOR: I was unable to get an exact
4 count that night.

5 MR. ALBERTI: Do you know approximately?

6 MR. SHAKOOR: I don't know approximately.

7 MR. ALBERTI: Do you know how the security
8 are dressed at Love?

9 MR. SHAKOOR: To get back to this question,
10 it is a bit difficult to clearly identify that they are
11 security guards. That night I do recall security
12 guards that were wearing boots, I believe, and BDU
13 style pants and mostly all black though.

14 MR. ALBERTI: Okay. It says in the security
15 plan, "Uniform for" -- I guess it's SP for Security
16 Personnel -- "may change for -- given the nature of the
17 event but in general they'll have black shirts, black
18 shoes, black belt, black socks, company-approved ear
19 piece, company-approved flashlights, company-issued
20 label nametags, IDs."

21 Did they have -- did they have ID tags or is
22 -- or were they labeled in any way?

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1 MR. SHAKOOR: Not that I saw.

2 MR. ALBERTI: Did you -- did they all have
3 flashlights?

4 MR. SHAKOOR: I didn't do a count of the
5 flashlights at all but I would assume they would have.

6 MR. ALBERTI: Pardon?

7 MR. SHAKOOR: I did not see --

8 MR. ALBERTI: Okay.

9 MR. SHAKOOR: -- flashlights myself.

10 MR. ALBERTI: The security guards you saw,
11 did they have ear pieces?

12 MR. SHAKOOR: Yes, they did.

13 MR. ALBERTI: On most nights you will be
14 issued a wrist band -- wrist arm band. Did the
15 security personnel you see have wrist or arm bands?

16 MR. SHAKOOR: I did not see that, no.

17 MR. ALBERTI: You said the first victim, Ms.
18 Wyche (ph) was her name, or something like that?

19 MR. SHAKOOR: I believe so, yeah.

20 MR. ALBERTI: Yeah. I thought I heard you
21 say when she came out, she was not being attended to.

22 Can you -- can you talk to that again and tell me about

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1 what you saw there?

2 MR. SHAKOOR: Right. I could only speak to
3 what I saw from when she came outside.

4 MR. ALBERTI: Right.

5 MR. SHAKOOR: I didn't observe what happened
6 inside.

7 MR. ALBERTI: Right.

8 MR. SHAKOOR: But when she came out, what I
9 would expect to see is that a security guard approach
10 her immediately --

11 MR. ALBERTI: Right.

12 MR. SHAKOOR: -- things like that. They get
13 -- someone notify the police. It was right there.

14 MR. ALBERTI: Right.

15 MR. SHAKOOR: I went ahead and did that. So
16 I notified the police myself.

17 MR. ALBERTI: So she came out and then how
18 did she -- how did you make contact with her?

19 MR. SHAKOOR: She came right out. I mean, I
20 was at the bottom of the stairs and she came out from
21 the top of the stairs, yelling and screaming.

22 MR. ALBERTI: Oh, yelling and screaming. All

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1 right. Were there other security personnel out there?

2 MR. SHAKOOR: Yes. They were outside
3 handling the line and things like that.

4 MR. ALBERTI: Did any of them come over to
5 her?

6 MR. SHAKOOR: It was a lady out - I believe -
7 - I'm not sure of her position but I believe she was
8 doing tickets or money or accounting, something like
9 that. And she was trying to speak to her about what
10 happened to her.

11 MR. ALBERTI: Okay.

12 MR. SHAKOOR: So someone was there. But
13 again, when someone's bleeding from the mouth and nose,
14 I think you want to get the police immediately.

15 MR. ALBERTI: So it wasn't the level of
16 action that you think should -- was warranted provided
17 the situation?

18 MR. SHAKOOR: Correct. What I -- when you
19 see numerous incidents when you have the police
20 department, who's there on scene, you need to get them
21 immediately. And that's what they're there for.

22 MR. ALBERTI: Now -- excuse me for a moment.

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1 Security personnel procedure in D-licensed SP -- this
2 is on Page 3 of their security plan -- an SP procedure
3 in dealing with issues. On -- it says -- at the end of
4 that first paragraph, it says, "On occasion, patrons
5 may become hard to deal with and uncooperative. In
6 those instances, use the ICT strategy when possible.
7 Inform the customer in a pleasant manner that the
8 witnessed behavior is inappropriate. Request that the
9 patron follow the club procedures and policies. Okay.
10 And it's -- confirm a final warning stating that if the
11 undesirable behavior does not cease, the guest will
12 have to leave the premise. Take action accordingly."

13 Let me see here. Okay. Would you -- would
14 you assume from those steps that the, "Take action
15 appropriately," is escort the person out of the club
16 rather than detain them?

17 MR. SHAKOOR: Personally, it's quite general.

18 MR. ALBERTI: Uh-huh.

19 MR. SHAKOOR: It's not clear what, "Take
20 action accordingly," means.

21 MR. ALBERTI: Okay.

22 MR. SHAKOOR: And I find a little issue with

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1 that myself.

2 MR. ALBERTI: So -- all right. So you saw in
3 the video -- you saw someone actually handcuffed to
4 whom? Who -- you saw the victim -- you saw a civilian
5 -- a patron handcuffed to whom?

6 MR. SHAKOOR: Two patrons, when they first
7 come down the stairs into the detox area.

8 MR. ALBERTI: Okay. So they're coming down
9 the stairs from where?

10 MR. SHAKOOR: I believe -- I'm not sure. I
11 think they're coming down from the first floor
12 possibly.

13 MR. ALBERTI: Okay.

14 MR. SHAKOOR: It's a -- it's a back
15 stairwell.

16 MR. ALBERTI: To the detox area?

17 MR. SHAKOOR: Correct. He's handcuffed to a
18 security guard by his wrist.

19 MR. ALBERTI: How do you know it was a
20 security guard?

21 MR. SHAKOOR: It's clear from the video. He
22 walks down and he takes him both, handcuffs them and

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1 he's clearly a security guard.

2 MR. ALBERTI: But does he have any
3 identifying markings on him?

4 MR. SHAKOOR: They're all dressed the same
5 way, with the boots and BDUs and things like that.

6 MR. ALBERTI: Okay. Does the person appear
7 to be stumbling?

8 MR. SHAKOOR: No. This -- the first patron
9 did not. He sat down and was pretty cooperating.

10 MR. ALBERTI: No. He didn't -- he didn't
11 outwardly exhibit the behavior of someone who was
12 intoxicated?

13 MR. SHAKOOR: No. And not outwardly, no.

14 MR. ALBERTI: Okay. Okay. So then now, the
15 second person?

16 MR. SHAKOOR: The second person comes down.
17 He's very unruly. He comes down, observes what from
18 the statement is his family member, starts an
19 altercation there with a security guard.

20 MR. ALBERTI: While the other person's still
21 handcuffed or after the other person's let go?

22 MR. SHAKOOR: Handcuffed at the time. And

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1 then you come down.

2 MR. ALBERTI: Okay.

3 MR. SHAKOOR: They get control of him and
4 handcuff him to a railing.

5 MR. ALBERTI: With the same set of handcuffs
6 or a second set?

7 MR. SHAKOOR: Second pair.

8 MR. ALBERTI: Second pair of handcuffs.
9 Okay. The handcuffs are really -- when did they
10 release the first individual?

11 MR. SHAKOOR: After the second one calmed
12 down. It just took a little while, I believe a minute
13 or so, maybe two minutes on the video. After this
14 time, the second patron is wildly swinging, pulling
15 away from the railing and just clearly can't get away.

16 MR. ALBERTI: How many security guards were
17 there?

18 MR. SHAKOOR: In the detox area? I'd say
19 approximately about ten.

20 MR. ALBERTI: Okay. Is there an exit out of
21 the detox area to the outside that you know of?

22 MR. SHAKOOR: Yes. There's a big garage door

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1 style that goes straight out.

2 MR. ALBERTI: Are you aware at all if they
3 called the police on that?

4 MR. SHAKOOR: The police were already there
5 on the scene.

6 MR. ALBERTI: Because of?

7 MR. SHAKOOR: For the event that night. The
8 police were already on the scene.

9 MR. ALBERTI: No. But you -- did you -- were
10 you aware of whether or not they asked the police to
11 deal with those patrons who had been handcuffed?

12 MR. SHAKOOR: On the video police did not
13 walk in at all or are not visible. So I would have to
14 assume no.

15 MR. ALBERTI: And how long did this video go
16 on for approximately?

17 MR. SHAKOOR: Video went for -- from about
18 3:02 to 3:14, so about 12 minutes.

19 MR. ALBERTI: How -- so you were watching
20 this for 12 minutes and no police showed up at all?

21 MR. SHAKOOR: No.

22 MR. ALBERTI: And they were on the scene.

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1 What do you mean they were on the scene?

2 MR. SHAKOOR: Like I said, when I got there
3 that night, they were already there on the scene and
4 they were there for the remainder of the night.

5 MR. ALBERTI: And they were out -- right
6 outside the entrance?

7 MR. SHAKOOR: That's correct.

8 MR. ALBERTI: How many police officers?

9 MR. SHAKOOR: I believe I saw two cars that
10 night, so approximately four officers.

11 MR. ALBERTI: Four officers. Okay. I have
12 no further -- thank you, Investigator Shakoor.

13 CHAIRPERSON MILLER: Others? You? Okay.
14 I've just got a couple of follow up. When -- you said
15 the police were on the scene. Do you know if they had
16 been called by the establishment?

17 MR. SHAKOOR: Not that -- from the first
18 incident, I was the one that notified them.

19 CHAIRPERSON MILLER: You called them?

20 MR. SHAKOOR: That's correct.

21 CHAIRPERSON MILLER: Okay. So they weren't
22 on the scene until you called them?

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1 MR. SHAKOOR: No, no. They were parked
2 outside the front. They were already there.

3 CHAIRPERSON MILLER: Oh, okay.

4 MR. SHAKOOR: They were not directly in the
5 view of the front doors. They're parked a little way
6 back. As this is going on, no patron witness said,
7 "Let's get this" -- no staff member witness said, "Let
8 me get MPD," who's right there.

9 CHAIRPERSON MILLER: Okay. Do you know why
10 they came to the scene, whether they came in response
11 to a call?

12 MR. SHAKOOR: I don't have the bills of
13 record so I couldn't tell you if they were paid to be
14 there. I would assume that because they were parked
15 there.

16 CHAIRPERSON MILLER: Parked there. Okay.
17 But there was a gap between the woman who came out and
18 the police that were parked there? No one escorted her
19 to a police car?

20 MR. SHAKOOR: No, that's correct.

21 CHAIRPERSON MILLER: Okay. Did you think
22 about escorting her to the police car?

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1 MR. SHAKOOR: My thoughts were to notify MPD
2 immediately so they could get involved. They are the
3 best at doing that. That's what they do.

4 CHAIRPERSON MILLER: Notify who?

5 MR. SHAKOOR: The police department. That's
6 -- they get involved. They can front the investigation
7 and they can --

8 CHAIRPERSON MILLER: But were they parked
9 across the street when you saw this woman coming out?

10 MR. SHAKOOR: No, no, no. They're -- Love is
11 on a -- it's a warehouse. And so it's not on a -- in
12 an open street like that.

13 CHAIRPERSON MILLER: Okay. They weren't
14 close?

15 MR. SHAKOOR: Yeah, no. They're open but, I
16 mean, they're parked on the same -- it's not really an
17 open street. You drive in through an alley pretty
18 much.

19 CHAIRPERSON MILLER: Okay. I mean, the cars
20 weren't that -- the police cars weren't that close?

21 MR. SHAKOOR: They were very close. I can --

22 CHAIRPERSON MILLER: They were close?

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1 MR. SHAKOOR: Yes, I was walking distance. I
2 walked maybe five feet.

3 CHAIRPERSON MILLER: Oh, okay. So when you
4 saw the woman come out, you called the police?

5 MR. SHAKOOR: I walked over and got them out
6 of the car so they could be notified.

7 CHAIRPERSON MILLER: Okay. Does that mean
8 you brought them to her?

9 MR. SHAKOOR: Yes, that's correct.

10 CHAIRPERSON MILLER: You didn't -- so you
11 didn't go with her to the police cars?

12 MR. SHAKOOR: No. I took -- brought the
13 police --

14 CHAIRPERSON MILLER: To her?

15 MR. SHAKOOR: -- to her.

16 CHAIRPERSON MILLER: Okay. Were you able to
17 confirm on the video whether there was a fight between
18 the various female customers?

19 MR. SHAKOOR: No, I was not.

20 CHAIRPERSON MILLER: No? You didn't see
21 that? Okay. And was that supposedly on that second
22 floor?

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1 MR. SHAKOOR: That's correct.

2 CHAIRPERSON MILLER: And was -- that would be
3 -- that's because in the video you testified that it
4 was dark?

5 MR. SHAKOOR: That's correct.

6 CHAIRPERSON MILLER: Okay. Could you tell
7 whether it was actually dark or just that the video was
8 dark?

9 MR. SHAKOOR: It's where a performance was
10 supposed to take place. So I would assume most
11 performances, they do dim the lights down. I would
12 assume that, yes, it was dark in there. There was some
13 strobe lighting, I believe, going on. But that with
14 the cameras, you weren't able to make out --

15 CHAIRPERSON MILLER: Okay. I think that's
16 all my questions.

17 MR. ALBERTI: I have --

18 CHAIRPERSON MILLER: Go ahead.

19 MR. ALBERTI: Go ahead with Mr. Silverstein's
20 questions. I just had one thought.

21 CHAIRPERSON MILLER: Okay.

22 MR. ALBERTI: Mr. Shakoar, going back to the

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1 handcuff person. Did they exhibit any weapons?

2 MR. SHAKOOR: The patrons?

3 MR. ALBERTI: Yeah.

4 MR. SHAKOOR: No.

5 MR. ALBERTI: The patrons who were
6 handcuffed. Did you see anybody searching them for
7 weapons?

8 MR. SHAKOOR: No, I did not.

9 MR. ALBERTI: Okay. So as far as you know,
10 they were -- they were unarmed?

11 MR. SHAKOOR: That's correct.

12 MR. ALBERTI: I have no other questions.
13 Thank you.

14 MR. STERN: I have some redirect.

15 CHAIRPERSON MILLER: Okay.

16 MR. STERN: Mr. Shakoor, did you -- as part
17 of your investigation, did you review the security plan
18 for Love Nightclub?

19 MR. SHAKOOR: I did.

20 MR. STERN: And did you attach that to your
21 investigative report?

22 MR. SHAKOOR: I believe so.

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1 MR. STERN: And I'm going to show you a copy
2 of your investigative report and ask you to take a look
3 at it.

4 MR. SHAKOOR: I've got it.

5 MR. STERN: Okay. Do --

6 CHAIRPERSON MILLER: Excuse me, is it --

7 MR. STERN: Is that a report that you wrote?

8 CHAIRPERSON MILLER: Mr. Smothers? Excuse
9 me, Mr. Stern. I just want to see if Mr. Smothers has
10 a copy of the security -- of the investigative report.

11 MR. STERN: I believe he does.

12 CHAIRPERSON MILLER: Okay. Thank you. Okay.

13 MR. STERN: Is that a report you wrote?

14 MR. SHAKOOR: That's correct.

15 MR. STERN: Including the addendums?

16 MR. SHAKOOR: Yes.

17 MR. STERN: We move that into evidence. Now,
18 regarding the handcuffs, did you speak to anyone
19 representing the police department or SPOs regarding
20 how SPOs use handcuffs?

21 MR. SHAKOOR: I did. I spoke with security
22 officers' branch management, Lieutenant John Shelton

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1 (ph) .

2 MR. STERN: Yes. And what did he tell you
3 about that?

4 MR. SHAKOOR: Lieutenant Shelton stated that
5 the SPOs do have authority to handcuff but only when
6 it's assigned at a designated and contracted
7 establishment and they are in their specific SPO
8 uniform.

9 MR. STERN: And were these security personnel
10 dressed as such?

11 MR. SHAKOOR: No, they were dressed as Love
12 security personnel.

13 MR. STERN: Okay. Now, does the security
14 plan -- does the security plan lay out a uniform for
15 security personnel?

16 MR. SHAKOOR: Yes, it does.

17 MR. STERN: And you stated -- I thought I
18 heard -- you can tell me if I'm wrong -- that when you
19 viewed the video, you could tell someone was a security
20 personnel because of the way they were dressed?

21 MR. SHAKOOR: I was able to identify they
22 were security guards because the majority of them were

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1 all dressed in a similar manner.

2 MR. STERN: Okay. Is there any reason to
3 believe that the young woman who told you she was able
4 to see a security guard -- could not make the same
5 determination?

6 MR. SHAKOOR: I go to -- because they were
7 not ID tagged or their shirt did not say, "Security,"
8 on it, I can understand how someone would -- could
9 mistake someone else as security. They were dressed in
10 all black and could be mistaken for someone else.

11 MR. STERN: Well, we've got the possibilities
12 but you don't have any reason to believe that girl did
13 mistake somebody else for a security guard, do you?

14 MR. SHAKOOR: No, I don't.

15 MR. STERN: Okay. Now, in fact, not wearing
16 an ID that identifies them as a security guard is a
17 violation of the security plan; isn't that right?

18 MR. SHAKOOR: That's correct.

19 MR. STERN: Okay. Now, is there also a
20 portion of the security plan that regards use of force?

21 MR. SHAKOOR: I believe there is.

22 MR. STERN: Okay. And are security personnel

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1 at Love, according to the security plan, allowed to use
2 force against a patron? For your recollection I'll
3 point you to Section 6 in the security plan.

4 MR. SHAKOOR: Yeah, I believe in Section 6 it
5 says, "SPs cannot legally use force against a person
6 unless it's self-defense and in defense of others from
7 imminent harm."

8 MR. STERN: When you saw the gentleman
9 handcuffed -- well, can we both agree that using
10 handcuffs is a use of force?

11 MR. SHAKOOR: That's correct.

12 MR. STERN: Okay. And when you saw the
13 person handcuffed, did it appear to you -- the first
14 person handcuffed, did it appear to you as though there
15 was a need for self-defense at that point?

16 MR. SHAKOOR: With the first patron? No, not
17 at all.

18 MR. STERN: Okay. Now, is there also a
19 portion of the security plan that talks about this
20 customer care center?

21 MR. SHAKOOR: Yes, I believe so.

22 MR. STERN: Okay. And what does it say about

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1 restraining customers in the customer sick care center?

2 MR. SHAKOOR: Could you refresh me on what
3 section that is?

4 MR. STERN: Yes. If you look at, "Customer
5 care center," it's Section 7 of the security plan. And
6 go to the -- I believe it's the last sentence there.

7 MR. SHAKOOR: Correct. At no time is SP
8 allowed to force a patron to stay inside customer care
9 against their will, unless a felony has been committed
10 or it is necessary to protect the patron or others from
11 harm.

12 MR. STERN: Did anyone report to you that a
13 felony had been committed by either of the two men who
14 were handcuffed?

15 MR. SHAKOOR: No, they did not.

16 MR. STERN: Okay. In fact, did you see
17 whether a felony had been committed by either of the
18 two men?

19 MR. SHAKOOR: No, and not from the
20 information I have obtained.

21 MR. STERN: Thank you. That's all I have.

22 CHAIRPERSON MILLER: Mr. Smothers, do you

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1 have any recross based on Mr. Stern or the Board's
2 questions?

3 MR. SMOTHERS: Yes. In regards to the young
4 lady that you passed, did -- were you aware that she
5 was coming out of the entrance?

6 MR. SHAKOOR: Yes. That's where she came out
7 from.

8 MR. SMOTHERS: Okay. So she came out. Were
9 you aware that she was not being attended to because
10 she was not supposed to be there in the first place?

11 MR. STERN: Objection, double negative.

12 MR. SMOTHERS: What is that?

13 CHAIRPERSON MILLER: Do you want to break up
14 your question? Okay.

15 MR. SMOTHERS: You had -- you hadn't -- at
16 the time when you encountered her, you were at the
17 front door, right?

18 MR. SHAKOOR: That's correct.

19 MR. SMOTHERS: Correct. Okay. And she came
20 out of the front door; is that correct?

21 MR. SHAKOOR: That's correct.

22 MR. SMOTHERS: Okay. Did she inform you that

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1 she was informed not to move from where she was when
2 she allegedly got assaulted?

3 MR. SHAKOOR: Yes. But she stated that
4 security had told her not to -- not to leave.

5 MR. SMOTHERS: Correct. But when you made
6 contact with her, she wasn't where she allegedly got
7 assaulted?

8 MR. SHAKOOR: No, she was not. She was
9 outside.

10 MR. SMOTHERS: Okay. In regards to the
11 handcuffing issue, did you witness from the beginning
12 to the end, from where the incident first take -- took
13 place -- first of all, let me -- let me ask you, where
14 did this -- the handcuffing issue, where did the whole
15 incident take -- start? Where did it begin at?

16 MR. SHAKOOR: I believe from what I witnessed
17 on the video and from the testimony from the interviews
18 from the head of security the patrons were becoming
19 highly aggressive. They said that they were -- that
20 security was able to intervene before it became a much
21 worse situation.

22 MR. SMOTHERS: Okay. What floor did it start

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1 on?

2 MR. SHAKOOR: I believe they said that first
3 floor it started on.

4 MR. SMOTHERS: It started on the first floor?

5 MR. SHAKOOR: I believe that's what they told
6 me, yes.

7 MR. SMOTHERS: Do you know how many parties
8 were involved -- how many individuals?

9 MR. SHAKOOR: I couldn't tell you the number
10 of individuals.

11 MR. SMOTHERS: You don't know how many
12 individuals were involved? Okay. In regards to Love's
13 security plan, would it be -- would you agree that
14 restraining someone to protect himself from harming
15 himself or others is okay?

16 MR. SHAKOOR: Be more specific. You said,
17 "the security plan?"

18 MR. SMOTHERS: In regards to Love's security
19 plan, to restrain someone from harming himself or
20 other, would you agree that that would be permissible?

21 MR. SHAKOOR: It would have to say it in the
22 security plan.

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1 MR. SMOTHERS: Well, answer me this. Section
2 6, "Use of force protect against -- to protect a patron
3 from harming himself or others." Forces -- Section 7,
4 "You can restrain someone by force to protect himself
5 and the public from harm."

6 MR. STERN: I'm not really hearing a
7 question. I'll object.

8 CHAIRPERSON MILLER: If I understood, he was
9 asking if he was aware in the security plan that you
10 could use -- you could restrain someone to protect them
11 from hurting themselves or others. And then Mr.
12 Shakoor said, "Where is it in the security plan," I
13 think. And I believe Mr. Smothers is responding to
14 that with a statement that it's in --

15 MR. STERN: The question is, "Are you aware
16 of that?"

17 CHAIRPERSON MILLER: Is there a question now?
18 I think he was referring to -- did you cite the
19 security plan, Mr. Smothers, where --

20 MR. SMOTHERS: It's that I was trying to
21 determine whether he was aware --

22 CHAIRPERSON MILLER: Of that provision?

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1 MR. SHAKOOR: Could you point out the
2 provision, what page it's on and what paragraph?

3 MR. SMOTHERS: Section 6.

4 MR. SHAKOOR: What page are you on?

5 MR. SMOTHERS: Section 7, last paragraph.

6 MR. SHAKOOR: What page are you on?

7 MR. SMOTHERS: Page 7. Section -- and we're
8 on Page 7, Section 7, last paragraph.

9 MR. STERN: At no time --

10 MR. SHAKOOR: Right. We read that one
11 already. It says, "At no time is SP allowed to force a
12 patron to stay inside customer care against their will,
13 unless a felony has been committed or it is necessary
14 to protect the patron or others from harm."

15 MR. SMOTHERS: Yes. That's the paragraph I'm
16 talking about.

17 MR. SHAKOOR: What's your question?

18 MR. SMOTHERS: The question is, if a patron
19 has harmed -- is intoxicated -- I mean, is to a point
20 where he's harming himself or putting the public at
21 harm -- others, is it okay to restrain him?

22 MR. SHAKOOR: That would have to be

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1 determined by case by case but in this incident, what
2 was -- what was made clear was that security intervened
3 before the -- it became a physical altercation. So I
4 would say, "No," because nothing was committed.

5 MR. SMOTHERS: How did you -- how did you
6 determine that nothing was committed?

7 MR. SHAKOOR: From what the -- your staff
8 told me. They said that they intervened before it
9 became -- they were acting very belligerent and they
10 were being very heated. But they intervened before it
11 became a physical altercation.

12 MR. SMOTHERS: Did you get -- who did -- who
13 gave you -- can you give me a name?

14 MR. SHAKOOR: Yeah, your head of security,
15 David Bailey.

16 MR. SMOTHERS: My head of security? Okay.
17 So in your words, my head of security suggested --

18 MR. STERN: Objection.

19 CHAIRPERSON MILLER: No. I -- sit -- you
20 have to hear the question first. Go ahead.

21 MR. SMOTHERS: I'm trying to ascertain how
22 you got the information. You got it from my head of

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1 security whose name is -- what's my head of security's
2 name?

3 MR. SHAKOOR: David Bailey.

4 MR. SMOTHERS: David Bailey informed you that
5 these gentlemen were not causing harm to themselves and
6 others?

7 MR. SHAKOOR: No. That's not what he
8 informed me of. He said that security intervened
9 before it became a physical altercation.

10 MR. SMOTHERS: Okay. I -- maybe I'm not
11 asking the question right. From what you were able to
12 determine, did these gentlemen appear -- either one or
13 the other appear to be in a physical altercation?

14 MR. SHAKOOR: The second patron did become
15 involved in an altercation in the detox area with
16 security guards.

17 MR. SMOTHERS: Okay. So the answer is, "Yes,
18 he did?"

19 MR. SHAKOOR: Yes, he was involved in a
20 physical altercation --

21 MR. STERN: Objection.

22 MR. SHAKOOR: -- in the detox area.

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1 MR. STERN: The answer is what the answer
2 was.

3 MR. SMOTHERS: Right. In regards to how --

4 MR. ALBERTI: Will you rule on the objection?

5 CHAIRPERSON MILLER: Well, I -- it's over.

6 Did you -- are you going to ask me to strike --

7 MR. STERN: Well, obviously the question --

8 CHAIRPERSON MILLER: -- are you asking me to
9 strike his answer? No.

10 MR. STERN: The objection is asked and
11 answered. He can't recharacterize his answer.

12 CHAIRPERSON MILLER: Okay. And you -- and
13 you said that in the middle of answering. And then you
14 went on to another question. So is there an -- is
15 there something on the table for me to rule on? I
16 didn't think there was but if there is, you can
17 rephrase that, Mr. Stern. And I'll see if I can rule
18 on it. Is there something to rule on or have we gone
19 beyond it?

20 MR. STERN: I'm -- we can probably move
21 beyond it.

22 CHAIRPERSON MILLER: Okay. Go ahead. Thank

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1 you.

2 MR. SMOTHERS: In regards to the SPO, you
3 earlier stated that you couldn't tell who was -- or it
4 would be hard for you to tell who was security and who
5 was not. Then you later stated that you could tell --

6 CHAIRPERSON MILLER: Yeah, Mr. Smothers, is
7 this going to be one question? Do you want to break it
8 to two?

9 MR. SMOTHERS: Could you tell who -- when you
10 walked up, who was Love Nightclub security?

11 MR. SHAKOOR: Personally, I would say it's
12 difficult to determine that because the patrons are
13 dressed in such a -- they're all dressed kind of in
14 boots, heavy jeans, things like that. And the security
15 guards also dressed in boots, BDUs and heavy coats
16 also.

17 MR. SMOTHERS: Okay. In your experience,
18 isn't that the dress of SPOs?

19 MR. SHAKOOR: I have to disagree. I have to
20 say, "No," because I don't deal with SPOs in such a
21 high manner that I could tell you how they're all
22 dressed.

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1 MR. SMOTHERS: So you're saying -- is that a,
2 "No?"

3 MR. SHAKOOR: I'm saying I couldn't tell you
4 how all SPOs normally dress. I don't have enough
5 experience in that.

6 MR. SMOTHERS: Okay. So that's not a
7 specific answer. Do you know how all SPOs dress?

8 MR. SHAKOOR: No, I don't.

9 MR. SMOTHERS: No. So then it would be --
10 then you couldn't determine whether we had SPOs on duty
11 that night?

12 MR. SHAKOOR: Actually I was able to
13 determine they were not SPOs on duty when I spoke to
14 Mr. Shelton. He stated Love doesn't have -- is not
15 contracted for SPOs. So therefore, even if they are
16 licensed SPOs serving another time at a different
17 location, when they're at Love, working in security
18 guard capacity, they are not special police officers.
19 They are Love security guards. That's it.

20 MR. SMOTHERS: According to Love's security
21 plan, as far as you're concerned, does it say that we
22 can or cannot restrain people using handcuffs?

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1 MR. SHAKOOR: I believe handcuffs are not in
2 there at all. So I would say, "No."

3 MR. SMOTHERS: Well, I -- okay. So then --
4 so your answer is?

5 MR. SHAKOOR: It -- we haven't reviewed that
6 security plan. Maybe you can point out a specific
7 location where it says that? But I don't believe it
8 says --

9 MR. SMOTHERS: Well, I'm asking you because
10 you said that we violated our security plan by
11 handcuffing. And I -- the reason I'm asking you is
12 that I'm assuming you read or -- read somewhere in the
13 security plan that said we can or cannot use security -
14 - I mean, handcuffs. Since it's not --

15 MR. SHAKOOR: It does not say that Love can
16 handcuff people.

17 MR. SMOTHERS: Say again.

18 MR. SHAKOOR: It does not say that Love has
19 the authority to handcuff people.

20 MR. SMOTHERS: It does not say that we do not
21 have the authority to handcuff people?

22 MR. STERN: Objection.

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1 CHAIRPERSON MILLER: Okay.

2 MR. STERN: I think we've been asking --

3 CHAIRPERSON MILLER: And what is -- I'm not
4 clear. What -- Mr. Shakoor, what -- it does not say
5 that Love cannot handcuff --

6 MR. SHAKOOR: It does not say that Love can
7 handcuff patrons.

8 CHAIRPERSON MILLER: Okay. So that's your
9 answer. It does not say --

10 MR. SHAKOOR: Correct.

11 CHAIRPERSON MILLER: -- that Love --

12 MR. SHAKOOR: By handcuffing --

13 CHAIRPERSON MILLER: -- can handcuff --

14 MR. SMOTHERS: Does it say that we cannot?

15 MR. SHAKOOR: No, it does not.

16 MR. SMOTHERS: Thank you. That's all I have
17 for right now.

18 CHAIRPERSON MILLER: Okay.

19 MR. ALBERTI: Ms. Miller, I have --

20 CHAIRPERSON MILLER: Yes. Yeah.

21 MR. ALBERTI: -- just one additional -- and I
22 apologize. If you'll indulge me? Mr. Investigator

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1 Shakoor, I want to refer you to your report --
2 investigative report on Page 2.

3 MR. SHAKOOR: Yes.

4 MR. ALBERTI: The bottom of Page 2.

5 MR. SHAKOOR: Yes.

6 MR. ALBERTI: The last paragraph continues
7 onto the next page.

8 MR. SHAKOOR: Yes.

9 MR. ALBERTI: Could you just take a moment
10 and read that? It involves the woman who you saw
11 coming out and what she told you. And I wanted to
12 refresh your memory.

13 MR. SHAKOOR: All right.

14 MR. ALBERTI: Okay. At the bottom -- the
15 very bottom of Page 2 it says, "Ms. Wyckoff (ph) stated
16 that the security personnel were visible but did not
17 even stop the fight. Ms. Wyckoff stated that she
18 crawled away. After being knocked down, Ms. Wyckoff
19 stated that she notified the security guard of the
20 incident. Ms. Wyckoff stated that the security guard
21 instructed" -- I believe it's him -- it says -- and I
22 believe it's her; it says, "Him," here -- "not to

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1 leave."

2 MR. SHAKOOR: That's correct.

3 MR. ALBERTI: So is that your recollection of
4 what she told you?

5 MR. SHAKOOR: That's correct.

6 MR. ALBERTI: Okay. Then she goes on and she
7 says -- you say, "Ms. Wyckoff stated that the group of
8 females observed her and attacked her again in view of
9 the security guard. Ms. Wyckoff stated that she did
10 not understand why the security guard did not stop the
11 altercation and did nothing to help her. She stated
12 that she was visibly bleeding and notified the security
13 guard again of the altercation and her injuries. Ms.
14 Wyckoff stated the security guard told her to go
15 outside."

16 Is that what you remember her telling you?

17 MR. SHAKOOR: Absolutely.

18 MR. ALBERTI: Thank you. No further
19 questions.

20 CHAIRPERSON MILLER: Mr. Shakoor, I also want
21 to ask just a clarifying couple of questions. I think
22 you referred to Mr. Bailey saying that security

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1 intervened before something -- more serious altercation
2 occurred?

3 MR. SHAKOOR: What -- you want to read what I
4 have here on the report?

5 CHAIRPERSON MILLER: What?

6 MR. SHAKOOR: You want me to read what I have
7 in the report here?

8 CHAIRPERSON MILLER: I didn't get it from the
9 report. I got it -- I mean, I noticed it from your
10 testimony. I don't know whether -- I was going to ask
11 you whether that referred to the handcuffing or whether
12 the -- what the security did to --

13 MR. SHAKOOR: What --

14 CHAIRPERSON MILLER: -- intervene before
15 things got worse?

16 MR. SHAKOOR: I interviewed Mr. Bailey
17 specifically about that -- the incidents and the
18 handcuffed patron. Mr. Bailey stated that the male
19 patron had been handcuffed due to his belligerent
20 behavior and for the safety of security personnel.

21 CHAIRPERSON MILLER: Okay.

22 MR. SHAKOOR: That's what he stated to me.

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1 CHAIRPERSON MILLER: Thank you. All right.
2 So then my question is, do you think that that is in
3 violation of the security plan? And I want to bring
4 your attention to a paragraph in the security plan that
5 I think is relevant possibly to this. It's Page 6,
6 Section 6, Use of force, third paragraph. "SPs cannot
7 legally use force against a person unless in self-
8 defense and/or defense of others from imminent harm."

9 So my question is, is this -- your just --
10 what Mr. Bailey said and the investigative report that
11 you were referring to, could you say that intervening
12 before a more serious altercation occurs or however
13 it's exactly stated is interfering before imminent harm
14 occurred?

15 MR. SHAKOOR: Well, what was stated to me
16 when the -- when security intervened, it's not at such
17 an intense level.

18 CHAIRPERSON MILLER: It was not according to
19 --

20 MR. SHAKOOR: Okay. It escalated further
21 once they got into the detox -- from what I observed.
22 Okay. Now, if Bailey told me that an all-out brawl had

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1 occurred and weapons were drawn or broken bottles and
2 someone was cut and bleeding, then this was obviously a
3 situation where some drastic measure would have to be
4 taken. That was not indicated to me. They indicated
5 that the patron was belligerent. And to get them under
6 control, they handcuffed them and brought them to the
7 detox area.

8 Okay. Now, belligerent patrons are what
9 security guards deal with every single day.

10 CHAIRPERSON MILLER: Okay.

11 MR. SHAKOOR: So that to me is not such
12 outstanding circumstances where you have to handcuff
13 somebody.

14 CHAIRPERSON MILLER: Okay. So to take that
15 person away in your view is not a violation of security
16 plan, but to handcuff them -- handcuff them is? That's
17 a greater use of force?

18 MR. SHAKOOR: Correct.

19 CHAIRPERSON MILLER: Okay. Thank you. Okay.
20 Any other question? No -- any other recross based on
21 the Board's questions? No. Okay. Thank you, Mr.
22 Shakoor. Okay. Mr. Stern, Mr. Shakoor was your only

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1 witness, correct?

2 MR. STERN: Yes.

3 CHAIRPERSON MILLER: Okay. So Mr. Bailey can
4 come back in now at this point. Do you want to go get
5 Mr. Bailey? Okay. Mr. Smothers, is Mr. Bailey your
6 first witness?

7 MR. SMOTHERS: Yes.

8 CHAIRPERSON MILLER: Okay. Do you swear to
9 tell the truth, the whole truth, nothing but the truth?

10 MR. BAILEY: I do.

11 CHAIRPERSON MILLER: Okay. Thank you. So
12 you can proceed and ask him questions or you can
13 testify without questions, however you want to proceed.

14 MR. SMOTHERS: Okay. How are you doing, Mr.
15 Bailey?

16 MR. BAILEY: I am fine.

17 CHAIRPERSON MILLER: Oh, he needs to give his
18 name and -- for the record.

19 MR. SMOTHERS: Okay.

20 MR. BAILEY: David Bailey, head of security
21 of Love Nightclub.

22 CHAIRPERSON MILLER: Thank you.

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1 MR. SMOTHERS: On February 19th do you
2 remember the incident -- or were you involved in an
3 incident where a young lady came out of the front door
4 supposedly bleeding from the nose or around the head
5 area?

6 MR. BAILEY: Which -- was it -- would this be
7 the one that -- there was two young ladies involved in
8 an altercation that came outside. Just read both of
9 them that you --

10 MR. SMOTHERS: Is -- there's one young lady
11 that was allegedly assaulted on the second floor --

12 MR. BAILEY: Correct.

13 MR. SMOTHERS: -- and told to stay by
14 security.

15 MR. BAILEY: Right, okay. That young lady --
16 she came -- she came outside. I was just meeting
17 Investigator Shakoor out front. He came there probably
18 for a noise violation or something and I greeted him
19 out front. The young lady came outside, stated that
20 she was assaulted inside. I called over the radio to
21 my -- to my security personnel, trying to figure out
22 exactly what happened.

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1 I went and spoke to one of the security
2 personnel members that were on the floor. He stated
3 that, you know, mayhem had occurred, that the woman was
4 -- security escorted the aggressors down to the detox
5 customer service area. The young lady who appeared to
6 be assaulted he asked to stay with -- stay with him.
7 She was upset and started proceeding down to the
8 stairs, which at that time, when she came downstairs,
9 that's when she was met by myself along with MPD.

10 And she had made a statement that she was
11 assaulted. We were dealing with, you know, mayhem that
12 was occurring at the time with MPD. And the young lady
13 was asked to stay here and just go -- "You know, we
14 identified the people who you were saying assaulted you
15 inside the club there. They're actually back in the
16 detox area, which you can identify as the people who
17 assaulted you. And MPD can basically take it from
18 there."

19 When we came back to where the young lady was
20 supposed to be, she had left the area. And we had no
21 contact information for her to have her come back. So
22 of course, the people that were brought down to the

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1 detox area who, you know, appeared to be aggressors in
2 the establishment, we had them of course leave the
3 area.

4 MR. SMOTHERS: Okay. And who walked the
5 aggressors down to the detox area?

6 MR. BAILEY: The security personnel.

7 MR. SMOTHERS: Security did?

8 MR. BAILEY: Yes.

9 MR. SMOTHERS: And your -- as far as you're
10 concerned, was the security plan followed?

11 MR. BAILEY: I believe it was. In our
12 security plan, it does state that we will make the
13 attempt to separate parties and -- which we did do
14 that.

15 MR. SMOTHERS: How come you didn't hold the
16 young lady and get the information from her?

17 MR. BAILEY: I mean, MPD was talking to her
18 outside. It's -- you know, so, I mean, we really had
19 no need to hold her. Like, we let MPD deal with --
20 deal with it first. I was dealing with also the other
21 incident that was going on and assisting MPD with that.
22 So when we came back from dealing with that, the young

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1 lady was gone.

2 MR. SMOTHERS: Okay. The security that
3 brought the alleged aggressors down to detox, what
4 happened to them?

5 MR. BAILEY: I mean, there's -- I mean, they
6 were -- you know, their information was taken down. I
7 mean, they were unaware that if anybody (inaudible)
8 they were just able to tell that these people were
9 being overly aggressive. There was a lot of pushing
10 and stuff going on. So they grabbed whoever appeared
11 to be an aggressor at that time and started taking
12 people down, you know, separating them, taking them
13 down different stairwells and taking them down to the
14 area which they are assigned to take people out.

15 MR. SMOTHERS: I understand. Did you speak
16 to the inspector in regards to this specific incident?

17 MR. BAILEY: No, he did not speak to me about
18 this.

19 MR. SMOTHERS: He did not speak to you in
20 regards to this --

21 MR. BAILEY: No.

22 MR. SMOTHERS: -- incident?

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1 MR. BAILEY: No.

2 MR. SMOTHERS: Was there any arrests made in
3 this incident?

4 MR. BAILEY: No, there were not. We are
5 unable -- MPD was unable to make the arrest because the
6 complainant never came back to identify the people
7 involved that apparently would have assaulted her.

8 MR. SMOTHERS: Was there a court case
9 involved in this?

10 MR. BAILEY: No, not in this one. No.

11 MR. SMOTHERS: Not in this case?

12 MR. BAILEY: No.

13 MR. SMOTHERS: So no arrests?

14 MR. BAILEY: No, no arrests in this one.

15 MR. SMOTHERS: Okay. There was another
16 incident involving handcuffs. Speak on that one.

17 MR. BAILEY: You don't want to go to the
18 other young lady who security (inaudible) tying it
19 together.

20 CHAIRPERSON MILLER: Could you all -- could
21 speak up? I'm having trouble hearing. There's a lot
22 of background noise or something.

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1 MR. SMOTHERS: Okay. Yes. I'm referring to
2 the incident involving the handcuffs. Can you go --
3 can you walk me through that?

4 MR. BAILEY: Okay. There were two gentlemen
5 caught on the first floor -- pardon me -- who were
6 involved, you know, physically in the altercation.
7 They were -- they were brought down to my detox
8 customer service area, which both parties were
9 separated on two different sides. Security, you know,
10 was trying to find out what was going on. The one
11 gentleman who was the complainant kept charging at the
12 other gentleman.

13 MR. SMOTHERS: That's -- can I ask you, where
14 did this take place?

15 MR. BAILEY: This happened down in the
16 customer service detox area.

17 MR. SMOTHERS: So it happened all in the
18 detox area?

19 MR. BAILEY: Right.

20 MR. SMOTHERS: Okay.

21 MR. BAILEY: So he -- because then he just
22 tried to keep, you know, going down to the other

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1 gentleman. Security, you know, surrounded him -- no
2 hands on him -- just telling him, "Man, you know, calm
3 down." The gentleman would not calm down. The
4 gentleman then -- as he kept trying to charge after the
5 gentleman, security grabbed him. He elbowed the
6 security personnel.

7 The other gentleman involved punched one of
8 the security personnel when he was trying to get over -
9 - they're trying to get to each other. I detained the
10 gentleman who punched the security. The other security
11 personnel detained the other gentleman by handcuffing
12 him because he refused to stop trying to, you know,
13 aggressively go after the other gentleman that he was
14 involved in the altercation with, which we later found
15 out they were apparently in-laws -- brother-in-laws.

16 MR. SMOTHERS: Were either of the gentlemen
17 21 or above?

18 MR. BAILEY: I believe they -- I believe both
19 gentlemen involved were 21.

20 MR. SMOTHERS: And --

21 MR. BAILEY: I'm really not absolutely sure
22 of their age at this present time.

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1 MR. SMOTHERS: Did either of the gentlemen
2 appear to be intoxicated?

3 MR. BAILEY: They did appear to be
4 intoxicated.

5 MR. SMOTHERS: What --

6 MR. BAILEY: Because a gentleman was brought
7 outside -- one -- after he finally got -- the gentleman
8 that threw a punch -- okay -- he calmed down. He came
9 over and spoke to him and told him, you know, "Chill
10 out. Calm down now. You know, we can go home, you
11 know. Let's just go home." His -- also his sister or
12 somebody was back there as well. When we -- you know,
13 after he calmed down and we let them leave, he went to
14 the alley and just started calling out in the alley,
15 like, just acting overly dramatic.

16 MR. SMOTHERS: How many gentlemen were
17 handcuffed?

18 MR. BAILEY: One.

19 MR. SMOTHERS: One?

20 MR. BAILEY: One.

21 MR. SMOTHERS: Not two?

22 MR. BAILEY: Unh-unh. Just one.

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1 MR. SMOTHERS: Okay. Were the police
2 notified?

3 MR. BAILEY: Yes. Police stayed, reviewed
4 the video footage, went down and then spoke with the
5 gentleman and his father. Because the gentleman, when
6 talking to MPD, the father said he didn't do anything.

7 MR. SMOTHERS: Uh-huh.

8 MR. BAILEY: But after watching the video,
9 the police officer instructed them that he witnessed
10 the gentleman coming down aggressive and then striking
11 with an elbow someone in security in his face and then
12 his counterpart also punching another security at the
13 same time.

14 MR. SMOTHERS: Okay. So he actually
15 assaulted Love personnel?

16 MR. BAILEY: Yes.

17 MR. SMOTHERS: Okay. Do you believe we acted
18 within the security -- in the rights of the security
19 plan?

20 MR. BAILEY: Yes, sir.

21 MR. SMOTHERS: Do you believe we violated any
22 parts of the security plan?

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1 MR. BAILEY: No, sir.

2 MR. SMOTHERS: Did you talk to the
3 investigator in regards to this incident?

4 MR. BAILEY: We did speak with him in regards
5 to this incident, yes.

6 MR. SMOTHERS: Was it -- was it the night of?

7 MR. BAILEY: I don't -- no. It was not the
8 night of. I believe -- I can't recall because I spoke
9 to him on probably, like, two different occasions. But
10 I believe it could have been later on that night or it
11 might have been another day. I can't exactly -- it was
12 not (inaudible) I spoke to him.

13 MR. SMOTHERS: Approximately how long was the
14 young man handcuffed?

15 MR. BAILEY: A few minutes until he actually,
16 you know, calmed down and we could actually take the
17 handcuffs off him without him trying to actually strike
18 somebody.

19 MR. SMOTHERS: Okay. Okay. That's all I
20 have right now.

21 CHAIRPERSON MILLER: Okay. Mr. Stern, cross?

22 MR. STERN: Yes, thank you. Let's start with

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1 the first incident. Is that the woman named Ms. Wyche
2 (ph)? Do you know?

3 MR. BAILEY: I'm sorry, I don't have the
4 report in my hands so I'm not aware of their --

5 MR. STERN: Okay.

6 MR. SMOTHERS: Excuse me, Board. Maybe I can
7 use the restroom?

8 CHAIRPERSON MILLER: You need to use the
9 restroom? Oh, okay. Well, we're not going to continue
10 with that.

11 MR. SMOTHERS: Okay. No problem. No
12 problem. It can wait.

13 CHAIRPERSON MILLER: No. If it's an
14 emergency -- we can --

15 MR. SMOTHERS: No. I --

16 CHAIRPERSON MILLER: -- take two minutes if
17 it's an emergency.

18 (WHEREUPON, at 12:39 p.m., the hearing went
19 off record until 12:42 p.m.)

20 CHAIRPERSON MILLER: Okay. We're back on the
21 record.

22 MR. STERN: I think the pending question was

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1 whether or not that was the incident involving Ms.
2 Wyche?

3 MR. BAILEY: Yes, it is.

4 MR. STERN: Okay. Now, is there a --
5 according to the security plan, is there a uniform for
6 security personnel?

7 MR. BAILEY: Yes, it's all black.

8 MR. STERN: And --

9 MR. BAILEY: Black slacks, black shirts.

10 MR. STERN: And is that to make them
11 identifiable?

12 MR. BAILEY: Yes.

13 MR. STERN: Okay. And in fact, the uniform
14 consists of clean and pressed black-collared shirt; is
15 that right?

16 MR. BAILEY: That's correct.

17 MR. STERN: And clean and pressed black-
18 collared pants, black belt, black shoes, right?

19 MR. BAILEY: Yes.

20 MR. STERN: Black socks and then ear pieces;
21 is that right?

22 MR. BAILEY: Yes. If applicable, yes.

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1 MR. STERN: Okay. And company-issued lapel
2 name tag or ID?

3 MR. BAILEY: I think you might have our old
4 security plan, not here, not with ABRA.

5 MR. STERN: Security plan that I believe --

6 MR. BAILEY: That is not the most recent
7 security plan that's submitted to ABRA.

8 MR. STERN: Okay. Is this the security plan
9 that was in effect on the day of the incident?

10 MR. BAILEY: No, it was not.

11 CHAIRPERSON MILLER: Could you -- could you
12 refer to what security plan --

13 MR. STERN: Okay. I want to take you -- look
14 at Exhibit 6.

15 CHAIRPERSON MILLER: Okay.

16 MR. BAILEY: When -- but I submitted a
17 different security plan which took out the lapel pin.

18 MR. STERN: When is that?

19 MR. BAILEY: I can look it up on my email for
20 you.

21 CHAIRPERSON MILLER: Could you speak up,
22 please?

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1 MR. BAILEY: I can look up --

2 MR. STERN: Well, we -- how would Mr. Shakoor
3 have gotten that security plan?

4 MR. BAILEY: Well, I submitted it to Martha
5 Jenkins.

6 MR. STERN: So how would Mr. Shakoor have
7 gotten that?

8 MR. BAILEY: This is the old -- probably the
9 old security plan that was on file here with ABRA.

10 MR. STERN: So at least on the day of the
11 incident, this is the security plan that was on file?

12 MR. BAILEY: No, it was not. No, it's not.

13 MR. STERN: Okay. A copy of the security
14 plan that you say you've changed?

15 MR. BAILEY: Not on me, sir. No. I
16 submitted it here to ABRA.

17 MR. STERN: Okay.

18 MR. BAILEY: As a matter of fact, it was
19 about a year ago. It was in November -- probably
20 November or December of last year.

21 MR. STERN: Okay. What's the purpose of
22 having the uniform in the security plan?

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1 MR. BAILEY: It's just to identify what
2 security personnel would be wearing.

3 MR. STERN: Now, when Ms. Wyche came out, was
4 she bleeding?

5 MR. BAILEY: She appeared to have some --
6 well, she had her shoe off. And, like, once again,
7 like I said, I'm dealing with her as well as another
8 young lady at the same time. So MPD immediately went
9 to her. I let MPD basically deal with that. I didn't
10 want to interfere with what they had to do. So I kind
11 of stepped back.

12 MR. STERN: And you don't know if she was
13 bleeding or not?

14 MR. BAILEY: I'm unaware if she was -- if she
15 was bleeding or not. She went immediately to the
16 police officers who were --

17 MR. STERN: Okay. So when you came out, you
18 didn't even see whether or not she was bleeding?

19 MR. BAILEY: Yeah, we didn't really --

20 MR. STERN: Okay.

21 MR. BAILEY: MPD attended to her immediately.

22 MR. STERN: Did you see what had occurred

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1 upstairs?

2 MR. BAILEY: No, I did not. I -- like I
3 said, at the time all this incident occurred, I went to
4 meet Investigator Shakoor.

5 MR. STERN: Now, there was another incident
6 involving some women; is that correct?

7 MR. BAILEY: This is correct.

8 MR. STERN: And there was -- that was an --
9 also a physical altercation?

10 MR. BAILEY: Probably, yes.

11 MR. STERN: And those women came downstairs.
12 Did you see them?

13 MR. BAILEY: Yes, I did.

14 MR. STERN: Did you see that they were
15 injured?

16 MR. BAILEY: Yes. The one -- the one young
17 lady apparently had some sort of injury on her head.

18 MR. STERN: Were there also scratches and
19 bruises on the other patrons?

20 MR. BAILEY: No. There was only one young
21 lady that appeared to have to be --

22 MR. STERN: Did they come outside themselves?

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1 MR. BAILEY: Yes, they did.

2 MR. STERN: They weren't helped out by any
3 security guard?

4 MR. BAILEY: No, they were not.

5 MR. STERN: Okay. So no one intervened in
6 that instance?

7 MR. BAILEY: They actually did. They
8 actually took the aggressors once again down to detox.
9 But when questioned to the young lady, she stated that
10 it was security personnel which struck her. And I then
11 took MPD -- I said, "Which incident did you want to
12 deal with first?" He said, "Let's deal with this." I
13 took them upstairs, identified the security in the area
14 with the young lady. She -- her friend identified one
15 of my security personnel, Gary Matthews.

16 Then I instructed him to step out -- he
17 needed to step out and talk -- speak with MPD.

18 MR. STERN: Okay. Now, did Ms. Wyche -- the
19 people who were the aggressors in Ms. Wyche's incident,
20 they were other females?

21 MR. BAILEY: It was females and males in that
22 area. So they took whoever appeared to be an aggressor

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1 at the time down to detox so we can find out exactly
2 what was going on.

3 MR. STERN: Okay. They didn't -- they didn't
4 pick out individuals that were actually involved in an
5 altercation at the time?

6 MR. BAILEY: They can -- they can see who --
7 the people involved in the altercation. And they --
8 and that's why they were taken out. Because of course
9 there was some pushing and things like that involved.
10 Anybody involved in any physical matter at that time
11 was taken out.

12 MR. STERN: Okay. And now, you say only one
13 person was handcuffed?

14 MR. BAILEY: Yes, sir.

15 MR. STERN: Where did you get that from?

16 MR. BAILEY: I was there.

17 MR. STERN: Okay. Did you look at the
18 surveillance footage?

19 MR. BAILEY: Yes, we did, along with MPD.

20 MR. STERN: Do you have any explanation why
21 Mr. Shakoor's notes on the surveillance footage
22 dictated by minutes indicate that there were two people

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1 handcuffed?

2 MR. BAILEY: I'm going to tell you the reason
3 why it couldn't be two people handcuffed. The second
4 person I actually detained myself by grabbing and
5 holding him down after he punched the security
6 personnel. You can look at the video footage yourself.

7 MR. STERN: Okay. But you don't have the
8 video footage here, right?

9 MR. BAILEY: We gave that to investigation.

10 MR. STERN: Now --

11 CHAIRPERSON MILLER: What was the question?

12 MR. STERN: You don't have the video footage
13 here?

14 CHAIRPERSON MILLER: Right, thank you.

15 MR. STERN: Now, I guess I didn't really get
16 an answer to my first question. Do you have any reason
17 why someone taking minute-by-minute notes and writing
18 down that someone was -- he saw someone handcuffed
19 could have been mistaken on that?

20 MR. BAILEY: I have no idea as to why
21 Investigator Shakoor would write that. But again, I
22 believe in the police report it also only states that

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1 only one person was handcuffed as well.

2 MR. STERN: Well, you don't know where the
3 information on the police report came from, right?

4 MR. BAILEY: Well, like I said, the police
5 officer and the complainant both came back. And I was
6 there as the -- as the gentleman made the complaint and
7 saying that he was the only one that was handcuffed.
8 And the second gentleman had left the area, which I
9 tried to identify to police officers the other
10 gentleman that was involved in the altercation. But of
11 course they left the area.

12 MR. STERN: Well, the police report doesn't
13 say he was the only one who was handcuffed. The police
14 report says he was handcuffed.

15 MR. BAILEY: Right.

16 MR. STERN: Okay. Just to be clear. Now,
17 does the security plan talk about the use of force?

18 MR. BAILEY: I believe it does.

19 MR. STERN: Does it allow you to use force to
20 keep people in the -- in the detox center?

21 MR. BAILEY: We're not allowed -- we're not
22 allowed to detain anyone against their will. But it

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1 does allow us to use the necessary force to protect our
2 patrons.

3 MR. STERN: Okay. And does that allow you to
4 -- do you believe that allows you to restrain someone
5 whenever they become belligerent?

6 MR. BAILEY: I believe it allows us to, you
7 know, hold somebody down if they're -- if they're
8 trying to cause harm to a patron, which I believe the
9 Board would not want.

10 MR. STERN: Do you believe that allows you to
11 handcuff people?

12 MR. BAILEY: I mean, I'm -- if necessary, for
13 somebody to actually use handcuff -- but since then
14 I've told them to not use handcuffs, if possible just
15 to use their hands. But like I said, they used
16 handcuffs only because the gentleman became very
17 aggressive. And they did not want to do any more
18 physical -- you know, anything physical to the
19 gentleman, just try to get him to calm down.

20 MR. STERN: Can you explain why Mr. Shakoor
21 would have been told that it is against policy -- well,
22 to use handcuffs?

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1 MR. BAILEY: Because after that incident I
2 did inform -- I did inform the staff to not use any
3 handcuffs. So at that time it was -- now, it's against
4 the policy to for them to bring any handcuffs in at all
5 other than flashlights, anything that we have
6 pertaining to gloves, flashlight, things of that
7 nature.

8 MR. STERN: How close in time was that?

9 MR. BAILEY: It -- well, I immediately just
10 after that night -- that night after the incident
11 instructed my staff to no longer -- the SOPs to no
12 longer bring their handcuffs inside the establishment.

13 MR. STERN: Okay. Now, going back to that
14 first assault on the young woman --

15 MR. BAILEY: Ms. Wyche -- Ms. Wyche?

16 MR. STERN: Right. Ms. Wyche.

17 MR. BAILEY: Okay. Uh-huh.

18 MR. STERN: Do you render assistance to
19 patrons who are injured?

20 MR. BAILEY: Yes, we do. She refused.

21 MR. STERN: And if someone was bleeding while
22 you were standing there, would you render assistance to

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1 them?

2 MR. BAILEY: I would. I would since -- if
3 they allowed me to.

4 MR. STERN: Okay. Would someone stay with
5 them if they attempted to move?

6 MR. BAILEY: Again, the call went out over
7 the radio when Ms. Wyche started heading downstairs and
8 somebody was heading down -- for somebody to intercept.
9 That's how I was able to intercept her as she came down
10 the steps with MPD.

11 MR. STERN: But you intercepted her for a
12 fraction of a second?

13 MR. BAILEY: Well, she -- my security
14 personnel was at the top of the steps. We tried to
15 have her stay there. She refused. She started to come
16 down the steps. Called over the radio for somebody to
17 meet her at the bottom of the steps to -- you know, to
18 --

19 MR. STERN: So here is someone who reports
20 that she was beaten up by a group of girls while your
21 security guard looked on, went to your security guard
22 and informed him of that. He told her to stay there.

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1 She was then beaten up a second time while the security
2 guard looked on. And when she tries to go downstairs,
3 nobody follows her to render assistance?

4 MR. BAILEY: Well, that is -- actually that's
5 her statement but that's not what happened.

6 MR. STERN: Okay. When the security guards
7 broke up the two males, were they involved -- were they
8 -- they were yelling and screaming at the time, right?

9 MR. BAILEY: Yeah, kind of getting very
10 aggressive towards each other.

11 MR. STERN: Okay. But they didn't actually
12 get to the point where they were hitting each other,
13 right?

14 MR. BAILEY: No. Not at -- not at that time,
15 no.

16 MR. STERN: So no felony was being committed,
17 right?

18 MR. BAILEY: No.

19 MR. STERN: Okay. And merely yelling at -- I
20 mean, you have patrons yelling and screaming at each
21 other all the time, right?

22 MR. BAILEY: Right.

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1 MR. STERN: I mean, it's not an unusual thing
2 in the club, right?

3 MR. BAILEY: Right.

4 MR. STERN: So merely yelling and screaming
5 at each other wouldn't be a cause of imminent harm to
6 another patron?

7 MR. BAILEY: Well, somebody yelling -- like,
8 the manner in which they were yelling and screaming at
9 each other appeared to be, to my security personnel at
10 that time, that they were getting ready to be involved
11 in a physical altercation. So they took the necessary
12 steps to ensure that the physical altercation did not
13 occur, which was taking them down to -- they can't
14 obviously talk to a patron as to what's going on,
15 what's the problem inside the club because you have
16 music playing.

17 So anytime somebody's involved in verbal
18 altercation where we fear it may escalate, they are
19 then moved to an area which was normally the detox
20 customer service area, speak to them as to what -- you
21 know, what's going on and made sure that this incident
22 is not going any further.

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1 MR. STERN: Okay. But they're not taken in
2 handcuffs down there, are they?

3 MR. BAILEY: No, he wasn't taken in handcuffs
4 as well.

5 MR. STERN: Despite --

6 MR. BAILEY: No. He wasn't --

7 MR. STERN: -- what the -- what the video
8 shows?

9 MR. BAILEY: Actually if you look at the
10 investigative report, it states that he was brought
11 down unhandcuffed into the detox area.

12 MR. STERN: Actually that's not accurate. If
13 you want to read the investigative report --

14 MR. BAILEY: It says, "Unhandcuffed."

15 CHAIRPERSON MILLER: Mr. Stern, do you have a
16 question?

17 MR. STERN: I'm sorry. I want to show you
18 what's Page 4 of the investigative report, time marked
19 3:02:15 seconds a.m. Can you read to me what that
20 says? "Security personnel bring male" --

21 MR. BAILEY: You say what, 3:02?

22 MR. STERN: The first line.

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1 MR. BAILEY: Okay. The very -- "Security
2 personnel bring male down to detox area, right hand
3 handcuffed."

4 MR. STERN: Thank you.

5 MR. BAILEY: I don't know as to how he could
6 see a handcuff. But in the second one, it says,
7 "Unhandcuffed."

8 MR. STERN: There was no question of that.

9 MR. BAILEY: Okay.

10 MR. STERN: I asked you if you could read
11 that. I believe you did. So the investigative report
12 actually does say that he was handcuffed, right?

13 MR. BAILEY: Right. But in the police report
14 it said he was handcuffed to a rail after he struck
15 security.

16 MR. STERN: Okay. In fact, the investigative
17 report says that a second male was handcuffed to the
18 rail; isn't that right?

19 MR. BAILEY: So I don't understand where we
20 are getting at with this because I don't understand
21 where in the video -- which he's watching -- where our
22 video can actually show him in handcuffs. They were

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1 both brought down arm in hand to make sure they
2 couldn't strike each other.

3 MR. STERN: Okay.

4 MR. BAILEY: That was the only thing.

5 MR. STERN: I'm sorry, that's not responsive
6 to my question.

7 MR. BAILEY: Well, no. They were not
8 handcuffed and brought down.

9 MR. STERN: Despite what the investigative
10 report says?

11 MR. BAILEY: Despite what Investigator
12 Shakoor thinks he saw.

13 MR. STERN: Thank you. Now, if I just may
14 have the Court's indulgence for a second?

15 CHAIRPERSON MILLER: Mr. Bailey, you refer to
16 a different security report -- different security plan
17 that was referenced in -- as Exhibit 6 to the
18 investigative report?

19 MR. BAILEY: Yes, ma'am.

20 CHAIRPERSON MILLER: And I -- for the record,
21 the -- and you said you had filed it --

22 MR. BAILEY: I emailed it to Martha Jenkins.

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1 CHAIRPERSON MILLER: -- with Martha Jenkins
2 at ABRA. So the staff did check the files for the most
3 recent security plan and there is a later one. And so
4 that was just given to Mr. Stern to take a look at --

5 MR. BAILEY: Thank you.

6 CHAIRPERSON MILLER: -- And I believe Mr.
7 Smothers.

8 MR. STERN: And do you have a date on when
9 this took effect? November of 2011.

10 MR. ALBERTI: I was told but I forget the
11 month.

12 MR. BAILEY: I can actually -- I actually
13 have the email right here on my --

14 MR. ALBERTI: Well, we'll --

15 CHAIRPERSON MILLER: Okay.

16 MR. ALBERTI: I'll check with our staff and
17 find out. But if --

18 CHAIRPERSON MILLER: But anyway, if you're --

19 MR. ALBERTI: It was some time in 2011.

20 CHAIRPERSON MILLER: I thought -- I thought
21 that you may have -- somebody may have said December,
22 2011 but that could be verified later.

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1 MR. STERN: Okay.

2 CHAIRPERSON MILLER: Do you have a --

3 MR. STERN: Just so we're clear --

4 CHAIRPERSON MILLER: Wait a second. I'm
5 sorry. Do you have a definitive answer?

6 MR. ALBERTI: The date stamp on the new
7 security plan was December 23rd, 2011.

8 MR. STERN: Okay. Is this a copy of the
9 revised security plan?

10 MR. BAILEY: Yes.

11 MR. STERN: Okay. And just so that we are
12 clear, in Section 6 -- in Section 7 there is use for
13 and the customer care center the same in both plans?

14 MR. BAILEY: Yes. Which one? Then it should
15 be at least somewhat the same.

16 MR. STERN: Okay. Am I correct that Section
17 7 still provides that at no time is an SP allowed to
18 force a person to stay inside the customer care center
19 against their will unless a felony has been committed
20 or it is necessary to protect the patrons of the club?

21 MR. BAILEY: That is correct.

22 MR. STERN: Okay. And am I also correct in

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1 saying that the plan still says SPs cannot legally use
2 force against a person unless in self-defense or
3 defense of others from imminent harm?

4 MR. BAILEY: That is correct.

5 MR. STERN: And imminent harm means immediate
6 harm?

7 MR. BAILEY: You mean, like, him getting
8 elbowed or security getting punched.

9 MR. STERN: The question was, imminent harm
10 means immediate harm?

11 MR. BAILEY: Yes.

12 MR. STERN: Okay. Thank you. I would move
13 into evidence the new security plan.

14 CHAIRPERSON MILLER: Okay. Are you -- okay.
15 So let me just say with respect to the evidence and --
16 that you've already asked to be moved into the record,
17 one was the investigative report with all the exhibits;
18 is that correct? Is --

19 MR. STERN: Yes.

20 CHAIRPERSON MILLER: And this -- the second
21 is the security plan, which we have judicial notice of
22 anyway. It's in our -- in our files. But it's in this

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1 case now as a -- as government's Exhibit No. 2. As --
2 are there any objections to these exhibits?

3 MR. STERN: Yes.

4 CHAIRPERSON MILLER: No. You have objections
5 to your own exhibits?

6 MR. STERN: No.

7 CHAIRPERSON MILLER: Okay. Okay.

8 MR. STERN: No.

9 CHAIRPERSON MILLER: Fine. All right. So
10 does that complete -- that completes your questioning,
11 right?

12 MR. STERN: That completes my questioning.

13 CHAIRPERSON MILLER: Okay. So this was
14 cross. Are there Board questions? No? It's their
15 witness.

16 MR. STERN: Oh, right. This was cross. I'm
17 sorry.

18 CHAIRPERSON MILLER: Okay. I know it's been
19 a --

20 MR. STERN: Uh-huh. Yeah.

21 CHAIRPERSON MILLER: Okay. No Board
22 questions? I'm just going to double-check to see if I

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1 do. I just want to clarify the procedure. When there
2 is trouble in the club on whatever floor, you take some
3 individuals into the care center?

4 MR. BAILEY: Yeah, we try -- we try to
5 separate them as much as possible. If there -- the
6 people that like -- that you can tell are not
7 aggressive that we know we're going to allow to kind of
8 stay in the club, we might -- if there's too many
9 people that we're worried about them trying to converge
10 again --

11 CHAIRPERSON MILLER: Right.

12 MR. BAILEY: -- we allow those lesser -- the
13 people that -- you know, like, if they're just standing
14 there and somebody's coming over to their face and
15 they're -- kind of have their hands back like this, we
16 know they're not trying to cause any trouble. We just
17 say, "Here, we're getting ready to take this person
18 down." And --

19 CHAIRPERSON MILLER: Do you take persons down
20 though who are fighting each other?

21 MR. BAILEY: Yes. We have people who are
22 fighting people each other. We --

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1 CHAIRPERSON MILLER: You take them to the
2 same room?

3 MR. BAILEY: No. We have -- it's -- we
4 typically try to -- it's, like, we bring them down. We
5 try to identify what's going on and then possibly
6 taking one to another room inside. Because it was,
7 like --

8 CHAIRPERSON MILLER: Oh --

9 MR. BAILEY: -- kind of, like, a loading dock
10 area and, like, take them -- take them through the --
11 you know what I'm saying -- the double door.

12 CHAIRPERSON MILLER: It's a big area?

13 MR. BAILEY: That's right.

14 CHAIRPERSON MILLER: Okay.

15 MR. BAILEY: You know what I mean? So we
16 have to separate them across the room if that is the
17 only space available but just making sure that they --
18 to make sure proper security's around, that they can't
19 converge again.

20 CHAIRPERSON MILLER: Okay. Okay. Any other
21 questions?

22 MR. ALBERTI: Yes.

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1 CHAIRPERSON MILLER: Okay, Mr. Alberti.

2 MR. ALBERTI: Excuse me, I'm sorry. I just
3 need to -- I apologize. Okay. The first instance with
4 Ms. Wyche --

5 MR. BAILEY: Yes.

6 MR. ALBERTI: -- I think you said that,
7 according to you, she was told to stay where she was
8 and the aggressors were pulled away?

9 MR. BAILEY: Well, okay. It was two times
10 when she was told to actually kind of stay.

11 MR. ALBERTI: Okay.

12 MR. BAILEY: The first, when the actual
13 incident occurred and security personnel started taking
14 the -- everybody -- the aggressors away. The security
15 personnel was there and, you know, identified her as
16 the, you know, lesser -- the lesser aggressor, if you
17 want to --

18 MR. ALBERTI: Okay.

19 MR. BAILEY: -- call it. And so I told her,
20 you know, "Stay here. You know, I'll get somebody to,
21 you know, come down, be -- you know, have somebody
22 there that would provide, like, medical attention and

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1 everything else." The young lady was upset and walked
2 off. That security personnel radio down to -- down to
3 the bottom of the stairs to inform them that, "We have
4 a young lady who was just involved in, you know, an
5 altercation, you know. Can somebody intercept her at
6 the bottom of the steps?"

7 That's where myself, along with, you know,
8 MPD proceeded to go upstairs as the young lady was
9 coming down.

10 MR. ALBERTI: MPD proceeded to go upstairs?

11 MR. BAILEY: Yeah, MPD was right with me at
12 the time.

13 MR. ALBERTI: So this was after or before Mr.
14 --

15 MR. BAILEY: No, they were already there.
16 MPD was already there.

17 MR. ALBERTI: -- before Mr. Shakoor
18 encountered her?

19 MR. BAILEY: Right. We were -- every -- MPD,
20 myself and Investigator Shakoor, we were all kind of
21 right out front of the -- like, right there.

22 MR. ALBERTI: No, no, no, no. You said to me

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1 that MPD was heading upstairs.

2 MR. BAILEY: Right.

3 MR. ALBERTI: Was that before or after Mr.
4 Shakoor encountered her?

5 MR. BAILEY: It was -- it was at the same
6 time. It was all at the same time. He arrived at --
7 everything

8 MR. ALBERTI: Was it before -- let me -- let
9 me rephrase my question. Was it before or after Mr.
10 Shakoor notified the police?

11 MR. BAILEY: I don't -- I'm unaware Mr.
12 Shakoor had notified --

13 MR. ALBERTI: Okay. Well, you're --

14 MR. BAILEY: -- the police or --

15 MR. ALBERTI: -- unaware that he notified --
16 fine.

17 MR. BAILEY: The police was --

18 MR. ALBERTI: Was it --

19 MR. BAILEY: -- there.

20 MR. ALBERTI: So Mr. Shakoor was with MPD?

21 MR. BAILEY: MPD was at the establishment.

22 They were already --

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1 MR. ALBERTI: They're inside the
2 establishment or outside?

3 MR. BAILEY: They were there right out front
4 of our main door.

5 MR. ALBERTI: Okay. So --

6 MR. BAILEY: They were standing right there.

7 MR. ALBERTI: Right. When they were at the -
8 - when they were coming up the stairs to investigate,
9 were they with the young woman?

10 MR. BAILEY: No, they're not. The young
11 woman --

12 MR. ALBERTI: Okay. Let me -- just answer my
13 questions, Mr. Bailey.

14 MR. BAILEY: Uh-huh.

15 MR. ALBERTI: Were they with the young woman?

16 MR. BAILEY: No.

17 MR. ALBERTI: Okay. Who was with them
18 besides you?

19 MR. BAILEY: Investigator Shakoore and my
20 other staff were all --

21 MR. ALBERTI: Oh, okay. Good. Good. So
22 now, you know the details of the inside incident

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1 because how?

2 MR. BAILEY: Partially because of the calls
3 coming over the radio. Secondly, because I questioned
4 my staff in regards to the incident.

5 MR. ALBERTI: So you weren't there then?

6 MR. BAILEY: No. I was not --

7 MR. ALBERTI: Okay.

8 MR. BAILEY: -- physically there.

9 MR. ALBERTI: Okay.

10 MR. BAILEY: I was not.

11 MR. ALBERTI: I thought I heard you earlier
12 say something -- what happened in the aggressors' party
13 -- aggressor party? Do you --

14 MR. BAILEY: The aggressor party was taken
15 down to the detox customer service area.

16 MR. ALBERTI: Okay. Before or after the
17 police entered your establishment?

18 MR. BAILEY: This was right as the incident
19 had occurred with the young lady. They separated --

20 MR. ALBERTI: Before or after the police
21 enter --

22 MR. BAILEY: Before.

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1 MR. ALBERTI: Before. Okay. Was -- to your
2 knowledge, was the woman visibly injured when she
3 approached the security guards?

4 MR. BAILEY: She appeared -- my immediate
5 attention was her clothing. I saw her clothing had
6 been but I didn't see any --

7 MR. ALBERTI: Her clothing had been --

8 MR. BAILEY: And I don't recall any of her
9 injuries. I do remember her --

10 MR. ALBERTI: Her clothing had been what?

11 MR. BAILEY: -- clothing kind of looked like
12 it's been -- like she had been in a scuffle.

13 MR. ALBERTI: But you didn't see -- did she
14 have any visible injuries when you saw her?

15 MR. BAILEY: I said not to my -- not to my
16 recollection. She possibly could have but not to my
17 recollection.

18 MR. ALBERTI: Okay. So what was the intent -
19 - what was your staff's intent to do with the -- with
20 the aggressors? What were they going to do with the
21 aggressors?

22 MR. BAILEY: I mean, of course they get their

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1 information if need be for the -- and we always ask the
2 person involved do they want to press charges, do we
3 need to bring MPD back to presses charges with them?
4 And that's what was supposed to have happened but the
5 young lady left.

6 MR. ALBERTI: So when do you -- when do you
7 call the police? I mean, what would trigger you
8 calling MPD and -- to deal with -- deal with an
9 incident?

10 MR. BAILEY: Like, if it's -- if it's
11 something that is, you know, major and somebody wants
12 to -- an individual wants to press charges or anything
13 like that.

14 MR. ALBERTI: So you rely on the individual
15 to tell you to press charges? If they're bleeding from
16 the head from a cut and they don't want to press
17 charges, you won't call MPD?

18 MR. BAILEY: I mean, we will take down -- we
19 will take down, you know, their information. And if it
20 -- if it is of that nature where somebody's head has
21 been busted open, of course I'm calling the police to
22 come back and --

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1 MR. ALBERTI: And if they're --

2 MR. BAILEY: -- deal with the person.

3 MR. ALBERTI: -- bleeding from the nose and
4 the mouth --

5 MR. BAILEY: Yeah.

6 MR. ALBERTI: -- would you call MPD?

7 MR. BAILEY: Yes. I mean, if it's --

8 MR. ALBERTI: You would?

9 MR. BAILEY: -- something of that very
10 physical and visible nature, yes, I would call MPD.

11 MR. ALBERTI: Did you call MPD to deal with
12 the aggressors that -- did you call MPD to come deal
13 with the aggressors or did your staff?

14 MR. BAILEY: MPD was -- MPD was already --

15 MR. ALBERTI: Yeah, did you or your staff
16 have MPD deal with the aggressors that --

17 MR. BAILEY: I did -- I did tell MPD about
18 the aggressors that were in detox, yes.

19 MR. ALBERTI: When did you tell them?

20 MR. BAILEY: At the same -- at -- all when
21 this incident occurred, as every --

22 MR. ALBERTI: When did you tell them?

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1 MR. BAILEY: Immediately.

2 MR. ALBERTI: Immediately when? After Mr.
3 Shakoor came in with the police officers or before?

4 MR. BAILEY: Before Investigator Shakoor came
5 in with the police officers.

6 MR. ALBERTI: You told that -- you told the
7 police officers that you had someone in detox?

8 MR. BAILEY: Yes.

9 MR. ALBERTI: So who would have done that?

10 MR. BAILEY: Who would have done what?

11 MR. ALBERTI: Who would have told the police?

12 MR. BAILEY: Any -- what do you mean, who
13 would have told the police? Who --

14 MR. ALBERTI: Who would have informed the
15 police that you had someone in detox?

16 MR. BAILEY: Any staff member can do that.

17 MR. ALBERTI: Do you know who did it?

18 MR. BAILEY: I did that.

19 MR. ALBERTI: Do you know who did it on that
20 evening?

21 MR. BAILEY: I did. I just said that.

22 MR. ALBERTI: You did on that evening?

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1 MR. BAILEY: Yes, I did.

2 MR. ALBERTI: Okay. How did you inform them?

3 MR. BAILEY: Face-to-face. We have people
4 that were possibly involved in this altercation back in
5 the detox room.

6 MR. ALBERTI: So you -- and you did this
7 before Mr. Shakoor came in?

8 MR. BAILEY: Yes, sir.

9 MR. ALBERTI: All right. So did you come
10 outside to the police officers?

11 MR. BAILEY: I was --

12 MR. ALBERTI: Because there was -- they were
13 -- the police officers weren't inside, right?

14 MR. BAILEY: No.

15 MR. ALBERTI: Yes or no?

16 MR. BAILEY: No.

17 MR. ALBERTI: So did you come outside to see
18 the police officers?

19 MR. BAILEY: I was already outside with the
20 police.

21 MR. ALBERTI: And where were the police
22 officers when you told them about this?

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1 MR. BAILEY: Directly in front of the
2 establishment.

3 MR. ALBERTI: They -- were they in their car
4 or outside the car?

5 MR. BAILEY: Standing outside of their
6 vehicle directly in front of the establishment.

7 MR. ALBERTI: Okay. And was Mr. Shakoor
8 there --

9 MR. BAILEY: Shakoor was there as well.

10 MR. ALBERTI: -- Shakoor there at that time?

11 MR. BAILEY: Yes, he was.

12 MR. ALBERTI: He was there at that time?

13

14 MR. BAILEY: Yes, he was.

15 MR. ALBERTI: Okay. What were the police
16 doing at that time when you told them?

17 MR. BAILEY: When the police were -- first we
18 were just all on deck and --

19 MR. ALBERTI: When you approached the police
20 to tell them, what were they doing?

21 MR. BAILEY: They -- I mean, they -- well,
22 one of the officers was dealing with the patron. I was

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1 talking to another officer about it but we were also
2 dealing with the second incident that came up all at
3 the same time.

4 MR. ALBERTI: Oh, okay. Okay.

5 MR. BAILEY: So --

6 MR. ALBERTI: So they were dealing with Ms.
7 Wyche?

8 MR. BAILEY: Right.

9 MR. ALBERTI: Okay. So you told the police
10 about the people in detox after you became aware of the
11 -- Ms. -- that MPD were investigating Ms. Wyche's
12 injuries?

13 MR. BAILEY: Right. And I called -- I called
14 over the radio and I found out where --

15 MR. ALBERTI: Okay.

16 MR. BAILEY: -- to find out where they were.

17 MR. ALBERTI: All right. Okay. Let's talk
18 about the handcuffed person. Who -- what was the
19 handcuffed person -- you're saying there's only one?

20 MR. BAILEY: There was only one person that
21 was handcuffed and he was handcuffed --

22 MR. ALBERTI: At what -- but at what point

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1 was he handcuffed?

2 MR. BAILEY: After he elbowed security in his

3 --

4 MR. ALBERTI: And where did -- where did that
5 occur?

6 MR. BAILEY: Right in the customer care area.

7 MR. ALBERTI: In the customer care area. And
8 he was handcuffed to what?

9 MR. BAILEY: A rail.

10 MR. ALBERTI: To a rail?

11 MR. BAILEY: A rail right there.

12 MR. ALBERTI: All right. Who else was in
13 that area -- in that detox area?

14 MR. BAILEY: Myself as well -- along with
15 other security personnel.

16 MR. ALBERTI: Was there another individual
17 that wasn't part of your staff in that room?

18 MR. BAILEY: Right. The gentleman who he was
19 initially involved in the altercation with.

20 MR. ALBERTI: And why were they both taken to
21 the detox area at the same time?

22 MR. BAILEY: I mean -- I mean, they were --

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1 they were escorted but separated from each other in the
2 detox area to find out what was going on. It was only,
3 like I -- as I stated at the time --

4 MR. ALBERTI: They were escort -- wait, wait.
5 Let's step back. They were escorted together to the
6 detox area?

7 MR. BAILEY: By two different parts of -- two
8 different -- like, two different sets of security.

9 MR. ALBERTI: So they're both in the detox
10 area at one time?

11 MR. BAILEY: Right.

12 MR. ALBERTI: Why if they were aggressors, if
13 they were fighting?

14 MR. BAILEY: If they're only --

15 MR. ALBERTI: I assume -- I assume that these
16 two people were having -- were having a physical
17 altercation. Is that --

18 MR. BAILEY: No, a verbal altercation.

19 MR. ALBERTI: They were having a verbal
20 altercation?

21 MR. BAILEY: Yes.

22 MR. ALBERTI: And that caused you to take

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1 them to the detox area?

2 MR. BAILEY: Yeah, which is -- like I was
3 stating before, is quieter that we can ask them and
4 find out what's going on.

5 MR. ALBERTI: Okay.

6 MR. BAILEY: So that's why they took them
7 down there initially, to -- just to speak with them as
8 to what was going on.

9 MR. ALBERTI: Okay. So the verbal
10 altercation was of such a nature that it concerned you;
11 is that correct?

12 MR. BAILEY: Yes. It caused big concern.

13 MR. ALBERTI: Okay. So you -- so you
14 escorted them both down to the detox area together?

15 MR. BAILEY: Yes.

16 MR. ALBERTI: Together?

17 MR. BAILEY: Well, separate but -- and detox,
18 like I stated, is a very large area. So you have --

19 MR. ALBERTI: How large?

20 MR. BAILEY: The size of this room.

21 MR. ALBERTI: Okay.

22 MR. BAILEY: So the one gentleman was on this

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1 side. The other gentleman was on that side.

2 MR. ALBERTI: Okay. And what was the other
3 gentleman, not the -- according to you, the one who
4 wasn't handcuffed to the railing, what was he doing?

5 MR. BAILEY: At first he was, you know, kind
6 of calm. He was -- he was basically the least
7 aggressor that -- involved. He was, you know, just
8 talking, you know, about what was going on. I mean, he
9 was kind of upset but he was still, you know, just
10 verbally talking. The other gentleman was the one who
11 was, like, constantly trying to physically come at him.

12 So he had more security personnel around him
13 just blocking him so he could not come after the other
14 gentleman.

15 MR. ALBERTI: So -- okay. So you have these
16 two guys. You know, one's handcuffed to the railing
17 and one is not. What happens next?

18 MR. BAILEY: As we -- the other one that
19 wasn't -- after I -- you know, I grabbed him. He's,
20 like, man -- he apologized to me. He said, you know,
21 "I'm sorry, man." You know, basically he was very
22 apologetic.

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1 MR. ALBERTI: For what?

2 MR. BAILEY: For striking -- for punching the
3 security personnel member.

4 MR. ALBERTI: Oh, he struck a security
5 personnel?

6 MR. BAILEY: Both of them struck a security
7 personnel.

8 MR. ALBERTI: So why wasn't he handcuffed?

9 MR. BAILEY: I detained him physically
10 myself. He was the -- he was actually the least
11 aggressive amongst --

12 MR. ALBERTI: Okay.

13 MR. BAILEY: -- total, you know, between the
14 two.

15 MR. ALBERTI: So then what happened?

16 MR. BAILEY: The gentleman who I -- you know,
17 when -- because like I said, it was two young ladies
18 that were down there. One apparently was the
19 complainant's sister, like -- and I guess the
20 complainant's girlfriend.

21 MR. ALBERTI: Complainant's girlfriend?
22 Complainant in what incident?

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1 MR. BAILEY: In the handcuff incident.

2 MR. ALBERTI: Okay.

3 MR. BAILEY: Stated that -- you know, they
4 were, like, the -- you know, "That's my brother-in-
5 law." So brother-in-law, you know, she'd be doing --
6 talking to them, like, "Man, calm down, man. Let's
7 just go home and we'll deal with this later on, you
8 know." So, you know, his sister -- you know, they was,
9 like, "Man, we'll take them out." So he finally calmed
10 down where we can actually approach him and take them
11 handcuffs off of him.

12 He then took both, you know -- they hugged
13 each other and we walked both -- you know, security
14 walked them all outside, you know, to their vehicle.

15 MR. ALBERTI: Well, why did you walk them
16 outside?

17 MR. BAILEY: It's just -- we just followed
18 them just to make sure no further incident occurs.

19 MR. ALBERTI: Well, why didn't you just walk
20 them outside initially rather than take them into
21 detox?

22 MR. BAILEY: Because they were trying to come

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1 at each other. Like, I mean, we wouldn't put them
2 outside and have them come on again. We -- you know,
3 they were only in a verbal altercation. So we only
4 brought them down to find out, you know, what's going
5 on and, you know --

6 MR. ALBERTI: Why did you hand them off to
7 MPD who's out there?

8 MR. BAILEY: I mean, they were only in a
9 verbal altercation. It wasn't a need for -- need to
10 deal with it. We was just trying to find out --

11 MR. ALBERTI: Yeah, but once they got
12 aggressive towards you, why did you just take them out?

13 MR. BAILEY: What, when --

14 MR. ALBERTI: When they became aggressive
15 towards you and the other security officers, why didn't
16 you just take them out --

17 MR. BAILEY: Because I -- as I stated --

18 MR. ALBERTI: -- and hand them over to MPD?

19 MR. BAILEY: No one -- I deal with
20 intoxicated patrons all the time who become very
21 aggressive because they have alcohol in them. Like I
22 said, when I -- once I detained the gentleman who

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1 punched the security personnel and he calmed down, you
2 know, and was willing to cooperate, I felt no need --
3 my security personnel was, like, he did -- I want to
4 press charges against him. I'm, like, "Listen, these
5 gentlemen" --

6 MR. ALBERTI: So I'm still confused why your
7 other -- why your -- how many security personnel were
8 there?

9 MR. BAILEY: Approximately I want to say
10 probably about 70 to 80 security personnel.

11 MR. ALBERTI: Seven to eight?

12 MR. BAILEY: Seventy to eighty.

13 MR. ALBERTI: No. How many were there in the
14 detox room?

15 MR. BAILEY: Oh, in the detox area probably
16 about 10-12.

17 MR. ALBERTI: And you had the one guy under
18 control?

19 MR. BAILEY: Right. Me and another security
20 personnel.

21 MR. ALBERTI: So I'm still unclear what the
22 need for the handcuffs was, why the other security

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1 people couldn't get the other guy under control.

2 MR. BAILEY: Because he was the one being the
3 most aggressive. He was the one still trying to charge
4 after people. He elbow and trying to fight the
5 security themselves. And so they ended up -- you know,
6 like I said, he was a -- the gentleman who handcuffed
7 him was a licensed SPO who's certified in the handcuff
8 -- to handcuff them. So --

9 MR. ALBERTI: Okay. So the gentleman who
10 handcuffed him, was he working as -- was he under
11 contract as an SPO?

12 MR. BAILEY: No, he was not.

13 MR. ALBERTI: Was he working for his company
14 that night?

15 MR. BAILEY: No, he was not.

16 MR. ALBERTI: Okay. Who is -- who was
17 security that night? Who was providing security that
18 night?

19 MR. BAILEY: It's in-house security.

20 MR. ALBERTI: Okay. I have no further
21 question.

22 CHAIRPERSON MILLER: Okay. Board questions?

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1 No. Okay. Redirect based on the Board's questions.

2 MR. SMOTHERS: Mr. Bailey?

3 MR. BAILEY: Yes.

4 MR. SMOTHERS: What qualifies you to be in
5 security at Love Nightclub?

6 MR. BAILEY: My -- I currently -- since 2005
7 I've done licensed security. I currently now am a
8 corporate officer in my own security company. And I've
9 had the experience here as an investigator with ABRA,
10 five years.

11 MR. SMOTHERS: All right. In your
12 recollection of events that night, did you, as well as
13 the security staff, act in accordance with the security
14 plan?

15 MR. BAILEY: Yes, sir.

16 MR. SMOTHERS: In regards to the handcuffing
17 incident, when the fight broke out, why wouldn't you
18 put the fight outside as opposed to keeping it inside?

19 MR. BAILEY: Because as stated before and
20 while we were here last November, it was because of
21 letting people go outside and then fight again outside.
22 So as we stated in our security plan, we would bring

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1 them down, you know, try to deal with the situation
2 there before letting them out. And what we do
3 normally, if there is an altercation, we let one party
4 go out first.

5 The security will follow them to the car and
6 make sure they leave the area and then have the second
7 party leave out, walk them to their car and make sure
8 that they leave the area.

9 MR. SMOTHERS: How many Love personnel got
10 struck by this gentleman that was cuffed?

11 MR. BAILEY: At least one was visibly struck
12 on video.

13 MR. SMOTHERS: So in your opinion, do you
14 believe it'd be better to restrain him as opposed to
15 continue taking blows?

16 MR. BAILEY: Right. They tried to physically
17 restrain him and he kept, you know, throwing elbow.
18 That's how -- that's how he initially struck security.
19 Because they were -- they were restraining him and he
20 elbowed the security trying to restrain him.

21 MR. SMOTHERS: I understand. And there seems
22 to be some disagreements in regards to this report.

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1 How many gentlemen were handcuffed, do you know?

2 MR. BAILEY: There's only -- there's only one
3 gentleman that was handcuffed and he was handcuffed
4 after he elbowed security and then handcuffed to the
5 railing, which was -- I admitted to MPD and -- because
6 then MPD came to watch the video with me.

7 CHAIRPERSON MILLER: But -- I'm sorry. Your
8 voice drops a little bit.

9 MR. BAILEY: I'm sorry.

10 CHAIRPERSON MILLER: And I think this is an
11 important point.

12 MR. BAILEY: I'm sorry.

13 CHAIRPERSON MILLER: The one person that was
14 handcuffed was handcuffed --

15 MR. BAILEY: Was actually the complainant.

16 CHAIRPERSON MILLER: When the --

17 MR. BAILEY: Was the complainant. He was
18 handcuffed after elbowing security, after they tried to
19 physically restrain him. He was -- he was then
20 handcuffed to the rail and that was it.

21 CHAIRPERSON MILLER: I'm sorry, I just want
22 to make sure that I understand this answer though.

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1 What -- he was handcuffed in the customer care area?

2 MR. BAILEY: Yeah, handcuffs were only used
3 on him once he -- after he struck the security
4 personnel inside of the customer care area.

5 CHAIRPERSON MILLER: Thank you. Okay. Thank
6 you.

7 MR. SMOTHERS: And what's Love's policy when
8 a -- when an altercation occurs? What do you do with
9 the two parties?

10 MR. BAILEY: An altercation occurs, we take
11 them -- you know, we try to -- I said we attempt to
12 identify the parties involved.

13 MR. SMOTHERS: Right.

14 MR. BAILEY: We then attempt to separate the
15 parties as, you know, as best -- as best as we can.
16 Then, you know -- oh, of course if a different
17 situation arises, we got to deal with the situation
18 different, according to where we can put people at
19 where they can't, you know, continue. We then identify
20 what's going on by either talking to the security that,
21 you know, saw what was going on or actually talking to
22 the patrons involved.

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1 We then -- we would take a report down, try
2 to -- if they provide us with their information, we
3 will write their information down. If not, we just
4 document in our own report as to what happened and let
5 them know they refused to give their -- you know, their
6 information. At that time, depending on the situation,
7 either call MPD, either call the ambulance, take those
8 measures. If not, those people are, you know, escorted
9 out of the establishment separately.

10 MR. SMOTHERS: What do you do with patrons
11 that are injured at Love Nightclub?

12 MR. BAILEY: We immediately, you know, call
13 for them our medical attention and then, you know, ask
14 them would they like an ambulance called. If the
15 extent is as far as feel like an ambulance needs to be
16 called, of course, we're going to call them ourselves.
17 But --

18 MR. SMOTHERS: And is it -- is it Love
19 protocol to allow the people just to leave injured?

20 MR. BAILEY: No. We don't -- we don't allow
21 -- we don't -- well, we don't allow them to leave but
22 we can't hold them if they don't want our attention.

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1 MR. SMOTHERS: Okay. With regards to the
2 handcuffing issue, when you first made contact with the
3 two gentlemen having words, when you first walked up on
4 the scene -- or security first walked up on the scene,
5 was it physical again?

6 MR. BAILEY: No. They were -- it was just
7 very aggressively verbal.

8 MR. SMOTHERS: Okay. At what point did it
9 get physical?

10 MR. BAILEY: It got physical once they --
11 once they got down to the customer care area.

12 MR. SMOTHERS: I understand. Do you believe
13 you acted in the best interest of patrons and public
14 safety --

15 MR. BAILEY: Yes, sir.

16 MR. SMOTHERS: -- by restraining that young
17 man?

18 MR. BAILEY: Yes, sir.

19 MR. SMOTHERS: Do you believe he was harm --
20 he was in a physical state to harm Love security or
21 himself?

22 MR. BAILEY: Love security, himself, as well

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1 as the other patrons involved.

2 MR. SMOTHERS: Okay. Do you believe that
3 there's any incorrect statements in this?

4 MR. STERN: Objection.

5 CHAIRPERSON MILLER: What's your objection?
6 He -- well, let him ask the question. Then we'll hear
7 the objection. What's the question?

8 MR. SMOTHERS: If the report that's wrote up,
9 dated February the 19th --

10 CHAIRPERSON MILLER: You're asking him if
11 there's any incorrect statements in the investigative
12 report that's government's Exhibit No. 1. And your
13 objection, Mr. Stern?

14 MR. STERN: He's asking a witness who already
15 admitted that he wasn't there or saw any of this,
16 whether his hearsay contradicts other hearsay. Here
17 he's already testified to what his contradictions are.
18 And to do that is asking a witness to testify on the
19 veracity of another witness, which isn't permitted.

20 MR. SMOTHERS: That's incorrect. I'm asking
21 in regards to the handcuffing issue.

22 CHAIRPERSON MILLER: Just the handcuffing

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1 issue?

2 MR. SMOTHERS: Yes.

3 CHAIRPERSON MILLER: Is there a statement in
4 the investigative report in particular that you want to
5 point to?

6 MR. SMOTHERS: That two gentlemen were
7 handcuffed.

8 MR. BAILEY: Right.

9 CHAIRPERSON MILLER: Did he --

10 MR. SMOTHERS: Is that correct?

11 CHAIRPERSON MILLER: He's already -- I think
12 he has already testified. Did you already testify that
13 there was only one handcuffed --

14 MR. BAILEY: There was only one person
15 handcuffed on the floor.

16 CHAIRPERSON MILLER: Okay. Because it's
17 getting late. So I don't -- I don't think we should do
18 anything more that's redundant, you know, that has
19 already been asked and answered.

20 MR. SMOTHERS: Okay. That's all I have right
21 now.

22 CHAIRPERSON MILLER: Okay.

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1 MR. STERN: I have just one very --

2 CHAIRPERSON MILLER: Oh, okay.

3 MR. STERN: -- brief -- one or two very brief
4 questions. And this is to really help me understand a
5 little bit better. We heard about a second floor. We
6 heard about a first floor and then we heard down to
7 detox. Is detox on the first floor?

8 MR. BAILEY: No. Detox is right off the
9 first floor. There's -- oh, there's about eight steps.
10 You go down about eight steps down from the first
11 floor.

12 MR. STERN: Okay. So when you come in the
13 front door, you --

14 MR. BAILEY: And it's on the first floor as
15 well. It's a -- it's a loading dock area basically.
16 So it's -- one level of it is on the first floor but
17 the -- you know, like, a loading dock. It's got a
18 bottom level to it as well.

19 MR. STERN: Okay. And so if you came in the
20 front door, you'd have to go down to the detox level?

21 MR. BAILEY: If you came in the --

22 MR. STERN: Yes, in the front door? Okay.

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1 MR. BAILEY: Right.

2 MR. STERN: Can you tell me, if you told the
3 police outside that the perpetrators were downstairs,
4 why did the police go upstairs to investigate?

5 MR. BAILEY: Well, as I said -- that's why
6 I'm saying there was two incidents that had occurred.
7 They went upstairs because the young lady stated that
8 security had assaulted her. So we went -- I said,
9 "Which incident do you want to deal with first?" They
10 said, "Let's deal with the security incident." I said,
11 "Well, come on."

12 I took them upstairs, the young lady as well
13 as MPD. I walked them through to the area which the
14 young lady said it had occurred, you know, to identify
15 parties involved. So we identified the parties
16 involved. MPD walked the young ladies out. I asked
17 the gentlemen -- the security personnel to step out to
18 deal with MPD at that time.

19 MR. STERN: So to your recollection, both the
20 young woman who was the less aggressor, bleeding, and
21 these other group of young ladies who had the knot to
22 their heads were -- came out at the same time?

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1 MR. BAILEY: It was one young lady with a
2 knot on her head. But, yes, they came -- they came out
3 verbally around the -- this all happened all, like --
4 the one, Ms. Wyche, I believe, came out first. And
5 then immediately following was the other set of young
6 ladies.

7 MR. STERN: If these both happened relatively
8 at the same time, why didn't the security personnel
9 take the aggressors in the second incident downstairs
10 as well?

11 MR. BAILEY: They did. All aggressors that
12 were put -- this happened at the front of the stage.
13 Those aggressors, those few aggressors that were
14 involved in there and that were brought down to detox
15 there -- but of course the young --

16 MR. STERN: If all the aggressors were
17 brought downstairs, why did the police -- why -- and
18 you told them that, why would they have gone upstairs?

19 MR. BAILEY: Because the young lady stated
20 that a security personnel member up there had assaulted
21 her. So I followed -- took MPD upstairs for the young
22 lady to identify who assaulted her. So instead of

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1 going to -- because we would have went to detox if she
2 said it was a patron involved. She said it was
3 security involved. So I took her up to where the
4 security was, you know, asked MPD what they wanted to
5 do. That's what they wanted to do. That's what I did.

6 MR. STERN: Did you then take MPD downstairs
7 to the customer care center?

8 MR. BAILEY: Well, we went back outside to
9 the young lady after they dealt with -- they were
10 dealing with the security personnel member as to what
11 happened with that incident, then went back to the
12 front where the young lady was supposed to have been,
13 Ms. Wyche, but she had left. Then --

14 MR. STERN: So in all this time, even though
15 you had told MPD that the aggressors were downstairs,
16 no one bothered to go downstairs to speak to them?

17 MR. BAILEY: No.

18 MR. STERN: Okay.

19 CHAIRPERSON MILLER: Okay. I just want to
20 ask you one clarification based on your testimony right
21 then. Was it your testimony that no security personnel
22 attacked any of the women upstairs, that it was a

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1 patron who she mistook for a security personnel?

2 MR. STERN: That is it.

3 CHAIRPERSON MILLER: Is that your testimony?

4 MR. STERN: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MR. STERN: Went to court and everything.

7 CHAIRPERSON MILLER: All right. I thought
8 you said that before. So I just wanted to make sure
9 that that was your testimony. Okay. I think you can
10 be excused now. Thank you very much. Is there closing
11 that you all want to do?

12 MR. STERN: Yes.

13 CHAIRPERSON MILLER: Okay.

14 MR. STERN: The District believes that we
15 have proven violations that we have charged. The
16 evidence here is diverse and it is a question, not
17 simply of recollection, but really a question of
18 credibility. On one hand, we have an investigator who
19 took notes by the minute of what he saw on a video. On
20 the other, we have a paid employee, the chief of
21 security, who has a stake in the outcome. And they
22 testify to two completely different events.

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1 Further, there is really no counter-testimony
2 to what Ms. Wyche, the first victim, said occurred. So
3 of the two incidences, there's really no counter-
4 testimony to the other. The -- Ms. Wyche said what
5 occurred on that night is she was attacked. She saw a
6 security guard. How do we know that she didn't mistake
7 him for somebody else? She went up and spoke to him
8 afterwards.

9 The security guard, by respondent's own
10 testimony, told her to stay there. We know it was a
11 security guard. It was the person who told her to stay
12 there. Ms. Wyche, after she spoke to the security
13 guard, got attacked a second time. And the security
14 guard did nothing to break it up. That is the
15 quintessential allowing your establishment to be used
16 for a disorderly purpose or unlawful purpose on this
17 case, assault being an unlawful purpose.

18 What is doubly concerning is that not only
19 did that happen, but again, in contravention to their
20 own policies, no assistance whatsoever was provided to
21 the victim. She wasn't taken anywhere, even though she
22 was bleeding. She wasn't even followed. The police

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1 were not called until she was outside already. And it
2 wasn't until Mr. Shakoor notified the police, even
3 though apparently, the head of security was standing
4 right there, that the police came in.

5 Then we have the incident -- there is still
6 the incident though -- I don't think this is quite
7 frankly a separate violation -- just disturbing about -
8 - and relevant to how they ran their business and
9 whether they allowed an unlawful or disorderly purpose
10 is the second incidence with the girls -- the women,
11 excuse me.

12 The women were involved in an altercation.
13 There was an attack there. They said it was a security
14 guard. That's what they told the police and what they
15 told Mr. Shakoor. What occurred later, whether or not
16 the case went forward or not, is completely irrelevant.
17 And anybody saying that it wasn't a security guard
18 involved -- merely secondhand hearsay, even further
19 removed than the interview with the -- with the women
20 themselves.

21 And how do we know -- what is the verifying
22 factor of the hearsay that Mr. Shakoor presented?

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1 Well, it's the girl bleeding and the girl with the knot
2 in her head, both of them clearly victims at the time,
3 one of them quite upset and excited. Then there's the
4 incident with the handcuffs. The security plan clearly
5 states that you cannot restrain people by using force.
6 You can't keep people by using force unless they are an
7 imminent threat or they're committing a felony.

8 An imminent threat, as we've heard the
9 respondent agree, is an immediate threat. When they
10 took these gentlemen off the -- off the floor, one of
11 them in handcuffs, restrained, they were not an
12 imminent threat. By nobody's stretch of the
13 imagination were they imminent threat. There was
14 yelling going on. That's all. In fact, the testimony
15 from the respondent was no one threw a punch until
16 after they had been restrained.

17 It is the very actions of the security
18 personnel in restraining them that led to this
19 instance, that led to physicality. That was a
20 violation of the security plan. Not giving comfort to
21 the -- not giving -- not preventing the second attack
22 on the -- on the -- on Ms. Wyche was a violation of the

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1 security plan.

2 In sum, all three of these incidents the
3 government has proven that they allowed the
4 establishment to be used for an unlawful purpose, that
5 they violated their security plan in not breaking up
6 and giving assistance to the young lady, and that they
7 violated the security plan in handcuffing the gentlemen
8 when they brought -- not even getting into the
9 gentleman who was handcuffed to the railing. They
10 handcuffed the gentleman when they brought him in off
11 the floor, when there was no imminent threat.

12 For those reasons, we ask that the Board find
13 the respondents responsible for all three violations
14 and we would ask that a penalty be imposed commensurate
15 with the gravity of the situation. We would note that
16 there is one prior primary style violation that the
17 respondent was convicted of within the last two years.
18 So the range in the penalty would be \$2000-\$4000 and
19 whatever suspension the Board thinks fit.

20 CHAIRPERSON MILLER: Thank you very much.
21 Mr. Smothers, do you have a closing?

22 MR. SMOTHERS: Yes. I just want to say --

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1 CHAIRPERSON MILLER: Okay.

2 MR. SMOTHERS: -- you know, in response that
3 this report does look kind of ugly as far as violations
4 are concerned. But in response to them, it was a
5 pretty good night for us as far as the amount of people
6 we had. We had ample security. As a matter of fact,
7 we were considering sending about 20 of them home
8 because we had too many security.

9 Sometimes things happen and to try to narrow
10 things down to a time line. And, "What were you doing
11 at 10:01 and 10:02," sometimes gets to be a little
12 confusing when you have three or four incidents going
13 on at the same time. In a club of this size, which is
14 one of the largest on the East Coast, it's not unusual
15 to have a, you know, pushing, shoving, shouting match
16 going on two or three floors at the same time, which in
17 this case occurred.

18 Police were on the scene. They were in
19 contact with our management. We knew they were there.
20 And we, as usual, was operating within our security
21 plan. The first incident, the young lady that walked
22 out of the door, was instructed to wait right here with

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1 the security staff. He stayed with her to ensure that
2 she wasn't assaulted again while they went to get the
3 alleged perpetrators.

4 They grabbed the guys that they -- that they
5 felt were the perpetrators and took them down. Now,
6 she was instructed to, "Let's go down. We need to
7 identify these guys." Because as Mr. Bailey said, it
8 gets kind of -- a little -- a little difficult to do
9 things in the middle of the club. You have lights and
10 music. So you try to take people away from the music
11 and, you know, get some kind of sound -- I mean, it's a
12 little less quiet -- I mean, less noisy.

13 She chose to do otherwise and security chose
14 not to try to restrain her and make her stay up on the
15 second floor. She came out of the -- out of the
16 building, went out through the in door, when she ran
17 into Investigator Shakoor, the investigator who was
18 there on a noise violation. At the same time, they get
19 a call coming over the air about another incident. So
20 let the franticness begin.

21 So he's -- you've got the police coming up.
22 You've got calls going over the air. You've got people

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1 responding here, there and everywhere. At the same
2 time, you've got people dealing with the first
3 incident, not knowing if it's the first incident or the
4 second one. They're taking -- you've got a response
5 team taking the first group of people down to be
6 identified by the young lady who just went out the
7 front door against our instructions.

8 The second incident -- and you just heard the
9 investigator say two or three things about the security
10 staff. "Yeah, I can identify them. No, I can't
11 identify them." Well, the fact of the matter is, it's
12 right there on the videotape. You looked at the
13 videotape. You did not see a Love personnel strike
14 this young lady or anybody in her immediate vicinity.
15 But now, because you can't identify it, you -- because
16 you can't identify Love personnel, it's, "Let's think
17 up some other stuff."

18 The fact of the matter is, no one from Love -
19 - and they -- our head of security, Mr. Bailey, brought
20 the police up to the second floor, not knowing the
21 first or second. They -- the young lady was gone from
22 the first incident so they responded to the second

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1 incident, which they couldn't point out the security
2 which by the way are stationed. They can't leave. If
3 they leave, they're fired.

4 So the security that was there is the same
5 security that was there. No, that's not the guy.
6 They're dressed in black. And on that night I'm pretty
7 sure there was more than one person dressed in black
8 that wasn't on our staff. She could not identify the
9 security staff that's allegedly struck her. And she
10 was welcome -- we came down. We got her information to
11 take a report. And in that case, they went further. I
12 think it was -- it went to court or something. And she
13 just basically said, no, nobody hit her from Love
14 Nightclub. So that was settled.

15 As far as the handcuffing incidence, it is in
16 our right and it is in our security plan to restrain
17 personnel but in the -- that are in the mind state of
18 hurting themselves or others, which this guy obviously
19 did. He'd struck two people and that was before he was
20 handcuffed. He wasn't handcuffed and then restrained.
21 He hit people and then he was restrained. Police knew
22 that he was restrained. And our pros are saying, no,

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1 there were no arrests of anybody from Love Nightclub on
2 that crazy night. We did act within our security plan.
3 We did act in the best interest of the patrons and
4 everybody around and employees as well.

5 We didn't allow the fight that started in the
6 detox to spill outside because we'd rather have it in a
7 controlled area as opposed to having it outside. It
8 gets a little crazy outside. So we maintained it and
9 contained it within the detox area. Once the gentlemen
10 calmed down, we let them go and that was the end of the
11 night. And that's all I have to say about that.

12 CHAIRPERSON MILLER: Thank you. Okay. And
13 at this point I'm going to close the record. What's in
14 the record is all your testimony today and the
15 investigative report with the exhibits and the later
16 security plan that's in effect now and that was in
17 effect at the time of the incidents at issue. Okay.

18 Parties have the opportunity to file Proposed
19 Findings of Fact and Conclusions of Law or you can
20 waive your right to do so. It's not that common to do
21 this but it -- I'm offer -- you have that right under
22 the law. So, Mr. Stern, what?

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1 MR. STERN: The government will waive.

2 CHAIRPERSON MILLER: The government's
3 waiving.

4 MR. SMOTHERS: We waive.

5 CHAIRPERSON MILLER: Okay. Fine. And all
6 that's left is I'm going to read the instructions,
7 which go to the fact that we are going to deliberate
8 this case, take it under advisement, and we'll be
9 deliberating it at a later time. And then we will
10 issue an order within 60 -- within 90 days. So

11 MR. STERN: Thank you.

12 CHAIRPERSON MILLER: Thank you. Okay. As
13 Chairperson of the Alcoholic Beverage Control Board for
14 the District of Columbia and in accordance with Section
15 405 of the Open Meetings Amendment Act of 2010, I move
16 that the ABC Board hold a closed meeting for the
17 purpose of seeking legal advice from our counsel on
18 Case No. 12-CMP-00112 [sic], per Section 405(b)(4) of
19 the Open Meetings Amendment Act of 2010 and
20 deliberating upon this case for the reasons cited in
21 Section 405(b)(13) of the Open Meetings Amendment Act
22 of 2010.

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1 Is there a second?

2 MR. BROOKS: Second.

3 CHAIRPERSON MILLER: Mr. Brooks seconded.

4 Okay. Mr. Brooks seconded the motion. I'll now take a
5 roll call vote on the motion. Mr. Brooks?

6 MR. BROOKS: I agree.

7 CHAIRPERSON MILLER: Mr. Alberti?

8 MR. ALBERTI: I agree.

9 CHAIRPERSON MILLER: Ms. Miller agrees. Mr.
10 Silverstein?

11 MR. SILVERSTEIN: I agree.

12 CHAIRPERSON MILLER: Okay. As it appears the
13 motion has passed by a 4-0-0 vote of the members that
14 heard this case, I will give notice that the ABC Board
15 will hold a closed meeting in the ABC Board conference
16 room today pursuant to the Open Meetings Amendment Act
17 of 2010 and issue an order within 90 days.

18 So that concludes this case and the morning's
19 calendar. And now, I would suggest that the Board
20 recess and take a lunch break.

21 Okay. So the Board needs to take a lunch
22 break and reenergize for the afternoon cases. So, I'm

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1 sorry, we're running a little bit late because of the -
2 - of the previous case. So we have two cases scheduled
3 for this afternoon. And we'll -- we have a fact
4 finding hearing, Edward's Bar & Grill scheduled for
5 1:30 p.m. That'll now be 2:30 p.m. And we have a
6 protest hearing, Three Way Liquors, scheduled for 2:00
7 and that'll be 3:00.

8 Okay. So anyone who's here on those cases
9 are free to go and come back at the times that I have
10 just stated. Okay. We'll see you all later. Thank
11 you.

12 (WHEREUPON, at 1:43 p.m., the hearing was
13 concluded.)

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CERTIFICATE OF REPORTER

I, ERICK MCNAIR, the officer before whom the foregoing hearing was taken, do hereby certify that the testimony appearing in the foregoing pages was recorded by me and thereafter reduced to typewriting under my direction; that said transcription is a true record of the testimony given by said parties; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

ERICK MCNAIR
Court Reporter

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1 CERTIFICATE OF TRANSCRIPTION

2

3 I, MIRANDA PENNACHI, hereby certify that I am not
4 the Court Reporter who reported the following
5 proceeding and that I have typed the transcript of this
6 proceeding using the Court Reporter's notes and
7 recordings. The foregoing/attached transcript is a
8 true, correct and complete transcription of said
9 proceeding.

10

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Date _____

MIRANDA PENNACHI
Transcriptionist

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