

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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<p style="text-align: right;">6</p> <p>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?</p>	<p style="text-align: right;">8</p> <p>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</p>
<p style="text-align: right;">7</p> <p>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</p>	<p style="text-align: right;">9</p> <p>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</p>

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<p style="text-align: right;">10</p> <p>1 him?</p> <p>2 MR. CLAYTON: That's correct.</p> <p>3 CHAIRPERSON MILLER: Okay.</p> <p>4 MR. CLAYTON: Good morning, members of the</p> <p>5 Board. This morning you will hear testimony similar to</p> <p>6 what counsel for the city has indicated -- or the</p> <p>7 government has indicated. However, there'd be some</p> <p>8 changes -- or wrinkles to that. First you will hear</p> <p>9 that the security guard, by way of his affidavit and by</p> <p>10 way of confirmation at some point by Mr. Woodfolk, did</p> <p>11 not kick Mr. Miranda.</p> <p>12 You will also hear from the police officer</p> <p>13 that the only reason why he arrested Mr. -- excuse me -</p> <p>14 - Mr. Watson was because of the testimony of Mr.</p> <p>15 Miranda, the complainant, and his friend, Mr. Ramirez.</p> <p>16 You'll also hear that Mr. Miranda did not show any</p> <p>17 visible signs of injury and that he refused medical</p> <p>18 treatment at the scene. You'll also hear that Mr.</p> <p>19 Watson, after being arrested, was not prosecuted for</p> <p>20 any charge by the US attorney.</p> <p>21 You will also hear subsequently that Mr.</p> <p>22 Miranda, although having allegedly told the</p>	<p style="text-align: right;">12</p> <p>1 CHAIRPERSON MILLER: I just said your name.</p> <p>2 Are you -- are you ready to proceed?</p> <p>3 MS. GEPHARDT: Oh, oh, I'm sorry. I thought</p> <p>4 you made some other statement.</p> <p>5 CHAIRPERSON MILLER: No.</p> <p>6 MS. GEPHARDT: The government is ready to</p> <p>7 call its first witness, Officer Paul Hrebenak.</p> <p>8 CHAIRPERSON MILLER: Good morning.</p> <p>9 MR. HREBENAK: Good morning.</p> <p>10 CHAIRPERSON MILLER: I'm just going to swear</p> <p>11 you in.</p> <p>12 MR. HREBENAK: Okay.</p> <p>13 CHAIRPERSON MILLER: Do you swear to tell the</p> <p>14 truth, the whole truth and nothing but the truth?</p> <p>15 MR. HREBENAK: I do.</p> <p>16 CHAIRPERSON MILLER: Thank you. Okay.</p> <p>17 MS. GEPHARDT: Good morning, Officer.</p> <p>18 MR. HREBENAK: Good morning.</p> <p>19 MS. GEPHARDT: Can you please state your name</p> <p>20 and spell it for the record?</p> <p>21 MR. HREBENAK: Sure. It's Paul, P-A-U-L,</p> <p>22 Hrebenak, H-R-E-B-E-N-A-K.</p>
<p style="text-align: right;">11</p> <p>1 investigator during his interview that the felt</p> <p>2 mistreated and that he felt disrespected and that was</p> <p>3 the reason why he called the police in addition to</p> <p>4 having been kicked allegedly, that he has been recently</p> <p>5 spotted in the club participating in the activities in</p> <p>6 the club.</p> <p>7 These things you would not believe or</p> <p>8 understand to be the case if someone felt mistreated,</p> <p>9 disrespected because of their ethnicity and also having</p> <p>10 been kicked by a security guard. You will also hear of</p> <p>11 course that the security guard in question was</p> <p>12 identified as a security person for the club, wearing</p> <p>13 the proper attire at the time. Thank you.</p> <p>14 CHAIRPERSON MILLER: Could I just as a follow</p> <p>15 up on the affidavit? Why isn't Mr. Watson here?</p> <p>16 MR. CLAYTON: Mr. Watson has a day job, Madam</p> <p>17 Chairperson. He's unable to get off work as a result.</p> <p>18 So we provided the next best thing, the sworn</p> <p>19 affidavit.</p> <p>20 CHAIRPERSON MILLER: Okay. Thank you. All</p> <p>21 right. Ms. Gephardt?</p> <p>22 MS. GEPHARDT: I'm sorry, what did you say?</p>	<p style="text-align: right;">13</p> <p>1 MS. GEPHARDT: And Officer, where do you</p> <p>2 work?</p> <p>3 MR. HREBENAK: Metropolitan Police</p> <p>4 Department's Fourth District.</p> <p>5 MS. GEPHARDT: And what -- okay. Fourth</p> <p>6 District. What -- are you in any specialized unit</p> <p>7 within the Fourth District?</p> <p>8 MR. HREBENAK: I'm in the Patrol Section.</p> <p>9 MS. GEPHARDT: Okay. And how long have you</p> <p>10 worked for the Metropolitan Police Department?</p> <p>11 MR. HREBENAK: Five years.</p> <p>12 MS. GEPHARDT: Okay.</p> <p>13 MR. SILVERSTEIN: Officer, if you can speak</p> <p>14 up and into the mike so that we can hear you as well?</p> <p>15 MR. HREBENAK: Sure. I'm sorry. Five years.</p> <p>16 MR. SILVERSTEIN: Thank you, sir.</p> <p>17 MS. GEPHARDT: And were you on the -- were</p> <p>18 you on duty the evening of January the 28th, 2012?</p> <p>19 MR. HREBENAK: Yes, I was.</p> <p>20 MS. GEPHARDT: Okay. And where were you</p> <p>21 assigned that evening?</p> <p>22 MR. HREBENAK: To PSA 403 in the Fourth</p>

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14	<p>1 District.</p> <p>2 MS. GEPHARDT: Okay. And PSA 403 includes</p> <p>3 what area approximately?</p> <p>4 MR. HREBENAK: The 5000 to the 5900 block of</p> <p>5 Georgia Avenue.</p> <p>6 MS. GEPHARDT: Okay. And is that your</p> <p>7 regular beat?</p> <p>8 MR. HREBENAK: Yes.</p> <p>9 MS. GEPHARDT: Okay. And during your shift,</p> <p>10 did you get a call to respond to Macombo Lounge?</p> <p>11 MR. HREBENAK: I did, yes.</p> <p>12 MS. GEPHARDT: And can you tell us</p> <p>13 approximately at what time you got that call?</p> <p>14 MR. HREBENAK: It was in the early morning</p> <p>15 hours. I'm not sure exactly what time that was.</p> <p>16 MS. GEPHARDT: Okay. But was it sometime</p> <p>17 after midnight?</p> <p>18 MR. HREBENAK: Yes. It was after midnight.</p> <p>19 MS. GEPHARDT: Okay. And what was the nature</p> <p>20 of the call?</p> <p>21 MR. HREBENAK: It was a call for what the</p> <p>22 dispatcher classifies as an assault just occurred,</p>	16	<p>1 MR. HREBENAK: I was alone -- driving alone</p> <p>2 that night but I received backup in the form of Officer</p> <p>3 Hector, who responded as well.</p> <p>4 MS. GEPHARDT: Okay. And when you first</p> <p>5 arrived on the scene, what did you see when you first -</p> <p>6 - when you first got there?</p> <p>7 MR. HREBENAK: I got to the corner -- the</p> <p>8 southeast corner of Georgia and Jefferson. And I was</p> <p>9 met by two Hispanic males that I later identified as</p> <p>10 the complaining witness and his friend, a witness to an</p> <p>11 assault.</p> <p>12 MS. GEPHARDT: Okay. And so did you -- did</p> <p>13 you see the security guard in question when you arrived</p> <p>14 or --</p> <p>15 MR. HREBENAK: I did not see him when I</p> <p>16 arrived. I later found him inside the club.</p> <p>17 MS. GEPHARDT: Okay. And so did you speak to</p> <p>18 the complainant and his friend?</p> <p>19 MR. HREBENAK: I did, yes.</p> <p>20 MS. GEPHARDT: And what did they tell you?</p> <p>21 MR. HREBENAK: They explained to me that they</p> <p>22 had tried to go inside the club -- to enter the club</p>
15	<p>1 which means somebody's been assaulted and the suspect</p> <p>2 is possibly still on the scene.</p> <p>3 MS. GEPHARDT: Okay.</p> <p>4 CHAIRPERSON MILLER: I'm sorry, could you</p> <p>5 repeat your last phrase? What --</p> <p>6 MR. HREBENAK: Sure. The District classifies</p> <p>7 it as an assault just occurred, which means there's a</p> <p>8 possibility that the suspect is still on the scene.</p> <p>9 CHAIRPERSON MILLER: Okay. Thank you.</p> <p>10 MS. GEPHARDT: And how soon after you -- did</p> <p>11 you -- how soon after you got the call did you arrive</p> <p>12 at the lounge?</p> <p>13 MR. HREBENAK: I'm not too familiar with how</p> <p>14 many minutes exactly but it was under ten minutes.</p> <p>15 MS. GEPHARDT: Under ten minutes.</p> <p>16 MR. HREBENAK: Yes.</p> <p>17 MS. GEPHARDT: Okay. And when you first</p> <p>18 arrived on the scene, were you -- were you the first</p> <p>19 officer on the scene?</p> <p>20 MR. HREBENAK: Yes, I was.</p> <p>21 MS. GEPHARDT: And were you accompanied by</p> <p>22 other officers?</p>	17	<p>1 and they were stopped by the security guard I later</p> <p>2 stopped and told that they couldn't enter. They asked</p> <p>3 why not or tried to understand why. At that point the</p> <p>4 security guard kicked the complaining witness in the</p> <p>5 abdomen. They retreated back to the corner where I met</p> <p>6 them and contacted the police department.</p> <p>7 MS. GEPHARDT: Did the complainant, Mr.</p> <p>8 Miranda, or Mr. Ramirez, did they indicate to you why</p> <p>9 they -- what made them call the police other than the</p> <p>10 kick?</p> <p>11 MR. HREBENAK: Other than the kick and the</p> <p>12 assault, that's -- they said that they felt like they</p> <p>13 shouldn't have been assaulted and that they should be</p> <p>14 able to go into the club.</p> <p>15 MS. GEPHARDT: Okay. And did the</p> <p>16 complainant, Mr. Miranda, or Mr. Ramirez -- did they</p> <p>17 appear to be intoxicated?</p> <p>18 MR. HREBENAK: They didn't appear intoxicated</p> <p>19 to me. I'm not too sure if they had consumed any</p> <p>20 alcohol that night or not.</p> <p>21 MS. GEPHARDT: Okay. But there wasn't a</p> <p>22 urinalysis or urine test done or anything like that?</p>

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18	<p>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</p>	20	<p>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?</p>
19	<p>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.</p>	21	<p>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.</p>

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22	<p>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</p>	24	<p>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?</p>
23	<p>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</p>	25	<p>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.</p>

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26	<p>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</p>	28	<p>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</p>
27	<p>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</p>	29	<p>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?</p>

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<p style="text-align: right;">30</p> <p>1 MR. HREBENAK: Yes, sir.</p> <p>2 MR. CLAYTON: And is this report based on</p> <p>3 your own personal investigation or is it a compilation</p> <p>4 of reports that the other officers who have responded</p> <p>5 also gave you by way of information? Do you understand</p> <p>6 my question?</p> <p>7 MR. HREBENAK: Yes, I understand your --</p> <p>8 MR. CLAYTON: Okay.</p> <p>9 MR. HREBENAK: -- questions. I arrived and</p> <p>10 did the investigation there so I was present for the</p> <p>11 entire investigation and conducted the investigation.</p> <p>12 MR. CLAYTON: Okay. So, I mean, this says,</p> <p>13 "Officers arrived on scene and interviewed all</p> <p>14 parties."</p> <p>15 MR. HREBENAK: Yes.</p> <p>16 MR. CLAYTON: That means that -- and this is</p> <p>17 on Page 3 of the report.</p> <p>18 MR. HREBENAK: Uh-huh.</p> <p>19 MR. CLAYTON: None of the information you</p> <p>20 have in this narrative is any information that was</p> <p>21 gathered from other officers? This is just your -- the</p> <p>22 information that you gathered from your personal</p>	<p style="text-align: right;">32</p> <p>1 while I wasn't present but I would gone back and</p> <p>2 confirmed or asked that question again to that person</p> <p>3 so that I would have direct knowledge of it.</p> <p>4 MR. CLAYTON: Oh, okay. So every question</p> <p>5 that was asked by -- and we'll back -- let's just</p> <p>6 strike that question.</p> <p>7 It was yourself, the initial officer on</p> <p>8 scene, your sergeant, Taggart (ph) --</p> <p>9 MR. HREBENAK: Yes.</p> <p>10 MR. CLAYTON: -- and then another officer,</p> <p>11 Hector --</p> <p>12 MR. HREBENAK: Correct.</p> <p>13 MR. CLAYTON: -- who arrives?</p> <p>14 MR. HREBENAK: And there were several other</p> <p>15 officers on scene. And you can see, also as noted in</p> <p>16 the report --</p> <p>17 MR. CLAYTON: Yes.</p> <p>18 MR. HREBENAK: -- Officer MPO Mason (ph)</p> <p>19 conducted the crime scene. There was a secondary</p> <p>20 officer who responded, Officer Murphy.</p> <p>21 MR. CLAYTON: Uh-huh.</p> <p>22 MR. HREBENAK: And there was an investigator,</p>
<p style="text-align: right;">31</p> <p>1 investigation, correct?</p> <p>2 MR. HREBENAK: Well, I guess I don't really</p> <p>3 understand that question.</p> <p>4 MR. CLAYTON: Okay. On Page 3 of your</p> <p>5 narrative --</p> <p>6 MR. HREBENAK: Right.</p> <p>7 MR. CLAYTON: -- it says, "Officers arrived</p> <p>8 on scene and interviewed all parties."</p> <p>9 MR. HREBENAK: Right. And I guess --</p> <p>10 MR. CLAYTON: Okay.</p> <p>11 MR. HREBENAK: -- that speaks more to how we</p> <p>12 conduct our investigations, where there may be several</p> <p>13 interviews going on at once. But if there's going to</p> <p>14 be an arresting or -- and a reporting officer, he'll</p> <p>15 will go to this -- the place where that person was</p> <p>16 interviewed and hear the questions from that person.</p> <p>17 So that's sentence -- while I, like, understand your</p> <p>18 question -- means that officers may have been</p> <p>19 simultaneously interviewing people, say, the witness or</p> <p>20 when I was able to make contact with the security</p> <p>21 guard.</p> <p>22 And then they may have been asked question</p>	<p style="text-align: right;">33</p> <p>1 Detective Wheeler (ph). They were also there.</p> <p>2 MR. CLAYTON: Okay. So that's approximately</p> <p>3 six officers, three --</p> <p>4 MR. HREBENAK: That's -- again, this is not a</p> <p>5 -- by all mean -- any means a complete list of every</p> <p>6 officer that would have been there that night. There's</p> <p>7 no way. I don't have a way of telling you every officer</p> <p>8 that was there because officers come to assist and they</p> <p>9 leave. And I don't have a complete list of that.</p> <p>10 MR. CLAYTON: Okay. The reason why I ask is</p> <p>11 because I'm curious to know whether or not you</p> <p>12 personally spoke with Mr. Woodfolk that evening or</p> <p>13 maybe another officer spoke with him and then that</p> <p>14 officer relayed to you what he gathered from his</p> <p>15 speaking with Mr. Woodfolk.</p> <p>16 MR. HREBENAK: I'm not too sure about that.</p> <p>17 He may have been a detective that specifically him that</p> <p>18 question and relayed it to me or it may have been</p> <p>19 another officer. But it wasn't me by myself.--</p> <p>20 MR. CLAYTON: Okay.</p> <p>21 MR. HREBENAK: -- or I would have attempted</p> <p>22 to confirm it.</p>

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34	<p>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.</p>	36	<p>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</p>
35	<p>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.</p>	37	<p>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?</p>

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38	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.	40	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
39	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.	41	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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42	<p>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</p>	44	<p>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?</p>
43	<p>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.</p>	45	<p>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</p>

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46	<p>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."</p>	48	<p>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.</p>
47	<p>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,</p>	49	<p>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</p>

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50	<p>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.</p>
51	<p>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.</p>
52	<p>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</p>
53	<p>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</p>

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54	<p>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.</p>	56	<p>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</p>
55	<p>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,</p>	57	<p>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</p>

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58	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?
60	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
59	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.
61	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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62	<p>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</p>	64	<p>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.</p>
63	<p>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.</p>	65	<p>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</p>

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66	<p>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 --</p>	68	<p>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,</p>
67	<p>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?</p>	69	<p>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.</p>

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70	<p>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.</p>	72	<p>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</p>
71	<p>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</p>	73	<p>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</p>

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74	<p>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.</p>	76	<p>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</p>
75	<p>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?</p>	77	<p>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</p>

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78	<p>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</p>
79	<p>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</p>
80	<p>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</p>
81	<p>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.</p>

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82	<p>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.</p>	84	<p>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</p>
83	<p>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</p>	85	<p>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.</p>

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86	<p>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 --</p>	88	<p>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</p>
87	<p>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.</p>	89	<p>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</p>

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<p style="text-align: right;">90</p> <p>1 Board questions. I think we're --</p> <p>2 MS. GEPHARDT: All right. Thank you.</p> <p>3 CHAIRPERSON MILLER: -- finished.</p> <p>4 MS. GEPHARDT: Thank you, Officer.</p> <p>5 MR. HREBENAK: Thank you.</p> <p>6 CHAIRPERSON MILLER: Thank you very much.</p> <p>7 MR. HREBENAK: Thank you.</p> <p>8 MS. GEPHARDT: All right. Government would</p> <p>9 now like to call its second witness, Investigator Earl</p> <p>10 Jones.</p> <p>11 CHAIRPERSON MILLER: Mr. Jones, do you swear</p> <p>12 to tell the truth, the whole truth and nothing but the</p> <p>13 truth?</p> <p>14 MR. EARL JONES: I do.</p> <p>15 CHAIRPERSON MILLER: Thank you.</p> <p>16 MS. GEPHARDT: Good afternoon, Mr. Jones.</p> <p>17 Can you please state your full name and spell it for</p> <p>18 the record?</p> <p>19 MR. EARL JONES: Earl Jones, E-A-R-L, last</p> <p>20 name, J-O-N-E-S.</p> <p>21 MS. GEPHARDT: And where do you work?</p> <p>22 MR. EARL JONES: I work for the Alcoholic</p>	<p style="text-align: right;">92</p> <p>1 reference to a simple assault that had taken place</p> <p>2 outside of the establishment -- or at the</p> <p>3 establishment.</p> <p>4 MS. GEPHARDT: And do you recall -- or do you</p> <p>5 know who called into the ABRA hotline to report this</p> <p>6 assault or this incident?</p> <p>7 MR. EARL JONES: MPD called. I don't know</p> <p>8 what officer it was but I know that it was the</p> <p>9 Metropolitan Police Department that had called.</p> <p>10 MS. GEPHARDT: Okay. And what time -- around</p> <p>11 what time did you go to -- did you respond to Macombo</p> <p>12 Lounge?</p> <p>13 MR. EARL JONES: I got there around 1:40 a.m.</p> <p>14 MS. GEPHARDT: Okay. And how long would you</p> <p>15 say that was after you had received the hotline call?</p> <p>16 MR. EARL JONES: Ten minutes.</p> <p>17 MS. GEPHARDT: Okay. And when you arrived,</p> <p>18 what did you first see?</p> <p>19 MR. EARL JONES: When I arrived, I saw an EMT</p> <p>20 out there. I saw several police cars blocking the</p> <p>21 entire Georgia Avenue, probably three to four squad</p> <p>22 cars. And then, like I said, it was an EMT's vehicle</p>
<p style="text-align: right;">91</p> <p>1 Beverage Regulation Administration.</p> <p>2 MS. GEPHARDT: And what is your job title?</p> <p>3 MR. EARL JONES: Compliance investigator.</p> <p>4 MS. GEPHARDT: And what -- how long have you</p> <p>5 worked for the Alcoholic Beverage Regulation</p> <p>6 Administration?</p> <p>7 MR. EARL JONES: Since October of 2009.</p> <p>8 MS. GEPHARDT: Okay. And what is your job</p> <p>9 duties as a compliance investigator?</p> <p>10 MR. EARL JONES: I conduct inspections and</p> <p>11 investigations of licensed ABC establishments within</p> <p>12 the District of Columbia.</p> <p>13 MS. GEPHARDT: Okay. And are you familiar</p> <p>14 with a licensee by the name of Macombo Lounge?</p> <p>15 MR. EARL JONES: Yes, I am.</p> <p>16 MS. GEPHARDT: And do you recall visiting the</p> <p>17 lounge on January the 28th of 2012?</p> <p>18 MR. EARL JONES: Yes, I do.</p> <p>19 MS. GEPHARDT: And why did you go there?</p> <p>20 MR. EARL JONES: I was responding to an ABRA</p> <p>21 hotline call, that telephone call that I received from</p> <p>22 my supervisor, Supervisor Investigator Stewart, with</p>	<p style="text-align: right;">93</p> <p>1 out there as well.</p> <p>2 MS. GEPHARDT: Do you recall if there were</p> <p>3 patrons outside or other people besides police and</p> <p>4 emergency technicians?</p> <p>5 MR. EARL JONES: I didn't see any patrons</p> <p>6 outside.</p> <p>7 MS. GEPHARDT: Okay.</p> <p>8 MR. EARL JONES: It was just all MPD</p> <p>9 officials.</p> <p>10 MS. GEPHARDT: And when you came upon the</p> <p>11 scene, did you -- where did you go first as part of</p> <p>12 your investigation?</p> <p>13 MR. EARL JONES: Well, our protocol is to</p> <p>14 kind of wait until MPD kind of does their thing. And</p> <p>15 then we speak to -- we try to speak to one of the --</p> <p>16 one officer who is on the scene. And we try to find</p> <p>17 out who is the -- whether a lead -- responding officer</p> <p>18 or whoever is lead on the case. The first officer that</p> <p>19 I came in contact with was Officer Hrebenak, I believe.</p> <p>20 And I interviewed -- I interviewed him.</p> <p>21 MS. GEPHARDT: And do you recall if you -- in</p> <p>22 addition to Officer Hrebenak, did you interview any</p>

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94	<p>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</p>	96	<p>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</p>
95	<p>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</p>	97	<p>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</p>

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98	<p>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</p>	100	<p>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</p>
99	<p>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?</p>	101	<p>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?</p>

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102	<p>1 MR. EARL JONES: Yes, I did.</p> <p>2 MS. GEPHARDT: And did you make any follow-up</p> <p>3 attempt to get the footage from Mr. Woodfolk?</p> <p>4 MR. EARL JONES: Oh, I'm sorry. Yes, I did.</p> <p>5 I would guess about a week to two weeks later, I</p> <p>6 telephonically contacted Mr. Woodfolk again and asked</p> <p>7 for the footage. And he said he's -- at that point he</p> <p>8 still wasn't able to download the footage.</p> <p>9 MS. GEPHARDT: Did he explain at all to you -</p> <p>10 - did he give you a reason why he wasn't able to</p> <p>11 download the footage?</p> <p>12 MR. EARL JONES: He said he didn't have a zip</p> <p>13 drive at that time. So I told him to get in contact</p> <p>14 with me once he was able to get that accomplished.</p> <p>15 MS. GEPHARDT: And have you heard -- did you</p> <p>16 hear anything after that from Mr. Woodfolk about</p> <p>17 getting the security footage?</p> <p>18 MR. EARL JONES: I hadn't heard anything else</p> <p>19 from him.</p> <p>20 MS. GEPHARDT: And to date have you received</p> <p>21 any information about it?</p> <p>22 MR. EARL JONES: No, ma'am.</p>	104	<p>1 eye?</p> <p>2 MR. EARL JONES: Yes, ma'am.</p> <p>3 MS. GEPHARDT: Okay.</p> <p>4 MR. EARL JONES: If the incident took place</p> <p>5 where Mr. Miranda's saying that it took place, yes.</p> <p>6 MS. GEPHARDT: Okay. Court's indulgence.</p> <p>7 Are you familiar with Macombo Lounge's security plan?</p> <p>8 MR. EARL JONES: Not thoroughly but I've</p> <p>9 definitely seen it. Yes.</p> <p>10 MS. GEPHARDT: Did you review the security</p> <p>11 plan either that evening or at some point after your</p> <p>12 investigation?</p> <p>13 MR. EARL JONES: Yes, I did.</p> <p>14 MS. GEPHARDT: And well, how did you obtain a</p> <p>15 copy of the security plan?</p> <p>16 MR. EARL JONES: They have a submitted copy</p> <p>17 on -- with our agency. So we're able to access that.</p> <p>18 MS. GEPHARDT: Okay. And do you recall the</p> <p>19 details of the security plan or would you -- would it</p> <p>20 help to see a copy of it?</p> <p>21 MR. EARL JONES: Well, I know that through</p> <p>22 whatever case -- cases that we're working, we pinpoint</p>
103	<p>1 MS. GEPHARDT: Are you familiar with the</p> <p>2 cameras near the front door at Macombo Lounge?</p> <p>3 MR. EARL JONES: Yes.</p> <p>4 MS. GEPHARDT: And do you know where they're</p> <p>5 located approximately?</p> <p>6 MR. EARL JONES: Yes. Pretty much, yes.</p> <p>7 There's one outside the front door and I believe</p> <p>8 there's one inside the vestibule area.</p> <p>9 MS. GEPHARDT: So if -- given what you were</p> <p>10 told by Officer Hector and Officer Hrebenak and</p> <p>11 Sergeant Taggart, as well as the complainant in this</p> <p>12 case, do you believe that where the location of the</p> <p>13 incident occurred, it would have been caught on</p> <p>14 security camera?</p> <p>15 MR. EARL JONES: I believe it should have</p> <p>16 been, yes.</p> <p>17 MR. SILVERSTEIN: Please say again.</p> <p>18 MR. EARL JONES: I believe it -- I believe it</p> <p>19 should have been, yes.</p> <p>20 MS. GEPHARDT: And then do you make that</p> <p>21 determination based upon the location of the cameras</p> <p>22 and where they're -- just from looking with the naked</p>	105	<p>1 -- when we go through security plans, we pinpoint the</p> <p>2 areas that -- the cases we're expected to. So we're</p> <p>3 dealing with the simple assault and what -- from what</p> <p>4 Mr. Miranda and as well as Mr. Ramirez as indicating,</p> <p>5 we point out the issues dealing with security and with</p> <p>6 disorderly ejection of patrons.</p> <p>7 MS. GEPHARDT: And when you reviewed the</p> <p>8 security plan in this case, did you discuss it at all</p> <p>9 with Mr. Woodfolk and explain to him why you were</p> <p>10 writing this up as a violation?</p> <p>11 MR. EARL JONES: Well, we spoke there. And I</p> <p>12 -- you know, I explained to him that, you know -- and</p> <p>13 he was aware that, you know, the charges were that his</p> <p>14 security member had kicked this -- supposedly had</p> <p>15 kicked this individual. He in fact told me that Mr.</p> <p>16 Watson told him that he'd pushed him and it wasn't a</p> <p>17 kick and it was retaliation. So we spoke about it. He</p> <p>18 was aware of that.</p> <p>19 MS. GEPHARDT: Okay. And did you</p> <p>20 specifically point out to him which provisions in the</p> <p>21 security plan that you believe that his -- that his</p> <p>22 establishment violated?</p>

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106	<p>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</p>	108	<p>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</p>
107	<p>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</p>	109	<p>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.</p>

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110	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.	112	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 --
111	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	113	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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114	<p>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</p>	116	<p>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</p>
115	<p>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.</p>	117	<p>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?</p>

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<p style="text-align: right;">118</p> <p>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.</p>	<p style="text-align: right;">120</p> <p>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</p>
<p style="text-align: right;">119</p> <p>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</p>	<p style="text-align: right;">121</p> <p>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</p>

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122	<p>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.</p>	124	<p>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</p>
123	<p>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.</p>	125	<p>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</p>

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126	<p>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.</p>	128	<p>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</p>
127	<p>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</p>	129	<p>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.</p>

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130	<p>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</p>	132	<p>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</p>
131	<p>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</p>	133	<p>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</p>

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<p style="text-align: right;">134</p> <p>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?</p>	<p style="text-align: right;">136</p> <p>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</p>
<p style="text-align: right;">135</p> <p>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?</p>	<p style="text-align: right;">137</p> <p>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?</p>

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<p style="text-align: right;">138</p> <p>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</p>	<p style="text-align: right;">140</p> <p>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,</p>
<p style="text-align: right;">139</p> <p>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</p>	<p style="text-align: right;">141</p> <p>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.</p>

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142	<p>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</p>	144	<p>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?</p>
143	<p>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</p>	145	<p>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</p>

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146	<p>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</p>	148	<p>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?</p>
147	<p>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-</p>	149	<p>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</p>

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150	<p>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</p>
152	<p>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.</p>
151	<p>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</p>
153	<p>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.</p>

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154	<p>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</p>	156	<p>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.</p>
155	<p>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</p>	157	<p>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</p>

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158	<p>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</p>	160	<p>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</p>
159	<p>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</p>	161	<p>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?</p>

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162	<p>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</p>	164	<p>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.</p>
163	<p>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.</p>	165	<p>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</p>

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166	<p>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.</p>	168	<p>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</p>
167	<p>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</p>	169	<p>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</p>

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170	<p>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.</p>	172	<p>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.</p>
171	<p>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</p>	173	<p>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?</p>

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174	<p>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,</p>	176	<p>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</p>
175	<p>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.</p>	177	<p>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</p>

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178	<p>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.</p>	180	<p>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?</p>
179	<p>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</p>	181	<p>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.</p>

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182	<p>1 MR. ALBERTI: Okay.</p> <p>2 MR. WOODFOLK: I didn't -- I didn't need to</p> <p>3 have to record anything. Again, I'm thinking I got 30</p> <p>4 days of coverage. So I can call him in if an incident</p> <p>5 happened. I got time to have him show me how to do it.</p> <p>6 MR. ALBERTI: What are -- what are the normal</p> <p>7 procedures for ejecting somebody?</p> <p>8 MR. WOODFOLK: Well, it depends on why</p> <p>9 they're being ejected. If a person comes in -- and I</p> <p>10 can give you a couple of incidents that we had before</p> <p>11 where a person picked up a -- actually it was a -- a</p> <p>12 person picked up a glass and was attempting to throw it</p> <p>13 at somebody.</p> <p>14 MR. ALBERTI: Uh-huh.</p> <p>15 MR. WOODFOLK: If the security staff saw that</p> <p>16 or approached the person and say, "Hey, hey. What are</p> <p>17 you doing? You can't do that in here. You've got to</p> <p>18 go." And they would leave. We have a no-touching rule.</p> <p>19 If a customer is trying to put their hands on dancers,</p> <p>20 we'll walk up to them. And usually we'll say, "If you</p> <p>21 do that again, you're out of here. You got to go."</p> <p>22 And if they -- a person is rowdy, then we'll tell them,</p>	184	<p>1 intoxicated. And he told me didn't believe the guy</p> <p>2 really understood because he couldn't speak English</p> <p>3 that well but the other friend that was with him could.</p> <p>4 And he told them, "You got to go because you're drunk.</p> <p>5 You're intoxicated."</p> <p>6 MR. ALBERTI: And so they weren't leaving.</p> <p>7 MR. WOODFOLK: And --</p> <p>8 MR. ALBERTI: So they weren't leaving?</p> <p>9 MR. WOODFOLK: They didn't want to.</p> <p>10 MR. ALBERTI: So he didn't call the police?</p> <p>11 MR. WOODFOLK: No.</p> <p>12 MR. ALBERTI: He pushed them out?</p> <p>13 MR. WOODFOLK: That's what he said. He kind</p> <p>14 of nudged them out. They were -- they were in the</p> <p>15 vestibule. They weren't actually into the club. They</p> <p>16 were in the vestibule.</p> <p>17 MR. ALBERTI: Thank you. I have no further</p> <p>18 questions.</p> <p>19 CHAIRPERSON MILLER: Yes, Mr. Jones.</p> <p>20 MR. JONES: Thank you, Madam. So you said</p> <p>21 you saw the video?</p> <p>22 MR. WOODFOLK: Yes.</p>
183	<p>1 "You go to go," and they'll leave.</p> <p>2 MR. ALBERTI: I'm sorry. Excuse me. I'm</p> <p>3 sorry.</p> <p>4 MR. WOODFOLK: And if --</p> <p>5 MR. ALBERTI: Yeah, I'm listening.</p> <p>6 MR. WOODFOLK: -- if something is touching</p> <p>7 the dancers, we usually give them one verbal warning.</p> <p>8 The second time we ask them to leave. And most of the</p> <p>9 time they'll comply and leave.</p> <p>10 MR. ALBERTI: And what if they stand there</p> <p>11 and argue with you? They're not leaving and they're</p> <p>12 just standing there and arguing with you?</p> <p>13 MR. WOODFOLK: We'll call the police.</p> <p>14 MR. ALBERTI: You call the police?</p> <p>15 MR. WOODFOLK: Uh-huh.</p> <p>16 MR. ALBERTI: So in this case, the individual</p> <p>17 threw a punch but it didn't connect?</p> <p>18 MR. WOODFOLK: Correct.</p> <p>19 MR. ALBERTI: Mr. Watson's immediate response</p> <p>20 was to push them out?</p> <p>21 MR. WOODFOLK: No. He told them -- he told</p> <p>22 them why they had to leave. He said the guy was</p>	185	<p>1 MR. JONES: And you did not see, based on</p> <p>2 your testimony and response to the questions that were</p> <p>3 -- that were raised, you did not see your security</p> <p>4 person push, nudge, bump, physically make contact with</p> <p>5 the attempted patrons to get them out of your</p> <p>6 establishment; is that correct?</p> <p>7 MR. WOODFOLK: Yes, that's correct.</p> <p>8 MR. JONES: So does it disturb you that the</p> <p>9 information you got directly from your security staff</p> <p>10 does not comport with what you saw yourself on the</p> <p>11 video?</p> <p>12 MR. WOODFOLK: Does it disturb me? Well,</p> <p>13 again --</p> <p>14 MR. JONES: So when you -- when you saw what</p> <p>15 you saw on that video, did you go back and re-question</p> <p>16 your staff person --</p> <p>17 MR. WOODFOLK: Yes.</p> <p>18 MR. JONES: -- to figure out why he was not</p> <p>19 communicating to you what really happened?</p> <p>20 MR. WOODFOLK: No, because again, the -- you</p> <p>21 have to be able to see the video to see how the view</p> <p>22 from that particular angle, where he said it happened,</p>

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186	<p>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</p>	188	<p>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</p>
187	<p>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.</p>	189	<p>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.</p>

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<p style="text-align: right;">190</p> <p>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</p>	<p style="text-align: right;">192</p> <p>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</p>
<p style="text-align: right;">191</p> <p>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?</p>	<p style="text-align: right;">193</p> <p>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.</p>

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194	<p>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.</p>	196	<p>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.</p>
195	<p>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.</p>	197	<p>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</p>

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198	<p>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</p>	200	<p>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</p>
199	<p>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 -</p>	201	<p>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</p>

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202	<p>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?</p>	204	<p>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.</p>
203	<p>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.</p>	205	<p>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</p>

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206	<p>1 punch, then how he could be --</p> <p>2 MR. WOODFOLK: But there are -- there are</p> <p>3 spots on the video -- there are -- there are blind</p> <p>4 spots in this club. There are blind spots on the</p> <p>5 video. Because I didn't see it, I'm not saying nothing</p> <p>6 I -- that doesn't mean it didn't happen. There's --</p> <p>7 there are blind spots all over the club. And that's</p> <p>8 why we used to have our cameras up on the big screen on</p> <p>9 the second floor. We took that down because we knew</p> <p>10 customers were looking at where blind spots are and</p> <p>11 they may use that as try -- to try to gain entry again.</p> <p>12 MS. GEPHARDT: I have no other questions.</p> <p>13 CHAIRPERSON MILLER: Thank you. Mr. Clayton?</p> <p>14 MR. CLAYTON: Yes, Your Honor -- Madam</p> <p>15 Chairperson. I did close earlier. And I'd asked the</p> <p>16 Board's indulgence. I wanted to ask Mr. Woodfolk if he</p> <p>17 had ever seen Mr. Miranda at the club after the</p> <p>18 incident on January 28th.</p> <p>19 CHAIRPERSON MILLER: What's that?</p> <p>20 MS. GEPHARDT: It's a phone.</p> <p>21 CHAIRPERSON MILLER: Oh, ah. What were you</p> <p>22 saying, you did close earlier? What --</p>	208	<p>1 allow this -- or the Board allow this simply because it</p> <p>2 goes to my closing, that if Mr. Miranda actually felt</p> <p>3 that he had been mistreated, disrespected by this</p> <p>4 particular club, he would not have gone back and been a</p> <p>5 patron of the club.</p> <p>6 I have a photograph taken this past Thursday</p> <p>7 of Mr. Miranda -- excuse me -- it was this past Friday</p> <p>8 of Mr. Miranda at the --</p> <p>9 MS. GEPHARDT: He can't admit his own</p> <p>10 evidence. He's --</p> <p>11 MR. CLAYTON: I'm -- it is an offer of proof,</p> <p>12 Your Honor.</p> <p>13 MS. GEPHARDT: He's basically testifying.</p> <p>14 CHAIRPERSON MILLER: It -- let me just -- I -</p> <p>15 - because I want to cut to the chase because it's so</p> <p>16 late. Is your -- if you want to ask one, "Yes," or,</p> <p>17 "No," question is, "Has he ever been in the club since</p> <p>18 then" -- is that your question?</p> <p>19 MR. CLAYTON: Yes.</p> <p>20 CHAIRPERSON MILLER: All right. Let's just</p> <p>21 do that and move on then.</p> <p>22 MR. CLAYTON: Mr. Woodfolk, have you seen --</p>
207	<p>1 MR. CLAYTON: Yes.</p> <p>2 CHAIRPERSON MILLER: Is this --</p> <p>3 MR. CLAYTON: Yes. I stopped my direct</p> <p>4 examination before asking Mr. Woodfolk if he had ever</p> <p>5 seen Mr. Miranda at the club after the January 28th</p> <p>6 incident.</p> <p>7 CHAIRPERSON MILLER: Right.</p> <p>8 MR. CLAYTON: I had showed the police officer</p> <p>9 a photograph and asked him to identify whether or not</p> <p>10 he had seen -- whether this was -- the person was Mr.</p> <p>11 Miranda. I'm now -- I would now ask to show the same</p> <p>12 photograph to Mr. Woodfolk. It's --</p> <p>13 CHAIRPERSON MILLER: And let me interrupt you</p> <p>14 because this -- we have -- we do have another case</p> <p>15 that's at least two hours late. And so at this point</p> <p>16 it's redirect based on the Board's questions and --</p> <p>17 MR. CLAYTON: I understand --</p> <p>18 CHAIRPERSON MILLER: -- cross.</p> <p>19 MR. CLAYTON: -- as much. I'd asked --</p> <p>20 CHAIRPERSON MILLER: So --</p> <p>21 MR. CLAYTON: Since the rules of evidence</p> <p>22 seem to be truly liberal, I would ask that the court</p>	209	<p>1 have you or any personnel to the club seen Mr. Miranda</p> <p>2 at the club since January 28th, 2012?</p> <p>3 MR. WOODFOLK: Yes.</p> <p>4 MR. CLAYTON: When was that?</p> <p>5 CHAIRPERSON MILLER: Okay. That's -- you</p> <p>6 said one question.</p> <p>7 MR. CLAYTON: Well, I --</p> <p>8 CHAIRPERSON MILLER: Is this the --</p> <p>9 MR. CLAYTON: The natural predicate is after.</p> <p>10 CHAIRPERSON MILLER: Is this the last one?</p> <p>11 And the only reason I'm being tough at this point is</p> <p>12 because you're really out of order in even asking this</p> <p>13 question at this point. So I'm trying to let you do it</p> <p>14 very, very easily.</p> <p>15</p> <p>16 MR. CLAYTON: Okay. Well, then I won't ask</p> <p>17 that question. You've answered it. Thank you.</p> <p>18 CHAIRPERSON MILLER: Okay.</p> <p>19 MR. CLAYTON: Redirect based on the Board's --</p> <p>20 CHAIRPERSON MILLER: And the Board's</p> <p>21 questions and --</p> <p>22 MR. CLAYTON: Mr. Woodfolk -- Mr. Woodfolk,</p>

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<p style="text-align: right;">210</p> <p>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?</p>	<p style="text-align: right;">212</p> <p>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</p>
<p style="text-align: right;">211</p> <p>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</p>	<p style="text-align: right;">213</p> <p>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</p>

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214	<p>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</p>	216	<p>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</p>
215	<p>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</p>	217	<p>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</p>

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218	<p>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.</p> <p>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.</p> <p>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</p>	220	<p>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.</p> <p>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.</p> <p>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</p>
219	<p>1 argument.</p> <p>2 CHAIRPERSON MILLER: Thank you.</p> <p>3 MR. BROOKS: Could you repeat that, please, 4 Madam Chair?</p> <p>5 MS. GEPHARDT: A \$3500 fine and a five-day 6 suspension, three days served, two days stayed for one 7 year.</p> <p>8 MR. BROOKS: Thank you.</p> <p>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.</p> <p>14 MR. CLAYTON: Thank you, Madam Chairperson.</p> <p>15 CHAIRPERSON MILLER: I don't know how long 16 you have in mind.</p> <p>17 MR. CLAYTON: No. I --</p> <p>18 CHAIRPERSON MILLER: That's why I don't say 19 anything. Okay.</p> <p>20 MR. CLAYTON: -- intend to be brief.</p> <p>21 CHAIRPERSON MILLER: Okay. Thank you.</p> <p>22 MR. CLAYTON: At the outset, however, I'd</p>	221	<p>1 specious.</p> <p>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.</p> <p>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.</p> <p>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</p>

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222	<p>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</p>	224	<p>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.</p>
223	<p>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,</p>	225	<p>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.</p>

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<p style="text-align: right;">226</p> <p>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</p>	<p style="text-align: right;">228</p> <p>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.) 10 11 12 13 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">227</p> <p>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.</p>	<p style="text-align: right;">229</p> <p>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. 15 16 17 18 _____ 19 BRADLEY ANGLIN 20 Notary Public in and for the 21 District of Columbia 22</p>

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1 CERTIFICATE OF TRANSCRIPTION

2

3 I, MIRANDA PENNACHI, hereby certify that I am not
4 the Court Reporter who reported the proceeding and that
5 I have typed the transcript of the proceeding using the
6 Court Reporter's notes and recordings. The
7 foregoing/attached transcript is a true, correct and
8 complete transcription of the proceedings.

9

10

11

12

13

14 _____

14 Date MIRANDA PENNACHI

15 Transcriptionist

16

17

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