

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:
Kabin Group, LLC,
t/a Kabin
1337 Connecticut Ave NW : Show Cause
Retailer CT - ANC 2B : Hearing
License No. 91267
Case #17-251-00134
(Allowed Establishment to:
be Used for Unlawful or
Disorderly Purposes)

Wednesday
February 7, 2018

The Alcoholic Beverage Control Board
met in the Alcoholic Beverage Control Hearing
Room, Reeves Building, 2000 14th Street, N.W.,
Suite 400S, Washington, D.C. 20009, Chairperson
Donovan W. Anderson, presiding.

PRESENT:

- DONOVAN W. ANDERSON, Chairperson
NICK ALBERTI, Member
BOBBY CATO, Member
DONALD ISAAC, JR., Member
MIKE SILVERSTEIN, Member
JAMES SHORT, Member
REMA WAHABZADAH, Member

ALSO PRESENT:

AMY SCHMIDT, OAG

THAD RUSH, Witness

KAMRAN ALI, Applicant

MARK WILKINSON, Investigator, ABRA

SIMONE ANDREWS, Investigator, ABRA

W-I-T-N-E-S-S-E-S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Mr. Wilkinson	12	33		
Mr. Rush	61	76		
Mr. Ali	134			

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

10:17 a.m.

CHAIRPERSON ANDERSON: Are these the parties for Kabin? Oh, are you guys ready to move forward? Oh, I didn't realize that we were scheduled for. It was here for 10:30, so we'll be in recess for a couple minutes. I'm not sure. Is someone coming to set it up? All right. Okay. So you need -- there is some video, all right, so once the video is setup, then we can -- I'll call the case then.

So can we start? Oh, well, then the next -- the show cause hearing calendar, Case Number 17-251-00134, Kabin, License Number 91276. Will the parties please approach and identify themselves for the record, please?

MS. SCHMIDT: Good morning. Amy Schmidt, Assistant Attorney General on behalf of District of Columbia.

CHAIRPERSON ANDERSON: Ms. Schmidt.

MR. RUSH: Good morning. Thad Rush on behalf of Kabin --

1 CHAIRPERSON ANDERSON: I'm sorry, your
2 last name, sir?

3 MR. RUSH: Rush, R-U-S-H.

4 CHAIRPERSON ANDERSON: Rush. Mr.
5 Rush.

6 MR. RUSH: Yes, sir.

7 MR. ALI: Good morning. Kamran Ali on
8 behalf of Kabin Lounge. General manager.

9 CHAIRPERSON ANDERSON: Mr. Rush, are
10 you an attorney?

11 MR. RUSH: No, sir.

12 CHAIRPERSON ANDERSON: What role are
13 you playing today. Are you --

14 MR. RUSH: I'm the security manager
15 that was there involved in the tape with the
16 altercation.

17 CHAIRPERSON ANDERSON: All right. And
18 you're the general manger?

19 MR. ALI: Yes, sir.

20 CHAIRPERSON ANDERSON: Do you have --

21 MR. ALI: Yes.

22 CHAIRPERSON ANDERSON: What is --

1 okay. Let me -- bring that up, please. Ms.
2 Schmidt, are there any preliminary matters in
3 this case?

4 MS. SCHMIDT: No, there are not.

5 CHAIRPERSON ANDERSON: And is the
6 Government ready to move forward?

7 MS. SCHMIDT: We can -- yes. I'm just
8 waiting -- yes. Yes. The Government -- okay.

9 CHAIRPERSON ANDERSON: All right. No,
10 the Government -- all right. So hold on one
11 minute, please.

12 MS. SCHMIDT: There she is. Okay.
13 Thank you.

14 CHAIRPERSON ANDERSON: All right.

15 MS. SCHMIDT: Hi, the Government --
16 good morning.

17 CHAIRPERSON ANDERSON: Okay. So does
18 the Government wish to make an opening statement?

19 MS. SCHMIDT: Yes, it does.

20 CHAIRPERSON ANDERSON: Go ahead, Ms.
21 Schmidt.

22 MS. SCHMIDT: Yes. Today the

1 Government will show that on July 2, 2017, that
2 the Kabin -- the employees of Kabin caused --
3 allowed the establishment to be used for an
4 unlawful facility purpose pursuant to 25-A23A2.
5 This will be shown by the fact, through the use
6 of a videotape, which will show the events of
7 that night.

8 These events consist of a patron being
9 -- a patron who was not resistance in any way,
10 being thrown down, among other things, being
11 thrown down -- carried out and thrown down some
12 stairs. The patron suffered a broken leg as a
13 result of this.

14 And the people who threw the patron
15 down the stairs were employees of the
16 establishment. Investigator Wilkinson will
17 testify as to his investigation and he will
18 explain the videotape to the Board.

19 CHAIRPERSON ANDERSON: Now, who -- do
20 you guys wish to make an opening statement?

21 MR. RUSH: I don't have one at this
22 time. I'm not sure.

1 MR. ALI: Well, after, I think,
2 watching the video, we'd like to explain how
3 everything happened, because it only shows one
4 part, you know? You need the whole story in
5 order to really see what's going on, and that
6 way, he can explain to you exactly what happened,
7 step-by-step, and what happened before, and what
8 happened afterwards, if that's okay.

9 CHAIRPERSON ANDERSON: No, well, I'm
10 just -- all right. You're not an attorney and so
11 that's why I was asking. So normally, the way
12 these proceedings work, it's, so the Government,
13 you give an opening statement, you can give an
14 opening statement, you don't really have to, then
15 the Government will present its case, they'll
16 call its witness. Who will be cross-examining
17 the witness that the Government is going to put
18 on? Who's going to do that?

19 MR. RUSH: I don't know if there's any
20 witness besides myself.

21 CHAIRPERSON ANDERSON: No, no, no. Do
22 you know how this process -- this is the way the

1 process work. I mean, this is actually a very
2 formal process.

3 MR. RUSH: I understand that.

4 CHAIRPERSON ANDERSON: So the
5 Government, it's their burden to establish that
6 there was a violation, they're going to call a
7 witness, they're going to ask questions of the
8 witness, once the Government asks questions of
9 the witness, then if you elect, you can ask the
10 witness questions based on -- you can cross-
11 examine the witness.

12 Are you going to do that, and if
13 you're going to do that, who is going to do it?

14 MR. ALI: Can it be both of us?

15 CHAIRPERSON ANDERSON: No. One person
16 has to do it.

17 MR. RUSH: I would like to, because
18 I'm involved with the situation.

19 CHAIRPERSON ANDERSON: Well, it's --
20 I'm not telling you who -- it can only be one
21 person, that's all I'm saying.

22 MR. RUSH: Okay. I will. Right.

1 CHAIRPERSON ANDERSON: So you will
2 cross-examine the witness.

3 MR. RUSH: Yes.

4 CHAIRPERSON ANDERSON: All right. And
5 so once that process -- okay. So after you
6 cross-examine the witness, the Board will ask
7 questions of the witness. Once the Board asks
8 questions of the witness, then you will have an
9 opportunity to ask questions of the witness based
10 on the questions that the Board has asked.

11 Once the Board -- once you've done
12 that, then the Government will have an
13 opportunity to ask questions. What will also
14 happen, you might ask a question and the
15 Government will object, and you then -- they
16 might say that -- the Government might object to
17 the frame of the question that you're asking,
18 they might file an objection, and then I have to
19 make a ruling.

20 So I just want to let you know that
21 this is a very -- not -- this is a very formal
22 process and proceeding, and I want to make sure

1 that you know how to move forward.

2 Once the Government has presented its
3 case, then you can present your case, either, if
4 you're going to call -- if, I don't know who's
5 going to be a witness, or if someone's going to
6 ask questions of a witness, I don't know how
7 you're going to present your case once the
8 Government has presented its case.

9 Once you have presented your case,
10 then we'll have -- the Government will do closing
11 arguments, then you'll do closing arguments, and
12 then we'll make a decision, okay? All right. So
13 does the Government wish to call its first
14 witness?

15 MS. SCHMIDT: Yes. The Government
16 calls Investigator Mark Wilkinson.

17 CHAIRPERSON ANDERSON: All right. Mr.
18 Wilkinson, can you raise your right hand, please?
19 WHEREUPON,

20 MARK WILKINSON
21 was called as a witness by Counsel for the
22 Government and, having been first duly sworn,

1 assumed the witness stand, was examined and
2 testified as follows:

3 CHAIRPERSON ANDERSON: All right.
4 Thank you. Your witness.

5 MS. SCHMIDT: Good morning,
6 Investigator Wilkinson. Can you please state
7 your full name for the record?

8 THE WITNESS: Good morning. My name
9 is Mark, M-A-R-K, Wilkinson, W-I-L-K-I-N-S-O-N.

10 DIRECT EXAMINATION

11 BY MS. SCHMIDT:

12 Q And by whom are you employed?

13 A I'm employed by the Alcohol and
14 Beverage Regulation Administration.

15 Q And in what capacity are you employed?

16 A I'm an investigator.

17 Q And how long have you been with ABRA?

18 A I've been with ABRA almost a year now.

19 Q And where were you employed before
20 that?

21 A Before that, I was employed 25 years
22 with the Virginia State Police and 10 years with

1 the Department of Homeland Security.

2 Q And what was the nature of your job
3 there?

4 A When I was with the State Police, I
5 was assigned to criminal interdiction, narcotics
6 unit, and when I was with DHS, I was with Air
7 Marshals Training Program at Reagan Airport.

8 MR. SHORT: Say that again, please.

9 THE WITNESS: I was with the TSA, DHS,
10 at Reagan National Airport in the training -- I
11 supervised the training division there.

12 MR. SHORT: Thank you.

13 THE WITNESS: Yes, sir.

14 BY MS. SCHMIDT:

15 Q And are you aware of an incident that
16 happened at Kabin, located at 1337 Connecticut
17 Avenue, NW, in the District of Columbia on July
18 2, 2017?

19 A Yes, ma'am.

20 Q And what was that incident?

21 A This was an incident that we received
22 through MPD 251 of an assault that occurred in

1 the early morning hours of Sunday morning, July
2 22, 2017 at Kabin.

3 Q And what happened at that time?

4 A There was a couple visiting from New
5 York for the 4th of July weekend and they were at
6 the Kabin establishment. They were attempting to
7 leave the establishment and apparently there was
8 some sort of an altercation near the backend of
9 Kabin that they had to walk through, and
10 apparently, the victim in this case accidentally
11 bumped into one of the bouncers, and that
12 apparently caused the resulting assault and
13 confrontation.

14 Q And is there a videotape of this
15 incident?

16 A Yes, there is.

17 Q And how did you obtain that videotape?

18 A On the early morning hours of July
19 5th, when I returned to work, when the case was
20 assigned to me, I reached out to the general
21 manager of Kabin, Mr. Ali, advised him that I was
22 looking into the incident of July 2nd, and that I

1 would be over to see him, and if he had any video
2 of the incident, he should preserve that for this
3 case.

4 And I think this happened around 9
5 o'clock in the morning on July 5th, is when I
6 contacted him, around 1 o'clock on the same day,
7 July 5th, I went over and met with Mr. Ali. He
8 actually gave me two statements from the security
9 personnel, and I think I went back the next day,
10 July 6th, and obtained video from four or five
11 different camera angles of the incident.

12 Q And what did you do with that video?

13 A Well, I obviously looked at it and
14 studied pretty hard, and captured it on a disk
15 drive, and brought it back to the office to
16 preserve as evidence for the case.

17 Q And did you give it to any employees
18 of ABRA to -- for viewing today?

19 A Yes, I did.

20 Q And who is that employee?

21 A Simone.

22 Q And that's the woman sitting next to

1 me?

2 A Yes, it is.

3 Q Okay. Why don't we start by playing
4 the video, the first -- and if you want to move
5 back so you can see it, you know, so you can
6 explain what's going on. And feel free to stop -
7 - to interrupt us and stop us --

8 A Sure.

9 Q -- so you can explain what's going on.

10 A So what we're going to see, for the
11 Board, in the first video is the victim and his
12 girlfriend --

13 Q Why don't we just let them see it.

14 A Sure.

15 Q Yes.

16 A So we'll run it up to --

17 MR. ALI: Can they see it?

18 MR. SHORT: Yes, we have it.

19 MS. SCHMIDT: And does that represent

20 Kabin?

21 THE WITNESS: That does represent

22 Kabin, yes, ma'am.

1 MS. SCHMIDT: Okay. If you think we
2 should stop, just let us know to stop.

3 THE WITNESS: Yes. Simone is looking
4 at the time. We coordinated this already. We're
5 just trying to get it up to the right time.

6 CHAIRPERSON ANDERSON: Oh, okay. Oh,
7 so I'm not really looking at anything at the
8 moment? All right. I was about to say, what am
9 I looking at?

10 THE WITNESS: Okay. So what we're
11 looking at right now is the victim's girlfriend
12 leaving the restaurant, and if you'll look over
13 to the left, there's an altercation that's about
14 to being right there. That's the --

15 MS. SCHMIDT: Stop it, please, for a
16 second. And who is involved in that altercation?

17 THE WITNESS: That altercation there
18 is the victim, Mr. Fernando Quiroz.

19 MS. SCHMIDT: And who's the gentlemen
20 on the right?

21 THE WITNESS: That would be this
22 gentlemen over here, Thad -- I'm sorry, your last

1 name again? I can't remember.

2 MR. RUSH: Rush.

3 THE WITNESS: Thad Rush.

4 MS. SCHMIDT: And that is Mr. Rush
5 there. Okay.

6 THE WITNESS: Yes.

7 MS. SCHMIDT: Please continue.

8 MR. ALBERTI: Can we just go back,
9 like, two seconds and go through that --

10 THE WITNESS: Altercation?

11 MR. ALBERTI: Altercation. No, right
12 back, just to where it starts. Can we go -- all
13 right. That's probably good. All right.

14 THE WITNESS: So what's you see here
15 is the victim's girlfriend leaving. They had
16 come from the back to the bathroom.

17 MR. ALBERTI: All right. And we see
18 that altercation. Okay. Now, wait, stop. So
19 someone threw someone to the ground.

20 CHAIRPERSON ANDERSON: Let her do it.

21 THE WITNESS: Correct.

22 MR. ALBERTI: Okay.

1 CHAIRPERSON ANDERSON: Yes.

2 MR. ALBERTI: Can you tell me what I
3 just saw, who I saw, and what actions I just saw?

4 THE WITNESS: So you saw Mr. Rush
5 throw the victim to the ground.

6 MS. SCHMIDT: And is Mr. Rush an
7 employee of the establishment?

8 THE WITNESS: Mr. Rush is one of the
9 security personnel at the establishment. Yes.

10 MR. ALBERTI: Okay. I'll hold my
11 questions for later.

12 THE WITNESS: Okay.

13 CHAIRPERSON ANDERSON: Go ahead, Ms.
14 Schmidt.

15 MS. SCHMIDT: No, that's fine, Mr.
16 Alberti. If you want to answer, I have no
17 objection to that, obviously.

18 CHAIRPERSON ANDERSON: I think this is
19 --

20 MR. ALBERTI: In the future, I'll have
21 you go back through this and I'll ask my
22 questions.

1 MS. SCHMIDT: Okay. Okay.

2 CHAIRPERSON ANDERSON: Well, the
3 Government is presenting its case and so
4 therefore, we need to stay out of it until the
5 Government presents its case and present whatever
6 evidence that they need us to look at, so I want
7 -- if we're looking at video, I think that what
8 the Government needs to do is to have the witness
9 walk us through the video.

10 MS. SCHMIDT: Okay. Let's continue
11 then.

12 THE WITNESS: If I might add, you
13 know, the beginning of this incident is
14 inconclusive, obviously, but what transpired
15 after this is pretty relevant.

16 MS. SCHMIDT: Why don't you continue
17 it then.

18 THE WITNESS: So what we're looking at
19 now is the crowd, obviously, watching the now
20 altercation on the floor. This is the only
21 camera angle of the altercation from that
22 position. If we could just stop it here and go

1 to the next video.

2 This is, if you look to the left where
3 this -- to the right, where this gentleman's
4 coming out of the club, just inside that door is
5 where the previous altercation took place. Now
6 they're going to drag the victim, head first, out
7 of the nightclub to the top of the stairwell,
8 which leads downstairs and outside to Connecticut
9 Avenue.

10 So if we could just stop it there and
11 play the next video. What we see now, to the
12 left, where this gentleman is standing, you know
13 -- Simone, I think -- yes. Why don't we play the
14 one previous to that, Simone?

15 MS. ANDREWS: Previous?

16 THE WITNESS: Yes.

17 MS. SCHMIDT: I think that's the same.
18 Maybe it's D. Maybe C and D got confused. Let's
19 try D.

20 THE WITNESS: The top of the
21 stairwell.

22 MS. ANDREWS: Okay.

1 THE WITNESS: So what we're seeing
2 here now is, they've drug the victim out of the
3 nightclub --

4 MS. SCHMIDT: Okay. Now, how would
5 you describe the victim, physically? I mean,
6 because, you know, the record doesn't have -- I
7 just want to make sure that it's on the record.

8 THE WITNESS: You mean, size?

9 MS. SCHMIDT: Size, yes.

10 THE WITNESS: He's about 5' 6", 130
11 pounds.

12 BY MS. SCHMIDT:

13 Q And the two gentlemen who are
14 escorting him, would you describe them
15 physically, please?

16 A Well, he's a pretty big --

17 Q From the video.

18 A Oh, yes, they're over 6-foot, 250
19 pounds easy.

20 Q Okay.

21 A So here, the victim and his girlfriend
22 are negotiating to be released to allow them to

1 leave the nightclub, and clearly, you can see
2 that Mr. Rush is blocking the way, not allowing
3 them to leave.

4 Q And what is the demeanor of the victim
5 at this point?

6 A Well, the demeanor of the victim is
7 calm. I mean, he's not causing any problems at
8 this -- causing any problem. Now, he put his
9 hand on him and he didn't want him to put his
10 hand on him, so now they throw him down the
11 stairs.

12 Q And what happened and was Mr. Quiroz
13 injured as a result of that?

14 A Yes, I think at that point is when he
15 received his broken leg.

16 Q And how do you know it was a broken
17 leg?

18 A By the medical reports. He went to
19 Georgetown University Hospital and had surgery,
20 emergency surgery, that night.

21 Q Okay.

22 A SO unfortunately, this is the only

1 camera in the stairwell, Camera Number 15, but
2 the altercation continues on the second platform
3 of the stairs that lead outside the Kabin
4 nightclub.

5 Q Now was this on this tape or is that
6 a different camera?

7 A NO, this is the same tape.

8 Q So we're just waiting for that to
9 happen.

10 A So we're just waiting now and they're
11 going to -- you'll see in just a second, they're
12 going to drag him down, yet, a second set of
13 stairs and then throw him out into the street.
14 This is when they begin to bring him down -- or
15 throw him down the second set of steps, drag him
16 down, actually.

17 Q How do you know that he broke his leg
18 previous to that?

19 MR. SHORT: Excuse me, what did you
20 say?

21 MS. SCHMIDT: How do you know that he
22 was injured on the first flight?

1 THE WITNESS: Well, I spoke to the
2 victim and the medical personnel, and I believe
3 as they believe, that's when the severity of his
4 injury occurred.

5 So now what we're going to play is the
6 last video from a camera that's not attached to
7 Kabin, but I searched the neighborhood and found
8 a camera that's adjacent to a business that shows
9 when they dragged the victim outside and the
10 beating continues.

11 BY MS. SCHMIDT:

12 Q How far away was that camera from
13 this?

14 A About 30 feet. So what we're looking
15 at is the establishment next door to the Kabin.

16 Q What street is this?

17 A This is on Connecticut Avenue.

18 Q Are those ropes for Kabin over there?

19 A Those ropes and statues are for the
20 Kabin restaurant, yes, ma'am. Or stanchions, I'm
21 sorry. So what we're looking at is the outside
22 security personnel, and here, they bring the

1 victim out, and continue to beat on him.

2 Q Okay. Can you stop it for a second?
3 I'm sorry, can you please point out exactly where
4 they're beating on him just to make sure that
5 it's clear?

6 CHAIRPERSON ANDERSON: Oh, we can't
7 see what you're pointing to, so we're looking at
8 different screens, so you have to talk what
9 you're pointing to.

10 THE WITNESS: Okay. So you see
11 there's a young lady with blonde hair in the
12 middle of the video.

13 CHAIRPERSON ANDERSON: Okay.

14 THE WITNESS: So just above her blonde
15 hair is a gentleman dressed in a black shirt, and
16 he's looking down to the ground, and that's where
17 the altercation is continuing.

18 CHAIRPERSON ANDERSON: Okay.

19 THE WITNESS: Thank you. Sorry.

20 MS. SCHMIDT: Can you please explain

21 --

22 CHAIRPERSON ANDERSON: Well, the

1 video's stopped, so I'm not -- so there's -- you
2 guys have stopped the video, right?

3 MS. SCHMIDT: Okay.

4 CHAIRPERSON ANDERSON: So that's all
5 I'm saying. Yes.

6 MS. SCHMIDT: Okay. Press play. Yes.
7 Can you explain exactly how the altercation is
8 continuing?

9 THE WITNESS: Well, at least one of
10 the security personnel, just to the left of the
11 ladies with -- now, you can see them picking up
12 the victim and his arm moving, he's, apparently,
13 somewhat unconscious right there, and they push
14 them, and drag him down the street, clearly, away
15 from the Kabin nightclub.

16 BY MS. SCHMIDT:

17 Q And do you know if MPD was called?

18 A MPD was called, EMS was called, and
19 the victim was transported to, I think I said
20 Howard University earlier, I think it was
21 actually GW, but one of the local hospitals.

22 Q And do you know who called MPD?

1 A I do not know who called MPD.

2 Q Okay.

3 A That's all the video.

4 Q Okay. And what did the -- and you
5 said you collected some statements from the --
6 from Mr. Rush and Mr. --

7 A I did.

8 Q And just basically summarize what they
9 said.

10 A I can. And if the Board will indulge
11 me for just one second, I think this is pretty
12 pertinent, from Mr. Rush, who is here today, he
13 provided, his words, not mine, a statement, dated
14 at January -- or I'm sorry, July the 3rd of 2017,
15 and if you'll just bear with me for one second, I
16 think this is pretty relevant.

17 Mr. Rush, in his words, not mine, says
18 that, "Patron B", he's calling the victim in this
19 incident Patron B, "looked at me and attempted to
20 shove me. As he extended his arms and shoved me,
21 I stepped sideways, grabbed him, and threw him to
22 the ground."

1 He continues to say in his statement
2 that, "Patron B continued to attempt to attack
3 me, along with other security personnel. I stood
4 Patron B up while retaining him and motioned
5 towards the steps leading to the exit. Once we
6 approached the steps, Patron B stopped and
7 resisted walking down the steps." Again, this is
8 his words.

9 Again, Mr. Rush says in his statement,
10 and again, if you'll indulge me, "After several
11 attempts to get Patron B to comply, walking out
12 on his own power, we assisted him down the steps,
13 all the while trying to protect him and ourselves
14 from him falling down the steps." His words, not
15 mine.

16 Q And did he also say anything about the
17 patron trying to attack him while they're going
18 down the steps?

19 A He said that, again, while making our
20 way down the steps, you know, Mr. Rush got his
21 shirt torn, and says that the victim was trying
22 to kick him.

1 Q And did he explain why he punched Mr.
2 -- why he punched the victim?

3 A Well, from what I gather from the
4 statement, he was trying to protect himself from
5 the victim.

6 Q And what did Mr. Burgess say?

7 A So again, if the Board will indulge
8 for just a second. The other security personnel
9 who was involved in this altercation, Mr. Dante
10 Burgess, he says that, again, his words, not
11 mine, "In the Kabin stairwell, the Latino male",
12 the victim was Latino, "refused to willingly
13 leave the premises."

14 He says, Mr. Burgess says, "However,
15 the Latino male refused to leave at which point
16 he became", the victim became, "physically
17 aggressive and struck the security personnel.
18 Security team made physical contact with the male
19 by picking him up and escorting him", his words,
20 not mine, "down the stairs at Kabin."

21 "During this time, the Latino male
22 began kicking and trying to break free from the

1 security team's hold."

2 Q Okay. Now, in your experience as
3 investigator, do these statements support what
4 you just saw on the videotape?

5 A Absolutely not.

6 Q And why don't they?

7 A Well, none of it's consistent. I
8 mean, the video speaks for itself. Obviously, in
9 my experience, I don't think that the victim, in
10 this case, was being the aggressor. I think,
11 based on my experience, it appeared that the
12 victim, at all points, wanted to do nothing but
13 get out of Kabin.

14 And it appears from the video and the
15 statements that he wasn't afforded the
16 opportunity to do that safely.

17 Q And you said you spoke to the victim.

18 A I did speak to the victim.

19 Q And what did the victim tell you about
20 this incident?

21 A Well, I don't think he'll be coming to
22 Washington for a while, but very courageous young

1 man. He and his girlfriend, like I said, were
2 here for the weekend visiting some friends. They
3 were having a good time. They were both using
4 the restroom facility, and they were trying to
5 leave, and at some point when they were trying to
6 leave, he accidentally bumped into somebody, and
7 the security team took it upon themselves to make
8 the matter worse.

9 Q And did you have any communication --
10 difficulty communicating with the victim?

11 A I did not, although, it was a
12 conference call between him and his girlfriend,
13 who did interpret periodically, but, you know, I
14 spoke to him.

15 Q But did he seem to understand most of
16 what you were saying?

17 A Oh, yes.

18 Q And the conduct you saw at Kabin, is
19 that standard operating procedure for an
20 establishment in the District of Columbia?

21 A I hope not.

22 MS. SCHMIDT: No further questions at

1 this time.

2 CHAIRPERSON ANDERSON: Mr. Rush, you
3 said that you're going to do the -- be the one
4 cross-examining. Do you have any questions of
5 the witness?

6 MR. RUSH: Yes. So, Mr. Wilkinson, I
7 do have a few questions for you in regards to
8 this tape that you reviewed. Did you witness the
9 incident personally?

10 THE WITNESS: Of course not.

11 CROSS EXAMINATION

12 BY MR. RUSH:

13 Q All right. So did you personally take
14 any statements from any of the employees of Kabin
15 Lounge, not the statements that were written, but
16 any physical statements?

17 A No.

18 Q Why not?

19 A Well, I didn't need -- I didn't see
20 that there was a need to do that and the reason I
21 never called you is because I wanted to lock you
22 in on your words, not mine.

1 Q Okay. So is it safe to say that you
2 believed the witness statements from the, I
3 guess, patron that was removed and his girlfriend
4 without prejudice?

5 A Repeat that.

6 Q Did you believe the statements from
7 the witness -- from the patron and his girlfriend
8 without prejudice? You believed their
9 statements.

10 A Yes.

11 Q Plain and simple. Okay. Can you go
12 back to the beginning of the tape, please?

13 MR. ALBERTI: I think you need to tell
14 her which tape.

15 MR. RUSH: I'm sorry. The beginning
16 of the incident, so Tape A. The start of the
17 incident.

18 MR. ALBERTI: Whereabouts would you
19 like her to be on this tape?

20 CHAIRPERSON ANDERSON: Hold on. Let
21 him do it, Mr. Alberti. That's his --

22 MR. ALBERTI: I know. I know.

1 MR. RUSH: I'm sorry.

2 CHAIRPERSON ANDERSON: But this is his
3 case. He's representing the -- so you need to
4 tell -- he said, the beginning, so I assume she'd
5 gone back to the beginning.

6 MR. RUSH: Right. Right where the
7 incident starts, because the reference -- the
8 statement was made that the patrons were leaving
9 or making their way out of the establishment.
10 They were leaving from the bathroom as stated,
11 right?

12 THE WITNESS: Yes, sir.

13 BY MR. RUSH:

14 Q Okay. So from the beginning of the
15 tape, can you visibly see the subject patron's
16 actions?

17 A No, that's why I said at the offset of
18 this that this is not conclusive. I wasn't able
19 to determine, based on this video, exactly what
20 happened. But what I was able to determine was
21 what happened afterwards.

22 CHAIRPERSON ANDERSON: Hold on. All

1 right. One person has to talk, so give him an
2 opportunity to answer the question and then if
3 you have another question, if you need to stop
4 the tape, or if you need someone to go slower
5 through the tape, then you need to direct her,
6 what is it you want to pull out from the rest of
7 the tape.

8 MR. RUSH: I apologize.

9 CHAIRPERSON ANDERSON: So hold on. So
10 because I'm now lost where we are, so what was
11 the question you asked him?

12 MR. RUSH: My question was, from the
13 beginning of the tape, could you visibly see the
14 subject patron's actions.

15 CHAIRPERSON ANDERSON: All right. And
16 he said, no -- right.

17 MR. RUSH: Which, Mr. Wilkinson was
18 explaining why it was inconclusive.

19 CHAIRPERSON ANDERSON: Right.

20 MR. RUSH: At that time, I was just
21 trying to ask -- I'm sorry, Ms. Simone here to
22 stop the tape, or pause the tape.

1 CHAIRPERSON ANDERSON: Okay. All
2 right.

3 MR. RUSH: Go ahead. I was listening
4 to your statement.

5 THE WITNESS: I'm sorry. I'm a little
6 confused --

7 CHAIRPERSON ANDERSON: No, you asked
8 him a question and he answered it. He said that
9 he -- it's inconclusive what ensued at the
10 beginning. That was the answer. Do you have
11 another question you want to ask him?

12 MR. RUSH: Right. So how relevant is
13 the claim that the patrons are actually leaving,
14 if it is inconclusive?

15 THE WITNESS: They provided
16 statements, I asked them, leading up to the
17 incident, where had you been? What was your
18 intent? What were you going to do? And both of
19 them said that they had used the restroom
20 facility and they were exiting the club.
21 Clearly, you can see they're headed towards the
22 exit when this altercation begins.

1 BY MR. RUSH:

2 Q How can you clearly see when you just
3 said that it was inconclusive what they were
4 doing in the first place?

5 A No, I didn't say anything about it
6 being inconclusive about what their intent was,
7 to leave the club, my comment was it was
8 inconclusive as to why you currently have your
9 hands on him.

10 Q Okay. I asked, could you see their
11 actions, and then I asked how relevant your claim
12 -- we'll --

13 MS. SCHMIDT: Objection. Asked and
14 answered.

15 MR. RUSH: Right. So we'll move
16 forward. If you go to the second tape, where the
17 patron entered into the hallway.

18 MR. ALBERTI: That was D. The second
19 tape we saw was D.

20 MR. RUSH: No, I'm sorry, just before
21 -- on the other side. Right. On the other side.
22 You made a statement that the subject patron was

1 dragged out headfirst. Can you tell me where you
2 see my hands placed on this patron at the moment?
3 Where do you see my hands as this patron is being
4 escorted out from the building?

5 THE WITNESS: Well, you appear to have
6 your hands on his hands.

7 BY MR. RUSH:

8 Q Right. So where is the notion of
9 headfirst?

10 A Well, if I'm looking at that video
11 first, he's coming out of that door headfirst on
12 his knees. You're dragging him across the
13 carpet.

14 Q Okay.

15 A I mean, that's what I think I see.

16 Q All right. Can you go to the next one
17 you just went to, the hallway? And start it
18 where we're going down the second set of stairs.
19 I'm sorry, ma'am.

20 MS. ANDREWS: This video?

21 MR. RUSH: Yes, ma'am. And go on to
22 the second landing. Can I ask a question of you

1 guys?

2 CHAIRPERSON ANDERSON: No, you can't
3 ask us questions. You have to ask him questions
4 and then -- but you can't ask us questions.

5 MR. RUSH: That's fine. Okay. Right
6 here. Right when we're going down the second
7 landing. At any point could you see where his
8 leg was broken or how do you know that he broke
9 his leg there? Aside from the statement that you
10 received.

11 THE WITNESS: Well, obviously, you
12 know, I can't see anything and neither can you.
13 I based my statement on what -- those steps are
14 concrete and steel, and based on conversation
15 with the victim and the medical personnel, it's
16 the assumption that that's where his -- the
17 injuries occurred.

18 I couldn't tell you any time during
19 you beating him up where it happened.

20 BY MR. RUSH:

21 Q Okay. Do you see what's -- did you
22 get a statement from the female patron there as

1 far as what was happening in that particular
2 instance right there, before he's going down the
3 second set of stairs?

4 A Well, the female is his girlfriend.

5 Q The girlfriend.

6 A Right.

7 Q Did you get a statement from her as
8 far as what was happening in that moment?

9 A Well, at that moment, I mean, she's
10 calm. So I think -- I have to revisit her
11 statement, but I don't think she made a statement
12 as to exactly what was transpiring on that second
13 set of stairs.

14 I think, during this whole process,
15 she was negotiating for you to let them go.

16 Q Right. So as we just saw the people
17 walking -- coming down the steps, I'm escorting
18 the gentleman from the front side, the second
19 security staff is escorting him from the
20 backside, and he is, as you notice, walking under
21 his own power, is that correct?

22 A If that's your definition of escort.

1 Q But is he walking? Is he upright? Is
2 his feet moving?

3 A They appear to be.

4 Q Okay. At the end of the tape, you
5 said that you noticed what seemed to be the
6 subject patron unconscious. Can you prove that?

7 A I cannot prove it, but based on his
8 demeanor and the use of -- the lack of the use of
9 his right arm, he was under duress; serious
10 duress.

11 Q Okay. And the last question for you,
12 did you notice that, at the end of the tape, the
13 fact that my shirt was torn?

14 MR. SHORT: Sir, can you repeat that?

15 MR. RUSH: I'm sorry, sir.

16 MR. SHORT: Could you repeat what you

17 --

18 CHAIRPERSON ANDERSON: The question
19 clear. The question was that, did he notice that
20 -- asked the witness --

21 MR. RUSH: Did you notice the fact
22 that my shirt was torn.

1 THE WITNESS: I didn't notice that
2 your shirt was torn.

3 MR. RUSH: Okay. That's okay.

4 CHAIRPERSON ANDERSON: Do you have any
5 other questions, sir?

6 MR. RUSH: No, sir.

7 CHAIRPERSON ANDERSON: Any questions
8 of any Board Members of the witness? Yes, Mr.
9 Short.

10 MR. SHORT: Investigator Wilkinson,
11 thank you for an excellent report and thank you
12 for your explanation as to what's going on.

13 THE WITNESS: Thank you, sir.

14 MR. SHORT: You mentioned during your
15 testimony, something about camera angles?

16 THE WITNESS: Yes, sir.

17 MR. SHORT: Will there be any follow-
18 up from ABRA about assisting this establishment
19 to get those camera angles to a point where they
20 are being acceptable to ABRA?

21 THE WITNESS: There could be, with
22 cooperation.

1 MR. SHORT: Okay. I think there will
2 be. Also, I'd like to ask, which bone was broken
3 was in the patron's -- which, his left, right,
4 upper, lower?

5 THE WITNESS: It was his right femur.

6 MR. SHORT: And the femur, for the
7 record, is the largest bone in the human body.

8 THE WITNESS: I believe you're
9 correct.

10 MR. SHORT: I do know that to be a
11 fact and it doesn't -- a broken femur can cause a
12 body to bleed to death within the thigh. I do
13 know that also to be a part of the record. And
14 I'd like to ask you, was it a compound fracture
15 or a -- what was the diagnosis from the hospital?

16 THE WITNESS: It was not a compound
17 fracture.

18 MR. SHORT: IT was just a fractured
19 femur.

20 THE WITNESS: It was a fractured
21 femur.

22 MR. SHORT: But it required emergency

1 surgery.

2 THE WITNESS: Right. He was admitted
3 that evening and the surgery was performed as
4 quickly as they could get an orthopedic surgeon.
5 I think, in the early morning hours, but -- and
6 then he stayed in the hospital for, I believe, a
7 day, or maybe two, before he was able to go back
8 to New York, and I believe he was off work for
9 several months.

10 MR. SHORT: Yes, I would imagine. A
11 femur break is pretty serious. During the tape,
12 the video, it appears that he was standing on
13 both legs and didn't appear to be any injuries
14 when he was at the top of the first landing
15 coming directly out of the club. Was he standing
16 on both legs?

17 THE WITNESS: He was standing on both
18 legs.

19 MR. SHORT: This was prior to him
20 going down the steps.

21 THE WITNESS: Absolutely.

22 MR. SHORT: And that was considered to

1 be an escort down the steps?

2 THE WITNESS: Security personnel
3 words, not mine, but he was escorted.

4 MR. SHORT: Was he walking down the
5 steps?

6 THE WITNESS: It didn't appear he was
7 walking down the steps. It appeared from the
8 video that he was thrown down the steps.

9 MR. SHORT: Coming out of the club, on
10 the, I guess that would be Video D, when he was
11 coming out of the club, and when the questions
12 came to you about headfirst, was he walking on
13 his own when he was coming out of the club
14 headfirst?

15 THE WITNESS: No, sir. It appeared he
16 was -- he was on his knees being drug out, and as
17 fast as his knees would carry him is as fast as
18 he could get out of there.

19 MR. SHORT: So the injury probably did
20 not happen at that time because, shortly after
21 that, he was standing up on the first landing.

22 THE WITNESS: That would be a good

1 assumption.

2 MR. SHORT: Okay. Now, after he came
3 down the stairways, escorted by security, does it
4 ever show him standing up again on his own;
5 inside, outside, on the landing, or on
6 Connecticut Avenue? Did it ever show him
7 standing again on his own?

8 THE WITNESS: Not on his own. I
9 believe the last video from the surveillance
10 camera from the establishment next door shows him
11 being lifted up and carried, out of camera view,
12 into the street. And I believe he sat on the
13 curb until EMS personnel arrived.

14 MR. SHORT: Which takes me to the
15 response of who called MPD or FEMS, Fire and
16 Emergency Medical Services, who did call and was
17 the club involved in the calls for assistance
18 from the city?

19 THE WITNESS: And, sir, I think I
20 testified earlier that I do not know who called
21 EMS or the police, although, I believe there's a
22 security detail on Connecticut Avenue that might

1 have seen the altercation and intervened. I
2 don't know that to be a fact, but I do not know
3 who --

4 MR. SHORT: Would that be a
5 reimbursable MPD detail?

6 THE WITNESS: Yes, sir.

7 MR. SHORT: Okay. Now, in doing your
8 report, your investigative report, for this
9 incident, were you able to look at the
10 investigative history of Kabin?

11 THE WITNESS: Yes, sir.

12 MR. SHORT: Can you please look at the
13 investigative history, I don't know if he has
14 that one, can I see which one you're looking at;
15 investigative history?

16 MS. SCHMIDT: I prefer the date of the
17 incident.

18 (Off-mic comments.)

19 MR. SHORT: Thank you, Mr. Chair. In
20 the investigative history, I'm looking at May 17,
21 2014. There was a disorderly patrons call.
22 September 4, 2014, there was a disorderly patrons

1 call. All these are 251s, which means MPD was
2 involved. November the 2nd, 2014, disorderly.
3 August the 2nd, 2015, simple assault. November
4 2016, an assault with a dangerous weapon.

5 Now, that's as far as I can go in this
6 history right now, but there's some others. But
7 at any rate, in your time as an investigator here
8 at ABRA, is this the first 251 case that you've
9 investigated?

10 THE WITNESS: No, sir.

11 MR. SHORT: How often do you do 251s
12 in your investigative work here with ABRA?

13 THE WITNESS: Well, whenever they come
14 along.

15 MR. SHORT: Okay. I understand. I
16 guess what I'm trying to get at is, basically,
17 sir, this incident was a 251, MPD was not called
18 by the establishment, is that correct? To your
19 knowledge.

20 THE WITNESS: To my knowledge, no.

21 MR. SHORT: Okay. Thank you. That's
22 all I have for right now, Mr. Chair. Thank you

1 very much.

2 CHAIRPERSON ANDERSON: Any other
3 questions by the Board Members? Mr. Alberti.

4 MR. ALBERTI: I hope nobody -- you
5 don't hate me, because I'm going to make you all
6 go through a lot of this again. I'll try not to
7 go over stuff we've already gone over, but I'd
8 really like some clarity. Can we go to Tape A?
9 I'd like to go to about 14:35 on that tape.

10 I just want to establish some facts
11 that have been, I think they've been mentioned,
12 but they're kind of, I don't want them to get
13 lost in the jungle, all right? So about 14:35,
14 if we can go there.

15 I want to go to the part where, I
16 believe, the witness -- Investigator Wilkinson
17 told us that the girlfriend was walking towards
18 us as we're looking --

19 THE WITNESS: That would be right
20 there.

21 MR. ALBERTI: Stop right there. So
22 the women in the foreground of this video at

1 02:14:32, is that the victim's girlfriend?

2 THE WITNESS: Yes, it is.

3 MR. ALBERTI: Okay. And what
4 direction, having been -- you were in the club,
5 right?

6 THE WITNESS: Yes, sir.

7 MR. ALBERTI: So you kind of know the
8 layout and the camera angles here we're looking
9 at?

10 THE WITNESS: Yes, sir.

11 MR. ALBERTI: Okay. So what direction
12 would you say she's walking?

13 THE WITNESS: She's headed towards the
14 exit of the club.

15 MR. ALBERTI: How far from the exit
16 would she have been at that point? Can you
17 guess?

18 THE WITNESS: I would say, probably,
19 8 to 10 feet.

20 MR. ALBERTI: All right. So it
21 appears -- so the implication to you is that she
22 was headed towards the exit.

1 THE WITNESS: Correct, followed by her
2 boyfriend.

3 MR. ALBERTI: Okay. Very good. All
4 right. So let's go to, I think, Tape B. And I'm
5 not sure where I need to be here. Can we go a
6 little bit -- I want to go where -- is this the
7 one that shows the top of the stairs?

8 THE WITNESS: No, sir. This one shows
9 --

10 MR. ALBERTI: Him coming out --

11 THE WITNESS: -- the victim being drug
12 headfirst out.

13 MR. ALBERTI: All right. Let's go to
14 D then. I'd like to get to the top of the
15 stairs. D. Okay. So let's just run this
16 through. Can you describe to me what -- stop
17 right there. Can you describe to me what we're
18 seeing?

19 THE WITNESS: So the victim's
20 girlfriend is negotiating with Mr. Rush to allow
21 them to leave.

22 MR. ALBERTI: Okay. So let me

1 interrupt here. Tell me if what I'm seeing is
2 what you're seeing.

3 THE WITNESS: Okay.

4 MR. ALBERTI: All right. I'm seeing
5 Mr. Rush standing, like, two steps down the
6 stairway, correct?

7 THE WITNESS: Blocking the stairwell,
8 yes. Go ahead.

9 MR. ALBERTI: Please don't
10 editorialize.

11 THE WITNESS: I'm sorry.

12 MR. ALBERTI: All right. He's facing
13 the victim, right?

14 THE WITNESS: Correct.

15 MR. ALBERTI: The victim has his back
16 up against the wall.

17 THE WITNESS: Correct.

18 MR. ALBERTI: Mr. Burgess is at the
19 landing facing the victim --

20 THE WITNESS: Correct.

21 MR. ALBERTI: -- who's also at the top
22 of the landing.

1 THE WITNESS: Correct.

2 MR. ALBERTI: The girlfriend is behind
3 Mr. Burgess' back, is that correct?

4 THE WITNESS: That's correct.

5 MR. ALBERTI: All right. And her hand
6 is reaching out to the victim. All right.

7 THE WITNESS: That's correct.

8 MR. ALBERTI: All right. Let's
9 continue. All right. And this is 2:15:28, that
10 was. All right. Okay. So let's stop it. We're
11 at 2:15:47, now 20 seconds later, right?

12 THE WITNESS: Correct.

13 MR. ALBERTI: And during that period,
14 what did you see going on?

15 THE WITNESS: Conversation.

16 MR. ALBERTI: Between?

17 THE WITNESS: Between the victim's
18 girlfriend and Mr. Rush.

19 MR. ALBERTI: All right. Now, Mr. --
20 let's pause. Mr. Rush is still standing on the
21 second step down, correct?

22 THE WITNESS: That's correct.

1 MR. ALBERTI: Would you say that he's
2 blocking the stairway?

3 THE WITNESS: He's blocking the
4 stairway.

5 MR. ALBERTI: All right. Thank you.
6 Let's continue. Stop. During this whole time,
7 where are the victim's hands?

8 THE WITNESS: Down in front of him, by
9 his side.

10 MR. ALBERTI: As I see it, his hands
11 are in front of him. It looks like they're --

12 THE WITNESS: They're clasped.

13 MR. ALBERTI: He's clasping his hands.

14 THE WITNESS: Yes, sir.

15 MR. ALBERTI: Would that be correct?

16 THE WITNESS: That would be consistent
17 with the video. Yes, sir.

18 MR. ALBERTI: All right. Thank you.
19 Let's continue. All right. Stop it right there.
20 At 2:16:04, what did we just see?

21 THE WITNESS: The victim making an
22 overt movement to get his arm away from Mr. Rush.

1 MR. ALBERTI: Okay. Very good. Mr.
2 Rush is still on the second step?

3 THE WITNESS: Yes, sir.

4 MR. ALBERTI: He's a big guy. He's
5 blocking the entire stairway, isn't he? Is he
6 not? Does it appear like anyone could walk by
7 him at that point?

8 THE WITNESS: No, sir.

9 MR. ALBERTI: All right. Thank you.
10 Continue. Stop. What did you just see at
11 2:16:07?

12 THE WITNESS: Mr. Rush reached out,
13 grabbed the victim by his left arm, and, like, is
14 dragging him down; pushing him down the --
15 pulling him down the stairs.

16 MR. ALBERTI: Continue. All right.
17 Stop. Stop. Would it be safe to say -- would I
18 be correct in saying that Mr. Rush grabbed the
19 victim by his left arm, the victim was facing
20 him, Mr. Rush reached out with his right arm,
21 grabbed the victim by his left arm, and pulled
22 the victim past him, and sort of, I'll say,

1 forcefully pulled the victim past him and then --
2 and the victim then stumbled down the stairs past
3 Mr. Rush.

4 THE WITNESS: That's correct, sir.

5 MR. ALBERTI: Could the victim have,
6 in your opinion, gotten past Mr. Rush without Mr.
7 Rush making that move?

8 THE WITNESS: No, sir.

9 MR. ALBERTI: All right. Thank you.
10 So at this point, at 2:16:08, Mr. Rush is, like,
11 on the third and fourth step of that stairwell,
12 which is about, how many steps would you say are
13 on that stairwell?

14 THE WITNESS: There were 12, I
15 believe.

16 MR. ALBERTI: Twelve. All right. So
17 he's, like, eight from the bottom, at this point,
18 is that correct?

19 THE WITNESS: Approximately, yes, I
20 would say.

21 MR. ALBERTI: Is the victim anywhere
22 in sight?

1 THE WITNESS: No, sir.

2 MR. ALBERTI: So he sort of
3 disappeared down towards the bottom of the
4 stairwell, right?

5 THE WITNESS: Well, he's on the second
6 landing now.

7 MR. ALBERTI: All right. Well, you
8 don't know that because we can't see it here.

9 THE WITNESS: No, I can't see it.

10 MR. ALBERTI: All right. We're just
11 going by what we see, right?

12 THE WITNESS: Correct.

13 MR. ALBERTI: He's disappeared because
14 he's somewhere down the stairway. All right.
15 Let's continue. All right. So now I see --
16 wait, wait, stop. What did you just see? I know
17 it's hard to see what happened on the second
18 landing, does it look like, at this point in the
19 video, all the people at 2:16:14, that all, Mr.
20 Rush, and Mr. Burgess, and the victim, are --
21 would you assume that they're on the second
22 landing?

1 THE WITNESS: Yes, sir.

2 MR. ALBERTI: All right. And what did
3 you just see preceding just this frame?

4 THE WITNESS: Well, actually, I didn't
5 see anything. I was reaching for this bottle of
6 water.

7 MR. ALBERTI: All right. All right.
8 Well, let's go back just a few seconds. All
9 right. Can we go back just a few seconds? All
10 right. Can we go back a little bit more? Okay.
11 All right. Okay. This is where the victim is
12 stumbling down the stairs. Now stop. What do
13 you see right there?

14 THE WITNESS: I see the second
15 security personnel, Dante Burgess, going down the
16 steps to --

17 MR. ALBERTI: And where is Mr. Rush?

18 THE WITNESS: Mr. Rush is just in
19 front of the second security personnel, with his
20 head bent over.

21 MR. ALBERTI: Can you see in that far-
22 right corner of this frame, at 2:16:10, can you

1 see it, does that look like it's the victim?

2 THE WITNESS: It appears to be the
3 victim's, probably, right arm. Right hand.

4 MR. ALBERTI: Okay. And Mr. Rush,
5 would you just -- would it be safe to describe
6 that as Mr. Rush standing over the victim?

7 THE WITNESS: Yes, sir.

8 MR. ALBERTI: All right. Continue.
9 Whoa. What did you just see? This is just
10 preceding 2:16:12.

11 THE WITNESS: What I just saw was
12 appeared to be the victim moving his arms to kind
13 of get away from the situation that he's involved
14 in right there.

15 MR. ALBERTI: Okay. Let's go back.
16 I want to know what you saw Mr. Rush's actions
17 just preceding that. How would you describe Mr.
18 Rush's actions just preceding that? Watch very
19 carefully.

20 THE WITNESS: So he appears, in that
21 video, to go down to his knees and get on top of
22 the victim.

1 MR. ALBERTI: Okay. Okay. Let's
2 continue. We can't see the people anymore in
3 this video, right? You can see Mr. --

4 THE WITNESS: Just the top of --

5 MR. ALBERTI: All right. All right.
6 So let's go to the next video. Let's go to the
7 next video, which would the bottom of -- oh, we
8 see the outside of them coming out. We don't see
9 the bottom of the stairs. We just see them
10 coming out, right?

11 THE WITNESS: That's correct.

12 MR. ALBERTI: All right. Let's see if
13 there's anything there I need to see. Can you
14 tell me what the store is next door; the shop
15 next door? Do you know what that is?

16 THE WITNESS: It's a rotisserie
17 chicken restaurant, but the name of it right now
18 just escapes me.

19 MR. ALBERTI: Can we move forward to
20 when we see these people coming out? Stop right
21 there. Do you see the victim in this video, in
22 this short here, which we're about 1/4 way

1 through this video? Can you see the victim here?

2 THE WITNESS: Yes. He's -- you see
3 the girl with the blonde hair and then the gray-
4 shirted person --

5 MR. ALBERTI: Yes.

6 THE WITNESS: -- the victim would be
7 in-between those two gray-shirted gentlemen.

8 MR. ALBERTI: Does he appear to be
9 standing? Is he prone?

10 THE WITNESS: I think at that point
11 he's on the ground.

12 MR. ALBERTI: Okay. Thank you. Let's
13 continue. Stop right there. Let's continue.
14 All right. Stop. Where does the victim -- we're
15 now couple, probably, ten seconds into this now,
16 where is the victim? Is he standing?

17 THE WITNESS: No, sir. He's still on
18 the ground. He would be on the ground, again,
19 the girl with the blonde hair, the gentleman with
20 the gray shirt, he's in front of the gentleman
21 with the gray shirt on the ground.

22 MR. ALBERTI: Okay. Let's continue.

1 All right. Stop. What did you just see? You
2 said this earlier. You said that the victim was
3 being escorted and his left arm -- well, his arm
4 was dangling.

5 THE WITNESS: Yes, sir.

6 MR. ALBERTI: Is that what I just saw?

7 THE WITNESS: Yes, sir.

8 MR. ALBERTI: Would it be correct to
9 say I saw his right arm being pulled up by
10 someone?

11 THE WITNESS: Yes, sir.

12 MR. ALBERTI: And sort of being lifted
13 up off the ground and his left arm dangling.

14 THE WITNESS: Yes, sir.

15 MR. ALBERTI: All right. I mean, he
16 wasn't moving and it was -- all right. Go ahead.
17 Continue.

18 THE WITNESS: No, based on my
19 experience, he was in serious medical duress.

20 MR. ALBERTI: I don't want -- yes, I
21 don't need that.

22 THE WITNESS: All right.

1 MR. ALBERTI: But how would you
2 describe his arm? Did it look like he was moving
3 it or it sort of was just --

4 THE WITNESS: It was involuntary.

5 MR. ALBERTI: Thank you. Let's
6 continue. I want to stay just to the facts here.
7 All right. So now where did they move him?
8 Where did they move him to? From what you see
9 here, where did they move him to?

10 THE WITNESS: They moved him just down
11 Connecticut Avenue, where that white car is --

12 MR. ALBERTI: Was that past the store
13 in front?

14 THE WITNESS: Yes, sir. Yes, you can
15 see when they move him --

16 MR. ALBERTI: It appears from this
17 video, would I be correct in saying, it looks
18 like they moved him at least a car-length past
19 the far side of the store next door?

20 THE WITNESS: Probably a little
21 distance beyond that.

22 MR. ALBERTI: But at least that. At

1 least that.

2 THE WITNESS: At least that. Yes.

3 MR. ALBERTI: From this video, that's
4 what you would gather, right?

5 THE WITNESS: Yes, sir.

6 MR. ALBERTI: Right. Because that car
7 is sort of parked -- it looks like the white car
8 is parked, sort of, halfway in front of the
9 rotisserie, and they moved him at least, it looks
10 from this video, past the back of that white car.

11 THE WITNESS: Yes, sir.

12 MR. ALBERTI: All right. How many
13 feet would you say that is?

14 THE WITNESS: Probably 20, 25 feet.

15 MR. ALBERTI: All right. So how do
16 you know the victim broke his leg? Did you check
17 the medical records or did you just take his word
18 for it?

19 THE WITNESS: No, he sent me a copy of
20 the medical record, actually.

21 MR. ALBERTI: Okay. So you've seen
22 the medical records.

1 THE WITNESS: Yes, sir.

2 MR. ALBERTI: Great. Does he tell you
3 why he thinks his -- you said that he thought his
4 leg was broken on the first landing. Does he
5 tell you why he thinks it was broken there?

6 THE WITNESS: I don't recall making
7 that statement. I think the statement I've made
8 all along was that I didn't know at what point
9 his leg was broken.

10 MR. ALBERTI: Forgive me. So you
11 don't know when his leg was broken.

12 THE WITNESS: No, sir.

13 MR. ALBERTI: Okay. All right. Do
14 you know that the ambulance came? I mean, have
15 you seen a call or anything of the ambulance
16 coming to pick him up?

17 THE WITNESS: Yes, sir, I have body
18 camera video from the MPD.

19 MR. ALBERTI: So we know he was not --
20 someone else took him to the hospital, he was
21 retrieved by EMS.

22 THE WITNESS: Correct.

1 MR. ALBERTI: Okay. Thank you. Just
2 wanted to establish that he didn't break his leg,
3 you know, later in that evening.

4 THE WITNESS: No, I don't think so.

5 MR. ALBERTI: All right.

6 THE WITNESS: Okay.

7 MR. ALBERTI: Trying to make sure we
8 have that clear. I have no further questions,
9 but thank you.

10 THE WITNESS: Thank you, sir.

11 MR. ALBERTI: Yes, that's it. Thank
12 you very much.

13 CHAIRPERSON ANDERSON: Any other
14 questions from any other Board Members? Mr.
15 Rush, do you have any questions of the
16 investigator? Could someone turn the lights back
17 on, please? Well, no, let me -- not yet. Do you
18 have any questions of the investigator based on
19 the questions that were asked by the Board
20 Members?

21 MR. RUSH: More so just willing to
22 give my own statement of the --

1 CHAIRPERSON ANDERSON: Not as yet.
2 That's why I'm saying, do you have any questions?

3 MR. RUSH: No, I do not have any
4 questions at the moment.

5 CHAIRPERSON ANDERSON: Mr. Schmidt, do
6 you have any questions of the investigator based
7 --

8 MS. SCHMIDT: No further questions.

9 CHAIRPERSON ANDERSON: All right. Mr.
10 Wilkinson, thank you for your testimony. You can
11 step down. Thank you. Will someone please turn
12 the lights back on, please?

13 THE WITNESS: Thank you.

14 CHAIRPERSON ANDERSON: Does the
15 Government have any other witnesses?

16 MS. SCHMIDT: No, we do not.

17 CHAIRPERSON ANDERSON: Does the
18 Government rest?

19 MS. SCHMIDT: We rest at this point.

20 CHAIRPERSON ANDERSON: All right. How
21 does the establishment wish to present its case?

22 MR. RUSH: My own testimony of what

1 happened in the evening during the course of the
2 evening.

3 CHAIRPERSON ANDERSON: Can you raise
4 your right hand, sir, please?

5 WHEREUPON,

6 THAD RUSH
7 was called as a witness for the Defendant and,
8 having been first duly sworn, assumed the witness
9 stand, was examined and testified as follows:

10 CHAIRPERSON ANDERSON: Go ahead, sir.

11 THE WITNESS: So from the beginning of
12 this incident, we were called, myself and another
13 security member, Mr. Burgess, we were called to
14 escort someone else out of the establishment.
15 Not the subject patron involved here, the
16 "victim" here involved.

17 We were called to a patron who was
18 smoking, who was warned to stop smoking, so we
19 asked him to leave. We were escorting him out of
20 the building.

21 As we're leaving out of the building,
22 I forget the victim's name, but the "victim" here

1 forced his way across me from my left to my
2 right. And as he made his way across, he
3 basically shoved his way through me, if you will.
4 He made himself to my right side. I stopped him
5 and I said, stop, what are you doing? Relax.

6 And the man looked at me, stopped for
7 a second, and proceed to shove through me again,
8 at which point, I'm not understanding why he's
9 doing this, I took him to the ground.

10 When he's on the ground, which you
11 can't see, unfortunately, under the tape, is,
12 where I'm looking over him and I'm telling him,
13 stop. Now, obviously, the music is loud, and I'm
14 shaking my head to this gentleman and telling
15 him, stop. Just stop.

16 The man doesn't. He tries to -- he's
17 flailing his legs, he's kicking, so at that
18 point, we basically go to reach down, grab him,
19 and take him out. When we get to the top of the
20 stairs, before we make it to the first landing,
21 we're basically now just trying to get him to
22 walk under his own power.

1 He's in the corner and he has this,
2 what I would call, reference, crazed look in his
3 eyes. You can understand -- oh, excuse me, I can
4 understand that the man had been drinking, so I
5 understand that he was probably intoxicated by
6 that point and not fully cognizant of what he is
7 doing. That's fine. That's why I stopped him to
8 ask him, you know, to walk under his own power.

9 His girlfriend is asking us, telling
10 us, not that they're leaving, his girlfriend is
11 saying, he's not -- he's harmless, he didn't mean
12 it, he's okay, let him go, let him go back in.
13 I'm telling her, he cannot go back in at this
14 point. He has to at least come outside.

15 And I'm talking to this girl calmly,
16 and as you saw in the video, the woman is -- the
17 girlfriend is calm herself. If we were attacking
18 this man, quote/unquote, I would imagine that
19 said girlfriend, she would be trying to defend
20 him as well, and she wasn't.

21 So at that point, we go to tell this
22 man, he has to come. He has to walk out with us.

1 He doesn't. He pulls himself away from us. At
2 this point, my -- the security officer that was
3 assisting me, tries to restrain him again, I grab
4 him to pull him to me, to take him -- basically,
5 to wrap my arm around him as we go down the
6 stairs together.

7 When I went to pull this man to me,
8 his right arm flails up above my head, at that
9 point, I don't know if he's swinging or not, so I
10 redirect him past me. The man does not fall.
11 The man, he stumbles, but he does not fall.

12 When we get to the bottom of those
13 steps, which you don't see, those -- that 20, 30-
14 second timeframe, or whatever, at the second
15 landing, or excuse me, the first landing, is
16 where the young lady now pleads again on his
17 behalf.

18 When she pleads with me, she's saying
19 to me, he does not speak English. He doesn't
20 understand anything you're telling him. So I
21 say, okay, that's fine. Can you please tell him,
22 in your language, he has to walk with us?

1 The woman interprets for us, telling
2 him, stop. Calm down. It's okay. He's looking
3 at her saying, no, I'm not doing anything. So
4 we're trying to, at this point, physically
5 communicate to him to tell him, it's okay, and
6 the man's like, no, no, at which point, we
7 realize, okay, we can't talk anymore. We just
8 got to take this man out.

9 So we go down the second set of steps.
10 As we're making our way down, this man -- before
11 I even could get to those steps, when I went to
12 reach for him, he grabs a handful of my collar,
13 of my shirt, and as we're making our way down,
14 this man is kicking me the entire time in my
15 stomach.

16 So my focus, from underneath, is to
17 not fall, for him not to fall, and for my
18 security behind us not to fall, obviously,
19 because it would just create a domino effect.

20 So we get down to the bottom of the
21 steps, as we make our way to the door, we fall.
22 Him and I fall together. The victim and myself,

1 we fall together. When we land, I landed on top
2 of him where, basically, at his hip level. This
3 man, at this point, still has a handful of my
4 shirt in a death grip, and he's reaching his legs
5 to kick me in the face.

6 At that point, I pushed his leg down
7 and hit him to release his grip. At that point,
8 the security outside grabbed me, and you can see
9 it in the video, grabbed me and tell me, B.J., we
10 -- my nickname is B.J., I'm sorry, B.J., we have
11 him. It's okay. You know, we got him. You can
12 come on. You can go away.

13 I basically stepped up and I walk away
14 from this man. They picked this man up and he
15 walks off under his own power. Where they sat
16 him, you asked the question earlier, where they
17 walked him to was, there's an awning that has a
18 landing right there with steps, they were
19 actually walking him to those steps, they didn't
20 sit him on those steps because they were
21 occupied, so they sat him on the curb.

22 He sat down with his girlfriend and

1 they just collected themselves. At that point,
2 there was an ambulance called, I don't know who
3 called, and he ended up going to the hospital.

4 That is my firm truth testimony of
5 what happened to that incident. I, myself, am
6 not a bully. I do not take pleasure in hurting
7 anyone and I was not trying to hurt this man. As
8 a matter of fact, I gave him more than one
9 opportunity to stop and to calm down.

10 I told them when they got to the
11 second steps, when I asked the young lady to
12 interpret for him, if he can stop right here and
13 now, and just walk out with me to calm down, I
14 would have apologized to this man, walked him to
15 the bar myself, and given him a drink on the
16 house. None of that happened.

17 This man was beyond reason. He was
18 beyond rationality. At that point, he had to go.
19 It was never my intention to attack this man. I
20 don't know, honestly, where he came from, because
21 I was focused on someone else. This man,
22 literally -- excuse me, in all intents and

1 purposes, came out of nowhere, because I had no
2 idea why he came -- why he even came by in the
3 first place, but I promise you they were not
4 leaving that night.

5 He was having the time of his life.

6 And that's my statement.

7 CHAIRPERSON ANDERSON: Ms. Schmidt, do
8 you have any questions for him?

9 MS. SCHMIDT: Yes, I have a few
10 questions. So are you disputing the fact that
11 the man broke his leg that night?

12 THE WITNESS: I am not disputing
13 because I was unaware.

14 CROSS EXAMINATION

15 BY MS. SCHMIDT:

16 Q Well, how do you think he could have
17 broken his leg?

18 A That is the \$64,000 question. I have
19 no clue.

20 Q You don't --

21 A No one touched his leg, no one grabbed
22 his leg.

1 Q Do you think it could have been when
2 you said you went on top of him?

3 A When we fell?

4 Q Well, when you fell -- well, you said
5 you fell on top of him. Do you think it could
6 have been then?

7 A I don't know, ma'am.

8 Q And how much do you weigh?

9 A I weigh 250.

10 Q And how much did Mr. Quiroz weigh?

11 A Mr. Quiroz probably weighed, as
12 mentioned, between 130 and 150. To your point,
13 we fell on top of each other with him elevated
14 above me.

15 Q And you said right away that he shoved
16 his way. Why did you take him -- you said you
17 took him to the ground, why did you take him to
18 the ground as a first step?

19 A When the man swung past me the first
20 time and I asked him to stop, the look he gave
21 and the action behind it was if he was trying to
22 attack me, and I did not understand why this man

1 was trying to attack me.

2 Q Okay. Based on your size, have you
3 been -- weren't you trained to use less, I can't
4 say intrusive, severe methods?

5 A Less force?

6 Q Less force, yes.

7 A Yes, we are. We are definitely
8 trained on --

9 Q So why didn't you use less force on
10 that gentleman? He's only 130 pounds and you're
11 250?

12 A When he first went past me and I
13 basically redirected him, that was less force in
14 that initial moment.

15 Q And how did you redirect him again?

16 A Basically, as he's shoving through me,
17 I can't reenact the moment here now, I guess,
18 clearly, but to give you an example, from my left
19 to right, as this man is trying to shove his way
20 through me, I basically grabbed his left arm and
21 took his own momentum and pushed him past me. In
22 the video, you see a flash, because that's how

1 quick it happened.

2 This man, as he -- the moment he
3 touched me and I realized what he was doing, I
4 redirected him past me.

5 Q And how many security personnel were
6 with you that evening?

7 A How many on staff or how many in that
8 vicinity?

9 Q In that vicinity and on staff.

10 A On staff, we probably had about seven
11 to ten, off the top of my head. I have to
12 literally, kind of, pinpoint and count.

13 Q And who was near there besides Mr.
14 Burgess?

15 A I'm not aware. I don't remember.

16 Q And was there a reimbursable MPD
17 detail outside?

18 A Probably so, but not under our
19 specific detail.

20 Q But are you aware of the fact that
21 there usually is an MPD detail outside your club
22 at that time?

1 A Yes.

2 Q And isn't it protocol to call the MPD
3 detail as soon as you have an incident like that?

4 A The more appropriate answer is, it
5 varies. It depends on the severity of the
6 situation. In most cases, if the situation has
7 been handled, and the patron is escorted out of
8 the building, we don't have to bother MPD,
9 because they may be focused on, not just our
10 establishment, but dozens of establishments on
11 that block itself.

12 Q But you just testified that you have
13 to take him to the ground immediately, which is
14 quite severe. Wouldn't you just have called the
15 MPD reimbursable detail?

16 A I'm sorry, say that one more time.

17 Q You just testified that because of his
18 actions, you had to take him to the ground right
19 away. Wouldn't that be a situation where you
20 should just call the MPD detail?

21 A No, not necessarily. Not necessarily.
22 And I will say why, in some cases, depending on

1 the venue, depending on the patron, there -- put
2 it this way, and I'll just be more candid and
3 blunt in my statement here, you're dealing with
4 kids. I mean, granted, they're 21 and up, but
5 they're still kids, in some cases. They really
6 don't know what they think they know.

7 And you're dealing with a young couple
8 who, as mentioned, they tried to have a good time
9 and focused on having fun, they're not paying
10 attention, or really having a care in the world
11 about their surroundings.

12 So dealing with carefree individuals,
13 if you will, you can gauge it and not have to
14 involve MPD directly. As mentioned, if this man
15 would have stopped in his actions, as we tried to
16 get him to do several times, we wouldn't have
17 escorted him out.

18 I would not have asked this man to
19 leave the premises completely, because again, my
20 focus was never on him to begin with. I would
21 have asked him, calm down, again, like I said,
22 apologize to him, and that was the whole point of

1 reference with the girlfriend.

2 As mentioned, as you saw in the video,
3 the girlfriend was calm in both instances where
4 we spoke. Why? Because she knew I was trying to
5 work with this man, not because I was trying to
6 bully him or hurt him.

7 Q Well, do you think maybe she was
8 scared of you?

9 A If she was, by the first -- I'm sorry.
10 If you'd like to replay the tape, you can look at
11 the first landing where, in the hallway there,
12 we're talking with the girl and she has her hand
13 on my shoulder. If the girl was scared of me, I
14 would imagine she would have kept her distance
15 because of how big I am.

16 Q Okay. And why did it take two of you
17 -- okay, you said you wanted to use less -- why
18 did it take both of you to carry that man down
19 the stairs, who's only 130 pounds, and --

20 A Because we had to restrain his arms
21 and legs. This man was kicking and flailing the
22 entire time from the beginning. And so going

1 down the steps, our first priority was protection
2 of ourselves and protection of him. What I mean
3 by that is, to not stumble and fall down the
4 entire landing where this man could have suffered
5 severe injuries, and myself.

6 Q So it's your testimony he never fell
7 down the landing. What we saw, he was not -- he
8 was just stumbling. He never fell down.

9 A Which landing are you referring to,
10 ma'am?

11 Q The first landing.

12 A The first landing, no, he did not fall
13 down the landing. Yes, I did redirect him down
14 this landing, but as mentioned --

15 Q When you say, redirect, do you mean
16 push or redirect?

17 A When I pulled this man down, I was
18 pulling him into my arms. So as you're asking
19 me, my initial implication was to pull him and
20 wrap him up so that we can walk down behind --
21 backwards together.

22 When I grabbed this man, his right arm

1 swings free from my security staff and goes above
2 my head. At that point, I don't know if that's a
3 punch or if that's him just flailing his arms.
4 I'm not willing to take that risk. I wasn't
5 trying to get hit. I didn't want anybody else to
6 get hit, so I redirected him past me.

7 As mentioned, when he got to the
8 bottom of the steps, he stumbled. He didn't
9 fall. What you can't see, because there isn't
10 another camera to show that second landing, or
11 that first landing, is the depth of those stairs.
12 The department of those stairs actually goes
13 another two, maybe three, steps below that camera
14 angle.

15 So it looks like he's falling. He has
16 not. And as mentioned, you can also see -- you
17 can't, excuse me, also see that at the bottom of
18 those steps, that's where we're talking with this
19 man standing upright, because why, again, the
20 depth is below that camera.

21 Q And we went outside Connecticut
22 Avenue. What happened there? Why didn't you

1 just -- what happened there? Why was he still
2 subject -- why did they -- why did you still feel
3 like he still needed some more calming down?

4 A I did not feel as though the man
5 needed anymore calming down, ma'am. At this
6 point, I was just trying to get him out of the
7 building and us back to our job.

8 Q And why did you have to use your fists
9 to do that?

10 A The man had a handful of my shirt, and
11 which, at the end of the video, I can clearly
12 show you where my shirt is torn from pulling away
13 from this man, but the man had a locked grip on
14 my shirt and he was raising his leg to kick me.
15 He had already been kicking me down the first set
16 of steps as we're taking him down the -- not the
17 first set, I'm sorry, the second set of steps,
18 after the first landing.

19 Q And where were the other security
20 personnel? Could they help you?

21 A They did. They were at the door.

22 Q And how were they helping you again?

1 A They basically separated us.

2 Q Weren't some of them -- if I remember
3 the video, didn't some of them also join in and
4 restrain him by hitting him?

5 A No, ma'am. Not at all, and you can
6 even replay the video to validate that claim.
7 Mr. Wilkinson's testimony just, he never said
8 that anyone was hitting this man, and nor did
9 anyone in questioning Mr. Wilkinson, even see or
10 ask Mr. Wilkinson, is there any other security
11 hitting him. No one hit this man, except for
12 myself, when I tried to get him off of me.

13 Nobody was trying to attach this man
14 and nobody in this establishment are bullies or
15 what we call weekend warriors. We don't work
16 that way. I hire men that are actually very
17 cognizant of their job and their surroundings. I
18 don't need hot heads for things like this,
19 because --

20 Q But wasn't there --

21 CHAIRPERSON ANDERSON: Let him finish,
22 Ms. Schmidt. Were you don't answering the

1 question, sir?

2 THE WITNESS: When these things
3 happen, when they are serious, they are serious,
4 and they can come back on this establishment, and
5 they can come back on me, because I do have a
6 direct hand in who we hire in this establishment,
7 so we do not hire people who are just looking to
8 tee-off on anyone, as implied here.

9 And neither is that my goal myself.

10 CHAIRPERSON ANDERSON: Go ahead, Ms.
11 Schmidt.

12 BY MS. SCHMIDT:

13 Q Okay. According to the report, there
14 was a third person involved on the sidewalk. Do
15 you know who that was; that security person?

16 A Yes.

17 Q And who was that? And what was he
18 doing, according -- what was he doing?

19 A At that point, he helped the man up
20 and he walked him -- he helped walk this man to
21 the curb to sit him down.

22 Q And he was not -- and it's in your

1 testimony, and even on the video showed, that he
2 was not helping to solve it generally, correct?

3 A Yes, ma'am.

4 Q Okay.

5 A No one hit this man, aside from
6 myself. No one had a reason to hit this man. I
7 was the only one that was in direct contact with
8 this gentleman as we fell, and at this point, I
9 was literally trying to push myself off the
10 ground away from him. And this man was pulling
11 me towards him, reaching his leg up, to kick me
12 in the face.

13 Q And then where was Mr. Burgess to try
14 to help? Was he helping you?

15 A Mr. Burgess was scrambling -- he
16 stumbled as we fell, and Mr. Burgess is trying
17 to, basically, get in to separate us.

18 Q So you're saying that this 130-pound
19 man could not combat the two of you, correct?

20 A I'm sorry, ma'am?

21 Q Your testimony is then, that this 130-
22 pound man, the two of you could not contain this

1 130-pound man.

2 A It wasn't about containment at this
3 point. We were trying to separate ourselves from
4 him. This man, as you -- to your point, yes, we
5 could restrain him, but you have to get into a,
6 for lack of a better description, correct
7 position to restrain someone so that they don't -
8 - they cannot attack you.

9 But even still, let me just say it
10 this way, give you a laymen's term example of
11 restraint, if you were to, say, bear hug someone,
12 because one of the easiest ways to restrain
13 someone from hitting you is to actually hold them
14 closest to your body. If you did that, you still
15 can't restrain them from head-butting you. You
16 still can't restrain them from swinging their
17 heads or kicking their feet, or what have you, so
18 are you still susceptible to a particular injury
19 or being injured? Yes, you are, from a 130-pound
20 man.

21 MS. SCHMIDT: No further questions.

22 CHAIRPERSON ANDERSON: All right.

1 Yes, Mr. Short.

2 MR. SHORT: I have some questions.
3 Mr. Rush, can you -- how long have you been in
4 the industry of security at clubs or restaurants?

5 THE WITNESS: Going on 18 years.

6 MR. SHORT: Eighteen years.

7 THE WITNESS: Yes, sir.

8 MR. SHORT: How much training have you
9 had, security-wise?

10 THE WITNESS: Probably, I would say,
11 half of those years, to a degree.

12 MR. SHORT: Was it from a certified
13 company you get certificates, hours of training
14 in a classroom?

15 THE WITNESS: Yes. I didn't bring it
16 with me now, but one of the most recent trainings
17 we had was in the art of verbal judo, as it's
18 called, where we are to --

19 MR. SHORT: Verbal judo.

20 THE WITNESS: Yes, sir.

21 MR. SHORT: Where you talk a person
22 down.

1 THE WITNESS: Exactly. You diffuse --

2 MR. SHORT: You don't have to put your
3 hands on them at all.

4 THE WITNESS: No. And if you do have
5 to put your hands on them to restrain them from
6 hitting you, you're still talking to them the
7 entire time, trying to get them to calm down.

8 MR. SHORT: Okay. All right.

9 THE WITNESS: And that's what was
10 happening in this video here, from beginning to
11 end.

12 MR. SHORT: Okay. So 18 years of
13 experience and training --

14 THE WITNESS: Yes, sir.

15 MR. SHORT: -- Okay. And how many
16 years have you worked at Kabin?

17 THE WITNESS: Since they opened. It's
18 going on three and a half years. It'll be year
19 four if they make it to August.

20 MR. SHORT: The whole time you worked
21 at Kabin, and the whole time you've been in --
22 with your experience and training, how many times

1 have you called for assistance from MPD or a
2 professional police officer?

3 THE WITNESS: A handful of times. Not
4 numerous. I would say, I couldn't give you an
5 exact number, but there have been a handful of
6 times where we've asked for MPD assistance. I'll
7 give you a most recent case, we had a patron who,
8 we asked him to leave a reserved table area. He
9 couldn't stay there. We asked him -- he had to
10 walk out. The man told us, no. Said, I'm not
11 going anywhere.

12 And we came with strength in numbers,
13 about three or four of us, we said, sir, you have
14 to come out of this area. The man said, no. I'm
15 not going anywhere. He basically made a stance
16 as if, you're going to have to drag me out, and
17 if you do, we're just going to go down swinging.

18 I walked outside, I said -- I told my
19 staff, don't touch him, don't do a thing, I
20 walked outside, I grabbed the --

21 MR. SHORT: That sounds great. Why
22 didn't you do this with this particular case?

1 THE WITNESS: Because at that time,
2 this man was still focused on attacking me. I
3 had no time to react to move away from him, and
4 at the same time, I did not know -- I didn't know
5 if this man was under any type of drug, because
6 again, the look in this man's eyes, he was -- for
7 lack of a better description, all I can say is,
8 he seemed out of it, like, he was not fully aware
9 of what he was doing.

10 MR. SHORT: Can we go back to the
11 video and what I want to see, Simone, is at the
12 top of the first landing, when they are talking,
13 the girlfriend, Mr. Rush, Mr. Burgess -- D, I
14 believe. I believe it's here. Okay. Now, he's
15 standing up. That's good. He said he's not
16 leaving, correct, in this --

17 THE WITNESS: Yes, sir.

18 MR. SHORT: Why wasn't the police
19 called then?

20 THE WITNESS: We did not take the time
21 to separate ourselves from him, because honestly
22 speaking, we couldn't just be one-on-one with

1 this guy. That's also why I had a backup there.
2 And I was to leave from that situation, I
3 couldn't assess what was going on, especially me
4 being a manager, I couldn't assess, I guess, what
5 would happen between him and Mr. Burgess.

6 MR. SHORT: You're the manager.

7 THE WITNESS: Yes, sir.

8 MR. SHORT: You delegate?

9 THE WITNESS: Yes, I do.

10 MR. SHORT: Okay. But you're leading
11 this particular incident, correct?

12 THE WITNESS: Right.

13 MR. SHORT: Now, keep it going some
14 more, please. Okay. Now, right there. Stop
15 again. How dangerous is this person right now to
16 you and the other security person, Mr. Burgess?

17 THE WITNESS: To be honest, my
18 statement would be, we're trying to assess that
19 right then in that moment, because now I can talk
20 to him. Inside the building, we can't fully talk
21 because you can't talk over music.

22 MR. SHORT: I understand. But you out

1 on the landing.

2 THE WITNESS: Right. So on the
3 landing --

4 MR. SHORT: The girlfriend's talking
5 --

6 THE WITNESS: I'm sorry. Go ahead,
7 Mr. Short.

8 MR. SHORT: The girlfriend's talking,
9 Mr. Burgess is talking, you're talking, the --
10 your client is not saying anything. It looks
11 like he's just standing there looking bewildered.
12 He doesn't look dangerous. I mean, is he a
13 danger to anyone now when he's standing there
14 like that?

15 THE WITNESS: He's not, but also, he
16 is being semi-restrained, if you will, because my
17 hand is on his wrist. I'm holding his hands from
18 swinging. I have him a position where his left
19 shoulder is against the wall --

20 MR. SHORT: But let me ask you this,
21 had you moved aside, could he have walked down
22 the steps then?

1 THE WITNESS: Oh, sure.

2 MR. SHORT: But you got your hand on
3 him, so you've got him restrained right now.

4 THE WITNESS: Not against him walking
5 down the stairs, sir.

6 MR. SHORT: He could get past you now?
7 Look at the picture.

8 THE WITNESS: I understand that.

9 MR. SHORT: The video.

10 THE WITNESS: I understand that.

11 MR. SHORT: He can get by you now?

12 CHAIRPERSON ANDERSON: Mr. Alberti,
13 please.

14 MR. ALBERTI: Could you ask him not to
15 --

16 CHAIRPERSON ANDERSON: He's answering
17 the question.

18 MR. ALBERTI: No, no, my concern is
19 that the licensee is coaching the witness.

20 CHAIRPERSON ANDERSON: Oh, well, I
21 don't --

22 MR. ALBERTI: Ms. Schmidt, would you

1 please observe what's going on here and deal with
2 it?

3 CHAIRPERSON ANDERSON: Well, I don't
4 -- hold on. Hold on.

5 THE WITNESS: I'm not paying --

6 MR. ALBERTI: I don't care. I don't
7 care.

8 CHAIRPERSON ANDERSON: Let's hold on.
9 I'm running this hearing.

10 MS. SCHMIDT: I didn't see that.

11 CHAIRPERSON ANDERSON: I see Mr. Rush
12 is looking this way at Mr. --

13 THE WITNESS: I'm focused on answering
14 your question.

15 MR. ALBERTI: The licensee was
16 whispering in his ear, Mr. Chairman. That's what
17 I saw.

18 CHAIRPERSON ANDERSON: Well, I didn't
19 see that. Okay. All right. Hold on a minute.
20 All right. Mr. Ali, Mr. Rush is being -- is on a
21 cross-examine, so therefore, you cannot have any
22 communication with him. Okay? I was paying

1 attention to what was going on. I was not
2 looking at you, so I'm just going to -- I don't
3 know whether or not you actually did it. I don't
4 know. I guess I didn't see it, so I'm just
5 saying that, it cannot occur.

6 All right. So Mr. Rush is being
7 questioned by Mr. Short. Go ahead, Mr. Short.

8 MR. SHORT: Thank you very much.
9 Okay. And again, why couldn't MPD be called in
10 there? As a supervisor, you could have said to
11 your staff, or Mr. Burgess, go get MPD, call MPD,
12 why did not you do that at that time?

13 THE WITNESS: At that time, my focus
14 was getting this patron out of the building as
15 quickly as possible. To your point, Mr. Short,
16 you're right, I should have contacted -- I should
17 have taken a moment to contact MPD or to get
18 someone to contact MPD, but my direct focus was
19 making sure that this patron didn't attack me any
20 further or attack anyone else, for that matter,
21 because as I mentioned, I was not -- I did not
22 know what was going on with this man.

1 MR. SHORT: One last question for you.
2 On all the videos we've seen from the time he was
3 brought out of the main area to the first
4 landing, you had both hands on him and he's on
5 his knees, correct?

6 THE WITNESS: You mean the first
7 landing right here.

8 MR. SHORT: Yes.

9 THE WITNESS: Okay.

10 MR. SHORT: All right. Now, when did
11 he ever -- you said he kicked and punched you.
12 It's not in any of the videos.

13 THE WITNESS: No, no, no, he just
14 kicked. He didn't punch me because his upper
15 body was being restrained by Mr. Burgess on the
16 top half of the step, but as we're going down, he
17 is digging into my stomach kicking me.

18 MR. SHORT: Okay. Well, let me say
19 this to you --

20 THE WITNESS: As you mentioned, you
21 can't see it on the tape because we don't have
22 another camera at that next landing right there.

1 MR. SHORT: Okay. Keep playing it,
2 Simone.

3 THE WITNESS: And for the record, I'm
4 not saying he's kicking me here.

5 MR. SHORT: I understand. We're
6 watching.

7 THE WITNESS: Okay. He's trying to
8 get him to calm down in this video. She's
9 talking directly to him.

10 MR. SHORT: I understand. I'm just
11 trying to see when some kicking could have
12 occurred.

13 THE WITNESS: Okay.

14 MR. SHORT: He definitely wasn't
15 kicking then.

16 THE WITNESS: No, sir.

17 MR. SHORT: He's on his back now,
18 correct?

19 THE WITNESS: No, sir. That's what
20 I'm trying to tell you. He did not fall. The
21 depth of those stairs goes at least two more
22 steps below that camera.

1 MR. SHORT: I understand.

2 THE WITNESS: At that point, we are
3 standing upright.

4 MR. SHORT: I'm looking at Mr.
5 Burgess.

6 THE WITNESS: Mr. Burgess is in the
7 corner. What you're looking at, actually, is the
8 girlfriend.

9 MR. SHORT: I understand, but I'm
10 seeing Mr. Burgess -- I can't see any kicking
11 going on.

12 THE WITNESS: No, sir, he's not. I
13 agree with you.

14 MR. SHORT: He's not kicking.

15 THE WITNESS: No, sir. I didn't say
16 he was then.

17 MR. SHORT: Okay. So had he had the
18 broken at that -- coming down that first set of
19 steps, he wouldn't have been doing a lot of
20 kicking after that, with a broken femur.

21 THE WITNESS: He wouldn't be doing any
22 kind of kicking. No, sir.

1 MR. SHORT: Well, when did he kick
2 you?

3 THE WITNESS: I'm going to show you.

4 MR. SHORT: Stop it right there for a
5 minute, Simone, please. Can you identify the
6 other people that are on the stairway looking
7 down at you and looking --

8 THE WITNESS: Yes, those are regulars
9 in our establishment.

10 MR. SHORT: None of those are security
11 persons?

12 THE WITNESS: No, sir. The gentleman
13 in the white shirt is one of our staff members.

14 MR. SHORT: So there's three of you
15 all together on the landing with this --

16 THE WITNESS: Right, but he's more so
17 there in observance. He had just started. It
18 probably was his second, maybe third, night
19 there.

20 MR. SHORT: He was in training.

21 THE WITNESS: Yes. Exactly.

22 MR. SHORT: Okay. That's enough for

1 me. That's all I have, Mr. Chair.

2 CHAIRPERSON ANDERSON: Any other
3 questions for this --

4 MR. ALBERTI: Yes, I do.

5 CHAIRPERSON ANDERSON: Go ahead, Mr.
6 Alberti.

7 MR. ALBERTI: Trying to figure out
8 where to start, and this might be a good space.
9 All right. So at any time during this whole
10 incident, was the -- from the point following
11 where you threw -- inside, where you threw him to
12 the ground, all right, you took him to the
13 ground. I don't want to use throw. You took him
14 to the ground, all right, inside.

15 From that point forward, was he a
16 danger, an immediate danger, to other patrons?

17 THE WITNESS: Yes.

18 MR. ALBERTI: And why?

19 THE WITNESS: Because the man had
20 this, again, deranged look, but he was kicking,
21 he was -- his legs are kicking from the ground up
22 --

1 MR. ALBERTI: Kicking whom?

2 THE WITNESS: -- towards me.

3 MR. ALBERTI: But was he by other
4 patrons at that time?

5 THE WITNESS: Yes, he was surrounded.
6 And he was surrounded by --

7 MR. ALBERTI: Where? Show me where he
8 was surrounded by other patrons and which --

9 THE WITNESS: Well, they're not --

10 MR. ALBERTI: No, no, no, show me
11 which --

12 THE WITNESS: They're not on the
13 camera, but we are surrounded.

14 MR. ALBERTI: Point to the video where
15 he's surrounded by other patrons.

16 THE WITNESS: Go back to the first
17 video, the very first video, where he's being
18 taken to the ground.

19 MR. ALBERTI: No, no, no, from that
20 point forward, I said, from that point forward.

21 CHAIRPERSON ANDERSON: You asked him
22 for a question and he's telling you where --

1 MR. ALBERTI: I understand, but I want
2 to make sure my question is clear, I said from
3 the point where he took him to the ground, from
4 that point afterwards, was he a threat to other
5 patrons.

6 THE WITNESS: Yes, we presumed he was.

7 MR. ALBERTI: Why?

8 THE WITNESS: Well, because this man
9 had no reason or recourse to attack me in the
10 first place, so it seemed as though -- putting it
11 this way, sir, it seemed as though, if this man
12 came after me out of nowhere, he could have done
13 the same to anyone else. My initial --

14 MR. ALBERTI: But --

15 CHAIRPERSON ANDERSON: Let him finish.

16 THE WITNESS: -- assessment in that
17 moment, not going all the way through to the end,
18 my initial assessment at that moment was to
19 figure out what was wrong with this guy.

20 MR. ALBERTI: Okay.

21 THE WITNESS: And why he was acting
22 the way he was acting.

1 MR. ALBERTI: All right. Once he goes
2 through the door onto the first landing, let's
3 talk from that point forward.

4 THE WITNESS: Okay.

5 MR. ALBERTI: Was he a threat to any
6 patrons?

7 THE WITNESS: At that point, no, he
8 was contained.

9 MR. ALBERTI: All right. At the top
10 of the stairs, you're standing there having a
11 conversation with him for many seconds, probably
12 at least ten seconds from this video, maybe
13 longer, am I correct?

14 THE WITNESS: Yes, sir.

15 MR. ALBERTI: And you wanted him to
16 leave, right?

17 THE WITNESS: Yes, I mostly wanted him
18 to walk out with me. I wasn't trying -- yes --

19 MR. ALBERTI: No, just answer my
20 question.

21 THE WITNESS: -- leave at that moment,
22 you're right, yes, to leave at the moment.

1 MR. ALBERTI: All right. How many
2 other security guards were involved? Did you
3 involve?

4 THE WITNESS: No one.

5 MR. ALBERTI: Just you and -- what do
6 mean, no one?

7 THE WITNESS: Well, no other one. It
8 was myself and Mr. Burgess.

9 MR. ALBERTI: Okay. Mr. Burgess, is
10 his name?

11 THE WITNESS: Yes.

12 MR. ALBERTI: Okay. You and Mr.
13 Burgess, and you involve no other security
14 people.

15 THE WITNESS: No, we did not take the
16 time at that moment to do so.

17 MR. ALBERTI: Okay. At the top of the
18 stairs, there were three patrons hanging around,
19 right?

20 THE WITNESS: Yes.

21 MR. ALBERTI: And an employee.

22 CHAIRPERSON ANDERSON: You have to

1 verbalize your answer.

2 THE WITNESS: Yes, sir. I'm sorry.

3 Yes, sir.

4 MR. ALBERTI: All right. You didn't
5 give any directions to that other employee to,
6 say, get additional security, call MPD, or
7 anything like that, did you?

8 THE WITNESS: No, sir.

9 MR. ALBERTI: Okay. Thank you. You
10 wanted this guy to leave, right?

11 THE WITNESS: I wanted him to leave
12 under his own power.

13 MR. ALBERTI: All right. So you were
14 sort of, in a way, as I see in this video, you
15 were standing in his line of movement -- egress,
16 outside the thing. You were standing in the
17 middle of the stairway. He could not have walked
18 by you unless you moved to the side, am I
19 correct?

20 THE WITNESS: You are correct in that
21 initial statement, however, if the man would have
22 made a positive step forward, I would have taken

1 a step back out of his way. My goal, in stepping
2 in front of him, was to guide him down those
3 steps.

4 MR. ALBERTI: So, Mr. Rush, I get that
5 you're dealing with an unreasonable patron. I
6 get it. I'm going to assume that he doesn't want
7 to leave. I get it. All right? But
8 nonetheless, you did not clear his path for him
9 to go down the stairs, did you?

10 THE WITNESS: As implied, no, I did
11 not.

12 MR. ALBERTI: All right. Did you take
13 any steps to clear patrons from that stairway so
14 that he could not be a threat to other patrons?

15 THE WITNESS: There was only one
16 patron at the bottom of the steps.

17 MR. ALBERTI: I didn't ask. I asked,
18 did you take any steps to clear patrons from that
19 stairwell?

20 THE WITNESS: No.

21 MR. ALBERTI: All right.

22 THE WITNESS: As I understand, to your

1 point, there was a call on the radio made letting
2 the front door staff know that someone was coming
3 out. So they blocked the people from coming up.

4 MR. ALBERTI: Who made the call?

5 THE WITNESS: I don't know. I just
6 know -- that's what I was told.

7 MR. ALBERTI: How would they have
8 known the call was made? How would they know to
9 make that call?

10 THE WITNESS: They, apparently, I
11 guess, from the inside. I do know that. I just
12 don't know. I wasn't a part of it.

13 MR. ALBERTI: Who made the call?

14 THE WITNESS: Additional staff. His
15 name is Jermaine. I don't know his last name.
16 What is Jermaine's last name?

17 CHAIRPERSON ANDERSON: He can't
18 answer.

19 MR. ALBERTI: Okay. So they called
20 the bottom of the stairwell.

21 THE WITNESS: Yes, sir.

22 MR. ALBERTI: All right. But yet,

1 there were people -- all right. I got you. All
2 right. But you didn't make any effort, right?

3 THE WITNESS: No, I did not. My focus
4 was on him.

5 MR. ALBERTI: Got you. And you didn't
6 involve any other security staff, right?

7 THE WITNESS: Only person I involved
8 outside of Mr. Burgess was his girlfriend to
9 interpret for us.

10 MR. ALBERTI: So when you brought him
11 out the doorway at the top -- first of all, how
12 many steps are on the flight of stairs?

13 THE WITNESS: I don't know, sir. I
14 never took the time to count. I actually did
15 once, but I forgot it, to be honest with you.

16 MR. ALBERTI: Well, I count, according
17 to your testimony, that there are three or four
18 steps below where the video seems --

19 THE WITNESS: No, no, no, there are
20 just two. There's not that --

21 MR. ALBERTI: Let's go back to the
22 start. Let's go back to A and show the

1 stairways.

2 THE WITNESS: That would be B or C,
3 probably.

4 MR. ALBERTI: Or B.

5 THE WITNESS: Yes. It would be,
6 probably, C.

7 MR. ALBERTI: All right. Let's go to
8 B, all right?

9 THE WITNESS: Yes, go ahead.

10 MR. ALBERTI: Or C. Yes, let's go
11 down. That's good there.

12 THE WITNESS: That's it.

13 MR. ALBERTI: Okay. All right. Let's
14 stop it here. Now, how many stairways below what
15 I can see?

16 THE WITNESS: Two.

17 MR. ALBERTI: Two.

18 THE WITNESS: It's three total, but
19 that first, after counting the top one right
20 there, two more.

21 MR. ALBERTI: So I see a partial stair
22 at the bottom.

1 THE WITNESS: Right.

2 MR. ALBERTI: Two more after that?

3 THE WITNESS: I'm sorry, sir?

4 MR. ALBERTI: Two more after that?

5 THE WITNESS: No, no, no, that partial
6 stairway at the bottom is the last stairway.

7 MR. ALBERTI: You just told us there
8 were two more steps that we couldn't see in this
9 video, and I see -- now, you're telling me I can
10 see the entire stairway.

11 THE WITNESS: No, sir. Okay. I think
12 you're confusing -- I think I'm confusing you,
13 because --

14 MR. ALBERTI: You are.

15 THE WITNESS: -- because you're
16 supposed to be following me here. What I'm
17 trying to tell you is, that first set of stairs
18 you're looking at, if you don't mind, may I step
19 up to point to that --

20 CHAIRPERSON ANDERSON: Well, you can't
21 point, because we can't see what you're pointing
22 to.

1 THE WITNESS: You can't see what I
2 see?

3 CHAIRPERSON ANDERSON: Yes.

4 THE WITNESS: Okay. So you see the
5 first set of stairs right there at the top, if
6 I'm describing them to you --

7 CHAIRPERSON ANDERSON: Why don't you
8 count the stairs? How many stairs can we see?

9 THE WITNESS: Right now, currently,
10 you can count, what, three --

11 MR. ALBERTI: Including the landing.

12 THE WITNESS: Including the landing
13 below or the landing --

14 MR. SHORT: The landing where the
15 guy's standing.

16 MR. ALBERTI: The landing above. The
17 landing above.

18 MS. SCHMIDT: I can see it better from
19 here.

20 MR. ALBERTI: No, no, no, what you can
21 see. The landing above. So the top of the
22 landing is one.

1 THE WITNESS: Okay.

2 MR. ALBERTI: How many steps do you
3 count?

4 THE WITNESS: I count about eight so
5 far, or seven, seven or eight, just off the top
6 of my head.

7 MR. ALBERTI: Tell me how many you
8 count. I mean, you're looking at it. Tell me
9 how many you count.

10 CHAIRPERSON ANDERSON: Well, Simone,
11 can you --

12 THE WITNESS: Seven.

13 MR. ALBERTI: Seven, all right. And
14 the last one is a partial stairway.

15 CHAIRPERSON ANDERSON: Hold on. Let
16 him -- can put --

17 THE WITNESS: The last one is a
18 partial stairway.

19 CHAIRPERSON ANDERSON: Hold on one
20 minute.

21 THE WITNESS: Yes, sir.

22 CHAIRPERSON ANDERSON: Can you put the

1 pointer so he can count so we can see what he's
2 counting.

3 THE WITNESS: He's counting from the
4 top, so that's one.

5 CHAIRPERSON ANDERSON: Right.

6 THE WITNESS: Two, three, four, five,
7 six, and seven.

8 MR. ALBERTI: Seven.

9 CHAIRPERSON ANDERSON: All right.

10 MR. ALBERTI: How many stairways can
11 we see -- can't we see after that?

12 THE WITNESS: Two more, probably,
13 steps.

14 MR. ALBERTI: Right. Two more steps
15 after that, so there's at least nine steps on
16 that stairway.

17 THE WITNESS: Yes.

18 MR. ALBERTI: Thank you.

19 THE WITNESS: We're on the same page
20 now.

21 MR. ALBERTI: All right. We are.

22 THE WITNESS: Okay.

1 MR. ALBERTI: We are. Lost my train
2 of thought. So when he came to this doorway, am
3 I correct that you were pulling him, you had him
4 by the wrist, and you were pulling him?

5 THE WITNESS: Yes.

6 MR. ALBERTI: You had control of his
7 arms, correct?

8 THE WITNESS: Yes.

9 MR. ALBERTI: And yet, you would have
10 us believe that when you got to the bottom of the
11 stairwell and -- or outside, or wherever it was,
12 that he had a chunk of your shirt, and you needed
13 to punch him to get him off, you couldn't grab
14 his fists to control his hands.

15 THE WITNESS: Sir, he wasn't trying to
16 punch me.

17 MR. ALBERTI: I didn't say he was
18 trying to punch you. Let me repeat my question.

19 THE WITNESS: Okay.

20 MR. ALBERTI: You would have us
21 believe that when he has a chunk of your shirt --

22 THE WITNESS: Yes.

1 MR. ALBERTI: -- at some point you
2 said he had a chunk of your shirt and you punched
3 him to get him away from you, is that correct?

4 THE WITNESS: Yes, sir.

5 MR. ALBERTI: You have us believe that
6 was your only alternative. You could not have
7 grabbed his hands and controlled his wrists at
8 that point, similar to the way you had control of
9 his hands earlier.

10 THE WITNESS: Not by a long short, and
11 I'll say why, because we fell and when we fell, I
12 fell below him, meaning to say, his upper body,
13 pretty much, was above me. I was basically at
14 his waist level. And this man had a, again, grip
15 of my shirt and he would not let go. I'm trying
16 to pull myself away from him.

17 MR. ALBERTI: Okay. You were at his
18 waist. What part of you is at his waist?

19 THE WITNESS: My upper body, laying
20 horizontally.

21 MR. ALBERTI: Explain to me your upper
22 body. From where to where?

1 THE WITNESS: From probably --

2 MR. ALBERTI: You have hips,
3 shoulders, and head.

4 THE WITNESS: Yes, exactly. From the
5 waist, up.

6 MR. ALBERTI: So from the waist, up
7 was where on him?

8 THE WITNESS: Was probably on his
9 waist.

10 MR. ALBERTI: Oh, Okay. So you were
11 -- so his waist was on your waist, and you're
12 taller than him, so you really --

13 THE WITNESS: No, not waists together,
14 sir, it basically is, give you an example here of
15 what I'm trying to say, imagine, if you will, a
16 domino effect. When you see a domino fall, the
17 head of the second domino does not fall where the
18 head of the first fell. I fell at his waist,
19 sir.

20 MR. ALBERTI: What part of your body
21 was at his waist?

22 THE WITNESS: Probably, I guess, from

1 the chest, up.

2 MR. ALBERTI: From the chest, up.

3 THE WITNESS: Yes.

4 MR. ALBERTI: All right. Was at his
5 waist.

6 THE WITNESS: Yes.

7 MR. ALBERTI: And he's -- you're 6
8 what?

9 THE WITNESS: 6' 2".

10 MR. ALBERTI: 6' 2", and he's what?

11 THE WITNESS: He was probably about,
12 he's not 5' 6", he's probably about 5' 9".

13 MR. ALBERTI: Okay. So I can sort of
14 guess where you were from that description. You
15 said in the previous incident that, you described
16 a previous incident where you had three or four
17 guards and security staff involved, why didn't
18 you involve more security staff here?

19 THE WITNESS: Initially, we were
20 focused on the first set of patrons. When this
21 man came by, I did not know if this man was
22 affiliated with this same group, which is, again,

1 why I said I was trying to assess who he was and
2 what -- why he was so focused on myself. Like I
3 mentioned to you, sir, he came out of nowhere. I
4 mean, honestly, of course, there are dozens of
5 people dancing, migrating, moving around the
6 establishment, I get that, but the way this man
7 came through me, I didn't know if he was with the
8 group or not.

9 MR. ALBERTI: So it looks like --
10 well, it appears that on the steps, when you had
11 him outside the first landing of the steps, you
12 made no effort to summon other security, to make
13 sure those patrons were moved out of harm's way,
14 were moved out of that stairwell, because I see
15 three -- as you describe them, three regulars,
16 and the -- wait, wait, and the staff person.

17 THE WITNESS: At the top of the steps.

18 MR. ALBERTI: At the top of the steps.

19 Is that correct?

20 THE WITNESS: Yes, sir.

21 MR. ALBERTI: All right.

22 THE WITNESS: He was not -- that

1 gentleman was not --

2 MR. ALBERTI: There's no question. I
3 asked if I was correct.

4 THE WITNESS: Okay. I'm sorry.

5 MR. ALBERTI: And there was a staff
6 person there who you could have directed to take
7 orders from you, correct?

8 THE WITNESS: Yes, sir.

9 MR. ALBERTI: All right. I'm not
10 going to ask you anymore questions, but I'm going
11 to leave you with this -- well, actually, I'm
12 going to ask you one more question. My job here
13 is to assess whether or not -- look, I get that
14 you were dealing with someone who was
15 unreasonable, but my job here is to assess
16 whether you took reasonably acceptable and safe
17 actions in your effort to get him out. That's my
18 job.

19 THE WITNESS: Okay.

20 MR. ALBERTI: Do you have anything
21 else to say?

22 THE WITNESS: Basically, again, as I

1 mentioned as far as my character is concerned,
2 with reference to this gentleman here, my intent
3 was never to hurt this man at all. My intent was
4 never to use any force that was unreasonable,
5 although, this video may seem ugly, or what have
6 you, this man here was a threat.

7 I did not understand how far this
8 threat would go. As mentioned, I was under the
9 hopes that this man would calm down. So to, I
10 guess, kind of go -- reiterate this point to you,
11 my focus is to use as less force as possible. I
12 am not in the position to want to deal with
13 anyone physically at all.

14 With this man here, that was the
15 entire goal. When we got to the bottom of the
16 steps, the one time where I did hit him, I didn't
17 want to do that in the first place, but I was not
18 going to risk being kicked in the face either, as
19 I had already been kicked going down the steps.

20 Mr. Short asked me to replay a video
21 to show where this man was kicking me, and
22 unfortunately, we didn't show where the man was

1 going down the second set of steps, of which,
2 that point is when this man is kicking me.

3 So I had already been taking hits from
4 him, from, basically, the beginning, if you want
5 to say, with this man.

6 MR. ALBERTI: So I probably shouldn't
7 ask this question, is it possible that had you
8 taken other steps, and handled this differently,
9 you could have avoided all of this?

10 THE WITNESS: I would say it this way,
11 there's always more than one way to handle a
12 situation, yet, and still, in that very moment,
13 we were doing what we felt was best to try to
14 contain the situation, not to hurt this man.

15 MR. ALBERTI: If you had to do it all
16 over again, how would you handle this from the
17 point where you took him down --

18 THE WITNESS: And so --

19 MR. ALBERTI: Wait, wait, you took him
20 down, I'll presume that there was some sort of
21 threat there, you took him down to the ground,
22 and now you got to get him out. Because once you

1 take a guy down, it's pretty obvious that he's
2 going to be -- pretty good chance he's going to
3 be unreasonable after that point.

4 But anyways, so at that point, you've
5 taken him down, in hindsight, how would you
6 handle this differently next time?

7 THE WITNESS: Honestly, once I --
8 that's a great question, and I've thought about
9 that many times, in hindsight, what I would have
10 done differently was, I would have detained him
11 in a way in which I would have asked for someone
12 to get either MPD or someone else involved.

13 I believed at that time that I could
14 contain this man and my initial thought was, let
15 me get him to stop first and figure out what his
16 issue is. I didn't want to take this man out in
17 the first place. I didn't want to throw this man
18 out in the first place. It ended up becoming
19 that way.

20 But in hindsight, what I would have
21 done differently was to ask for MPD to escort
22 this man out, as you mentioned.

1 MR. ALBERTI: Okay. Thank you. I
2 have no further questions.

3 CHAIRPERSON ANDERSON: Any other
4 questions by any other Board Members? Yes, Mr.
5 Silverstein.

6 MR. SILVERSTEIN: Thank you. Can we
7 go to -- Simone, can we go to D at 2:15:00?
8 Okay. Let's stop right about there. At this
9 point, is the gentleman being aggressive or is he
10 in a defensive posture?

11 THE WITNESS: He's in a, I guess you
12 could say, defensive posture, with his body away
13 from me at that moment; turned away from me.

14 MR. SILVERSTEIN: Is there anything --
15 as we go along through this, if there's any place
16 that he appears to be aggressive, please stop and
17 tell me. Who is the gentleman behind Burgess?

18 THE WITNESS: That's our additional
19 staff. That was the gentleman who I just
20 mentioned who had just started there. It was
21 probably his second or third night. He was in
22 training.

1 MR. SILVERSTEIN: So is the gentleman,
2 in any way at this point, a threat to any of the
3 people in the establishment; to any of your
4 customers?

5 THE WITNESS: Not at that moment, sir.

6 MR. SILVERSTEIN: Not at this moment.

7 THE WITNESS: No, sir.

8 MR. SILVERSTEIN: And at this moment,
9 he is in a defensive posture and is anyone laying
10 -- is he laying hands on anyone or is anyone
11 laying hands on him?

12 THE WITNESS: No, sir.

13 MR. SILVERSTEIN: Okay. And his
14 girlfriend is trying to speak to you?

15 THE WITNESS: Yes.

16 MR. SILVERSTEIN: Okay. Let's roll
17 the tape, Simone. She puts her hand on you and
18 then as Mr. Burgess put his hand on the gentleman
19 or do you have his -- who's touching who? Who's
20 laying hands here?

21 THE WITNESS: I'm holding the
22 gentleman's wrist. Mr. Burgess is, basically,

1 bracing his left arm up, just to contain him in
2 that corner. The girlfriend there is talking
3 with me. I'm telling the girlfriend to get him
4 to calm down, to relax. What I am telling this
5 man --

6 MR. SILVERSTEIN: Stop the tape right
7 here.

8 THE WITNESS: What I'm telling this
9 man is to walk outside with me. That's all I'm
10 asking him to do at this point, is to just walk
11 outside with me. I never even said he had to go.
12 I didn't call him out of his name. I didn't say
13 anything belligerent to him. I just said, you
14 need to walk outside with me now, is what I'm
15 saying to him.

16 I was firm in my statement, but I was
17 just telling him he had to walk with me.

18 MR. SILVERSTEIN: Now, suddenly, we
19 have four or five people in the stairwell,
20 including customers. If you didn't clear them
21 out, why did you not clear them out if this
22 gentleman is a threat?

1 THE WITNESS: I agree. My initial
2 thought, before seeing this video, was I thought
3 that these guys were the people that we were
4 taking out. Because the gentleman -- the people
5 we were taking out were three guys, and we asked
6 them to leave, and we were escorting them out.
7 They were calm and they were just walking with
8 us. They just figured, okay, we got caught, and
9 they're walking with us.

10 Because my focus was on this gentleman
11 here, I thought that these guys were just walking
12 with us as if they knew they were leaving. So it
13 wasn't clear to me who they were until I had seen
14 the tape after the fact.

15 MR. SILVERSTEIN: So here we are at
16 2:15:54, and you are on the second step down with
17 your hand on the railing, and the gentleman is,
18 at this point, being forcibly restrained by two
19 people. Is there any way at this point, that he
20 can leave voluntarily?

21 THE WITNESS: Yes, he could have left
22 voluntarily.

1 MR. SILVERSTEIN: How?

2 THE WITNESS: The man could have
3 walked. He wasn't -- sir, I'm --

4 MR. SILVERSTEIN: He would have gone
5 into you?

6 THE WITNESS: He would have -- again,
7 as I said, if he would have taken that positive
8 step forward, I would have stepped back out of
9 the way. This man never stepped -- or Mr.
10 Burgess is not bracing him as if he cannot walk.
11 I am holding him with the intent of him just
12 coming and walking with me. That has happened
13 several times where I've been able to contain a
14 person at the top of those steps, talk with them,
15 talk them down, and have them walk under their
16 own power. We do that.

17 And that's my point in saying that we
18 are not bullies here.

19 MR. SILVERSTEIN: Is there anything in
20 his physical posture that shows any aggression?
21 Let's start rolling again, Simone. He's not
22 doing anything.

1 THE WITNESS: Well, I'm going to tell
2 you what -- his physical posture there that does
3 show aggression, one, he's shaking his -- well,
4 I'm sorry, two, he was shaking his head no, and
5 then he braced himself, but the first instance
6 was, he locked in on me.

7 MR. SILVERSTEIN: Say again.

8 THE WITNESS: He locked in on me,
9 meaning to say that this man, basically, locked
10 his eyes on to me as if he had the intent on
11 doing anything. Give you an example --

12 MR. SILVERSTEIN: Well, would that --
13 stop right there.

14 THE WITNESS: Yes, sir.

15 MR. SILVERSTEIN: Would that not be
16 that he perceived a threat and he had been thrown
17 to the ground, that he was put here, that two
18 people are on him, that he is cornered, and would
19 that not be also, like, oh, my God, I'm looking
20 death in the eyes?

21 THE WITNESS: I don't know if you can
22 say that, considering I don't know if death

1 reasons with you. I mean, I tried my best to
2 reason with this man, and as mentioned to your
3 point of your saying in this video, if it was
4 that bad, then why is the girlfriend trying to
5 convince this man to work with us?

6 Because in the video, you can see, at
7 that point, where the girlfriend is literally
8 raising her hand to actually tell him, stop,
9 relax, calm down, and then when we got the second
10 landing, that's when she tell me directly, he's
11 not understanding you. He doesn't speak English.

12 MR. SILVERSTEIN: Right. There's
13 obviously here, and I think that it's one point
14 that no one will disagree with --

15 THE WITNESS: I'm sorry, sir?

16 MR. SILVERSTEIN: -- failure to
17 communicate.

18 THE WITNESS: I'm sorry, sir, failure
19 to communicate.

20 MR. SILVERSTEIN: There is a serious,
21 serious, almost fatal, failure to communicate.

22 THE WITNESS: Right. So we're trying

1 to get this man to understand what we're saying
2 to him. So I told the girl, when we got to the -
3 - right down those steps is where the man is
4 kicking me, to your point, but back at that
5 landing, where we're reasoning with him, I'm
6 telling the girl, I'm asking her to interpret for
7 me what I'm trying to tell him.

8 And what I'm saying to her is, get him
9 to relax. We won't hurt him. We're not trying
10 to hurt him. The girl looks at him, looks at her
11 boyfriend, and says, they won't hurt you, and
12 this man, as he did at the top, is shaking his
13 head no. He had done that the entire time.

14 Every time we went to reason, he said
15 no, so I don't -- at this point, what I'm trying
16 to say is, this man showed that he was not trying
17 to be reasoned with at all from the jump -- from
18 the beginning.

19 MR. SILVERSTEIN: Thank you. No
20 further questions.

21 CHAIRPERSON ANDERSON: Any other
22 questions by any of the Board Members? Hearing

1 none, Ms. Schmidt, any questions of Mr. Rush
2 based on the questions by the Board?

3 MS. SCHMIDT: No further questions.

4 CHAIRPERSON ANDERSON: Do you, Mr.
5 Rush, is there any further explanation you have
6 to provide based on the questions that you --
7 that were posed to you by the Board Members?

8 THE WITNESS: I guess the only last
9 piece I can say is, if you looked at the end of
10 the tape, you can see where, in fact, my shirt
11 was torn to show that this man did grab me, or
12 was trying to -- physically, you can show where
13 he was trying to harm me.

14 CHAIRPERSON ANDERSON: All right.

15 THE WITNESS: I mean, that's basically
16 it. I mean, like I said to you, we never was
17 trying to hurt this man from the beginning, and
18 I'm not saying it because I'm sitting in front of
19 a Board with you guys, I voluntarily came here to
20 explain that point. I have nothing to hide and
21 nothing to prove to anyone. My point of
22 reference here with you all is to understand that

1 we were not trying to hurt this man nor anyone
2 else in that building, at all.

3 I take that very seriously. It's
4 unfortunate that you're meeting me the first time
5 here, but if we had character witnesses, it would
6 be out the door.

7 CHAIRPERSON ANDERSON: All right. Mr.
8 Ali, is there anything that you wish to say?

9 MR. ALI: Yes, sir.

10 CHAIRPERSON ANDERSON: Before, can you
11 raise your right hand, please?

12 MR. ALI: Sure.

13 WHEREUPON,

14 KAMRAN ALI

15 was called as a witness for the Defendant and,
16 having been first duly sworn, assumed the witness
17 stand, was examined and testified as follows:

18 CHAIRPERSON ANDERSON: What is it that
19 you want to add?

20 MR. SILVERSTEIN: Mr. Ali, could you
21 put the microphone in front of you?

22 THE WITNESS: Sure. I'm sorry. I'll

1 sit here.

2 CHAIRPERSON ANDERSON: What is it that
3 you want to add, sir?

4 THE WITNESS: There's quite a few
5 things, sir. I was the one who had asked him to
6 escort the three people out, initially. Now,
7 like he said, he wasn't concentrating on them, so
8 it was three, four people that, first, I told
9 them, hey, put that away. When I saw that they
10 didn't, then I was like, B.J., you know, walk
11 these people out. They're not listening.

12 So, you know, he's already
13 concentrating on that. So he was concentrating
14 on those people, and like he said, the first time
15 the guy walked out, he kind of pushed him to the
16 side to stop him. It was the second reaction.

17 So if you told someone to stop first,
18 and then they snap at you, and you see that in
19 the video, that's when he took him down. When he
20 took him down, he told him to stop. The guys
21 doesn't speak English, you know? I don't know
22 how he communicated, but if he doesn't speak

1 English, how are you going to -- you know, and
2 that's when he said, stop.

3 Like, anyone who does that, then if
4 someone would stop, why would we stop someone
5 from leaving? I mean, that just blows my mind.
6 Why would we stop someone from leaving, you know?
7 And that, what he's doing at the steps, is common
8 sense, you know? They're long steps. They're
9 all metal. He's going to fall.

10 So what he's trying to do is prevent
11 that, because that, our experience and how long
12 we've been doing it, it's a simple thing. You
13 want to protect someone so he doesn't fall. That
14 was his intention.

15 And, notice that, and go to it,
16 they're holding his hands. Why would they hold
17 the hands? Because that's why, he's been
18 punching and fighting the whole time. I mean,
19 it's -- you know, I'm just surprised that -- I
20 just wish I had more cameras, but also, the
21 girl's talking for 10, 15 seconds, what do you
22 think they're talking about?

1 If he was like, hey, I'm leaving, they
2 would have moved out of the way. If the girl was
3 like, hey -- you know, we're reasonable people.
4 I only hire nice, good character people. I've
5 been in the industry 25 years. Character. It's
6 my number one thing we look for. I know how it
7 looks.

8 But everything I've said, does that
9 make sense? You know, him being there is to
10 protect him. He doesn't even know it, but that's
11 automatic. Eighteen years of training, there's
12 certain things you do. And they're holding his
13 hands there. Why? Because he's already shown
14 that he's fighting.

15 Gentlemen, we do the right thing.
16 I've been in the industry a long time. I've
17 worked for a lot of people. Twenty-five years.
18 I hire nice people. We love what we do. We love
19 people. Last thing we want to do is anything
20 like that.

21 Every time something happens, you
22 know, and I was behind the bar, because one of

1 the first things I'll do there, hey, are you
2 okay? We love what we do. We love people. The
3 last -- you know, that would have been an
4 automatic thing. I would have called it.
5 Because I came downstairs, I was like, what
6 happened?

7 Because I'm thinking, it was the other
8 people. The reason -- but look at the
9 interaction, the lady, if someone was, you know,
10 beating up her guy, she would have been crazy
11 about it. Anyone would be. You know, those are
12 the things that, you know, interacting with
13 people that you know very, very well.

14 It's, you know, like what Mike Tyson
15 said, everybody has a plan until you get punched
16 in the face. When you're in that situation,
17 you're trying to protect yourself also. There
18 was a gentleman who got butted in the face and he
19 has multiple surgeries years ago. So you have to
20 protect yourself too.

21 He's not listening to his girl. Try
22 to reason with him. The thing is, he's not

1 blocking his entrance, he's making sure he
2 doesn't fall either, but that's automatic to him.
3 I know we're not savvy enough that, hey, you
4 know, we're supposed to ask it a certain way.
5 We're not attorneys.

6 So, you know, when you're cornering us
7 in that sense, oh, okay, you know, he's trying to
8 leave. Leave. That's it, gentlemen. Thank you
9 very much for at least giving us an opportunity
10 to give our story. I appreciate that.

11 CHAIRPERSON ANDERSON: Ms. Schmidt.

12 MS. SCHMIDT: Yes, I have a few
13 questions. First of all, for the record, Mr.
14 Ali, what is your position at --

15 THE WITNESS: I'm the general manager.

16 MS. SCHMIDT: The general manager. Do
17 you have an ownership interest in the --

18 THE WITNESS: No.

19 MS. SCHMIDT: And where is the owner
20 today?

21 THE WITNESS: They're in Richmond and
22 most of the owners are in Richmond.

1 MR. ALBERTI: Can we ask Ms. Schmidt
2 if we have representation?

3 CHAIRPERSON ANDERSON: Yes, we do. We
4 do.

5 MR. ALBERTI: We do? Okay.

6 CHAIRPERSON ANDERSON: Move forward.

7 MR. ALBERTI: All right.

8 MS. SCHMIDT: The owner's in Richmond
9 today. And you said that you thought he was --
10 you thought there were other people involved. I
11 got a little confused at that statement. You
12 said you thought he was dealing with other
13 people. I got confused when you were talking
14 about that.

15 THE WITNESS: No worries. Ma'am,
16 initially, there were three gentlemen who had
17 weed in their hand. I was behind the bar. So I
18 told them, hey, put it away. But also, years of
19 experience and working -- I have 35 years of
20 customer service experience. So when I saw that,
21 you know, they weren't really going to listen to
22 me, that's when I got B.J., hey, do me a favor,

1 escort them out.

2 So, you know, we are concentrating on
3 them. He was not an issue until he became an
4 issue.

5 MS. SCHMIDT: So when you said, escort
6 them out, were you watching the escort going to
7 the other people, the people who were smoking?

8 THE WITNESS: Yes, that.

9 MS. SCHMIDT: And when did you see him
10 in contact with these -- with Mr. Quiroz?

11 THE WITNESS: No, I didn't.

12 MS. SCHMIDT: So you didn't see any of
13 that. All you saw was what was on the tape,
14 correct, of this incident?

15 THE WITNESS: Yes.

16 MS. SCHMIDT: Okay. No further
17 questions then.

18 CHAIRPERSON ANDERSON: Any questions
19 by any Board Members? Yes, Mr. Short.

20 MR. SHORT: This is for the general
21 manager. Those three gentlemen that were
22 smoking, did they ever leave the club? Did

1 someone walk them out?

2 THE WITNESS: He was walking them out,
3 sir, and that's what --

4 MR. SHORT: Okay. I understand that.
5 We saw what he did. He couldn't. Did anyone else,
6 in your employ, walk those three gentlemen out?

7 THE WITNESS: That was secondary after
8 dealing with -- I don't know, but that was
9 secondary after we're dealing with a much more
10 serious situation.

11 MR. SHORT: So the gentleman who was
12 intoxicated, apparently, and got his leg broke,
13 he was a bigger threat than three people smoking
14 marijuana, which could get your license --
15 endanger your license, so I'm trying to balance
16 this out.

17 You had three people that are smoking
18 illegally in your club, you have a gentleman that
19 brushes against B.J., so the gentleman who
20 brushes against B.J. becomes a bigger threat than
21 the three people smoking whatever they were
22 smoking.

1 THE WITNESS: Like he said, he didn't
2 know who they were with, if they were together,
3 or something like that, but someone who's
4 physically against you is definitely more of a
5 threat than someone who has marijuana, or
6 whatever, wouldn't you think?

7 MR. SHORT: Okay. I'm going to ask
8 you this, those three that were smoking whatever
9 they were smoking, were they regular customers?

10 THE WITNESS: No.

11 MR. SHORT: You never seen them before.

12 THE WITNESS: No.

13 MR. SHORT: Okay. That's all I have,
14 Mr. Chair. Thank you.

15 CHAIRPERSON ANDERSON: Mr. Alberti.

16 MR. ALBERTI: I'm sorry, your name
17 again?

18 THE WITNESS: Ali.

19 MR. ALBERTI: Ali. Mr. Ali, I'm
20 sorry. Mr. Ali, how busy was it? How many
21 people were there at the time this all started;
22 this incident started?

1 THE WITNESS: I can guesstimate. It
2 wasn't jam-packed, there was still room, maybe
3 100, 125 people.

4 MR. ALBERTI: Okay. How many security
5 staff did you employ that evening?

6 THE WITNESS: Six.

7 MR. ALBERTI: Six. Okay. How many
8 floors do you have to this --

9 THE WITNESS: Just one, sir.

10 MR. ALBERTI: Just that one. How
11 large is that floor?

12 THE WITNESS: I'm not sure of the
13 square footage.

14 MR. ALBERTI: Okay.

15 THE WITNESS: But it's not a huge
16 place.

17 MR. ALBERTI: So 125 people, would it
18 have been 1/2 full, 1/4 full, 3/4 full?

19 THE WITNESS: About half, maybe a
20 little bit more.

21 MR. ALBERTI: About half full?

22 THE WITNESS: Maybe 70 percent.

1 MR. ALBERTI: Okay. So maybe 200
2 people can fit in this place?

3 THE WITNESS: Yes, sir.

4 MR. ALBERTI: But that's full.

5 THE WITNESS: Yes.

6 MR. ALBERTI: Okay. Trying to get an
7 idea. And you had six security staff. Security
8 staff are stationed where?

9 THE WITNESS: Two of them are
10 downstairs, four are upstairs.

11 MR. ALBERTI: Two of them are down at
12 the door?

13 THE WITNESS: Yes.

14 MR. ALBERTI: And four upstairs. So
15 is Mr. Rush part of the security staff?

16 THE WITNESS: Yes, sir.

17 MR. ALBERTI: Okay. So he's one of
18 the six. Okay. And Mr. Burgess was another one
19 of the six. Okay. How many other employees were
20 there that evening and what were their functions?

21 THE WITNESS: Two bartenders, two bar
22 backs, two servers.

1 MR. ALBERTI: So the gentleman we saw
2 at the top of the stairs, who was described as an
3 employee, what was his position?

4 THE WITNESS: Well, we're training
5 him, kind of, to manage and stuff like that, but
6 he's not that experienced.

7 MR. ALBERTI: What was his -- I get
8 that. I don't care. The question was, what --

9 THE WITNESS: I mean, overall --

10 MR. ALBERTI: I mean, what was his
11 position that night?

12 THE WITNESS: I mean, it could be --
13 you're managing everything, so I mean --

14 MR. ALBERTI: So he was sort of -- he
15 was learning, but to be sort of manage the
16 establishment in general.

17 THE WITNESS: Yes.

18 MR. ALBERTI: All right. Okay. I
19 have no further questions. Thank you.

20 THE WITNESS: Thank you.

21 CHAIRPERSON ANDERSON: Any other
22 questions by any Board Members? Ms. Schmidt, any

1 questions of Mr. Ali based on the questions that
2 were asked by the Board?

3 MS. SCHMIDT: No questions.

4 CHAIRPERSON ANDERSON: Mr. Ali, do you
5 need to clarify anything at this juncture? No?

6 THE WITNESS: No, I just appreciate
7 that you guys listened to our side and saw that
8 it's a lot more than the video, but there are so
9 many things that are obvious that, you know,
10 someone was walking, we're restraining him, he
11 could walk out, you know, we're trying to protect
12 him because it's automatic. He didn't say that,
13 but it's automatic that if you have two people --

14 MS. SCHMIDT: Objection. It is final
15 argument.

16 CHAIRPERSON ANDERSON: Well, Ms.
17 Schmidt, you know that he's not an attorney and
18 so, normally, someone would ask questions, so I
19 was just trying to see, give him an opportunity
20 to -- questions were asked, if he wants to
21 clarify the record from -- based on the questions
22 that were asked.

1 THE WITNESS: That's it. Thank you.

2 CHAIRPERSON ANDERSON: So if that's
3 all that you're going to say?

4 THE WITNESS: I mean --

5 CHAIRPERSON ANDERSON: Well, no, what
6 I'm saying is that, as part -- I'm still going to
7 give you an opportunity and both you can decide
8 who wants to state, so I'm going to give you
9 what's called an opportunity to do a closing
10 argument and basically make recommendations to us
11 based on the charge, what is it that you want us
12 to do, so I'm going to give you that opportunity
13 to do that.

14 But so you've presented your direct
15 testimony, is that correct?

16 THE WITNESS: Yes.

17 CHAIRPERSON ANDERSON: And you have
18 rested, is that correct? Does the Government --
19 hold on. Does the Government wish to make a
20 closing argument?

21 MS. SCHMIDT: Yes, it does.

22 CHAIRPERSON ANDERSON: What is your

1 closing argument? Go ahead, Ms. Schmidt.

2 MS. SCHMIDT: Operating an
3 establishment in the District of Columbia that
4 sells alcohol is a great responsibility for the
5 owners of the establishment and they have a duty
6 to -- they have a responsibility for the safety
7 of the public.

8 And in this case, the tape speaks for
9 itself that this was not done in this case. And
10 in fact, even today, the owners, you can see the
11 owners are not even taking this that seriously by
12 the fact they are not here today. In fact, they
13 just sent representatives instead of taking it
14 upon themselves.

15 But in any event, there is no
16 justification for what happened on that tape.
17 You have two gentlemen plus an additional staff
18 person, and one small gentleman at the top of the
19 stairs there, and what we saw there was that Mr.
20 Quiroz was given no opportunity just to walk out
21 on his own.

22 Yes, he was agitated, of course he was

1 agitated, these two gentlemen are there, he
2 didn't quite understand the language, and instead
3 of trying to take some more time to explain to
4 him, or their other obligation is to call MPD,
5 they decided just to say, okay, let's just handle
6 this ourselves.

7 And basically, you saw from the tape
8 that Mr. Quiroz was boxed in there. And so he
9 had no opportunity to leave at that time. And
10 the tape does not even show him kicking.

11 I know that the testimony that he was
12 kicking at some time on the tape, but it's
13 undisputed that that night he broke his leg.
14 That is shown by the testimony of Investigator
15 Wilkinson and the medical records that there was
16 emergency surgery that evening at Howard
17 University Hospital.

18 And the testimony was that when MPD
19 was called, they did take him to the hospital.
20 And even Mr. Rush admitted that once Mr. Quiroz
21 was out of the door, he was not a threat because
22 he was contained. And also, he was explaining

1 that Mr. Quiroz never calmed down.

2 Well, if I had two large gentlemen
3 speaking at me, I will not calm -- I know from
4 myself, I would not be calm. I would be scared
5 to death and I would get more agitated. You
6 know, certain people react in different ways.

7 When you have two people yelling and
8 screaming at you, who are bigger than you, you're
9 scared of them, sometimes it's in human nature to
10 flail around, which you saw in that tape, but the
11 solution was not to jerk him down the stairs the
12 way you saw in that tape.

13 And when he left -- plus, when he left
14 the establishment, you saw there was -- instead
15 of just directing him directly out, there was
16 additional assault on this gentlemen. Therefore,
17 the Government has shown that it's proved its
18 case that the owners of this establishment
19 allowed the establishment to be used for
20 disorderly purpose, and thus, the Government is
21 asking that they be fined at least \$2000 and any
22 other sanctions that the Board wishes to put on

1 the establishment.

2 CHAIRPERSON ANDERSON: Now, who's
3 going to wrap the case up, Mr. Ali or Mr. Rush,
4 to tell us what it is that you want us to do?
5 So, Mr. Ali, you're going to wrap the case up and
6 tell us what it is that you want the Board to do?

7 MR. ALI: I mean, it's unfortunate the
8 guy was hurt. You know, the first thing I do if
9 anyone is hurt, you know, it doesn't matter about
10 business or whatever, take care of people. Like
11 I said, I cannot emphasize enough of that and the
12 character of anyone I hire.

13 Twenty-five years' experience, I know
14 what I'm doing. The reason the owners aren't
15 here, they live far, plus, I know better than
16 them. I'm more experienced than them and I do
17 everything, hiring and stuff like that, they used
18 to work for me.

19 Plus, I have the right people around
20 me because I hire older people, more experienced
21 people. You know, it's certain things that you
22 can't teach certain things, you know, that you

1 learn over time, character. All the training and
2 stuff like that, but if he was leaving, we would
3 have left him.

4 But, you know, like, there's things
5 that you can't understand because you are not in
6 that scenario, and if I was two big guys, I would
7 have been like, I would have backed off. That
8 would have been the natural thing, not to fight
9 them, so he was illogical and irrational, and
10 they're holding his hands, you know?

11 They didn't want him to fall. I mean,
12 you know, that -- he did it without knowing, so
13 when you're asking him, he didn't know who to
14 answer that properly, because it's instinct.
15 Certain things become instinct when you do over a
16 long period of time.

17 You assess the threat. Until you have
18 been, you know, have some understanding, you
19 know, when you're dealing with that, you don't
20 know what the person, no matter how small, you
21 don't know how small, you don't know what they
22 have.

1 It's easy to find out at the problem,
2 the solution, now how do I get him out? How do I
3 get him down the stairs? His girl's talking.
4 He's not listening to her. The girl would have
5 came in the middle, hey, you know, that's not who
6 we are, you know?

7 It's not about the money. The fine.
8 You know, we're not really worried about that.
9 It's our character, because we firmly believe we
10 go out of our way. I brought reviews, you know,
11 that you can read. We do all those things
12 because we love it, and we care for people.

13 You know, money, who cares about the
14 \$1500? We'll make that, but it's because we go
15 out of our way to do the right thing, whether
16 safety, in all aspects, that's what's very
17 disappointing, and that's why we're here.

18 So whatever you feel necessary, I'm
19 okay with it, but know that we're not at fault
20 and I would have called an ambulance if I thought
21 he was hurt, and if there was a better solution,
22 just in that moment, a lot of things happened,

1 but look at the things that happened.

2 You know, look at the tape, what they
3 say, look at what makes sense, because we deal
4 with people. When you deal with people, you have
5 much better understanding of people. You listen.
6 You see. You assess. Thank you.

7 CHAIRPERSON ANDERSON: All right.
8 Thank you. The record is now closed. Do the
9 parties wish to file proposed findings of fact
10 and conclusions of law or waive their right to do
11 so?

12 MS. SCHMIDT: Government waives its
13 right.

14 CHAIRPERSON ANDERSON: Meaning that,
15 you're asking the Board to make a decision based
16 on what was presented today. You're not going to
17 wait for the transcript so you can review it and
18 make legal arguments.

19 MR. ALI: No, sir, I see you guys are
20 very reasonable and you've listened, and you
21 listened to both sides, I feel like, you know,
22 you're going to make the right decision and I

1 appreciate the challenge, that you really went
2 in-depth and listened to everything, and I'm okay
3 with whatever decision.

4 CHAIRPERSON ANDERSON: Okay. Thank
5 you. The Board will issue a decision within 90
6 days. All right. As Chairperson of the Alcohol
7 and Beverage Control Board for the District of
8 Columbia, in accordance with Section 405 of the
9 Open Meetings Amendment Act of 2010, I move that
10 ABC Board hold a closed meeting for the purpose
11 of seeking legal advice from our counsel on Case
12 Number 17-251-00134 Kabin, per section 405(b)(4)
13 of the Open Meetings Amendment Act of 2010, and
14 deliberating upon Case Number 17-251-00134 Kabin,
15 for the reasons cited in Section 405(b)(13) of
16 the Open Meetings Amendment Act of 2010.

17 Is there a second?

18 MR. SHORT: Second.

19 CHAIRPERSON ANDERSON: Mr. Short has
20 seconded the motion. I will now take a roll call
21 vote on the motion before us now that has been
22 second. Mr. Cato?

1 MR. CATO: Agree.

2 CHAIRPERSON ANDERSON: Mr. Alberti?

3 MR. ALBERTI: I agree.

4 CHAIRPERSON ANDERSON: Mr. Short.

5 MR. SHORT: I agree.

6 MR. SHORT: Mr. Silverstein.

7 MR. SILVERSTEIN: I agree.

8 CHAIRPERSON ANDERSON: Ms. Wahabzadah.

9 MS. WAHABZADAH: Agree.

10 CHAIRPERSON ANDERSON: Mr. Anderson.

11 I agree. As it appears that the motion has
12 passed, I hereby give notice that the ABC Board
13 will hold a closed meeting in the ABC Board
14 conference room pursuant to the Open Meetings
15 Amendment Act of 2010, and issue an order within
16 90 days.

17 I want to thank the parties for their
18 presentation today and we will issue an order
19 accordingly. Thank you. We are now in recess.
20 Thank you.

21 (Whereupon, the hearing in the above-
22 entitled matter was concluded at 12:32 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Kabin Group, LLC
t/a Kabin

Before: Alcoholic Beverage Control Board

Date: 02-07-18

Place: Washington, DC

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