

Capital Reporting Company
In the Matter of: Jefferson Grill, Inc. t/a Macombo Lounge 10-10-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
Jefferson Grill, Inc. :
t/a Macombo Lounge :
5335 Georgia Avenue, NW :
Retailer CN : Show Cause
License No. 771 : Hearing
ANC 4D :
Allowed the Establishment to be :
Used for an Unlawful or :
Disorderly Purpose; Failed to :
Comply with Security Plan :
-----x

October 10, 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.

PRESENT

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
CALVIN NOPHLIN, Member

MIKE SILVERSTEIN, Member

ALSO PRESENT

EARL JONES, ABRA
CHRISSY GEPHARDT, OAG

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

2 11:41 a.m.

3 CHAIRPERSON MILLER: -- for 12-251-00046,
4 Macombo Lounge, located at 5335 Georgia Avenue, N.W.,
5 License No. 771, in ANC 4D.

6 MS. GEPHARDT: All right. Good morning. My
7 name's Chrissy Gephardt for the District of Columbia.

8 MR. CLAYTON: Good morning. My name is
9 Robert Clayton. I'm general counsel for the Spike
10 Club, LLC (ph), owners of Macombo Lounge. And with me
11 is Michael Woodfolk, managing member of Spike Club, LLC
12 and owner of Macombo Lounge.

13 CHAIRPERSON MILLER: Okay. When you have a
14 chance to sign in -- papers in. Yes. And this is a
15 show cause hearing. Do we have any preliminary
16 matters?

17 MS. GEPHARDT: No, we do not have any
18 preliminary matters.

19 MR. CLAYTON: Yes. I'm sorry. I have -- I
20 would like to present the Board with two affidavits.
21 I've already sent those to counsel. They are
22 affidavits of Mr. Donnell Watson (ph) and a Mr. David

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1 Dykes (ph). Mr. Watson is the security guard of the
2 Macombo Lounge who was -- well, he was arrested and is
3 the person who was asserted to have assaulted Mr.
4 Miranda, the complainant. And Mr. Dale Dykes -- Mr.
5 Dale Dykes is the owner of Touch AV. Touch AV is the
6 company that installed the security system at Macombo
7 Lounge -- when I say, "Security system," the security
8 cameras.

9 CHAIRPERSON MILLER: You have given copies to
10 Ms. Gephardt?

11 MS. GEPHARDT: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MS. GEPHARDT: I have received those.

14 CHAIRPERSON MILLER: Any objection?

15 MS. GEPHARDT: No, there's no objection.

16 CHAIRPERSON MILLER: Okay. So let me ask
17 each of you how many witnesses you'll be presenting.

18 MS. GEPHARDT: The government will be calling
19 two witnesses.

20 CHAIRPERSON MILLER: Okay.

21 MR. CLAYTON: I will cross-examine the
22 government's witnesses. And to short-circuit the

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1 proceedings, I will also, as part of my cross-
2 examination, will include my direct examination. So I
3 won't have to call them again unless there's any
4 rebuttal or redirect. I had intended to also call the
5 complainant, Mr. Miranda, and his friend or the other
6 person who was present that evening and Mr. Ramirez.

7 I had asked -- I requested subpoenas be
8 issued for those individuals. Apparently they are not
9 present or a subpoena had been served on them.

10 CHAIRPERSON MILLER: Okay. That's on who,
11 Mr. Ramirez?

12 MR. CLAYTON: Mr. Ramirez is the person who
13 actually, I believe, contacted the police department.
14 Mr. Miranda --

15 CHAIRPERSON MILLER: You requested a subpoena
16 for him?

17 MR. CLAYTON: Yes.

18 CHAIRPERSON MILLER: And you don't -- and he
19 -- and he isn't here?

20 MR. CLAYTON: That's correct.

21 CHAIRPERSON MILLER: Do you know if it was
22 served?

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1 MR. CLAYTON: I don't know.

2 CHAIRPERSON MILLER: Okay.

3 MR. CLAYTON: The -- my understanding is that
4 his address was not known. I understand from the
5 police report that an address was on there but it was
6 redacted. Likewise, a Mr. -- the investigating officer
7 from the ABRA did speak with Mr. Miranda by telephone.
8 But I don't know if that means he had his address.

9 CHAIRPERSON MILLER: This is Mr. Ramirez and
10 a Mr. Miranda, right?

11 MR. CLAYTON: That's correct.

12 CHAIRPERSON MILLER: So the -- and the story
13 with Mr. Miranda is the same thing? You requested a
14 Subpoena and you don't know if it was served?

15 MR. CLAYTON: Yes, Your Honor.

16 CHAIRPERSON MILLER: Okay.

17 MR. CLAYTON: Obviously -- I'm sorry.

18 CHAIRPERSON MILLER: That's okay.

19 MR. CLAYTON: Yes, Madam Chairperson.

20 CHAIRPERSON MILLER: All right. I -- do you
21 want to invoke the rule on witnesses?

22 MR. CLAYTON: I beg your pardon?

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1 CHAIRPERSON MILLER: Rule on witnesses -- do
2 you want the government's witness to be out of the room
3 while the other witness is testifying or do you not
4 care?

5 MR. CLAYTON: No, that's not necessary.

6 CHAIRPERSON MILLER: Okay. All right. Then
7 opening statements? Okay.

8 MS. GEPHARDT: Yes, thank you. Good
9 afternoon. Good morning, members of the Board. In this
10 case you will hear that the establishment, Macombo
11 Lounge, failed to follow their security plan on the
12 evening of January the 28th, 2012. You will hear that
13 on this evening -- it was a Saturday night -- a young
14 man and his friend attempted to enter the lounge. And
15 they were told by the security guard at the front door
16 that they could not enter.

17 Surprised that they were not allowed to come
18 in, the two men approached the guard again and asked
19 him why they were being denied entry. It was at that
20 time that the guard kicked one of the men in the
21 stomach. The men retreated from the entrance as a
22 result of the kick and stood at the corner of Georgia

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1 Avenue, near the lounge, and called 911 to report the
2 assault.

3 You will hear that the security guard did not
4 call the police, did not detain the patron, and no one
5 from inside the establishment called the police.
6 Instead, when the police arrived, the officer found the
7 two men still on the scene. They stayed to report the
8 assault to the officers. They did not run away and
9 they did not flee.

10 You will also hear that the security guard
11 not only failed to detain -- what he will say -- or
12 what his affidavit will say -- was supposedly an
13 aggressive patron. But he even retreated into the
14 establishment. And when police officers arrived, they
15 had to summon him outside in order to interview him.
16 The evidence will also show that even though there is a
17 security camera located directly over the front
18 entrance -- actually there's two cameras over the front
19 entrance -- the security footage from the evening was
20 not able to be accessed.

21 On the night of the incident, the owner, Mr.
22 Woodfolk, told the ABRA investigator that he would get

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1 the footage for the investigator. But here we are,
2 nine months later, and no footage has been produced to
3 date. You will hear that when the police asked the
4 security guard for his version of the story, he said
5 that on a Saturday night there were no other witnesses
6 to the incident, outside or near the door, who saw what
7 happened.

8 So at the end of all of this testimony and
9 all of the evidence, I will come back and ask you to
10 make the only reasonable, logical conclusion here, and
11 that is that the security guard, who was employed by
12 Macombo Lounge on that evening to provide security
13 services, inappropriately failed to follow the security
14 plan and inappropriately kicked a patron in the
15 stomach, not in self-defense, and thus, the
16 establishment violated their security plan. Thank you.

17 CHAIRPERSON MILLER: Thank you.

18 MR. CLAYTON: Before I give my opening
19 statement, Madam Chairperson, there was one witness --
20 one other witness I did intend to call. That is Mr.
21 Woodfolk for the Macombo Lounge.

22 CHAIRPERSON MILLER: Oh, you will be calling

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1 him?

2 MR. CLAYTON: That's correct.

3 CHAIRPERSON MILLER: Okay.

4 MR. CLAYTON: Good morning, members of the
5 Board. This morning you will hear testimony similar to
6 what counsel for the city has indicated -- or the
7 government has indicated. However, there'd be some
8 changes -- or wrinkles to that. First you will hear
9 that the security guard, by way of his affidavit and by
10 way of confirmation at some point by Mr. Woodfolk, did
11 not kick Mr. Miranda.

12 You will also hear from the police officer
13 that the only reason why he arrested Mr. -- excuse me -
14 - Mr. Watson was because of the testimony of Mr.
15 Miranda, the complainant, and his friend, Mr. Ramirez.
16 You'll also hear that Mr. Miranda did not show any
17 visible signs of injury and that he refused medical
18 treatment at the scene. You'll also hear that Mr.
19 Watson, after being arrested, was not prosecuted for
20 any charge by the US attorney.

21 You will also hear subsequently that Mr.
22 Miranda, although having allegedly told the

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1 investigator during his interview that the felt
2 mistreated and that he felt disrespected and that was
3 the reason why he called the police in addition to
4 having been kicked allegedly, that he has been recently
5 spotted in the club participating in the activities in
6 the club.

7 These things you would not believe or
8 understand to be the case if someone felt mistreated,
9 disrespected because of their ethnicity and also having
10 been kicked by a security guard. You will also hear of
11 course that the security guard in question was
12 identified as a security person for the club, wearing
13 the proper attire at the time. Thank you.

14 CHAIRPERSON MILLER: Could I just as a follow
15 up on the affidavit? Why isn't Mr. Watson here?

16 MR. CLAYTON: Mr. Watson has a day job, Madam
17 Chairperson. He's unable to get off work as a result.
18 So we provided the next best thing, the sworn
19 affidavit.

20 CHAIRPERSON MILLER: Okay. Thank you. All
21 right. Ms. Gephardt?

22 MS. GEPHARDT: I'm sorry, what did you say?

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1 CHAIRPERSON MILLER: I just said your name.

2 Are you -- are you ready to proceed?

3 MS. GEPHARDT: Oh, oh, I'm sorry. I thought
4 you made some other statement.

5 CHAIRPERSON MILLER: No.

6 MS. GEPHARDT: The government is ready to
7 call its first witness, Officer Paul Hrebenak.

8 CHAIRPERSON MILLER: Good morning.

9 MR. HREBENAK: Good morning.

10 CHAIRPERSON MILLER: I'm just going to swear
11 you in.

12 MR. HREBENAK: Okay.

13 CHAIRPERSON MILLER: Do you swear to tell the
14 truth, the whole truth and nothing but the truth?

15 MR. HREBENAK: I do.

16 CHAIRPERSON MILLER: Thank you. Okay.

17 MS. GEPHARDT: Good morning, Officer.

18 MR. HREBENAK: Good morning.

19 MS. GEPHARDT: Can you please state your name
20 and spell it for the record?

21 MR. HREBENAK: Sure. It's Paul, P-A-U-L,
22 Hrebenak, H-R-E-B-E-N-A-K.

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1 MS. GEPHARDT: And Officer, where do you
2 work?

3 MR. HREBENAK: Metropolitan Police
4 Department's Fourth District.

5 MS. GEPHARDT: And what -- okay. Fourth
6 District. What -- are you in any specialized unit
7 within the Fourth District?

8 MR. HREBENAK: I'm in the Patrol Section.

9 MS. GEPHARDT: Okay. And how long have you
10 worked for the Metropolitan Police Department?

11 MR. HREBENAK: Five years.

12 MS. GEPHARDT: Okay.

13 MR. SILVERSTEIN: Officer, if you can speak
14 up and into the mike so that we can hear you as well?

15 MR. HREBENAK: Sure. I'm sorry. Five years.

16 MR. SILVERSTEIN: Thank you, sir.

17 MS. GEPHARDT: And were you on the -- were
18 you on duty the evening of January the 28th, 2012?

19 MR. HREBENAK: Yes, I was.

20 MS. GEPHARDT: Okay. And where were you
21 assigned that evening?

22 MR. HREBENAK: To PSA 403 in the Fourth

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1 District.

2 MS. GEPHARDT: Okay. And PSA 403 includes
3 what area approximately?

4 MR. HREBENAK: The 5000 to the 5900 block of
5 Georgia Avenue.

6 MS. GEPHARDT: Okay. And is that your
7 regular beat?

8 MR. HREBENAK: Yes.

9 MS. GEPHARDT: Okay. And during your shift,
10 did you get a call to respond to Macombo Lounge?

11 MR. HREBENAK: I did, yes.

12 MS. GEPHARDT: And can you tell us
13 approximately at what time you got that call?

14 MR. HREBENAK: It was in the early morning
15 hours. I'm not sure exactly what time that was.

16 MS. GEPHARDT: Okay. But was it sometime
17 after midnight?

18 MR. HREBENAK: Yes. It was after midnight.

19 MS. GEPHARDT: Okay. And what was the nature
20 of the call?

21 MR. HREBENAK: It was a call for what the
22 dispatcher classifies as an assault just occurred,

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1 which means somebody's been assaulted and the suspect
2 is possibly still on the scene.

3 MS. GEPHARDT: Okay.

4 CHAIRPERSON MILLER: I'm sorry, could you
5 repeat your last phrase? What --

6 MR. HREBENAK: Sure. The District classifies
7 it as an assault just occurred, which means there's a
8 possibility that the suspect is still on the scene.

9 CHAIRPERSON MILLER: Okay. Thank you.

10 MS. GEPHARDT: And how soon after you -- did
11 you -- how soon after you got the call did you arrive
12 at the lounge?

13 MR. HREBENAK: I'm not too familiar with how
14 many minutes exactly but it was under ten minutes.

15 MS. GEPHARDT: Under ten minutes.

16 MR. HREBENAK: Yes.

17 MS. GEPHARDT: Okay. And when you first
18 arrived on the scene, were you -- were you the first
19 officer on the scene?

20 MR. HREBENAK: Yes, I was.

21 MS. GEPHARDT: And were you accompanied by
22 other officers?

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1 MR. HREBENAK: I was alone -- driving alone
2 that night but I received backup in the form of Officer
3 Hector, who responded as well.

4 MS. GEPHARDT: Okay. And when you first
5 arrived on the scene, what did you see when you first -
6 - when you first got there?

7 MR. HREBENAK: I got to the corner -- the
8 southeast corner of Georgia and Jefferson. And I was
9 met by two Hispanic males that I later identified as
10 the complaining witness and his friend, a witness to an
11 assault.

12 MS. GEPHARDT: Okay. And so did you -- did
13 you see the security guard in question when you arrived
14 or --

15 MR. HREBENAK: I did not see him when I
16 arrived. I later found him inside the club.

17 MS. GEPHARDT: Okay. And so did you speak to
18 the complainant and his friend?

19 MR. HREBENAK: I did, yes.

20 MS. GEPHARDT: And what did they tell you?

21 MR. HREBENAK: They explained to me that they
22 had tried to go inside the club -- to enter the club

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1 and they were stopped by the security guard I later
2 stopped and told that they couldn't enter. They asked
3 why not or tried to understand why. At that point the
4 security guard kicked the complaining witness in the
5 abdomen. They retreated back to the corner where I met
6 them and contacted the police department.

7 MS. GEPHARDT: Did the complainant, Mr.
8 Miranda, or Mr. Ramirez, did they indicate to you why
9 they -- what made them call the police other than the
10 kick?

11 MR. HREBENAK: Other than the kick and the
12 assault, that's -- they said that they felt like they
13 shouldn't have been assaulted and that they should be
14 able to go into the club.

15 MS. GEPHARDT: Okay. And did the
16 complainant, Mr. Miranda, or Mr. Ramirez -- did they
17 appear to be intoxicated?

18 MR. HREBENAK: They didn't appear intoxicated
19 to me. I'm not too sure if they had consumed any
20 alcohol that night or not.

21 MS. GEPHARDT: Okay. But there wasn't a
22 urinalysis or urine test done or anything like that?

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1 MR. HREBENAK: No. They were able to stand
2 up straight and able to competently explain to me so to
3 my estimation, they weren't too intoxicated.

4 MS. GEPHARDT: Okay. I'm sorry, you said
5 they weren't too intoxicated? Is that what you said?

6 MR. HREBENAK: Right.

7 MS. GEPHARDT: Okay.

8 MR. HREBENAK: I can't --

9 MS. GEPHARDT: I'm sorry, I just --

10 MR. HREBENAK: No problem.

11 MS. GEPHARDT: -- trying to -- okay. Do you
12 know if Mr. Miranda sustained any injuries from the
13 kick?

14 MR. HREBENAK: He didn't sustain any visible
15 injuries as far as he told me. He just said that he
16 was -- a complaint of what I would classify as
17 transient pain in his abdomen from the kick.

18 MS. GEPHARDT: Did an ambulance come to the
19 scene? Was an ambulance called?

20 MR. HREBENAK: I can't recall specifically if
21 I called for an ambulance. I do know that it's
22 standard procedure for ask for an ambulance to come any

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1 time there is an assault. And I would have noted that
2 in the reporter in the 251 if an ambulance was called.

3 MS. GEPHARDT: Okay. And do you recall if
4 Mr. Miranda received any treatment on the scene for his
5 injuries, if there were any?

6 MR. HREBENAK: He would've received treatment
7 if the ambulance came. He did not go to the hospital -
8 -

9 MS. GEPHARDT: Okay.

10 MR. HREBENAK: -- through DC.

11 MS. GEPHARDT: Okay. And did you ask Mr.
12 Miranda if there was anyone besides his friend who
13 witnessed the assault?

14 MR. HREBENAK: I did. I asked him if there
15 were any other witnesses that he knew of. And he
16 couldn't point anybody out to me other than his friend,
17 the witness.

18 MS. GEPHARDT: Okay. And did you interview -
19 - in addition to Mr. Miranda, did you interview his
20 friend, Byron Ramirez?

21 MR. HREBENAK: Yes.

22 MS. GEPHARDT: And what exactly did Mr.

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1 Ramirez tell you what happened?

2 MR. HREBENAK: He gave the same account of
3 the story, that they attempted to enter the club, were
4 denied access, tried to get an explanation as to why
5 they could enter and then Mr. Miranda was assaulted by
6 the security guard.

7 MS. GEPHARDT: Okay. And did you -- did you
8 interview the security guard?

9 MR. HREBENAK: I did, yes.

10 MS. GEPHARDT: Okay. And how did you go
11 about interviewing him? Did you have to go into the
12 club or --

13 MR. HREBENAK: Yeah. I had to enter the
14 club. Inside the club, once you enter, there's a
15 vestibule before you enter I guess what you would call
16 the main ground floor section or go upstairs. He was
17 directly in the vestibule. So I had to open up the
18 door, go in and ask him to step outside --

19 MS. GEPHARDT: Okay.

20 MR. HREBENAK: -- to interview him.

21 MS. GEPHARDT: And what did you talk to him
22 about or what did he tell you?

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1 MR. HREBENAK: He said that the individuals
2 had attempted to gain entry, they were too intoxicated,
3 and that they had attempted to assault him and that --

4 MR. SILVERSTEIN: Say again, please.

5 MR. HREBENAK: That they had attempted to
6 assault him and that the -- he had to rebuff their
7 assault basically and that they left and that there was
8 no -- I inquired as to whether there were witnesses and
9 he said, "No."

10 MS. GEPHARDT: Did he indicate -- when you
11 said that they attempted to assault him, did he
12 indicate how they attempted to assault him?

13 MR. HREBENAK: I can't recall exactly how
14 they attempted to assault him.

15 MS. GEPHARDT: Okay. Did Mr. Watson indicate
16 that he was -- used self-defense?

17 MR. HREBENAK: From what he was claiming,
18 that he had to use self-defense, yes.

19 MS. GEPHARDT: Okay. So you -- did you ask
20 the security guard if there were any witnesses to
21 corroborate his version of the incident?

22 MR. HREBENAK: I did.

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1 MS. GEPHARDT: And what was his response?

2 MR. HREBENAK: That there was no witnesses.

3 MS. GEPHARDT: Okay. And how many people are
4 typically -- would you say would be outside of Macombo
5 Lounge on any given Saturday night -- Saturday night?

6 MR. HREBENAK: Quite a few. There's people
7 outside having cigarettes or people entering or
8 exiting. I would say anywhere from five to ten people
9 at that time of night either entering or exiting or
10 have -- like I said, having a cigarette outside the
11 club at that time.

12 MS. GEPHARDT: And do you frequently drive by
13 Macombo Lounge when you're going on other calls since --

14 MR. HREBENAK: It's in a main intersection in
15 my patrol area. So I would say on a regular basis,
16 frequently through the night I drive past it.

17 MS. GEPHARDT: Okay. And do you know exactly
18 where Mr. Watson was when -- where he was within the
19 club when he was checking IDs?

20 MR. HREBENAK: From his account of the story
21 and the witness's and the complainant's account of the
22 story, he was standing directly in front of the door of

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1 Macombo Lounge on the corner of Georgia and Jefferson.

2 And that's where the complainants approached him.

3 MS. GEPHARDT: Okay. So he was not on the
4 very outside but between there -- between the two
5 doors; is that correct?

6 MR. HREBENAK: Correct. Yeah.

7 MS. GEPHARDT: Okay.

8 MR. HREBENAK: He was -- he was standing -- I
9 believe the door was open at the time leading to the
10 outside and he was standing in-between the door that
11 leads to the club and the door that leads outside. And
12 he may have been standing in the doorway.

13 MS. GEPHARDT: Okay. And given your
14 interviews with both the complainant and Mr. Watson,
15 what was your assessment of their stories?

16 MR. HREBENAK: I credited the complainant and
17 the witness's story based on the evidence that I had
18 because the complainant called the police and because
19 he had a witness. The complainant had a witness. Also
20 due to the fact that the defendant did not call the
21 police. Investigation that night he didn't provide me
22 with any sort of video to confirm the defendant's

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1 version of the stories.

2 And based on the fact that the defendant
3 wasn't detaining or didn't immediately make himself
4 known to the police and tell me immediately upon my
5 arrival or my contacting him that he had been assaulted
6 and needed police assistance.

7 MS. GEPHARDT: Okay. And is that what gave
8 you the probable cause to arrest Mr. Watson?

9 MR. HREBENAK: Yes.

10 MS. GEPHARDT: Okay. And when you arrested
11 Mr. Watson, what did you do? Where did you take him?

12 MR. HREBENAK: To the Fourth District for
13 processing.

14 MS. GEPHARDT: Okay. And do you know if Mr.
15 Watson was prosecuted for the crime?

16 MR. HREBENAK: My understanding is that the
17 US attorney declined to press charges.

18 MS. GEPHARDT: Okay. Court's indulgence.
19 Before the evening of January the 28th, the evening of
20 this incident, were you familiar with any of the actors
21 in this scenario, whether the complainant, the security
22 guard or the owner of Macombo Lounge?

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1 MR. HREBENAK: I was familiar with the --
2 with the -- at that point I was familiar with the owner
3 of the bar.

4 MS. GEPHARDT: Okay. And how did you -- how
5 had you gotten to know him?

6 MR. HREBENAK: There had been a burglary of
7 his establishment earlier in that year.

8 MS. GEPHARDT: Okay. But did you know Mr.
9 Ramirez prior to this?

10 MR. HREBENAK: I had -- at that point I had
11 not had any encounter with Mr. Ramirez.

12 MS. GEPHARDT: Or Mr. Miranda?

13 MR. HREBENAK: No, no. Mr. Miranda neither.

14 MS. GEPHARDT: Okay, okay. And how do you
15 know who called the police?

16 MR. HREBENAK: The dispatcher gave us a --
17 the callback came from the -- from the witness. I
18 can't believe -- I can't remember if it was the witness
19 or the complaining witness but it was one of those two
20 that were there. And we checked to see if there had
21 been any other calls that night in reference to the
22 assault and those were -- that was the only call.

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1 MS. GEPHARDT: So to your knowledge today,
2 you do not know if anyone -- do you know if anyone from
3 the establishment called the police?

4 MR. HREBENAK: To my knowledge, no, nobody
5 else --

6 MS. GEPHARDT: Okay.

7 MR. HREBENAK: -- contacted 911.

8 MS. GEPHARDT: Do you know if anyone from the
9 establishment attempted to detain Mr. Miranda?

10 MR. HREBENAK: No. Nobody attempted to
11 detain him.

12 MS. GEPHARDT: Okay. And did you attempt to
13 interview the owner of the establishment, Mr. Woodfolk?

14 MR. HREBENAK: I believe I would have
15 attempted to. I don't specifically remember attempting
16 to interview him that night. I usually as a -- as of
17 habit when I come to the ABC establishment, I usually
18 request to speak to the ABC manager. So I don't
19 specifically remember that.

20 MS. GEPHARDT: Court's indulgence. The
21 government is showing defense counsel what's been
22 marked as government Exhibit No. 1, which is the PD251

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1 that was written by Officer Hrebenak on this evening.

2 MR. HREBENAK: Thank you.

3 CHAIRPERSON MILLER: Thank you.

4 MS. GEPHARDT: And Officer, are you familiar
5 with this document?

6 MR. HREBENAK: Yes.

7 MS. GEPHARDT: And what exactly is this?

8 MR. HREBENAK: This is the incident-based
9 reporter, the PD 251 that I prepared then.

10 MS. GEPHARDT: And did you -- were you the
11 one -- were you the author of this report?

12 MR. HREBENAK: Yes.

13 MS. GEPHARDT: Okay. And in your narrative,
14 does it indicate whether you spoke to the owner, Mr.
15 Woodfolk?

16 MR. HREBENAK: Yes. If you give me one
17 second I can -- my apology. Yes. I do say in the
18 report, "The owner stated that he could not provide MPD
19 with the camera footage from the active security
20 cameras on scene."

21 MS. GEPHARDT: Okay. And so did you -- do
22 you know -- from having been in the Macombo or from

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1 that night, do you know if there are security cameras
2 above the front door?

3 MR. HREBENAK: Yes, there are.

4 MS. GEPHARDT: Do you know if there are
5 security cameras in the vestibule area?

6 MR. HREBENAK: I believe there are, yes.

7 MS. GEPHARDT: Okay. And so when you
8 interviewed Mr. Woodfolk, you specifically asked him
9 for the security footage from the front door cameras?

10 MR. HREBENAK: Yes.

11 MS. GEPHARDT: And what was his response?

12 MR. HREBENAK: That they -- that he was
13 unable to provide me with the footage that night.

14 MR. SILVERSTEIN: Please say it again.

15 MR. HREBENAK: That he was unable to provide
16 me with the footage that night, that it wasn't
17 functioning.

18 MS. GEPHARDT: So he told you that they were
19 not functioning?

20 MR. HREBENAK: Right.

21 MS. GEPHARDT: Okay. And when you were
22 there, did you -- did you go inside the lounge at all

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1 as part of your investigation?

2 MR. HREBENAK: Just into the vestibule area.

3 MS. GEPHARDT: Okay, okay. Board's
4 indulgence. Okay. Right. And so because you said you
5 didn't go into the lounge area -- into the actual --
6 through the vestibule door, you can't say how many
7 people were in the club at that time?

8 MR. HREBENAK: No, I'm not able to testify to
9 that. No.

10 MS. GEPHARDT: Okay. All right. Thank you.
11 That concludes my direct examination of Officer
12 Hrebenak.

13 CHAIRPERSON MILLER: Thank you. Cross-
14 examination?

15 MR. CLAYTON: Yes, thank you. Let's start
16 with the police report and then we can backtrack from
17 there. So the police report that's marked as I guess
18 the government's No. 1 -- Exhibit 1 that you have in
19 front of -- do you have this in front of you?

20 MR. HREBENAK: Yes, I do.

21 MR. CLAYTON: Okay. You authored this
22 report, correct?

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1 MR. HREBENAK: Yes, sir.

2 MR. CLAYTON: And is this report based on
3 your own personal investigation or is it a compilation
4 of reports that the other officers who have responded
5 also gave you by way of information? Do you understand
6 my question?

7 MR. HREBENAK: Yes, I understand your --

8 MR. CLAYTON: Okay.

9 MR. HREBENAK: -- questions. I arrived and
10 did the investigation there so I was present for the
11 entire investigation and conducted the investigation.

12 MR. CLAYTON: Okay. So, I mean, this says,
13 "Officers arrived on scene and interviewed all
14 parties."

15 MR. HREBENAK: Yes.

16 MR. CLAYTON: That means that -- and this is
17 on Page 3 of the report.

18 MR. HREBENAK: Uh-huh.

19 MR. CLAYTON: None of the information you
20 have in this narrative is any information that was
21 gathered from other officers? This is just your -- the
22 information that you gathered from your personal

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1 investigation, correct?

2 MR. HREBENAK: Well, I guess I don't really
3 understand that question.

4 MR. CLAYTON: Okay. On Page 3 of your
5 narrative --

6 MR. HREBENAK: Right.

7 MR. CLAYTON: -- it says, "Officers arrived
8 on scene and interviewed all parties."

9 MR. HREBENAK: Right. And I guess --

10 MR. CLAYTON: Okay.

11 MR. HREBENAK: -- that speaks more to how we
12 conduct our investigations, where there may be several
13 interviews going on at once. But if there's going to
14 be an arresting or -- and a reporting officer, he'll
15 will go to this -- the place where that person was
16 interviewed and hear the questions from that person.
17 So that's sentence -- while I, like, understand your
18 question -- means that officers may have been
19 simultaneously interviewing people, say, the witness or
20 when I was able to make contact with the security
21 guard.

22 And then they may have been asked question

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1 while I wasn't present but I would gone back and
2 confirmed or asked that question again to that person
3 so that I would have direct knowledge of it.

4 MR. CLAYTON: Oh, okay. So every question
5 that was asked by -- and we'll back -- let's just
6 strike that question.

7 It was yourself, the initial officer on
8 scene, your sergeant, Taggart (ph) --

9 MR. HREBENAK: Yes.

10 MR. CLAYTON: -- and then another officer,
11 Hector --

12 MR. HREBENAK: Correct.

13 MR. CLAYTON: -- who arrives?

14 MR. HREBENAK: And there were several other
15 officers on scene. And you can see, also as noted in
16 the report --

17 MR. CLAYTON: Yes.

18 MR. HREBENAK: -- Officer MPO Mason (ph)
19 conducted the crime scene. There was a secondary
20 officer who responded, Officer Murphy.

21 MR. CLAYTON: Uh-huh.

22 MR. HREBENAK: And there was an investigator,

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1 Detective Wheeler (ph). They were also there.

2 MR. CLAYTON: Okay. So that's approximately
3 six officers, three --

4 MR. HREBENAK: That's -- again, this is not a
5 -- by all mean -- any means a complete list of every
6 officer that would have been there that night. There's
7 no way. I don't have a way of telling you every officer
8 that was there because officers come to assist and they
9 leave. And I don't have a complete list of that.

10 MR. CLAYTON: Okay. The reason why I ask is
11 because I'm curious to know whether or not you
12 personally spoke with Mr. Woodfolk that evening or
13 maybe another officer spoke with him and then that
14 officer relayed to you what he gathered from his
15 speaking with Mr. Woodfolk.

16 MR. HREBENAK: I'm not too sure about that.
17 He may have been a detective that specifically him that
18 question and relayed it to me or it may have been
19 another officer. But it wasn't me by myself.--

20 MR. CLAYTON: Okay.

21 MR. HREBENAK: -- or I would have attempted
22 to confirm it.

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1 MR. CLAYTON: And did you ask Mr. Woodfolk on
2 the evening of January 28th to look at the video
3 footage from the security cameras?

4 MR. HREBENAK: Like I said, this is what I've
5 written in the report. I don't specifically remember
6 that.

7 MR. CLAYTON: Okay. And do you recall
8 specifically speaking with Mr. Woodfolk about anything
9 the evening of January 28th?

10 MR. HREBENAK: I don't remember -- like I
11 said to the government, I don't specifically remember
12 speaking to him because it was over nine months ago.
13 But that's why I took the police reporter. All I can
14 say is what's in my police report.

15 MR. CLAYTON: Okay. Now, when you arrived on
16 the scene, you spoke with the complainant, Mr. Miranda,
17 and his friend, Mr. Ramirez, correct?

18 MR. HREBENAK: Yes.

19 MR. CLAYTON: And you did indicate on direct
20 examination that Mr. Ramirez was Mr. Miranda's friend,
21 correct?

22 MR. HREBENAK: Correct.

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1 MR. CLAYTON: Okay. Did you -- do you recall
2 what Mr. Ramirez looks like?

3 MR. HREBENAK: Other than the fact that he's
4 a Hispanic male and an adult, I wouldn't be able to
5 give you specifics about what he was wearing that night
6 or characteristics.

7 MR. CLAYTON: Okay. What about Mr. Miranda,
8 the actual complainant and victim -- alleged victim?
9 Do you recall what he looks like?

10 MR. HREBENAK: I do. Yes.

11 MR. CLAYTON: Okay. If I were to show you a
12 photograph of a person who may or may not be Mr.
13 Miranda, would you be able to tell us whether or not
14 this is the person -- same person?

15 MR. HREBENAK: Based on -- depending on the
16 photograph, yes.

17 MR. CLAYTON: Okay. Let me see. All right.
18 Show the witness that photograph and then I would -- I
19 have copies for the Board.

20 CHAIRPERSON MILLER: Yeah.

21 MR. CLAYTON: May I approach the witness?

22 CHAIRPERSON MILLER: Yes, uh-huh.

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1 MR. CLAYTON: Officer --

2 MR. HREBENAK: Hrebenak.

3 MR. CLAYTON: -- Hrebenak -- I'm sorry -- is
4 this -- does it look like Mr. Miranda?

5 MR. HREBENAK: I -- to my best guess, yes.

6 MR. CLAYTON: Well, I'm not asking to guess
7 but do you --

8 MR. HREBENAK: I mean, I can't -- I wouldn't
9 be comfortable confirming this was him simply because
10 it's kind of a side shot. And I -- the last time I saw
11 him was quite a while so I'm not sure based on this
12 photograph. I'm sorry.

13 MR. CLAYTON: All right.

14 CHAIRPERSON MILLER: I'm sorry, the answer
15 you're not sure?

16 MR. HREBENAK: I'm not sure. Yes, I'm sorry.

17 CHAIRPERSON MILLER: Okay.

18 MR. CLAYTON: How much time did you spend
19 interviewing Mr. Miranda?

20 MR. HREBENAK: Like I said, it was nine
21 months ago, so I would be uncomfortable giving the
22 exact time. I would say an investigation like that

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1 tends to take 20- 30 minutes to maybe up to an hour,
2 depending on how many parties we have to interview. So
3 it would be more than five to ten minutes but less than
4 a couple hours. So that's the best I can give. I'm
5 sorry.

6 MR. CLAYTON: Were you able to communicate
7 clearly with Mr. Miranda and Mr. Ramirez?

8 MR. HREBENAK: He has limited English
9 capabilities so I did have to have -- and I do have
10 limited Spanish capabilities. So I did have to have an
11 interpretation service used for -- initially by -- on
12 the phone. And then an officer came to assist me. But
13 like I said, I have limited Spanish. He has limited
14 English. So we were able to sort of meet in the middle,
15 if you understand what I'm saying.

16 MR. CLAYTON: I understand. So the evening
17 of the 28th is the evening you spoke with Mr. Miranda,
18 correct?

19 MR. HREBENAK: Yes. The evening of the 28th.

20 MR. CLAYTON: Okay. And you indicated that
21 you needed translation services in order to help you
22 communicate with him?

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1 MR. HREBENAK: Some of the more complicated
2 aspects, yes.

3 MR. CLAYTON: Okay. And you were able to get
4 that through -- by way of a translation service?

5 MR. HREBENAK: I believe I used a translation
6 service at first. But shortly after, an officer
7 arrived and assisted me with translation.

8 MR. CLAYTON: Okay. Now, that's not noted
9 anywhere in your report, is it?

10 MR. HREBENAK: No. It's not specifically
11 noted. No.

12 MR. CLAYTON: Okay. And is it something that
13 --

14 MR. HREBENAK: Oh, I'm sorry, it is -- it is
15 noted.

16 MR. CLAYTON: Is it?

17 MR. HREBENAK: Under each complainant it says
18 its language, "Assistance needed?" And I marked,
19 "Yes." If you see --

20 MR. CLAYTON: Okay.

21 MR. HREBENAK: -- it's in -- if you see the
22 name, it's three boxes over.

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1 MR. CLAYTON: I see it. I see it.

2 MR. HREBENAK: Yeah.

3 MR. CLAYTON: Okay. So a language assistant
4 was needed.

5 MR. HREBENAK: Right.

6 MR. CLAYTON: And you were able to get
7 language assistance --

8 MR. HREBENAK: Correct.

9 MR. COLLINS: -- presumably from one of the
10 officers on the scene?

11 MR. HREBENAK: Right. Because I'm not
12 considered a certified Spanish speaker. To confirm
13 what I understand in Spanish, I received a Spanish
14 translator who's certified by the department to
15 translate in Spanish.

16 MR. CLAYTON: And who was it who translated
17 for you when Mr. Miranda told you that he had been
18 kicked in the stomach?

19 MR. HREBENAK: I believe I understood that in
20 Spanish but I was confirmed by Officer Figuereo -- Anna
21 Figuereo (ph), she's an officer with the Fourth
22 District.

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1 MR. CLAYTON: Okay. Now, is she listed here
2 as one of the responding officers?

3 MR. HREBENAK: No. Because there's actually
4 only one slot to list officers on the PD251.

5 MR. CLAYTON: Uh-huh. Yes.

6 MR. HREBENAK: She's not listed on there.

7 MR. CLAYTON: So on your police report it's
8 not listed but you're saying that another officer, a
9 Fiarino [sic] --

10 MR. HREBENAK: It's Figuereo.

11 MR. CLAYTON: -- Figuereo, excuse me --

12 MR. HREBENAK: Yes.

13 MR. CLAYTON: also responded to the scene?

14 MR. HREBENAK: Yes. And I -- like I said,
15 she - - there may have been other officers there that
16 spoke Spanish but she's the one I primarily use.

17 MR. CLAYTON: And did she prepare a report of
18 the translation of the incident?

19 MR. HREBENAK: No, that's not required by
20 MPD.

21 MR. CLAYTON: And I'm assuming you asked a
22 question, "What happened," and she translated that to

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1 Mr. Miranda.

2 MR. HREBENAK: Generally, yes. If I wasn't
3 able to ask the question in Spanish or I wasn't able to
4 understand the answer in Spanish, she assisted me to
5 the best of my abilities.

6 MR. CLAYTON: And then he told you through
7 her that he had been kicked by someone at the club?

8 MR. HREBENAK: Correct.

9 MR. CLAYTON: Okay. Now, you indicated in
10 response to a question by the government that you were
11 not certain if the complainant, the victim and his
12 friend were intoxicated, correct?

13 MR. HREBENAK: Right.

14 MR. CLAYTON: But you said they did not
15 appear - - they -- not too intoxicated.

16 MR. HREBENAK: So I guess that's ambiguous.
17 The term, "Intoxication," for police officers usually
18 means drunk or somebody who can't drive -- is when
19 we're using the word, "Intoxicated." I wouldn't feel
20 comfortable giving him that classification. So that's
21 what my -- to clarify my answer.

22 MR. CLAYTON: Would you say he was buzzed?

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1 MR. HREBENAK: Again, I mean, I don't know.
2 I feel like that's a very unscientific, very ambiguous
3 term. So I wouldn't be comfortable labeling him as
4 buzzed or drunk or --

5 MR. CLAYTON: Well, based on your observation
6 of Mr. Miranda, in your opinion, would you believe that
7 a security guard may have viewed him as being
8 intoxicated?

9 MR. HREBENAK: I can't speak for a security
10 guard's motives that night. I understand that the
11 security guards have a responsibility to not let
12 intoxicated patrons into the establishment. But I
13 don't know at that point what his actions were that
14 would have led the security guard to believe that.

15 MR. CLAYTON: And you said Mr. Miranda
16 complained of transient pain.

17 MR. HREBENAK: Correct.

18 MR. CLAYTON: What's -- how would you define,
19 "Transient pain?"

20 MR. HREBENAK: Basically the legal standard
21 for transient pain is the difference between what US
22 attorney or the police department would classify as a

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1 simple assault, a felony assault, or an aggravated
2 assault and transient pain means you don't require
3 hospital treatment. You're not -- there's no visible
4 injuries. And because Mr. Miranda -- and it said in my
5 report -- I made a mistake. I wasn't able to clarify
6 earlier. An ambulance did come to the scene.

7 And he was treated but he did not have
8 visible injuries. Because he wasn't transported to the
9 hospital or treated at a hospital, I classified that as
10 transient pain or pain that wasn't meeting the
11 threshold of a felony or aggravated assault.

12 MR. CLAYTON: Okay. You said that he was
13 treated at the scene?

14 MR. HREBENAK: Yes.

15 MR. CLAYTON: Okay.

16 MR. HREBENAK: I did -- I wasn't able to give
17 a clear answer about that earlier.

18 MR. CLAYTON: Okay.

19 MR. HREBENAK: And I see on the report it did
20 say that.

21 MR. CLAYTON: Yeah, because I'm looking at
22 Page 3 of your report.

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1 MR. HREBENAK: Correct.

2 MR. CLAYTON: And the last sentence says,
3 "C1" -- I guess that's the complainant -- "refused
4 medical treatment on scene and did not have visible
5 injuries."

6 MR. HREBENAK: Correct.

7 MR. CLAYTON: So when you say that he refused
8 treatment on the scene, what do you -- that differs
9 from what you just testified to saying that he received
10 treatment on scene.

11 MR. HREBENAK: So he -- what I'm saying is
12 that an ambulance responded and assisted him by
13 providing DCF/EMS services to him. He -- they're --
14 when that ambulance responds, they have very limited
15 capabilities to treat somebody on the scene. And they
16 -- their medical treatment would be transporting that
17 person to a hospital. He refused to go to the hospital
18 in that night and didn't have visible injuries. That's
19 what's meant by that statement.

20 MR. CLAYTON: Okay. And at any time while
21 you were interviewing Mr. Miranda, was he doubled over
22 in pain?

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1 MR. HREBENAK: No, he was not.

2 MR. CLAYTON: Was he holding his stomach?

3 MR. HREBENAK: I don't -- I can't say that he
4 never held his stomach the whole time I interviewed him
5 but he wasn't continually holding his stomach while I
6 was interviewing him. No.

7 MR. CLAYTON: Did you -- did you notice him
8 hold his stomach at all?

9 MR. HREBENAK: I didn't specifically notice
10 that. No.

11 MR. CLAYTON: Did he ask to sit down?

12 MR. HREBENAK: He did not specifically ask to
13 sit down. No.

14 MR. CLAYTON: Were his eyes glassy?

15 MR. HREBENAK: I don't remember if --

16 MR. CLAYTON: Were they teary?

17 MR. HREBENAK: I don't remember.

18 MR. CLAYTON: Now, you said Mr. Miranda
19 couldn't point any else as -- else out as a witness.
20 Do you know if that was because Mr. Miranda didn't know
21 any other witnesses or there were no other witnesses?

22 MR. HREBENAK: I don't know. I didn't -- I

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1 didn't follow up questions regarding that.

2 MR. CLAYTON: And speaking now, you
3 interviewed the security officer, correct? You
4 interviewed him?

5 MR. HREBENAK: Yes.

6 MR. CLAYTON: Okay. And you personally
7 interviewed him?

8 MR. HREBENAK: Yes.

9 MR. CLAYTON: Okay. Did the security officer
10 ever tell you that he kicked Mr. Miranda?

11 MR. HREBENAK: He never explained to me that
12 kicked Mr. Miranda. No.

13 MR. CLAYTON: Okay. And did he ever say to
14 you that he kicked Mr. Miranda in self-defense?

15 MR. HREBENAK: He didn't specifically explain
16 to me how he rebuffed the attempted assault by Mr.
17 Miranda. He just said that he needed to rebuff the
18 assault.

19 MR. CLAYTON: That's all. You used the term,
20 "rebuffed the assault?"

21 MR. HREBENAK: He did not use the term,
22 "Rebuff."

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1 MR. CLAYTON: Okay.

2 MR. HREBENAK: He said, "Stop the assault."

3 MR. CLAYTON: Stop the assault?

4 MR. HREBENAK: Yeah.

5 MR. CLAYTON: Okay.

6 MR. HREBENAK: I can't remember his exact
7 words because I don't have those written down.

8 MR. CLAYTON: Okay. Did Mr. Watson tell you
9 that Mr. Miranda took a punch at him?

10 MR. HREBENAK: Yes, he did -- I did note that
11 in the report, that he attempted to punch him.

12 MR. CLAYTON: Okay. And did Mr. Watson tell
13 you that as a result of him punching, he pushed him out
14 of the club?

15 MR. HREBENAK: He said -- he said that he got
16 him away. I don't remember him saying specifically,
17 "Push."

18 MR. CLAYTON: Okay. Now, did you -- you said
19 that you -- when you came to the club, Mr. Watson was
20 not outside --

21 MR. HREBENAK: Correct.

22 MR. CLAYTON: -- but he was in the vestibule,

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1 correct?

2 MR. HREBENAK: Correct.

3 MR. CLAYTON: Okay. Do you know how much
4 space is between the front door and the vestibule?

5 MR. HREBENAK: A matter of feet.

6 MR. CLAYTON: It's a very short distance.

7 MR. HREBENAK: Correct.

8 MR. CLAYTON: Okay. So you didn't have to go
9 into the physical club itself to go look for Mr.
10 Watson, did you?

11 MR. HREBENAK: I did not have to look for Mr.
12 Watson, no. He was --

13 MR. CLAYTON: He was right inside the door,
14 correct?

15 MR. HREBENAK: I believe he was standing in
16 the entryway from the vestibule to the club --

17 MR. CLAYTON: Okay.

18 MR. HREBENAK: -- that leads into the club.

19 MR. CLAYTON: And so that's a matter of feet?

20 MR. HREBENAK: Yes. It would be a matter of
21 feet, yes.

22 MR. CLAYTON: Let me show you a photograph.

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1 I want you to tell me if this describes the scene. I
2 guess -- and for housekeeping purposes, I guess I
3 should mark them by alphabet. So the first letter --
4 the first photograph would have been, I guess, the
5 respondent's A. And this I'm mark as respondent's B.

6 CHAIRPERSON MILLER: Thank you.

7 MR. CLAYTON: And I'm going to have copies
8 for the Board members and for his witness. Madam
9 Chairperson, may I approach the witness?

10 CHAIRPERSON MILLER: Yes, go ahead.

11 MR. CLAYTON: Thank you. Officer, can you
12 tell me if this describes the scene? And you can tell
13 the members of the Board what you're viewing here. To
14 your - - to your right, is that the front door of the
15 club?

16 MR. HREBENAK: Yes. That -- I would guess,
17 yeah, that's the front of the club. Yes.

18 MR. CLAYTON: Okay. And the space in-between
19 the front door and this door that has the Budweiser
20 sign, is that the vestibule area?

21 MR. HREBENAK: It would appear so. I've
22 never seen that. I don't recall if that's the door to

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1 the club or going up the stairs. I'm not sure.

2 MR. CLAYTON: So -- but this is the front
3 door?

4 MR. HREBENAK: That's definitely the front
5 door and it looks familiar to me.

6 MR. CLAYTON: And when you open the front
7 door, where was Mr. Watson situated when you enter the
8 club?

9 MR. HREBENAK: It's kind of hard to make out
10 in the photo. I -- is the staircase leading up to the
11 front door?

12 MR. CLAYTON: No. This is -- I -- and I'll
13 make a representation.

14 MR. HREBENAK: Okay.

15 MR. CLAYTON: It's like looking from the
16 staircase to the front of the door.

17 MR. HREBENAK: Oh, I see. Okay. All right.
18 Well, this is the front door. And then the other side
19 would be the entry into the main part of the club --

20 MR. CLAYTON: And --

21 MR. HREBENAK: -- if that's the case.

22 MR. CLAYTON: Okay. Now, where was Mr.

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1 Watson when you came to the club to look for him?

2 MR. HREBENAK: He would be on the left side
3 of the photo inside -- just inside that door.

4 MR. CLAYTON: Just inside the door?

5 MR. HREBENAK: Right.

6 MR. CLAYTON: So when you came into the club
7 -- thank you -- when you entered the club, were you
8 able to see Mr. Watson?

9 MR. HREBENAK: Yeah, I believe he had his
10 back to me and I just tapped him on the shoulder. I
11 was, like, "Can you please step outside?"

12 MR. CLAYTON: Okay. And it was January,
13 correct? Was it -- the temperature, how was it that
14 evening? Was it cold, warm, hot?

15 MR. HREBENAK: With this area, I can't even
16 guess what the weather was.

17 MR. CLAYTON: But it was a date in January
18 and it was the evening?

19 MR. HREBENAK: It was -- yeah, it was -- it
20 was actually the early morning hours. Yeah.

21 MR. CLAYTON: Early morning --

22 MR. HREBENAK: Yeah.

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1 MR. CLAYTON: -- of January 29? Yeah.

2 MR. HREBENAK: Yeah, January 28th.

3 MR. CLAYTON: Okay. So the incident --

4 MR. HREBENAK: Took --

5 MR. CLAYTON: -- went from 27 to 28 or it

6 occurred on the 28th -- the morning of the 28th?

7 MR. HREBENAK: It occurred on the morning of
8 the 28th.

9 MR. CLAYTON: All right.

10 MR. HREBENAK: Yes.

11 MR. CLAYTON: All right. And you said that
12 the reason why you arrested Mr. Watson is because you
13 credited the complainant's statement as more credible?

14 MR. HREBENAK: Not necessarily more credible.
15 It just -- the complainant had information that led me
16 to believe that it was true, which was his witness and
17 the fact that the defendant had no cooperating evidence
18 for me to be -- or talk to.

19 MR. CLAYTON: Okay. So basically if I can
20 sum that up, it's because the witness had -- the
21 complainant had a witness and Mr. Watson did not?

22 MR. HREBENAK: Well, that wasn't the only

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1 factor but that was one of them.

2 MR. CLAYTON: Okay. And the other factors
3 were?

4 MR. HREBENAK: That the footage from the
5 camera, which I knew to be working in the past, for
6 some reason was not working that night, the fact that
7 as counsel has brought up before, typically there's a
8 lot of people or at least a number of people outside
9 Macombo's -- outside that front door that we just
10 pointed out every night on a Saturday, even winter,
11 having cigarettes, entering or exiting the club, and
12 the fact that the -- that there was no witness and the
13 fact that the -- nobody inside the club and the
14 defendant made no attempt to contact the police.

15 Those facts, along with the fact that there
16 was a witness corroborating the complaining witness's
17 stories, gave me pause to credit the complaining
18 witness's story.

19 MR. CLAYTON: Okay. Now, about the allegedly
20 non-working security cameras --

21 MR. HREBENAK: Yes.

22 MR. CLAYTON: -- of footage -- or inability

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1 to get the footage, did you speak to Mr. Woodfolk about
2 that?

3 MR. HREBENAK: You mean, as, like, a follow-
4 up investigation?

5 MR. CLAYTON: No. During that evening did
6 you ask him -- say, "I'd like to go look at the video
7 footage?"

8 MR. HREBENAK: I -- like I said, I can't
9 specifically remember if I talked to Mr. Woodruff (ph)
10 that night or if it was one of my colleagues or how
11 that transpired. All I know is that I noted in the
12 report that I attempted at some point that some -- a
13 member of MPD or I did -- attempted to get camera
14 footage from the complainant --

15 MR. CLAYTON: Okay. So some --

16 MR. HREBENAK: -- I'm sorry, from the owner.

17 MR. CLAYTON: So you -- it wasn't -- it
18 wasn't necessarily you but you believe that someone
19 tried to get footage that night?

20 MR. HREBENAK: I'm not saying it wasn't me.
21 I'm saying I can't remember.

22 MR. CLAYTON: You can't recall.

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1 MR. HREBENAK: Yeah, I can't recall.

2 MR. CLAYTON: And did someone tell you that
3 the video camera or recording devices were not working?

4 MR. HREBENAK: I believe that was the reason
5 for the fact that we couldn't get the footage and that
6 we were unable to get footage from that night.

7 MR. CLAYTON: And when you say you believe
8 that's the reason is -- you don't know for certain?

9 MR. HREBENAK: I -- there's no way for me to
10 know for certain, no.

11 MR. CLAYTON: And that's not written in your
12 report anywhere, the fact that the video camera was not
13 operational?

14 MR. HREBENAK: No. All I noted in the report
15 is that we were unable to get the footage from that
16 night.

17 MR. CLAYTON: Okay. And you indicated that
18 there was a -- there were no people standing around
19 outside the club smoking cigarettes that evening?

20 MR. HREBENAK: I'm sorry?

21 MR. CLAYTON: You said there were no people
22 standing around, smoking cigarettes that evening,

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1 correct?

2 MR. HREBENAK: I'm saying that's what the
3 defendant told me.

4 MR. CLAYTON: When you arrived on scene ten
5 minutes after the call came in, was there anyone
6 outside the club other than the complainant and his
7 friend?

8 MR. HREBENAK: I don't remember. I don't
9 have anybody recorded as being out there. But I don't
10 have anybody -- I don't recall how many people would
11 have been out there.

12 MR. CLAYTON: Okay. And you were the first
13 officer on the scene, correct?

14 MR. HREBENAK: Yes.

15 MR. CLAYTON: Did you go into the actual club
16 itself and stop what was going on and ask anyone if
17 they saw what happened?

18 MR. HREBENAK: No.

19 MR. CLAYTON: Did any one of your officer --
20 fellow officers or your sergeant go in the club and ask
21 anyone, did they see what happened?

22 MR. HREBENAK: I don't -- I don't -- not to

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1 my knowledge, no officer did. No.

2 MR. CLAYTON: And when it was determined by
3 Metropolitan Police Department that the video could not
4 be viewed, at that point did anyone go say to any
5 witness -- any persons in the club and say, "Did anyone
6 see what happened this evening?"

7 MR. HREBENAK: No.

8 MR. CLAYTON: So there was no follow up by
9 Metropolitan Police Department as to whether or not
10 there were any witnesses to this incident?

11 MR. HREBENAK: Other than interviewing the
12 complaining witness, the witness and the defendant, no.

13 MR. CLAYTON: That's it. Let me see. When
14 you first arrived at the scene, what did you do?

15 MR. HREBENAK: I think as noted I went and
16 spoke to the complaining witness and the witness.

17 MR. CLAYTON: Uh-huh. And you physically
18 spoke to those? You personally speaking -- you spoke
19 to those two individuals?

20 MR. HREBENAK: Well, as I mentioned, I spoke
21 to them personally and with the aid of a translator.

22 MR. CLAYTON: Okay. Well, was there a

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1 translator on scene when you first arrived?

2 MR. HREBENAK: No.

3 MR. CLAYTON: Okay.

4 MR. HREBENAK: I was the first officer there.

5 MR. CLAYTON: So how long did you speak with
6 them before a translator arrived?

7 MR. HREBENAK: I mean, again, it was nine
8 months ago. I wouldn't be comfortable giving the time
9 frame. It was not -- it wasn't during the course of the
10 entire investigation is all I can't say.

11 MR. CLAYTON: Okay. In the time between when
12 you first arrived on the scene and the translator
13 arrived, at that point had you determined that Mr.
14 Miranda had been kicked?

15 MR. HREBENAK: I can't recall.

16 MR. CLAYTON: At what point during the course
17 of your investigation that night did you determine that
18 Mr. Miranda had actually been kicked?

19 MR. HREBENAK: I would guess the only way to
20 answer that question is when I arrested the defendant.

21 MR. CLAYTON: So that's when you decided he
22 had been -- actually been kicked?

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1 MR. HREBENAK: Well, logically, yes. That's
2 why I would have arrested him for the simple assault of
3 Mr. Miranda, yes.

4 MR. CLAYTON: So it wasn't -- you didn't
5 automatically conclude that Mr. Miranda's story was --
6 had validity, did you?

7 MR. HREBENAK: I wouldn't be doing my job as
8 investigator if I -- I mean, are you asking did I
9 immediately arrive on the scene and assume that he had
10 -- he has been kicked?

11 MR. CLAYTON: Well, no. Not when you
12 immediately arrived on scene but after you had spoke --
13 I'm assuming you spoke to -- and your testimony was you
14 spoke with the complainant and his friend first. And
15 then you spoke with Mr. Watson; is that correct? Did
16 you speak with him third or did you speak with someone
17 else before you spoke to Mr. Watson?

18 MR. HREBENAK: I don't know that -- I know
19 that I spoke to the complaining witness and the witness
20 first. Then I did eventually talk to the defendant. I
21 don't know if I would have spoken to anybody else in
22 between those parties.

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1 MR. CLAYTON: Okay. So upon your -- and so
2 my question was, upon your -- the conclusion of your
3 interview of the witness -- I mean, the complainant and
4 his friend, at that point had you determined that we --
5 that he had been kicked -- he being Mr. Miranda?

6 MR. HREBENAK: I'm sorry, can you just repeat
7 that one more time for me?

8 MR. CLAYTON: After you had concluded your
9 investigation or your investigation -- strike that.

10 After you had completed your initial
11 interview of Mr. Miranda and his friend --

12 MR. HREBENAK: Uh-huh.

13 MR. CLAYTON: -- at that point had you
14 concluded that Mr. Miranda had been kicked?

15 MR. HREBENAK: No. I would not have done
16 that because I would -- my investigation at that point
17 was not complete.

18 MR. CLAYTON: Okay. So at -- so there was
19 additional information you needed to conclude that Mr.
20 Miranda had been kicked? That's why you arrested Mr.
21 Watson, correct?

22 MR. HREBENAK: I don't know that I would call

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1 it additional information but additional accounts and
2 additional facts surrounding the events.

3 MR. CLAYTON: Okay. And based on the fact
4 that you were -- Mr. Watson did not call the police --

5 MR. HREBENAK: Yes.

6 MR. CLAYTON: -- and that he did not
7 immediately report to you that he had been -- that Mr.
8 Miranda had swung at him --

9 MR. HREBENAK: Correct.

10 MR. CLAYTON: -- and also the fact that there
11 were no other witnesses and there was no video footage,
12 those facts, taken in conjunction with your interview
13 with Mr. Miranda and Mr. Ramirez, led you to conclude
14 that Mr. Miranda had been kicked; is that correct?

15 MR. HREBENAK: Correct. That and the fact
16 that the defendant, Mr. Watson, hadn't attempted to
17 detain or -- with the assistance of others, detain Mr.
18 Miranda if he had indeed attempted to assault him.

19 MR. CLAYTON: Okay. Let's talk about that.
20 So that would be -- that sounds as though you looked at
21 the Macombo Lounge security plan; is that correct?
22 Have you seen that?

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1 MR. HREBENAK: I have seen it. But at that
2 night, I had not seen it.

3 MR. CLAYTON: Okay. So the fact that Mr.
4 Watson did not detain Mr. Miranda would be relevant for
5 the purposes of showing that Mr. Watson believed he had
6 been assaulted, correct?

7 MR. HREBENAK: Correct.

8 MR. CLAYTON: All right. So if Mr. Watson
9 didn't believe he had been assaulted, there would have
10 been no need to detain Mr. Miranda, correct?

11 MR. HREBENAK: I guess if he had not believed
12 he'd been assaulted, yes, that's correct.

13 MR. CLAYTON: Correct. So did Mr. Watson
14 specifically tell you he had been assaulted or he
15 thought he had been assaulted by Mr. Miranda?

16 MR. HREBENAK: He said -- he said that he had
17 attempted -- that Mr. Miranda had attempted to punch
18 him.

19 MR. CLAYTON: Okay.

20 MR. HREBENAK: -- which is an attempted
21 assault.

22 MR. CLAYTON: Well, you and I know the legal

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1 definition of an assault.

2 MR. HREBENAK: Correct.

3 MR. CLAYTON: Okay. But do you believe that
4 Mr. Watson would have known the legal definition of an
5 assault?

6 MR. HREBENAK: I can't -- I don't know Mr.
7 Watson so I wouldn't be comfortable making that
8 assumption.

9 MR. CLAYTON: Okay. So you assume then that
10 when Mr. Watson said that Mr. Miranda attempted to
11 swing at him or punch at him --

12 MR. HREBENAK: Correct.

13 MR. CLAYTON: -- you assume then that meant
14 that Mr. Watson was saying that Mr. Miranda attempted
15 to assault him?

16 MR. HREBENAK: Well, that was my inference
17 from the actions, yes.

18 MR. CLAYTON: Okay. But Mr. Watson never
19 told you he'd believed he had been assaulted?

20 MR. HREBENAK: He -- are you asking me if he
21 ever used the word, "Assault?"

22 MR. CLAYTON: Correct.

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1 MR. HREBENAK: He never used the word,
2 "Assault," with me.

3 MR. CLAYTON: He just said he swung at him?

4 MR. HREBENAK: Correct.

5 MR. CLAYTON: Right?

6 MR. HREBENAK: He attempted to punch him.

7 MR. CLAYTON: And, you know, a guy's took a
8 swing at him, correct?

9 MR. HREBENAK: Right.

10 MR. CLAYTON: All right. And Mr. Watson is a
11 security guard, right?

12 MR. HREBENAK: That's what he was -- that was
13 what he was employed with when I met him. I don't know
14 that that's the only thing he does.

15 MR. CLAYTON: Okay. Well, at the time. And
16 in fact the evening of the 28th, Mr. Watson had on a t-
17 shirt that said, "Security;" isn't that correct?

18 MR. HREBENAK: I don't remember what the
19 shirt said. I do remember it was a black shirt.

20 MR. CLAYTON: Okay.

21 MR. HREBENAK: And I think it may have said,
22 "Security," on it.

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1 MR. CLAYTON: Okay. Well, you identify him
2 as a security guard on your report. How did you come
3 to that conclusion?

4 MR. HREBENAK: I would guess either through
5 interview or talking to other people on the scene.

6 MR. CLAYTON: Okay.

7 MR. HREBENAK: He identified -- I believe he
8 identified himself a security guard.

9 MR. CLAYTON: Okay. And did Mr. Miranda
10 identify him as a security guard?

11 MR. HREBENAK: He identified him as the
12 person who assaulted him. And by his explanation of
13 events, one could logically assume that he was acting
14 as security for the establishment.

15 MR. CLAYTON: So back to the earlier
16 question, if Mr. Watson didn't believe he had been
17 assaulted, he wouldn't have needed to contact you, the
18 police department, to detain Mr. Miranda, correct?

19 MR. HREBENAK: I follow your logic, yes.

20 MR. CLAYTON: Okay. So the fact -- one of
21 the reasons you said that you, as a basis for arresting
22 Mr. Watson was the fact that Mr. Watson didn't call you

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1 -- call the Metropolitan PD and did not tell you
2 personally that he had been assaulted at the time of
3 the incident?

4 MR. HREBENAK: Correct.

5 MR. CLAYTON: Okay. So let's assume now that
6 Mr. Watson didn't believe that he had been assaulted,
7 okay?

8 MR. HREBENAK: Okay.

9 MR. CLAYTON: Then he wouldn't have called
10 the Metropolitan PD for that purpose, correct?

11 MR. HREBENAK: I -- based on that assumption,
12 yes.

13 MR. CLAYTON: And also if he assumed that he
14 -- we assume that he had not been -- or he did not
15 believe he had been assaulted, he would not have had a
16 need to tell you that he believed he had been assaulted
17 by Mr. Miranda?

18 MR. HREBENAK: If he believed he wasn't
19 assaulted, he wouldn't tell me he didn't believe he was
20 assaulted? Is that what you're asking me?

21 MR. CLAYTON: No. If he -- if he didn't
22 believe he was assaulted --

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1 MR. HREBENAK: Right.

2 MR. CLAYTON: -- he would not have told you
3 that, "I believe I've just been assaulted."

4 MS. GEPHARDT: Objection. We can't -- we
5 don't know what Mr. Watson would have said or what Mr.
6 Watson believed. Mr. Watson is not here. And he
7 doesn't know what Mr. Watson would have thought or what
8 he believed.

9 MR. CLAYTON: Understood. But one of the
10 purposes -- one of the reasons he's given for arresting
11 the -- my -- well, not my client, but Mr. Watson was
12 the fact that Mr. Watson didn't identify the fact that
13 he believed that he had been assaulted. And what I'm
14 trying to get at is that if Mr. Watson didn't have a
15 belief that he'd been assaulted -- he had been
16 assaulted, he would have never mentioned that to the
17 police officer.

18 Thus, we would have -- that two legs or two
19 prongs of the reasons why the police officer arrested
20 Mr. Watson in the first instance would be removed.

21 CHAIRPERSON MILLER: I thought he already
22 answered that. Did he? Did you already answer that?

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1 If he had -- if he didn't believe he was assaulted,
2 then wouldn't that be a reason that he wouldn't have
3 called the police?

4 MR. HREBENAK: I -- yeah, I kind of assume
5 that. Yes.

6 MR. CLAYTON: That was one of the questions.

7 MS. GEPHARDT: Right.

8 MR. CLAYTON: And the other question was one
9 of the reasons the officer --

10 CHAIRPERSON MILLER: Not that he knows for
11 sure. Yeah.

12 MR. CLAYTON: Understood. But one of the --
13 one of the things the officer indicated was that
14 another factor he used in deciding whether to arrest
15 Mr. Watson was the fact that Mr. Watson did not
16 immediately identify to the officer that he had been
17 assaulted, he being Mr. Watson. If Mr. Watson didn't
18 have the belief that he had been assaulted, the police
19 -- he would have never told the police officer, "I
20 think I've been assaulted."

21 So that's the question I was asking. But the
22 last question was, did Mr. Watson tell you -- oh,

1 strike that.

2 If Mr. Watson did not believe he had been
3 assaulted, he would not have told you he was assaulted?

4 MR. HREBENAK: All I can make a conclusion
5 from was the events as they were described to me that
6 night. Mr. Watson told me that he had been attempted to
7 be -- he had attempted to be punched --

8 MR. CLAYTON: Uh-huh.

9 MR. HREBENAK: -- by the complaining witness.
10 That is the classification as assault and that's really
11 the only conclusion I can make. I can't tell you
12 whether Mr. Watson felt like he was assaulted or not or
13 knew the legal definition of assault. I don't know how
14 to better answer that.

15 MR. CLAYTON: Understood. Understood. So
16 the term, "Assault," is where you (inaudible) the legal
17 definition as a police officer understands it, correct?
18 That is a --

19 MR. HREBENAK: The term, "Assault," is the
20 term, "Assault." I mean, I'm using it as both in my --
21 in the English language as one would use it or -- and
22 as the legal definition.

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1 MR. CLAYTON: Okay. Well, then you tell us
2 so we'll be -- everyone is clear because I may have a
3 different understanding of what an assault is. What is
4 the definition as you -- that you attribute to assault?

5 MS. GEPHARDT: That question's been asked and
6 answered.

7 MR. CLAYTON: I don't believe so.

8 CHAIRPERSON MILLER: I don't think so either.

9 MR. CLAYTON: What did --

10 MR. HREBENAK: An assault is any unwanted
11 action -- any unwanted physical action towards another
12 person. So it can be categorized it as spitting,
13 pushing, punching. And it could be -- and an attempted
14 assault would be attempting to do one of those actions
15 towards another person, if you're asking for what I
16 understand as the legal definition of assault.

17 MR. CLAYTON: And what is your definition of
18 a battery?

19 MR. HREBENAK: I've never been privy to be
20 educated -- I don't believe that we have battery as a
21 charge in the District of Columbia. And I don't --
22 I've never charged battery.

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1 MR. CLAYTON: Okay. Because I have a
2 different - - my definition that I learned in law
3 school at the University of Michigan is that an assault
4 is a fear of an unlawful touching.

5 MS. GEPHARDT: This is --

6 MR. CLAYTON: Well, I'm trying to see whether --

7 MS. GEPHARDT: They're argumentative.

8 MR. CLAYTON: Well, I'm just trying to
9 understand whether or not -- when he said that he's
10 using -- he implied the definition of an assault in
11 layman's terms and also the legal term. And so I'm
12 trying to make sure that those two are the same.
13 Because --

14 CHAIRPERSON MILLER: Well, can I --

15 MR. CLAYTON: -- the legal definition of an
16 assault is different from what a common person would
17 understand an assault to be.

18 CHAIRPERSON MILLER: Can -- what do you mean
19 by, "Legal definition?"

20 MR. HREBENAK: What I mean by legal is what I
21 would assume you can be arrested for. So if I had
22 enough evidence to corroborate the fact Mr. Watson had

1 been attempted to be punched at, I would have arrested
2 Mr. Miranda. And on the other side, I had enough
3 evidence to say that Mr. Miranda had been assaulted by
4 Mr. Watson by being kicked, which is a form of assault.

5 And in the layman's term, "Assault," people
6 know that when somebody tries to punch you, that you're
7 being assaulted. People use that word on the street to
8 me when people are talking in normal language to me,
9 non- legalese, not in court, "So and so assaulted me.
10 He tried -- he punched me or he pushed me." And so I
11 think in this term -- in this case, when somebody
12 attempts to punch you, it's both a layman's
13 understanding of the definition of assault and it meets
14 the legal threshold where I would be able to arrest
15 somebody if there was enough evidence saying that Mr.
16 Watson had been attempted to be assaulted.

17 MR. CLAYTON: So the fact that Mr. Watson
18 didn't have enough evidence to support a claim that
19 he'd been assaulted was one of the reasons you used in
20 determining to arrest Mr. Watson?

21 MR. HREBENAK: No, that's not what I said.

22 MR. CLAYTON: Well, I think that is what you

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1 said. You --

2 CHAIRPERSON MILLER: Don't -- let's not get
3 argumentative. So --

4 MR. CLAYTON: Okay.

5 CHAIRPERSON MILLER: -- can you just keep --

6 MR. CLAYTON: All right.

7 CHAIRPERSON MILLER: -- with questions?

8 MR. CLAYTON: So the -- so then you did not
9 use as a determining factor in deciding to arrest Mr.
10 Watson the fact that Mr. Watson did not report to you
11 that he had been assaulted? You didn't use that as a
12 factor; is that correct?

13 MR. HREBENAK: I did use that as a factor.

14 MR. CLAYTON: You did use that as a factor?

15 MR. HREBENAK: Yes.

16 MR. CLAYTON: Okay. And you did not use as a
17 factor the fact that Mr. Watson did not call the
18 Metropolitan PD and report having been assaulted; is
19 that correct?

20 MR. HREBENAK: Well, to be more clear, what I
21 used is that nobody in the establishment, including Mr.
22 Watson, contacted MPD to report an assault or an

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1 attempted assault or a combative patron, however you
2 would classify it.

3 CHAIRPERSON MILLER: Okay.

4 MR. CLAYTON: And you're not certain -- and
5 you're not aware if anyone else knew about this
6 situation until the police arrived, correct? In other
7 words, you don't know if anyone else in the club knew
8 that this incident had occurred until the police
9 actually arrived on scene?

10 MR. HREBENAK: All I -- all I can go by is
11 what was explained to me. And the defendant said that
12 nobody observed it. So I would guess by my presence
13 there that people had an idea that something had
14 occurred. But they didn't have any specific knowledge
15 of what happened.

16 MR. CLAYTON: Nothing further of this
17 witness.

18 CHAIRPERSON MILLER: Okay. Thank you. Mr.
19 Silverstein?

20 MR. SILVERSTEIN: Thank you, Officer
21 Hrebenak. How long have you been on the --

22 MR. HREBENAK: Five years.

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1 MR. SILVERSTEIN: This appears to be a they
2 said/he said case in terms of assault or battery, which
3 is probably a more precise term. Is there any proof or
4 corroboration other than Mr. Ramirez that you were able
5 to find to Mr. Miranda's claim --

6 MR. HREBENAK: No.

7 MR. SILVERSTEIN: -- any physical evidence,
8 any evidence in terms of his treatment, anything -- a
9 shoe mark on him, anything of that sort?

10 MR. HREBENAK: No.

11 MR. SILVERSTEIN: Were there any witnesses
12 other than his friend to his side of the argument?

13 MR. HREBENAK: No.

14 MR. SILVERSTEIN: Any scar, any redness,
15 anything like that that you could --

16 MR. HREBENAK: Not that I could make out that
17 night. No, sir.

18 MR. SILVERSTEIN: He refused treatment?

19 MR. HREBENAK: He refused transportation to
20 the hospital, yes.

21 MR. SILVERSTEIN: Had he been drinking at
22 all?

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1 MR. HREBENAK: I'm not sure he had been
2 drinking that night. I didn't specifically ask him
3 that question.

4 MR. SILVERSTEIN: He did not appear to be
5 intoxicated but you can't say that he had been
6 drinking?

7 MR. HREBENAK: Right. He didn't appear to be
8 so intoxicated that it would affect how he was standing
9 or talking to me. So I can't guess as to whether he
10 had or had not been drinking that night.

11 MR. SILVERSTEIN: Was there any liquor on Mr.
12 Miranda's breath?

13 MR. HREBENAK: Not that I can recall. I
14 didn't get close enough to smell it. I was standing
15 several feet away from him, interviewing him.

16 MR. SILVERSTEIN: How about his friend or
17 witness, Mr. Ramirez? Had he been drinking? Do you
18 know that?

19 MR. HREBENAK: That would be the same set of
20 circumstances. I never asked them specifically, "Have
21 you been drinking or are you drunk right now?" And
22 they didn't -- they weren't falling over or stumbling

1 or slurring their speech. So I didn't draw any
2 specific conclusion that they were drunk. So I don't -
3 - and I don't know if they had been drinking earlier in
4 the night.

5 MR. SILVERSTEIN: They were able to give you
6 -- did they speak any English at all or --

7 MR. HREBENAK: They spoke, like, limited
8 English. So they could identify themselves, say that
9 they had been -- that something had happened and then
10 they were able to tell me in Spanish their stomach hurt
11 - - that he got hit in the stomach.

12 MR. SILVERSTEIN: Did they -- I'm sorry, but
13 they weren't slurring? There was nothing there that
14 would indicate that they were intoxicated or impaired?

15 MR. HREBENAK: I don't specifically remember
16 anything.

17 MR. SILVERSTEIN: Okay. Let's look at the
18 other side of this. Was there any proof at all behind
19 Mr. Watson's version of the events?

20 MR. HREBENAK: No.

21 MR. SILVERSTEIN: You said that Mr. Watson
22 said he rebuffed the assault. But then you said that

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1 he didn't specifically say it was an assault. Did he
2 tell you in any way, do you recall, how he rebuffed the
3 assault?

4 MR. HREBENAK: I don't -- I didn't write it
5 in the report and I don't remember how he -- how he did
6 it specifically.

7 MR. SILVERSTEIN: You don't recall whether he
8 said he ducked or blocked it or just --

9 MR. HREBENAK: No, I don't.

10 MR. SILVERSTEIN: -- pushed him out of the
11 way?

12 MR. HREBENAK: I'm sorry.

13 MR. SILVERSTEIN: Was there any indication
14 that Mr. Watson was impaired in any way?

15 MR. HREBENAK: No, there was no indication of
16 that.

17 MR. SILVERSTEIN: Absent of -- with the lack
18 of footage here, is there any real evidence to help us
19 determine who struck who?

20 MR. HREBENAK: Who struck --

21 MR. SILVERSTEIN: Who struck who?

22 MR. HREBENAK: No, other than the two

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1 complaining -- the witness and the complaining witness
2 and the defendant, there's no physical evidence. No.

3 MR. SILVERSTEIN: And you did not see, nor
4 did anyone else, any independent witnesses when this
5 happened --

6 MR. HREBENAK: I can't speak for --

7 MR. SILVERSTEIN: -- well, when you got
8 there?

9 MR. HREBENAK: I can't speak for the other
10 officers on the scene. Well, like I explained
11 earlier, there's lots of other officers on the scene.
12 There are at least six accounted for and there may have
13 been others that I don't specifically have direct
14 knowledge of being there or that may have come and
15 left. And I can't say that none of the other officers
16 made an attempt to contact the other people. I can say
17 it's standard procedure for MPD to make contact with
18 people around the area to ask if they had seen
19 anything.

20 And I'm sure if one of them had been witness
21 to it, we would have collected their information.

22 MR. SILVERSTEIN: And you didn't -- no one

1 asked -- you have no indication that anybody -- that
2 there's any independent witnesses to corroborate one
3 side or the other? So then the key to unlock this
4 whole thing would be the video?

5 MR. HREBENAK: Correct.

6 MR. SILVERSTEIN: Who personally asked for
7 the video?

8 MR. HREBENAK: I can't -- I can't tell you.
9 I don't know who would have specifically asked for it.
10 Like, I don't remember specifically talking to Mr.
11 Woodruff [sic] that night. And I don't know that -- I
12 don't remember which officer would have asked. Like I
13 said, there were several officers on the scene.

14 MR. SILVERSTEIN: So that's -- basically
15 that's it? You -- there's no evidence one way or
16 another that is hard, physical evidence. And the key
17 to this is the video and we don't know from you yet
18 whether the video was asked for or anything like that?
19 (Inaudible) --

20 MR. HREBENAK: All I can testify to is the
21 fact that I specifically noted it in the report and
22 that it would have been asked by either myself or

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1 another officer directly. And I can't -- because I
2 didn't list who asked it in the report, I can't tell
3 you.

4 MR. SILVERSTEIN: Thank you for your service.
5 I have no further question.

6 CHAIRPERSON MILLER: Others? Mr. Jones?

7 MR. JONES: Just real quick.

8 CHAIRPERSON MILLER: Okay.

9 MR. JONES: And you may have spoken to this,
10 so I apologize if this is redundant or repetitive, but
11 when you spoke with the security guard, did he
12 specifically indicate that he denied entry to these
13 individuals?

14 MR. HREBENAK: I believe he denied -- I
15 believe he was attempting to deny them entry and that's
16 what was the -- created the attempted assault -- his --
17 what the defendant said was the attempted assault by
18 Mr. Miranda.

19 MR. JONES: Okay. So just to be clear, these
20 two individuals never actually gained entry into the
21 establishment, correct?

22 MR. HREBENAK: No, they never went inside.

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1 MR. JONES: Okay. So whatever he did, he
2 effectively kept them from getting into the
3 establishment, it appears?

4 MR. HREBENAK: Yes.

5 MR. JONES: Okay.

6 MR. HREBENAK: Yeah.

7 MR. JONES: So did he indicate in any way,
8 shape or form why he was denying these two individuals
9 entry?

10 MR. HREBENAK: I didn't specifically ask him
11 that question so I don't have an answer to that.

12 MR. JONES: Okay. Thank you. Thank you,
13 Madam Chair.

14 CHAIRPERSON MILLER: I just have a few. Just
15 to clarify, did Mr. Miranda appear to be in pain when
16 you saw him?

17 MR. HREBENAK: He didn't hold his belly or
18 moan or anything like that that would have given me
19 immediately indication that he was in intense pain or
20 anything like that. So I guess the -- I'm sorry -- the
21 answer is, "No."

22 CHAIRPERSON MILLER: Okay. And, I mean, Mr.

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1 Watson, the security guard, he's a key person in here.
2 Is there -- does the police keep longer, like, written
3 statements of people like the security guard here or
4 the other witnesses?

5 MR. HREBENAK: Other than the initial
6 interview, once we determine there's probable cause and
7 it's a misdemeanor, we stop questioning the defendant
8 because at that point he's under arrest.

9 CHAIRPERSON MILLER: Oh, I see.

10 MR. HREBENAK: And since it was a
11 misdemeanor, we're not required by our procedures to
12 interview him in a custodial setting. So he was --
13 there would be no other record.

14 CHAIRPERSON MILLER: Okay. So this is it,
15 your -- this PD report?

16 MR. HREBENAK: Correct.

17 CHAIRPERSON MILLER: Did you see Mr. Watson's
18 affidavit that was submitted today?

19 MR. HREBENAK: I didn't have the chance to
20 read it, no.

21 CHAIRPERSON MILLER: Okay. Okay. I just
22 want to read No. 7 and get your reaction to it since we

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1 don't have a full statement in your report. And tell
2 me if this is the same thing he told you.

3 MR. HREBENAK: Okay.

4 CHAIRPERSON MILLER: Okay. No. 7 on the
5 affidavit says, "In informing the men that they could
6 not enter, I did not touch either gentleman, but
7 rather, I put my hands up and told them specifically
8 that they could not come in. I moved forward towards
9 the men with my hands up so they would turn and leave.
10 The men did back into the vestibule, however, before
11 exiting the front door as I was walking towards them."
12 "The person closest to me swung at me with a closed
13 fist. He did not connect with his punch, however, but
14 it was at that time that I actually put my hands on
15 that gentleman. And I pushed him towards the exit,
16 acting in self-defense to protect myself, telling him
17 again that they had to leave. However, I want to
18 emphasize that at no time did I kick either gentleman."

19 Okay. Is that -- is that square with what he
20 told you that night?

21 MR. HREBENAK: Based on the information I
22 heard that night is that this all occurred right in

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1 front of the front door, that there was never inside
2 the club.

3 CHAIRPERSON MILLER: Okay.

4 MR. HREBENAK: He never specifically told me
5 that night that they had already gained entry. He was
6 attempting to get them out and they refused to leave.
7 That was never explained to me that night.

8 CHAIRPERSON MILLER: This talk of fist though
9 and pushing them out, is that consistent?

10 MR. HREBENAK: Well, the -- other than the
11 fact that I was never told that they were inside. So
12 he wouldn't have a reason to push them out.

13 CHAIRPERSON MILLER: Okay.

14 MR. HREBENAK: And that the only reason that
15 he would have had to contact them was to get them away
16 from him trying to assault him.

17 CHAIRPERSON MILLER: So do you think this
18 swung at him with a closed fist -- is that what you
19 consider assault -- attempted assault?

20 MR. HREBENAK: Attempted -- that would be an
21 attempted assault. It would be arrestable if I had
22 evidence to back it.

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1 CHAIRPERSON MILLER: Okay. And the
2 significance of that is -- if that's attempted assault,
3 does that oblige him to call the police?

4 MR. HREBENAK: Depending on your -- I guess
5 on your familiarity with the DC law -- in DC and
6 procedures with ABRA, I would say, "Yes." Because I
7 know other security guards in the area that I deal with
8 on a regular basis. But he happened to be a
9 corrections officer. And any time anybody attempts to
10 assault him or becomes aggressive with him, he
11 immediately calls the police and knows to call the
12 police before he -- and the only time he would have
13 stopped somebody -- put some hands on someone is to
14 detain them for the police department.

15 So -- but he again, may be more educated
16 about the regulations than this security guard.

17 CHAIRPERSON MILLER: Okay. Thank you.
18 Anybody else? Okay. Is there a redirect or recross
19 based on the Board's questions -- limited to the
20 Board's questions?

21 MS. GEPHARDT: Let's see. Officer, have you
22 arrested individuals for other attempted assaults --

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1 MR. HREBENAK: Yes.

2 MS. GEPHARDT: -- or assaults?

3 MR. HREBENAK: Yes.

4 MS. GEPHARDT: And in these cases, do you
5 typically have physical evidence?

6 MR. HREBENAK: No.

7 MS. GEPHARDT: And when you have cases like
8 this, what do you rely on to make the determination
9 that one story is more likely than another?

10 MR. HREBENAK: Based on the actions
11 immediately following the assault. So if for example
12 it was a man and a woman in a house, if that man
13 assaulted that woman, then that woman ran out and into
14 a neighbor's house to call, based on her actions, her
15 demeanor, her -- what she told us, that's how I would
16 make my determination based on that. So I guess --

17 MS. GEPHARDT: So -- oh, I'm sorry. Go
18 ahead.

19 MR. HREBENAK: No, go ahead.

20 MS. GEPHARDT: No, no, no. Go ahead.

21 MR. HREBENAK: I was just -- it's based on
22 what they do after the assault -- is a big indication.

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1 MS. GEPHARDT: So there are -- there are
2 situations -- numerous situations that you have been in
3 where it's a he said/she said situation, but you do
4 have enough probable cause to make an arrest?

5 MR. HREBENAK: Yes.

6 MS. GEPHARDT: And that's based on other
7 factors --

8 MR. HREBENAK: Correct.

9 MS. GEPHARDT: -- what has happened post-
10 arrest -- or excuse me, post-assault; is that what
11 you're saying?

12 MR. HREBENAK: Yes.

13 MS. GEPHARDT: So this wasn't a case of you
14 just deciding to believe one side over the other?

15 MR. HREBENAK: No, this was not the case.

16 MS. GEPHARDT: You had other corroborating
17 evidence to move forward with the arrest?

18 MR. HREBENAK: Yes.

19 MS. GEPHARDT: And in these situations where
20 you have a misdemeanor assault or attempted assault,
21 what would -- what would be the reason why you would go
22 looking for other witnesses? Like, what would be the

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1 reason in this case why other people were not
2 interviewed besides the defendant and the complainants?

3 MR. HREBENAK: Based on the information that
4 we had and the fact that the defendant specifically
5 said there was nobody outside. And the complaining
6 witness and the witness couldn't specifically identify
7 anybody. There wasn't anybody else to interview at the
8 time.

9 MS. GEPHARDT: Okay. Okay. Thank you.

10 MR. CLAYTON: One question. As the lead
11 investigator -- the lead officer on the scene -- and
12 there were other officers ultimately there -- would you
13 have expected that another officer would have contacted
14 you or told you if they had -- were able to locate
15 another witness?

16 MR. HREBENAK: Yes, I would expect that.

17 MR. CLAYTON: And no one -- no other officer
18 told you that?

19 MR. HREBENAK: No other officer came to me
20 and said that there was other witnesses. No.

21 MR. CLAYTON: Thank you.

22 CHAIRPERSON MILLER: Okay. I don't see any

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1 Board questions. I think we're --

2 MS. GEPHARDT: All right. Thank you.

3 CHAIRPERSON MILLER: -- finished.

4 MS. GEPHARDT: Thank you, Officer.

5 MR. HREBENAK: Thank you.

6 CHAIRPERSON MILLER: Thank you very much.

7 MR. HREBENAK: Thank you.

8 MS. GEPHARDT: All right. Government would
9 now like to call its second witness, Investigator Earl
10 Jones.

11 CHAIRPERSON MILLER: Mr. Jones, do you swear
12 to tell the truth, the whole truth and nothing but the
13 truth?

14 MR. EARL JONES: I do.

15 CHAIRPERSON MILLER: Thank you.

16 MS. GEPHARDT: Good afternoon, Mr. Jones.
17 Can you please state your full name and spell it for
18 the record?

19 MR. EARL JONES: Earl Jones, E-A-R-L, last
20 name, J-O-N-E-S.

21 MS. GEPHARDT: And where do you work?

22 MR. EARL JONES: I work for the Alcoholic

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1 Beverage Regulation Administration.

2 MS. GEPHARDT: And what is your job title?

3 MR. EARL JONES: Compliance investigator.

4 MS. GEPHARDT: And what -- how long have you
5 worked for the Alcoholic Beverage Regulation
6 Administration?

7 MR. EARL JONES: Since October of 2009.

8 MS. GEPHARDT: Okay. And what is your job
9 duties as a compliance investigator?

10 MR. EARL JONES: I conduct inspections and
11 investigations of licensed ABC establishments within
12 the District of Columbia.

13 MS. GEPHARDT: Okay. And are you familiar
14 with a licensee by the name of Macombo Lounge?

15 MR. EARL JONES: Yes, I am.

16 MS. GEPHARDT: And do you recall visiting the
17 lounge on January the 28th of 2012?

18 MR. EARL JONES: Yes, I do.

19 MS. GEPHARDT: And why did you go there?

20 MR. EARL JONES: I was responding to an ABRA
21 hotline call, that telephone call that I received from
22 my supervisor, Supervisor Investigator Stewart, with

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1 reference to a simple assault that had taken place
2 outside of the establishment -- or at the
3 establishment.

4 MS. GEPHARDT: And do you recall -- or do you
5 know who called into the ABRA hotline to report this
6 assault or this incident?

7 MR. EARL JONES: MPD called. I don't know
8 what officer it was but I know that it was the
9 Metropolitan Police Department that had called.

10 MS. GEPHARDT: Okay. And what time -- around
11 what time did you go to -- did you respond to Macombo
12 Lounge?

13 MR. EARL JONES: I got there around 1:40 a.m.

14 MS. GEPHARDT: Okay. And how long would you
15 say that was after you had received the hotline call?

16 MR. EARL JONES: Ten minutes.

17 MS. GEPHARDT: Okay. And when you arrived,
18 what did you first see?

19 MR. EARL JONES: When I arrived, I saw an EMT
20 out there. I saw several police cars blocking the
21 entire Georgia Avenue, probably three to four squad
22 cars. And then, like I said, it was an EMT's vehicle

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1 out there as well.

2 MS. GEPHARDT: Do you recall if there were
3 patrons outside or other people besides police and
4 emergency technicians?

5 MR. EARL JONES: I didn't see any patrons
6 outside.

7 MS. GEPHARDT: Okay.

8 MR. EARL JONES: It was just all MPD
9 officials.

10 MS. GEPHARDT: And when you came upon the
11 scene, did you -- where did you go first as part of
12 your investigation?

13 MR. EARL JONES: Well, our protocol is to
14 kind of wait until MPD kind of does their thing. And
15 then we speak to -- we try to speak to one of the --
16 one officer who is on the scene. And we try to find
17 out who is the - - whether a lead -- responding officer
18 or whoever is lead on the case. The first officer that
19 I came in contact with was Officer Hrebenak, I believe.
20 And I interviewed -- I interviewed him.

21 MS. GEPHARDT: And do you recall if you -- in
22 addition to Officer Hrebenak, did you interview any

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1 other police officers that evening?

2 MR. EARL JONES: I interviewed Sergeant
3 Taggart. And I want -- I want to say it was another
4 officer, Officer Hector.

5 MS. GEPHARDT: Okay.

6 MR. EARL JONES: That's who it was, yes.

7 MS. GEPHARDT: And have you reviewed the case
8 report that you did in reference to this incident?

9 MR. EARL JONES: Yes, I have.

10 MS. GEPHARDT: Okay. I don't know -- just
11 for the record, the government asks that the Board take
12 note of the case report that was done in this case by
13 Investigator Jones --

14 CHAIRPERSON MILLER: Okay. That's in the
15 record.

16 MS. GEPHARDT: -- and make that part of the
17 record. Uh-huh.

18 CHAIRPERSON MILLER: Thank you.

19 MS. GEPHARDT: Do you have a copy?

20 MR. CLAYTON: Yes.

21 MS. GEPHARDT: Oh, okay. Okay. Thank you.

22 So the Officer Hrebenak, was he the first police

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1 officer that you interviewed that night?

2 MR. EARL JONES: I think it was Sergeant --
3 MPD Officer Hector, ma'am.

4 MS. GEPHARDT: Okay. And what did Officer
5 Hector tell you that had occurred -- or what kind of
6 questions did you ask him?

7 MR. EARL JONES: Well, I asked Officer Hector
8 what had taken place because, again, I noticed that all
9 the squad cars were in the middle of the street. They
10 were blocking Georgia Avenue. So I just kind of wanted
11 to get his rendition as to what took place and I just
12 wanted to let him talk. He indicated that there were
13 two Hispanic males who had tried to enter Macombo
14 Lounge on two separate occasions.

15 He said that the first time that both
16 individuals tried to enter the establishment, they were
17 denied entry. He said shortly thereafter they tried to
18 come back. And they were again denied entry by --
19 excuse me -- they were denied entry both occasions by a
20 security member on the establishment. He said that on
21 the second occasion, when they tried to enter the
22 establishment, they were again denied, followed by one

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1 of the individuals being kicked in the stomach or in
2 the midsection by the security member.

3 He stated that the security member was
4 subsequently arrested for assault.

5 MS. GEPHARDT: Okay. And did Officer Hector
6 -- do you know if Officer Hector personally interviewed
7 the complainant and his friend as well as the defendant
8 in this case?

9 MR. EARL JONES: He stated he had.

10 MS. GEPHARDT: Okay. And do you recall if
11 Officer Hector had knowledge of whether the kick that
12 took place -- whether it was a successful kick, meaning
13 did he actually make contact with the complainant, do
14 you know?

15 MR. EARL JONES: He stated that the
16 complainant indicated that the kick landed. I asked,
17 "Did -- was there any physical evidence of that?" He
18 stated, "No." I asked was -- "Did he needed -- did he
19 need medical attention?" He indicated, "No," and he
20 was not transported to a hospital as well.

21 MS. GEPHARDT: Did you have the opportunity
22 to interview the complainant and his friend on this

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1 evening?

2 MR. EARL JONES: I had -- I did not have the
3 opportunity. Both of the individuals had left the
4 scene by the time I had gotten there.

5 MS. GEPHARDT: Okay. Did you ever get the
6 opportunity to interview Mr. Miranda and Mr. Ramirez?

7 MR. EARL JONES: I spoke to Mr. Miranda, who
8 was the complainant, telephonically using the Spanish
9 interpreter.

10

11 MS. GEPHARDT: And how long after the
12 incident do you recall that the -- that you were able
13 to interview Mr. Miranda?

14 MR. EARL JONES: Probably about three to four
15 days.

16 MS. GEPHARDT: And what did Mr. Miranda say
17 happened?

18 MR. EARL JONES: Mr. Miranda said that he and
19 his friend had tried to enter Macombo Lounge on January
20 28th at about 11:45. He said that he had tried to
21 enter the front door. He had gotten through the front
22 door and into the vestibule area. He said that he was

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1 confronted by a gentleman who was wearing all black
2 that he perceived to be security for the establishment.
3 He said that the security person told him that he could
4 not enter the establishment.

5 But he also said that he only assumed that he
6 may have been security. But he said that the gentleman
7 didn't identify himself as security. But he said that
8 once he had -- he had gotten into the vestibule area,
9 he was denied entry. He said that he didn't understand
10 why. He said that he and his friend had gone back
11 outside. They had returned. And he said that he felt -
12 - at that time he tried to gain entry into the
13 establishment again.

14 And he was denied entry once again, followed
15 by being kicked in the stomach.

16 MS. GEPHARDT: Did you ask Mr. Miranda why he
17 attempted to gain entry a second time?

18 MR. EARL JONES: He said he wanted to -- he -
19 - well, he said that he wanted to get into the
20 establishment but he also wanted to understand why he
21 was being denied. He said he felt that it was because
22 of his ethnicity that he was being denied entry into

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1 the establishment.

2 MS. GEPHARDT: And did you ask Mr. Miranda if
3 there were any other witnesses to the assault or the
4 kick, however we want to call it, besides his friend,
5 Mr. Ramirez?

6 MR. EARL JONES: He didn't have any other
7 witnesses.

8 MS. GEPHARDT: Did you ask him if Mr.
9 Ramirez, his friend, witnessed it?

10 MR. EARL JONES: He said he did, yes.

11 MS. GEPHARDT: And did you attempt to contact
12 Mr. Ramirez?

13 MR. EARL JONES: I did. It was unsuccessful.
14 And I also asked Mr. Miranda if he had a good phone
15 number on him or a good -- a good contact information
16 on him. And he indicated that he didn't have any
17 information. He said that he basically just wanted to
18 leave this whole ordeal alone.

19 MS. GEPHARDT: Did you ask Mr. Miranda if he
20 would be willing to be a witness if there was a
21 potential hearing for the establishment regarding their
22 alcohol license?

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1 MR. EARL JONES: Yes, I did. And he
2 indicated he didn't want to have anything to do with
3 it.

4 MS. GEPHARDT: And do you know if you -- did
5 you ask him at all if his friend, Mr. Ramirez, would be
6 interested in being a witness of any kind for this
7 matter?

8 MR. EARL JONES: That would be the same as
9 his response. And also, again, he stated he had no way
10 of contacting him.

11 MS. GEPHARDT: Okay. And did you interview
12 the security guard, Mr. Watson?

13 MR. EARL JONES: I didn't get an opportunity.
14 He had been -- from what I'm understanding, he had been
15 arrested and taken away.

16 MS. GEPHARDT: Okay. Did you have the
17 opportunity to interview the owner, Mr. Woodfolk?

18 MR. EARL JONES: Yes, I did.

19 MS. GEPHARDT: And did Mr. Woodfolk indicate
20 whether he had witnessed the kick or the assault?

21 MR. EARL JONES: No. Mr. Woodfolk stated
22 that he was inside working. He stated that he was

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1 notified by a security member that MPD was outside
2 waiting. He said once he had gotten outside, he had
3 kind of gotten the rendition of what took place from
4 this -- the alleged suspect, which is the security
5 member that we're speaking of. He got the rendition
6 from him.

7 MS. GEPHARDT: So did Mr. Woodfolk indicate
8 to you how long after the incident that he was
9 notified? You indicated -- I'm sorry, I apologize. You
10 said that the police had already arrived; is that
11 correct?

12 MR. EARL JONES: Yes. He said that -- he
13 said that he was notified by one of his security
14 members that MPD was outside.

15 MS. GEPHARDT: Okay. And did you ask Mr.
16 Woodfolk for any security footage?

17 MR. EARL JONES: Yes, I did. He indicated
18 that he wasn't able to retrieve it at that point
19 because he didn't have his laptop which allows him to
20 download the footage.

21 MS. GEPHARDT: And did you ask him if he
22 could provide you the footage at a later date?

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1 MR. EARL JONES: Yes, I did.

2 MS. GEPHARDT: And did you make any follow-up
3 attempt to get the footage from Mr. Woodfolk?

4 MR. EARL JONES: Oh, I'm sorry. Yes, I did.
5 I would guess about a week to two weeks later, I
6 telephonically contacted Mr. Woodfolk again and asked
7 for the footage. And he said he's -- at that point he
8 still wasn't able to download the footage.

9 MS. GEPHARDT: Did he explain at all to you -
10 - did he give you a reason why he wasn't able to
11 download the footage?

12 MR. EARL JONES: He said he didn't have a zip
13 drive at that time. So I told him to get in contact
14 with me once he was able to get that accomplished.

15 MS. GEPHARDT: And have you heard -- did you
16 hear anything after that from Mr. Woodfolk about
17 getting the security footage?

18 MR. EARL JONES: I hadn't heard anything else
19 from him.

20 MS. GEPHARDT: And to date have you received
21 any information about it?

22 MR. EARL JONES: No, ma'am.

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1 MS. GEPHARDT: Are you familiar with the
2 cameras near the front door at Macombo Lounge?

3 MR. EARL JONES: Yes.

4 MS. GEPHARDT: And do you know where they're
5 located approximately?

6 MR. EARL JONES: Yes. Pretty much, yes.
7 There's one outside the front door and I believe
8 there's one inside the vestibule area.

9 MS. GEPHARDT: So if -- given what you were
10 told by Officer Hector and Officer Hrebenak and
11 Sergeant Taggart, as well as the complainant in this
12 case, do you believe that where the location of the
13 incident occurred, it would have been caught on
14 security camera?

15 MR. EARL JONES: I believe it should have
16 been, yes.

17 MR. SILVERSTEIN: Please say again.

18 MR. EARL JONES: I believe it -- I believe it
19 should have been, yes.

20 MS. GEPHARDT: And then do you make that
21 determination based upon the location of the cameras
22 and where they're -- just from looking with the naked

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1 eye?

2 MR. EARL JONES: Yes, ma'am.

3 MS. GEPHARDT: Okay.

4 MR. EARL JONES: If the incident took place
5 where Mr. Miranda's saying that it took place, yes.

6 MS. GEPHARDT: Okay. Court's indulgence.
7 Are you familiar with Macombo Lounge's security plan?

8 MR. EARL JONES: Not thoroughly but I've
9 definitely seen it. Yes.

10 MS. GEPHARDT: Did you review the security
11 plan either that evening or at some point after your
12 investigation?

13 MR. EARL JONES: Yes, I did.

14 MS. GEPHARDT: And well, how did you obtain a
15 copy of the security plan?

16 MR. EARL JONES: They have a submitted copy
17 on - - with our agency. So we're able to access that.

18 MS. GEPHARDT: Okay. And do you recall the
19 details of the security plan or would you -- would it
20 help to see a copy of it?

21 MR. EARL JONES: Well, I know that through
22 whatever case -- cases that we're working, we pinpoint

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1 -- when we go through security plans, we pinpoint the
2 areas that -- the cases we're expected to. So we're
3 dealing with the simple assault and what -- from what
4 Mr. Miranda and as well as Mr. Ramirez as indicating,
5 we point out the issues dealing with security and with
6 disorderly ejection of patrons.

7 MS. GEPHARDT: And when you reviewed the
8 security plan in this case, did you discuss it at all
9 with Mr. Woodfolk and explain to him why you were
10 writing this up as a violation?

11 MR. EARL JONES: Well, we spoke there. And I
12 -- you know, I explained to him that, you know -- and
13 he was aware that, you know, the charges were that his
14 security member had kicked this -- supposedly had
15 kicked this individual. He in fact told me that Mr.
16 Watson told him that he'd pushed him and it wasn't a
17 kick and it was retaliation. So we spoke about it. He
18 was aware of that.

19 MS. GEPHARDT: Okay. And did you
20 specifically point out to him which provisions in the
21 security plan that you believe that his -- that his
22 establishment violated?

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1 MR. EARL JONES: I did not have it on me but,
2 you know, we had talked about, you know, basically, you
3 know, knowing that security is no supposed to use
4 excessive force, kicking, those of type of things or --
5 aren't part of the security plan.

6 MS. GEPHARDT: Right. Okay. Do you know
7 specifically what the plan says with respect to the
8 proper protocol for ejecting patrons?

9 MR. EARL JONES: I don't know it word for
10 word, no. But --

11 MS. GEPHARDT: Okay. Would it help to see a
12 copy of the plan?

13 MR. EARL JONES: Okay.

14 MS. GEPHARDT: The government is showing the
15 witness what's been marked as government Exhibit 3,
16 which is the security plan for Macombo Lounge. Give
17 you this and this.

18 MR. EARL JONES: Thank you.

19 CHAIRPERSON MILLER: Okay. Thank you.

20 MS. GEPHARDT: Investigator, if you turn to
21 Page 15, at the bottom of the page -- the question was,
22 do you know -- what does the plan say with respect to

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1 the proper protocol for ejecting disorderly patrons?

2 Can you tell the Board what it says?

3 MR. EARL JONES: "Removal enforcement is a
4 core component of a security member's responsibility.
5 The security personnel will discreetly comment about
6 the particular patron's behavior. Sometimes a second
7 warning may be given. After that, any patron who
8 rejects a request will be asked to leave. The biggest
9 mistake security personnel could make is to ignore a
10 patron who becomes a nuisance and hope that they will
11 calm down." You need me to keep going?

12 MS. GEPHARDT: Just specifically, what does
13 it say with respect to force at the bottom of Page 16?

14 MR. EARL JONES: "If it -- if it becomes
15 necessary to escort a patron to the door, security
16 personnel should be well trained to do so. For safety
17 purposes a rule of thumb is to have at least one person
18 to assist. Security personnel not allowed to use
19 physical force. This is not to say you can -- you
20 cannot slightly touch a patron to guide, direct, or
21 block entry. Force should only be used in self-defense
22 for the purpose of detaining a criminal for the

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1 police."

2 MS. GEPHARDT: Okay. And on the top of Page
3 17 what does it say are inappropriate methods for
4 security personnel to use to remove somebody from the
5 lounge?

6 MR. EARL JONES: "Kicking, punching,
7 tackling, dragging or putting a patron in a lock -- in
8 a headlock are all inappropriate methods for security
9 personnel to remove someone from Macombo Lounge."

10 MS. GEPHARDT: And then can you -- can you
11 read the rest of that paragraph, please?

12 MR. EARL JONES: "Escorting a patron out of
13 the establishment involves the use of professional
14 verbal commands and a polite explanation of why they're
15 being asked to leave. There can be only two ejections
16 choices for the patron, either leave the premises
17 quickly and quietly or be reported to the police. The
18 security personnel must be prepared to take a little
19 verbal abuse. If the ejected patron attacks security
20 personnel, protect oneself, but under no circumstances
21 should excessive force be used."

22 MS. GEPHARDT: Okay. Thank you. So based on

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1 what we've just -- what you just read, if a security
2 guard uses force in self-defense, what is the purpose
3 of the force?

4 MR. EARL JONES: Well, the purpose of the
5 force would be to detain for police.

6 MS. GEPHARDT: Okay.

7 MR. EARL JONES: And that didn't take place.

8 MS. GEPHARDT: Okay

9 MR. EARL JONES: As well as, you know, I
10 guess, in self-defense.

11 MS. GEPHARDT: Okay. And self-defense would
12 be if the patron is initiating the assault or the
13 violence or whatever it may be?

14 MR. EARL JONES: Correct.

15 MS. GEPHARDT: Is that correct? Okay. And
16 do you know -- based on your investigation, do you know
17 who called the police that evening?

18 MR. EARL JONES: From what I understand, it
19 was the witness of the complainant.

20 MS. GEPHARDT: Okay. Do you know if anybody
21 from Macombo Lounge called the police?

22 MR. EARL JONES: Not that I know of, no.

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1 MS. GEPHARDT: Do you know if Mr. Watson
2 called the police, who was the security guard?

3 MR. EARL JONES: Not that I know of, no.

4 MS. GEPHARDT: Okay. Do you know if Mr.
5 Watson tried to detain Mr. Miranda at all?

6 MR. EARL JONES: Not that I know of, no.

7 MS. GEPHARDT: Do you know if Mr. Watson is
8 still a security guard for Macombo Lounge?

9 MR. EARL JONES: Not that -- I don't know. I
10 don't know.

11 MS. GEPHARDT: Okay. Do you -- one other
12 question and if you don't know, please indicate. Do
13 you know how excessive force is defined in this
14 security plan or what you would deem to be excessive
15 force?

16 MR. EARL JONES: Well, from what they have at
17 the top of Page -- what is it -- 17, I would assume
18 would be -- to be excessive force will -- you know,
19 kicking, punching, tackling, dragging or putting
20 someone in a headlock or a choke hold to me would be
21 excessive force.

22 MS. GEPHARDT: Okay. And do you know if Mr.

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1 Watson, in your interviews with Mr. Woodfolk and the
2 other people in this case -- do you know if Mr. Watson
3 had called for assistance from other security personnel
4 or from the owner after this incident?

5 MR. EARL JONES: That wasn't relayed to me.

6 MS. GEPHARDT: Okay. Do you know if there's
7 anywhere in the security plan that indicates whether --
8 when there is an incident on the hands of one of the
9 security members, whether they are to summon another
10 security member for assistance or to report it?

11 MR. EARL JONES: I know there is a section in
12 here that indicates when there is an altercation, they
13 are to have someone else assist.

14 MS. GEPHARDT: And do you know in this
15 situation if somebody else was called to assist?

16 MR. EARL JONES: Not that I'm aware of, no.

17 MS. GEPHARDT: And do you know if there's any
18 requirement that the security personnel are supposed to
19 report incidents immediately to the owner or to the
20 management?

21 MR. EARL JONES: Yes, they are.

22 MS. GEPHARDT: And do you know whether that

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1 was done in this case?

2 MR. EARL JONES: I'm assuming it was done in
3 this case because there was another -- it was directly
4 from Mr. Watson. It was from another security member
5 who did tell Mr. Woodfolk what was going on --

6 MS. GEPHARDT: Okay.

7 MR. EARL JONES: -- or told -- or told him to
8 come outside because MPD was outside.

9 MS. GEPHARDT: Okay. So the police had
10 already arrived?

11 MR. EARL JONES: Yes.

12 MS. GEPHARDT: Okay.

13 CHAIRPERSON MILLER: I'm sorry, could you
14 repeat that?

15 MR. EARL JONES: The --

16 CHAIRPERSON MILLER: The question was --
17 could you --

18 MS. GEPHARDT: The question was, did --

19 MR. EARL JONES: Okay. Mr. Woodfolk was
20 notified by another security member to come outside and
21 speak about the incident that had just taken place. So
22 to me that is how he was notified --

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1 CHAIRPERSON MILLER: Okay.

2 MR. EARL JONES: -- with reference to what
3 had taken place.

4 CHAIRPERSON MILLER: Okay. Thank you.

5 MS. GEPHARDT: Okay. Those are all the
6 questions I have for direct examination.

7 MR. CLAYTON: Good afternoon, Mr. Jones.

8 MR. EARL JONES: Good afternoon, sir.

9 MR. CLAYTON: Let me ask you a few follow-up
10 questions and then a couple direct examination
11 questions. First off, did you make an independent
12 assessment yourself whether or not Mr. Miranda had been
13 kicked by Mr. Watson, the security guard?

14 MR. EARL JONES: I couldn't tell that.

15 MR. CLAYTON: Okay. So your summary in your
16 report, where you state that -- excuse me for a second.
17 I don't bring my glasses today, the worst day to not
18 bring my glasses. You determined in your summary that
19 a simple assault took place outside the Macombo Lounge
20 and that a Macombo Lounge security guard kicked a male
21 individual in the abdomen.

22 And so this determination that you made was

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1 based on what?

2 MR. EARL JONES: Determine -- that
3 determination at the time was based on what had been
4 collected thus far, from speaking with the responding
5 officers on the scene, the fact that Mr. Watson had
6 been arrested, and as well as the -- from the follow-up
7 in speaking with Mr. Miranda.

8 MR. CLAYTON: So -- but again, you didn't
9 make an independent assessment? You just based it on
10 what the police had told you and the fact that Mr. --
11 and the fact that based on their investigation, they
12 arrested Mr. Watson?

13 MR. EARL JONES: As well -- I --

14 MR. CLAYTON: And then you spoke with Mr. --

15 MR. EARL JONES: Because I couldn't make a --
16 I couldn't make a determination on the scene that he
17 had been kicked. I hadn't seen the gentleman. I
18 didn't know anything. So my determination came once I
19 spoke with Mr. Miranda.

20 MR. CLAYTON: Okay. And then you also state
21 in your summary that you determined that the Macombo
22 Lounge security plan had been violated because the

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1 security guard applied inappropriate methods of
2 attempting to remove someone from the premises. Would
3 that inappropriate method of removing them be the
4 kicking?

5 MR. EARL JONES: It would be the kicking or
6 whether it was -- however the case was that Mr. Miranda
7 was put out of the establishment. Because again, I
8 wasn't there, I couldn't determine how he was put out.
9 MPD at that point, they stated that he was kicked.
10 Again, I'm going off of what they're telling me as well
11 as, once I spoke to Mr. Miranda, what he told me.

12 MR. CLAYTON: Okay.

13 MR. EARL JONES: So that's -- that was my
14 determination.

15 MR. CLAYTON: So the determination would have
16 been that because Mr. Miranda was kicked by --
17 allegedly kicked by the security guard, that was an
18 inappropriate method of removing him from the premises?

19 MR. EARL JONES: Yes, sir. Yes, sir.

20 MR. CLAYTON: Okay. So you didn't do an
21 independent assessment of whether or not something else
22 had happened? You just relied on the statements of Mr.

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1 Miranda and the police?

2 MR. EARL JONES: Well, I couldn't do an
3 independent assessment because I couldn't get -- I
4 didn't see video. I couldn't --

5 MR. CLAYTON: Uh-huh.

6 MR. EARL JONES: -- get anything else.

7 MR. CLAYTON: I understand.

8 MR. EARL JONES: So that's all I had.

9 MR. CLAYTON: All right. I understand. Now,
10 you subsequently spoke with Mr. Miranda?

11 MR. EARL JONES: Yes, sir.

12 MR. CLAYTON: And he told you he didn't want
13 anything else to do with this matter?

14 MR. EARL JONES: Yes, sir.

15

16 MR. CLAYTON: Essentially, he didn't want to
17 press charges?

18 MR. EARL JONES: Yes, sir.

19 MR. CLAYTON: But he went further and said he
20 didn't want to have anything to do with this matter?

21 MR. EARL JONES: Totally.

22 MR. CLAYTON: Okay. Did Mr. Miranda -- you

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1 testified that Mr. Miranda said he felt like he had
2 been mistreated and disrespected because of his
3 ethnicity; is that correct?

4 MR. EARL JONES: Yes, sir.

5 MR. CLAYTON: Okay. And did he specifically
6 tell you that he was actually kicked by the security
7 guard?

8 MR. EARL JONES: He stated that upon trying
9 to gain entry and get some type of understanding as to
10 why he was being denied the first time, he said that
11 the gentleman who was standing in the doorway had
12 gotten angry with him and kicked him in his -- in his
13 midsection.

14 MR. CLAYTON: Now, were you able to
15 corroborate that statement with the witness the police
16 had interviewed, Mr. Ramirez?

17 MR. EARL JONES: No, I wasn't.

18 MR. CLAYTON: So the only statement you had
19 to go on was now Mr. Miranda's?

20 MR. EARL JONES: Yes, sir.

21 MR. CLAYTON: Okay. And did -- and you never
22 spoke with Mr. Watson, the security officer?

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1 MR. EARL JONES: No, sir. No, sir.

2 MR. CLAYTON: Okay. And you spoke with Mr.
3 Woodfolk?

4 MR. EARL JONES: I did speak with Mr.
5 Woodfolk.

6 MR. CLAYTON: And Mr. Woodfolk told you at
7 some point that Mr. Watson said he didn't kick the --
8 Mr. Miranda?

9 MR. EARL JONES: That night -- that night we
10 spoke. And he told me that he had spoken to Mr. Watson
11 prior to being transported, I believe.

12 MR. CLAYTON: Okay. Okay. Oh, that's right.
13 He was arrested.

14 MR. EARL JONES: Uh-huh.

15 MR. CLAYTON: And so, nevertheless, based on
16 just your -- the information you had from the police at
17 this time and your information you had from Mr.
18 Woodfolk, you nevertheless made a determination that
19 Mr. Watson did in fact kick Mr. Miranda?

20 MR. EARL JONES: Well, my determination was
21 something had taken place that evening.

22 MR. CLAYTON: Uh-huh.

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1 MR. EARL JONES: It wasn't the -- it -- my
2 thing is that when you make a determination, again, we
3 have to factor in what MPD is saying from their
4 narrative and their 251 and what they gathered, as well
5 as what happened at the establishment. I spoke to Mr.
6 Woodfolk. He indicated that he spoke to Mr. Watson, who
7 told him that he in fact did not kick him. He said
8 that Mr. Miranda on the second occasion trying to gain
9 entry to the establishment, swung on him and missed.

10 Or -- yeah, he said he attempted to punch
11 him. And he said that Mr. Watson pushed him out of the
12 establishment at that point. He never kicked him. So
13 my thing was that's -- that was the reason why I asked
14 for the video footage, which again, is a common
15 practice anyway. But I really wanted to see that video
16 footage to see what had taken place. And a lot of
17 times, when we have cases, especially when we have
18 cases like this where we get called out, we try to
19 review footage right there on the spot.

20 At least I can get an account of what's going
21 on. And then I ask for -- if I can get a copy of it.
22 And I wasn't able to get that. So that was -- that was

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1 kind of what took place at that time.

2 MR. CLAYTON: Did you ever speak with Officer
3 Hrebenak?

4 MR. EARL JONES: Yes, sir.

5 MR. CLAYTON: Okay. Because in your report,
6 it references having spoken with Officer Hector but I
7 don't see where you've referenced any statements given
8 to you by Officer Hrebenak.

9 MR. EARL JONES: It's the third paragraph
10 after Sergeant Taggart.

11 MR. CLAYTON: Yes. It says --

12 MR. EARL JONES: And basically everyone said
13 the same thing.

14 MR. CLAYTON: Okay. So it was your
15 understanding that Officer Hrebenak was the lead
16 officer or was it your understanding that Officer
17 Hector was the lead officer?

18 MR. EARL JONES: Officer Hector was --
19 Officer Hector was the lead from what I understand.
20 Now, Officer Hrebenak took the report.

21 MR. CLAYTON: Okay. Because in here you've
22 indicated that Officer Hector stated that he could not

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1 visually see signs of any -- excuse me -- see signs of
2 injury on Mr. Miranda. However, medics responded. But
3 Mr. Miranda refused treatment.

4 MR. EARL JONES: Right.

5 MR. CLAYTON: Okay. And did Officer Hector
6 tell you anything else about the circumstances
7 surrounding -- well, excuse me. Did he tell you
8 anything else about the incident?

9 MR. EARL JONES: No, not really. From what I
10 understand, he said that Mr. Miranda -- outside of him
11 being -- I guess feeling like he was disrespected
12 because of his ethnicity, he said that he thought that
13 Mr. Watson had also -- thought he heard him say
14 something about being put out because he was
15 intoxicated. I never -- when I spoke to any one of the
16 officers, they never indicated that they could tell if
17 he was intoxicated or not.

18 So, no, that really didn't come up either.

19 MR. CLAYTON: But Officer Hector mentioned
20 that?

21 MR. EARL JONES: Yes.

22 MR. CLAYTON: That he believed -- that he

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1 heard -- or someone -- strike that.

2 Because this is the first time we've heard
3 anyone from the police department having any indication
4 that Mr. Miranda may have been intoxicated at the time
5 of the incident. So was it --

6 MR. EARL JONES: I'm not saying that they
7 said he was intoxicated. I said that --

8 MR. CLAYTON: Okay.

9 MR. EARL JONES: -- this is what Mr. Miranda
10 said he heard Mr. Watson telling him.

11 MR. CLAYTON: Okay.

12 MR. EARL JONES: When he asked for the -- you
13 know, why was he being, I guess, denied entry on the
14 second case, he said that Mr. Watson kind of told him,
15 you know, "You're drunk, get out," that type of thing.

16 MR. CLAYTON: Okay. Well, even better. Mr.
17 Miranda now, the complainant, was given an explanation
18 by the security guard as to why he was being denied
19 entry; is that correct?

20 MR. EARL JONES: That's what he said. But he
21 said he knows that wasn't the case. He said he felt it
22 was because he was Hispanic.

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1 MR. CLAYTON: Well, he says he knows that it
2 wasn't the case that he was intoxicated?

3 MR. EARL JONES: Right.

4 MR. CLAYTON: Is that what he said?

5 MR. EARL JONES: Right.

6 MR. CLAYTON: Okay. All right. But back to
7 the point that I was making before is that he was given
8 an explanation because in the reports that we viewed,
9 there's statements that Mr. Miranda was never given an
10 explanation as to why he was being -- he was not
11 allowed entry into the club.

12 MR. EARL JONES: Again, this is what, you
13 know he -- but again, he's telling me this is what Mr.
14 Watson said. But he's saying that wasn't it. He said
15 he knows he wasn't intoxicated. He said he felt that
16 it was because it was -- he was Hispanic.

17 MR. CLAYTON: Because he was Hispanic. Okay.
18 And notwithstanding the fact that he felt like he had
19 been bullied -- he'd believed that he'd been kicked.
20 We'll use that or -- and he believed he'd been kicked
21 or he had been kicked. He felt disrespected --

22 MR. EARL JONES: Uh-huh.

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1 MR. CLAYTON: -- because of his ethnicity.
2 When you asked him whether or not he would participate
3 in these proceedings, he had nothing -- he said he
4 wanted nothing to do with this?

5 MR. EARL JONES: He said he just wanted to --
6 he wanted to be done with it.

7 MR. CLAYTON: Now, you -- counsel for the
8 government asked you to read pages from the Macombo
9 Lounge security manual. And it states that security is
10 not to use excessive force. Okay. And you put in your
11 report that you believe that Macombo Lounge has
12 violated security plan. Did you make an independent
13 assessment that excessive force had been used in this
14 instance?

15 MR. EARL JONES: My determination again was
16 taken on what MPD had said plus what Mr. Miranda had
17 said.

18 MR. CLAYTON: So you didn't make a
19 determination that Mr. Miranda had been kicked,
20 punched, tackled, dragged -- drug -- dragged, I guess,
21 or put in a headlock?

22 MR. EARL JONES: My determination was made

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1 from what MPD said as well as what Mr. Miranda had told
2 me. Again, I don't have video.

3 MR. CLAYTON: Okay.

4 MR. EARL JONES: So I'm going off of what
5 independent -- the complainant had told me as well as
6 what MPD reports.

7 MR. CLAYTON: Right. But the security plan
8 also states that if an ejected patron uses force or
9 attacks a security person --

10 MR. EARL JONES: Uh-huh.

11 MR. CLAYTON: -- that person is entitled to
12 protect himself; isn't that correct?

13 MR. EARL JONES: But he wasn't a patron from
14 what I understand. He didn't make it inside. So how
15 is he a patron?

16 MR. CLAYTON: Well, we have -- well, there's
17 -- one of -- we have conflicting stories on that. The
18 police officers indicated that he believed that the
19 patron made it into the vestibule. What is your
20 understanding?

21 MR. EARL JONES: But you're not a patron if
22 you don't make -- he didn't make it inside. So how are

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1 you a patron?

2 MR. CLAYTON: Okay. So it was your
3 understanding then that the security person -- if the -
4 - if a person does not enter the establishment --

5 MR. EARL JONES: Uh-huh.

6 MR. CLAYTON: -- it is your understanding
7 then that a security person cannot protect himself if
8 someone who was attempting to enter the club attacks
9 him?

10 MR. EARL JONES: I'm not saying that he
11 couldn't. It's not my plan. I'm just telling you what
12 a -- a patron is someone who is in the establishment
13 who, to me, is enjoying what's going on inside the
14 establishment. He never made it in.

15 MR. CLAYTON: Okay. So --

16 MR. EARL JONES: So I'm not saying he
17 couldn't defend himself. I'm just saying, to me, he
18 didn't -- he didn't even make it in. He doesn't
19 qualify to be a patron.

20 MR. CLAYTON: So in that instance Macombo
21 Lounge would not have violated its security plan
22 because Mr. Miranda was not even a patron of the club.

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1 MR. EARL JONES: But that has nothing to do
2 with -- you have a security person at the front door.
3 And does that mean that person can have at will to
4 whoever comes to the front door?

5 MR. CLAYTON: Well, I mean, I'm just using
6 the same definition you just used.

7 MR. EARL JONES: Okay.

8 MR. CLAYTON: Okay? That -- you said that
9 Mr. Miranda wasn't a patron because he didn't enter the
10 club.

11 MS. GEPHARDT: I don't think that this proves
12 one way or another that -- what happened here. I don't
13 -- I don't -- I think we're going down a road that's
14 not --

15 CHAIRPERSON MILLER: Well, hey, I think you
16 should be a little bit more specific. I mean, is there
17 any specific provision of the security plan that you
18 think Mr. Jones relied on and want to ask about?

19 MR. CLAYTON: I'm getting to that --

20 CHAIRPERSON MILLER: Okay.

21 MR. CLAYTON: -- actually. Okay?

22 CHAIRPERSON MILLER: It -- there -- it's

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1 getting a little bit late. If you could be -- you
2 know, focus, it'd be good.

3 MR. CLAYTON: Well, I have been focused --

4 CHAIRPERSON MILLER: No, I know.

5 MR. CLAYTON: -- Madam Chairperson.

6 CHAIRPERSON MILLER: I'm just saying now if
7 we could --

8 MR. CLAYTON: I'm just -- I was --

9 CHAIRPERSON MILLER: -- zero in on the
10 question?

11 MR. CLAYTON: Well, I was trying to do that.
12 But Mr. Jones just indicated for the first time that he
13 didn't believe that Mr. Miranda was actually a patron
14 of the club.

15 CHAIRPERSON MILLER: Okay.

16 MR. CLAYTON: If that's the case then, now,
17 I'm going to ask then, the security manual in this
18 instance applies to patrons and the ways to eject
19 patrons; is that correct?

20 MR. EARL JONES: That is correct.

21 MR. CLAYTON: Okay. So if Mr. Miranda wasn't
22 a patron of the club, then would the security manual

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1 apply to Mr. Miranda?

2 MR. EARL JONES: I think the security plan
3 would apply to the premises.

4 MR. CLAYTON: Okay. So then --

5 CHAIRPERSON MILLER: I'm sorry, I missed that
6 answer. Could you repeat it, Mr. Jones?

7 MR. EARL JONES: I think that the security
8 plan applies to the premises.

9 CHAIRPERSON MILLER: Okay.

10 MR. CLAYTON: Okay. So if someone attempted
11 to attack a security person, whether or not they were a
12 patron, that security person would have the ability or
13 the right to protect himself, but not use excessive
14 force?

15 MR. EARL JONES: One more time?

16 MR. CLAYTON: If a person, not necessarily a
17 patron, attacked a security member of the club --

18 MR. EARL JONES: Uh-huh.

19 MR. CLAYTON: -- that security person would
20 be able to protect themselves, just not use excessive
21 force; is that correct?

22 MR. EARL JONES: They should be able to.

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1 MR. CLAYTON: All right. Now, you asked --
2 did you ask Mr. Woodfolk the night of the incident to
3 view the video footage?

4 MR. EARL JONES: Yes.

5 MR. CLAYTON: And were you able to view the
6 video footage that night or did you --

7 MR. EARL JONES: I wasn't able to. Mr.
8 Woodfolk indicated that -- he said he didn't have his
9 laptop on him. And he said that he would -- we could
10 get all that together at a later time.

11 MR. CLAYTON: Upon conclusion of your
12 interview with Mr. Miranda several days after the
13 incident --

14 MR. EARL JONES: Uh-huh.

15 MR. CLAYTON: -- were you able at that time
16 to make an independent assessment as to whether or not
17 Mr. Miranda had been kicked by the security person?

18 MR. EARL JONES: I still couldn't make an
19 independent determination on whether he was kicked.
20 But obviously, there was something that took place that
21 night. I -- again, I can't say whether he was kicked
22 in the abdomen, he was pushed in the head. I don't

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1 know. I couldn't tell you.

2 MR. CLAYTON: Nothing further.

3 CHAIRPERSON MILLER: Okay. Mr. Silverstein.

4 MR. SILVERSTEIN: Thank you, Mr. Jones --
5 Investigator Jones. Precisely when on the night of the
6 incident did you first request video footage from Mr.
7 Woodfolk?

8 MR. EARL JONES: When I arrived and I was
9 speaking with him. I arrived around 1:40, I believe.
10 And probably I was speaking to Mr. Woodfolk maybe -- I
11 don't know -- 15, 20 minutes after that.

12 MR. SILVERSTEIN: And what specifically was
13 his response? What did he tell you? What did he
14 promise you, if anything?

15 MR. EARL JONES: There were no promises. It
16 was just -- he said that he didn't have his laptop on
17 him and that's kind of the way he -- I guess he views
18 videos as well as downloads it. I mean, you could ask
19 him to be more in-depth about that. But I know at that
20 point in time he said that, you know -- when I asked
21 him if I could, you know, get a copy of the footage --
22 and he stated that he would be able to provide that and

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1 he would let me know.

2 MR. SILVERSTEIN: He said he would let you
3 know. Did he ever get back in touch with you?

4 MR. EARL JONES: Well, I had contacted him
5 once again a few days later. And he said that he still
6 wasn't able to do it because he didn't have a zip drive
7 at the time and that he would -- and I told him to
8 contact me once he was able to get that attained.

9 MR. SILVERSTEIN: Did he ever contact you
10 again?

11 MR. EARL JONES: No, sir.

12 MR. SILVERSTEIN: Did you ever try to reach
13 him again?

14 MR. EARL JONES: No, sir.

15 MR. SILVERSTEIN: Did you know if the cameras
16 were -- you never received any video?

17 MR. EARL JONES: No, sir.

18 MR. SILVERSTEIN: Did you know if the cameras
19 were working previous to that night? You ever had any --

20 MR. EARL JONES: Yes, they were. I know.
21 I've had cases there before where they were working.

22 MR. SILVERSTEIN: Do you know that they have

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1 worked since then?

2 MR. EARL JONES: I can't tell you. I don't
3 know.

4 MR. SILVERSTEIN: Do you have any way of
5 knowing -- believing even that they were working that
6 night?

7 MR. EARL JONES: I can't tell you. I don't
8 know.

9 MR. SILVERSTEIN: Very well. Mr. Miranda,
10 did he tell you at first that he was not given a reason
11 why he was denied entry into the club or was that
12 something that we simply heard from Mr. Hrebenak?

13 MR. EARL JONES: I'm trying to recall. The
14 first time, I believe he said that he tried to go in,
15 he said the gentleman that was in front of him told him
16 he couldn't come in. And then he said once he and his
17 friend again tried to gain entry, that's when, you
18 know, he said that he had words with the gentleman who
19 was in front of him.

20 MR. SILVERSTEIN: So I want to -- I want to
21 make sure if you're aware that there was a discrepancy
22 in his -- in his answers or if these were two different

1 incidents? I hear someone say that he said that he was
2 denied entry and he was not told why, and then that he
3 told you that he was denied entry because he was drunk
4 -- or because they said he was drunk.

5 MR. EARL JONES: Right.

6 MR. SILVERSTEIN: Is there a conflict there
7 or are these two separate instances? Did he change his
8 story or --

9 MR. EARL JONES: It's the same instance but
10 in that -- in the context of their conversation, that's
11 what he said. He initially indicated that he wasn't
12 told and then towards the end of the conversation, as
13 we were closing our conversation, he said that the
14 gentleman told him that he was -- that he was
15 intoxicated. And then he turned -- then he said, "I
16 wasn't intoxicated. It was because of I'm Hispanic."

17 MR. SILVERSTEIN: So he told you he wasn't
18 told and then he told you that he was told but that it
19 was because of some --

20 MR. EARL JONES: It was because of something
21 else.

22 MR. SILVERSTEIN: -- ethnic bias?

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1 MR. EARL JONES: Right, right.

2 MR. SILVERSTEIN: So he did change his story?

3 MR. EARL JONES: So turned it into something
4 else.

5 MR. SILVERSTEIN: You're telling us that he
6 did in fact have an inconsistency in his story?

7 MR. EARL JONES: Yes.

8 MR. SILVERSTEIN: No further questions.

9 CHAIRPERSON MILLER: I have one question.
10 Did he tell you why he thought the security guard
11 kicked him?

12 MR. EARL JONES: He didn't know why.

13 CHAIRPERSON MILLER: He didn't know why. Did
14 he say what happened right then?

15 MR. EARL JONES: He never -- he never
16 indicated that he threw a punch. He never -- he just
17 said that the guy just kicked him.

18 CHAIRPERSON MILLER: Okay. Thank you. All
19 right. Mr. Brooks?

20 MR. BROOKS: Yes. Thank you, Madam Chair.
21 Investigator Jones, you say you have had occasion to
22 visit the Macombo Lounge in the past?

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1 MR. EARL JONES: Yes, sir.

2 MR. BROOKS: And had you had any occasion to
3 download video during those visits?

4 MR. EARL JONES: Yes, sir. I've had
5 occasions before where Mr. Woodfolk had provided zip
6 drives to me with reference to video.

7 MR. BROOKS: So was a thumb drive required?

8 MR. EARL JONES: From what I'm understanding,
9 yes.

10 MR. BROOKS: So you had a thumb drive in the
11 past?

12 MR. EARL JONES: Yes.

13 MR. BROOKS: All right. Thank you, Madam
14 Chair.

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

17 MR. ALBERTI: Yeah, just real quick. Mr.
18 Jones, I -- in your report you said that Mr. -- that
19 Mr. Woodfolk relayed to you his conversation with Mr.
20 Watson?

21 MR. EARL JONES: Yes, sir.

22 MR. ALBERTI: He said that Mr. Watson -- he

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1 said that -- let me see -- "Mr. Miranda suddenly
2 attempted to punch him," is what Mr. Watson told Mr.
3 Woodfolk. "Mr. Miranda suddenly attempted to punch
4 him, followed by Mr. Watson pushing Mr. Miranda out the
5 front door." Is that what Mr. -- is that what Mr.
6 Woodfolk relayed to you that he heard from Mr. Watson?

7 MR. EARL JONES: Yes, sir.

8 MR. ALBERTI: Okay. Not that he pushed him
9 away after being punched, he actually pushed him to
10 eject him from --

11 MR. EARL JONES: From the establishment.

12 MR. ALBERTI: Okay. Thank you.

13 CHAIRPERSON MILLER: Yes, Mr. Jones.

14 MR. JONES: Thank you, Madam. Just for
15 clarification purposes, in your testimony you noted,
16 "Zip drive," and you also responded to a question where
17 it's asking about a thumb drive. Just for
18 clarification purposes, is it a USB thumb drive that
19 we're referring to --

20 MR. EARL JONES: Yes.

21 MR. JONES: -- and not necessarily those old
22 zip disks that are old, old, old, old, old things?

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1 MR. EARL JONES: No, it's the USB.

2 MR. JONES: USB thumb drive.

3 MR. EARL JONES: Yes, yes.

4 MR. JONES: Okay. And you've had occasion
5 where you've requested video on the spot and gotten a
6 populated thumb drive from the owner or you're
7 requested video and then subsequent to that request,
8 i.e., one day, two days later, you've gotten your
9 request addressed via a delivered thumb drive from the
10 owner?

11 MR. EARL JONES: That would be the latter.

12 MR. JONES: The latter. Okay. So he's never
13 -- to your -- in your experience, he's never produced
14 video for you on a thumb drive on the spot, i.e., the
15 day of the event where you made your initial request
16 and you just sat and waited for it? And then he gave
17 it to you, like, an hour or two later? It's always
18 been a delay?

19 MR. EARL JONES: Yes.

20 MR. JONES: Okay.

21 MR. EARL JONES: Yes.

22 MR. JONES: Related to that, when you'd

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1 gotten video footage from the owner, is the owner in
2 the room that you'd gotten video footage? Is he in the
3 room right now?

4 MR. EARL JONES: Yes, he is.

5 MR. JONES: He is.

6 MR. EARL JONES: Yes.

7 MR. JONES: So that gentleman that's sitting
8 at the Licensee's table is the individual from whom
9 you've gotten video from in the past?

10 MR. EARL JONES: Yes.

11 MR. JONES: Is he the individual that you
12 specifically requested a video from this time?

13 MR. EARL JONES: Yes.

14 MR. JONES: Okay. So in your estimation, you
15 didn't expect that process to go any differently than
16 it had in the past?

17 MR. EARL JONES: Correct.

18 MR. JONES: Okay. Thank you. Thank you,
19 Madam Chair.

20 MR. ALBERTI: Just real quick.

21 CHAIRPERSON MILLER: Yes, Mr. Alberti.

22 MR. ALBERTI: Mr. Jones, did Mr. Woodfolk

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1 ever ask you to provide him with a thumb drive?

2 MR. EARL JONES: No, sir.

3 MR. ALBERTI: Have you done that for -- in
4 other instances where the owner --

5 MR. EARL JONES: No, sir.

6 MR. ALBERTI: -- has asked for you to bring
7 in a thumb drive for him to do that? Do you know if
8 other investigators have?

9 MR. EARL JONES: I don't know.

10 MR. ALBERTI: Okay. Thank you.

11 CHAIRPERSON MILLER: I just have one
12 question. In the past where Mr. Woodfolk has provided
13 you videos, did it contain -- did it ever contain
14 incriminating information on it? It's kind of a
15 general word --

16 MR. EARL JONES: Yeah.

17 CHAIRPERSON MILLER: -- but did it ever
18 contain information that showed a violation or

19 MR. EARL JONES: I haven't -- I've only had a
20 few cases there. But the cases that I've had -- that I
21 have had there were not on the establishment. It was -
22 - it was dealing with patrons who were just unruly,

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1 things happening outside the establishment. And so
2 again, as common practice, we get video footage
3 whenever we can.

4 CHAIRPERSON MILLER: Uh-huh.

5 MR. EARL JONES: That's a common practice.
6 So, no, I can't say that it was incriminating evidence.
7 But again, he supplied the things that I've asked for
8 from -- in the past.

9 CHAIRPERSON MILLER: Okay. So this was the
10 first time you didn't get what you asked for --

11 MR. EARL JONES: Yes, ma'am.

12 CHAIRPERSON MILLER: -- with respect to the
13 videos? Okay.

14 MR. EARL JONES: Yes, ma'am.

15 CHAIRPERSON MILLER: Any follow-up question
16 based on Board questions?

17 MS. GEPHARDT: I just have one further
18 question. Do you know that -- if an incident report was
19 done in this case by the management or security
20 personnel?

21 MR. EARL JONES: I have not seen one. I have
22 not.

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1 MS. GEPHARDT: Do you know if that's required
2 of the -- of the establishment to fulfill -- or to fill
3 out a secure -- or an incident report?

4 MR. EARL JONES: It is.

5 MS. GEPHARDT: Did you request an incident
6 report from Mr. Woodfolk?

7 MR. EARL JONES: Well, at the time it was --
8 when we do -- when we had to go out on call, there's a
9 lot of times, because it just happened, you don't get
10 the report. So all -- a lot of times you have to come
11 back and get those things. That was also requested
12 with the video and it was the same situation.

13 MS. GEPHARDT: And so you never -- you have
14 not received an incident report? And you followed up
15 by asking specifically for the incident report?

16 MR. EARL JONES: And for the video.

17 MS. GEPHARDT: Okay. And it is a requirement
18 according to the security plan for them to do one in
19 every case where there's been an assault or an
20 altercation?

21 MR. EARL JONES: Yes, ma'am.

22 MS. GEPHARDT: Okay. Thank you. No further

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1 questions.

2 CHAIRPERSON MILLER: Okay. Mr. Clayton?

3 MR. CLAYTON: I have one question. Mr.
4 Jones, I don't see anywhere in your report where it
5 indicates that you requested a copy of the incident
6 report. I see where you state where you wanted a copy
7 of the flash drive but nowhere -- excuse me -- a zip
8 drive, but nowhere do you say that you asked Mr.
9 Woodfolk for an incident report.

10 MR. EARL JONES: I probably didn't put it in
11 there, sir. If it's not in here, I didn't put it in
12 there.

13 MS. GEPHARDT: It is -- it is on Page 3 at
14 the end of that big, large, first paragraph. "Mr.
15 Woodfolk stated he could not supply an incident report
16 to the event just taking place."

17 MR. CLAYTON: Is that the same as him -- the
18 investigator requesting an incident report be provided
19 to him?

20 MR. EARL JONES: This was during the
21 conversation.

22 MR. CLAYTON: So that was during the

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1 conversation. So, like, my question was, you didn't
2 ask him for an incident report? You asked him for the
3 zip drive, correct?

4 MR. EARL JONES: I asked him -- because with
5 -- that's -- again, that's when we talked again and it
6 was - - the follow-up was I would get these items. So
7 that's when he told me, you know -- and again, that's
8 why I just explained about when things do -- you know,
9 when we get these calls, a lot of times you can't do
10 the incident report because it just happened.

11 MR. CLAYTON: Nothing further.

12 CHAIRPERSON MILLER: Okay. Thank you very
13 much.

14 MR. EARL JONES: Thank you.

15 MR. CLAYTON: Oh, I'm sorry. One question --
16 one follow-up question. The lack of an incident report
17 was not noted as being a violation of the security
18 plan; is that correct?

19 MR. EARL JONES: I don't -- you are correct.

20 MR. CLAYTON: Okay. Nothing further.

21 CHAIRPERSON MILLER: Thank you. Okay,
22 thanks. Does that complete your case, Ms. Gephardt?

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1 MS. GEPHARDT: That concludes the
2 government's case. Thank you.

3 CHAIRPERSON MILLER: Okay. Thank you, Mr.
4 Clayton.

5 MR. CLAYTON: Thank you.

6 COURT REPORTER: Are we going to break for
7 lunch?

8 CHAIRPERSON MILLER: Yeah, we are going to
9 break for lunch but I think at the end of this case
10 because we just had one witness; is that correct?

11 MR. CLAYTON: Yes, your honor -- your honor -
12 - yes, Madam Chairperson. I would like to read into
13 the record the two affidavits that I've provided to the
14 Board and one witness would be Mr. Woodfolk.

15 CHAIRPERSON MILLER: I'm not sure you need to
16 read them into the record. They're in the record.

17 MR. CLAYTON: Well, it's my understanding
18 that the -- will the text of the statements be in the
19 record or will just the fact that affidavit was
20 provided be a part of the record.

21 CHAIRPERSON MILLER: Oh, no. I'll just tell
22 them to check with (inaudible) counsel but the

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1 affidavit would be in, like -- my understanding, like
2 an exhibit would be in -- will be in text. It just
3 won't be in the middle of a transcript.

4 MR. CLAYTON: Okay. Could we confirm that
5 because --

6 CHAIRPERSON MILLER: Sure. We can confirm
7 that. Yes.

8 MR. CLAYTON: Okay. So --

9 CHAIRPERSON MILLER: We can confirm.

10 MR. CLAYTON: -- then I won't need to read
11 the text?

12 CHAIRPERSON MILLER: Okay.

13 MR. CLAYTON: Okay. Perfect. Then I have
14 one witness, Michael Woodfolk. And I do want to point
15 -- while he's taking the stand, I would like to point
16 out again that --

17 CHAIRPERSON MILLER: You need a five-minute
18 break?

19 MR. CLAYTON: -- Mr. Miranda, the
20 complainant, had been subpoenaed or requested to be
21 present for today's hearing. I would have liked to
22 have cross-examined him about the incident. But since

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1 he did not respond or the subpoena was not actually
2 served, I'm unable to do that. I'd like that noted.

3 CHAIRPERSON MILLER: Okay. Is there a
4 request for a five-minute break? Did you request a
5 five-minute break?

6 MR. CLAYTON: I have a copy of the request
7 for the subpoena if the Board would like to see it.

8 CHAIRPERSON MILLER: What?

9 MR. CLAYTON: I have a copy of the request
10 for - - issuance of subpoena if the Board would like
11 that.

12 CHAIRPERSON MILLER: Okay, okay. Wait a
13 minute. We have a request for a five-minute break.

14 MR. CLAYTON: Okay.

15 CHAIRPERSON MILLER: So we'll pick that up
16 when we -- when I get back.

17 MR. CLAYTON: Okay.

18 (WHEREUPON, at 1:57 p.m., the hearing went
19 off record until 2:06 p.m.)

20 MR. CLAYTON: Would you state your name for
21 the record, please?

22 MR. WOODFOLK: Michael Woodfolk, W-O-O-D-F-O-

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1 L-K.

2 MR. CLAYTON: And are you the owner of the
3 Macombo Lounge?

4 MR. WOODFOLK: Yes, I am.

5 MR. CLAYTON: Mr. Woodfolk, I'm going to ask
6 you a couple questions first -- predicates. Was
7 Donnell Watson employed as a security guard at the
8 Macombo Lounge on January 28th, 2012?

9 MR. WOODFOLK: Yes.

10 MR. CLAYTON: Okay. And as a requirement as
11 -- of his employment as a security guard at the Macombo
12 Lounge, is he required to read the Macombo Lounge
13 security plan?

14 MR. WOODFOLK: Yes.

15 MR. CLAYTON: And do you know if Mr. Watson
16 did in fact read the security plan?

17 MR. WOODFOLK: Yes, he did.

18 MR. CLAYTON: As a requirement of employment
19 with Macombo Lounge, are security guards, when on duty,
20 required to wear a particular uniform?

21 MR. WOODFOLK: Yes, they are.

22 MR. CLAYTON: What are they required to wear?

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1 MR. WOODFOLK: They're required to wear a
2 black shirt, either short sleeve or long sleeve, that
3 says, "Security," in big, white letters on the front
4 and on the back.

5 MR. CLAYTON: And on the evening of January
6 28, 2012 did you have occasion to view Mr. Watson
7 before he went on duty?

8 MR. WOODFOLK: Yes, I did.

9 MR. CLAYTON: Did you notice that -- if Mr.
10 Watson had on his security -- that t-shirt you
11 indicated?

12 MR. WOODFOLK: Yeah, yes. He had it on.

13 MR. CLAYTON: He did have it on?

14 MR. WOODFOLK: Yes, he did.

15 MR. CLAYTON: Okay. Is this a copy of -- I
16 mean, not a copy -- is this Mr. Watson's t-shirt that
17 he was wearing on January 28th?

18 MR. WOODFOLK: Yes, it is.

19 MR. CLAYTON: Okay. I'd like to identify for
20 the record black t-shirt. On the front in white, bold
21 letters it says, "Security." And on the rear,
22 likewise, it says, "Security." And is Mr. Watson -- I

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1 mean, excuse me, Mr. Woodfolk, you are certain that on
2 January 28th Mr. Watson had on that t-shirt?

3 MR. WOODFOLK: Yes. Any security personnel
4 that comes in that does have it, we keep extras in the
5 club. But he had it on so

6 MR. CLAYTON: And under the terms of the
7 Macombo Lounge security plan, do the security guards
8 have the discretion to deny entry into the club of
9 anyone who appears intoxicated?

10 MR. WOODFOLK: Yes, they do.

11 MR. CLAYTON: Okay. Now, on the evening of
12 January 28 -- or the morning of January 28, you were
13 not present at the time of the alleged incident that is
14 the subject of this hearing, correct?

15 MR. WOODFOLK: When you say, "Present," I was
16 -- I was in the club but I wasn't out in the -- where
17 the incident occurred.

18 MR. CLAYTON: Okay. So you were working in
19 the club but you just didn't witness the events that
20 are the subject of this hearing, correct?

21 MR. WOODFOLK: That's correct.

22 MR. CLAYTON: All right. Now, how did you

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1 become aware of the incident?

2 MR. WOODFOLK: One of the staff told me that
3 somebody had opened the door and they could see police
4 lights out front. So they called me upstairs and told
5 me to come down; the police are outside. That's when I
6 came down.

7 MR. CLAYTON: Now, did the police enter the
8 club at all at any point during the time when they were
9 present? Did they enter the club physically themselves
10 and interview any person -- any patrons of the club?

11 MR. WOODFOLK: No, they did not.

12 MR. CLAYTON: Did the police officers enter
13 the club and ask if any witnesses -- if there were any
14 witnesses to any incident that evening?

15 MR. WOODFOLK: No, not that I'm aware of.

16 MR. CLAYTON: And you were interviewed by a
17 police officer; isn't that correct?

18 MR. WOODFOLK: I can't remember if I was
19 interviewed at that time. I really can't say but I
20 don't believe so.

21 MR. CLAYTON: Okay. And --

22 CHAIRPERSON MILLER: I'm sorry, you can't say

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1 because why?

2 MR. WOODFOLK: I can't recollect if an
3 officer interviewed me that night of the incident, no.

4 CHAIRPERSON MILLER: Okay.

5 MR. CLAYTON: Were you interviewed that
6 evening by an ABRA investigator?

7 MR. WOODFOLK: Yes.

8 MR. CLAYTON: Okay. Was that Mr. Jones who
9 was on the stand?

10 MR. WOODFOLK: Yes, it was.

11 MR. CLAYTON: Okay. And did you recount to -
12 - what did you tell Mr. Jones about what happened that
13 evening?

14 MR. WOODFOLK: I told him that I spoke to Mr.
15 Watson. And Mr. Watson had told me that a patron tried
16 to enter the club and he was intoxicated and he was not
17 allowed entry. It was two of them together. And he
18 said one of them was intoxicated. And he told them he
19 could not come in. And he said that the other guy who
20 was with him could have come in because he didn't
21 appear to be intoxicated.

22 But they were together. So they went away.

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1 Then they came back more than 10, 15 minutes later.
2 They tried to re-enter again. He told them again that
3 he could not come in. The guy took a swing at him.
4 And he said he ducked, missed the swing, but backed up
5 to miss the swing, and then he kind of pushed him out.
6 So that - - this -- he said that it happened in the
7 vestibule between the front door and the main door --
8 the outside door. And he kind of pushed him out. Then
9 they went out. He closed the door and came back in.
10 That's what I told Mr. Jones.

11 MR. CLAYTON: Okay. Now, the Macombo Lounge
12 has security cameras installed; is that correct?

13 MR. WOODFOLK: That's correct.

14 MR. CLAYTON: Okay. How many cameras does it
15 have?

16 MR. WOODFOLK: Sixteen cameras.

17 MR. CLAYTON: Now, it didn't always have 16
18 cameras, did it?

19 MR. WOODFOLK: No, we've always had 16. And
20 sometimes certain cameras may be out. And we get them
21 replaced or whatever. But it has -- the total number
22 of cameras is 16.

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1 MR. CLAYTON: Okay. And on January 28th,
2 were your security cameras all working and functioning?

3 MR. WOODFOLK: Yes.

4 MR. CLAYTON: Okay. Did a police officer ask
5 you on the evening of -- or the morning of January 28th
6 to look at the video footage from that night?

7 MR. WOODFOLK: Police officer? No.

8 MR. CLAYTON: Okay. Was there any video
9 footage of the incident that evening or that morning?

10 MR. WOODFOLK: There was video that I
11 reviewed myself, I believe, it was next day or the day
12 after.

13 MR. CLAYTON: Okay. Can you tell us what you
14 saw in the video?

15 MR. WOODFOLK: I saw two guys approach. And
16 the camera in the vestibule showed them trying to
17 attempt to get in the club. And then it showed them
18 going back out of the club, followed by Mr. Watson
19 going out behind them until they were through the
20 second door and out in the street. And then he closed
21 the door behind them. I also saw them appear to walk
22 out to the corner, the corner of Georgia Avenue and

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1 Jefferson Street.

2 And I could see one of those guys on the
3 phone. And there were other people out there smoking
4 cigarettes. And Mr. Watson came back in and I would say
5 five minutes later a police car pulled up.

6 MR. CLAYTON: Now, your security cameras show
7 -- are trained on the vestibule area and also outside
8 of the club; is that correct?

9 MR. WOODFOLK: Yeah, there's a camera in the
10 vestibule and out the front of the building.

11 MR. CLAYTON: Okay. At any point did you see
12 Mr. Watson kick Mr. Miranda on that video?

13 MR. WOODFOLK: Well, no. No.

14 MR. CLAYTON: And as a result of viewing that
15 video footage, did you make a determination whether or
16 not Mr. Watson had kicked Mr. Miranda?

17 MR. WOODFOLK: Yeah, I said that didn't
18 happen, that he didn't -- he did not kick them at all.

19 MR. CLAYTON: Did you tell that to anyone?

20 MR. WOODFOLK: I told it to Mr. Jones at the
21 ABC guy.

22 MR. CLAYTON: Now, there's a -- the video, as

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1 you've heard throughout the morning, has been the
2 lynchpin because this is essentially a he say/he say
3 case. The video footage that you saw again, you are
4 absolutely certain that you did not see Mr. Watson kick
5 Mr. Miranda; is that correct?

6 MR. WOODFOLK: I'm positive he did not kick
7 him.

8 MR. CLAYTON: And because of that fact,
9 you've decided to proceed with these hearings today as
10 opposed to accepting an offer in compromise; is that
11 correct?

12 MR. WOODFOLK: That's correct.

13 MR. CLAYTON: Now, you were asked -- you were
14 asked by Mr. Jones, the investigator, to provide him
15 with the footage from the incident; is that correct?

16 MR. WOODFOLK: That's correct.

17 MR. CLAYTON: The evening of January 28th did
18 Mr. Jones ask to see the video footage?

19 MR. WOODFOLK: No, he didn't ask to see. He
20 asked for a copy of the events that took place between
21 a certain time and a certain time. But he didn't ask
22 to see it.

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1 MR. CLAYTON: So were you able eventually to
2 provide Mr. -- excuse me -- Mr. Jones with a copy that
3 he asked for?

4 MR. WOODFOLK: No, I was not.

5 MR. CLAYTON: Can you tell us why not?

6 MR. WOODFOLK: Well, on January the 3rd we
7 had a break-in into the club. At that time the
8 suspects, who broke in, took the DVR, broke probably 8
9 of the 16 cameras, and proceeded to rob us. I had new
10 cameras installed probably two weeks after that, a
11 whole new, complete system. The previous DVR was out
12 in the open on the second floor. So we had them hide
13 the new DVR. And when we got the new cameras in -- the
14 whole new system in, at that time I was not trained in
15 making copies using a thumb drive or a CD or anything
16 to make -- I was able to view and play back incidents
17 that had happened.

18 But at that point, I was not trained in
19 making copies. So when Mr. Jones came to me and asked
20 me for a copy of the events of that night, I would say
21 three or four, maybe five days later, I had already
22 contacted the person that installed the system to come

1 by and show me how to make a copy because we had an
2 event -- an incident happen outside the club I needed
3 to get a copy of. The person that put the cameras in
4 told me he would do that.

5 And I'd say it was about -- well, when Mr.
6 Jones contacted me the second time, two weeks later, to
7 make a copy of it after I had found out how to do it,
8 when I went back to look at the incident for that
9 night, much to my surprise, the incident was not there.
10 And so I asked the person that installed the cameras --
11 I said, "I thought I was -- had 30 days of coverage,
12 whereby on the hard drive, the recording will record
13 for 30 days."

14 And he told me that he thought it did also.
15 But because of the cameras and the way it was situated
16 where it only records if there's motion -- if there's -
17 - in other words, if there's no movement, the cameras
18 would just stop. If there was any movement, it was
19 continuing to record. It's a motion-sensitive
20 recording. And so therefore, it ate up more of the
21 hard drive. So the 30 days which I thought it was
22 covering was only covering, like, ten days to two

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1 weeks.

2 So when Mr. Jones contacted me probably two
3 weeks later -- and I was assuming I was going to
4 produce it for him -- I went back to record that
5 particular day and it was gone. And so I told Mr.
6 Jones that I thought I had 30 days of coverage but I
7 only had -- it was between ten days and two weeks
8 before it started recording over. So I told him I
9 could not provide him with the footage from that night.
10 I did tell him that I saw it. I told him what I saw
11 and I told him I would be happy to provide you with a
12 thumb drive now that I know how to do it.

13 But when I went back to do that, it was gone.

14 MR. CLAYTON: Okay. Now, when you -- the
15 break-in occurred January 3rd --

16 MR. WOODFOLK: Correct.

17 MR. CLAYTON: -- which is 25 days before the
18 incident on January 28th. When were the new cameras
19 installed?

20 MR. WOODFOLK: I'm not sure of the exact date
21 but I think it was about two weeks after the break-in.
22 I was going to go with the same guy who did the first

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1 cameras. But I just was having a lot of trouble with
2 him in some other issues. So I went with a new
3 company. And I don't have the exact date but I think
4 it was about ten days to two weeks later that the new
5 system was installed.

6 MR. CLAYTON: And when you had the new
7 system, that included a new recorder, correct?

8 MR. WOODFOLK: Yeah, DVR.

9 MR. CLAYTON: And the new recorder did not
10 require a CD or a DVD for recording? It required a USB
11 thumb drive; is that correct?

12 MR. WOODFOLK: Correct. Correct.

13 MR. CLAYTON: Okay. And you've indicated
14 that you did not know how to download information using
15 the thumb drive?

16 MR. WOODFOLK: Correct.

17 MR. CLAYTON: Okay. When you were able to
18 look at the video, how were you able to do that?

19 MR. WOODFOLK: Through my laptop computer.

20 MR. CLAYTON: Okay.

21 MR. WOODFOLK: Because I have access with my
22 laptop to view the club wherever I can get internet. I

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1 can also view it on my cell phone. But I can't make a
2 copy or record from the cell phone. I have a -- I need
3 a laptop to see it but I need the actual DVR to record.

4 MR. CLAYTON: So you have to actually plug
5 the thumb disk -- the thumb drive into the DVR --

6 MR. WOODFOLK: Correct.

7 MR. CLAYTON: -- that's hidden at the club?

8 MR. WOODFOLK: Correct.

9 MR. CLAYTON: After you told Mr. Jones -- you
10 recount those events to Mr. Jones and told him that you
11 were -- it had been erased over --

12 MR. WOODFOLK: Uh-huh.

13 MR. CLAYTON: -- what happened after that?

14 MR. WOODFOLK: I never heard from him again.
15 Well, I heard from him one time since. And he told me
16 that he had spoken to Mr. Miranda and that he thought
17 or -- either Mr. Miranda told him or he made the
18 assumption that Mr. Miranda was denied entry because --
19 well, he made the story up because he couldn't get in
20 that night. That's what he told me.

21 MR. CLAYTON: And he told you, being Mr.
22 Jones told you that?

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1 MR. WOODFOLK: Mr. Jones told me that the guy
2 was mad because he didn't get let in that night and
3 that's why he called the police.

4 MR. CLAYTON: So he said he made the story
5 up. Would that include the part about being kicked?

6 MR. WOODFOLK: Yes.

7 MR. CLAYTON: Nothing further.

8 CHAIRPERSON MILLER: Okay. Cross?

9 MS. GEPHARDT: Okay. Good afternoon, Mr.
10 Woodfolk. Do you train your security personnel on how
11 to deal with rowdy patrons or potential patrons?

12 MR. WOODFOLK: Yes, I do. My security
13 personnel now comes from two sources. One is a company
14 I use -- Mr. Watson had been hired prior to that. He's
15 been with the company for over two years. He's been
16 with Macombo for over two years. So before I got the
17 new company, I trained him. And he had some training
18 at other facilities that he worked at also.

19 But as far as our rules, yes, I go over the
20 security plan with all the security personnel.

21 MS. GEPHARDT: And what do you instruct your
22 security personnel to do when they encounter a rowdy

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1 patron or somebody who's refusing to leave?

2 MR. WOODFOLK: Well, we try to talk them into
3 leaving. That's typically what we try to do. And that
4 works most of the time. We'll tell a person that they
5 have to leave. They usually comply. We've called the
6 police before on incidents but the majority of the time
7 we talk to them to get them out. And they will usually
8 comply.

9 MS. GEPHARDT: Are you -- do you ever
10 instruct your security personnel to use any kind of
11 physical touching or force to eject a patron?

12 MR. WOODFOLK: No, never.

13 MS. GEPHARDT: Not even --

14 MR. WOODFOLK: We --

15 MS. GEPHARDT: -- in self-defense?

16 MR. WOODFOLK: Well, in self-defense. That's
17 -- we tell them, "If someone hits you, you've got to
18 defend yourself." Yes. But we don't use that as a
19 first choice of action to use if someone doesn't want
20 to leave.

21 MS. GEPHARDT: If somebody -- oh, I'm sorry.
22 Go ahead.

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1 MR. WOODFOLK: Most of the time people are
2 going to leave when you tell them that they have to go.
3 And they may, you know, cuss at you or whatever but
4 they'll usually comply and leave.

5 MS. GEPHARDT: If a security personnel -- if
6 they use any type of force in self-defense, is that
7 intended -- is there -- is the intent to get them out
8 the door or is the intent to try to detain them and
9 then call the cops?

10 MR. WOODFOLK: It depends on the situation.
11 If it's someone that's acting really violent, you know,
12 throwing glasses or -- that's never happened. But if
13 someone were to act like that, then we would call the
14 police. On our busier nights, we have more personnel -
15 - I mean, more security personnel for that purpose.
16 But normally, we're not -- the situation that -- where
17 we have to actually physically grab someone and get
18 them out, that -- I can't recall that happening.

19 MS. GEPHARDT: So are you familiar with your
20 security plan, what -- and what it says with regards to
21 when self-defense can be used?

22 MR. WOODFOLK: Yes.

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1 MS. GEPHARDT: And what does it say?

2 MR. CLAYTON: Objection. He's asking from
3 memory. It would be better to show him the actually
4 security plan.

5 MS. GEPHARDT: Okay. Okay.

6 CHAIRPERSON MILLER: Sustained.

7 MS. GEPHARDT: Showing the witness what's --
8 the security plan, which is government's Exhibit 3.
9 Can I approach the witness?

10 CHAIRPERSON MILLER: Yes.

11 MS. GEPHARDT: At the bottom of that page,
12 can you read what it says with regard to --

13 MR. WOODFOLK: "If it becomes necessary to
14 escort a patron to the door, security personnel should
15 be well trained to do so. For safety purposes, a rule
16 of thumb is to have at least one more person to assist.
17 Security personnel are not allowed to use physical
18 force. This is not to say you cannot slightly touch a
19 patron to guide, direct or block entry. Force should
20 only be used in self-defense, for the purpose of
21 detaining a criminal for the police."

22 MS. GEPHARDT: So is it not true that it says

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1 that force should only -- highlighted, in italics --
2 should only be used in self-defense for the purpose of
3 detaining a criminal for the police?

4 MR. WOODFOLK: That's correct.

5 MS. GEPHARDT: And in this case Mr. Watson
6 did not detain Mr. Miranda so -- is that correct?

7 MR. WOODFOLK: Correct. He did not detain
8 Mr. Miranda.

9 MS. GEPHARDT: So Mr. Watson told you that
10 Mr. Miranda swung the first punch?

11 MR. WOODFOLK: Correct.

12 MS. GEPHARDT: So -- and the reason he pushed
13 back was because he was defending himself?

14 MR. WOODFOLK: Correct.

15 MS. GEPHARDT: So he did not detain him as
16 per the security protocol?

17 MR. WOODFOLK: Well, again, in this type of
18 situation, a patron trying to come through the door
19 that he's already blocked, and saying he can't come in
20 because he's intoxicated, in that -- I don't think in a
21 case like that that he needed to be detained for the
22 police.

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1 MS. GEPHARDT: Okay. Do you -- one moment.
2 When were you notified that an incident had occurred
3 after the --

4 MR. WOODFOLK: When -- well, I was told that
5 the police were out front, I came down and I walked
6 outside. And I saw Mr. Watson talking out there. I
7 seen other people standing out there. So I just asked
8 Mr. Watson, "What happened? Why were the police out
9 here?" He told me what was going on.

10 MS. GEPHARDT: So did Mr. Watson at any time
11 prior to the police arriving try to get in touch with
12 you to let you know that he had this rowdy patron out
13 front?

14 MR. WOODFOLK: No, because he didn't use the
15 word, "Rowdy." He said a guy tried to come in that was
16 intoxicated. That happens all the time. People come
17 up there and they try to come in. If they're
18 intoxicated, you're trained not to let them in.

19 MS. GEPHARDT: But is it common for just --
20 for patrons who are denied entrance to -- if it were
21 true, to swing a punch at the security guard?

22 MR. WOODFOLK: I guess that depends on how

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1 intoxicated the person is. If they're --

2 MS. GEPHARDT: What if --

3 MR. WOODFOLK: -- if they're intoxicated and
4 they're not in clear mind, then they might try to
5 swing. You know, a lot of people get courage when they
6 get alcohol in their system. And he thought that -- I
7 guess he thought that he could, you know, take Donnell
8 out -- Mr. Watson.

9 MS. GEPHARDT: But it is incumbent upon a
10 security personnel to notify management or notify you
11 that an incident has occurred where a patron has tried
12 to swing at the security guard or vice versa, where the
13 security guard has attempted to put his hands on a
14 patron --

15 MR. WOODFOLK: Well --

16 MS. GEPHARDT: -- or kick a patron?

17 MR. WOODFOLK: Because I came downstairs
18 prior to him coming in to me to tell me, probably maybe
19 a couple minutes.

20 MS. GEPHARDT: What's -- but there was enough
21 time had passed that police were able to get to the
22 scene by the time you even found out; isn't that

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1 correct?

2 MR. WOODFOLK: Correct.

3 MS. GEPHARDT: Okay. So you told counsel
4 that you have 16 cameras within your establishment?

5 MR. WOODFOLK: That's correct.

6 MS. GEPHARDT: And all of those cameras are
7 working and functioning and -- were working and
8 functioning on the date of this incident?

9 MR. WOODFOLK: Correct.

10 MS. GEPHARDT: And you also indicated that
11 you reviewed the footage yourself?

12 MR. WOODFOLK: That's correct.

13 MS. GEPHARDT: And you did not see any
14 indication that your security guard, Mr. Watson -- that
15 he kicked this patron?

16 MR. WOODFOLK: That's correct.

17 MS. GEPHARDT: Okay. So -- and you also
18 stated that two weeks prior to this incident, you had a
19 new security system installed?

20 MR. WOODFOLK: New cameras, yes.

21 MS. GEPHARDT: New cameras. But when you had
22 them installed by this new company, you didn't ask for

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1 them to sit down and show you how to record or how to
2 keep, you know, track of, you know, how to record
3 surveillance if there were an incident or anything like
4 that?

5 MR. WOODFOLK: I asked -- I can see -- I knew
6 how to play back the whole -- I can take a period in
7 time, an hour here, an hour here, two days ago, three
8 days ago, a week ago. I can go play it back and look
9 at it. I did not know how to make a copy. Actually I
10 was thinking I could copy it on my laptop. But they
11 told me, "No, you need to do it from the DVR." I can
12 play back from the laptop but I couldn't record it.

13 So I said, "Well, you need to come out here
14 and show me how to do it from the hidden DVR."

15 MS. GEPHARDT: Uh-huh.

16 MR. WOODFOLK: And I guess when they found
17 time to do it, they came out and showed me.

18 MS. GEPHARDT: So your establishment is --
19 what are the hours of your establishment on --

20 MR. WOODFOLK: 2:00 p.m. to 2:00 a.m.,
21 Friday; and Saturday, 2:00 p.m. to 3:00 a.m.; Sunday,
22 6:00 p.m. to 2:00 a.m.

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1 MS. GEPHARDT: And is it -- have you had
2 other incidences at Macombo Lounge with rowdy patrons
3 or the police being summoned for whatever reason -- not
4 necessarily the fault of the establishment, but just
5 incidences that happened?

6 MR. WOODFOLK: Yes.

7 MS. GEPHARDT: So it would be important then
8 to know how to use your security system to be able to
9 record because the police might need it, ABRA might
10 need it. So that would be a top priority for you,
11 correct?

12 MR. WOODFOLK: That's correct.

13 MS. GEPHARDT: Okay.

14 MR. WOODFOLK: But once we got the new
15 cameras, anything between the time that the old cameras
16 were stolen or destroyed -- and they took the old DVR -
17 - and the point where we got new -- we had no footage
18 anyway. So the point new started once we got the new
19 ones installed. That was the point -- that was the new
20 beginning, so to speak, of being able to record an
21 incident.

22 Between the time that we had the new cameras

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1 installed and this incident, there was nothing else
2 necessary to record.

3 MS. GEPHARDT: But you didn't require or ask
4 the security camera people to sit down with you and
5 show you how to record footage?

6 MR. WOODFOLK: At that point, no.

7 MS. GEPHARDT: Okay. Just a few more
8 questions. One other question. Did you -- you said
9 when you reviewed the footage yourself, you could see
10 people outside, smoking cigarettes?

11 MR. WOODFOLK: That's correct.

12 MS. GEPHARDT: Okay. So you did see people
13 outside at the front of your establishment?

14 MR. WOODFOLK: Yes.

15 MS. GEPHARDT: Did Mr. Watson tell you why he
16 didn't call the police?

17 MR. WOODFOLK: I didn't ask Mr. Watson why he
18 didn't call the police. When I saw the police there, I
19 didn't know who called after, you know, looking --

20 MS. GEPHARDT: Did you call the police?

21 MR. WOODFOLK: No.

22 MS. GEPHARDT: No further questions.

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1 CHAIRPERSON MILLER: Any Board questions?

2 MR. CLAYTON: Yes, just two questions, Your
3 Honor and I -- I mean, Madam Chairperson.

4 CHAIRPERSON MILLER: Wait a second. Wait,
5 wait, wait.

6 MR. CLAYTON: They're very quick.

7 CHAIRPERSON MILLER: This is your -- wait,
8 wait. Excuse me. This is your witness, correct?

9 MR. CLAYTON: That's correct.

10 CHAIRPERSON MILLER: Okay. So you did your
11 questions. She did cross. So we go to the Board now.

12 MR. CLAYTON: Oh, okay.

13 CHAIRPERSON MILLER: And then you can cross
14 (inaudible) or, you know -- okay. All right. And the
15 Board questions?

16 MR. ALBERTI: Yeah.

17 CHAIRPERSON MILLER: Mr. Alberti?

18 MR. ALBERTI: I'll -- hi. Good afternoon,
19 Mr. Woodfolk.

20 MR. WOODFOLK: Good afternoon.

21 MR. ALBERTI: First of all, the incident
22 report -- did you prepare an incident report for this?

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1 MR. WOODFOLK: There was an incident report
2 of the incident that night. I do have a report. I
3 don't have it. I did make Donnell fill out one.

4 MR. ALBERTI: But did you bring it today?

5 MR. WOODFOLK: No, I did not.

6 MR. ALBERTI: Okay. And why not?

7 MR. WOODFOLK: I think I just forgot it. We
8 have a log book that club for all incidents. And I
9 didn't bring it.

10 MR. ALBERTI: Can you -- you went through
11 very quickly what you saw on the video. Can you repeat
12 that for me?

13 MR. WOODFOLK: Sure. I saw the two gentlemen
14 approach, try to enter the club. The -- Mr. Watson was
15 inside the second door. They come through the first
16 door. They were in the vestibule. And then they
17 opened the second door where he turns around and greets
18 you. And at that point, he usually checks IDs and he
19 pats people down. At that point the camera that's
20 focused on them from inside there seen -- saw them turn
21 around, walk back out the club.

22 Okay. That was the first time. Second time,

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1 they came back 10, 15 minutes later. They came back,
2 came through the first door, then the vestibule, opened
3 the second door. Mr. Watson's standing there again.
4 At this point they're just standing there talking. And
5 then they turned around. I don't see a swing or a
6 kick. But I do see them turn around and walking out.

7 And Mr. Watson walks out behind him and
8 closed the second door.

9 MR. ALBERTI: Okay.

10 MR. WOODFOLK: So when he closed the second
11 door, then they walked out to the corner. And one of
12 the two looks like he was on his cell phone. Mr.
13 Watson walked back into the club.

14 MR. ALBERTI: Okay. You told Investigator
15 Jones that Mr. Watson told you that he pushed them out
16 the door but you didn't see that --

17 MR. WOODFOLK: I couldn't see it --

18 MR. ALBERTI: -- on the video?

19 MR. WOODFOLK: -- because of the angle of the
20 camera -- and the camera in the vestibule.

21 MR. ALBERTI: What -- well, describe for me
22 what the angle is there.

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1 MR. WOODFOLK: The camera is up here --

2 MR. ALBERTI: Right.

3 MR. WOODFOLK: -- pointing down.

4 MR. ALBERTI: Right.

5 MR. WOODFOLK: This is the camera in the
6 vestibule. Sometimes, depending on the adjustment of
7 the camera, it could be pointing more downward as
8 opposed to -- other words, it can show from shoulder
9 down or show from head down --

10 MR. ALBERTI: So --

11 MR. WOODFOLK: -- of the person standing
12 there.

13 MR. ALBERTI: -- when you saw the people in
14 the vestibule, what did you see? I mean, what part of
15 their body were you seeing?

16 MR. WOODFOLK: I could see from shoulders
17 down. So --

18 MR. ALBERTI: Shoulder down. So you couldn't
19 see their head?

20 MR. WOODFOLK: I couldn't see their head. So
21 I saw shoulder down.

22 MR. ALBERTI: So how do you know it was these

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1 two individual -- how do you know who it was?

2 MR. WOODFOLK: Because they walked out. This
3 camera on the outside picks them up as they come out
4 the door. And I see four legs walking out from the --
5 from the vestibule and they walked straight over to the
6 corner -- on the corner of the -- of the street. And
7 that's where --

8 MR. ALBERTI: Okay.

9 MR. WOODFOLK: -- that's where I saw them.

10 MR. ALBERTI: Okay. So you saw from the
11 shoulders down, correct?

12 MR. WOODFOLK: Yes.

13 MR. ALBERTI: So unless Mr. Watson pushed him
14 in the head, you would have been able to see it, right?

15 MR. WOODFOLK: Correct.

16 MR. ALBERTI: But you didn't?

17 MR. WOODFOLK: I didn't see him push him.

18 MR. ALBERTI: Okay.

19 MR. WOODFOLK: And I saw all four -- actually
20 six feet.

21 MR. ALBERTI: So you --

22 MR. WOODFOLK: And I didn't see any feet

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1 leave the ground.

2 MR. ALBERTI: I mean, so this is in conflict
3 with what Mr. Watson told you or what you told Mr.
4 Jones Mr. Watson told you?

5 MR. WOODFOLK: Meaning that I did not see him
6 -- see --

7 MR. ALBERTI: Well, you didn't see anyone
8 pushing -- I mean, that you didn't see -- you didn't
9 see anyone being pushed. But Mr. Watson told you that
10 he pushed somebody out?

11 MR. WOODFOLK: Right.

12 MR. ALBERTI: Okay. When did you contact Mr.
13 Dale Dykes about the fact that you didn't know how to
14 record this stuff?

15 MR. WOODFOLK: I would say about -- well,
16 after -- right after I spoke with Mr. Jones and he said
17 he needed a copy of the footage. It was probably, I
18 would say, no more than a day or two after.

19 MR. ALBERTI: Okay. And then Mr. Dykes got
20 back to you when?

21 MR. WOODFOLK: He said he would have his tech
22 come out and show me how to do it.

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1 MR. ALBERTI: And when was that?

2 MR. WOODFOLK: Tech didn't come out until
3 about two weeks later.

4 MR. ALBERTI: So on February 8th, when Mr.
5 Jones contacted you and asked you why you didn't have
6 the video, what did you tell him?

7 MR. WOODFOLK: I told him that -- you said,
8 "February the 8th?" Is that --

9 MR. ALBERTI: It was Wednesday, February the
10 8th. So to me that's a week and a half, ten days after
11 the incident.

12 MR. WOODFOLK: Right. At that point I don't
13 think I knew how to make the copy.

14 MR. ALBERTI: And what'd you tell Mr. Jones
15 at that time?

16 MR. WOODFOLK: That's what I told him, that I
17 didn't have a -- I told him that I didn't have a thumb
18 drive, which I was told that I needed. And I had told
19 him I didn't know how to do it, that I would get back
20 to him.

21 MR. ALBERTI: Okay. I'm just -- because I'm
22 really curious about the -- this feature of being able

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1 to see it on your laptop. You can monitor --

2 MR. WOODFOLK: Yeah.

3 MR. ALBERTI: -- what's going on in your club
4 anytime?

5 MR. WOODFOLK: Yeah.

6 MR. ALBERTI: And you can play it back?

7 MR. WOODFOLK: Yes.

8 MR. ALBERTI: Did you have this on your old
9 system?

10 MR. WOODFOLK: The old -- yes. I did have --
11 I was able to use my laptop to see what's going on.
12 Yes.

13 MR. ALBERTI: Is it the same operation
14 identical to the old one?

15 MR. WOODFOLK: The old system?

16 MR. ALBERTI: Yeah.

17 MR. WOODFOLK: No. It was -- I had more
18 trouble with the old system before than I had with this
19 system now.

20 MR. ALBERTI: Okay. So did -- so did you
21 have to get instructions from the installer to know how
22 to do that?

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1 MR. WOODFOLK: Yes.

2 MR. ALBERTI: Okay.

3 MR. WOODFOLK: This -- the new --

4 MR. ALBERTI: I got it. Thank you. And you
5 also be able -- you're also able to do this on your
6 phone?

7 MR. WOODFOLK: I'm able to see what's going
8 on but I'm not able to record or play back.

9 MR. ALBERTI: Okay. You can't play back.
10 Okay.

11 MR. WOODFOLK: I can see what's going on.
12 Yes.

13 MR. ALBERTI: Okay. So I'm a little curious.
14 I mean, you got instructions on how to monitor this on
15 your phone and your laptop but you never asked them how
16 to record it?

17 MR. WOODFOLK: Again at the time --

18 MR. ALBERTI: -- how to -- how to store it up
19 onto an external drive?

20 MR. WOODFOLK: At the time, because we had
21 just gotten it in and there was no incidents needed, it
22 wasn't that urgency to learn how to do that.

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1 MR. ALBERTI: Okay.

2 MR. WOODFOLK: I didn't -- I didn't need to
3 have to record anything. Again, I'm thinking I got 30
4 days of coverage. So I can call him in if an incident
5 happened. I got time to have him show me how to do it.

6 MR. ALBERTI: What are -- what are the normal
7 procedures for ejecting somebody?

8 MR. WOODFOLK: Well, it depends on why
9 they're being ejected. If a person comes in -- and I
10 can give you a couple of incidents that we had before
11 where a person picked up a -- actually it was a -- a
12 person picked up a glass and was attempting to throw it
13 at somebody.

14 MR. ALBERTI: Uh-huh.

15 MR. WOODFOLK: If the security staff saw that
16 or approached the person and say, "Hey, hey. What are
17 you doing? You can't do that in here. You've got to
18 go." And they would leave. We have a no-touching rule.
19 If a customer is trying to put their hands on dancers,
20 we'll walk up to them. And usually we'll say, "If you
21 do that again, you're out of here. You got to go."
22 And if they -- a person is rowdy, then we'll tell them,

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1 "You go to go," and they'll leave.

2 MR. ALBERTI: I'm sorry. Excuse me. I'm
3 sorry.

4 MR. WOODFOLK: And if --

5 MR. ALBERTI: Yeah, I'm listening.

6 MR. WOODFOLK: -- if something is touching
7 the dancers, we usually give them one verbal warning.
8 The second time we ask them to leave. And most of the
9 time they'll comply and leave.

10 MR. ALBERTI: And what if they stand there
11 and argue with you? They're not leaving and they're
12 just standing there and arguing with you?

13 MR. WOODFOLK: We'll call the police.

14 MR. ALBERTI: You call the police?

15 MR. WOODFOLK: Uh-huh.

16 MR. ALBERTI: So in this case, the individual
17 threw a punch but it didn't connect?

18 MR. WOODFOLK: Correct.

19 MR. ALBERTI: Mr. Watson's immediate response
20 was to push them out?

21 MR. WOODFOLK: No. He told them -- he told
22 them why they had to leave. He said the guy was

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1 intoxicated. And he told me didn't believe the guy
2 really understood because he couldn't speak English
3 that well but the other friend that was with him could.
4 And he told them, "You got to go because you're drunk.
5 You're intoxicated."

6 MR. ALBERTI: And so they weren't leaving.

7 MR. WOODFOLK: And --

8 MR. ALBERTI: So they weren't leaving?

9 MR. WOODFOLK: They didn't want to.

10 MR. ALBERTI: So he didn't call the police?

11 MR. WOODFOLK: No.

12 MR. ALBERTI: He pushed them out?

13 MR. WOODFOLK: That's what he said. He kind
14 of nudged them out. They were -- they were in the
15 vestibule. They weren't actually into the club. They
16 were in the vestibule.

17 MR. ALBERTI: Thank you. I have no further
18 questions.

19 CHAIRPERSON MILLER: Yes, Mr. Jones.

20 MR. JONES: Thank you, Madam. So you said
21 you saw the video?

22 MR. WOODFOLK: Yes.

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1 MR. JONES: And you did not see, based on
2 your testimony and response to the questions that were
3 -- that were raised, you did not see your security
4 person push, nudge, bump, physically make contact with
5 the attempted patrons to get them out of your
6 establishment; is that correct?

7 MR. WOODFOLK: Yes, that's correct.

8 MR. JONES: So does it disturb you that the
9 information you got directly from your security staff
10 does not comport with what you saw yourself on the
11 video?

12 MR. WOODFOLK: Does it disturb me? Well,
13 again --

14 MR. JONES: So when you -- when you saw what
15 you saw on that video, did you go back and re-question
16 your staff person --

17 MR. WOODFOLK: Yes.

18 MR. JONES: -- to figure out why he was not
19 communicating to you what really happened?

20 MR. WOODFOLK: No, because again, the -- you
21 have to be able to see the video to see how the view
22 from that particular angle, where he said it happened,

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1 was not that clear, where I could not actually see a
2 punch thrown, but I could see them him coming in and
3 turning around and going back out. So to me, I thought
4 that, because it was not the case where the punch
5 connected, where he may have had to defend himself
6 through some other type of way that the patron turns
7 around and walked out.

8 They just turned around and walked out. And
9 I can see them turn around and walk out to the middle
10 of the street. And I -- by looking at that made me
11 feel that, "Okay. He did the right thing. He got them
12 out of there." And so they won't cause any further
13 ruckus in the place.

14 MR. JONES: Okay. But his statement to you
15 and his statement to the police and his statements to
16 others was that he had to push them out?

17 MR. WOODFOLK: Yes.

18 MR. JONES: That does not match what you said
19 you saw on the video. Not even -- doesn't appear to be
20 even close. Because from what you're saying, there is
21 no evidence that you saw on the video that your
22 security person made any contact whatsoever physically

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1 with the individuals -- the potential patrons.

2 Did you see your security person in any way
3 physically make contact with the patrons or the
4 potential patrons?

5 MR. WOODFOLK: Only that when the two walked
6 in and they got to that second door and they turned
7 around, it was three bodies walking out close to each
8 other. Now, I don't know if that was a push but there
9 was three bodies close together, walking out. And when
10 they got to the -- outside the second door, I could see
11 him reach back and close the door and come back in.

12 MR. JONES: Okay. So it seemed --

13 MR. WOODFOLK: Now, if he had -- I don't know
14 if he, like, bumped him, pushed him like this or nudged
15 him like that. I couldn't see that. But I saw three
16 bodies walking close together as they walked back out.

17 MR. JONES: Okay. So earlier you noted that
18 you could see from the -- basically the shoulders down.

19 MR. WOODFOLK: Of the camera in the
20 vestibule.

21 MR. JONES: Of the camera in the vestibule.

22 MR. WOODFOLK: Right.

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1 MR. JONES: So I guess maybe I'm not
2 following the camera --

3 MR. WOODFOLK: Not the camera inside the
4 second door.

5 MR. JONES: -- I'm not following the camera
6 layout. So there's a vestibule camera and there's a --

7 MR. WOODFOLK: Camera in the vestibule.

8 MR. JONES: -- different camera that you saw
9 what from?

10 MR. WOODFOLK: There's a camera in the middle
11 way of the club facing the front door. Okay. And you
12 go through that -- coming from the inside out. And you
13 step out into the vestibule. There's a camera facing
14 down to the vestibule. That's the one that had the
15 angle where you could see shoulders down.

16 MR. JONES: Okay.

17 MR. WOODFOLK: Then there's a camera out in
18 front of the club. If you walk through that front door
19 and take one step, you can -- you'd be seen by that
20 second camera that's on the side of the building.

21 MR. JONES: What do you see, the whole body?

22 MR. WOODFOLK: You see the whole outside in

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1 front of the club.

2 MR. JONES: Would you be able to see the
3 whole person?

4 MR. WOODFOLK: Yes.

5 MR. JONES: Okay. So those are the only two
6 cameras that we're talking about right now?

7 MR. WOODFOLK: Three.

8 MR. JONES: Three? What's the third one?

9 MR. WOODFOLK: The first camera is the camera
10 inside the club, facing the front door. Like, if I'm
11 looking at the door and you open that door, now, you're
12 in -- and you take a step. You're in the vestibule.

13 MR. JONES: Okay.

14 MR. WOODFOLK: There's a second camera in the
15 vestibule. Then there's a third camera outside the
16 building.

17 MR. JONES: So there's one inside. Well,
18 let's call it -- the first door that you come in from
19 the outside to the inside, let's call that Door 1.

20 MR. WOODFOLK: Okay.

21 MR. JONES: And then you have the vestibule.

22 MR. WOODFOLK: Yes.

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1 MR. JONES: And then you have a second door?

2 MR. WOODFOLK: Correct.

3 MR. JONES: Is that what you're telling me?

4 MR. WOODFOLK: Correct.

5 MR. JONES: I think I follow now. So there's
6 a camera that shows the outside view.

7 MR. WOODFOLK: Correct.

8 MR. JONES: There's a camera that shows
9 what's going on in the vestibule.

10 MR. WOODFOLK: Correct.

11 MR. JONES: And there's a third camera that
12 goes -- shows what's going on inside the club but at
13 that second door?

14 MR. WOODFOLK: Correct.

15 MR. JONES: Okay. So walk me through what
16 you saw. You saw these individuals come in. They were
17 inside the vestibule. You saw from the waist -- or
18 from the shoulders down?

19 MR. WOODFOLK: In the vestibule.

20 MR. JONES: But then did you -- when did you
21 see them enter into the third camera?

22 MR. WOODFOLK: Well, they never -- they never

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1 got -- when they opened the second door to come into
2 the actual club --

3 MR. JONES: Yes.

4 MR. WOODFOLK: -- Mr. Watson met them right
5 there.

6 MR. JONES: Cool. Could you see that
7 activity on that third camera?

8 MR. WOODFOLK: Of them at the front door?

9 MR. JONES: Yes. There at that second door.
10 We're calling them Door 1 and Door 2.

11 MR. WOODFOLK: Right.

12 MR. JONES: Right. So at Door 2, did you see
13 them on that camera?

14 MR. WOODFOLK: Yes.

15 MR. JONES: Okay. What could you see? Could
16 you see their whole bodies?

17 MR. WOODFOLK: Yes.

18 MR. JONES: Okay. Could you see your
19 security person engage them --

20 MR. WOODFOLK: I could see --

21 MR. JONES: -- i.e., in a conversation, any
22 type of engagement?

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1 MR. WOODFOLK: I could see them having a
2 conversation.

3 MR. JONES: Okay.

4 MR. WOODFOLK: And the two were standing side
5 by side and Mr. Watson was facing them. I could see
6 them standing there, having a conversation.

7 MR. JONES: Okay. Did you --

8 MR. WOODFOLK: Then --

9 MR. JONES: Go ahead.

10 MR. WOODFOLK: Then I saw they -- Mr. Watson
11 facing them and they're facing Mr. Watson. Then they
12 turn around.

13 MR. JONES: Uh-huh.

14 MR. WOODFOLK: I can see them turn around.
15 And they walked back out. And he walks out behind
16 them.

17 MR. JONES: Okay. So --

18 MR. WOODFOLK: Now, that's the first time. I
19 tell you, they came in twice.

20 MR. JONES: Understood.

21 MR. WOODFOLK: The second time, when they
22 came in, they came through the first door. They're in

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1 the vestibule now. The opened up the second door and
2 Mr. Watson is standing right there. At that point --

3 MR. JONES: Let's pause right there. Could
4 you see that point in time, where you just noted --
5 could you see that from the third camera or the camera
6 that's on the inside of the club pointing to the second
7 door?

8 MR. WOODFOLK: Well, the third camera is the
9 camera inside the club? Is that what we're calling the
10 third camera?

11 MR. JONES: Yeah, that's pointing to --

12 MR. WOODFOLK: If that door is closed and
13 they're in the vestibule, you can't see them from that
14 camera.

15 MR. JONES: Okay. So they -- the second time
16 they came to your establishment --

17 MR. WOODFOLK: Uh-huh.

18 MR. JONES: -- they came in through the Door
19 No. 1, came into the vestibule --

20 MR. WOODFOLK: Uh-huh.

21 MR. JONES: -- opened up Door No. 2?

22 MR. WOODFOLK: Yes.

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1 MR. JONES: You should be able to see them at
2 that point.

3 MR. WOODFOLK: I can.

4 MR. JONES: Okay. So then at some point your
5 security person must have left from the club to the
6 vestibule and closed that door -- allowed that door to
7 close.

8 MR. WOODFOLK: Well, he stands -- his
9 placement is just inside that second door.

10 MR. JONES: Okay.

11 MR. WOODFOLK: That's his post.

12 MR. JONES: So you could see him then?

13 MR. WOODFOLK: Yes.

14 MR. JONES: Okay. So at what point -- like,
15 what transpired that you could not see them? Did the
16 door close?

17 MR. WOODFOLK: Okay. Yes.

18 MR. JONES: Okay.

19 MR. WOODFOLK: When they -- when they came
20 into the second door and they turned around to go back
21 out, as Mr. Watson walked out behind them, that door is
22 on a spring. It closes behind you.

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1 MR. JONES: Understood. But are you talking
2 about the first time they came or the second time they
3 came?

4 MR. WOODFOLK: The second time.

5 MR. JONES: Okay. So whatever happened, they
6 voluntarily turned around?

7 MR. WOODFOLK: The first time.

8 MR. JONES: No. Because I'm talking about
9 the second time.

10 MR. WOODFOLK: Second time.

11 MR. JONES: Because you're telling me they
12 came to the second door and they opened it.

13 MR. WOODFOLK: Correct.

14 MR. JONES: Then your security person engaged
15 them again?

16 MR. WOODFOLK: Correct.

17 MR. JONES: Right? And for whatever reason,
18 engaged them in such a way that led to him allowing the
19 second door to close behind him so that you couldn't
20 view that from that third camera?

21 MR. WOODFOLK: Well, sir, if he's walking
22 them out, that door is going to close behind him.

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1 MR. JONES: Oh, I got that. So I'm clear on
2 that. What I'm trying to understand is how it got to
3 the point where he's now walking them out this second
4 time when I'm thinking, "I'm at a club. I'm opening up
5 this second door." He doesn't know it's them.

6 MR. WOODFOLK: Correct.

7 MR. JONES: Right? So you're opening up that
8 door. You have to first acknowledge and recognize that
9 these are the individuals that you just asked to leave,
10 right?

11 MR. WOODFOLK: Correct.

12 MR. JONES: He was able to do that in a -- in
13 a fairly short period of time and be able to convince
14 them to turn around on their own and walk back out a
15 second time without really engaging them because you
16 didn't have much opportunity to see them on that third
17 camera.

18 MR. WOODFOLK: Well, when he told me that he
19 nudged them out, they turned around and they --

20 MR. JONES: Okay. So pause right there. You
21 should be able to see that on that third camera because
22 that door is opened at this point.

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1 MR. WOODFOLK: Not at that -- not at that --
2 not if the door is closing and it happened before they
3 got out into the vestibule -- way in.

4 MR. JONES: So the part that doesn't follow
5 for me is, if I'm trying to gain entry into your
6 establishment and I've already opened up the second
7 door, what's going to push me to walk away from that
8 second door to the point where the door is now going to
9 be able to close, that you couldn't see that on the
10 camera? And you're saying at no point do you see him
11 physically touch these patrons.

12 So I'm not understanding how it is that
13 you're telling me now that your security person told
14 you that he nudged them out but you didn't see that on
15 that camera. Because at this point, the door should be
16 open because the door was opened by the patrons to the
17 second -- the second door was opened?

18 MR. WOODFOLK: Correct.

19 MR. JONES: Right? Your security person now
20 has to physically acknowledge them, recognize them, and
21 identify them as somebody that he wants to keep from
22 getting into your establishment and then nudge them

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1 out. And you're not seeing them being -- because I'm
2 trying to get into your establishment. He has to
3 affect something to create an environment that I'm not
4 going to be getting in.

5 And you didn't see that on the camera. All
6 you saw was him opening up or going through the door
7 and allowing it to close.

8 MR. WOODFOLK: Correct.

9 MR. JONES: Right? You're not telling me
10 that he talked to them? You're not telling me that you
11 saw them being engaged? You're not telling me that you
12 saw him push?

13 MR. WOODFOLK: No. What -- no. What I -- he
14 opened -- when they opened the second door, they were
15 in conversation.

16 MR. JONES: Okay. So how long -- this is on
17 camera now, right?

18 MR. WOODFOLK: Yeah.

19 MR. JONES: Okay. How long were they
20 talking? This is the second time, right?

21 MR. WOODFOLK: A minute or two.

22 MR. JONES: A minute or two. Okay. So there

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1 was some time there?

2 MR. WOODFOLK: Yeah.

3 MR. JONES: At any point did you see a punch
4 thrown?

5 MR. WOODFOLK: No.

6 MR. JONES: No. Then you could see this on
7 the camera, correct? You could see them just talking?

8 MR. WOODFOLK: I could see them just talking
9 from when the door first opened.

10 MR. JONES: All right. And this is the
11 second time, right?

12 MR. WOODFOLK: The second time.

13 MR. JONES: You didn't see a punch thrown?

14 MR. WOODFOLK: No.

15 MR. JONES: No.

16 MR. WOODFOLK: Well, when they were walking
17 back out -- when they're walking back out, as -

18 MR. JONES: And just to be clear, when
19 they're walking back out, they're now in the vestibule.
20 And this camera's the only one which you can only see
21 from the shoulders down?

22 MR. WOODFOLK: Well, if the door is closing -

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1 - let's say the door is closing halfway and they're
2 standing there talking, that door right now is blocking
3 that camera three from seeing what's going on on the
4 outside. And they have not actually stepped into the
5 vestibule yet.

6 MR. JONES: Okay.

7 MR. WOODFOLK: So --

8 MR. JONES: But this is a -- this is a door
9 that's on a spring, as you noted --

10 MR. WOODFOLK: Yes.

11 MR. JONES: -- where it's going to close on
12 its own?

13 MR. WOODFOLK: Correct.

14 MR. JONES: So unless somebody's physically
15 holding it open --

16 MR. WOODFOLK: Correct.

17 MR. JONES: -- or there's a doorstopper, it's
18 going to close.

19 MR. WOODFOLK: There's a spring. Correct.

20 MR. JONES: So was the door being propped
21 open in any way during this time period?

22 MR. WOODFOLK: Yeah, because Mr. Watson had

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1 the door on his back.

2 MR. JONES: Got it. So if the door's propped
3 open, you should see it from the other camera.

4 MR. WOODFOLK: If you look at where the
5 camera is, if this is the door and it's swinging like
6 this and the camera's right here, that door has to be
7 all the way open for you to see what's going on here.
8 If Mr. Watson is standing on this side and the door is
9 closing like that. As you see now, the camera is
10 seeing the door. It's not seeing on here. And they
11 haven't stepped out into the vestibule for that camera
12 to pick it up. You follow me?

13 MR. JONES: I hear what you're saying. I
14 just - - it doesn't make sense to me. Like, I hear
15 what you're saying. But if you're telling me that the
16 doors are open and you can see through --

17 MR. WOODFOLK: The only --

18 MR. JONES: -- and it's swinging closed, then
19 I don't understand, if it's swinging closed, why your
20 vestibule camera is now blocked by that door that's now
21 swinging closed.

22 MR. WOODFOLK: The vestibule camera's not

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1 blocked but they're not -- they're not all the way --

2 MR. JONES: Okay. So that's all I'm asking
3 about. I'm just asking about the vestibule camera.

4 MR. WOODFOLK: Right. The vestibule camera's
5 not blocked.

6 MR. JONES: Got it. So we're talking about
7 the vestibule camera right now. So your security
8 person comes from the inside, goes into the vestibule.
9 You didn't see a punch on the camera when the door was
10 open, correct?

11 MR. WOODFOLK: Correct.

12 MR. JONES: You said they were standing and
13 talking for a minute.

14 MR. WOODFOLK: Correct.

15 MR. JONES: Now, they're in the vestibule.
16 You can see from the shoulders down, correct?

17 MR. WOODFOLK: Correct.

18 MR. JONES: Did you see any punch thrown when
19 they're in the vestibule in that camera view?

20 MR. WOODFOLK: No.

21 MR. JONES: No. Did you see a punch thrown
22 when they were on the outside of your establishment?

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1 MR. WOODFOLK: No.

2 MR. JONES: So at no point did you see a
3 punch thrown?

4 MR. WOODFOLK: No.

5 MR. JONES: Okay. So does that correspond to
6 what you were told by your security person?

7 MR. WOODFOLK: Well, it depends on where the
8 punch was thrown at. If the punch was thrown as they
9 were just inside the vestibule, but not all the way
10 into the club, and the door is halfway closed, then,
11 yeah, I wouldn't be able to see that.

12 MR. JONES: Okay. Thank you, Madam Chair.

13 CHAIRPERSON MILLER: Okay. Others? I just
14 have very quick questions. Does Mr. Watson still work
15 for you?

16 MR. WOODFOLK: Yes.

17 CHAIRPERSON MILLER: And how long has he
18 worked for you?

19 MR. WOODFOLK: Two years.

20 CHAIRPERSON MILLER: And have there been
21 other complaints against him?

22 MR. WOODFOLK: No, never.

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1 CHAIRPERSON MILLER: Okay. That's all I
2 have. So any other Board questions? Back to Ms.
3 Gephardt. Do you have anything? And then Mr. Clayton
4 will have the last follow-up questions. What? Did you
5 have one?

6 MS. GEPHARDT: So just -- Mr. Woodfolk, had
7 you -- have you read the case report that was done by
8 ABRA on this event? Okay.

9 MR. WOODFOLK: Yes.

10 MS. GEPHARDT: Okay.

11 CHAIRPERSON MILLER: And is -- it's just
12 based on the Board questions at this point.

13 MS. GEPHARDT: Okay. Yeah. And so --

14 MR. ALBERTI: I thought it was redirect and
15 recross.

16 CHAIRPERSON MILLER: Well, redirect is -- he
17 gets the last redirect. So --

18 MR. ALBERTI: Yeah, but he can do it after
19 she - - but he gets redirect.

20 CHAIRPERSON MILLER: He's going to get
21 redirect.

22 MR. ALBERTI: All right. Whatever.

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1 CHAIRPERSON MILLER: Do you want to have
2 redirect based on ABRA questions or on Ms. Gephardt's
3 questions?

4 MR. CLAYTON: Just go.

5 CHAIRPERSON MILLER: Okay.

6 MS. GEPHARDT: And so according to the
7 report, you told Mr. Jones that Mr. Watson told you
8 that Mr. Miranda swung a punch at him?

9 MR. WOODFOLK: Yes.

10 MS. GEPHARDT: And -- but you didn't see a
11 punch on the video?

12 MR. WOODFOLK: That's correct.

13 MS. GEPHARDT: So do you think that Mr.
14 Watson was not being truthful with you?

15 MR. WOODFOLK: No.

16 MS. GEPHARDT: Why do you say that?

17 MR. WOODFOLK: Because he's never lied to me
18 before about anything. And I trust his judgment.

19 MS. GEPHARDT: So -- but --

20 MR. WOODFOLK: That's why he's still working
21 for me.

22 MS. GEPHARDT: But if you didn't see the

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1 punch, then how he could be --

2 MR. WOODFOLK: But there are -- there are
3 spots on the video -- there are -- there are blind
4 spots in this club. There are blind spots on the
5 video. Because I didn't see it, I'm not saying nothing
6 I -- that doesn't mean it didn't happen. There's --
7 there are blind spots all over the club. And that's
8 why we used to have our cameras up on the big screen on
9 the second floor. We took that down because we knew
10 customers were looking at where blind spots are and
11 they may use that as try -- to try to gain entry again.

12 MS. GEPHARDT: I have no other questions.

13 CHAIRPERSON MILLER: Thank you. Mr. Clayton?

14 MR. CLAYTON: Yes, Your Honor -- Madam
15 Chairperson. I did close earlier. And I'd asked the
16 Board's indulgence. I wanted to ask Mr. Woodfolk if he
17 had ever seen Mr. Miranda at the club after the
18 incident on January 28th.

19 CHAIRPERSON MILLER: What's that?

20 MS. GEPHARDT: It's a phone.

21 CHAIRPERSON MILLER: Oh, ah. What were you
22 saying, you did close earlier? What --

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1 MR. CLAYTON: Yes.

2 CHAIRPERSON MILLER: Is this --

3 MR. CLAYTON: Yes. I stopped my direct
4 examination before asking Mr. Woodfolk if he had ever
5 seen Mr. Miranda at the club after the January 28th
6 incident.

7 CHAIRPERSON MILLER: Right.

8 MR. CLAYTON: I had showed the police officer
9 a photograph and asked him to identify whether or not
10 he had seen -- whether this was -- the person was Mr.
11 Miranda. I'm now -- I would now ask to show the same
12 photograph to Mr. Woodfolk. It's --

13 CHAIRPERSON MILLER: And let me interrupt you
14 because this -- we have -- we do have another case
15 that's at least two hours late. And so at this point
16 it's redirect based on the Board's questions and --

17 MR. CLAYTON: I understand --

18 CHAIRPERSON MILLER: -- cross.

19 MR. CLAYTON: -- as much. I'd asked --

20 CHAIRPERSON MILLER: So --

21 MR. CLAYTON: Since the rules of evidence
22 seem to be truly liberal, I would ask that the court

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1 allow this -- or the Board allow this simply because it
2 goes to my closing, that if Mr. Miranda actually felt
3 that he had been mistreated, disrespected by this
4 particular club, he would not have gone back and been a
5 patron of the club.

6 I have a photograph taken this past Thursday
7 of Mr. Miranda -- excuse me -- it was this past Friday
8 of Mr. Miranda at the --

9 MS. GEPHARDT: He can't admit his own
10 evidence. He's --

11 MR. CLAYTON: I'm -- it is an offer of proof,
12 Your Honor.

13 MS. GEPHARDT: He's basically testifying.

14 CHAIRPERSON MILLER: It -- let me just -- I -
15 - because I want to cut to the chase because it's so
16 late. Is your -- if you want to ask one, "Yes," or,
17 "No," question is, "Has he ever been in the club since
18 then" -- is that your question?

19 MR. CLAYTON: Yes.

20 CHAIRPERSON MILLER: All right. Let's just
21 do that and move on then.

22 MR. CLAYTON: Mr. Woodfolk, have you seen --

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1 have you or any personnel to the club seen Mr. Miranda
2 at the club since January 28th, 2012?

3 MR. WOODFOLK: Yes.

4 MR. CLAYTON: When was that?

5 CHAIRPERSON MILLER: Okay. That's -- you
6 said one question.

7 MR. CLAYTON: Well, I --

8 CHAIRPERSON MILLER: Is this the --

9 MR. CLAYTON: The natural predicate is after.

10 CHAIRPERSON MILLER: Is this the last one?
11 And the only reason I'm being tough at this point is
12 because you're really out of order in even asking this
13 question at this point. So I'm trying to let you do it
14 very, very easily.

15

16 MR. CLAYTON: Okay. Well, then I won't ask
17 that question. You've answered it. Thank you.

18 CHAIRPERSON MILLER: Okay.

19 MR. CLAYTON: Redirect based on the Board's --

20 CHAIRPERSON MILLER: And the Board's
21 questions and --

22 MR. CLAYTON: Mr. Woodfolk -- Mr. Woodfolk,

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1 the counsel for the government asked you to read Page -
2 - I believe 16 of the security plan.

3 MR. WOODFOLK: YES.

4 MR. CLAYTON: Would you look on Page 17 of
5 the security plan that you are -- I think you should
6 have a copy of in front of you?

7 MR. WOODFOLK: Yeah.

8 MR. CLAYTON: Okay. The highlighted section
9 on that page, would you please read that for the
10 record?

11 MR. WOODFOLK: "If the ejected person attacks
12 security personnel, protect oneself, but under no
13 circumstances should excessive force be used."

14 MR. CLAYTON: Do you know if Mr. -- can you
15 tell us whether Mr. Watson kicked Mr. Miranda?

16 MR. WOODFOLK: No.

17 MR. CLAYTON: You -- can you tell us whether
18 Mr. Watson punched Mr. Miranda?

19 MR. WOODFOLK: No.

20 MR. CLAYTON: Did he tackle Mr. Miranda?

21 MR. WOODFOLK: No.

22 MR. CLAYTON: Did he drag Mr. Miranda?

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1 MR. WOODFOLK: No.

2 MR. CLAYTON: Or did he put Mr. Miranda in a
3 headlock?

4 MR. WOODFOLK: No.

5 MR. CLAYTON: Okay. And those are the things
6 you've described -- you -- in your security plan you
7 consider to be excessive force?

8 MR. WOODFOLK: Correct.

9 MR. CLAYTON: Okay. So in your opinion, Mr.
10 Watson did not use excessive force on Mr. Miranda?

11 MR. WOODFOLK: That's correct.

12 MR. CLAYTON: Thank you. Nothing further.

13 CHAIRPERSON MILLER: Okay. Thank you. Does
14 that complete your case?

15 MR. CLAYTON: Yes. The --

16 CHAIRPERSON MILLER: Okay. You may be --

17 MR. CLAYTON: -- Licensee rests.

18 CHAIRPERSON MILLER: -- excused. Thank you.
19 Okay. And I believe we're at closing.

20 MS. GEPHARDT: Okay. Members of the Board,
21 you have heard all of the evidence today, specifically
22 the testimony of Officer Paul Hrebenak, Investigator

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1 Earl Jones, and the owner of the licensed
2 establishment, Mr. Michael Woodfolk. And given to what
3 they testified to today, there's many reasons to credit
4 the testimony of Officer Hrebenak and Investigator
5 Jones and to discredit the testimony of Mr. Woodfolk.

6 First, Officer Hrebenak is an unbiased
7 witness. Unlike the other -- unlike Mr. Woodfolk, he
8 doesn't have a dog in this fight. He just happened to
9 be one of the officers who responded to the scene. He
10 interviewed witnesses. He did an independent
11 investigation and he made an unbiased determination as
12 to whether an assault occurred and whether there was
13 probable cause to make an arrest.

14 As you heard, Officer Hrebenak made that
15 determination based on various factors, one of them
16 being the fact that Mr. Miranda was the one who called
17 the police. He didn't flee. He didn't run. If Mr.
18 Miranda had been the aggressor, it's doubtful he would
19 have stuck around. The second thing is, he wasn't able
20 to get any security footage from the establishment.
21 The other thing that prompted him to disbelieve the
22 story told by Mr. Watson was that he said there were no

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1 witnesses to the event.

2 In addition, he -- Mr. Watson did not notify
3 management, he did not call the police, and no one from
4 the establishment called the police. Therefore, based
5 on those factors and the fact that he had a
6 corroborating witness made him believe that he had
7 probable cause to arrest Mr. Watson for simple assault.
8 Like I said, the fact that it was Mr. Miranda and Mr.
9 Ramirez who called the police is strong evidence that
10 they were the ones assaulted and not the other way
11 around.

12 If someone knows they're at fault, why would
13 they call the police? The fact of the matter is that
14 Mr. Watson, the security guard, did not call the police
15 and in fact didn't even report it to management. And
16 it wasn't until the police arrived that Mr. Woodfolk
17 was even apprised of the fact that there was an
18 incident. If Mr. Watson had been assaulted without
19 provocation, as Mr. Watson so states in his affidavit,
20 don't you think he would be dialing 911 to notify them
21 that he has a rowdy patron on his hands?

22 And of course, according to the security

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1 plan, it's his obligation and duty that, if he does use
2 force and if it is in self-defense, which he's alleging
3 it is, it should only be for the purpose -- only for
4 the purpose of detaining a criminal for the police.

5 And he -- we know from the testimony that that did not
6 happen.

7 The government argues that the fact that they
8 did not call the police suggests that this is strong
9 evidence that it wasn't Mr. Miranda who was the
10 aggressor here and, in fact, it was Mr. Miranda who was
11 the object of an assault by a security guard who
12 probably got carried away and kicked a patron in an
13 effort to get him to go away.

14 Another reason to believe Mr. Miranda's
15 version of events is that when Mr. Watson was asked if
16 there were any witnesses to his version of the assault,
17 he said, "No." No one was out there. No one saw it
18 happen. This seems pretty hard to believe. It's a
19 Saturday night. You heard Mr. Woodfolk say that on the
20 security camera, he could see people outside smoking.
21 You have other patrons waiting to get inside.

22 And so it seems unlikely that there were no

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1 other witnesses to the assault. Another reason to not
2 believe Mr. Watson's version of events as we've heard
3 from -- through the testimony of Earl Jones and through
4 the testimony of Officer Hrebenak and through the
5 testimony of Mr. Woodfolk is that the management of
6 Macombo Lounge has not been able to produce any camera
7 footage from that night.

8 You heard that he has 16 cameras. He's got
9 three cameras in the vestibule -- in the vestibule and
10 the front door area. And he was able to review the
11 footage but he was not able to record it. He said he
12 got a new system in two weeks prior but he did not have
13 the security camera company sit down and show him how
14 to record it. He runs a nightclub. He has intoxicated
15 people in his establishment. He's had prior assaults.
16 He's had other rowdy type incidences at his
17 establishment.

18 You would think that it would be a top
19 priority and a top concern to have his security people
20 sit down and show you how to record because you know
21 the police are going to be asking for it and you know
22 ABRA's going to be asking for it. But that did not

1 happen here. The fact that we don't have the footage -
2 - if we had had it here today, we wouldn't be here
3 right now. That footage would have shown what happened
4 that night because the security camera was located in
5 that vestibule and we would have been able to see what
6 happened.

7 The other reason to not believe Mr. Watson's
8 version of events according to what he told to Mr.
9 Woodfolk is that he said that Mr. Miranda swung the
10 first punch. But Mr. Woodfolk himself said he saw the
11 videotape and he didn't see any punch, he didn't see
12 any kick. He didn't see anything. So it would appear
13 that Mr. Watson is sort of embellishing the facts,
14 perhaps to justify why Mr. Miranda was kicked out and
15 why the police were called and whatnot. So it calls
16 into question the version of events that Mr. Watson
17 gave to his boss.

18 Finally, even if the Board were to believe
19 the fact that Mr. -- that Mr. Miranda was the first
20 aggressor, we would still find that the security plan
21 was violated here. Specifically, we heard that
22 Macombo's security plan forbids the use of physical

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1 force but that if a patron attacks security personnel,
2 security personnel are instructed to protect
3 themselves. But under no circumstances should
4 excessive force be used.

5 The security plan then says that force should
6 only be used in self-defense for the purpose of
7 detaining a criminal for the police. And here, Mr.
8 Watson kicked Mr. Miranda, which is considered
9 excessive force. And furthermore, it was an act
10 clearly not intended to detain Mr. Miranda.

11 So the government's burden here today was to
12 prove by a preponderance of the evidence that the
13 lounge violated their security plan. That means that
14 it's more likely than not that they failed to call the
15 police, they failed to fill out an incident report,
16 they failed to produce security footage for
17 investigators and MPD, and they failed to use proper
18 ejection procedures. And the government feels that we
19 have met that burden.

20 The final point that I want to make is that
21 even if it's more likely than not that the security
22 guard assaulted Mr. Miranda or in the alternative that

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1 the security guard used an inappropriate method to
2 eject an unruly patron who might have swung the first
3 punch -- even if Mr. Watson had kicked Mr. Miranda out
4 of self- defense, logically speaking, kicking isn't the
5 way to deal with a patron in order to detain for the
6 police.

7 In addition, the security plan specifically
8 states that kicking is an inappropriate method. So
9 whether Mr. Watson kicked first, which the government
10 believes it has shown, Macombo Lounge is still in
11 violation of their security plan because if a kick had
12 been in self-defense, Number 1, kicking is considered
13 inappropriate method of ejecting a patron and, Number
14 2, any kind of force should only be used in self-
15 defense for detaining a criminal for the police.

16 And we know that Mr. Watson or anyone at the
17 establishment for that matter did not detain Mr.
18 Miranda for the police, nor did they call the police.
19 The government would ask that based on the foregoing we
20 would request a \$3500 fine and a five-day suspension
21 with three days served and two days stayed for one
22 year. And that concludes the government's closing

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1 argument.

2 CHAIRPERSON MILLER: Thank you.

3 MR. BROOKS: Could you repeat that, please,
4 Madam Chair?

5 MS. GEPHARDT: A \$3500 fine and a five-day
6 suspension, three days served, two days stayed for one
7 year.

8 MR. BROOKS: Thank you.

9 CHAIRPERSON MILLER: Mr. Clayton, I should
10 have probably suggested that the closing be, you know,
11 like, about five minutes. She did go a little over
12 that. So just as a guidance. I don't want to be
13 unfair to you.

14 MR. CLAYTON: Thank you, Madam Chairperson.

15 CHAIRPERSON MILLER: I don't know how long
16 you have in mind.

17 MR. CLAYTON: No. I --

18 CHAIRPERSON MILLER: That's why I don't say
19 anything. Okay.

20 MR. CLAYTON: -- intend to be brief.

21 CHAIRPERSON MILLER: Okay. Thank you.

22 MR. CLAYTON: At the outset, however, I'd

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1 like to point out that the government seemed to
2 increase the charges against Macombo Lounge. They're
3 now stating that there was a violation of the security
4 plan because of a failure to call the police. My
5 reading of the show cause hearing is that there are two
6 charges against Macombo Lounge, the first charge being
7 that they allowed the club to be used for an unlawful
8 or disorderly purpose, and the second charge is that
9 they violated a security plan by failing to avoid a
10 physical confrontation.

11 That is what we are here for. And so to the
12 -- to the extent that the government is now trying to
13 enlarge the charges against Mr. -- Macombo Lounge, I
14 think that is inappropriate.

15 In closing, what we've seen here is the
16 classic he say/he say. No one knows what happened for
17 sure. The only person who has seen the video of this
18 entire incident is Mr. Woodfolk, who has testified
19 under oath as to what he saw on the video. First off,
20 the arresting officer and the lead officer, his
21 testimony -- granted, he's a five-year member of the
22 force -- his testimony at best was speculative and

1 specious.

2 At no point could he give a definitive answer
3 to any question. He could not tell us even a
4 definition that everyone could agree upon for an
5 assault. He could not tell us whether or not Mr.
6 Miranda appeared intoxicated other than the fact that
7 he did not appear intoxicated under the police
8 definition of an intoxication.

9 He got information from various sources, some
10 of which is included in his report, some of which is
11 not. The next person, the investigating -- oh, and back
12 to the arresting officer. Again, if you sum total
13 everything he said, he based his decision to arrest Mr.
14 Watson on the plain and simple fact that Mr. Miranda
15 said he did it and his friend, Mr. Ramirez, said he did
16 it. That's it.

17 The fact that he -- that Mr. Watson couldn't
18 tell them that, oh, well, he was assaulted or that he
19 didn't call the police because he allegedly was
20 assaulted is irrelevant. And Mr. Watson is not here to
21 testify but clearly he didn't believe he was assaulted.
22 Next, Mr. Jones, the investigating officer for the ABRA

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1 -- Mr. Jones's position was, "I investigated but I got
2 all my information from the police officers and Mr.
3 Miranda. I spoke with Mr. -- I spoke with Mr.
4 Woodfolk, asked him for a copy of the tape and I didn't
5 get the copy of the tape."

6 Okay. Fine. The information from the police
7 officers was Mr. Hector says, "Well, the guy didn't
8 show any visible signs of injury," something you would
9 have expected if someone had been kicked in the stomach
10 just recently. He didn't show. Officer Hrebenak said
11 he didn't show any tearing, as if he had been -- you
12 know, crying because he got kicked in the stomach. No,
13 he even -- did not even get treatment or refused
14 treatment.

15 Officer -- Investigator Jones spoke with Mr.
16 Miranda several days after the event, when tempers had
17 cooled and he was able to recollect himself. He said,
18 "Look, I don't want to have anything to do with this."
19 Next, we have Mr. Woodfolk, who's identified Mr.
20 Miranda as being a patron in his club after the fact.
21 Well, if Mr. Miranda, as he indicated, was -- felt
22 mistreated and abused because of his heritage, you

1 would think he would never want to go to this club
2 again.

3 But yet and still, he's there four, five days
4 before this hearing is scheduled. Ultimately, what we
5 have is the only person who's seen any footage of this
6 incident is Mr. Woodfolk. And Mr. Woodfolk has
7 testified that he did not see a kick. And that is the
8 -- that is the lynchpin of this case -- no kick, no
9 disorderly conduct, no violation of the security plan.

10 Mr. Woodfolk, he has no reason to lose his
11 license over this. The employee is an employee. If he
12 lies, he's fired. If he kicks, he's fired. But he's
13 not going to risk his livelihood over something like
14 this where he goes to the defense of an employee that
15 could possibly cause him the club itself. That's not
16 the case. Mr. Woodfolk has testified honestly and
17 truthfully under oath as to what he saw on the video.
18 And he's the only person who's seen the video.

19 Even if you discount, as the -- as the
20 government would like you to do -- discount the video,
21 you can't pick and choose which parts you want. You
22 can't say they didn't see a -- they didn't see a push,

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1 but then say, "Well, there was a -- there was a kick."
2 If Mr. Woodfolk didn't see a push and he didn't see a
3 kick, he didn't see a push or a kick, period. So if
4 there's no push and if there's no kick -- particularly
5 if there's no kick, there's no case. There's no
6 violation and there's no disorderly conduct. Thank
7 you.

8 CHAIRPERSON MILLER: Thank you very much.
9 Okay. I'm about to close the record. Have you all
10 gotten into evidence everything you wanted to?

11 MR. CLAYTON: I believe so.

12 MS. GEPHARDT: Yes.

13 CHAIRPERSON MILLER: I believe you have. I
14 just wanted to double-check. Okay. Then the record is
15 closed. I'm just going to ask if the parties want to
16 file Proposed Findings of Fact and Conclusions of Law
17 or waive their right to do so?

18 MS. GEPHARDT: No, waive our right to do so.

19 MR. CLAYTON: The club would like to do that,
20 Your Honor.

21 CHAIRPERSON MILLER: You would like to --

22 MR. CLAYTON: Yes.

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1 CHAIRPERSON MILLER: -- submit a Proposed
2 Findings and Conclusions of Law?

3 MR. CLAYTON: Yes.

4 CHAIRPERSON MILLER: Okay. You will have 30
5 days to do after the transcript is available.

6 MR. CLAYTON: Okay.

7 CHAIRPERSON MILLER: I'm not exactly sure how
8 -- when that will be, probably a couple of weeks. You
9 can check with me after this.

10 MR. CLAYTON: I will.

11 CHAIRPERSON MILLER: Okay. Then that
12 completes this hearing. And I'm just going to read the
13 provision from the Open Meetings Act because after the
14 Proposed Findings and Conclusions of Law are filed,
15 which means you can still -- you want to do that
16 perhaps, you know, leave open your right to file?

17 MS. GEPHARDT: I mean, I will leave open my
18 right to file.

19 CHAIRPERSON MILLER: Yeah.

20 MS. GEPHARDT: Sure.

21 CHAIRPERSON MILLER: But it's unlikely that
22 you will? Okay.

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1 MS. GEPHARDT: Probably unlikely but

2 CHAIRPERSON MILLER: Okay. Given that the
3 other side is filing?

4 MS. GEPHARDT: Right. Sure.

5 CHAIRPERSON MILLER: Okay. So after we've
6 received that, then 90 days after that, we will have --
7 issue an Order and will be deliberating some time in
8 between. So I'm going to read the provisions from the
9 Open Meetings Act for that deliberation. Okay.

10 As Chairperson of the Alcoholic Beverage
11 Control Board for the District of Columbia, and in
12 accordance with Section 405 of the Open Meetings
13 Amendment Act of 2010, I move that the ABC Board hold a
14 closed meeting for the purpose of seeking legal advice
15 from our counsel on Case No. 12-251-00046, Macombo
16 Lounge, per Section 405(b)(4) of the Open Meetings
17 Amendment Act of 2010 in deliberating upon this case
18 for the reasons cited in Section 405(b)(13) of the Open
19 Meetings Amendment Act of 2010.

20 Is there a second?

21 MR. NOPHLIN: Second.

22 CHAIRPERSON MILLER: Mr. Nophlin has seconded

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1 the motion. I'll now take a roll call vote. Mr.
2 Nophlin?

3 MR. NOPHLIN: I agree.

4 CHAIRPERSON MILLER: Mr. Brooks?

5 MR. BROOKS: I agree.

6 CHAIRPERSON MILLER: Mr. Alberti?

7 MR. ALBERTI: I agree.

8 CHAIRPERSON MILLER: Ms. Miller agrees. Mr.
9 Silverstein?

10 MR. SILVERSTEIN: I agree.

11 CHAIRPERSON MILLER: Mr. Jones?

12 MR. JONES: I agree.

13 CHAIRPERSON MILLER: This appears the motion
14 has passed by a 6-0-0 vote. I hereby give notice that
15 the ABC Board will hold a closed meeting in the ABC
16 Board conference room after the Proposed Findings and
17 Conclusions of Law are filed, pursuant to the Open
18 Meetings Amendment Act of 2010, and issue an order
19 within 90 days from that time. Okay. Thank you very
20 much.

21 MS. GEPHARDT: All right. Thank you.

22 MR. CLAYTON: Thank you very much.

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1 CHAIRPERSON MILLER: Okay. Good. We have a
2 hearing that was scheduled for 1:00. All right. So
3 the Board is going to recess. It's 3:20 and we will
4 hold our next hearing at 4:00. I apologize to those
5 who are here for the 1:00 hearing. We had obviously
6 another case that had a lot of witnesses and took a lot
7 of time. Thanks.

8 (WHEREUPON, at 3:20 p.m., the hearing was
9 concluded.)

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1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, NATALIA THOMAS, the officer before whom the
4 foregoing hearing was taken, do hereby certify that the
5 testimony appearing in the foregoing pages was recorded
6 by me and thereafter reduced to typewriting under my
7 direction; that said transcription is a true record of
8 the testimony given by said parties; that I am neither
9 counsel for, related to, nor employed by any of the
10 parties to the action in which this hearing was taken;
11 and, further, that I am not a relative or employee of
12 any counsel or attorney employed by the parties hereto,
13 nor financially or otherwise interested in the outcome
14 of this action.

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BRADLEY ANGLIN

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Notary Public in and for the

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District of Columbia

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CERTIFICATE OF TRANSCRIPTION

I, MIRANDA PENNACHI, hereby certify that I am not the Court Reporter who reported the proceeding and that I have typed the transcript of the proceeding using the Court Reporter's notes and recordings. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

Date

MIRANDA PENNACHI

Transcriptionist

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