1 BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD

2 OF THE STATE OF CALIFORNIA

3

4 IN THE MATTER OF THE ACCUSATION AGAINST)
)File No 47-43051
5 DUONG, CHIEN T. & NGUYEN, CHUNG)
DBA: THE ABYSS)Reg No 08068524
6 PREMISES 146 S. MURPHY AVENUE)
SUNNYVALE, CA 94086)
7 LICENSE: ON-SALE GENERAL EATING PLACE)
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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 HEARING ON ACCUSATION

17 TUESDAY, FEBRUARY 24, 2009

18 SAN JOSE, CALIFORNIA

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24 Reported by: MARK I. BRICKMAN, CSR, RPR
License No. 5527

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A-P-P-E-A-R-A-N-C-E-S

For the ABC: DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL - STATE OF CALIFORNIA
3780 Rosin Court, Suite 260
Sacramento, California 95834
By: GERRY J. AGERBEK, ESQ.

For the Respondent: LAW OFFICES OF RICHARD D. WARREN
929 Fresno Avenue
Berkeley, California 94707
By: RICHARD D. WARREN, ESQ.

The Judge: JOHN LEWIS
Administrative Law Judge

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BE IT REMEMBERED that, pursuant to Notice of The Hearing, and on February 24, 2009, at the hour of 9:46 AM, at San Francisco, California, before me, MARK I. BRICKMAN, CSR No. 5527, State of California, there commenced a hearing under the provisions of the State of California Alcoholic Beverage Control Act.

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JUDGE LEWIS: On the record. This is the hearing in the matter of the accusation against Chien T. Duong and Chung Nguyen doing business as The Abyss located at 146 South Murphy Avenue in Sunnyvale, California. The file number is 47-430051. The registration number is 08068524.

My name is John Lewis and I have been assigned to hear this matter.

May I have the appearances of the parties, please?

MR. WARREN: Good morning. My name is Gerry Agerbek, Senior Staff Counsel, appearing on behalf of the ABC.

MR. WARREN: Good morning, Your Honor. My name is Rick Warren appearing on behalf of the licensees.

JUDGE LEWIS: Prior to going on the record, I was given a binder of documents, and among the documents -- they are Bate stamped, by the way, and I take it, Mr. Warren, you have the exact same set of documents.

MR. WARREN: Yes, Your Honor. I'm working on the same assumption.

JUDGE LEWIS: All right. Specifically the documents beginning dated with Bate stamp number 2 and ending with Bate stamp number 35 are the jurisdictional

documents in this particular case. They involve the Notice of Continued Hearing, the Second Amended Accusation, the First Amended Accusation, I believe our original accusation, the Department's Request for Discovery, Notice of Defense and proofs of service accompanying each.

Unless there's an objection, I'm going to receive those documents beginning with number 2 and ending at 35. I'm going to receive them for jurisdictional purposes.

Any objection?

MR. WARREN: No objection, Your Honor.

JUDGE LEWIS: Any objection, Mr. Agerbek?

MR. AGERBEK: No, Your Honor.

JUDGE LEWIS: Okay. Exhibit 1 is received.

Now, as far as the rest of the documents here, I have not really looked at them. You gentlemen I'm sure will guide me through this process as to how you wish to present the case, and I'm just along for the ride here.

MR. WARREN: Okay.

JUDGE LEWIS: Now, before we go a whole lot further here, is there any preliminary matters that we just address? Mr. Agerbek?

MR. AGERBEK: Yes, Your Honor. The department will be dismissing count three -- this is on

the second amended accusation -- just so we're all clear.

JUDGE LEWIS: Right. That's the one I'm dealing with.

MR. AGERBEK: Count three and count six.

JUDGE LEWIS: Count three, count six.

MR. AGERBEK: Those are dismissed.

MR. WARREN: And Your Honor, the licensees will be stipulating to the allegations in count one and count four. These are failing to maintain a bona fide eating place -- comply with bona fide eating place allegations.

JUDGE LEWIS: Okay. Well, hold on a second.

First of all, I take it you have no objection to the dismissal of count three and six.

MR. WARREN: No, Your Honor.

JUDGE LEWIS: And as to count one and count four, the parties are stipulating that the facts alleged in count one and count four are true and correct?

MR. WARREN: Yes, Your Honor.

MR. AGERBEK: Yes, Your Honor.

JUDGE LEWIS: Okay. We're almost done.

Anything else, Mr. Warren?

MR. WARREN: Just by way of preliminary -- for purposes of planning, I think both Mr. Agerbek and I are confident that we will conclude the hearing -- this

is scheduled for three days. I believe we're confident we will conclude the hearing tomorrow, and so the third day, Thursday will not be necessary.

I think we have such confidence that if you were planning to return home, that you could make your plans accordingly.

JUDGE LEWIS: I hate like heck to check out of the hotel tomorrow morning and not have any place to stay tomorrow night.

MR. WARREN: I think we're comfortable. We'll know certainly more at the end of the day.

MR. AGERBEK: Yes.

MR. WARREN: But we're comfortable, given the witnesses today and their availability, that we will be here tomorrow, but not Thursday.

JUDGE LEWIS: That sounds good.

MR. AGERBEK: We can get a final by tomorrow, because I'm in the same situation with the hotel. But I already checked with the hotel.

JUDGE LEWIS: All right. Anything else?

MR. AGERBEK: Just -- not a necessary preliminary matter, but the next thing I would be doing would be offering the prior discipline, which is contained within the binder --

JUDGE LEWIS: Okay.

MR. AGERBEK: -- at pages 37 and 47, Bate stamp 37 to 45 at Exhibit 2.

JUDGE LEWIS: Just one prior disciplinary matter?

MR. AGERBEK: Yes, Your Honor.

MR. WARREN: Yes.

JUDGE LEWIS: All right. Okay. I'm marking as Exhibit Number 2 a certified copy of a prior disciplinary matter.

MR. WARREN: We have no objection to that coming into evidence, Your Honor.

JUDGE LEWIS: All right. Let me identify it. It bears the same file number, 47-430051, the registration number 0606482. It's a certified copy. It includes the writ of denial, stipulation and waiver and accusation, and it is Bate stamped beginning at 37 and ending at 45.

And you have no objection, Mr. Warren?

MR. WARREN: Right.

JUDGE LEWIS: All right. Exhibit 2 is received.

Mr. Agerbek.

MR. AGERBEK: At this point, I am prepared to waive opening statement.

JUDGE LEWIS: Okay. Do you wish to give an

opening statement, Mr. Warren?

MR. WARREN: No, Your Honor.

JUDGE LEWIS: Okay.

MR. AGERBEK: I would call Jeff Anadon.

JUDGE LEWIS: Please step forward.

JEFFERY ANADON

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated.

State and spell your name, please.

THE WITNESS: Jeff Anadon. J-e-f-f-e-r-y. A-n-a-d-o-n.

JUDGE LEWIS: Mr. Agerbek.

MR. AGERBEK: Thank you.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Mr. Anadon, with whom are you employed?

A. The Department of Alcoholic Beverage Control.

Q. And what is your position?

A. Investigator.

Q. And how long have you been so employed?

A. Approximately four years.

Q. And just generally and briefly what are your duties?

A. To investigate violation of Alcoholic Beverage

Control Act and criminal activity occurring in and around premises licensed by us.

Q. Are you familiar with a business by the name as The Abyss that's located in Sunnyvale, California?

A. Yes, I am.

Q. And how are you familiar with that business?

A. I was assigned an investigative assignment to investigate some possible violations occurring at the premises.

Q. Does that business hold a license with the department?

A. Yes, it does.

Q. And at this time, there's a binder in front of you. If we can turn to pages -- what are Bate stamped in the lower right-hand corner as pages 55 and 56.

MR. WARREN: What are we doing, Your Honor? Are we just -- is this to refresh the witness' recollection?

MR. AGERBEK: No. I'm going to be offering this document into evidence. This is the Petition for Conditional License.

MR. WARREN: Okay.

JUDGE LEWIS: Is that okay, Mr. Warren?

MR. WARREN: Yes.

JUDGE LEWIS: Fair enough.

MR. AGERBEK: I'm going to ask -- this is going to be marked Exhibit 3 even though your copy isn't marked as such.

Q. But pages 55 and 56, what is this document?

A. A Petition for Conditional License.

Q. And are you familiar -- is this a form or a document that the department uses on a regular basis?

A. Yes, it is.

Q. And are you familiar with this type of form?

A. Yes, I am.

Q. And this particular form, what is this related to?

A. The Abyss.

Q. And what is briefly a Petition for Conditional License?

A. A Petition for Conditional License is basically an agreement, a promise that the licensee will keep each conditions, to not cause problems for the community or for the police department in the area.

Q. And looking at this document, page 56, is this dated and signed?

A. Yes, it is.

Q. And to your knowledge, is this signed by licensee or licensee's representative?

A. Yes.

MR. AGERBEK: I would offer for admission into evidence as Exhibit 3 the Petition for Conditional License.

MR. WARREN: No objection, Your Honor.

JUDGE LEWIS: Exhibit 3 is received.

MR. AGERBEK: Directing your attention on the Petition for Conditional License on page 55, condition 5, if you could just review that and just basically tell us what the gist of the condition is.

THE WITNESS: (Complying.) Condition 5 basically states that between the hours of 8:00 PM and 2:30 AM, that licensee shall keep security guards not only inside the premises, but in the outer areas around the premises and the parking lots and to maintain the security of the patrons and the quiet enjoyment of the area by residents.

MR. AGERBEK: Q. Directing your attention to January 17th of 2008, did you have occasion to go by the premises?

A. Yes.

Q. Do you recall what time you first went by there?

A. Approximately 2030 hours.

Q. And what, if anything, did you observe when you went by there?

A. We parked in the rear of the parking lot, which is the majority of the parking for that area, and I observed that there was no security in the parking lot to the rear of the premises.

Q. And earlier you said "we."

Who went with you?

A. Investigator Martinez was with me.

Q. And were you there on official business at that time?

A. Yes.

Q. And after you observed no visible security guards, what did you do next?

A. We -- myself and Investigator Martinez went inside the premises, conducted an inspection of the premises.

Q. And did you -- and how were you attired that evening? Were you under cover or were you --

A. In plain clothes.

Q. In plain clothes.

A. Yes.

Q. And did you have occasion to meet with any representatives of the business?

A. Yes. We met -- we identified ourselves to security and met with a person who identified himself as the manager.

Q. Okay. Now, when you said you identified yourself to security, where was the security located?

A. You -- this premises -- although it has an entrance in the rear, we walked around to the front on the main street entrance and identified ourselves to security.

Q. And how many security guards were there out front?

A. I'm not sure. Maybe four or five.

Q. And where were they -- were they at the entrance? Were they standing outside? Were they patrolling? What were they doing?

A. To the entrance of the premises. They were at the entrance of the premises, you know, letting people in and stuff like that.

Q. Was there a line of people, patrons waiting to get in?

A. There was one starting to form, yes.

Q. Okay.

JUDGE LEWIS: Before you go too much further, that was January what date?

THE WITNESS: 17th.

JUDGE LEWIS: Of '08?

THE WITNESS: Yes.

JUDGE LEWIS: Thank you.

MR. AGERBEK: And I apologize, Your Honor. I'm dealing with count 2.

Q. And once you identified yourself to the security guards, did they let you into the premises?

A. No. I believe they called the head person out to me.

Q. Do you recall that person's name?

A. Mr. Nguyen.

Q. Okay. Do you recall his first name or nickname?

A. No. I can look at this.

Q. Did you prepare a report in conjunction with the visit this evening?

A. Yes, I did.

Q. And did you prepare that report at or about the time you entered the premises?

A. Yes.

Q. In reviewing that report, would it help you refresh your recollection as to the name of this head -- this person in charge that you met with?

A. Yes, it would.

Q. Please refer to your report.

A. (Complying).

Q. I would ask you not to read from your report, but once you've read through it and refreshed your

recollection, you can set it aside.

MR. WARREN: What Bates number is this report?

MR. AGERBEK: Actually, I have you -- instead of referring to the one that you have in your hand, you can set that aside. Let's look in the binder. Let's look at the binder starting on Bate stamp 47.

THE WITNESS: (Complying).

MR. AGERBEK: Q. Is this a report you prepared?

A. Yes, it is.

Q. Or a copy of it.

A. I met with Michael Nguyen.

Q. Okay. Did Mr. Nguyen identify his position with the licensee?

A. Yes. He was like a manager.

Q. And when you met with Mr. Nguyen, did you discuss the security guard situation with him?

A. Yes.

Q. And what did you tell him?

A. I asked Mr. Nguyen about the security outside, and he advised me that the security guards actually go outside when the place clears out, they clear out the parking lot, and before 2:30, approximately, they come back inside.

Q. Did Mr. Nguyen indicate whether there was a uniformed security presence or -- I'm saying readily identifiable security guard presence maintained at the premises when the premises was open for business, you know, in that parking lot area? Maybe I didn't make my question clear.

A. He said he had security guards and that before those hours, 2:30 hour, they push everybody out and then they bring everybody back in.

Q. Okay. Between the hours of 8:00 PM and let's say till about 2:00 AM when it sounds like the premises closes, did Mr. Nguyen indicate where the security guards are stationed?

A. No.

Q. Was there discussion as to whether or not the security guards were patrolling the parking lot area?

A. He did mention to me that when they pushed everybody out, they walked through the parking lot and they come inside.

Q. And when you say "they push everybody out," you're talking about the patrons at the time of closing?

A. Yes.

Q. Did Mr. Nguyen leave you with the impression that the security guards remained in the premises until such time as the patrons were pushed out, to use your

terminology?

A. Yes.

Q. And was that consistent with your observations of what you'd seen in the parking lot and outside?

A. Yes.

Q. If you could go back to Exhibit 3, which is the Petition for Conditional License found on Bate stamp 55.

A. (Complying).

Q. What is the date of signature of this Petition for Conditional License?

A. December 5th, 2006.

Q. And looking at condition 1 that's found on page 55, what is that condition?

A. That there should be no live entertainment of any type, including but not limited to live music, disk jockey, karaoke, topless entertainment and male or female performers or fashion shows.

Q. If I could direct your attention in the binder to what I'm going to be asked to be marked -- let me back up.

I guess at least for identification purposes, Your Honor, let's -- if we could mark the ABC report that Mr. Anadon prepared as Exhibit 4 just so we can -- that was pages 47 through 53.

JUDGE LEWIS: Okay. That's basically the ABC-333 --

MR. AGERBEK: Correct.

JUDGE LEWIS: -- Bate stamp 47 through 55.

MR. AGERBEK: Correct.

JUDGE LEWIS: I'm sorry. 53.

MR. AGERBEK: 53.

JUDGE LEWIS: And collectively that is marked as Exhibit 4.

MR. AGERBEK: If we could then mark Bate stamp pages 63 and 64 -- they're colored photographs -- collectively as Exhibit 5.

JUDGE LEWIS: All right.

MR. AGERBEK: Q. Investigator Anadon, directing your attention to what's been marked as Exhibit 5, which is pages 63 and 64, what are these two pages?

A. These are online advertisements for upcoming events at the nightclub.

Q. And when you say the "nightclub," you mean The Abyss?

A. Yes.

Q. And did you go online and find these two documents?

A. Yes, I did.

Q. And if we could specifically look at page --

what's been marked at Bate stamp page 64.

Does this document -- when is this document for? What date is this advertising?

A. It's advertising for the 2008 New Year's Eve Bash.

Q. Okay. And does this document indicate what type of entertainment is going to be at the premises?

A. Disk jockies of various types.

Q. At this time I'm going to ask that the ABC-333 that's been marked Exhibit 4 be admitted into evidence.

MR. WARREN: This entire exhibit?

MR. AGERBEK: Yes. As administrative hearsay.

MR. WARREN: Well, if it's coming in solely as administrative hearsay, we don't have any objection, but we do object that much of this contents is hearsay.

JUDGE LEWIS: Okay. It will be received as such, then.

Is that your suggestion, Mr. Agerbek?

MR. AGERBEK: Yes.

JUDGE LEWIS: Okay. It will be received as administrative hearsay as Exhibit 4.

MR. AGERBEK: I have no further questions for Mr. Anadon.

JUDGE LEWIS: What about these two

advertisements, Bate stamp page 63, 64 collectively, Exhibit 5?

MR. AGERBEK: I'm not prepared to offer them into evidence at this point.

JUDGE LEWIS: All right, but they are marked. Okay. Mr. Warren. Your turn.

MR. WARREN: Thank you.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Investigator Aragon -- is that how you pronounce your name?

A. Anadon, sir.

Q. Going -- with respect to your visit to the premises on January 17, you said you were in the rear parking lot. And the premises has its main entrance on Murphy Street; correct?

A. Yes.

Q. In the City of Sunnyvale.

A. Yes.

Q. And then behind the premises -- and the premises along Murphy Street is just one of multiple commercial storefronts; correct?

A. Yes.

Q. And behind the premises and these other commercial storefronts is a public parking lot; is that correct?

A. That's correct.

Q. So you read the condition with respect to the security guards to -- which describes the adjacent parking lot as pertaining to that parking lot at the rear of the premises; correct?

A. Yes.

Q. And that condition says that security guards are to be present in the parking lot from 8:00 PM 2:30 AM; correct?

A. Correct.

Q. You made your visit on January 17 at you said 2030 hours, which in my calculation is 8:30 PM; correct?

A. Correct.

Q. And you did not observe any apparent uniformed security in the parking lot at that time?

A. That's correct.

Q. So you then went around the premises to the main entrance; right?

A. Correct.

Q. And identified yourself to security there and asked to be admitted, and they got a manager and then you were admitted with the manager; right?

A. That's correct.

Q. Now, when you were admitted -- and you said that a line was beginning to form. Is that right?

A. Yes.

Q. A line of patrons.

When you were admitted to the premises, did you go into the main part of the premises, like the main dance floor area?

A. No. I went in there, but only briefly.

Q. Okay.

A. Because I asked them to take me to where the food's prepared, the restaurant area.

Q. Okay.

A. And he took me down to that area.

Q. So what you were -- so your purpose of going in the club was to conduct a 23038 bona fide eating place investigation; is that right?

A. Not only --

Q. To confirm that food was available to be prepared?

A. For food and conditions, to make sure they're adhering to all aspects of their license.

Q. Okay. Did you observe whether there were any patrons in the premises when you went in?

A. I do remember that there were patrons in the premises and that there -- but like I said, I went to the edge of where the dance floor technically is.

Q. Okay.

A. And back along this hallway and down these stairs to where the food -- the kitchen was.

Q. And did you -- was music playing and were patrons dancing? Did you see any patrons dancing?

A. I don't recall.

Q. When you said that you observed that there were patrons present, was there something about the people you observed that made you think they were patrons as opposed to staff?

A. Yeah. Their dress and manner. Their dress was -- people going out for the night.

Q. Out to party, out to dance?

A. Yes. And then the staff appeared to be controlling how many people were let in, who was let in.

Q. So the security in the front of the premises was -- when you went to go in, was, in fact, already admitting people, checking IDs, doing the things they normally do?

A. Yes.

Q. And I was unclear as to what you were told by the manager with respect to whether security were present in the parking lot during the evening.

Did he say anything to you about whether they would be present in the parking lot at 11:00 PM or midnight or when they were open and operating?

A. He didn't say anything like that to me. I was just asking him "What's your security policy? " --

Q. Okay.

A. -- and letting him explain to me.

He said basically security guards don't have stations. They rove throughout or are called to different areas where there might be problems, and then at a certain time, they close everything down, get the patrons outside and clear out everything and then the security guards would come back inside.

Q. So you asked him sort of an open-ended question about "describe your security policy"?

A. Right.

Q. Okay. And did you ask him any specific question about whether security guards are assigned to the rear parking lot between the hours of 8:00 and 2:30?

A. I asked him a question -- I don't remember exactly how I stated it -- regarding the stations. Are security guards stationed to certain places during the evening.

That's when I recall that he said they had a more roving policy. There were a couple guys in the front.

Q. Okay. But I'm getting the sense that he may have been describing for you just the security guard

working within the building roving as opposed to whether or not there were security guards roving in the parking lot.

You didn't ask him specifically about the parking lot; correct?

A. No, I didn't.

Q. Okay. But he did indicate -- he did indicate when he described -- when the premises closed in the evening, he mentioned his security guards push everyone out; correct?

A. Correct.

Q. And did he say, then, that they also follow them out and observe them leaving the parking lot?

A. He didn't tell me how long they stayed out there for or if they made sure that everyone was safe and in their cars and away.

He didn't go into that much detail with me. He said, "Make sure everybody was out, and when we were out in the parking lot, everyone came back in."

Q. So was -- the sense that you had, when the parking lot was cleared out with patrons, that the security guards would come back in, even if it was before 2:30 AM?

A. That's correct.

Q. And did he tell you whether -- if patrons of

The Abyss in fact used that parking lot that's to the rear or whether they use other parking lots such as the Macy's parking lot at the end of Murphy Street or other parking lots? Did he indicate to you where the patrons parked, generally?

A. He didn't indicate to me, but from my own observations as seeing where people were going, it was indicative to me that they used that parking lot.

Q. All right. So let me hear about that.

You observed people going to the parking lot or coming from the parking lot to The Abyss?

A. Going to The Abyss as we were making our own way up. There's actually between some of those storefronts a little hallway that connects the parking lot to Murphy Street.

Q. Right.

A. And --

Q. When you say a hallway, it's not part of the licensed premises; right?

A. That's correct.

Q. It's a public passage to Murphy Street from this public parking lot in the back?

A. Yes. And the parking lot when I was there, the rear of The Abyss wasn't open and the people would come from this parking lot through this hallway to the

front of the premises.

Q. Okay. So you observed patrons coming from the parking lot through this public passageway. I sort of think of it more like a sidewalk that's just running between the buildings, but it's covered.

And then coming out to Murphy Street and then turning and going to The Abyss?

A. Yes.

Q. And you saw them come from the parking lot.

Did you see them come from vehicles that they -- that were parked in the parking lot?

A. Yes.

MR. WARREN: All right. No further questions, Your Honor.

JUDGE LEWIS: Okay.

MR. AGERBEK: Just a couple for clarification.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Basically the questions that Mr. Warren was asking you about, the parking lot, since he also mentioned a Macy's parking lot and other public parking nearby, we're talking about the parking lot that you saw people walking through this passageway, was that the rear parking lot that's adjacent to the premises?

A. Yes, it is.

Q. Okay. And when you -- approximately what time did you leave the premises?

A. We were there for approximately an hour and a half to two hours, I would say. Maybe 9:30 or 10:00, around.

Q. And if I recall correctly, you said you had parked in that rear parking lot adjacent to the building?

A. Yes, we did.

Q. And when you left the premises to leave, did you see any security guards in the parking lot when you were leaving?

A. I didn't see any.

MR. AGERBEK: No further questions.

JUDGE LEWIS: Would they be readily noticeable if they were, in fact, present?

THE WITNESS: They're supposed to wear their -- something readily identifiable as being a security guard.

JUDGE LEWIS: Mr. Anadon, you know, I'm looking at this accusation here and -- how many times were you at this place? How many times did you physically go there during the course of this investigation?

THE WITNESS: Probably maybe four to five at

different times.

JUDGE LEWIS: Four or five times?

THE WITNESS: Yes, Your Honor.

JUDGE LEWIS: Was this the only time that you had not seen a security guard in the rear parking lot?

THE WITNESS: No. There were other times, Your Honor.

JUDGE LEWIS: But on each of those visits -- well, going back to January 17th, you did not see one physically present in the rear parking lot, but you did see four or five uniformed security guards in the front of the business?

THE WITNESS: That's correct.

JUDGE LEWIS: And were there additional security guards inside the premises?

THE WITNESS: Not that I saw at that time.

JUDGE LEWIS: Okay. And when you left, you said you didn't notice any security guard in the rear parking lot.

THE WITNESS: I didn't.

JUDGE LEWIS: Now, what other dates were you there that you saw no security guard in the rear parking lot? Do you remember?

THE WITNESS: No, I don't, Your Honor.

JUDGE LEWIS: Okay.

MR. WARREN: I have some further --

JUDGE LEWIS: Anything based on my questions?

MR. AGERBEK: Just for clarification, I feel compelled in all fairness in my role for the department.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Were -- some of those other visits, were they at a time that this condition would not be required that they were to have security guards? In other words, did you go on lunch and breakfast?

A. Yes, I did.

Q. Were some of the visits also during the evening hours when they would be required to have the licensed security?

A. I recall one instance where we were passing by on our way to somewhere else and there was nothing in the back parking lot. I couldn't see anybody. I made a mental note of it.

Q. Okay. And did you also on that other visit when you drove by note whether there were patron vehicles in the -- or what appeared to be vehicles belonging to patrons in that back parking lot? In other words, were they open for business?

A. I don't recall.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Okay. Along Murphy Street where The Abyss has its main entrance, there are other licensed premises; correct?

A. Yes, there are.

Q. And principally I mean entertainment clubs that are open late. Not just licensed premises, but more entertainment premises.

A. Some, yes.

Q. Five, six, seven other bars besides Abyss.

A. I wouldn't know exact number. I do know that there are other bars and stuff in the area.

Q. The parking lot that you were in, were you able to identify that it's a public parking lot, just generally open for anyone who wants to park there?

A. Yes, it is.

Q. There's no valet or anything that identified this parking lot as being solely for Abyss patrons?

A. Correct.

Q. Cars could be parked there. Patrons could be coming to any of the other clubs or restaurants on Murphy Street?

A. Correct.

Q. Or any other business not even on Murphy Street because there are businesses on other adjacent streets; correct?

A. Yes.

Q. And the parking lot runs pretty much the entire block behind this row of commercial buildings; correct?

A. I don't know how long -- I know it's a pretty good-sized parking lot.

Q. The parking lot's much bigger than just the rear of The Abyss premises; correct?

A. Correct.

Q. It extends hundreds of feet on each side of the rear of The Abyss premises?

A. Right.

Q. And the Abyss premises is readily identifiable from the rear because it's pretty much the largest building in terms of the back end, pretty much the largest building along Murphy Street; right?

A. Correct.

Q. Okay. And from your observation, does The Abyss appear to have at one time been a movie theater?

A. Yes.

MR. WARREN: No further questions, Your Honor.

JUDGE LEWIS: Okay. Thank you very much, sir. You're excused.

MR. AGERBEK: At this time I would call

Investigator Martinez.

ALLISON MARTINEZ

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Be seated, please, and state and spell your name.

THE WITNESS: Allison Martinez, A-l-l-i-s-o-n M-a-r-t-i-n-e-z.

JUDGE LEWIS: Mr. Agerbek.

MR. AGERBEK: Thank you. We're going to be moving on to count 5.

JUDGE LEWIS: Okay.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Ms. Martinez, with whom are you employed?

A. Department of Alcoholic Beverage Control.

Q. What is your position?

A. I'm an investigator for the department.

Q. And how long have you been so employed?

A. Three years.

Q. And just briefly, generally what are your duties as an investigator with the Department of Alcoholic Beverage Control?

A. With -- as an investigator, we look into, you know, violations of the ABC Act. If there are any

complaints alleging certain premises are not complying with their licenses, we investigate those allegations.

We also go out and do minor decoy operations, shoulder tap operations, just making sure that people are complying with the Business and Professions Code.

Q. Are you familiar with a business by the name of The Abyss located in Sunnyvale, California?

A. Yes.

Q. And how are you familiar with that business?

A. Last year, probably in 2007 or 2008, they had a complaint against that location and me and my other partners, we did an investigation there.

Q. And as part of that investigation, did you have occasion to go by The Abyss on or about February 28th, 2008?

A. Yes.

Q. And what was the purpose of the visit on that day?

A. Basically just to verify whether they were serving food or not, because basically the complaint was that they were not serving food.

Q. And do you recall approximately what time you arrived at the business?

A. Approximately 2200 hours or 10:00 AM.

Q. And do you recall who you went with that day?

A. Investigator Anadon and I believe also Investigator Martin.

Q. And what did you -- well, let me back up.

When you arrived, where did you park? If you recall.

A. You know, I believe -- I believe we parked in the front along the curbside. That's at least where they dropped me off, because I walked into the front of the premise.

Q. And were you in an undercover capacity or were you in your --

A. I was in an undercover capacity.

Q. And so it sounds like you said you got dropped off.

What did you do next?

A. I walked over. They had a line to go into the bar, and so I went and I got in line. I was -- let's see. If you're on the Main Street, I was right there.

They also had a line that also kind of curved around. There's like a walkway that goes to the back parking lot, and so there was a line starting there, as well.

Q. And --

A. And I wasn't in the line that was on that -- that curved into that hallway. I was in a different

line. They kind of had it separated.

Q. Just to simplify things, was this the line for admission --

A. Yes.

Q. -- into the premises?

A. They had two separate lines, so --

Q. And did you subsequently make your way to the front of the line?

A. I did.

Q. And were you admitted to the premises?

A. I was, yes, and I paid.

Q. And what did you see when you entered into the premises?

A. Well, when I walked in, I went to the left-hand side, because there was -- you could go two ways when you walk in. You could either go to your right, and there was a hallway to the right, and you could go to your left, and I walked to the left, and as I walked in, basically there's a bar which you enter and there's a big opening. There's a bar to your right-hand side, and there was a DJ stand and there was a DJ up there.

Q. Let me stop you there. You said there's a big opening --

A. Yes.

Q. -- adjacent to the bar.

What is that opening?

A. There's a dance floor and there's -- you know, there's some seating, like seating areas where people would sit if they weren't on the dance floor, and then if you're on the dance floor on the left-hand side, there's a DJ booth, kind of like a little small stage area.

Q. And this DJ booth, does this overlook the dance floor?

A. Yes, it does.

Q. And what did you observe with regard to this DJ booth?

A. Basically he was standing on that DJ booth. He had the ear phones on one ear like this (Indicating), and I just saw him doing something with his hand, but you could clearly hear the mixing of two different songs going into each other, so that's what he was doing.

Q. And when you say he --

A. It was a male. It was a male DJ.

Q. Let me finish my question.

A. I'm sorry.

Q. When you say "he was in a DJ booth," as you're describing, there was a person standing up in the DJ booth?

A. Yes.

Q. Were they engaged in activities -- based on

your training and experience and your knowledge of clubs, was that consistent with someone acting as a DJ?

A. Yes.

Q. In what way?

A. Like I say, he had the headphones up to one ear, and just mixing the records, you could clearly hear just one song going into another, and the hand motions.

But I couldn't visually see the two records right there. I just saw his hand motions, and from what he did -- he was doing, it appeared that he was DJing and from the sound, as well.

Q. Now, you say "records."

Did you really mean vinyl records or were you using records as generic for music?

A. Kind of generic, because I know nowadays they use CDs and different kinds of technology and stuff like that.

Q. And when you heard -- when you said you heard one song mixing into the next, what do you mean by that?

A. Well, usually when you're DJing, at least when I've been into clubs and just from my training and experience, when you're DJing, you know, if you're listening to a record, basically you're going to hear a whole song and it will end and then a new song.

This was basically in the middle of the song,

it was going into a different song, different sound. So you have to mix in the beats.

JUDGE LEWIS: So you have a smooth transition, Mr. Agerbek. I am not that old.

MR. AGERBEK: I'm not implying that.

Q. In other words, there's an overlap of two songs?

A. Yes.

Q. I just want to make sure the record's clear.

Were there people out on the dance floor dancing?

A. You know, there was people there. As far as if they were dancing or not, I do not recall.

MR. AGERBEK: I have no further questions.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Yes. Thank you, Your Honor.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Did you -- as you were describing this, I'm trying to picture this, and it appears to me that -- well, let me ask you.

Were you able to see the equipment that was in front of this person that appeared to be acting as a DJ?

A. On the stage?

Q. Yes.

A. Basically not -- not really. Basically how it

was is there was a stage and then they had -- I don't Want to say like a wall, but it was somewhat like a wall, you could see the stand, and obviously I saw the DJ guy.

He was standing up there and he had the headphones (Indicating). Basically the equipment I saw was his earphone right here, and you could see basically just the very top of, you know, whatever equipment that was for the music.

Q. Okay. And you referred to this as a stage, but the interior of the club, once you get from the reception area --

A. Mm-hmm.

Q. -- the lobby into the interior where there's a bar and a dance floor, it has a stage, a large stage across the front like a theater house or a movie house might have; correct?

A. On the left side?

Q. No. Directly ahead. Along the rear wall. On the main floor.

A. I didn't -- I did not see one.

Q. The location you're talking about is a -- like a booth or a podium that's off to the left side if you're facing the rear?

A. If you're on the dance floor, it was directly to your left against the wall, basically, yeah.

Q. It was a raised sort of like a podium?
A. Yeah, something like that.
Q. And the walls of this area were solid or opaque. You couldn't see. It wasn't glass or transparent?
A. No. It wasn't glass or transparent.
Q. And you were not able observe any electronic equipment that was there?
A. That's correct.
Q. What you saw was a person with headphones on who was listening to the music and appeared to be -- appeared to be doing something that you concluded looked like a DJ who was mixing two tracks together; correct?
A. Yes.
Q. But you don't know if, in fact, it was all pre-recorded; right?
A. I do not believe it was pre-recorded.
Q. But you don't know whether or not -- whether it was pre-recorded; correct?
A. No, but I don't believe it was from what I observed.
Q. But based on your observations, you don't know.
A. Yeah.
Q. Just like a person could lip synch; he could

have been DJ-synching?

A. I guess, yes.

Q. The purpose of this part of your investigation or the purpose for your telling us about this is because a condition on the license that prohibits live entertainment; correct?

A. That's correct.

Q. And it specifically says it prohibits a DJ?

A. That's correct.

Q. Now, if the DJ was not, in fact, mixing music, but just a person standing there with headphones on appearing to mix music but not mixing music, it's all pre-recorded, would that person violate the condition, in your opinion?

A. Can you rephrase the -- I mean, you're kind of confusing me.

Q. Okay. I don't want to confuse you.

If the person you observed --

A. Mm-hmm.

Q. -- was a person with headphones on occupying the position they were occupying and appearing to be a DJ, but not, in fact, mixing music because the music was all pre-recorded, would that in your opinion violate the condition?

A. From appearing to mixing the CDs and from what

I heard, yes, I would believe that is a violation.

Now, as far as --

Q. And why do you believe it's a violation?

A. Because you're saying they just appeared to be a DJ and they're doing things that are consistent with a DJ. You're not saying that I go over there and verify if it is recorded or not.

To me, that would be a violation because I have not verified a hundred percent, you know, showing who I am and coming out that "oh, this is just recording."

Now, as far as the appearance, you know, he appears to be mixing music together, is doing the motions of a DJ, then yes, they do have a DJ.

Q. Okay. So in your judgment, a DJ is somebody who simply mimics being a DJ whether or not they're playing music?

A. That's not what I said.

Q. Tell me what's wrong about that.

If the person is not, in fact, playing music, it's pre-recorded. Let's say that he knew he was going to do this gig that night. He knew that he couldn't be a live DJ because that would violate the condition, so he mixed his music off-site --

A. Okay.

Q. -- and brought that and was playing it and then put his earphones on and stood on that platform. Let's say that's exactly how he was operating.

Is that a violation of the condition?

A. No.

Q. Okay. Thank you.

No further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. This person in your opinion that was acting as a DJ, did he address the crowd at times?

A. You know, I was in there very quickly. When I was upstairs -- you know, I'd walked in. I had gone upstairs and we ordered a drink upstairs.

I did hear him saying something on the microphone, but as far as what it was, I don't recall. I don't remember what he was saying.

But when I was downstairs and I observed -- when I first walked in, all I observed was him when he was mixing songs. He didn't say anything then.

Q. Did the announcement, based on your recollection, or the speaking that you heard the DJ saying, did it appear to be of the nature of "will the owner of license number such and such, you know, please

check your lights"?

A. No.

Q. Was it more -- in your opinion, was it -- in recollection, was it more consistent with somebody who's acting as a DJ?

A. Yes.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. You do or don't remember what he said?

A. I do not recall exactly what he said.

Q. So you don't know if it was an announcement welcome to somebody's birthday party or -- you don't know what he said?

A. Yeah. I do not know.

Q. And you didn't write it down anywhere?

A. No, I did not.

MR. WARREN: No further questions, Your Honor.

JUDGE LEWIS: Ms. Martinez, you said that you arrived there about 10:00 PM.

THE WITNESS: Yes.

JUDGE LEWIS: How long did you stay there?

THE WITNESS: Approximately thirty minutes.

JUDGE LEWIS: Thirty minutes.

THE WITNESS: Yeah.

JUDGE LEWIS: During the course of that thirty minutes, did you maintain an observation of this individual who you decided was a DJ or at least acting in the capacity of a DJ?

THE WITNESS: No, I did not. That wasn't my primary observation. We were just looking for food service. That was my primary.

He appeared -- from my training and experience, appeared to be doing things of a DJ. I noted that in my mind. He appears to be mixing music, and then I walked upstairs.

I visited -- you know, conversed with the bartender for a few minutes just talking -- asking if they had any food or appetizers, ordered a drink, talked about whatever you talk about in a normal day.

Then I walked over, and on the top stairs, in the upstairs area, you can actually oversee the downstairs, and I looked down and I saw the DJ was still on that stand.

JUDGE LEWIS: Same individual?

THE WITNESS: Same individual, yes.

JUDGE LEWIS: All right.

THE WITNESS: So I was like okay. He's still there. Then I walked downstairs, because the bartender upstairs had told me that they didn't serve food

upstairs, but they might serve food downstairs.

So I went downstairs and talked to the downstairs bartender, and then from there, I left.

JUDGE LEWIS: Okay. When you went back downstairs prior to your leaving, did you note whether or not this DJ was still in that same location?

THE WITNESS: Yes, he was.

JUDGE LEWIS: Okay.

MR. WARREN: No further questions, Your Honor.

JUDGE LEWIS: All right.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Thank you very much. You're excused.

MR. AGERBEK: Let's see if my next witness is here.

MR. WARREN: Can we take a little break?

JUDGE LEWIS: Yeah. Five or ten minutes. That's fine.

(Recess taken).

JUDGE LEWIS: Back on the record.

Raise your right hand, please.

Having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated.

State and spell your name for the record, please.

THE WITNESS: Officer Shawn Rybak, S-h-a-w-n R-y-b-a-k.

JUDGE LEWIS: B-a-k?

THE WITNESS: Yeah. B-a-k.

JUDGE LEWIS: Mr. Agerbek.

MR. AGERBEK: Thank you.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Officer Rybak, with whom are you employed?

A. With the City of Sunnyvale, Sunnyvale Police Department.

Q. And what is your position?

A. Public safety officer.

Q. And how long have you been so employed?

A. I have been with Sunnyvale for two years.

Q. And just in general and briefly, what are your duties?

A. To patrol the streets, respond to calls, emergency calls, prevent crimes.

Q. Directing your attention to December 31st, 2007, were you on-duty that evening?

A. Yes, I was.

Q. What was your assignment that evening?

A. I was a normal beat officer assigned to the downtown area to answer calls.

Q. On the evening of December 31st, 2007, did you go to a premises by the name of The Abyss that's located in Sunnyvale, California?

A. Yes, I did.

Q. And why did you go there?

A. I was asked by Captain Fitzgerald to do a check on the club to make sure that they were in compliance with the ABC or the ABC.

Q. And approximately what time did you arrive at the business?

A. I believe it was about 10:40 at night.

Q. And did you go inside the business?

A. Yes, I did.

Q. And what did you see when you went inside the business?

A. When I entered the business, I saw a DJ set up on a main stage on the main floor, and --

Q. Go ahead.

A. And at that time I talked with Michael, who was there on the site.

Q. And who is Michael?

A. I believe he's Michael Nguyen. He's the

owner-operator. That's how -- what he told me.

Q. And why did you make contact with -- let me back up.

Were you in plain clothes?

A. I was in full uniform.

Q. And why is it you spoke with Mr. Nguyen?

A. Because working that downtown, I had -- driving by just checking on the bar -- got to know him over the years because he's always out in front and he always comes over and says hi.

Whenever we show up at The Abyss, security calls him out to the front so he can meet us and talk with us.

Q. What did you discuss with Mr. Nguyen?

A. I just advised him why I was there, that the captain asked me to check, to make sure they're following the ABC rules, and I said, "I saw a DJ." I asked him about the DJ.

Q. And what was Mr. Nguyen's response?

A. He told me that the DJ was not playing music; he was just on the stage to make it appear that they were having a DJ because people won't come to their club if they don't have a DJ.

Q. To use a term that came up earlier in today's proceeding, you're familiar with lip synching.

Would this be the equivalent of DJ-synching?

A. That's what he was trying to explain to me.

Q. And did you form an opinion as to whether this person was DJ synching or performing live?

A. I -- it appeared to me that he was performing live based on they have a little booth off to the side where they play CDs and Michael took me up there saying, "Oh, yeah. We're playing CDs pretending to spin. I can control the volume," and he brought the volume down.

But the disk player said: "No disk" or said something like "no disk" or "insert disk" and it didn't appear that there was any disk in the CD player, the little console that they played music from.

Q. And at the time that you made these observations about either "no CD" or "insert CD," was there music playing?

A. Yes. There was music playing.

Q. Was there anything else about the -- well, how many people were in there booth that you discussed?

A. It was just Michael and I.

Q. Was there a DJ type person?

A. Not in that booth. There was just a DJ on the stand or on the stage, I should say.

Q. Okay.

A. So from previous going into the building, they

usually, according to them, put the CDs in, the mixed CDs and let them play.

I've never seen them change CDs or actually watched them control the music, but that's what they say. They put them in and let them play. There's usually nobody standing up where I've seen where the machines are.

Q. I guess I'm confused. There's a main dance floor?

A. Yes.

Q. And there's the location that you went to where you saw CD players; correct.

A. Yes.

Q. That's where you saw that it said "no CD" or "insert CD"?

A. Yeah.

Q. And it was also at that location that Mr. Nguyen messed around with the volume?

A. Yes.

Q. Now, you said you saw somebody that you presume to be a DJ somewhere else.

Where was that person?

A. There -- if you walk into the club, there's the dance floor and there's a stage, and he was on the stage, and then off to the left if you look at that

stage, there's the little booth where they have the CD players and controls for the sound.

So he was right in the middle of the stage right in front of the dance floor.

Q. Did he have any equipment in front of him?

A. He had turntables, it appeared, records, speakers.

Q. And what was he physically doing that you observed?

A. It appeared that he was moving knobs around and changing volumes and it appeared that records were spinning on his -- on his booth thing.

Q. When you say "records," do you physically mean vinyl?

A. Yes. I believe it was vinyl.

Q. And did you hear how the transition between songs went between the -- as you were there?

A. I didn't pay that close attention to that.

Q. Did -- this person who was standing in front of the turntables with vinyl records, did they speak to the crowd in any way, shape or form?

A. I never heard him speak to the crowd.

Q. And are there multiple levels to this premises?

A. There is I think three levels, three different

rooms there.

Q. Are each of the levels, are they kind of enclosed like, for instance, like we're in an office building here and there's multiple floors, and I can't see down to the level below me.

Is that the structures of The Abyss or is it kind of an open --

A. It's -- there is -- you can go up some stairs and there's another closed off room and there's another room up above that one.

There's three floors, and they just have doors open. I think the middle one, I think you can look down on the dance floor. I'm not sure about the other one, though.

Q. And is the setup with these multi-levels and these multiple rooms set up so that the music being played on the lower floor is intended to be amplified or broadcast into these upper floors?

A. I don't know if it's set up that way, but on that day, there was two additional DJs, one in each of the -- each of those rooms, also.

Q. So let's go up to the second floor and tell me what it is you observed there when you say there was a DJ.

A. I observed a person standing behind -- I also

believe once again it was records, had records, turntable and speakers.

Q. And was there a separate booth here for like there had been downstairs?

A. No, not that I'm aware of.

Q. Was the music that was playing in the second story or second room, was that the same music that you were hearing downstairs?

A. I can't recall.

Q. What was this person that you've described as a DJ on the second floor, what is it that they were doing? Describe what you saw.

A. I really don't remember because that night, there was probably only about fifty people in the club and I don't remember seeing anybody in the other two floors, but I know -- the DJ was in the room, but I don't remember if there was anybody in there or what they were doing because I was walking through real quick just checking.

Q. Was there music playing in that second room?

A. I cannot remember.

Q. Now, let's go up to the third floor.

What is it that you observed on the third floor?

A. Same thing. There was a DJ with some speakers

and I believe also once again, it was records. Not for sure, and -- yes. I don't believe there was anybody in that room, either at that time.

Q. Did you as part of your investigation obtain any advertisements for this event?

A. I did off the -- off their website. I did not see any at the site identifying any, but I did go to their website and print it out there, their flyer.

Q. In front of you, there's a binder. If we can look at pages 58 through 61 and have those marked as Exhibit 6. I believe we're on 6. There's numbers on the lower right.

A. Yeah.

JUDGE LEWIS: All right. Next in order is Exhibit 6. Exhibit 6 will consist of four pages. It's Sunnyvale Police Department Incident Report, which is two pages long, and then there are two pages, a printout, I guess, of advertisements for the premises. They are Bate stamped 58 through 61 inclusive.

MR. AGERBEK: Let's just start with pages 58 and 59.

Q. Did you prepare a report around this time?

A. Yes, I did.

Q. And looking at pages 58 and 59, does this look like the report you prepared?

A. Yes, it is.

Q. Now, was this prepared at or near the time of the incident?

A. Yes.

Q. And looking at pages 60 and 61, are these the printouts of the website that you were discussing?

A. Yes.

Q. And you pulled these specific websites or pages and printed them?

A. Yes. I did.

Q. If we look at page 61 specifically, this advertisement seems to be discussing three different levels and what's going to be taking place.

Is that correct?

A. That's what it appears, but I don't know what their advertising, their marketing is.

Q. And based on what you had pulled off, this was for the evening of December 31st, 2007, advertising kind of a New Year's Eve Bash?

A. Yes.

Q. And based on the advertisement that you see on page 61, does it appear that they are advertising DJs on the various levels?

A. It does appear that.

Q. And would this information be consistent with

your observation that you had seen that evening?

A. Yes.

Q. I'm going to ask you to take a look at page 63 and 64.

A. (Complying).

Q. Have you seen these pages before?

A. No.

MR. AGERBEK: All right. I have no further questions.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Thank you.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Officer Rybak, when -- when you went with Michael to the booth on the main floor, you -- I think you said that he demanded to you that he could control the volume.

Q. He adjusted the volume up and down from that booth --

A. Yes.

Q. -- correct?

And was the volume that he was adjusting the music that was, in fact, playing?

A. Yes.

Q. And you saw -- when you saw the equipment in this booth, you saw CD players that said, you know,

"insert CD" or "no disk" or words to that effect.

A. Yes, correct.

Q. How many CD players were in this booth?

A. I don't know how many CD players. I believe there was two. I'm not sure, but I believe there was two LCD screens that I saw. I can't remember how many.

Q. Were there more -- could there have been as many as four or five CD players in that booth?

A. There could be. I did not examine them.

Q. But what you noted was that at least two of them or only two of them had a readout that said "insert disk" or "no disk," words to that effect?

A. I believe the readout was on top, if you look down. It got my attention.

MR. WARREN: Okay. No further questions, Your Honor.

JUDGE LEWIS: Officer, you arrived at about 2040 hours on New Year's Eve and you said there were how many people inside here?

THE WITNESS: I think there was only about fifty.

JUDGE LEWIS: A sparse crowd for someone trying to celebrate New Year's Eve and make money?

THE WITNESS: Yeah. Michael was not very happy that night.

JUDGE LEWIS: Okay.

THE WITNESS: And he was -- I don't know if I can -- how this works, but if you have to ask me questions or I can talk about some of the things.

JUDGE LEWIS: Let me --

THE WITNESS: Okay.

JUDGE LEWIS: -- do it this way: You arrived at 2040.

THE WITNESS: It was 10:42, so 2240.

JUDGE LEWIS: You are right. 2240.

All right. You only see about fifty people inside. You see the one guy who is basically acting in the capacity as a DJ on the stage.

THE WITNESS: Mm-hmm.

JUDGE LEWIS: That's a yes; right?

THE WITNESS: Yes.

JUDGE LEWIS: What is it exactly that you see him do that caused you to believe that he was acting in the capacity of a DJ?

THE WITNESS: He had headphones on.

JUDGE LEWIS: Okay.

THE WITNESS: And just from seeing DJs in the past, it appeared to me how he was moving knobs and records spinning that he was actually DJing.

JUDGE LEWIS: At any point -- how long were

you there that night?

THE WITNESS: Maybe ten minutes, ten, fifteen minutes. Just a quick walk-through.

JUDGE LEWIS: All right. At any point in time during that ten or fifteen minutes, did you ever walk up on stage to see exactly what it was that he was standing in front of?

THE WITNESS: No, I did not.

JUDGE LEWIS: When you were upstairs, could you look down and see what was in front of him?

THE WITNESS: I could see that there was DJ equipment in front of him.

JUDGE LEWIS: Okay. Could you see vinyl records?

THE WITNESS: I believe it was, but I can't recall for sure. It was --

JUDGE LEWIS: Were they spinning?

THE WITNESS: I can't -- it's been a while.

JUDGE LEWIS: Fair enough. Now, you said there was a DJ on the second floor?

THE WITNESS: Yes.

JUDGE LEWIS: But there was no music playing or you didn't --

THE WITNESS: I can't remember if there was or not.

JUDGE LEWIS: And you said there was another DJ on the third floor?

THE WITNESS: Yes.

JUDGE LEWIS: And you don't remember whether or not that person was playing.

THE WITNESS: That's correct.

JUDGE LEWIS: But the second and third floor, you knew that they were DJs because of what?

THE WITNESS: Because of their equipment and just from past experience of how DJs set up their equipment, speakers, and I believe I saw record players, you know.

JUDGE LEWIS: Now, you're going to have to help me out with this one. You said when you talked to Michael, Michael told you that the DJ was not playing the music, but he was acting as if he was playing the music.

THE WITNESS: Yes.

JUDGE LEWIS: DJ-synching for lack of a better term.

Okay? Fair enough?

THE WITNESS: Fair enough.

JUDGE LEWIS: I want to make sure I got what you said accurate. You said that Michael told you the reason for that was because people would not come if there was no DJ.

THE WITNESS: Yeah. He said nobody would -- if they knew there was no DJ playing music and they were just playing off CDs, nobody would come to their club, because nobody wants to come to a club where there's no DJ music.

JUDGE LEWIS: Okay.

THE WITNESS: That's what he told me. That was part of his reason why --

JUDGE LEWIS: Based on your observation, sir, your experience, I take it you've been to a club or two.

THE WITNESS: A few.

JUDGE LEWIS: I take it you've seen DJs operating.

THE WITNESS: I have.

JUDGE LEWIS: Based on your personal knowledge of making observations such as that in the past, is it your opinion that this DJ on this occasion was playing music or was not playing music?

THE WITNESS: It was my opinion that he was playing music.

JUDGE LEWIS: Okay.

THE WITNESS: Based on I don't know any DJ that would come and DJ-synch for, you know -- and put their name on a flyer trying to get more business for their DJ. That's just from my own opinion.

JUDGE LEWIS: I understand what you're saying.

All right.

MR. WARREN: Yeah, I have follow-up, but I'll let Mr. Agerbek go first if he wishes.

MR. AGERBEK: I did have a question and it escaped me. So go ahead.

MR. WARREN: I'll go ahead. Thank you.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. You just said that you thought the DJ was -- your opinion was that you thought the DJ was in fact playing the music you were hearing; correct?

A. Yes.

Q. But -- but Michael from another location, this booth off to the side was able to control the volume of the music; correct?

A. Yes.

Q. And Michael had told you that, in fact, the source of the music you were hearing was CDs in this bank of CD players; correct?

A. I don't remember if he told me where the source was coming from.

Q. But he said it was pre-recorded?

A. They always play pre-recorded music. If I can

add up real quick. It's up to you.

Q. Add on.

A. Doing theater work and stuff, I know that you can plug one sound device into another device where they can control sound, also. Just because he's controlling the sound.

Q. The source is --

A. The source is not coming from him.

Q. Exactly.

A. Which I'm sure you all know that.

Q. That's fine. But his description of what was happening was that the music that you were hearing was pre-recorded?

A. That's what he was trying to explain.

Q. And he was trying to, in fact, inform you that the DJ that you were observing on the stage appearing to be the source of the music was not, in fact, the source of the music; correct?

A. That's correct.

Q. All right. Now -- and then he explained to you that DJs are used to attract patrons to the club; right? That's why they have to include their them in their advertising?

A. Yes.

Q. Do you follow music at clubs at all

personally?

A. Not too much.

Q. Have you or -- just socially now, just you or your friends, would they ever say that such and such DJ is performing at a certain club and they want to go hear that particular DJ, they like that DJ's mix of music?

A. Not in my personal life, but I know there's groups that follow certain DJs around just from --

Q. All right. And DJs presumably are getting paid for their services; right?

A. That's correct. As far as I know.

MR. WARREN: Okay. I have no further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Let's just assume for the sake of argument that somebody is DJsynching.

Q. Would you characterize somebody who's up there DJ-synching, would you characterize them as entertainment?

A. I don't know. It depends what -- me personally, I wouldn't think it's entertainment, but everybody has their own opinion.

Q. But in terms of -- if you were advertising an event and that you were going to have somebody there,

whether they were live or whether they were DJ-synching, the purpose of having them is for entertainment for the patrons? Would that be a fair assumption?

A. That would be.

Q. And the person that you saw on the stage was a live actual person as opposed to like a robot or something automated; correct?

A. Correct.

Q. And the same you saw on floors two and three?

A. Correct.

MR. AGERBEK: I would admit -- ask that Exhibit 6 be admitted into evidence.

JUDGE LEWIS: Okay. Exhibit 6 is Bate stamp 58 to 61.

Mr. Warren.

MR. WARREN: 58, 59 seem completely -- that report seems completely superfluous, Your Honor. The witness only testified about 61 in terms of the ads, I believe.

So I have no objection to page 61, but I object to the others as being both hearsay and superfluous given that the witness has testified about everything that's in the report.

MR. AGERBEK: And I'm willing to stipulate that pages, you know, 58, 59 and 60 be administrative

hearsay consistent with the way the officer's testified and that 61 be admitted for all purposes.

JUDGE LEWIS: Okay. Fair enough, Mr. Warren?

MR. WARREN: Yes, Your Honor.

JUDGE LEWIS: 61 is Bate stamped page 61 admitted for all purposes; 58 through 60 as administrative hearsay.

MR. AGERBEK: And just so I'm probably real clear, 58 and 59, there's administrative hearsay pursuant to Legg versus Reed?

JUDGE LEWIS: Yes. Okay. Thank you very much, sir. You are excused.

THE WITNESS: Thank you.

MR. AGERBEK: And that was the count 7, if you were keeping track.

We're going to now move on -- we're going to jump a little bit out of order. We're going to move on to count 8D and 9F, because they both deal with the same incident.

JUDGE LEWIS: Please stand. Raise your right hand.

MARIE PLONKA

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated.

Please state and spell your name.

THE WITNESS: My name is Marie Plonka. P, as in Paul, l-o-n-k-a.

JUDGE LEWIS: P-l-o-n-k-a.

THE WITNESS: Yes.

JUDGE LEWIS: Is it Marie or Maria?

THE WITNESS: Marie.

JUDGE LEWIS: I got jetlag ear.

Okay. Mr. Agerbek.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Because you're in uniform, Officer Plonka, with whom are you employed?

A. With the City of Sunnyvale.

Q. What is your position?

A. I'm a public safety officer.

Q. How long have you been employed?

A. This is my eighth year.

Q. Just briefly, what are your duties?

A. Assigned to a beat currently and just answering calls for service.

Q. Directing your attention to August 10th of 2008, were you on-duty?

A. Yes.

Q. What was your assignment that evening or day?

A. I was assigned a beat, but at that time I was

working also downtown area doing security.

Q. And with whom did you work that evening?

A. I had my recruit with me that evening, Officer Ochoa.

Q. On the -- and were you on-duty the evening of August 10th, 2008?

A. Yes.

Q. So on the evening of August 10th, 2008, did you have occasion to go to a business by the name of The Abyss located in Sunnyvale, California?

A. Yes.

Q. And why did you go there?

A. We were doing security in the downtown area where The Abyss is located.

Q. Do you recall approximately what time you arrived at the business?

A. I don't remember exactly what time I put myself out at security, but I had contact at The Abyss around 1:45 in the morning.

Q. Okay. And what did you see when you arrived there at The Abyss?

A. I was standing outside The Abyss and noticed a couple of rowdy subjects coming out of The Abyss that I wanted to talk to.

Q. And did you make contact with those

individuals?

A. We made contact with one of the individuals, Mr. Le, and as we were talking to him, the other subject, Mr. Truong came out of The Abyss, as well, and I contacted him.

Q. And why did you make contact with these two individuals?

A. Extremely rowdy, talked extremely loud and happened to be drunk in public.

Q. Now, when you first saw them, did you immediately form an opinion that they were drunk in public?

A. No, not immediately.

Q. So why did you -- specifically what was it that caused you to make contact with them?

A. We were there trying to do enforcement in the entire downtown area from another incident that we had, and so when I decided to contact them, it was just because they were belligerent and just being loud.

Q. And in what way were they doing belligerent? To whom?

A. They were just being extremely loud, yelling, and a crowd would start forming around them at the time.

Q. Did this cause you concern that maybe there was a 415, fight in progress?

A. Possibly, potential.

Q. And so then you made contact with these two individuals.

Did you speak with both of them or only one of them?

A. I personally -- well, initially my recruit started talking to Mr. Le and I was there and I noticed Mr. Truong coming out of The Abyss, as well acting the same way and I pulled him aside.

Q. Okay. And so you had a conversation with Mr. Truong?

A. I did.

Q. And what did you observe based on your conversation with Mr. Truong?

A. I noticed he had an odor of alcoholic beverage coming from his person. His speech was slurred, eyes were bloodshot and watery. He had a very unsteady gait and needed a little bit of assistance to sit down when I asked him to.

Q. And did you form an opinion as to his state of intoxication at that point?

A. I did.

Q. What was that?

A. He was drunk in public.

Q. Did you form an opinion that he could

adequately to take care of himself?

A. Yes, and he was unable to take care of himself to since he needed assistance to sit down.

Q. You saw Mr. Truong coming out of The Abyss?

A. Yes. They have a gate that leads from the door to come out and goes down the street, and so I pulled him out of that area.

Q. And did you place Mr. Truong under arrest?

A. Yes.

Q. And did you have any further contact with Mr. Le?

A. My recruit ended up handcuffing him and arrested him, as well, and we both put them into the same car together and transported them.

Q. And do you know why Mr. Le was handcuffed and --

A. Same thing. He was intoxicated, as well. Unable to take care of himself.

Q. And did you have occasion to observe the condition of Mr. Le?

A. He was -- yes. He was also -- at initial contact, his speech was slurred, had red eyes and smelled of alcohol.

When talking to him, I asked him to get his ID out for us, and he handed us a different card. I think

it was a credit card with somebody else's name on it.

Q. And does the recruit have the authority to make the arrest?

A. Yes.

Q. Does the recruit seek your advice and guidance --

A. Yes.

Q. -- as to whether or not he should make the arrest?

A. Yes.

Q. And did you help the recruit make the assessment that Mr. Le was drunk in public?

A. Yes.

Q. And did you also assist your recruit in making the assessment that Mr. Le was unable to care for himself?

A. Yes.

MR. AGERBEK: No further questions.

JUDGE LEWIS: Hold on a second, Mr. Warren.

MR. AGERBEK: We've only charged one of them.

JUDGE LEWIS: Okay. That clears a little bit up.

Go ahead, Mr. Warren.

MR. WARREN: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Officer Plonka, you said you were working security in the downtown area.

Q. Is Murphy Street where The Abyss is located sort of the center of the downtown area as you were describing it?

A. Yes. That's what we consider downtown is basically that main strip where all the bars are.

Q. And you said all the bars. Do you know how many bars there are on Murphy Street? It's really one block of Murphy Street; right?

A. Yes. There is one block. There is probably about six.

Q. Counting The Abyss or in addition to The Abyss?

A. In addition to.

Q. Okay. So seven all together?

A. Yes.

Q. And when we talk about a block, we're basically talking about a customary urban block, the length of the street; right?

A. Yes.

Q. And the incident that you referred to that had brought you to Murphy Street just before observing these people was an incident at another premises; had nothing

to do with the Abyss? Right?

A. Yes. It was the week before.

Q. Do you -- is -- I think you said you've been with the Sunnyvale Police for eight years.

Has it -- during your time, let's say, in the last two years, have you had regular assignments for security on Murphy Street?

A. Normally most of the units that worked the hours that I work, we all assign ourselves to downtown area, especially when the bars let people out.

Q. So between 12:30 and 2:00 AM, something like that?

A. Yeah, we usually --

Q. So it's customary for there to be uniformed officers within this one block of Murphy Street when the bars are closing?

A. Or in the Macy's lot.

Q. And the Macy's lot is at one end of Murphy Street; right?

A. Yes.

Q. And is it your experience that most of the patrons who visit the bars on Murphy Street park at the Macy's lot?

A. As far as I know, yes.

Q. Although there is parking on both sides of

Murphy Street, there is public parking behind the bars that front on to Murphy Street; correct?

A. Yes.

Q. Including The Abyss. There's public parking.

A. Yes.

Q. But it's your observation that most of the patrons, in fact, go to the Macy's parking lot at the end of the street?

A. Yes.

Q. When you're working security at closing time, is it -- do you have contact with the security of The Abyss customarily?

A. We have, yes.

Q. And do you know -- are you familiar with the security, the head of security at The Abyss?

A. Are you referring to Emma or --

Q. No. I'm referring to Usiko Barrow.

A. No. I don't recall anybody's names.

Q. All right. When you encountered these two individuals coming out of The Abyss, do you recall what the security was doing? Were there any security from The Abyss present?

A. That I do not recall.

Q. How many times -- say in the last two years, how many times can you approximate when you've been there

on Murphy Street when the patrons of The Abyss are coming out at closing time?

A. That the security is there?

Q. No. When you've been on Murphy Street and observing the patrons of The Abyss coming out.

How many times?

A. How many times have I been there?

Q. Yeah.

A. In the last two years?

Q. Yeah.

A. It's pretty much almost every night that I do work. So I couldn't tell you how many times that is.

Q. Okay. And this particular evening, you observed these two -- these two patrons.

Is that something you observe all the time, patrons coming out of The Abyss who are --

A. Yes.

Q. -- drunk in public?

And do you normally -- as part of your duties, do you ever do security checks through the premises while it's open?

A. Through the bar or through the clubs?

Q. Yes.

A. Yes. I walk through.

Q. You walk through.

All right. And you observed the security at The Abyss.

Do you know how many security are working on let's say a typical Saturday night?

A. No. I don't know exact numbers.

Q. Okay. These two patrons that you observed, you heard them being loud and rowdy and their conduct was then attracting the attention of other patrons; right?

A. Yes.

Q. So you wanted to nip something in the bud before it evolved into something more difficult; right?

A. Yes.

Q. And did you observe The Abyss security doing anything in connection with these patrons?

A. Not in connection with those two, no.

MR. WARREN: No further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

MR. AGERBEK: Just a few.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Did you observe Mr. Le coming out of The Abyss?

A. Yes.

Q. And did -- did you ask either of the two individuals whether they had been drinking?

A. I -- I don't recall.

Q. Okay. Do you know if Recruit Ochoa asked the question in your presence?

A. I don't recall.

Q. Did either of these individuals indicate to you that they had not been drinking at The Abyss and they were, in fact, coming from some other club?

A. No.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Okay.

MR. WARREN: I have one further question, Your Honor, if I may.

JUDGE LEWIS: Go ahead.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. When these -- when these individuals were coming out, were they coming out as part -- from your observation, did it appear that they were coming out as part of the closing of the club for the evening?

A. Yes.

Q. So it appeared to you that all of the patrons were in the process of exiting the club at this time?

A. Yes.

MR. WARREN: No further questions, Your Honor.

JUDGE LEWIS: Okay. When we started this witness, Mr. Agerbek, you referred me to counts 8D and 9F. Neither --

MR. AGERBEK: I'm sorry. Yes, I did.

JUDGE LEWIS: Am I right?

MR. AGERBEK: Yes, I did -- yes. That is correct.

JUDGE LEWIS: Okay. I heard testimony from this witness about two different individuals.

MR. AGERBEK: Correct.

JUDGE LEWIS: And after the main portion of her testimony, I was informed that count 8D and count 9F only refers to one individual.

MR. AGERBEK: That's correct.

JUDGE LEWIS: Okay.

MR. AGERBEK: And --

JUDGE LEWIS: What I'm trying to find out is which individual it is that that testimony refers to as to count 8D and 9F, because substantially from what I understand and would refer to the witness' -- not witness. The arrestee with whom Officer Plonka dealt with, but I don't have a name to associate with that person.

MR. AGERBEK: I understand. Maybe -- let me ask a clarifying question before I answer your question

from the officer.

JUDGE LEWIS: All right.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Were Mr. Le and Mr. Truong, were they both transported -- let me back up.

In terms of -- were you an officer -- you and Recruit Ochoa, were you considered kind of a team for the evening?

A. We are basically -- yes. I arrive with him the entire night while he does the duties of an officer and I'm just there to supervise.

Q. And would these two individuals -- would they have been transported in the same vehicle?

A. Yes. They were transported in the same vehicle.

Q. I guess if we were keeping score -- and again, I don't know that police officers would do that -- would it be considered one arrest for you, one arrest for Ochoa, or is it just one arrest for the two of you as a team -- two arrests for you at a team?

A. No. It all goes as a team. Basically I'm his supervisor. Whenever he fills out paperwork, he should sign his name and then backslash it with my name.

Q. So you specifically made the arrest of Mr. Truong?

A. I did.

Q. And Ochoa, as kind of your person in your custody and control as a recruit, made the arrest of Mr. Le?

A. Yes, and I was standing next to him.

Q. And that was a joint decision made between the two of you?

A. Yes.

Q. So in terms of the physical arrest part, that was the only aspect that Ochoa would have made? Jointly you had decided yes, we're arresting Mr. Le?

A. Yes. Officer Ochoa talks to him, gets the information. I'm also there someone listening, as well, to make sure he's not violating any rights or anything and doing the proper steps.

MR. AGERBEK: Okay. Now with that in mind, I'm going to move to amend the complaint to conform to the evidence that it should, in fact, reflect two individuals were arrested for 647f on the evening in question on the question of count 8D and 9F.

JUDGE LEWIS: Okay. That's what I was inclined to believe after I heard the initial testimony here, and I know that 8D and 9F do not contain individual names, but it was my understanding that there were, in fact, two individuals who were arrested as part of 8D and

9F.

Now, before we get to your motion, Mr. Agerbek, I want the names of the individuals, please.

Officer, can you help me? One of them -- his last name was Le.

THE WITNESS: Yes. Let me refer back to my report to get the spelling for you.

JUDGE LEWIS: Okay.

THE WITNESS: So the first one, last name was Le, L-e.

JUDGE LEWIS: One E?

THE WITNESS: Just one more. Hao, Henry Adam Ocean. His middle name is Hong, H-o-n-g.

JUDGE LEWIS: Okay.

THE WITNESS: And his date of birth is 5-20 --

JUDGE LEWIS: I don't need his date of birth.

THE WITNESS: Tom Robert Union Ocean Nora George. His first name is Nora George Henry Adam, and his --

JUDGE LEWIS: And Mr. Truong is the individual that you specifically dealt with?

THE WITNESS: Yes.

JUDGE LEWIS: And Mr. Le is the individual your partner dealt with?

THE WITNESS: My recruit, yes.

JUDGE LEWIS: Under your supervision.

THE WITNESS: Yes.

JUDGE LEWIS: I understand now.

Okay. Now, do you wish to be heard, Mr. Warren?

MR. WARREN: Yes, Your Honor. Some questions first for the witness.

JUDGE LEWIS: Okay.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. The -- were these two gentlemen together?

A. No, they were not.

Q. And all of your testimony so far has been about your observations of them outside of The Abyss as they were leaving.

Do you have any information about whether they appeared to be intoxicated when they were served alcohol in The Abyss?

A. No, I don't.

Q. Do you have any information about whether they were acting in any -- in the same manner -- rowdy, noisy -- while they were inside The Abyss?

A. No, I don't.

MR. WARREN: No further questions, Your

Honor.

JUDGE LEWIS: Okay. All right. Anything else from this witness, Mr. Agerbek?

MR. AGERBEK: No.

JUDGE LEWIS: Thank you very much, Officer. You are excused.

MR. AGERBEK: So I guess the way we could address the amendment would be as follows: I'm looking at 8D. On or about 8-10-08 --

JUDGE LEWIS: Wait a minute. Let me read it. I can see the problem you're going to have is that second sentence.

MR. AGERBEK: I'm going to strike that. "they were arrested for 647(f) and they were seen coming out of the premises."

JUDGE LEWIS: Are these things really identical?

MR. AGERBEK: Yes.

JUDGE LEWIS: Okay.

MR. AGERBEK: So my suggestion for the language would be -- for both as such would be "on or about 8-10-08, a police officer from the Sunnyvale Police Department contacted" -- strike the word "A," insert the word "two," t-w-o, make "subject" plural so it's subjects, "contacted two subjects in front of the

premises that" -- strike "was," insert "were intoxicated, unable to care for themselves."

JUDGE LEWIS: Right.

MR. AGERBEK: Period. Strike the next sentence. Then the final sentence. "Thus subjects" -- plural -- "were arrested for 647(f)PC (drunk in public)." That will be the same amendment for both.

JUDGE LEWIS: Okay. Sometimes I wish I could type as fast as McCarthy. I can't write that fast.

All right. You wish to be heard regarding the amendment, Mr. Warren?

MR. WARREN: I have no problem with the amendment, Your Honor.

JUDGE LEWIS: All right. Counts 8D and 9F are amended and will read as follows. "On or about 8-10-08, police officers from the Sunnyvale Police Department contacted two subjects in front of the premises that were intoxicated and unable to care for themselves. The subjects were arrested for 647(f)PC, drunk in public." The accusation is so amended.

Mr. Agerbek.

MR. AGERBEK: Thank you.

JUDGE LEWIS: Do you want to go off the record?

MR. AGERBEK: Yeah.

JUDGE LEWIS: Off the record.

(Recess taken).

JUDGE LEWIS: Back on the record.

KARIN JENKS

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated. State and spell your name.

THE WITNESS: Karin Jenks, K-a-r-i-n J-e-n-k-s.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. With whom are you employed, Miss Jenks?

A. The Sunnyvale Department of Public Safety.

Q. What is your position there?

A. I'm a crime scene investigator.

Q. And how long have you been so employed?

A. Just about six years.

Q. And just generically, what are your duties? I'm sure they're different than what we see on TV.

A. Yes, sir, they are.

I work control, so I'm control-based, so I do regular patrol duty in addition to any type of crime scene investigation, taking photographs of injuries, collecting blood or DNA evidence, fingerprints.

Q. And directing your attention to May 25th of 2008, were you on-duty?

A. Yes, sir.

Q. And just for the record, we're dealing with counts 8C and 9E.

JUDGE LEWIS: Okay.

MR. AGERBEK: Q. On the 5th -- I'm sorry.

With whom were you working -- what was your assignment that evening?

A. Crime scene investigator working patrol.

Q. And were you -- do you typically work with another individual or with an officer or how does that work?

A. I'm in my car by myself.

Q. Okay.

A. And then I'll respond to whatever situation.

Q. On the evening of May 25th, 2008, did you get a callout to go to a premises by the name of The Abyss located in Sunnyvale, California?

A. Yes.

Q. And why did you go there?

A. It was a teen-age night I believe at The Abyss and there was a large crowd and several fights broke out in the area in front of the club as well as the parking lot down the street.

Q. Approximately what time did you arrive at The Abyss?

A. I don't recall.

Q. Okay. And what was your task or assignment once you got to the club?

A. Assisting with crowd control and photographing.

Q. And did you, in fact, take some photographs that evening?

A. Yes, I did.

Q. If -- there's a binder in front of you. we're going to look at -- there's numbers on the right-hand side.

A. Okay.

Q. Page 243 through 249. Just give us a second. If we could have those collectively marked as Exhibit 7, I think.

JUDGE LEWIS: Okay. I am marking as Exhibit 7 some color copies of photographs and they bear the Bate stamp number beginning at 243 and ending at 249.

Go ahead, Mr. Agerbek.

MR. AGERBEK: Q. Looking at pages 243 through 249, do you recognize these photocopies of these photographs?

A. Yes, sir.

Q. And are these the photographs that you took?
A. Yes, sir.
Q. And are these the photographs that you took related to the crowd control issue you were describing on May 25th --
A. Yes.
Q. -- 2008?
And is there any particular reason that you took these particular individuals in the photograph? Why these photographs?
A. They're closer up photos of people that were acting out towards us, towards the officers, 243, the female subject laying against a tree, and her friend there. The larger group ones, not particularly.
Q. Is that page 244?
A. Yeah.
Q. And does that, in fact -- it shows somebody with a shirt that appears to be security.
Do you know where that person is security for?
A. I believe he's security for the Abyss.
Q. Okay.
Q. 245?
A. 245, I don't remember the specific individual with regards to that. 246, the gentleman there with the shirt off and few people with him were verbally

aggressive and just kind of acting out, yelling at the other people that were out there, yelling at us.

Nothing specifically directed towards us, but --

Q. Page 247.

A. 247, I don't remember specifics about any of those people.

Q. And it appears that there's somebody with the security shirt n.

A. I believe that would be The Abyss, as well.

Q. That looks like a megaphone.

A. Yes.

Q. Page 248.

A. I don't remember specifically what that person was doing. The yellow jacket was also The Abyss personnel.

Q. That would be security for Abyss?

A. That would be security.

Q. And then page 249.

A. Yeah. I'm not sure. A couple of officers.

Q. Okay.

A. I think I was just showing the officers were present with the crowd behind them. Nothing specific.

MR. AGERBEK: No further questions.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: No questions, Your Honor.

JUDGE LEWIS: What?

MR. WARREN: No questions.

MR. AGERBEK: Just for clarification -- and just so Your Honor understands where you're going, I do have another officer who's going to be testifying about the incident as a whole.

This officer or the CSI was mainly here to lay a foundation and authentication of the photographs.

JUDGE LEWIS: Okay. It's your case.

Thank you very much. You are excused.

THE WITNESS: Thank you.

MR. AGERBEK: I would ask that the photographs be admitted into evidence.

MR. WARREN: Object on the grounds of relevance, Your Honor. I don't have a clue what they depict unless showing a bunch of people standing on a sidewalk.

I don't see any conduct that appears to be injurious. I've heard the witness talk about verbal abuse.

JUDGE LEWIS: I think it's too early for me to rule on it, Mr. Warren. That's why I refrain from asking any questions.

I'll let Mr. Agerbek put on his case and we'll

revisit that, Mr. Agerbek.

MR. AGERBEK: Okay.

JUDGE LEWIS: Thank you.

Raise your right hand, please.

NICOLE PASTORE

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated.

State and spell your name, please.

THE WITNESS: My name is Nicole Pastore, N-i-c-o-l-e P-a-s-t-o-r-e.

JUDGE LEWIS: Mr. Agerbek.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Officer Pastore, with whom are you employed?

A. The Department of Public Safety at Sunnyvale.

Q. And what is your position?

A. I'm a public safety officer.

Q. And how long so employed?

A. Just over two years now.

Q. And just briefly and generically what are your duties?

A. Typically I work as a beat officer. I drive a patrol car and I'm typically assigned to beat 3.

Q. And what is beat 3?

A. It's the downtown area of Sunnyvale where all the bars and clubs are.

Q. And is that where a business by the name of The Abyss is located?

A. Yes.

Q. Directing your attention to May 25th of 2008, were you on-duty that evening?

A. I was.

Q. And what was your assignment that evening?

A. I was the beat 3 officer for the evening. I was on midnight shift and I typically covered the downtown area.

I usually will stay there and do security while The Abyss lets out, which is -- on this underage evenings, they typically lets out around 11:30. A bunch of us will sit at the 200 West Washington area, which is across the street, and watch the crowds come out.

Q. And on the evening of May 25th, 2008, did you go to The Abyss located in Sunnyvale, California?

A. I did.

Q. And approximately what time did you arrive at that business?

A. The time I arrived was a little bit later. The -- so the call came out at approximately 2322 hours, and when I arrived, there was already units that had

called for the code 3 fills because I guess some fights started inside the club and sort of pushed out into the street.

When I arrived, I came from the west side heading east on Washington Street. So when you come on Washington Street and I would make the left to go north, The Abyss would be on the right-hand side, which is the east side of the street.

When I came up, I could see all the crowds pushing out into the street. When we have crowds that large, we won't send officers into the crowd. We'll be on the outside and keep it controlled.

I guess officers on the north side of the street saw fights coming out. Eventually they flood off on to the sidewalks and -- where we typically let their parents pick them up, but what happened it was so out of control up by the club, we actually had to cut off the north side of the street by calling up pretty much all of your units in.

The units actually formed a skirmish line, wearing some of the riot gear using the shields and actually pushed the crowds down.

At that point, I was able to make my way north. My beat of responsibility, I have to go and take the paper, so --

Q. Let me try to break that up. You just talked about the club.

When you say "the club," were you referring to The Abyss?

A. The Abyss, yes.

Q. And you talked about a crowd that large.

What do you mean by "a crowd that large"?

A. When I had spoken to the security officer early in the evening -- I usually will stop by there every night. If they have something going on, he'll tell me what type and what for.

He told me they expected between two and 500 people. By the time I arrived, there was largely over 300 people there. It was probably one of the biggest crowds I've ever seen.

Q. When you say "there," was that inside the club --

A. At The Abyss.

Q. -- or out on the street?

A. Well, they were closing, so everybody that was inside the club was being pushed out. The security guards were wrapped up. They started having people leave, and people will typically disburse in a relatively orderly fashion, but on this night, it was completely out of control, and I think because some of the fights

started happening, these little independent fights starting, and people would get hit in the midst of those and it would start other fights throughout the crowd, and the security guards were overwhelmed; they couldn't handle it.

Q. Did you observe any particular fights going on when -- well, when you arrived, what did you see going on when you arrived at the premises?

A. I saw a lot of pushing and shoving. I didn't see any blatant fist-striking or anything like that. I do know that there was a security guard that had a bloody lip.

From what I know, most of the actual physical fights that dealt with punching, kicking happened inside the club.

Q. But you don't personally know that?

A. I didn't personally witness any of that. I personally witnessed large crowds. The only way I could describe it is if you've ever been to a concert where a lot of people are on the floor and everyone's hitting into each other.

I mean, it looks like that, but there's more yelling and screaming and you could see that the crowd's getting riled up and pushing and shoving, and some of -- I remember some of the women were a little scared, some

of them were crying trying to get out of the way because they were getting pushed, and it was pretty intense that night.

Q. So you see approximately about 300 people out on the street?

A. At least. That had to be.

Q. And did you see any Abyss nightclub security personnel that night?

A. I did see a few up by the club. They do try to push them down off the east sidewalk, usually.

At that particular night, most of them were just trying to separate parties, push people away, yell, push them down.

They were just preoccupied. A lot of our officers were in there from the north side trying to help them push the crowd down, break up small fights. But there were security guards there, yes.

Q. Did it appear that the security guards from The Abyss were able to control what was going on?

A. No. Not that night. We couldn't hardly control what was going on.

Q. When you arrived, how many officers were on the scene at the time?

A. When I arrived, we were almost all there. That's when all the code 3 fills had been put out.

Q. What is a code 3 fill?

A. It's when all of the units have to come lights and sirens, stepping red lights, real quick. You're putting your life at risk.

With crowds like that, it puts everybody's life at danger, security guards, staff, the kids that are there, us. Everybody's in danger.

So we had calls pending. We were unable to pick up any calls in the city. All of our staff was there. A total of 21 officers, including lieutenants and also including three trainees that were riding two-man cars, which is not typical.

Typically squad 4 and squad 5, which covers that time period, there's typically about twelve officers to handle calls. That doesn't include lieutenants.

Q. So all told, about how many officers had to respond?

A. Including lieutenants and the trainees, there was 21 officers that night.

Q. And Murphy Street is where The Abyss is located, I understand; correct?

A. Yes.

Q. And was there -- with this crowd, was this street able to be open for through traffic?

A. No, sir. We had to shut down the whole

street. We ended up shutting it down from the north side first, because we like to have the parents come down Washington Street to pick the kids up. There's a big parking lot. We go to that south side. We had to shut down the entire street, and we had to shut down traffic on the east and the west side just to contain the crowd so it wouldn't spill out through the little city there.

Q. Did the -- did Sunnyvale Police Department have to enlist the aid of any other agencies?

A. We did. We had to call Santa Clara PD. I think Lieutenant Anton had to call for that. We had too many calls pending and the whole evening took -- it took about two hours to control the crowd and get everybody picked up and sent home, and we had our skirmish line out there with the shields and a little bit of unruly crowds here and there.

They get each other riled up and then they want to fight us. Just get loud, but -- Santa Clara PD picked up our calls for a good two hours that night, calls for service.

Q. And the request for Santa Clara to come out and cover calls, was that something you personally heard over the radio?

A. I did. I do remember hearing it, yes.

Q. And did you have occasion to arrest anyone

that evening?

A. That evening, no, I did not.

Q. Did you -- as a result of this incident broadcast over the radio, did you hear that any other individuals had been arrested?

A. I was --

MR. WARREN: Objection. Hearsay, Your Honor.

JUDGE LEWIS: Overruled. I'll allow that. Go ahead.

THE WITNESS: Since I'm the beat officer, I'm informed of everything that takes place on my beat. As the crowd got less loose and it's my job to investigate what exactly happened, I am told later who's arrested, who's not.

There was not very many of us, and I'll read those records typically and find out what happened. So yes, I was informed of that.

MR. AGERBEK: Q. Are there any -- it sounds like there's other businesses in this area.

A. True.

Q. Are there residences in this area?

A. No. The residences are -- I'll say in yardage, approximately maybe 75, a hundred yards away. The downtown area is all commercial. It's all business.

Q. And from where -- let me back up.

This crowd of individuals that was assembled there, to your knowledge, were these individuals primarily being released from the Abyss?

A. Yes. Absolutely.

Q. Okay. And what do you base that opinion on?

A. The fact that you could see them coming out of the main doors where they come out and it's sectioned off, and the crowd gets pushed and funneled out through that so it doesn't interfere with any of the other businesses. So that's one.

Two is that that night, The Abyss shuts down. They start letting out around 11:30.

Q. And why was that?

A. It's a junior -- up to 21. It's the underage night. So they make it a little earlier. I think they -- I don't know why exactly they do it, but they get the crowd.

It's a weeknight. It's on underage night. Everybody gets picked up by the parents.

Q. This crowd of approximately 300 or 300 plus that you observed, is this crowd primarily made up of people under 21?

A. Yes.

Q. In front of you, there's a binder on the table. On the right-hand side, you'll see on the bottom

there's numbering. Looking at pages 243 through 249. You're right in that area.

A. Mm-hmm.

Q. These photographs -- and I guess collectively, they've been identified as Exhibit 7.

Do you recognize these photographs?

A. I do. This is son the south side of the street right in front of the parking lot. It's on Washington Street. So if you were standing on Murphy.

They had the skirmish line facing where these people are all gathered. So they typically line up on this sidewalk here (Indicating).

Q. How is it that you recognize these photographs?

A. The bushes in the background, the sidewalk, the street lighting from the parking lot set up this way in the back, the Macy's parking lot where I spend a lot of my time, and the bushes are where all the kids will usually line up. Even on the good nights where everybody's orderly.

There's also street signs, the crosswalk which shows me which is there on Washington to get you to Murphy Street, and there's no through street. It's just the parking lot behind the bushes and the crossway there.

Q. If you could look at the last photograph,

number 249. I know it's kind of hard to see, but does this photograph have -- does it depict the skirmish line that you were talking about?

A. Not really. This is just -- it looks like I think just more officers that were over here. The skirmish line looks a lot more orderly. Everybody was completely lined next to each other. They had the shields and it was -- they have the batons ready to go.

This is just -- this is more the aftermath. This is when the crowd was under control.

Q. Did you prepare a report regarding this incident?

A. I do. It's no other class. It's basically a notification that hey, we used all our resources and this is why.

Q. And as part of your report, would you have gathered information from other officers and CSIs who were on the scene?

A. No. They'll handle the crimes. Anybody who came across any crimes.

I understand there was a couple of arrests that night, and those officers who have taken those arrests would have done this report separately.

Since this is my beat, I just do a report on the resources we had to use, the cause of the situation,

and if there was any injuries. Any other charges that were pressed or crimes committed, it would be my detail in the actual report.

Q. And did you -- as part of your report, did you include these photographs in your report?

A. I believe the lieutenant had a CSI take these photos independently and attach them to my case.

Q. Okay. And it looks like there's at least -- on 244, there appears to be kind of in the upper right-hand corner a case number or just a partial case number?

A. That would be 5318, probably.

Q. Does this appear -- do these photos --

A. Well, that could be -- there was -- according to my notes, there was 5316 and 5317 were my case to refer to those. I believe those were the two arrests that were made, 08-53136 and 085317. Those could have been attached, as well.

Q. If we look at 247, it looks like there's a complete case number there.

A. Yep. 5318. That would be to mine.

Q. That would be to your report?

A. Mm-hmm.

Q. Just taking a look at these photographs, does this accurately depict the scene that you observed that

evening?

A. This is the aftermath. This is typically what the crowd looks like on almost any given night when they're to the end. They'll kind of accumulate down there on that sidewalk, and a lot of them will actually sit down and calm down, but we had them pretty contained there at that night.

CSIs were not available to take photos during the altercations. We needed all of our resources to be hands-on and ready for anything that might happen.

The photos were the aftermath after it was pretty much taken care of.

Q. Okay. But these photographs, to your knowledge, were taken --

A. Yes.

Q. -- for the evening in question?

A. Yes.

MR. AGERBEK: Okay. Just for purposes of the record, I'm going to move on to 8E and 9G, because this officer was involved in that.

Or the alternative, if we kind of -- kind of do cross on this incident and let me go back and do another one, that would be a clearer record for everybody.

JUDGE LEWIS: You tell me.

MR. AGERBEK: I'm amenable on this.

MR. WARREN: Let me do cross on this incident and then we can move on.

JUDGE LEWIS: Go head, Mr. Warren.

MR. WARREN: Thank you.

JUDGE LEWIS: The idea is not to confuse me.

MR. WARREN: Or me.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Officer Pastore, you mentioned a few times in your testimony -- first of all, this incident is noted in the record as -- in the accusation as occurring on May 25 of '08. When I checked my calendar for that date, that's a Sunday.

THE WITNESS: Mm-hmm.

MR. WARREN: Q. Does that square with your recollection?

A. Yes. They changed that night to Tuesdays. They do the underage night on Tuesdays.

Q. So is it your experience that before this evening in question, that The Abyss had a regular event that you referred to as an underage night?

A. Yes. As far as I've known, they've always had that since I've been here.

Q. This is an event that's typically inviting high school age patrons who want to have a place to come

and dance; right?

A. Yes.

Q. And to your knowledge, no alcohol is served during that event; right?

A. Not that I'm aware of.

Q. Have you ever been in -- have you ever walked into The Abyss during an underage event?

A. No. Not underage event, no.

Q. So since they are knowingly underage, they are not serving alcohol?

A. I would hope so.

Q. You said that you thought the ages might be up to 21, but if you were told that this was a crowd limited in age 14 to 18, would that square with your observations?

A. It would definitely be possible. It looked like a fairly young crowd, although 14 would probably be a little bit young. I don't recall seeing anybody that young.

But definitely teens, between 15 and 18.

Q. You also mentioned that on this particular evening, you had, in fact, checked in with security earlier in the evening to -- and they had told you what size crowd they were expecting.

A. Right. They usually always do.

Q. Is that something you customarily do?
A. Yes.
Q. Now, is it only for the underage events or when you're customarily working?
A. Every time I'm in beat 3, which is pretty much every night I work, if they have an event going on, I'll swing by and talk to the security guards and see how many people they're expecting, what kind of crowd and whether they foresee any problems.
Q. And they also let you know when you do that checking in with security what time they're going to expect to close?
A. No. We have -- we just sort of know that on the underage nights -- now it's Tuesday -- they let out at 11:30.
It's the same for regular club hours, usually around 2:00 AM.
Q. And do you do this -- we've heard from another witness that there are six other bars besides The Abyss on this one block of Murphy.
A. Yes.
Q. Do you check in with the other bars, as well, with their security?
A. No. Some of the bars don't have security. The other bars are not clubs. One of the bars does play

some pretty loud music, but usually it's a pretty mellow crowd. It's not crowded, and the Tarragon Restaurant has a club which is very small. It's only supposed to legally fit about 150, 160 people by fire code.

It does not ever get huge crowds. We've only, as far as I know, ever had one problem with that club since I've been.

Maybe on one of the nights I haven't been, but The Abyss by far. It's a very large club. It holds a very large amount of people, and people show up for it from all over.

Q. And you mentioned previous underage events, so before this event on May 25 -- and I think again that was probably also the Sunday of Memorial Day weekend if I look it right on my calendar.

So before this event in the end of May of '08, approximately how many other underage events had you been present for?

A. I don't even know. I work every other four days.

Q. But underage events are a regular event?

A. They do it once a week, and I'm pretty sure it's on a Tuesday. I was just on the fire side. Things change.

Q. With all these other previous events, would

you say the crowds vary between 2 to 500?

A. Yes. They always get a good turnout. Very rare they don't, weather.

Q. And I think in your earlier testimony, you described these earlier events as the crowds coming out and you're observing them, that they tend to disburse in an orderly fashion.

A. Yes, for the most part.

Q. And also that it's typical in these events where parents to show up because these are younger --

A. Right.

Q. -- patrons, for parents to show up to pick up their kids; right?

A. Right.

Q. But this particular evening, something different happened; right?

A. Yes.

Q. Do you have any personal knowledge -- because I understand that you weren't there when things got started.

A. Got started, right.

Q. Do you have any personal knowledge as to what triggered that?

A. No. Probably just kids being kids. I don't know.

Q. And do you know if -- do you have any -- you were not personally involved in any of the arrests that were made that night.

A. No. I had some kids detained for spitting on our vehicles, but that was about it. That was -- no. That was it.

Q. They were detained, but not arrested?

A. Right, right.

Q. So you don't know if the arrests were -- were because of charges filed by the security or anything like that?

A. I could not give you further information on that, no.

Q. And since this incident, you continue to be a beat officer for this beat?

A. Yes.

Q. Since this incident in May of '08, has The Abyss continued to have these underage events?

A. Well, as I said, I was in fire for six months. I actually just came out about -- I've worked six patrol cars since I've been back out of fire.

I've only been out for a few weeks, but to my recollection, I know there was a couple of other incidents there.

One I don't think was even reported because it

happened -- the club had shut down because a couple of guys had been in the club that were drunk and were actually friends.

One guy put his face through a window and sliced up his whole arm, so --

Q. That was probably not an underaged event.

A. No. They were one of their unusual evenings, so --

Q. In terms of the underage events, do you know if they -- since this incident in May of '08 if the Abyss has continued to hold those regularly?

A. I believe so, yes.

Q. Have you heard -- as the beat officer during the time you've worked, have you heard about any other incidents or problems with the underage events?

A. Not that I can recall.

MR. WARREN: Okay. No further questions, Your Honor.

JUDGE LEWIS: Okay.

MR. AGERBEK: No further questions on that issue, and I would renew my motion to admit the photographs, Exhibit 7 into evidence.

JUDGE LEWIS: Let's deal with that, Mr. Warren.

MR. WARREN: Objection. Relevance, Your

Honor.

JUDGE LEWIS: Well, I think there is some relevance. At least it substantiates some of the testimony I've heard regarding the type of crowd that was present there.

So I'm going to receive Exhibit 7.

MR. AGERBEK: And then as to -- on the pleading itself, as to count 8C and 9E, I'm going to move to strike the last sentence of each as this officer did not physically do the arrests. And that sentence says two patrons had a fight in public.

JUDGE LEWIS: 8C and 9E?

MR. AGERBEK: Correct. It's the same sentence above.

JUDGE LEWIS: All right. I do see that. All right. I do have a motion to amend count 8C and 9F --

MR. WARREN: No objection.

JUDGE LEWIS: -- by striking the very last sentence.

MR. AGERBEK: It's actually 9E.

JUDGE LEWIS: I'm sorry. Didn't I say --

MR. WARREN: You said 9F, Your Honor.

JUDGE LEWIS: I apologize. It is 9E. I was looking at the right one.

All right. 8C and 9E are amended by striking

the last sentence in each count. Mr. Warren has no objection, and the amendment -- that amendment is stricken.

Go ahead, Mr. Agerbek.

MR. AGERBEK: I would now be moving on to 8E and 9G.

JUDGE LEWIS: Okay.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Officer Pastore, directing your attention to the evening of August 12th, 2008, moving into August 13th, 2008, did you have occasion to go to The Abyss that evening?

A. I did.

Q. And why did you go there?

A. This was to assist the security guards. They're actually being viewed by an officer that was on scene. And I was actually in the area.

When I rolled up on the scene, I could see Officer Godfried yelling towards a male subject making obscene gestures and yelling and screaming in the street.

I think the officer was trying to get him to come back over and talk to him.

Q. And what did you do?

A. The subject jaywalked. I wasn't sure what exactly was going on at that point. I was on the street

with the subject. I was trying to calm down him down and find out exactly what happened.

This particular individual was rejected from the club. They didn't want to let him in. They were probably right for doing so. He was a little out of his mind.

Since he couldn't get into the club, he was making trouble. He ended up trying to strike one of our officers and we ended up arresting him.

Q. Did you observe this attempt to strike the --

A. Yes. I was right there. I was actually the arresting officer.

Q. Did this individual in any way threaten you?

A. Oh, he did. He told me personally he wouldn't hit me. He would just throw me because I was a female. He doesn't hit females, but he made it clear --

JUDGE LEWIS: He was a gentleman.

THE WITNESS: Exactly. He made it very clear that his fists were registered, that he'd been a fighter for many years, that he'd been shot and that he was just ready to go and he was tempting all of us to come and take him on.

We were just trying to calm him down. He just wasn't letting it happen, so -- he was threatening everybody there on the scene, probably the bouncers, too,

when he was in line, but I wasn't there for that, so --

MR. AGERBEK: Now, you indicated that he -- he attacked or he took a swing at an officer.

Q. What happened?

A. Well, it got to a point, we sort of had him surrounded and he was continuing to throw threats and I got him to talk a little bit and explain why he was upset, and one of the other officers said, "Hey, do you have any weapons on you?"

We were concerned about our safety since and he was compliant and allowed us to get into a position for safety where typically, we'll just take control of their fingers and check their waistband and check their pockets real quick to make sure they don't have anything.

And as far as my partner, my partner went to control his hand, and as soon as he touched his hand, this kid just turned and swung his elbow, and from there, both of us ended up tackling him down to the ground and put him in handcuffs.

Q. What was he arrested for?

A. 148 obstructing.

Q. Resisting, delaying or obstructing a peace officer in the performance of their other duties?

A. Right.

Q. While -- when you arrived or while you were

dealing with him, did he threaten anyone other than the officers?

A. He said that he had friends inside the bar that would be willing to hurt anybody if he told them to. To me, that's threatening. I don't know exactly what he was intending, but he was a little -- he kept saying he knew the bar owners, the club owners. He kept saying he knew the bouncers. None of them were saying they knew him.

He was a little delusional, I'd even say. I think he had some grandiose ideas, thoughts in his head. So he'd go back and forth to wanting to hurt everybody in the club to saying they were all his friends. He was back and forth.

Q. When you arrived, it was Officer Godfried and you?

A. Officer Godfried was out of his vehicle. I think PSO Chien arrived right behind me. Lockwood was called to the scene. I think I was the fourth at that point.

We have a office policy whenever we go. We typically call code 3 fills. We don't know what's going to happen, when our attention is called to one person, but where there's a lot of people lined up to go into the club, we'll call code 3 fills so the other officers can

control what was happening around.

Q. Did that happen this evening?

A. It was. A lot of them didn't stay very long. It was over quickly.

MR. AGERBEK: No further questions.

JUDGE LEWIS: Mr. Warren.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Just so I'm crystal clear, this person was not a person who had been in the club, but someone who had been denied entry to the club?

A. To my knowledge, yes.

Q. Okay. And I'm looking at a report that bears your name, and this is a report numbers 088276.

A. Okay.

Q. And it starts out by saying that an Abyss security guard flagged down PSO Godfried.

PSO is public safety officer?

A. Yes.

Q. That's another police officer. So you wrote this report?

A. Yes, sir.

Q. Okay. And so you were informed that the security had, in fact, flagged down the officer?

A. Yes. I was later informed by PSO Godfried, and I ended up speaking with the security guard myself.

Q. And you described this person as appearing delusional.

Is it your impression at the time -- did you have an impression at the time whether he was intoxicated?

A. We did not -- I do not think he was, no. I think he was just a little bit delusional.

Q. Was it your impression that he was suffering from some sort of mental instability during this episode?

A. Yeah. I think it's very possible. He did not tell us he'd been diagnosed with anything. We do ask. Especially with someone that delusional, we say, "Do you want to hurt yourself or anybody else?" They obviously wanted to hurt themselves.

Once they're in cuffs, they tend to calm down pretty quickly.

Q. In your conversations with The Abyss security that evening, did they tell you what had caused them to deny this person entry?

A. I believe they did. I did not recall what the reason was. I think his attire. I think he didn't have a collared shirt. I think he told me he had given his friend a collared shirt. It was his attire.

Q. Okay. And did you ever substantiate one way or another whether, in fact, he had any friends inside

the club?

A. No.

Q. Did you in your own view believe he was there alone that evening?

A. It appeared that way.

MR. WARREN: Okay. I have no further questions, Your Honor.

JUDGE LEWIS: Okay.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Officer, you said the suspect when he was -- he was about to be searched, he turned and threw his elbow at one of the officers.

THE WITNESS: Yes, sir.

JUDGE LEWIS: Did he strike him?

THE WITNESS: I do not believe he ended up hitting -- he moved back and we both ended up pushing him forward.

JUDGE LEWIS: It was over before he had a chance.

THE WITNESS: I don't think he was ever charged with battery on a police officer.

JUDGE LEWIS: Now, let's see how to do this. I heard about an incident involving the teens. I'm assuming that your observations as far as -- to the fact that alcohol was probably not being served is probably

pretty accurate if it was on all teen crowd, and I'm assuming that's what it was. Pretty much.

THE WITNESS: I think so.

JUDGE LEWIS: I'm hearing about this incident here involving a 415 male who was refused entry into the club. They never let him in.

THE WITNESS: Right.

JUDGE LEWIS: Alcohol played no factor.

THE WITNESS: As far as I know, no.

JUDGE LEWIS: Alcohol played no factor in the teen night?

THE WITNESS: As far as I know, no.

JUDGE LEWIS: Okay. How long have you -- how long have you been employed at Sunnyvale PD?

THE WITNESS: Since October of 2006, October 15 of 2006.

JUDGE LEWIS: Since that time, you've basically worked this area of Main Street.

THE WITNESS: When I got in field training, I got a little experience all over, but since I was a solo officer, yes.

JUDGE LEWIS: Give me your impression, Officer. What do you think of this place?

THE WITNESS: Look. I don't see anything wrong with having a club where people can get together

and have fun. The issue with it being in Sunnyvale is that Sunnyvale only has on any given time about twelve officers, and when there's a crowd that decides to turn unruly, which seems to happen pretty frequently at The Abyss, and with a crowd of three officers, things get out of hand pretty quickly.

Our responders get used up pretty quick. It's very rare that our officers get tied up. Other than downtown incidents involving The Abyss and maybe other occasions at another venue, a fight will break out.

JUDGE LEWIS: I've only heard about one.

THE WITNESS: These are only two of the cases.

JUDGE LEWIS: Okay. All right. Okay. And the teen nights, you said they go pretty --

THE WITNESS: Smooth.

JUDGE LEWIS: Pretty good for the most part.

THE WITNESS: Well, a few fights here and there, but nothing that is out of control, out of our control, out of the security guards' control.

I'm not saying it doesn't happen. It does as you've seen here, but --

JUDGE LEWIS: But it was just this one incident as far as --

THE WITNESS: I think when alcohol is not

involved, I think there's less potential for things to get out of hand.

JUDGE LEWIS: All right. Okay. Okay. Fair enough. Thank you. I appreciate it. You are excused. Thank you.

THE WITNESS: Thank you.

MR. AGERBEK: We can take a lunch break. Let me just see if the witness they were transporting ever arrived.

JUDGE LEWIS: Off the record.

(A luncheon recess was taken at 12:34 PM to reconvene at the same location at 1:15 PM.)

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FEBRUARY 24, 2009 AFTERNOON SESSION 1:26 PM

JUDGE LEWIS: Back on the record.

MARIO KNIGHT

having first been duly sworn, thereupon testified as follows:

THE WITNESS: Yes.

JUDGE LEWIS: Please be seated.

Would you state and spell your name, please?

THE WITNESS: Mario Knight, M-a-r-i-o K-n-i-g-h-t.

JUDGE LEWIS: Okay. Mr. Agerbek.

MR. AGERBEK: And we're dealing with 8A and B and 9A, B, C and D.

JUDGE LEWIS: 8A and B, 9 --

MR. AGERBEK: A, B, C, D.

JUDGE LEWIS: A, B, C, D.

Go ahead.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Mr. Knight, on the evening of March 8th, 2008, did you go to a club by the name of The Abyss located in Sunnyvale, California?

A. Yes, I did.

Q. And why did you go there?

A. I was a promoter for the club.

Q. What do you mean by that?

A. I worked there. I get people to come to the club and I get paid for it.

Q. Okay. And what time did you arrive at The Abyss?

A. Probably around 9:00, 10:00ish. Around 10:00.

Q. And you went inside?

A. Yes.

Q. Okay. And while you were there that evening, did anything of consequence happen while you were there?

A. Yeah. There was a fight.

Q. Okay. Did you go to the club with anybody?

A. Yeah. I went with my friend Gavino, Jose and Victor.

Q. And Gavino, is his last name Srosco?

A. Yes.

MR. WARREN: Can you spell his name?

MR. AGERBEK: Sure.

THE WITNESS: I wouldn't know how to spell it.

MR. AGERBEK: G-a-v-i-n-o Srosco is the way I have it.

THE WITNESS: Yeah.

MR. AGERBEK: Now, you said a fight happened while you were there.

Q. Did either you or any of your friends get

involved in that fight?

A. No, but my friend got stabbed on accident.

Q. And the friend that got stabbed, who was that?

A. Gavino.

Q. And did you see how this fight that led to the stabbing broke out?

A. Yes.

Q. What happened?

A. We were around dancing and I guess some guy -- I don't know who he was, some black guy. He bumped into this guy, and I guess he was drunk or something, because I bumped into him on accident, and he looked at me like he wanted to stab me.

As he was moving back, he keeps jumping back and stabbing him. He couldn't get away. He was just stabbing -- my friend Gavino got stabbed in the leg.

Q. Besides Gavino, you saw at least one other person get stabbed?

A. Yes.

Q. And after Gavino got stabbed, what happened next?

A. We took him to the bathroom and he was just bleeding, I think, and after that, we were taking him out and security guards were like moving move out of the way to everybody, and the other guy was in the closet, I

believe.

MR. WARREN: When you say "the other guy," what do you mean?

THE WITNESS: The other one that got stabbed, yeah.

MR. AGERBEK: Q. So you and Gavino and your other two friends, you're all in the bathroom together?

A. Yeah.

Q. And what did Gavino do when he was in the bathroom?

A. He was in the bathroom. He lifted his pants leg up. He says, "I got stabbed" and a whole bunch of blood was running down his leg.

Q. Did you see where the stab wound was.

A. I think it was on -- I think it was his right leg towards more -- I think probably towards the thigh part.

Q. Okay. And so the four of you are in the bathroom, and then what -- did security come in or did you guys decide to leave or what happened?

A. We decided to leave, and so we took -- my friend Victor took Gavino to the hospital.

Q. Okay.

A. And security guards were around. And so one of them, I told him --

Q. Let's hold on. Let's break it down.

When you say security guards were around, the security guards weren't around at the hospital?

A. No. The front of the club.

Q. So did -- it was you, Victor, Jose and Gavino, the four of you?

A. Yeah.

Q. Did all four of you go to the hospital?

A. Yeah.

Q. How did Gavino get from the bathroom --

A. We --

Q. -- to a car to get to the hospital, or did an ambulance come?

A. No. We carried him out of the club and put him in my friend, Victor's car.

Q. Okay. Did you have contact with anybody from the club as you were carrying Gavino out?

A. Well, one of the security guards talked to me about it.

Q. And where did that take place?

A. Right in front of the club.

Q. And what was the -- did the security guard ask you questions or what happened?

A. He was telling me what happened and I told him "my friend got stabbed," so he went in and he -- he

grabbed the guy that was stabbing and they pulled him over to the side and he was telling me "is this the guy? Is this the guy?"

And I was like "Yeah, that's him," and he has another friend, so I guess his friend ran off somewhere.

Q. Okay. This -- your friend, Gavino had been stabbed?

A. Yeah.

Q. You went into the bathroom, and as you're leaving in front of the club, a security guard asked you "Who did this?"

A. Yeah.

Q. Okay. So then the security guard -- did you go back inside with the security guard?

A. Yeah. I went back in with him and I showed him who the guy was, and he grabbed him and he took him over to the side.

Q. What happened after security grabbed this guy and pulled him off to the side?

A. They were asking me "is this the dude? Is this the guy who did the stabbing?" And I said, "That's him, and he has another friend." He was running around somewhere in the club.

Q. Okay. What did you do after you identified the person who did the stabbing?

A. Me and Jose and -- we went to the hospital where Gavino was, and as we're sitting there, an officer comes and he asked me questions and I tell him "what's going on?" And I told him who the security guard was and I -- I guess one of the officers was already at the club asking the security guard questions, and he called the -- the security guard calls my friend.

And he says, "Your friend told on me." I said, "What happened? What did you mean by that?"

"He told the police who I was and everything." I'm like -- I didn't know who he was like that, but I knew him, and so I told the police it's the guy with the P-coat who grabbed the guy. The officer grabbed him and they came over and talked with him.

Q. So how do you know that the person who asked you what had happened outside the security -- outside the club was a security guard?

A. Um.

Q. Was he wearing a security uniform or something?

A. No. He always comes like that with a P-coat, pants and boots.

Q. So you know him from your prior dealings with the club?

A. Yeah.

Q. Do you know what his name is by chance?

A. No.

Q. Did -- after you -- did the security guard say anything else to either you or your friends while you were getting Gavino outside?

A. Well, he was telling me, you know, "don't -- don't tell what happened," and so I was like why shouldn't I tell? "Don't say nothing" because I guess he didn't want to get in trouble or something.

Q. When you're saying he told you not to tell, you mean the security guard?

A. Yeah. The security guard didn't want me to say something about it. I guess he didn't want trouble, to get in trouble.

Q. Whom did he tell you not to tell?

A. The police. We get a call from him and he tells my friend, Jose "your friend told on me."

MR. WARREN: Objection. Hearsay, Your Honor.

JUDGE LEWIS: Overruled.

Go ahead. Finish.

THE WITNESS: Okay. And he's on the phone. He's on the phone to the security guard, and I go back up there to the club later on with me and my friend, Jose, and he's like "I don't want your friend here" and "he told on me," and I'm like "okay." So then I just left

right after that and I went home.

MR. AGERBEK: Q. So it was the same day you went back to the club?

A. Yes. The same night.

Q. And why did you go back to the club?

A. Well, I guess there's these two girls that my friend -- that worked with us. We all worked together, and so we went up there. I guess they left things. So we left right after that. That was it.

Q. You went back to pick up the two girls?

A. We went back -- no. The girls were with us. We went back -- they had to go back for something. I guess their ride.

Q. They left some belongings there?

A. They rode up to the club with some other people.

Q. When you went back to the club --

A. That's when the security guard came up to me and told me that "I don't want you here. You're a snitch" and all this other stuff.

Q. Was this the same security guard --

A. Yes.

Q. -- that you've been describing, the one wearing the P-coat?

A. Yes.

MR. AGERBEK: No further questions.

JUDGE LEWIS: Okay. Hold on one second, Mr. Warren.

MR. WARREN: Thank you.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Did you report this to the police? What you just told us about, did you report this to the police?

A. Yes. I told them about the stabbing and the security guard that was up there.

Q. And where did that conversation happen?

A. Which one?

Q. When you were talking to the police.

A. At the hospital.

Q. So were you on the dance -- when your friend Srosco was stabbed --

A. Yes.

Q. -- were you -- were you all on the dance floor?

A. Yes.

Q. And was your friend, Srosco the person -- the person with the knife, was he intending to stab your friend Srosco or did he just happen to get in the way?

A. Yeah.

MR. AGERBEK: Objection. Calls for

speculation as to intent.

MR. WARREN: From what you saw.

JUDGE LEWIS: Hold on. Let me hear the question again.

JUDGE LEWIS: Your opinion, sir.

THE WITNESS: I kind of feel like he got in the way.

JUDGE LEWIS: Srosco did?

THE WITNESS: Yes.

JUDGE LEWIS: Okay.

MR. WARREN: Q. And did you see -- the person who did the stabbing, did you see a knife in his hand?

A. I couldn't really tell.

Q. So you didn't see a knife or you did see a knife?

A. No. Not really, no.

Q. Okay. And how soon -- what exactly was it that led you to believe that your friend had gotten stabbed?

A. Because he was yelling that he got stabbed.

Q. And when he was yelling that -- that's a good clue. When he was yelling that, were you all still on the dance floor?

A. Yeah. We were -- it was just a circle.

Everybody was crowded around us and we couldn't move nowhere.

Q. And was the -- and were there any security who were right there at that same time?

A. No.

Q. When is the first time you saw a security person who seemed to be responding to whatever was going on on the dance floor?

A. When I got out of the circle. When I got out of the crowd, and one of the security guards came in and he grabbed the guy that was stabbed.

Q. The other victim?

A. The other victim. He grabbed him and they took him out into the closet.

Q. Okay.

A. And they kept him there for a while.

Q. Had -- when that happened --

A. Yeah.

Q. When that security guard came in and got the other victim, did you see the guy whom you thought had done the stabbing? Was he still there in the crowd or did you see him?

A. Yeah. He was in the crowd, but he was pushing people and trying to get through so he can get out of the crowd.

Q. To get away?
A. Yes.
Q. And was he fleeing towards the main entrance of the club?
A. Yeah.
Q. And did you see him after that?
A. Yeah. I saw him when he was running, because I told the security guard "that's him right there" and they got him.
Q. And what was the -- can you describe the security guard who got him?
A. He was -- he was a tall black male. He had a P-coat on, like dark, dark blue jeans.
Q. So this is the guy with the P-coat?
A. Yeah.
Q. There's only one P-coat guy?
A. Only one.
Q. The guy with the P-coat is the guy who grabbed the guy that was running away?
A. Yeah.
Q. And then -- now my -- my recollection of the way the club is laid out is when you come in the main entrance, it's an old movie theater; right? Big old place?
A. Yeah.

Q. So when you come in the main entrance, you can go either way to get into the big dance floor club area; right?

A. Yeah.

Q. And -- okay. So when you're in the club area, you were going to take your friend -- you were going to the bathroom; right?

A. Yeah.

Q. So when you went to the bathroom, it's moving back towards the front.

A. Yes.

Q. And are you moving -- when you're moving towards the front, are you moving to your right or moving to your left?

A. My right.

Q. And that's where the bathroom was?

A. Yeah.

Q. The men's room?

A. Yes.

Q. Did you see where -- the guy with the P-coat, was he going anywhere? Did you see him going anywhere with the other guy that did the stabbing?

A. Well, he was standing right in front of the -- in front of the club and he grabbed the guy. The guy came from the left.

Q. Hold on. Standing in front of the club, meaning outdoors?

A. Yeah.

Q. So out on the street?

A. Well, right in front of the door.

Q. But on --

A. Yeah.

Q. -- Murphy Street. Not inside the club?

A. No.

Q. I'm just trying to -- you're moving from the dance floor to the men's room?

A. Yes.

Q. So when you're doing that, are you able to see --

A. Yeah.

Q. -- the front of the club?

A. Yes.

Q. All right. So you could see through the doors?

A. Yes.

Q. And you could see the guy in the P-coat is still with the guy that had done the stabbing?

A. Yes.

Q. And then you go into the bathroom with your friend?

A. Yes.

Q. All right. That's when he --

A. When he pulled his pants down.

Q. Pulled his pants down and you can see that there's a cut?

A. Yeah.

Q. Was there any security that come into the bathroom with you?

A. No, there wasn't.

Q. Did anyone come in and administer any first aid or put any Band-Aids or dressings on it?

A. No.

MR. WARREN: One moment, Your Honor.

JUDGE LEWIS: Off the record.

(Recess taken).

JUDGE LEWIS: Back on.

MR. WARREN: Q. So when you're in the bathroom with your friend, is there -- you said there are no security in there with you?

A. No.

Q. Okay. And did you think of calling an ambulance?

A. I did, but then my friend was like "no. Just take him. Let's just take him out and take him to the hospital."

Q. And did your friend, Srosco, the one who had been stabbed, did he say what he wanted to do?

A. He said just to take him, so my friend Victor drove him up there.

Q. And you got in the car with them?

A. No. I got into a different car.

Q. So Victor and Srosco get into one car?

A. Yes.

Q. And they go on their way.

And from the time that your friend was stabbed -- from the time Srosco was stabbed until he got in the car to drive away, did you see him talking with any security?

A. No.

Q. So you remained behind.

A. Yes.

Q. All right. And then what happened? Do you talk to any security?

A. Yeah. I talked to the one with the P-coat.

Q. And when you're talking to the guy with the P-coat, is -- the guy that you think had done the stabbing, is he still visible? Is he still around?

A. He was holding him. He was like "is this the guy right here?" I told him that that was the guy, and after that, I left. They walked off and I don't know

where he went after that.

Q. All right. And when you talked to the guy with the P-coat --

A. Yes.

Q. -- did you say anything to him like "you know, he's the guy that did the stabbing" or "there was a stabbing"?

A. Yeah.

Q. Not just a fight, but a stabbing?

A. Yes.

Q. All right. And you then next come back to the club.

Approximately what time does this happen?

A. I wouldn't -- I don't really know what time it was happening. I was just --

Q. What time did you get to the club that night?

A. I got around 9:00 or 10:00, around that time.

Q. And does it seem like it's almost closing time or --

A. No. It was just opening.

Q. Just opening. When this incident occurred?

A. When this incident occurred, no. It wasn't just opening about that time.

Q. Because the dance floor's pretty crowded; right?

A. Yeah. It was pretty crowded.

Q. Whatever the crowd in the club is, there was a crowd in the club?

A. Yeah.

Q. So you returned to the club?

A. Yes.

Q. And when you returned to the club, is it still open or is it closed?

A. It was closed. Everybody left. They closed it down.

Q. Okay. So was it now like after 2:00 AM by the time you got back to the club?

A. I think it was a little -- yeah. I think it was around a little bit before 2:00.

Q. Okay. Is the guy in the P-coat still there?

A. Yeah. He's still there.

Q. And did you have any conversation with him?

A. Yeah. I was standing -- I was standing close to them as my friend was talking to them and he said, "Your friend told on me."

Q. When he said that, he's not talking to you?

A. He's talking to my friend, but I'm standing right next to them, probably like two, three feet away. He said, "Your friend told on me, man. I don't want him around me."

Q. Is he meaning you?

A. Yeah. He's meaning me. Me and my friend left and went back to his house.

Q. And have you been back to The Abyss?

A. No.

MR. WARREN: No further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Hold on one second.

Mr. Agerbek, let me do it this way: Am I going to be exposed to a witness who's going to tell me the name of Mr. P-coat?

MR. AGERBEK: I'm hoping.

JUDGE LEWIS: Okay. All right. Obviously you don't know this person's name; do you, sir?

THE WITNESS: No.

JUDGE LEWIS: Okay. Now, I want to get this straight. Stabbing on the floor, on the dance floor. You take your friend, Gavino Srosco to the restroom. You're taking care of him, decide you're going to leave and take him to the hospital.

THE WITNESS: Yes.

JUDGE LEWIS: Basically you go outside. Srosco gets in somebody -- Jose's car, somebody's car.

THE WITNESS: Yeah.

JUDGE LEWIS: And they drive off to the hospital. You and your other friend are left there.

THE WITNESS: Yes.

JUDGE LEWIS: And at that time Mr. P-coat takes you back into the club?

THE WITNESS: Yes.

JUDGE LEWIS: And he asked you "is this the guy who the did stabbing?"

THE WITNESS: Yes.

JUDGE LEWIS: And you said, "Yeah."

THE WITNESS: Yes.

JUDGE LEWIS: End of conversation?

THE WITNESS: Yes.

JUDGE LEWIS: Okay. He didn't say anything else to you at that point in time?

THE WITNESS: No.

JUDGE LEWIS: Okay. Now, you leave and go to the hospital?

THE WITNESS: Yes.

JUDGE LEWIS: And there is a telephone call.

THE WITNESS: Yes.

JUDGE LEWIS: Well, there's officers that meet you at the hospital.

THE WITNESS: Yes.

JUDGE LEWIS: And they start asking you some questions.

THE WITNESS: Yes.

JUDGE LEWIS: Some of these officers get a phone call from someone else.

THE WITNESS: No. My friend got a phone call from the security guard at the club.

JUDGE LEWIS: Your friend got a call from Mr. P-coat?

THE WITNESS: Yes. My friend Jose did.

JUDGE LEWIS: How do you know it was Mr. P-coat who called him?

THE WITNESS: Because he told me who it was, and we went back up there and talked to him.

JUDGE LEWIS: All right. So you didn't talk to the security guard, Mr. P-coat on the phone?

THE WITNESS: No.

JUDGE LEWIS: Okay. Were you told by your friend what Mr. P-coat said to him?

THE WITNESS: Yes.

JUDGE LEWIS: And what was that?

THE WITNESS: "He told me that I told on him and he doesn't want me up there."

JUDGE LEWIS: All right. What was it that he told?

THE WITNESS: I guess I told them that he grabbed the guy, and I guess I told on him. I don't know what he meant by it, but he said I told on him, so I guess he called my friend and told him that. "Your friend told on me and I don't want him here." I don't know what he meant by that.

JUDGE LEWIS: Let me get this straight. The guy in the P-coat, the security guard, he didn't stab anybody; did he?

THE WITNESS: No.

JUDGE LEWIS: He took the man who did the stabbing into custody.

THE WITNESS: Yes.

JUDGE LEWIS: Did he hand him over to police officers, if you know?

THE WITNESS: I didn't see that part.

JUDGE LEWIS: Do you know if that was done?

THE WITNESS: No. I don't know.

JUDGE LEWIS: Okay.

THE WITNESS: Because I was at the hospital the whole time.

JUDGE LEWIS: All right. I'm trying to figure out if the security guard did what was to be expected of a security guard in that situation, why he would be upset with the fact that you said it was him.

Because he did exactly what he was supposed to do.

Is there something that I'm missing here?

THE WITNESS: I don't know. I don't think -- that's all I know. He told me.

JUDGE LEWIS: Basically my interpretation of what happened, those events are --

THE WITNESS: Yeah.

JUDGE LEWIS: As far as you know, that's what really happened?

THE WITNESS: (Witness nods head affirmatively).

JUDGE LEWIS: You're shaking your head.

Does that mean yes?

THE WITNESS: That means yes.

JUDGE LEWIS: We need it for the record here.

THE WITNESS: Okay.

JUDGE LEWIS: When you returned to the club --

THE WITNESS: Yes.

JUDGE LEWIS: -- after the hospital --

THE WITNESS: Yes.

JUDGE LEWIS: -- you and your friend had contact with the security guard in the P-coat.

THE WITNESS: Yes.

JUDGE LEWIS: The security guard in the

P-coat didn't talk to you; he talked to your friend, but you were standing right next to him.

THE WITNESS: Yes.

JUDGE LEWIS: He more or less said to your friend "tell your friend," meaning you, "I don't want him around anymore."

THE WITNESS: Yes.

JUDGE LEWIS: Did he ever say what you told that made him so upset?

THE WITNESS: The security guard wanted to fight me or something, so my friend told him "no, it was the other guy who told." I don't know what that meant, but --

JUDGE LEWIS: I know. I have the same problem right now.

THE WITNESS: I was just thinking what did I do wrong? I mean, I did what I was supposed to do.

JUDGE LEWIS: Well, I'm trying to think what the security guard did that was wrong.

THE WITNESS: I don't know.

JUDGE LEWIS: And it's not that obvious from what I've heard so far, at least to me. Hint, Mr. Agerbek.

Okay. Do either of you have any questions of this witness?

MR. AGERBEK: Yes.

JUDGE LEWIS: Okay.

MR. WARREN: I do, too.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Now, earlier you told us before you left the premises --

THE WITNESS: Yeah.

MR. AGERBEK: -- Mr. P-coat for lack of a better name --

JUDGE LEWIS: I dubbed him.

MR. AGERBEK: -- said to you "don't tell the police."

Q. Is that correct?

A. Yes.

Q. Do you think that's what Mr. -- in your opinion, do you believe that's what Mr. P-coat was upset about when he called you a snitch?

A. Yes, I do. Maybe that's probably what it was.

JUDGE LEWIS: At what point in time did he tell you this?

THE WITNESS: When I was leaving to take Gavino, when we were leaving to take him in the car.

JUDGE LEWIS: Okay.

THE WITNESS: And he told me not to tell. So that's probably what it was, because then the police came

and talked to me. I guess the police came to the club and talked to him, and my friend got a call right after.

The officer left. My friend got a call and he told my friend "your friend told on me" and that was all I know.

JUDGE LEWIS: Did you ever tell the police officers that Mr. P-coat --

THE WITNESS: I told the police officers that --

JUDGE LEWIS: Wait a minute. Wait, wait, wait, wait.

THE WITNESS: Okay.

JUDGE LEWIS: Did you ever tell the police officers that the security guard, Mr. P-coat told you not to report this incident to the police?

THE WITNESS: No, I didn't.

JUDGE LEWIS: What did you tell the police.

THE WITNESS: I told him that he grabbed the guy that was stabbing people.

JUDGE LEWIS: Okay.

THE WITNESS: That's all I told them.

JUDGE LEWIS: Mr. P-coat?

THE WITNESS: Yes.

JUDGE LEWIS: And he basically took them into custody.

THE WITNESS: I don't know if he held them.

JUDGE LEWIS: We don't know. Maybe that's where I'm missing something. Go ahead.

MR. AGERBEK: That's all the questions I have.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Thank you.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Your -- Srosco who's been stabbed gets in the car with another friend --

A. Yes.

Q. -- and they take off.

And you're still behind?

A. Yes.

Q. And before you leave to go to the hospital, the guy in the P-coat says something like "don't tell."

A. Yeah.

Q. As best you recall -- and he's talking directly to you. As best you recall, what words does he say to you?

A. All I know is he asked me "if this is the guy" and "I'm going to handle this," and he told me "don't tell," and right after that, me and my friend Jose left and went to the hospital.

Q. So the words he used were "don't tell"?

A. Yes.

Q. He didn't say, "Don't tell the police"?

A. Well, yeah.

Q. It's important.

A. Yes.

Q. Were the words that he said, "Don't tell the police" or were the words that he said, "Don't tell"?

A. He told me not to tell.

Q. Don't tell.

JUDGE LEWIS: Period?

THE WITNESS: Yes.

JUDGE LEWIS: Okay.

THE WITNESS: And then right after my friend gets a call after the officer left me and he told my friend that I told on him.

JUDGE LEWIS: Okay.

MR. WARREN: No further questions of this witness, Your Honor.

MR. AGERBEK: Can I ask a follow-up?

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. When you heard the words "don't tell" --

A. Yes.

Q. -- who did you think he meant don't tell?

MR. WARREN: Well, objection, Your Honor.

Calls for speculation.

JUDGE LEWIS: Well, it's his opinion.

Go ahead. You can answer.

THE WITNESS: I don't know who he meant not to tell, but --

MR. AGERBEK: Q. In your opinion, who did you think he meant not to tell?

A. Probably the police.

Q. Okay.

A. Yeah.

MR. AGERBEK: That's it.

JUDGE LEWIS: Thank you very much, sir. You are excused.

THE WITNESS: Thank you.

MR. WARREN: Can I ask another question? I'm sorry, Your Honor.

JUDGE LEWIS: You weren't quick enough.

MR. WARREN: I was writing.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: You say -- you say he probably meant don't tell the police, but at that moment, he had the guy that you thought had done the stabbing.

THE WITNESS: Yeah.

MR. WARREN: The guy you identified as doing the stabbing, he had him under his control.

THE WITNESS: Yes.

MR. WARREN: Q. So did you think he was going to turn him over to the police?

A. I don't know. I don't really think he was, but I don't know.

Q. Did you think he was going to let him go?

A. No. I didn't think he was.

Q. So when he says, "Don't tell" and you say he probably meant don't tell the police --

A. Yeah.

Q. -- why do you think he meant don't tell the police if he was going to turn the -- if you didn't think he was going to let the guy go, but probably turn him over to the police?

A. I didn't know if he was going to turn him over or not, but I don't know.

Q. The words he said were "don't tell," and you filled -- in your own head, you filled in the blank oh, he probably means don't tell the police.

A. Yes.

Q. But you told the police, anyway, that he had the guy who had done the stabbing.

A. Yes.

JUDGE LEWIS: All right. You're excused. Let's see how quick you can get out of here.

JUDGE LEWIS: Raise your right hand.

DAVID OSBORN

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated. State and spell your name, please.

THE WITNESS: Officer David Osborn, O-s-b-o-r-n.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Officer Osborn, with whom are you employed?

A. The City of Sunnyvale Police Department.

Q. What is your position there?

A. I'm a patrol officer and a crime scene investigator.

Q. And how long have you been so employed?

A. With the City of Sunnyvale, I've been there approximately seven years, and prior to that, I was a police officer in the City of Orange for fifteen years.

Q. Directing your attention to your duties as a CSI, can you just briefly give us a general overview, very brief overview what's expected in that role?

A. CSIs in our department, we collect photos, any evidence. We process scenes for fingerprints. We collect DNA, variety of things.

We don't go into the major processing of the DNA or fingerprints, but we just collect most of the time, send it to the crime lab in San Jose.

Q. Directing your attention to the March 8th, 2008, were you on-duty?

A. Yes, I was.

Q. What was your assignment that day?

A. I was crime scene investigator working the entire city.

Q. Were you alone or did you have a partner?

A. I'm alone.

Q. On the evening of March 8th, did you have occasion to go to a business by the name of The Abyss in Sunnyvale, California?

A. Yes, I did.

Q. Why did you go there?

A. I went there at the request of my supervisor who asked me to come there and they had already actually obtained consent to search the place from the owner of the business.

So my job was to go in and actually search for any evidence or an earlier stabbing that occurred there.

Q. And approximately what time did you arrive at The Abyss?

A. I believe it was -- if I can refer to my

report, I can give you the exact time. It was approximately 2:30, 2:40.

Q. The business was closed at this time?

A. Yes.

Q. Did you actually get to go in and do the search?

A. Yes, I did.

Q. What kind of search did you do? What were you looking for?

A. I was looking for any evidence of a crime, any evidence of blood on the ground, on the walls, any weapons used.

It was actually -- since the business was already closed, most of it was already cleaned up, so --

Q. Did you have a discussion with anyone at the premises when you arrived?

A. When I arrived, no.

Q. And did you conduct your search?

A. Yes, I did.

Q. And what, if anything, did you find?

A. The only evidence that I could find of any type of struggle or crime was there was a trash can -- there's a bar on the lower level with a hallway that runs on either side, kind of runs down the middle, and there was a trash can in that little area, the hallway area,

and in that trash can, there was a tied large gray trash bag.

I opened the trash bag up. I found two terrycloth towels. Both of them were covered with a red substance which I determined to be blood.

Q. Was there ever determination made as to whether or not that was blood?

A. I -- like I said, I collected it and I submitted it. I didn't actually do any test to see if that was blood or not.

Q. Okay. Did you on that evening ever meet or see anyone who had any wounds that would be indicative of somebody being stabbed?

A. Yes, I did.

Q. And where did you see -- not on the person, but where location-wise was that?

A. It was at a car stop that was made by Mr. Curiel. It was in the area of Mathilda and California.

Q. And what wounds did you observe?

A. Two stab wounds to the victim's back. One was dead center and one was in his left buttocks.

Q. And do you know the victim's name by any chance?

A. I believe it was Bell. I don't know his first name.

Q. Did you -- as part of your duties, are you trained in first aid?

A. Yes, I am. I'm an EMT basic.

Q. And did you do any treatment of these wounds of Mr. Bell?

A. Actually, I didn't because he had already actually been bandaged up. So the one in the middle of his back was bandaged. Hit buttock had been bleeding, but it wasn't bleeding that bad when I got to him.

Q. Did Mr. Bell indicate to you how he came to be bandaged on his back?

A. He told me he was bandaged up by the security guards at The Abyss.

Q. Did you take any photos of the wounds by any chance?

A. Yes, I did. I took them at the scene and actually Curiel summoned fire, paramedics to take a look at it.

Q. These two towels that you found, what was it that led you to believe that the red substance on them was blood?

A. Past experience. Looked like blood. I've seen blood many times. Cut myself personally. Collected other evidence, blood evidence before on clothing and it just appeared to be blood to me. Red, it was still damp

and wet and --

Q. Did you have any reason to believe it might be something like Compari or some other red --

A. It didn't.

Q. Alcohol?

A. Didn't appear to be anything but blood to me.

Q. And what is it -- what training and experience have you had in determining whether something would be blood besides your own personal observations of a cut?

A. I've attended approximately 120 hours of crime scene investigation school, forty hours of homicide investigation school.

Like I said, I'm an EMT basic, which means I've had all the pretty much training up until paramedic. I'm not exactly a paramedic yet. But everybody in our department's an EMT.

Q. And have you worked as an EMT or in a role where you had to administer --

A. For the last seven years.

MR. AGERBEK: No further questions.

JUDGE LEWIS: Mr. Warren.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Just to be clear, when you went to the club, it was closed.

A. It was closed, correct.

Q. The club looked as if it had been cleaned up, normal sort of end of day cleanup.

A. Yes.

Q. And you didn't speak with anyone other than to gain admission.

Did you speak with anyone inside the club?

A. Inside the club, there was one gentleman seated just inside the rear doors that they were talking to.

I couldn't even tell you who he was other than it was an oriental gentleman, and I maybe said two words to the officer that was talking to him and walked inside.

Q. Okay. And when you saw Mr. Bell, who was the stabbing victim, this was while he was still in his vehicle; right, at the car stop?

A. It was at the car stop. I can't remember if Officer Curiel had him removed from the vehicle prior to me getting there or he was just getting out as I got there.

Q. But he hadn't yet gotten to a hospital --

A. No.

Q. -- as far as you could tell?

A. Exactly.

Q. And when you looked at the wound in the middle of his back, you saw that it had been bandaged already?

A. Correct.

Q. And the bandage appeared to be adequate?

A. Gauze with medical tape.

Q. Was there also a bandage on the wound on his buttock?

A. I don't believe there was. I believe there was only a bandage on the middle of the back.

Q. The wound that on his buttock was bleeding, but not badly enough that you thought --

A. I actually did, because we actually summoned the EMTs, but I didn't think I needed to do it. I was taking the evidence photos. We called for paramedics.

Q. Okay. And these -- the garbage bags, you said you found a gray garbage bag tied up like regular plastic.

A. The large --

Q. Big large plastic garbage bags?

A. I don't know how many gallons, but the big large ones.

Q. You found two towels on them what you thought was blood.

Was there other stuff?

A. It was full.

Q. Club debris. It looked like somebody did their cleaning and dumped all the debris into this

garbage bag and tied it up?

A. Correct.

MR. WARREN: Nothing further.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Officer Osborn, Mr. Bell, did you ever determine whether he was a suspect or a victim in anything that occurred at the club?

THE WITNESS: He told me, when I asked him what happened, why he was bandaged up and that he had been stabbed at The Abyss.

JUDGE LEWIS: Okay. Now, somewhere you have this individual's first name.

THE WITNESS: Personally, I may. I'm not sure.

JUDGE LEWIS: Somebody give me a first name.

MR. AGERBEK: Tavio. Would that sound correct?

THE WITNESS: I'll tell you right now. I have it written down. Tavio, T-a-v-i-o.

JUDGE LEWIS: Last name Bell, B-e-l-l.

THE WITNESS: Correct.

JUDGE LEWIS: Okay. All right. All right. thank you very much, sir. You're excused.

Off the record for a second.

(Discussion off the record).

JUDGE LEWIS: Back on the record.

ANTHONY FRASIER

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated.

State and spell your name, please.

THE WITNESS: Anthony Frasier, F-r-a-s-i-e-r.

JUDGE LEWIS: Go ahead, Mr. Agerbek.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Mr. Frasier, on the evening of March 8th, 2008, did you go to a club by the name of The Abyss located in Sunnyvale, California?

A. Yes.

Q. And were you or are you an employee of The Abyss?

A. Was.

Q. Okay. And what was your position there?

A. Security.

Q. And how long were you employed in that capacity? Just roughly.

A. About a year.

Q. Okay. And directing your attention to March 8th, 2008, were you a security guard for The Abyss?

A. Yes.

Q. And were you on-duty that evening?

A. Yes.
Q. And what were your duties that evening?
A. To patrol the perimeter inside the building and stop any fights that were occurring.
Q. Okay. And approximately what time did you start your shift that evening or did you have a set start time usually?
A. Usually I start about 9:30, help set up.
Q. And how long was your shift typically?
A. Till about 2:00.
Q. And on March 8th, 2008, would you say you worked a regular shift that evening?
A. Maybe a little longer, but yeah.
Q. Okay. Did anything of consequence happen while you were there that evening?
A. A stabbing happened.
Q. Okay. And how do you know that a stabbing took place there that evening?
A. I was doing my patrolling around and there was a bunch of screaming and hollering going on, and then somebody came up and said that their friend was stabbed, so I went trying to look for it.
Q. And when you said a "bunch of screaming and hollering went on," where was the screaming and hollering happening?

A. In the main dance floor.

Q. And so then you went in search of trying to figuring out where this commotion was?

A. Trying to find where the victim was at.

Q. Yes or no for the court reporter. Mm-hmm and unh-unh don't work too well.

Did you find a victim?

A. Over by the men's bathroom.

Q. Okay. Do you recall what the name of that victim was?

A. No. I do not remember.

Q. Okay. Do you remember -- what did you notice about this victim that you found?

A. He was complaining that there was pain in his back, lower back and he had his hand right there, and then -- hold on. Let me back that up a little bit. There was a mistake there.

Now that I remember, it was actually not the men's bathroom where I found him. It was actually where the dance floor was at where I found him, complaining that the back of his lower back was hurting.

As I was escorting him towards the front to see, when I looked on the back of his -- I think it was white shirt, there was just a massive blood stain on there.

So I said, "Hold on a second." I lifted it up and I seen that there was a stab right there.

Q. That was in his back?

A. On his lower back, yeah.

Q. Okay.

A. So I brought him into the coat room to secure him so that we could get medical attention on him and help him there until he can get help.

Q. And what happened next?

A. I turn around and asked for any medical supply that they had.

Q. Who did you ask?

A. Mike, the owner of the club.

Q. Is that Mike Nguyen?

A. Yeah.

Q. Okay. And what did Mike say to you or do?

A. He went and got a small little medical box that really didn't have hardly any supply in it.

So I had told him "get some paramedics here, hold him here. Don't let him anywhere. I'll be right back."

I went to my truck, grabbed all the medical supply I had. I had four cases of, you know, first aid equipment.

I went back inside, tried to stop the

bleeding, put bandage -- cotton because -- not cotton balls. Cotton pads on it to try to stop the bleeding.

Q. Gauze pad?

A. Yeah, gauzes, and hold it against there, my gloves and what not, and then he was also saying that he was having trouble sitting down.

Q. Who was saying that?

A. The victim. He was saying, "I can't sit. I'm hurting. I'm hurt," and I said, "I know. I'm trying to get medical attention."

He said, "No, it hurts on my butt." So I said, "What?"

So I asked him to -- to pull down his pants a little bit. He also had another stab down lower of his rear.

Q. Okay. So what happened next?

A. I continued to try to bandage it up and try to stop the bleeding. I put as much gauze as I could on it.

Q. This is on the back?

A. On the back and the lower one.

Q. Okay.

A. And then I asked for, you know, medical -- medical and I was told by Suit, the one that -- he's supposed to be the head of security that tells everybody where to go and what to do, was saying, "No, no. Don't

call the paramedics. He doesn't have insurance" and what not, and I'm like "this is a club. It doesn't matter if he has insurance or not. He needs medical attention."

Q. When he said, "He doesn't have insurance," what does he mean?

A. The victim.

I said, "It doesn't matter. He needs medical attention. We need to get him to a ambulance. We need the ambulance here."

"No, no, no. Just bandage him up and the victim's friend will drive him to the hospital."

After that, the victim's -- I don't know the girl's name, she pulled up with the car, and since they were refusing to get an ambulance there, I helped him into the car and told him the nearest hospital to get to.

Q. When you say they were refusing to get an ambulance there --

A. The club.

Q. Now, you mentioned -- what was the name of the person you said that, Suit?

A. Suit.

Q. Suit.

JUDGE LEWIS: How do you spell that?

THE WITNESS: I spell it S-u-i-t, but I don't think that's correct, either.

MR. AGERBEK: Q. Can you describe -- is it a Mr. Or Mrs.?

A. Mr.

Q. Can you describe Mr. Suit?

A. Always wears a black, like a dress coat, watches security out front. Big heavy set black guy.

Q. The coat that you're describing, would that be like a P-coat?

A. Yes.

Q. I'm sorry. We've just been introduced to somebody named Mr. P-coat.

JUDGE LEWIS: We didn't have a name associated. That's why we're asking.

THE WITNESS: I'm here to tell the truth.

MR. AGERBEK: Okay. So you helped get this victim who had been stabbed in the back and the buttocks out to the car.

THE WITNESS: Yes, sir.

MR. AGERBEK: Q. Did you have any further -- did you go back and clean up any of the blood -- I guess that's an assumption.

Was there any blood in the coat room from where you'd been working on the victim?

A. Not on the ground, no.

Q. Was the victim sitting on something, in a

chair or on a bench?

A. I had him sit on a chair.

Q. Okay. And was there blood on the chair?

A. Chair, no.

All the gauze and blood and stuff on the gloves and what not I had put in a trash can and left it right where it was at in that room.

Other than that, I don't know what happened to it.

Q. Now, when you say "gauze," are you talking about the white terrycloth towels or are you talking about gauze when I go to the Band-Aid section at the drug store?

A. When you go to a Band-Aid section, you get gauze.

Q. Like the stuff that you wrap around or the squares?

A. Or the squares.

Q. Did you use any white terrycloth towels in the treatment of this victim?

A. No.

Q. The security guards for the premises, do they have radios that they carry?

A. Yes.

Q. That's so you can call for assistance if

something comes up?

A. Yes.

Q. Was there anything broadcast over the radio that you heard about the stabbing?

A. The only thing I recall hearing on the radio was that somebody had gotten stabbed and somebody's asking for medical supply.

Q. Did you at some point get interviewed by any police officers?

A. Yeah.

Q. Do you recall the officer's name by any chance?

A. No.

Q. Were you present when -- let me back up.

Do you know somebody by the name of Frank Collins?

A. Yes, I do.

Q. And who is Frank?

A. Frank Collins is my best, best friend. He's like a brother to me. I've known him for about fifteen years, if not more.

Q. And was he also employed by --

A. Yes.

Q. -- this club Abyss?

A. Yes.

Q. As a security guard?

A. Yes.

Q. Were you present when -- let me back up.

Was Frank Collins interviewed -- was Frank Collins working that evening?

A. Yes, he was.

Q. Was Frank Collins interviewed by the police?

A. I don't -- I wasn't there if he was.

Q. Okay. Was there anybody present from -- that worked for The Abyss when you were being interviewed by the officers?

A. No. No. I -- one of the times that I was interviewed, Frank Collins had called me and said that I was leaving -- I had left the club at this point, and he had said that he was asked --

MR. WARREN: Objection. Hearsay.

JUDGE LEWIS: There's no question pending, sir. Why don't you just wait.

THE WITNESS: Okay.

MR. AGERBEK: Q. How many times were you interviewed by the police?

A. Once.

Q. And one of them took place at the premises?

A. Yes.

Q. And the other one took place where?

A. On El Camino Real.

Q. Was that at a police station or your home?

A. No. Just near the police station. I saw a cop and stopped him.

Q. So was that the same night?

A. Yes.

Q. Okay. Why did you feel -- well, when you first met with the police, did you tell them the information you just relayed to us about how you treated --

A. Yes.

Q. -- this victim?

And why did you feel a need to stop the police officer?

A. Because Frank Collins was told -- had found the knife and had given it to one of the security guards.

Q. Is this all stuff that somebody else told you?

A. This is what he had told me.

Q. So this is something you felt the need to contact the police and convey that information?

A. Yes.

MR. WARREN: Object to this as all hearsay, Your Honor.

MR. AGERBEK: I'm going to go into it.

JUDGE LEWIS: I don't think he's offering it

for the truth of the matter asserted. It's just a reason for continuing the investigation, I would assume.

MR. AGERBEK: Correct.

Q. Did you -- other than conveying what other people had told you, did you provide the police any new information from your direct observation?

A. No.

Q. When you went to treat the victim, did you put a call out over on the radio regarding the stabbing and your need for medical supplies?

A. Yes.

Q. Did you ever see the person who was alleged to have done the stabbing?

A. No.

Q. Did -- was there ever any broadcast put out on the radio that the person who had done the stabbing had been apprehended?

A. Not that I recall. I had taken my radio off about halfway when I started working on the victim.

Q. So you weren't paying attention to the radio anymore?

A. (Witness nods head negatively).

Q. That's a no? You were shaking your head.

A. No.

MR. AGERBEK: No further questions.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Thank you.

` CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. When you first became aware of the disturbance that evolved into your becoming aware that there had been a stabbing, but when you first are aware, it's a disturbance?

A. Yes.

Q. You think it's probably a fight or something.

A. Yes.

Q. Where were you physically? Where were you positioned in the club?

A. I was positioned to roam the whole perimeter from the front to the inside where the dance floor's at.

Q. Okay. Were you -- but at that moment, as part of your roaming, when you're in the main dance floor area, do you go up on to the -- there's --

A. Stage.

Q. -- a stage that's at the far back of the room; right?

A. Yes.

Q. It's elevated like a stage in a music hall or something; right?

A. Yes.

Q. Do you go up on that stage so that you can

have more of a bird's eye view of what's going on?

A. Yes.

Q. Do you think you were on that stage when you first became aware of a disturbance?

A. No.

Q. Where do you recall you were when you first --

A. I recall --

Q. -- noticed?

A. I recall looking at the club. I recall being on the right-hand side looking down at the dance floor.

Q. Okay.

A. Facing looking at the stage.

Q. Okay. And were you on the same level as the dance floor or were you on the second floor?

A. Two stairs up --

Q. Okay.

A. -- from the dance floor.

Q. On the stairway that goes into the second floor area that --

A. It's not -- there's a lower bar.

Q. Right.

A. And then there's like two steps and then a little platform.

Q. Right.

A. And then two more steps to the dance floor. I

was on that second platform right there.

Q. Okay. And you had sort of -- so you had somewhat of an elevated position standing maybe fifteen, twenty inches above the dance floor?

A. Yes.

Q. And you were looking out over the dance floor.

A. Yes.

Q. That's part of what you do, keeping an eye on things?

A. Right.

Q. That particular night, was it a typical night in terms of there was no special event, no specially large crowd, typical crowd?

A. Yeah. It was a typical crowd.

Q. How many security were working that night?

A. Oh, geez. I really don't have count of that.

Q. If somebody said there were twelve, would that sound about right?

A. Maybe, possibly.

Q. Okay. And your job is to -- you said you were roving.

Are you -- do you rove in the main dance floor area or do you -- where do you rove?

A. Usually I start from the start of the club and work my way going around where the women's bathroom is,

come down the hallway, go down to the dance floor, up the stage and back around, and then usually I go up the main bar of the stairway there, come back down and then go back down to where the women's bathroom is to the men's bathroom.

Q. I've heard it described that there's a bar on the dance floor level that is the lower level and then a bar at the second level.

A. Right.

Q. And the bar at the second level is where alcohol is served; right?

A. Correct.

Q. And the bar at the lower level is not an alcohol serving bar.

A. Right.

Q. So to go to the second level, there are security who check IDs?

A. Yes.

Q. Okay. So when you first became aware of this disturbance, was it the noise that drew your attention or did you see anything?

A. No. I saw someone screaming for help.

Q. Okay. And did you see people start to move away from this person?

A. I seen people moving away and I seen a lot of

flashlights flashing towards him.

Q. And the flashlights flashing indicated what to you? Who would have a flashlight?

A. Security.

Q. It indicated to you that security was already there when you saw flashlights?

A. It wasn't that they were already there. They were from a distance viewing and they're seeing something going on so they're paying attention.

Q. And they're shining their lights?

JUDGE LEWIS: They're pointing out where the problem is.

THE WITNESS: Yes.

MR. WARREN: And when you say flashlights, it sounds like you mean more than one.

Q. How many lights were you seeing?

A. At least two to three.

Q. So two to three other security. Each security only has one light, I would assume.

A. Correct.

Q. Two to three other security were aware that something had happened and they were shining their lights and presumably moving to that location; right?

A. Yes.

Q. Okay. And you were also moving to that

location.

A. Correct.

Q. When you get to that location -- when you get to that location, were you already aware that a stabbing had occurred?

A. No.

Q. Did it just look like a fight?

A. Just looked like a fight.

Q. And was the fight still continuing or had the people been separated?

A. People had been separated.

Q. All right. And the first person you turned to was this Mr. Bell who later turned out to be stabbed; right?

A. Correct.

Q. And is that the only person that you sort of took charge of?

A. Yes.

Q. Okay. And did you see other security taking charge of anyone else?

A. I was not paying attention.

Q. So you were paying attention to your guy.

A. Yes.

Q. Let's just leave this moment. I want to go back to just sort of a normal practice, if there was such

a thing.

Normally at The Abyss, fights might break out on the dance floor; right?

A. Yes.

Q. And what's your normal procedure when a fight breaks out on the dance floor?

A. Just to break it up, and the people that were -- were the main cause of the fight, tell them that they have to leave for the night and escort them out nicely.

Q. Do you escort the people?

A. Yes.

Q. Is it the practice -- just assume it's two people involved. Some of the people take one person to the back and let them out the back and some of the people take someone else out the front and try to keep them separated.

A. Correct.

Q. Talk to them a while and get them calmed down.

A. Yes. That's how they would do it.

Q. And when you feel that they're calmed down, you release them?

A. Sometimes, or sometimes just tell them that they have to go. They don't even calm them down.

Q. I mean, ask them to leave.

A. Sometimes they escort them to the door. That's it. Don't even talk to them.

Q. That's the normal practice?

A. Yes.

Q. So as you were taking Mr. Bell from the dance floor, that's what you were attempting to do; right?

A. Yes.

Q. Because as far as you knew, he was just a combatant. He's a guy who was in the fight. You don't know if he threw a punch or what his role was.

A. Correct.

Q. But you identified him as a guy who was trouble and you were getting him out.

A. Correct.

Q. And as you are -- now you're focused on him.

Are you aware of other security doing anything else with anyone else?

A. No.

Q. Okay. No one's talking to you over the headset saying anything?

A. No.

Q. So as you're moving him out, you're moving him towards the front of the club.

A. Correct.

Q. You're going to take him from the passageway

that leads from the dance floor to the main lobby?
A. Correct.
Q. As you're moving him there, is that when he started complaining about the pain?
A. He started complaining about the pain then, and I had looked and saw the blood stain on his shirt.
Q. When you were still on the dance floor, had he complained about the pain?
A. If so, I could not hear.
Q. All right. And the music's continuing to play during all this; right?
A. Correct.
Q. As you're moving him out, are people just continuing on dancing? It's over, as far as they're concerned, and things are calming down?
A. Yes.
Q. That's exactly what you want to happen; right?
A. Yes.
Q. Now he's complaining about the pain. You take a look and see the wet spot, the red spot, so you take him into the coat check room, because there's better illumination there.
A. Yes.
Q. You then lift up his shirt; right?
A. Correct.

Q. And that's when you see the size of the wound and the amount of the blood?

A. Yes.

Q. You can tell that it's going to need to be bandaged.

A. Yes.

Q. Before that, had he said to you "I've been stabbed"?

A. Yes.

Q. When did he say to you "I've been stabbed"?

A. After he said he was complaining of pain.

Q. So the first time you heard him complaining of pain was when you had him already off the dance floor and had him between the dance floor and the front lobby?

A. Yes.

Q. When he said to you "I've been stabbed," did you report anything over your headset?

A. The only thing I reported was that I have a victim in pain with a stab wound.

Q. Stab wound.

Okay. So you take him then into the coat check and you start to check him out and you can see that he needs to have some kind of bandage or dressing put on; right?

A. I saw that he possibly needed bandage,

dressing and at least possibly a couple stitches.

Q. It's a severe cut. It's deep --

A. Yeah.

Q. -- from your judgment.

Do you have any EMT training?

A. Yes.

Q. Before this night?

A. Yes.

Q. And do you work as a firefighter?

A. I do volunteer.

Q. Okay. And have you worked in the capacity as an EMT anywhere?

A. Just doing small medical stuff like bandaging and stock bleeding and CPR training.

Q. At the club or as part of some other job?

A. Just part of another job.

Q. What's the other job?

A. When I worked for -- I worked for Santa Clara doing volunteer for them, their fire department.

Q. Okay. And was it known to Suit -- the guy with the P-coat, is he the head of security?

A. Yes.

Q. And was it known to Suit that you had this sort of EMT background?

A. Yes.

Q. All right. And when you made the call that you're attending to a guy that's been stabbed, did he identify from your voice that it was you that was talking?

A. I have no idea.

MR. AGERBEK: Objection. Who's "they"?

MR. WARREN: Q. Do you identify yourself when you make that?

A. No.

JUDGE LEWIS: Okay. Fair enough.

MR. WARREN: Q. So you asked for what kind of first aid supplies they had, and Mike --

A. Correct.

Q. -- who -- you described him as the owner of the club?

A. That's what I was told.

Q. That's how you know him.

A. Yes.

Q. He brings you some box, which has some meager supplies in it.

A. Yes.

Q. You say to yourself "man, I could do better." You go out to your truck, which is parked in the back parking lot?

A. Yes.

Q. And you bring in your own supplies.
A. Yes.
Q. So you start up about cleaning the wound and putting a dressing on.
A. Yes.
Q. And you've got gloves and you know what to do.
Do you have any conversation -- do you know the guy's name by now? Do you know his name is Tavio?
A. No. I never asked for his name.
Q. Is he calm during this period?
A. He's very calm and just, you know, in pain.
Q. But he's cooperative, he's calm?
A. Yes.
Q. Are there any of his friends in the room with you?
A. Yes. There was one girl, and I don't remember what her name was or what she looked like.
Q. Is she calm?
A. She's calm, yes.
Q. Now, did you tell him that you needed to call an ambulance for him?
A. Yes.
Q. And did he say anything in response to that?
A. The only thing he said was he had no medical, and I told him it doesn't matter.

Q. Okay. All right. And then it turns out that he's going to be driven to the hospital; right? His friends are going to drive him to the hospital?

A. After they catch, yeah.

Q. Did your friends say, "We'll drive you to the hospital"?

A. Yes.

Q. Was there any -- you know, I'm unclear. Was there someone from the club who was telling you that you should tell him that he needs to get himself to the hospital, that the club is not going to call an ambulance?

A. Sue.

Q. And where is he when he says this?

A. In the front lobby.

Q. Where are you when he says this?

A. In the coat room, which is in the front lobby.

Q. Okay. And are you eye to eye when he says this?

A. Yes.

Q. Okay. So it's not like he's saying this over the headset or anything.

A. No.

Q. He's looking at you and telling him "we're not calling an ambulance. Get him out of here"?

A. Yes.

Q. Do you know if he had conversation with any of the other friends of Mr. Bell?

A. I have no clue.

Q. Did he say his friends want to take him to the hospital?

A. Yes.

Q. He told you that?

A. He said one friend is going to get in the car.

Q. So did that suggest to you that separate from what was going on in the coat room, he'd been talking to one of the friends of Mr. Bell and they were going to get a car?

A. Yes.

Q. Okay. So when he was saying, "No, no, we don't need to call an ambulance," could it be because he knew that his friends were already on their way to get the car and getting him to a hospital?

A. No.

Q. You say no. Why do you say no, it couldn't be that way?

A. Because the way -- they try to hide things. They try to hide any evidence that they have and they don't do procedures correctly.

Q. This is your opinion?

A. Yes.

Q. Okay. So your frame of mind was they're trying to cover up that there was even a stabbing here?

A. Correct.

Q. And your frame of mind is they don't even want to call an ambulance for this guy.

A. Correct.

Q. Okay. And this was because Suit is saying, "No, no. We don't need to call an ambulance. His friends will get him to the hospital"; right?

A. Yes.

Q. And the guy himself, the victim Mr. Bell had already told you "I don't have any insurance."

A. Yes.

Q. So he was worried about having to pay for something; right?

A. Correct.

Q. Now, you never -- you never thought that Mr. Bell was in any way the assailant? He wasn't the guy who was wielding the knife; right?

A. No.

Q. He was clearly somebody who was victimized by this?

A. Correct.

Q. From the time that you first put your hands on

Mr. Bell to escort him from the dance floor, do you have any firsthand knowledge of what happened to the guy that was wielding the knife?

A. No.

Q. Could you even see him? Could you describe him in any way?

A. No.

Q. Is it possible that another security took that person out -- again, thinking this was just a fight -- and got him out to the front and as standard procedure, let him go?

A. Yes.

Q. Now, at the club, did you give statements to more than one police officer?

A. No.

Q. Were you interviewed by only one?

A. That I recall, yes.

Q. And was it -- was it only that officer standing there listening to you or were there twelve officers standing shoulder to shoulder?

A. I don't remember.

Q. Was Suit -- I'm taking you to the moment when you're first appearing on the dance floor to break up the fight. Okay? And you identified Bell as somebody that you're going to take care of.

Was Suit one of the security that was there at that moment; do you know?

A. I don't know.

Q. Okay. Do you know any of the other security who were there at that moment taking out any of the other combatants?

A. No.

Q. Or the people involved.

All right. So your focus was on your guy?

A. Correct.

Q. And that's where you wanted it to be?

A. Correct.

Q. You don't know what he's going to do. You're there as patrol to get him out.

Okay. Now, I'm looking at a police report by an Officer Foley, and let me just read to you what he wrote. He's writing -- this section of his report is called Statement of Frasier.

He says: "Frasier was told by someone over the radio that the police were going to be notified and that he should bandage the victim up as best he could and send him on his way. Frasier described the voice on the radio as an Asian surrounding male that he recognized, but couldn't remember the name of."

Now having heard that read to you as something

an officer wrote, purporting to be what you were telling him that night, was it -- was it Suit who was telling you "don't call an ambulance, send this guy away," or something it you heard over the radio?

A. Something I heard over the radio.

Q. And was it -- when this officer reported presumably your words, that it was an Asian sounding male, was there someone other than Suit?

A. Yes.

Q. Because Suit's African-American?

A. Yes.

Q. After Bell left -- Bell then left with his friend; right?

A. Yes.

Q. The woman that was with him in the coat check?

A. Yes.

Q. Did you see him get into a car?

A. I helped him get into a car.

Q. Did you say anything to them like "go to the hospital"?

A. I told them about the nearest hospital.

Q. Do you believe that that was, in fact, what they were going to do?

A. Yes.

Q. What did you next do?

A. Go straight to an officer and tell them what happened.

Q. An officer who was on the scene?

A. Yes.

Q. All right. And was the officer on the scene in response to a call or was it just a patrol officer sitting in a car?

A. In response to a call.

Q. So a call had been made to the police?

A. I reckon so. There was cops all right there.

Q. And this was while -- this was just in that moment while you put Bell into the car?

A. Yes.

Q. The police were already there?

A. Yes.

Q. And so you --

A. Actually, the police had just gotten there after the car was gone.

Q. Okay. How long after?

A. I would say maybe five minutes or so. Less than that.

Q. Okay. All right. So -- but let me take you through that interval of time, because I had an image when you were talking first, there was a police officer within your sight and you talked to him.

A. After the car had already gone, I seen an officer had come up to the club.

Q. Within a minute, thirty seconds?

A. Yeah.

Q. You were still outside?

A. Yes.

Q. So you went to the officer and you told the officer about the victim --

A. Yes.

Q. -- the wounds, and that you bandaged them up and he was being driven to the hospital by his friend?

A. Yes.

Q. And did you say anything to the officer about the -- that you had heard what you thought was some instruction not to call an ambulance?

A. Yes.

Q. Okay. You said that to the officer?

A. Yes.

Q. And what did the officer do?

A. All I know is took my statement. I don't know what they did.

Q. So he was writing things down while you were talking?

A. Yes.

Q. Was this a man or a woman?

A. I don't remember.

Q. And did he review with you his notes and say -- did he review with you what he wrote down to say, "Is this right? Is this right?"

A. I don't know.

Q. Okay. Did you ever later have any meeting with anyone from the police department where they showed you a written statement that they had prepared?

A. No.

Q. After that conversation with the officer, what did you then do in the club?

A. I go inside and just clean things up and pick up any garbage that I had seen on the ground and put it in the garbage can.

Q. By the time the police came, was the dance party over?

A. Yeah.

Q. So the club was sending them on their way. They weren't trying to carry on and keep the dance thing going?

A. No.

Q. When you went back in to clean up, was this part of your normal duties, to start cleaning up debris?

A. Yes.

Q. Did you come upon blood anywhere that needed

to be cleaned up?

A. No.

Q. Did you see anyone else cleaning up blood anywhere?

A. No.

Q. And all the bloody bandages, your gloves and things, you said you just left them in the trash and the coat check room?

A. Yes.

Q. Did you try to hide that in any way?

A. No way.

Q. Did you have any reason to think that anyone that was working within the club was trying to hide that a stabbing had occurred?

A. Not that I can recall. Only what I was told.

Q. Okay. But you, in fact, knew that the police were already there --

A. Yes.

Q. -- in response to this stabbing; right?

A. Yes.

MR. WARREN: I have no further questions, Your Honor.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Did you ever tell Mr. Bell not to call the police?

A. No.

Q. Did anyone else from the club while you were present ever tell Mr. Bell not to call the police?

A. Yes.

Q. Who?

A. I don't remember who. I just heard -- I heard people saying, "Don't call the police. Don't call the police."

Q. If I told you the name -- different subject. Okay. Just so you don't get confused.

If I told you the name Usiko Barrow, does that name sound familiar to you as being Suit?

A. No.

Q. So you don't know -- nothing I can say would jog your mind as --

A. No.

Q. -- to what Suit's real name is?

A. No.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Mr. Frasier?

THE WITNESS: Yes, sir.

JUDGE LEWIS: You -- as far as you personally know and saw, there was only one victim; right?

THE WITNESS: Yes.

JUDGE LEWIS: Did you ever see the person who

is alleged to have done the stabbing?

THE WITNESS: No.

JUDGE LEWIS: Did anyone ever suggest to you after you got rid of Mr. Bell and sent him on his way with his friend that there was, in fact, a suspect in custody?

THE WITNESS: Somebody said that there was.

JUDGE LEWIS: Okay. Now, if I understand correctly, it was not, in fact, Suit who said, "Don't call the paramedics." It was a male Oriental over the radio that you heard say, "Just patch him up and his friends will take him to the hospital," or something to that effect?

THE WITNESS: I heard "don't call" -- I heard on the radio that the police were on their way --

JUDGE LEWIS: Okay.

THE WITNESS: -- and that as far as being told not to call the police or tell them to bring an ambulance, that was coming from Suit himself saying that "the friends are going to take care of it," you know, "and he don't have medical."

JUDGE LEWIS: Okay. All right. Now, after you send Mr. Bell on his way and you clean up and stuff, at some point in time after that, is that when you stopped a police officer to talk to him?

THE WITNESS: I stopped -- I left the club and stopped another officer because of what I was told over the phone.

JUDGE LEWIS: You were on your way home --

THE WITNESS: Yes.

JUDGE LEWIS: -- at this point in time?

And so you stopped the police officer because of what your buddy, Frank Collins told you on the phone.

THE WITNESS: Right.

JUDGE LEWIS: And you know Frank from talking to him. He's your best friend and everything?

THE WITNESS: Yes.

JUDGE LEWIS: And you know it was Frank's voice on the other end of the phone?

THE WITNESS: Yes.

JUDGE LEWIS: And what was it that Frank told you that you rely on the police officer?

THE WITNESS: That during the incident had occurred, when I was taking care of the victim -- it --

JUDGE LEWIS: Mm-hmm.

THE WITNESS: That he had -- a girl had come up -- was yelling across at him for his attention.

JUDGE LEWIS: Was yelling to who? Frank Collins?

THE WITNESS: Frank Collins. For his

attention, so he went over to this girl and she said that she had the knife and her foot was on it.

So he had picked it up with gloves and handed it off to a security guard named Phong, and what he had also told me was that while he was on the stage, an officer was inside, I guess after the fact, wanting to ask him questions, and from a distance Phong was pointing at him shaking his finger "no, don't say nothing. Don't say anything."

JUDGE LEWIS: That's what Collins told you over the phone?

THE WITNESS: Correct.

JUDGE LEWIS: Did the police ever get this knife?

THE WITNESS: I don't know.

JUDGE LEWIS: Okay. This guy Phong, who's he?

THE WITNESS: He's one of the security guards who also has bartending there sometimes.

JUDGE LEWIS: Now, this happened on March 8th of 2008.

Do you still work there?

THE WITNESS: No.

JUDGE LEWIS: In relation to March 8th, 2008, when did you leave?

THE WITNESS: Shortly after that. I'd say

maybe a week after that.

JUDGE LEWIS: Okay. How about Mr. Collins?

THE WITNESS: Yes. He left the same time.

JUDGE LEWIS: Okay. Were either of you terminated from your employment?

THE WITNESS: No.

JUDGE LEWIS: You left of your own free will?

THE WITNESS: Yes.

JUDGE LEWIS: Okay. All right. Thank you. Anything else, gentlemen?

MR. WARREN: I have one follow-up question.

MR. AGERBEK: And I have one clarification question.

MR. WARREN: Go.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Just so the record's clear and we're all clear, it sounds like there's three different statements we're dealing with. Let me just kind of run through and see what you've told to.

Q. The first statement is "don't call the paramedics," which was an Asian verse you heard over the radio; correct?

A. Correct.

Q. The second statement by Suit "don't call the paramedics. They're transporting him," whatever the rest

of the statement was; correct?

A. Yes.

Q. And the third statement was "don't call the police" directed towards Mr. Bell, and that was by an unknown male voice while you were working on him?

A. Yes.

MR. AGERBEK: Okay.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: This last statement "don't call the police," you heard -- you heard someone saying that.

Q. Is this on the headset? Had you put the headset back on?

A. At which point?

Q. I'm asking you. You're hearing someone saying, "Don't call the police. Don't call the police."

A. I'm hearing that on the headset.

Q. So you have the headset back on?

A. The headset was on at that time.

Q. So you told us that you took the headset off when you were dressing Mr. Bell's wounds.

A. Afterwards, I heard it again.

Q. Okay. And is it possible that they -- that the person was saying, "Don't call the police" because he didn't want multiple calls going in; that, in fact, the police had already been called?

A. I don't --

Q. Is it possible?

A. Maybe.

Q. Because weren't the police -- if this was after you dressed Mr. Bell's wound, was this after you'd put him in the car?

A. As far as "don't call the police"?

Q. No. Yes. As far as hearing on the headset "don't call the police."

A. No.

Q. Was it after you put Mr. Bell in the car?

A. No. It was before that.

Q. So you dressed Mr. Bell's wound. He's either in the coat check or getting in his friend's car.

A. He's still in the coat check.

Q. And you put your headset on?

A. I heard it over the headset before I started dressing him.

Q. Okay.

A. When I announced that I had a stabbing victim, I took my headset off when I was taking care of a victim. I heard it out there in the lobby, and then Suit also told me not to say anything. "Don't call the cops because they're going to have the friend take him to the hospital."

Q. Okay. So when you say you heard it out there in the lobby, you mean that this was -- you just heard a voice yelling it?

A. Yes.

Q. Or you heard it?

A. No. I heard a voice yelling it.

Q. Or you heard an announcement over the PA system?

A. No. I heard a voice yelling it.

Q. Did you recognize that voice?

A. No.

Q. But you don't, in fact, know whether the police had already been called?

A. No.

Q. So they could have been saying, "Don't call the police because they've already been called" rather than "don't call" because they're trying to cover this up; right? It could have been either way?

A. Either way.

MR. WARREN: No further questions, Your Honor.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. You indicated earlier that the club seemed to have -- tried to cover up things and you had this impression that they were trying to cover

something up that evening; correct?

A. Yes.

Q. What is it that led you to believe that they were trying to cover something up that evening?

MR. WARREN: Objection, Your Honor. Relevance.

I mean, are we going to be amending the accusation now into all these other things that I don't have any discovery or any reports on?

MR. AGERBEK: No, we're not.

MR. WARREN: How far afield are we going to go here?

JUDGE LEWIS: You know --

MR. AGERBEK: I'm just trying to establish the basis of his opinion why he felt that that evening.

JUDGE LEWIS: That's probably going a little far afield. So I'll sustain the objection.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Thank you very much, Mr. Frasier. You're excused.

Okay, Mr. Court Reporter. You need a break.

MR. WARREN: I could use five.

JUDGE LEWIS: Off the record.

Would you please stand for the oath, raise your right hand?

FRANK COLLINS

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated.

State and spell your name for the record.

THE WITNESS: Frank Collins.

JUDGE LEWIS: Okay. I'm sorry.

THE WITNESS: F-r-a-n-k C-o-l-l-i-n-s.

JUDGE LEWIS: Okay. Now, Mr. Warren.

MR. WARREN: Your Honor, yes. Joining us is Emma Nguyen, who is the daughter of the licensees and the day-to-day operator, manager of Club Abyss.

JUDGE LEWIS: Okay. And her first name is what?

MR. WARREN: Emanuel, E-m-a-n-u-e-l.

JUDGE LEWIS: N-g-u-y-e-n?

MR. WARREN: Yes.

JUDGE LEWIS: Is she a percipient witness to any of this stuff, Mr. Warren?

MR. WARREN: This incident, no. This March 8th incident, yes. She is at the club when one or two of these other incidents occur.

I wouldn't say she's a percipient witness in terms of the incident, but she's there and interacts with security and/or the police.

JUDGE LEWIS: Okay.

MR. WARREN: But my licensees are in New Jersey, which is why --

JUDGE LEWIS: God bless them.

Mr. Agerbek.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Mr. Collins, on the evening of March 8, 2008, did you go to a club by the name of The Abyss located in Sunnyvale, California?

A. Yes.

Q. Were you employed by Club Abyss on that date?

A. Yes.

Q. And what was your position?

A. I was a security guard.

Q. And how long had you been employed in that capacity prior to March 8, 2008? Just approximately.

A. Approximately four months.

Q. Directing your attention to March 8th, 2008, were you on-duty that evening?

A. Yes.

Q. And what were your duties that evening?

A. I was security by the dance floor.

Q. Okay. Did anything of consequence happen while you were there that evening?

A. There was a stabbing.

Q. Okay. And how do you know that there was a stabbing?

A. I was informed by one of the patrons. I knew there was a fight across the dance floor from my position, and a patron came up to me about a knife that they had seen on the floor.

Q. Okay. What did you do when this patron came up to you about a knife?

A. They directed me to where it was, said their friend had their foot on it so nobody could pick it up.

I proceeded to come down from my spot, put the gloves on to pick up the knife.

Q. When you got to that location, was there somebody, in fact, standing with their foot on the knife?

A. Yes.

Q. What kind of knife was it? Can you describe it, I guess?

A. It was a dark color. I couldn't exactly tell you the exact color of it. It was a folding pocket knife.

Q. Okay. Do you know about how long the blade was?

A. I did not open it. It was in the closed position when I picked it up.

Q. The fight that you described, had you seen the

fight taking place?

A. I saw a scuffle across the floor from me because it was on the other side of the dance floor from me. I did not jump down. There was enough guards over there.

Q. Based on where you found the knife -- and how far away was that from where the scuffle had taken place?

A. Where I found the knife, it was about two or three feet away from them.

Q. At the point that you went and picked up the knife, had you been made aware that a knife had been used in any way, shape or form that evening?

A. Not that particular knife, but I was informed that there was a stabbing.

Q. And the knife that you found, do you believe -- well, how did you know that a stabbing had taken place?

A. The patron that brought the knife to my attention was in the area of the scuffle and said that someone had been stabbed.

Q. Did you form an opinion based on your observations of where the scuffle had taken place, the statement that there'd been a stabbing and the position you found the knife in, whether or not that knife may have been used in this stabbing?

A. Yes.

Q. And what was that opinion?

A. My opinion would be that it was the one that was used.

Q. So you put on gloves. You come to the knife. What did you do next?

A. I picked it up and I handed it over to one of my supervisors.

Q. And what was that supervisor's name?

A. Phong P-h-o-n-g.

Q. And Phong was a -- a security guard supervisor?

A. Yes. To my knowledge.

Q. Did you tell Phong why you were giving him a knife?

A. Yes.

Q. What did you tell him?

A. I told him that a patron had informed me about this knife and I picked it up, and he asked me to give it to him.

Q. And did you see what Phong did with the knife?

A. No, I did not.

Q. Were there any police at the premises at that time?

A. Not inside the building.

Q. What was Phong doing when you approached him to give him the knife?

A. He was in one of the hallways between the dance floor and the front doors. What he was doing precisely, I honestly couldn't tell you.

Q. Was he carrying anything in his hands?

A. Not at the present time.

Q. Subsequently some police officers showed up; correct?

A. Yes.

Q. And did you meet with any police officers?

A. No, I did not.

Q. Did you --

A. I'm sorry. I take that back. I was repositioned on to the stage and an officer came up to me.

Q. Did you give the officer a statement?

A. No, I did not.

Q. Did you ever tell any officers about finding the knife?

A. No, I did not.

Q. What did you and the officer talk about?

A. The officer had asked me if I had been in that spot all night and I told her no.

Q. Did you meet with another officer later in the

evening?

A. Not that evening.

Q. Okay.

A. I believe it was the next day when I met with an officer to give my statement.

Q. Okay. So the night in question, you didn't give a statement to any police officer?

A. Correct.

Q. But subsequently you did give a statement?

A. Yes.

Q. And you believe that was the next day?

A. I believe so.

Q. And where did that take place?

A. At the police department in Sunnyvale.

Q. And did you tell the officer the next day the information you just gave us about finding a knife and turning it over to Phong?

A. Yes.

Q. When the police officer approached you while at the club, was Phong present anywhere?

A. He was across the dance floor from the bar.

Q. And what was he doing?

A. He was giving me signals not to say anything to the officer.

Q. And how was he giving you signals not to say

anything?

A. Basically going like this and like that (Indicating).

JUDGE LEWIS: Can you ask him to describe it?

MR. AGERBEK: Q. The first motion that you made, you indicated putting a single index finger up to your lips?

A. Yes.

Q. And what does that signal mean to you?

A. Keep quiet.

Q. The second gesture you made was kind of taking a slicing motion with your hand across your throat.

Is that correct?

A. Yes.

Q. We're just trying to make sure that the record has a description.

A. Sorry.

Q. What did that second gesture mean to you?

A. Not to say anything, also.

Q. And did you basically comply with that order?

A. I didn't tell the officer anything but answer the questions she asked me.

Q. So the reason you didn't give a detailed statement to the officer is because she didn't ask the right questions?

A. That, and I was under the impression that she already knew who had happened in the club.

Q. Who had led you to believe that?

A. The fact that I was in my position and they came from the front door, so I automatically assumed that someone out front, one of the supervisors had already talked to her.

Q. When you met with the officer the next day, did you tell him about the gestures that Phong had been making?

A. Yes.

Q. And did you -- did you form an opinion as to why Phong didn't want you to make a statement to the police?

A. Not at that time, no.

Q. Okay. Did you subsequently form an opinion as to why he didn't want you to make a statement to the police?

A. When I was told more about what happened at the end of the night, I figured he didn't want me to say anything because they didn't want anybody else knowing about anything that happened.

Q. Okay. When you say "they," they meaning who? The club?

A. The club.

Q. Want anyone to know about what had happened, who didn't they want to know what had happened?

A. The officers.

Q. And did you convey that information to the officer you met at Sunnyvale PD?

A. Yes.

Q. Did you go to work the next day?

A. No. Not at The Abyss, no.

Q. Did you -- after this event, was there at some point a meeting with all club security personnel?

A. Yes.

Q. Okay. Was this within a day or two of the incident?

A. Yes.

Q. And who was conducting that meeting?

A. Suit.

Q. Who?

A. Suit. Suit. I believe it's Suit.

Q. Okay. And did anybody besides Suit speak at this meeting?

A. No.

Q. What did Suit tell the security staff assembled during that meeting?

A. The only part that I was present for was he told us to be safe.

Q. Okay. Let's talk a little bit about Suit. We're trying to figure out who Suit is because we have him referenced a couple different ways throughout this hearing.

We've had a description of somebody who is a large black man who wears what's been described as a P-coat.

A. A black P-coat.

Q. Is that same person that you're calling Suit?

A. Yes.

Q. If I were to tell you the name Usiko Barrow, does that name mean any reference to you?

A. No.

Q. Do you know Suit's real name?

A. No.

Q. Did you have any dealings with any of the victims of the stabbings on the evening in question?

A. No, I did not.

Q. Were you asked to do any cleanup after the incident?

A. Just the normal cleanup.

Q. And did you clean up any blood anywhere in the premises?

A. No, I did not.

Q. Did at some point you have telephone

conversation with Mr. Frasier about the knife?

A. Yes.

Q. And was that that evening?

A. Yes.

Q. And just generally what did you tell him?

A. I just told him that I was brought -- that it was brought to my attention about the knife and I told him that I picked it up and gave it to Phong.

Q. Were you involved in detaining the person who did the stabbing?

A. No.

Q. Did you see anybody detain somebody alleged to have done the stabbing?

A. I saw a couple guards detaining someone. I'm not sure if that was who it was.

Q. Was that at or near the time of the stabbing?

A. Yes.

Q. Do you know if the person you saw being detained by the security guards was turned over to the police?

A. I do not know.

MR. AGERBEK: Okay. No further questions.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Thank you.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: When the fight broke out -- you know, I know things were happening quickly, but I'm just trying to get you to think in your head to recall what it was that first drew your attention to whatever was going on on the dance floor that later evolved into your learning that a stabbing had occurred.

Q. But what was going on on the dance floor when you first became aware of it?

A. I saw a scuffle. I signalled with any flashlight to the guard that was on the stage, and I saw a bunch of other flashlights going towards that spot.

Q. The guard on the stage was who?

A. I'm not sure at this -- I'm not --

Q. Was it Anthony Frasier?

A. Anthony was roaming.

Q. But there was a guard on the stage?

A. Yes.

Q. And when you signalled with your flashlight, was it pretty much simultaneous that other flashlights -- that you could see other flashlights?

A. Yes.

Q. And when you see flashlights in that situation, do you understand that that is security trying to signal each other, but also illuminate what's going on?

A. Right.

Q. So how many other flashlights did you see at that moment?

A. I saw about three or four.

Q. All right. And do you think that you saw the scuffle at the moment it was occurring?

A. I saw it towards the end of the scuffle.

Q. Okay. And did you see security lead people away from the scuffle?

A. Yes.

Q. Who did you see leading people away?

A. I saw Suit leading someone away and I saw Anthony leading someone away.

Q. And who was an -- when you say "Anthony," you mean your friend, Anthony Frasier?

A. Yes.

Q. And who was Anthony Frasier leading away?

A. I just saw him leading a patron away. At that time, I was not aware of anything else that was going on.

Q. Describe the patron, if you can. Was it a man?

A. Yes.

Q. What did he look like?

A. I honestly couldn't tell you. I was on the other side of the floor.

Q. And you saw Suit leading another person away?
A. Another gentleman, yes.
Q. Can you describe that man?
A. No, I cannot.
Q. And before this night, how long had you worked as a security guard?
A. At The Abyss?
Q. Yes.
A. For about four months.
Q. And so that's twice a week, basically, maybe three times a week?
A. At the most twice a week.
Q. But you're working every week?
A. Yeah.
Q. You're a regular security guard there?
A. I wasn't one of the regulars, no. I was a filling in.
Q. So how many times -- before this incident in the four months, how many times had you worked as a security guard there?
A. I would say probably about ten to twelve.
Q. All right. And had you seen scuffles occur on the dance floor?
A. Yes.
Q. And was there -- had you been trained what to

do -- part of your job was if you were close to the scuffle, you were to respond to it; right?

A. Right.

Q. And were you trained what to do?

A. Yes.

Q. So tell us what you were trained to do.

A. I had been trained by my other security job that I have to detain the person and escort them to the front of the building and turn them over to authorities if need be.

Q. Okay. Were you trained -- how were you trained at The Abyss? Were you trained at The Abyss?

A. I was not trained at The Abyss.

Q. What was the practice at The Abyss, if any? Were you aware of a practice of what to do when there was a scuffle on the floor?

A. No.

Q. So you hadn't participated in any scuffles at The Abyss before this?

A. One.

Q. One in maybe ten previous shifts as a security guard?

A. Yes.

Q. When you worked as a security guard, were you always working on the inside?

A. Not always.

Q. Where else did you work?

A. I was either -- if I was not inside, I was out front at the front doors checking IDs or searching.

Q. Searching --

A. The patrons as they come in.

Q. -- patron's handbags and things like that doing pat-downs?

A. Yes.

Q. So when -- when you saw the scuffle, you then saw security leading two people away --

A. Yes.

Q. -- right?

And Anthony Frasier was leading one person in one direction toward the front and the other security guard was leading the other person in a different direction?

A. No. They were both going towards the front on the same side.

Q. On the same side. And was there any continuing dialogue or scuffle going on between the two people they were leading or did they have their guys under control?

A. They had them under control, that I could see.

Q. But you couldn't -- if I asked you to describe

the ethnicity or race of the person that -- that Anthony was leading away --

A. I would not be able to tell you.

Q. And the person that Suit was leading away.

A. I would not be able to tell you.

Q. It was too dark; you were too far away?

A. Yes.

Q. And did you later see up close either of the two people that were being led away?

A. No.

Q. So if they were in this room, you wouldn't be able to identify them?

A. No.

Q. When you met up with -- when you came to the woman who had her foot on the knife, was she near where you had been -- you said something about being two or three feet away.

Away from what is what I was trying to get to.

A. She was about two or three feet away from where the scuffle was.

Q. From where the scuffle had occurred.

A. Yes.

Q. Did she say anything to you about her seeing how the knife had come to be there?

A. Her friend had mentioned that she saw the

knife fall to the floor and that's all that she had said.

Q. All right. Did she say whether she saw it fall off either of the people being led out?

A. No. She just said it fell off when they were walking through the crowd.

Q. Okay. And how long -- how much time had passed from the time that you picked up the knife until you gave it to Phong?

A. Maybe two minutes.

Q. And was Phong in the dance area or somewhere else?

A. He was in the hallway between the dance floor and the front door.

Q. Would this be in the vicinity of the men's room?

A. The women's bathroom.

Q. Okay.

A. The hallway by the women's bathroom.

Q. All right. And is the women's bathroom on one side of the building and the men's on the other?

A. Yes.

Q. And after you gave the knife to Phong, did you ever see it again?

A. No.

Q. And when you gave the knife to Phong, how did

he take it?

A. He grabbed it with his hand and told me to go back to my position.

Q. Okay. And the music was still playing; right?

A. Yes.

Q. And the crowd was still in there dancing?

A. Yes.

Q. So your job was to be security, and things hadn't changed inside?

A. That's right.

Q. And in fact, two of the security were being detained elsewhere?

A. That's correct.

Q. Right. Dealing with these people.

Now, when you gave the knife the Phong, did you say anything to him like "I think this is the knife from the stabbing" or anything like that?

A. I let him know that a patron came up to me and made me aware of the knife, and that was it.

Q. Okay.

A. I picked it up and gave it to him.

Q. And when the -- eventually the club closed down that night.

A. Yes.

Q. Did it close down its regular time or close

down early?

A. I don't remember. I believe it closed down at the normal time.

Q. All right. And were you still on-duty when the club closed?

A. Yes.

Q. All right. And when the club closed, what -- after the patrons are gone, do you have any responsibilities?

A. To help clean up and put stuff away.

Q. And is this the cleanup of just normal debris?

A. Yes.

Q. And did you have -- did you find any blood anywhere?

A. I did not.

Q. All right. Did you know of anyone else who cleaned up any blood anywhere?

A. No, I do not.

Q. Did anyone give you any direction to go look and see if there was blood anywhere to clean it up?

A. No.

Q. How long -- after the scuffle occurred and the two people are being led away by security, how long after that were you first aware that there were police on -- in the club?

A. I would say probably about fifteen to twenty minutes.

Q. All right. And do you -- did you have any idea who called the police?

A. No, I did not.

Q. And after you picked up the knife, gave it to Phong, you -- during that fifteen, twenty minutes, you had gone back in and were doing your normal duties inside the club?

A. Yes.

MR. WARREN: Okay. No further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. where is the coat check in relation to the restrooms that you're describing?

A. The coat check is in between the two restrooms up by the front doors.

Q. Was the area where you gave Phong the knife --

A. No.

Q. -- in this area?

A. The hallways -- when you come in the front door, the coat check's right there in front of you. The hallways's off to the side.

Q. And to your knowledge, at the time that you

were working there on the evening of March 8, 2008, was there more than one Phong that was working there?

A. Not to my knowledge.

Q. Do you know Phong's last name, by any chance?

A. No, I do not.

Q. If I told you a name that was in the official report, would that possibly refresh your recollection?

A. Possibly.

Q. Does the name Phong Lyong, does that ring a bell?

A. No.

Q. To your knowledge, there's only one Phong that was working there at the time?

A. Yes.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Mr. Collins --

MR. WARREN: I have one more follow-up, Your Honor.

JUDGE LEWIS: Go ahead.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: I think you said that you identified Phong as your supervisor.

Q. Did -- how did you think of him as your supervisor? Did somebody tell you "this is the guy you report to? He's your boss"?

A. I was told when I first started working there that if I had any questions or needed anything, that he would be a person to talk to.

Q. Okay. All right. Because you were -- you were not a regular.

A. Right.

Q. You were on-call and helped out, came in; right?

A. That's correct.

Q. So because you're not a regular, while you're learning the ropes, learning how things actually worked there, here's a guy who's a regular. This is someone you can talk to?

A. Yes.

Q. Did he direct you as to how to carry out your duties?

A. Sometimes.

Q. All right. And was there anyone else that you had been told was in charge of security?

A. That would be Suit.

Q. Okay. Thank you.

JUDGE LEWIS: Mr. Collins, a couple things. During the four months that you did work there --

THE WITNESS: Yeah.

JUDGE LEWIS: -- were you ever assigned to

the rear parking lot?

THE WITNESS: I -- yes.

JUDGE LEWIS: Okay. Was that done on a regular basis when you worked, someone being assigned to the rear parking lot?

THE WITNESS: Yes.

JUDGE LEWIS: Okay. Now, when you picked up the knife that was on the floor, and I believe you said that you put gloves on first.

THE WITNESS: Yes.

JUDGE LEWIS: Why?

THE WITNESS: I always put on gloves before I pick any sharp objects up.

JUDGE LEWIS: Okay. All right. Was there any visible blood on the knife?

THE WITNESS: Not that I could tell, no.

JUDGE LEWIS: Was there any visible blood on the floor around the knife?

THE WITNESS: No.

JUDGE LEWIS: All right. You handed this knife over to Phong. Later on, you're on the stage. The police officer approaches you. You're looking forward. You see Phong and Phong is going like this (Indicating) and making the gestures with his hand not to say anything. At least that's your interpretation.

THE WITNESS: Right.

JUDGE LEWIS: Okay. And all you did was answer whatever the officer asked you. You didn't volunteer any information.

THE WITNESS: Right.

JUDGE LEWIS: You did not tell the officer "hey, I gave that guy the knife over there."

THE WITNESS: No.

JUDGE LEWIS: Okay. Was there a reason that you did not say anything other than what the officer answered -- answered the question the officer asked you?

THE WITNESS: I was under the assumption that they already knew what they needed to know.

JUDGE LEWIS: Okay.

THE WITNESS: The officer came up and asked me if I had been positioned in that spot the entire night and I said, "No."

JUDGE LEWIS: Okay. So you just assumed they knew and they had the knife?

THE WITNESS: Right.

JUDGE LEWIS: You were not intimidated by the fact that Mr. Phong was making these gestures to you?

THE WITNESS: No.

JUDGE LEWIS: Okay. Fair enough. The next day, you gave a detailed statement to the police officers

and you inform them of this information regarding the giving the knife to Phong.

THE WITNESS: Yes.

JUDGE LEWIS: I take it -- well, let me ask you this: Did the officer seem somewhat surprised when you told them this?

THE WITNESS: Yes. He was very surprised. He did not know anything about it prior to that except for what Anthony had told him, Anthony Frasier.

JUDGE LEWIS: Okay. So what did this lead you to believe? You personally.

THE WITNESS: That led me to believe that someone was hiding something.

JUDGE LEWIS: Okay. And that person would probably be Phong based on what you've indicated; right?

THE WITNESS: That would be my assumption, yes.

JUDGE LEWIS: Okay. Now you went back to work after this?

THE WITNESS: I worked there one more night after that.

JUDGE LEWIS: Okay. How comfortable was it working -- was Mr. Phong there on that night that you worked?

THE WITNESS: I did not see him.

JUDGE LEWIS: Okay. All right.

THE WITNESS: He might have been there. I just personally did not see him.

JUDGE LEWIS: All right. Did you feel comfortable returning to the location?

THE WITNESS: Not too comfortable at all.

JUDGE LEWIS: Okay. All right. Now, I probably should have asked this of several other witnesses that were in here before, but I'm going to ask you.

You indicated that you worked there for about four months, and this particular incident occurred on March 8th of '08. So I'm assuming you probably started somewhere in November or December of 2007.

THE WITNESS: December, yes.

JUDGE LEWIS: Okay. All right. December '07 to March of '08. And you worked there a couple nights a week?

THE WITNESS: One night for sure, if at all. There was -- I would say probably one month that I didn't work there at all. They just didn't need me.

JUDGE LEWIS: Okay. Now, I want you, since you were physically present -- what time did you start? Did you start?

THE WITNESS: It varied depending on what

time they wanted you there. I usually started about seven o'clock.

JUDGE LEWIS: About seven o'clock.

THE WITNESS: 7:00, eight o'clock at night.

JUDGE LEWIS: In December and in January and in February and in March, when you arrived at work at 7:00 PM, I take it -- right?

THE WITNESS: Yes.

JUDGE LEWIS: Describe the interior of this place to me. What did you see?

THE WITNESS: When I would arrive to work, the club had -- was not open at the time.

JUDGE LEWIS: Okay.

THE WITNESS: They hadn't opened the doors yet. I usually started just before they opened the doors to help set up whatever was left to be set up.

The dance floor would be empty, nothing out except for the chairs and --

JUDGE LEWIS: And what was it that you set up once you arrived there?

THE WITNESS: I would set up the barricades out front and out back for the smoking section.

JUDGE LEWIS: Mm-hmm.

THE WITNESS: The barricades out front to help form the line to get in. That's pretty much it.

JUDGE LEWIS: Okay. And when they opened the doors, it was usually around what time?

THE WITNESS: I would say about 8:30.

JUDGE LEWIS: Okay. The customers who entered the premises beginning at around 8:30, during the days that you worked, sir --

THE WITNESS: Yes.

JUDGE LEWIS: -- describe to me what these customers did from the time they arrived till the time they left.

What were they up to?

THE WITNESS: If they were of age, they'd be drinking. Most of the time, they'd be dancing.

JUDGE LEWIS: If I understand correctly, they had to go up on the second floor to do that.

THE WITNESS: Yes. If it was 21 and over night.

JUDGE LEWIS: Oh, they had specific nights for -- you had to be at least 21 just to get in?

THE WITNESS: Yes.

JUDGE LEWIS: Okay. How often did they occur?

THE WITNESS: Not very often.

JUDGE LEWIS: All right. Other than that, if you were over 21 and you wanted to drink, you went to the

second floor?

THE WITNESS: Correct.

JUDGE LEWIS: What about anybody that was under 21?

THE WITNESS: They stayed down on the bottom floor.

JUDGE LEWIS: What were the activities on the bottom floor other than a dance floor and a DJ-synching?

THE WITNESS: Just dancing most of the time. Just people sitting around talking, dancing.

JUDGE LEWIS: Okay. The persons who were under 21 and on the main floor, I guess, was there things available for them to consume? I'm trying to figure out how to do this properly here.

THE WITNESS: There was water, sodas.

JUDGE LEWIS: That they could purchase?

THE WITNESS: Energy drinks, yes.

JUDGE LEWIS: What other than drinks?

THE WITNESS: Nothing that I know of.

JUDGE LEWIS: Okay. What about on the second floor?

THE WITNESS: On the second floor, just drinks.

JUDGE LEWIS: Okay. What about the third floor?

THE WITNESS: I don't know of any third floor.

JUDGE LEWIS: Okay. What I'm trying to get at, Mr. Collins -- and I admit. I probably should have -- I know there's been a stipulation to this, but I wanted to find out exactly what it was.

Was this place ever -- if you walked into this place. You knew nothing about it, would you ever say to yourself hey, this is -- this is restaurant. I'm going to sit down and eat?

THE WITNESS: No.

JUDGE LEWIS: Did they ever have tables set up while you were there like a restaurant would?

THE WITNESS: No. Not like a restaurant would.

JUDGE LEWIS: Did they have a kitchen?

THE WITNESS: They do have a kitchen.

JUDGE LEWIS: What did they do in the kitchen?

THE WITNESS: I'm not sure.

JUDGE LEWIS: Okay. And I'm only talking about your personal knowledge between December of '07 and March of '08.

THE WITNESS: Right.

JUDGE LEWIS: Okay. Thank you, sir.

MR. AGERBEK: I do have some questions.

JUDGE LEWIS: Did I open any Pandora's box for you guys?

MR. AGERBEK: Yes, you did.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Did you by any chance work on New Year's Eve?

A. Yes, I did.

Q. Did -- was there entertainment there that evening?

A. Besides the DJ-synching, there was some dancers.

Q. Okay. With regard to the DJs, were they, to your knowledge, mixing the music themselves or were they, to use a term we used earlier, DJ-synching, similar to lip synching?

A. I'm not sure.

Q. Okay.

A. I'm not sure how they did that.

Q. Did you have reason to believe that DJs were performing live as opposed to just kind of faking it?

A. No, I did not.

Q. You don't know either way?

A. No.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Mr. Warren?

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. The nights -- the nights you worked, were they usually Fridays, Saturday?

A. Yes.

Q. And you said the doors open at 8:30, but what time do the patrons arrive?

A. They started arriving before that. A lot of times, they would arrive before we even did.

Q. Okay. All right. No further -- well, when the club is closing, are you working inside, generally, at the time that it's time to close down?

A. They'll keep me inside for a little bit to help start me pushing people out the door and they'll put me outside.

Q. So you don't go outside until you've cleared the patrons from the inside?

A. Sometimes they'll pull me before the patrons are completely out.

Q. And then what do you do once you go outside?

A. Make sure they get to their cars and leave in a timely manner.

Q. And where are you -- do you follow them off to their cars?

A. Yes.

Q. And where are you headed?
A. To the Sears parking lot.
Q. Okay. The Macy's parking lot?
A. The Macy's. I'm sorry, yes.
Q. This is at the far end of Murphy Street?
A. Yes.
Q. You're not heading to the parking lot directly behind Club Abyss; right?
A. No.
Q. And based on your observation, does it appear that virtually all of the patrons for Club Abyss are heading off to the Macy's parking lot at the end of Murphy Street?
A. A majority of them are, yes.
MR. WARREN: Nothing further.
MR. AGERBEK: I do have further questions.
MR. WARREN: Thank you.
REDIRECT EXAMINATION BY MR. AGERBEK
MR. AGERBEK: Q. You mentioned New Year's Eve that you were working, you said besides the DJs, you saw dancers?
A. Yes.
Q. What do you mean by that?
A. They would have girls there dancing every once in a while for a certain time period. Every night --

some nights.

Q. Dancing how? Are we talking about dancing on the floor like they're putting on a show or are we talking they're kind of mingling and dancing with patrons?

A. They would be up on what we call the box, just dancing. Basically putting on a show. Nobody else would be able to go up there with them.

Q. And your recollection is that this took place on New Year's Eve of 2007?

A. Yes.

Q. And in your opinion, would you characterize this as live entertainment?

A. I would.

MR. AGERBEK: Okay. Nothing further.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Do patrons get up on the box and dance?

A. Not while the dancers are up there.

Q. No, but just generally through the course of the night? Patrons get up on that box and dance?

A. Yes.

Q. Do you know if those people that got up and danced that you call live entertainers, they were paid to be dancing?

A. They were paid to be dancing.

Q. And you know this?

A. I know this.

Q. How do you know this?

A. I've seen them get paid.

Q. By?

A. By people that work at the club.

MR. WARREN: Okay. No further questions, Your Honor.

JUDGE LEWIS: How many, Mr. Collins?

THE WITNESS: There'd be two to three.

JUDGE LEWIS: Okay. Thanks you very much, sir. You are excused.

Raise your right hand, please.

ANDREW ZARRILO

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated. State and spell your name, please.

THE WITNESS: Officer Zarrilo, Z, as in zebra, a-r-r-i-l-o, first name Andrew.

JUDGE LEWIS: Go ahead, Mr. Agerbek.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Officer Zarrilo, with whom are you employed?

A. Sunnyvale Department of Public Safety.

Q. What is your position?

A. Public safety officer.

Q. How long have you been so employed?

A. Since March of 2001.

Q. And directing your attention to March 8, 2008, were you on-duty that evening?

A. Yes.

Q. And what was your assignment that evening?

A. Patrol.

Q. And on the evening of March 8, 2008, did you get called out to The Abyss located in Sunnyvale, California?

A. I did.

Q. And why did you go there?

A. I went as a field unit with Officer Curiel about 0230 in the morning.

Q. Okay. That answers that question.

Did you go inside the premises when you arrived there?

A. Yes.

Q. And why did you go inside the premises?

A. I went in, like I said, as a field unit for PSO Curiel kind of as his safety. He went in there to interview some witnesses, also suspects.

Q. Did you have occasion to interview anyone that evening?

A. Yes. I talked to a security guard after we entered the rear entrance.

Q. And do you recall that security guard's name?

A. Phong Lyong, I believe.

Q. Last name is spelling Lyong.

JUDGE LEWIS: L-y --

MR. AGERBEK: -- o-n-g.

JUDGE LEWIS: Okay.

MR. AGERBEK: Q. And why did you speak with Mr. Lyong?

A. Because I got briefly about what happened. There was a fight or stabbing that happened at The Abyss, so I was just asking him questions regarding that night, stabbing.

Q. What did you ask him?

A. I asked him if there was any fight in the club that night.

Q. And what was his response?

A. He just kept on telling me "I'm a bar-back. I don't know anything. I'm just here to clean up the bar after." Just kept on repeating himself. "I don't know anything. I don't know anything."

Q. Did you ask him any further questions?

A. Yes. I asked him if there was a fight, if there was any blood in the Abyss. "Has anyone ever cleaned up any blood?"

Q. What was his response to the blood?

A. He kept on acting confused like he didn't know what he was I was talking about. He continued to say, "I don't know. I don't know."

Q. Did you ask him any further questions?

A. I asked him if someone gave him a knife to discard.

Q. And what was his response to that?

A. Again, he just kept saying, "I'm a bar-back. I don't know anything. I just clean up one item. I was working all night. Didn't see anything. Don't know anything."

MR. AGERBEK: I have nothing further.

JUDGE LEWIS: Mr. Warren?

MR. WARREN: Nothing.

JUDGE LEWIS: Officer, this -- you responded to the radio call of a stabbing; right?

THE WITNESS: I didn't go to the initial. That was in my beat, so I was actually tending for a while until after Curiel went to The Abyss later on that evening, because I was free -- responding to other calls.

JUDGE LEWIS: Okay. Why -- yes, and I'm

trying to understand this, because don't forget I've a lot of witnesses.

THE WITNESS: No problem.

JUDGE LEWIS: Why did you ask Mr. Phong if he was in possession of a knife?

THE WITNESS: Because I heard that there was a stabbing at The Abyss and it was in the Abyss, so I was asking him if there was any knife, if there was any fight, was there any blood.

JUDGE LEWIS: You didn't specifically ask Mr. Phong about a knife because you were under the impression that someone gave him a knife; it was just a general question was there anything recovered?

THE WITNESS: Correct.

JUDGE LEWIS: That makes a little bit more sense to me. Okay.

Gentlemen?

MR. AGERBEK: No.

MR. WARREN: No questions.

JUDGE LEWIS: That's it for now.

THE WITNESS: Wonderful. Thank you.

JUDGE LEWIS: Thank you. You're excused.

Raise your right hand, please.

JESSE CURIEL

having first been duly sworn, thereupon testified as

follows:

JUDGE LEWIS: Please be seated. State and spell your name for the record.

THE WITNESS: My name is Officer Jesse Curiel, J-e-s-s-e C-u-r-i-e-l.

JUDGE LEWIS: Mr. Agerbek.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Officer Curiel, with whom are you employed?

A. Sunnyvale Public Safety.

Q. And what is your position?

A. Police officer. Public safety officer.

Q. And how long have you been so employed?

A. Six years.

Q. And just briefly and generally what are your duties?

A. Patrol the streets, enforce traffic stops and safety of the public.

JUDGE LEWIS: Put bad guys in jail. Arrest and put bad guys in jail.

MR. AGERBEK: Q. Directing your attention to March 8th, 2008, were you on-duty?

A. Yes, I was.

Q. And what was your assignment that evening?

A. Patrolling on-duty for uniformed patrol car

beat 3.

Q. And on the evening of March 8th, 2008, did you respond or get involved in an incident related to The Abyss located in Sunnyvale, California?

A. Yes. I attended a traffic stop at Mathilda and California for a red light violation, I believe.

Q. And how is it that that traffic stop was related to The Abyss?

A. As I pulled the vehicle over initially, it was -- the red stop violation was one of the violations. The vehicle was driving reckless, high rate of speed.

So I effected the stop, contacted the driver. She identified herself and then I asked her why she was driving like that and she said that one of her friends was -- had just been stabbed at Club Abyss.

Q. Was this friend who had been stabbed at Club Abyss with her?

A. He was.

I contacted the subject. He identified himself as Tavio Bell. I asked Tavio if he can move from what had happened. He said yes.

I then asked him to step out of the vehicle. I observed two wounds, two puncture wounds to the mid-rear back area and to the right buttocks.

I asked him how he sustained those injuries.

He said he was -- he had just been stabbed by someone in the club.

Q. Okay. These puncture wounds that we observed, how big are we talking?

A. Approximately an inch (Indicating).

Q. Okay.

A. He was hit with some sort of knife.

Q. There's knives and then we've seen the kind like Crocodile Dundee -- when he pulls out the big old buckskin knife.

A. It would be more like being inflicted with a small pocket knife.

Q. And these wounds, were they covered? Were they open? What was --

A. They -- they had some bandages on them, Band-Aids on them. I asked Tavio who put these bandages on, and he said security from the club put -- put bandages on.

During this time, I then updated -- updated dispatch as to what had happened and I requested for emergency medical services to arrive to tend to Mr. Bell.

Q. Did you discuss with Mr. Bell why it was that you were making contact with him as they were driving on the street as opposed to at the club?

A. No, I did not.

Q. Did Mr. Bell in any way indicate why he had not called the police or paramedics from the club?

A. Yes. He said he was told by -- by security at the club that it would be better for him just to drive and get -- and get medical assistance on his own.

Q. Did you go to the club that evening?

A. After -- yes, I did. I went to the club after being contacted, I -- by Frasier.

Q. Is that Anthony Frasier?

A. Anthony Frasier.

Q. And why was it that you went to the club after having contact with Mr. Frasier?

A. Why did I?

Q. Yes.

A. Because he advised me that some -- that some of the -- that some of the security guards haven't been forthcoming with the initial investigation of the officers and there was some evidence that had been -- that had been -- that had been -- how do you want to say it? Suppressed by -- by security at the club.

Q. And so you went to the club that evening, then?

A. Yes.

Q. And why did you go to the club that evening?

A. Went to recontact -- I went to recontact, to

initiate -- to reinterview people and to see if what Mr. Frasier said had any bearing to the statement.

Q. And did you conduct a search when you went to the club?

A. Did I conduct a search initially? No. Officer Osborn, CSI Osborn was the one that was at the club to conduct a search.

Q. Did you obtain a statement from Anthony Frasier?

A. I did.

Q. And where did you obtain that statement?

A. I -- he flagged me down that morning at about 2:09 AM at El Camino and Mathilda.

Q. And --

A. After he contacted me.

Q. And he gave you information that led you to go back to the club?

A. Yes. He told me that his friend, Frank Collins had found the knife and that the knife had been given to management and --

Q. Is that why you went back to the club that night?

A. Yes.

Q. At some point that evening, were you made aware that there was more than one victim that had been

stabbed at Club Abyss?

A. Yes. During the initial stop with Tavio Bell.

Q. Okay. And how did you find out about that?

A. Dispatch advised that they were receiving another call of a second stab victim from The Abyss.

Q. All right. Okay. And did you ever go and meet with that second victim?

A. No. CSI Carl Ella, he responded out to the hospital and met with that victim.

Q. When you went to the club, did you have a conversation with somebody by the name of Frank Lyong?

A. I did.

Q. And what was the reason you had contact with Mr. Lyong?

A. I had contact with him because from the information that I got from Frasier, Phong was the one that was given the knife by Collins.

Q. Did you ask Mr. Lyong about receiving the knife from Collins?

A. I did.

Q. And what was his response?

A. That he didn't receive anything.

Q. Okay. Did you ask Mr. Lyong about whether there was any blood in the premises?

A. I did.

Q. What was his response?
A. He said he did not know -- he did not know about any victim's blood, any blood on the premises.
Q. Did you have a conversation with somebody by the name of Hai, H-a-i Nguyen?
A. I did.
Q. And who was he?
A. He is the manager of the club. He's also known -- we also call him Mike. He also uses the name Mike.
Q. So he also goes by Mike Nguyen?
A. Yes.
Q. When you had a conversation with Mike, what were you talking about?
A. I asked him pretty much why he didn't call law enforcement during -- to report this incident.
Q. And did he respond to that?
A. Why he didn't call law enforcement or paramedics. He said that he did not know.
Q. That was his response, he didn't know why he didn't call?
A. Yeah.
Can I refresh my memory with my report?
Q. Sure.
A. That's correct. He said he did not know. I

asked him why he did not contact PD knowing the stabbing had occurred, and he stated he did not know.

Q. Okay. Did you discuss whether there was any blood that had been cleaned up by anybody at the premises?

A. We did.

Q. And what was his response?

A. His response is that all of his security members are instructed to clean up all messes regardless of what it is at all times.

I remember a reference "I can understand that being the case for alcohol, but not being the case for blood."

Q. And what was his response to that?

A. He stated he did not know exactly who cleaned up the blood.

Q. Did you discuss with him whether a knife had been found or turned over to any of the security guards?

A. We did.

Q. And what was his response?

A. He did not know of any knife.

Q. To your knowledge, was the perpetrator of the stabbing apprehended?

A. From what Frasier and -- from what Frasier said -- from what Frasier, Collins and I believe one of

the security guards, Carucci --

Q. No.

A. There was a possibility of a suspect being detained at that time, yes.

Q. Let me rephrase my question.

Was a suspect of the stabbing ever apprehended by the police?

A. Police, no.

Q. Was -- did any security guards ever turn over an alleged suspect to the police, to your knowledge?

A. No.

Q. Okay. To this day, do you have any identification or idea who the perpetrator is?

A. No.

Q. To your knowledge, were any charges, criminal charges ever filed against any employees of The Abyss with regard to this incident?

A. From my knowledge, no.

Q. Based on your investigation of this incident, did you form an opinion as to whether or not any members of The Abyss either delayed or obstructed you in the performance of your duties?

A. Yes.

MR. WARREN: Objection.

JUDGE LEWIS: Overruled.

MR. AGERBEK: Q. And what is that opinion?

A. The opinion was that they did have a possible suspect detained at the time and that Officer Collins also came across a knife that he then handed over towards Mr. Phong and that there was -- there was blood cleaned up in one of the bathrooms which was then later -- bloody towels was then later found by Officer Osborn.

So a crime scene had been tampered with and that there was absolutely no attempt at all to -- to phone this call in by staff, by any of the staff members at the club.

Q. Did you form an opinion as to whether Mike had -- Mike Nguyen had delayed or obstructed Sunnyvale Police Department in the performance of their duties?

A. Yes.

Q. And what is that opinion?

A. That it was his ultimate responsibility to contact us to report this incident and to also call emergency aid, because they're not the medical authority. I'm not the medical authority.

The fire personnel and paramedics are, and they were the ones to attend to the needs, not their -- not the security guards, and also his obligation to -- to call when something -- something like this that's over -- that's over their heads if you want to say happened, it's

their responsibility to call us so we can initiate our investigation.

Q. And why is it that you believe it was Mike Nguyen's responsibility to contact Sunnyvale PD or the medical authority?

A. If we're talking about my opinion, it's all -- it's all of the security -- security's responsibility to report something like this if -- if possible, if they can, but from what everyone's saying, he's the one that makes the ultimate call.

Q. He, meaning Mike Nguyen?

A. He, Mike, yes.

Q. In other words, he was in charge, so kind of the buck stops here --

A. Yes.

Q. -- type thing?

A. Yes.

Q. In your opinion, do you believe that Phong Lyong delayed or obstructed Sunnyvale PD in the performance of their duties?

A. Yes.

Q. How so?

A. By not providing the knife when the initial law enforcement officer arrived on scene, and also if there were security -- security members at the club, try

and provide statements, and if he was trying to delay or make any hand gestures not to provide any statements, that definitely hinders our investigation.

Q. Now you making -- indicated making hand gestures.

Did one of the witnesses that you interviewed indicate that Mr. Lyong was making hand gestures indicating not to cooperate with law enforcement?

A. Yes.

Q. Who was that?

A. That was Mr. Collins.

Q. In your opinion, did any employees of the licensee try to dissuade the stabbing victims from calling the police?

A. That was the impression that -- that I received from Tavio Bell when I asked him why he did not initially call law enforcement or paramedics or fire personnel.

If I can refresh my memory here.

Q. You've answered the question.

A. Okay.

MR. AGERBEK: I have nothing further.

JUDGE LEWIS: Mr. warren.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Officer Curiel, you made

this car stop, this red light stop and became aware of the stabbing, and then later after 2:00 PM, you were flagged down by Anthony Frasier?

A. Yes, sir.

Q. Okay. Did you -- between those two events, did you go back to The Abyss and participate in any initial investigation on-scene?

A. No.

Q. All right. So by the time you're talking to any witnesses, you've already been told by Frasier that you think there was a cover-up that the people at the club had participated in; right?

A. That's correct.

Q. And did anyone tell you -- did anyone tell you that they had detained a suspect that they believed at the moment they had him detained had been responsible for a stabbing as opposed to a fight?

A. After when I went back? Is that when you're referring to?

Q. Any time you interviewed witnesses in connection with this incident.

Did anyone tell you that at the time that they had a person detained, they believed that that person had been responsible for a stabbing?

A. A stabbing, no. A fight, yes.

Q. Okay. As part of -- you've been a patrol officer in Sunnyvale I think you said for six years, so is this downtown area, Murphy Street, has this been part of your patrol duties?

A. Yes.

Q. And is this a regular beat that you cover?

A. At that particular -- that particular year, yes. They change yearly.

Q. Let's just stay with that year.

We've heard from other officers involved about practices and so on, and we heard from some of the security guards who've already testified about practices, and one of them testified that it was a practice in the club that when there was a scuffle or a fight that broke out, that security tried to get in there, separate the combatants and move them out and sent them on their way.

A. Mm-hmm.

Q. Were you aware or did you ever know of such a practice at the club?

A. Yes.

Q. And do you see any problem with that?

A. No.

Q. Just a fight.

A. No.

Q. That's pretty normal; right?

A. Yes.

Q. So if at the time that -- we've also heard from Mr. Frasier that while he was escorting Mr. Bell from scuffle area on the dance floor to -- off -- out of the dance floor area to the front of the club, as far as he knew, there had just been a fight that Mr. Bell had been engaged in.

A. Mm-hmm.

Q. He didn't know if he was the assailant or victim. He had no idea there was a stabbing. He just knew there was a fight.

Is it possible that when the other person who had been involved was being also led off the dance floor, that nobody connected him to a stabbing?

A. Mm-hmm.

Q. Is that possible --

A. Yes.

Q. -- as far as you know?

So when you say they had detained him or had him under their control, is it possible that the person was just someone who had been in a fight?

A. Yes.

Q. Is it possible that they got him not to the front of the club just believing that he was in a fight, that they sent him on his way?

A. Yes.

Q. If that was their state of mind, letting that person go, do you see any problem with that?

A. No.

Q. If they knew that he had stabbed somebody, it would be a different situation?

A. Yes.

Q. I don't think any of us disagree with that.

Did anyone give -- did anyone describe for you what the person that they thought had been the person who'd done the stabbing, what they look like?

A. Initially, yes. Tavio Bell, yes.

Q. How did Tavio Bell describe him?

A. Let me refer to my report here.

Q. You have a written report that you prepared?

A. Yes.

Q. This is after you encountered Mr. Bell in the car stop?

A. Yes.

Tavio Bell described the suspect as an Asian man, early 20s, short hair and wearing a white T-shirt.

Q. Okay. And that's the person he believed that stabbed him; right?

A. Yes.

Q. Is the first time after you learned about the

stabbing when you make the vehicle stop, the first time you're on the scene at The Abyss the club is closed for the night.

A. Yes.

Q. And -- but while you're with Bell at the car, did you go with Bell to the hospital?

A. Yes.

Q. While you're with Bell at the car stop, is that when you hear over the radio that there's a second victim?

A. Yes.

Q. And you hear something from dispatch, you said.

A. Yes.

Q. And do you know how dispatch learned of the second victim, that there was a stabbing victim?

A. The hospital called it in.

Q. Okay. Because -- and how do you know that?

A. Because they advised me over the radio that the second stab victim from The Abyss went to the hospital.

It was kind of protocol for the staff there to -- to call the originating agency and advise them of injuries like that.

Q. Okay. All right. So if at that point in time

the two victims who have been stabbed have left, gone with their friends to be taken off to the hospital and the person who might have been the suspect had been let go because by the time they got him outside, nobody knew he'd done the stabbing and just a fight, what purpose would there have been for the club to call the police? They didn't have a suspect. He'd been let go. The victims were now at the hospital.

Why would they want to call the police?

A. The scenario changes when you look at the -- the wounds and totality and severity of everything. You're now looking at a bleeding. You're not looking at a black eye. You're looking at puncture wound. You're looking at severe bleeding.

Again, something that required more than just a first aid attention. It requires a higher medical authority to attend to those injuries.

At that point, that's where it escalates where this is out of The Abyss' hands. It's out of even my hands. We need to call paramedics to tend to this victim.

Q. Okay. And if the victims themselves have made the decision, for whatever reason -- maybe they didn't have insurance, whatever reason -- that they want to get themselves to the emergency room. They'll rely on their

friends to get them there. They don't want to have an ambulance and all of that, and they communicate that to the security, should the security detain them or do they have to let them go?

A. The security's obligation at that point is to notify authorities, because at that point, it's -- again, it's above and beyond their duties.

Q. Okay. So even if the victim makes the decision that they want to get themselves to the hospital, do you think it's security's responsibility to keep them there?

A. To keep them there, and they can -- so that they can -- until they receive medical attention, yes.

Q. All right. And this is your opinion --

A. Medical treatment. I'm sorry.

Q. And is this your opinion or is this something that you've been informed as part of your professional training?

A. It's both my opinion and as far as my professional training and responsibilities, and this is also something that I communicated to Mike with.

Q. So if you come upon a victim and the victim says, you know, "I want to leave. I want to go to the hospital. I don't want to wait for the ambulance," you believe it's your responsibility to detain them?

A. Yes.

MR. WARREN: Okay. No further questions, Your Honor.

JUDGE LEWIS: Okay. Sir, do you know an individual by the name of Mario Knight, K-n-i-g-h-t?

THE WITNESS: I do not, sir.

JUDGE LEWIS: Did you ever interview Mr. Knight as part of this investigation in any way, shape or form?

THE WITNESS: I did not, sir.

JUDGE LEWIS: Did you ever become aware that Mr. Knight was interviewed by the police department in any way as part of this investigation?

THE WITNESS: I did not, sir.

JUDGE LEWIS: Okay. I'm going to tell you what Mr. Knight testified to here and I want you to tell me what you think in your professional opinion the security staff at the premises should have done. Okay.

Mr. Knight says that he was with Tavio Bell and two other individuals; said that he was a promoter out on the dance floor.

MR. AGERBEK: Excuse me, Your Honor. I hate to interrupt. He was actually with Gavino Srosco.

JUDGE LEWIS: I'm sorry. You're right. Anyway, he was out on the dance floor. He witnessed the

stabbing, okay? He took Mr. Srosco into the restroom of the premises.

Mr. -- Mr. Srosco -- he was stabbed twice, in the leg and the right thigh.

MR. AGERBEK: I hate to interrupt.

JUDGE LEWIS: A fight broke out, his friend got stabbed. Gavino Srosco, he was stabbed in the leg and the right thigh. One other person was also stabbed.

Victor, who was his friend, a friend of Mr. Knight took Gavino to the hospital. That was probably the call, the dispatch call that you got about a victim in the hospital.

THE WITNESS: Yes.

JUDGE LEWIS: Mr. Knight did not go with them to the hospital. He remained there, but assisted in getting this guy out into the parking lot and into the car.

He went back and he was contacted by a large male black security guard who wears a black P-coat. From what I understand, he's a pretty regular guy.

THE WITNESS: Usiko.

JUDGE LEWIS: Okay. You apparently know who I'm talking about.

This person in the P-coat took Knight back into the premises and displayed to him a person who they

had in custody. Mr. Knight told him -- told Mr. P-coat or Suit or Usiko or Suit or whatever his name is told him "Yes, that's him. He's the one that did the stabbing."

What would you expect the security staff to do with that individual?

THE WITNESS: Detain him, call 911 immediately.

JUDGE LEWIS: Now, if I understand correctly -- and I haven't heard everything here -- this is a whodunit. Nobody knows who this person was.

Am I correct?

THE WITNESS: Initially from their -- at the club? That's what they said, but I'm not believing that at all.

JUDGE LEWIS: Did anyone find this individual that was displayed to Mr. Knight by the guy in the P-coat?

THE WITNESS: By the time police showed up, nobody was there.

JUDGE LEWIS: Were the security staff still there?

THE WITNESS: Yes.

JUDGE LEWIS: Was the guy in the black P-coat still there?

THE WITNESS: Yes.

JUDGE LEWIS: But whoever he displayed to Mr. Knight was no longer there?

THE WITNESS: That's correct.

MR. WARREN: Your Honor, could I ask a question?

JUDGE LEWIS: When I'm done.

MR. WARREN: Could I ask a question of you? Because you're reviewing your night --

JUDGE LEWIS: Go ahead.

MR. WARREN: Did Mr. Knight describe the ethnicity of who Mr. P-coat had?

THE WITNESS: No. I don't have that.

MR. WARREN: Okay. It was either not said or apparently unimportant at the time, although it may be important now.

MR. WARREN: My notes reflect that he said an African-American man.

JUDGE LEWIS: I -- if he did, I don't recall. I do recall him describing Mr. -- Mr. P-coat there in that fashion.

MR. WARREN: Right. Maybe before we break -- and I don't want to delay you further. Maybe when we break, we can ask the reporter to check that for us.

JUDGE LEWIS: Now, anyway, the person that was displayed to Mr. Knight who Mr. Knight said, "That's

him" to your knowledge was never identified?

THE WITNESS: He was never identified. He was not there when units arrived on the scene initially.

JUDGE LEWIS: And Mr. P-coat didn't provide you with a field interview card indicating his name, address and phone number?

THE WITNESS: He did not.

JUDGE LEWIS: When you made the traffic stop -- no. Take that back.

When you were flagged down by the security guard and he told you that "hey, my buddy said he turned the knife over to Phong" and you went back to the premises at that time?

THE WITNESS: Yes.

JUDGE LEWIS: Phong is still there?

THE WITNESS: Yes.

JUDGE LEWIS: Did you contact Phong or someone else?

THE WITNESS: Initially I believe Officer Zarrilo contacted him while I spoke with another security --

JUDGE LEWIS: Okay.

THE WITNESS: -- which I recall correctly is Mr. Carucci.

JUDGE LEWIS: What I want to know is: To

your knowledge, was this guy Phong ever searched?

THE WITNESS: Yes.

JUDGE LEWIS: By whom?

THE WITNESS: From what I remember when we initially contacted him, I believe Officer Zarrilo did, but I do not know if he was searched during the initial investigation.

When I put out the car stop, officers immediately responded to the club, obviously. I would not know if he was searched at that time.

JUDGE LEWIS: Well, they were unaware of it until you were later informed that hey, there's a knife involved and Phong had it?

THE WITNESS: That's correct.

JUDGE LEWIS: Okay. So at any point in between, he could have gotten rid of the knife.

THE WITNESS: Yes. There was an extensive time delay.

JUDGE LEWIS: Okay. So a potential suspect who was identified was released and not identified; correct?

THE WITNESS: Yes.

JUDGE LEWIS: A piece of evidence was destroyed or gotten rid of -- I'll put it politely. Gotten rid of, because the knife was never located, was

it?

THE WITNESS: No, not by us.

JUDGE LEWIS: And we have people going around giving signals to potential witnesses telling them to be quiet.

THE WITNESS: Yes.

JUDGE LEWIS: I get the picture.

Okay. Gentlemen. Now's your turn.

REDIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: We've had a discussion here throughout the course of the day of an individual who's been identified as Mr. P-coat, Suit and Usiko.

THE WITNESS: He also goes by that, yes.

MR. AGERBEK: And you kind of put all that together and seem to know who we're talking about.

Q. If I tell you the man's name is Usiko Barrow, is that who we're talking about?

A. Yes.

Q. And who is -- I'll spell it for you. It's first name U-s-i-k-o, last name Barrow, B-a-r-r-o-w. There was also another witness that was mentioned, Carucci, C-a-r-u-c-c-i, first name Santino, S-a-n-t-i-n-o.

Who is Usiko Barrow?

A. He is the security guard -- the security

personnel who was in charge of security outside the club.

Q. And if I give you a physical description as set forth in police reports at 6'1", 250, black male adult, is that --

A. Sounds about right, yes.

Q. Is that who we're talking about?

A. Yes.

Q. That would be the person who wears the black P-coat.

Q. And is Mr. Barrow the individual that you and Sunnyvale police officers tend to deal with when you're dealing with security issues at The Abyss?

A. I've dealt with him in the past. When fights occur and they're escorting people out and they call us, he would be one of the guys that we would contact, yes.

Q. That's because he's head of security, is your understanding?

A. Yes.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Mr. Warren.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Before this incident, you have responded to The Abyss when fights have broken out and the security have in fact called for the police?

A. Yes.

Q. And Suk is a person that did that?
A. I'm not sure if he's done that, if he's done that directly, but he's the guy who usually we dealt with outside the club, Suk and Mike.
Q. So based on your knowledge of prior dealings with Suk, right, if you were told that Suk had in his custody, his own physical history a person that he believed had just stabbed two people, do you think he would call the police?
A. I wouldn't see why he wouldn't.
Q. But based on your -- on the sort of behavior, demeanor that he displayed before this night, would you have expected that person to have called the police?
MR. AGERBEK: Objection. It's asking for him -- it's asking the witness' --
JUDGE LEWIS: Overruled. I want to hear the witness.
THE WITNESS: I would -- one more time.
MR. WARREN: Yeah.
Q. You had dealt with Suk in the past before March 8, '08; right?
A. Yes.
Q. And some of those incidents were when the club had asked for the police, called the police; right?
A. Yes.

Q. So the guy that you dealt with is now there on March 8th.

A. Yes.

Q. And he's got a guy in his physical custody that he has been told just stabbed two people.

Is that guy that you know before any of this other stuff happens, is this the guy that you know a guy that you would expect to call the police?

A. Yes.

MR. AGERBEK: And I'd just for the record like to object and move to strike. He's asking for conduct on this occasion based on prior acts or conduct.

JUDGE LEWIS: It sure is, and I'm going to allow it because I would expect the officer to give me an honest answer based on his impressions of having dealt with this individual in the past.

MR. AGERBEK: But again, my objection is if the argument is going to be gee, Mr. Barrow must have called because he always did call in the past, you can't use prior conduct to show what he did on this prior occasion.

There may be circumstances that would dictate other reasons.

JUDGE LEWIS: You know what? All I can go by is the testimony of the witnesses I have here and I

haven't heard from Mr. Barrow or Mr. P-coat or Mr. Suk or whatever we want to call him, but I have heard from this officer, and quite frankly, at least Sunnyvale police officers have been pretty straightforward and straight shooters as far as the incidents and the facts regarding this incident.

So I'm going to take it for what it's worth. I know how to add two and two.

MR. WARREN: Thank you, Your Honor.

I have no further questions.

JUDGE LEWIS: Thank you.

Thank you very much officer. You're excused.

THE WITNESS: Thank you all.

MR. WARREN: I don't want to lose track of this. It's burning in my head. I wonder if the reporter can go back to Mr. Knight's testimony and see if Mr. Knight told us the ethnicity of the guy who was being retained, because my notes say African-American.

JUDGE LEWIS: I never wrote it down.

MR. AGERBEK: And my recollection is he described one of the other people who had been involved in a bumping and potential stabbing as African-American. I never thought that he actually identified --

MR. WARREN: And that's why it may be confused in my notes, too.

JUDGE LEWIS: Let's go off the record.

(Record read).

JUDGE LEWIS: Back on the record.

Would you please stand, sir.

STANLEY STEWART

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated.

State and spell your name for the record.

THE WITNESS: Stanley Stewart. First name is S-t-a-n-l-e-y. Last name is S-t-e-w-a-r-t.

JUDGE LEWIS: Go ahead, Mr. Agerbek.

MR. AGERBEK: We're going to be dealing with counts 8F and 9H.

JUDGE LEWIS: 8F, 9H. Go ahead.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Officer Stewart, with whom are you employed?

A. I'm employed with the Department of Public Safety for the City of Sunnyvale.

Q. And what is your position?

A. I'm a public safety officer.

Q. And how long have you been so employed?

A. I have been employed with Sunnyvale for two years.

Q. Just to speed things up, would it be fair to say that your duties involve law enforcement, generically?

A. Yes, sir.

Q. Directing your attention to September 7th of 2008, were you on-duty?

A. Yes.

Q. And what was your assignment that evening?

A. I was doing routine patrol as a patrol officer.

Q. And on the evening of September 7, 2008, did you have occasion to go to a club by the name of The Abyss in Sunnyvale, California?

A. Yes.

Q. And why did you go there?

A. I was dispatched there for a report of an assault and battery that had occurred inside the club.

Q. Approximately what time did you arrive at The Abyss?

A. I arrived on-scene -- I'd say approximately 1:30 --

Q. Okay.

A. -- in the morning.

Q. Did you go inside the business?

A. At the time of my arrival, the victim and

medical personnel, security were outside at the rear, rear exit of the business, so right -- at my arrival, I went to the exit, the victim's location. I didn't go inside the premises.

Q. And what -- you described a number of people and you described somebody you identified as the victim.

Why is it that you identified this one person as a victim?

A. Upon my arrival, the victim, person that was laying on the ground being tended to by fire, AMR medical personnel, security -- there was a security officer to identify this person as being the victim of the assault and battery that occurred inside The Abyss nightclub.

Q. How did this victim appear?

A. When I saw the victim, he was semi-conscious, not -- not responsive to any questions or anything of that nature.

He did have a strong odor of alcohol coming from his breath and person. He had a visceral injuries to his face as far as his mouth, chin. He also had abrasions on his chest.

Q. Can you describe the injuries you observed around his face? I mean, you said injuries to his mouth, but what did you see?

A. Do you mind if I refer to my --

Q. Did you prepare a report --
A. Yes, sir.
Q. -- regarding this incident?
A. Yes.
Q. Did you prepare it at or near the time of the incident?
A. Yes.
Q. Would referring to the report refresh your recollection?
A. Yes.
Q. Please do so. So if you could read it, refresh your recollection and then not read it out loud to us, but tell us what you recall.
A. His injuries consisted of bruising, swelling, abrasions to his mouth and right eye and also his chin.
Q. Okay. And did you notice any other injuries on -- other than on his face?
A. Abrasions to his chest, chest area.
Q. Based on your training and experience, were these injuries consistent with somebody who had been involved in an altercation?
A. Yes.
Q. Did you speak with any representatives from The Abyss?
Q. And who did you speak with?

A. I spoke with a security guard, a Mr. John Vasquez who identified himself as a security guard for The Abyss.

Q. Did Mr. Vasquez provide you any information as to -- let me back up.

Do we have a name for this victim?

A. Yes.

Q. What is the name?

A. Do you mind if I refer to my --

Q. Would that -- is it a difficult name?

A. Yes.

Q. Let's go ahead and do that and get a spelling.

A. First name is Brian, B-ri-a-n. I'm not sure if this is middle, but Huu-Dat, H-u-u hyphen D-a-t nguyen, N-g-u-y-e-n and Tran, T-r-a-n.

Q. And for purposes of our discussion, we'll just call the victim Brian. Would that make it easier?

A. Yes.

Q. Did the security guard Vasquez provide you any information as to how Brian came to be in the condition that he was in?

A. Yes.

Q. And what did Mr. Vasquez tell you?

A. Mr. Vasquez informed me that he was working security inside the club. He was monitoring the stage

and dance -- dance area of The Abyss. He noticed a commotion on the dance floor. A crowd was gathering.

At that point, he decided to investigate, was able to make his way through the crowd, saw victim Brian on the ground and he mentioned that he was being -- there was a suspect -- suspects were hitting and punching and kicking him.

He said at that point he laid across Brian in order to prevent any further attack on to Brian. He said shortly after the fight ended, crowd disbursed, and he was able to dis -- disburse enough that he was able to pick Brian up, lay him across his shoulder and carry him quickly to the rear exit of The Abyss, where he waited outside for medical personnel.

Q. At some point, during this investigation, were you able to have a conversation with Brian?

A. Yes.

Q. And where did that conversation take place?

A. That conversation took place at Stanford University Hospital.

Q. And did Brian tell you how he came to be in the condition that he was in?

A. Brian told me that he was able to -- he wasn't able to recall most of the incident. He did inform me that he was on the dance floor.

I guess the incident occurred starting when someone threw water on him, and shortly after he was punched and from there, he couldn't remember a lot of the incident.

Q. Were any arrests subsequently made of -- let me back up.

When you arrived, did you meet with any other security guards besides Security Guard Vasquez?

A. When I arrived on-scene, there was actually -- I believe there was one other security guard that was outside that informed me that the suspects -- the people that he mentioned committed battery against Brian had fled in a black Cadillac Escalade.

Q. So the security guards were unable to detain the suspects involved in this scuffle or beating?

A. Correct.

Q. To your knowledge, was a subsequent arrest made?

A. Yes.

Q. And those individuals who were subsequently arrested, they weren't employees of The Abyss; were they?

A. No.

Q. And how many suspects were arrested for this beating?

A. There were two suspects arrested.

Q. And do you know what they were arrested for?

A. They were arrested for assault with a deadly weapon or force greatly -- force likely to produce great bodily injury.

Q. Violation of?

A. Violation of 245, section A, subsection A, subsection 1 of the California Penal Code.

MR. AGERBEK: No further questions.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Yes. Thank you.

CROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Officer Stewart, was it your impression that the police were summoned to The Abyss for this incident by the security?

A. Under -- I was not sure who called to report the incident, but I'm sure someone -- I'm assuming someone who was involved with The Abyss nightclub called.

Q. And when you arrived on the scene, was it security that provided you with a description of the vehicle that the suspects were seen fleeing in?

A. Yes.

Q. And that was the black Cadillac Escalade?

A. Yes.

Q. And throughout your investigation on the scene, did you have any sense of the -- that the security

was anything other than cooperative with your investigation?

A. No.

Q. They were completely cooperative?

A. Yes.

Q. And was it your impression that the security or someone at The Abyss had also been responsible for calling for emergency medical personnel?

A. Yes.

Q. Okay. How long have you been an officer in Sunnyvale?

A. Two years.

Q. Two years?

A. Yes.

Q. Had you as part of your regular duties -- this incident that we're talking about was on September 7 of '08.

As part of your regular duties before that night, had -- had you done patrol work on Murphy Street in downtown when The Abyss was open?

A. Yes.

Q. And how often? Was it a regular part of your beat?

A. No. It's not regular part of my beat.

Q. So let's say in the year -- let's say in the

year 2008 before September, how many shifts would you have worked where your beat was Murphy Street? When The Abyss was open.

A. I don't have an exact number. I'm sure quite a few.

Q. Quite a few. And as part of your -- when you patrol -- do you patrol Murphy Street when you're working that beat?

A. When I work the beat, when I'm in that area, I do drive up --

Q. Okay.

A. -- Murphy Street.

Q. And is your patrol always -- almost always in a vehicle as opposed to on foot?

A. Not necessarily. There are times that we've walked. I have a partner, and we have met up and walked the street or walked inside various clubs on Murphy Street.

Q. And we've heard another officer describe that Murphy Street is a street -- it's been called downtown Sunnyvale and it's a street that has seven bars on it.

Does that sound about right?

A. It has several bars on it, yes.

Q. And Club Abyss is the largest of them.

A. To my recollection, yes.

Q. In terms of patron capacity.
A. Yes.
Q. Did you have an impression before this incident on March -- I'm sorry. In September of '08. Did you have an impression as to the -- whether the security of Club Abyss were -- were cooperative with the police?
A. With my -- the times that I've dealt with the security at Club Abyss, they've been cooperative with me.
Q. Okay.
A. So yes.
Q. And is it also your impression that they were effective in controlling their patrons?
A. I mean, there were situations where of course they've gotten out of control where they've had to call for police assistance.
Q. Right.
A. But from what I am aware of, I'm sure there's incidents where they've been able to control something that occurred inside.
Q. When you would come on-duty to that beat, did you have an expectation that you're going to have to pay attention to The Abyss because there's going to be a problem there that night?
A. We are aware of certain incidents where --

certain nights that we expect a large crowd or we do just part of basic patrol, you tend to focus on locations or clubs that tend to have a situation that become out of control.

Q. Okay. We heard another officer testify that when she was on patrol with -- for Murphy Street, that she would check in with the security, ask them "what kind of crowd are you expecting?" and "generally when are you going to be closing?" or she generally knew when they were going to be closing.

Did you have that practice, as well?

A. Due to the fact that that's not my primary beat, I didn't actually have -- no. I didn't do that personally.

Q. Okay.

A. But I do know that it does occur.

Q. Okay. In this incident on September 7, is there anything that you're aware of that leads you to criticize the response of the security to this incident?

A. To -- no. From -- from what I was told as far as what occurred inside and what I learned in regards to the incident that was handled by security, I don't have anything.

Q. You're not critical?

A. Critical, yes.

MR. WARREN: No further questions, Your Honor.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Officer Stewart, what time of the day was it that you responded?

THE WITNESS: It was 0120. We got dispatched approximately 0120 hours.

JUDGE LEWIS: And you said that this incident occurred inside?

THE WITNESS: Yes.

JUDGE LEWIS: And when you contacted the victim, the victim had the odor of alcohol about him?

THE WITNESS: Yes.

JUDGE LEWIS: Okay. Thank you very much, sir. You're excused.

MR. WARREN: Thank you.

MR. AGERBEK: Let's go off.

(Discussion off the record).

(Telephone call is being placed to previous witness).

MARIO KNIGHT

having been previously duly sworn, thereupon testified as follows:

JUDGE LEWIS: Mr. Knight, this is John Lewis, the judge from the hearing this morning. I just want to

remind you that you're still under oath. We're going to ask you a couple questions.

Okay?

THE WITNESS: Okay.

JUDGE LEWIS: Thank you.

RECROSS-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Mr. Knight, this is Rick Warren. I'm the lawyer representing The Abyss, and my question is: You -- yes. You testified that -- can you hear me?

A. Yes.

Q. Okay. You testified -- you testified that you heard or that you saw the man with the P-coat detaining a person that you identified as the person who had done the stabbing; right?

A. Yes.

Q. And so my question is: What was the ethnicity or the race of the person that was being detained, the person you suspected of doing the stabbing?

A. He was Asian.

Q. Say again.

A. He was Asian.

Q. All right. Thank you.

THE WITNESS: Okay.

MR. AGERBEK: That's it. Thank you, Mr.

Knight.

JUDGE LEWIS: Off the record.

(The hearing adjourned at 5:10 PM).

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STATE OF CALIFORNIA)

COUNTY OF SAN FRANCISCO)

I, the undersigned, hereby certify that the discussion in the foregoing hearing was taken at the time and place therein stated; that the foregoing is a full, true and complete record of said matter.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing hearing and caption named, or in any way interested in the outcome of the cause named in said action.

IN WITNESS WHEREOF, I have
hereunto set my hand this
_____day of _____,
2009.

_____
Mark I. Brickman CSR No. 5527

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION AGAINST)
)File No 47-43051
DUONG, CHIEN T. & NGUYEN, CHUNG)
DBA: THE ABYSS)Reg No 08068524
PREMISES 146 S. MURPHY AVENUE)
SUNNYVALE, CA 94086)
LICENSE: ON-SALE GENERAL EATING PLACE)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HEARING ON ACCUSATION
WEDNESDAY, FEBRUARY 25, 2009
SAN JOSE, CALIFORNIA
`DAY TWO

Reported by: MARK I. BRICKMAN, CSR, RPR
License No. 5527

A-P-P-E-A-R-A-N-C-E-S

For the ABC: DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL - STATE OF CALIFORNIA
3780 Rosin Court, Suite 260
Sacramento, California 95834
By: GERRY J. AGERBEK, ESQ.

For the Respondent: LAW OFFICES OF RICHARD D. WARREN
929 Fresno Avenue
Berkeley, California 94707
By: RICHARD D. WARREN, ESQ.

The Judge: JOHN LEWIS
Administrative Law Judge

---o0o---

BE IT REMEMBERED that, pursuant to Notice of The Hearing, and on February 25, 2009, at the hour of 9:33 AM, at San Jose, California, before me, MARK I. BRICKMAN, CSR No. 5527, State of California, there commenced a hearing under the provisions of the State of California Alcoholic Beverage Control Act.

---o0o---

I N D E X

Witness:

HUNG TRAN

Direct Examination by: Page

Mr. Agerbek - 9:35 AM 303

Cross-Examination by:

Mr. Warren - 9:44 AM 311

USIKO BARROW

Direct Examination by:

Mr. Warren - 9:53 AM; 11:39 AM 320, 404

Cross-Examination by:

Mr. Agerbek - 11:05; 11:42 AM; 11:52 AM 378, 407, 415

SANTINO CARUCCI

Direct Examination by:

Mr. Warren - 12:40 PM, 1:15 PM 419, 453

Cross-Examination by:

Mr. Agerbek - 12:56 PM 436

EMMA NGUYEN

Direct Examination by:

Mr. Warren - 1:17 PM 455

Cross-Examination by:

Mr. Agerbek - 1:49 PM 481

CLOSING ARGUMENTS

By Mr. Agerbek - 1:39 PM; 314 PM 512, 534

By Mr. Warren - 2:56 PM 522

JUDGE LEWIS: On the record. This is day two in the hearing in the matter of the accusation against Chien T. Duong and Chung Nguyen doing business as the Abyss at 146 South Murphy Avenue in Sunnyvale, California. File number is 47-430051. Registration number 08068524.

My name is John Lewis. I am hearing this matter. Gerry Agerbek, staff counsel for the Department is present and so is Mr. Rick Warren representing the licensee, and we are ready to proceed with day two.

Raise your right hand, please.

HUNG TRAN

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Be seated, please.

State and spell your name.

THE WITNESS: My name is Hung Tran, H-u-n-g. Last name's Tran, T-r-a-n.

JUDGE LEWIS: T-r-a-n?

THE WITNESS: Yes.

JUDGE LEWIS: Okay. Mr. Agerbek.

MR. AGERBEK: Thank you.

DIRECT EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Mr. Tran, on the evening of March -- I'm sorry. The evening of September 7th,

2008, did you go to a club by the name of the Abyss located in Sunnyvale, California?

A. I didn't remember date, but yes, I did somewhere around there. I don't remember the date.

Q. And why did you go there?

A. Why? Just to have fun like, you know.

Q. It wasn't because you were working or anything like that. You went there for pleasure?

A. Yeah.

Q. Okay. And do you recall whom you went with?

A. Brian Tran. He's my friend.

Q. Okay. And do you recall about what time you arrived there? Was it daytime, evening, nighttime?

A. Nighttime.

Q. Do you recall 8:00, 9:00, 10:00?

A. Probably from maybe -- maybe around 10:00.

Q. Okay.

A. I'm not sure.

Q. And did you actually get inside the business?

A. Yes.

Q. And did anything of consequence happen while you were there that evening?

A. Well, my friend got into a fight.

Q. Okay. And when you arrived at the club, we've been told that there are different levels to the club.

There's the first floor and then there's a couple other floors.

What level were you on when this fight broke out?

A. First floor.

Q. And how did -- if you know -- the fight start?

A. Okay. What happens or what I saw was my friend and the other girl was talking, right? And then the next time when I looked back, I saw the guy who started the fight threw a drink at him, and then -- and then he jumped down the fence. There was a fence there at the first floor.

So he jumped down and started the fight, and there was like a bunch of guys on top -- you know, on that -- that high level, higher ground. They start to jump at him, start beating him up, and -- that's when it started.

The crowd just got around it, watched the fight, I guess, and I was on crutches, so I stood at the side.

Q. Let me back up just a couple things. You said your friend.

Was that Brian that was talking to a girl?

A. Yes.

Q. And this girl didn't go to the club with you?

A. No.

Q. Brian had met her there?

A. No. She was -- I guess she was in that group.

Q. She was in --

A. The guys who started the fight.

Q. Okay. So Brian's talking to a girl and then some guys there apparently didn't like that and they threw a drink at him?

A. He threw a drink at him and he started a fight.

Q. And the same guy who threw a drink jumped down and started the fight?

A. Yes.

Q. Okay. Did Brian fight back?

A. He tried to -- when the guys jumped down, started the fight, a bunch of guys down there ran down, too.

So I guess he saw that and he tried to run away, but he got caught in the middle. It was crowded.

Q. So he couldn't get through the crowd?

A. Couldn't get through the crowd.

Q. And in terms of the fight itself, what did you see? Were people punching, kicking? What were they doing?

A. A bunch of guys came down, beat him up. What

I saw is that -- I saw one of the guys kicking -- kicking at him when he was on the ground.

When he start kicking, I saw that, but people's kind of blocking it. So maybe I guess the direction is to the head is when I saw it.

Q. Okay.

A. So --

Q. And did any security guards jump in and do anything?

A. Later on when he was on the ground, yeah. Security came and, you know, break up the fight. But it took a while, though.

Q. What do you mean by "a while"?

A. Probably thirty seconds.

Q. Okay. So the fight had been going on for about thirty seconds in your estimation?

A. When he was on the ground, got beaten up, yeah.

Q. After security broke up the fight, what happened next?

A. I didn't know. I got blocked by the crowd. I was on crutches, so the next time when I -- my friend called me and I -- my other friend called me and I went outside and meet Brian.

He was just lying on the -- kind of like a

sofa, a couch. He was lying there, you know, just like unconscious.

Q. And was this -- was this area that you went and then found Brian, was that at the end of the building or the back?

A. The back of the building.

Q. Now, you said another friend called you.

Did you meet up with some friends at the club?

A. Yeah. I met some friends at the club, some old friend of mine. Also knew Brian.

Q. And they called you on your cell phone?

A. Yes.

Q. So then you went and found where Brian had been taken?

A. Mm-hmm.

Q. And Brian was unconscious at that point, you said?

A. He looks like unconscious. Didn't say anything. Just laid there.

Q. Can you describe physically how Brian looked at this point?

A. He was bleeding right here (Indicating) at his mouth. That's pretty much what I saw. Some blemish over here.

Q. When you say "bleeding at the mouth," I'm just

going to describe this your gestures for the record so we have it clear. It looked like you pointed to the right side where the top lips and the bottom lips meet?

A. Maybe over here at the lips (Indicating).

Q. At the bottom lip?

A. Yeah.

Q. Okay. And then you said a blemish. You pointed to right below the right eye; is that correct?

A. I don't remember, but I saw blemish on his eyes, yeah.

Q. Okay.

A. It was quite a while.

Q. Did at some point police and paramedics respond?

A. Yeah. For a while, probably twenty minutes. Twenty minutes to thirty minutes after we were trying to comfort him.

I was there with the friends. Probably around twenty to thirty minutes, police came, and I believe later on, the paramedic came. Paramedic came after the police came.

So they took him --

Q. While you were trying to comfort Brian, were the club employees trying to stand there trying to help?

A. I guess they were trying to call the police or

something.

Q. Okay. Was Brian transported to the hospital?

A. Later on, yes.

Q. And did you go with Brian to the hospital at that time?

A. I drove there with my friends later to visit him, yeah. Not at the same time.

Q. Did you meet -- before you left for the hospital, did you meet with the police officers?

A. Actually, before I went to the hospital, I met the officers and they asked me to witness the -- the guy who beat him up.

Q. Are you talking about some form of identification of the person --

A. Yes.

Q. -- who --

A. Mm-hmm. So the police drove me to the freeway where the car was -- the suspect vehicle was there. So I got down behind the car and then -- but it wasn't them.

Q. Okay. And do you know if Brian was released from the hospital that day or did they keep him overnight?

A. The next morning.

Q. Next morning.

A. Yeah.

Q. All right. And Brian's okay at this point?
A. He's okay.
Q. No permanent damage or anything?
A. According to the scan -- I mean, according to the scan, they didn't find anything.
Q. They did a scan at the hospital?
A. Yeah. At Stanford Hospital.
MR. AGERBEK: Okay. Nothing further.
MR. WARREN: Okay.
JUDGE LEWIS: Mr. Warren.
MR. WARREN: Thank you, Your Honor.
CROSS-EXAMINATION BY MR. WARREN
MR. WARREN: Q. Mr. Tran, before this fight broke out, your friend was on the dance floor dancing?
A. Before the fight started out?
Q. Yeah.
A. Yeah. He was dancing.
Q. And the girl that he was talking to, she was also on the dance floor dancing?
A. Yeah.
Q. And what was your sense? Things were fine. Everyone was having a good time, enjoying themselves?
A. He was dancing with us at a moment. Later on, I didn't see him, so -- because we weren't together all the time second by second.

So he goes there, here and there, and I was doing the same thing. We weren't like together all the time.

So it was -- it was part of maybe you call it a snapshot of a time frame.

Q. But before this fight broke out, was your sense that this was -- everything was cool?

A. Yeah.

Q. You were having fun?

A. Yeah.

Q. And when you saw your friend, he was having fun?

A. (Witness nods head affirmatively).

Q. Okay. And then the -- he starts smiling and talking with another woman on the dance floor. She's not part of your party. They're just out there dancing in proximity to each other, close together.

I don't mean close like they're dancing as a couple, but they're smiling at each other?

A. Maybe three feet away, yeah.

Q. And some other guys that are with the woman begin to react in a way that leads to the fight; right?

A. Yeah.

Q. Okay. And when -- and when the -- and you said a bunch of guys, you know, are going after him.

How many are we talking about?

A. A lot. Maybe seven, nine, ten.

Q. Really? Okay. And before they begin to fight, are the seven, nine, ten people all together in a cluster or are they kind of scattered around?

A. They were standing on the fence, on the higher ground.

Q. So there is --

A. Fence.

Q. The dance floor is one level and then there's kind of a riser?

A. Like a riser, mm-hmm.

Q. That patrons can be on; right?

A. Patrons?

Q. Customers.

A. Okay.

Q. And they can be on the riser so they can sit there and also look out over the dance floor?

A. And also stand there on the fence and look out.

Q. And so this group of guys swarm on your friend and several of them are punching and kicking him? Is that what you were seeing?

A. I didn't see several punching him, but I saw -- I saw a bunch of guys ran after him when he was

trying to get away, and the next thing -- and I tried to get away slowly, not a quick response --

Q. Right.

A. -- because I was on crutches.

The next time when I looked back, I saw him on the floor already and I saw one of the guys start kicking him.

I got blocked, but I'm just assuming the direction of the guys kicking is to the head.

Q. Okay.

A. Because I got blocked at that snapshot.

Q. Okay. And when you saw him later outside --

A. Laid outside.

Q. You saw him later, your friend.

A. Okay.

Q. He was taken outside. Okay. When you saw him later outside, the injury you saw on his face was consistent --

A. Pretty much.

Q. -- with what you thought was kicked in the head?

A. Probably got cracked right here (Indicating).

Q. In the corner of the mouth.

Okay. And the -- when the security got there, did the security -- did any of the security act to

protect your friend? He was down on the ground already; right?

A. Mm-hmm.

Q. Did any of the security act to protect your friend?

A. I didn't know who was the security. A bunch of guys -- a bunch of people were watching him fight. I didn't know. I didn't know who was the security.

But for a while, the fight broke off. That's all I know, and then later on, I know that he was outside.

Q. Okay.

A. Yeah.

Q. And when the fight broke off, how close were you to your friend?

A. One, two, three, four -- probably at him. to --

Q. Eight, ten feet?

A. Eight, ten feet.

Q. Okay. And was there a lot of people in between you and your friend?

A. A lot of people in between.

Q. Did you see how your friend -- you later saw your friend outside in the back of the club; correct?

A. Mm-hmm.

Q. Right? You have to say yes or no so the court reporter --

A. Yes.

Q. Thank you.

And did you see how your friend got from the dance floor out to the outside?

A. No. I didn't see -- I didn't see them brought him out. I didn't see them carry him out. I just saw him outside when I --

Q. Okay.

A. -- went outside.

Q. When you saw him outside, had police or fire arrived yet?

A. No. We have to wait probably half an hour, I would say.

Q. Were there club security with him?

A. Yes.

Q. Okay. And throughout the time that he was outside, were you outside with him?

A. I was outside with him.

Q. And you stayed with him until the emergency medical team arrived?

A. (Witness nods head affirmatively).

Q. And did security remain with him at the -- throughout that time, as well?

A. Yes, mm-hmm.

Q. Okay. And do you know who called the police -- the police arrived, too?

A. The police arrived.

Q. Do you know who called the police?

A. No, I don't.

Q. Do you know who called the ambulance?

A. No, I don't.

Q. Okay. You then left -- did you leave with police officers?

A. Leave? What do you mean "leave"?

Q. Your friend was taken away in the ambulance; right?

A. Mm-hmm.

Q. And you were still at the club?

A. Yes.

Q. Okay. And then you said that you went -- the police took you to do an identification out on the highway somewhere.

A. Yes.

Q. So did the police drive you from the club to that identification?

A. Yes.

Q. Okay. And then from there, how did you get to the hospital?

A. From there?

Q. Yeah.

A. The police took me back to the club.

Q. And you got your car?

A. And then I got my car.

Q. Okay. Thank you.

No further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Thank you very much, sir. You're excused.

MR. AGERBEK: At this point, the department rests their case.

JUDGE LEWIS: Okay. I have only -- the only thing I do not have is Exhibit 5 has been marked only at this time.

MR. AGERBEK: Correct, and I'm not offering it.

JUDGE LEWIS: Okay.

MR. AGERBEK: It's actually for New Year's Day, so --

JUDGE LEWIS: Okay. All right. And the department rests.

Mr. Warren.

MR. WARREN: Okay. Your Honor, I have

previously given you a document, four pages marked as The Abyss security plan. You pre-marked that --

JUDGE LEWIS: Yes.

MR. WARREN: -- as Exhibit A.

JUDGE LEWIS: Yes.

MR. WARREN: All right. We're going to be calling as our first witness Usiko Barrow.

JUDGE LEWIS: Okay.

MR. WARREN: And otherwise known as Suit, Mr. P-coat and Suk.

JUDGE LEWIS: All right. Would you raise your right hand, please?

USI-KU BARROW

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated. State and spell your name, please.

THE WITNESS: My name is Usi-ku, U-s-i hyphen k-u.

JUDGE LEWIS: Hold on. U-s-i --

THE WITNESS: -- k-u hyphen Y-o-o-f-i.

JUDGE LEWIS: Okay.

THE WITNESS: Barrow, B-a-r-r-o-w.

JUDGE LEWIS: Thank you.

Mr. Warren.

DIRECT EXAMINATION BY MR. WARREN

MR. WARREN: Q. Mr. Barrow, you're employed at the Club Abyss; correct?

A. Yes, sir.

Q. And how long have you worked there?

A. Two years now.

Q. All right. And what is your present job?

A. I'm currently the head of security.

Q. And how long have you been the head of security?

A. A year and a half.

Q. And besides working at Club Abyss, do you have any other employment?

A. I'm a campus supervisor for Vallejo Unified School District and I also coach for them, as well.

Q. What do you coach there?

A. I coach volleyball, wrestling and softball.

Q. And you say a campus supervisor.

What are your responsibilities?

A. As a campus supervisor, we maintain the safety of the campus, make sure the kids are protected so that people aren't walking on, making sure the kids are going to class.

If there's fights, we stop them. Also we assist teachers for various reasons if they need to

remove a student from class that's unruly.

Q. Okay. So it sounds as if your job there is more security oriented.

A. Yes, but there's times when we do have to do a little more counseling, like if there's a kid in trouble, we're told to kind of interact with them.

Sometimes we can diffuse a situation before it gets worse, or if we know certain crowds, we know these people have issues, we try to stop things before they start.

Q. Certain crowds like gangs or something like that?

A. Yeah. We have -- on my campus, we have a small population that's Fenyos and Arenas, but we had Cuddies for a time that had problems with Pacific Islanders on campus.

Q. So do you work as a particular school?

A. Yes, I do. Jesse Bethel High School.

Q. And is that a high school in the City of Vallejo?

A. Yes, it is.

Q. And how long have you had that job?

A. Six and a half years.

Q. In addition to working as security at The Abyss, have you also worked at any other alcohol

establishments?

A. I worked at Crossing the Bar in San Francisco before it was sold. I've also done bus events with Nine Foundation. I've worked at Base 550. That's where I initially started. I also did hotel security at Holiday Inn in Vallejo.

Q. Were all these other places working as security?

A. Yes.

Q. All right. I wanted you to tell us about your training.

What kind of training have you had that you use in your job providing security?

A. Well, I was in the military for a time, so I got some structure there. I was a supply records and parts specialist, but we were assigned to an MP unit, so I got to kind of observe some of their tactics.

Also, at the school district, we've gone through our standardized California SB training, and then also --

Q. What's SP stand for?

A. SB. It's a California statute. I don't know the exact detail. It's been three years since we've gone through the current update.

Q. Okay.

A. But it's a class that we all have to go to as far as Ed Code, California Code, things that we all need to watch out for.

But all campus supervisors have to -- actually, anyone that's doing security at a high school is supposed to have a state mandate.

Also, I am PROAC certified.

Q. What's PROAC mean?

A. Preventative assault training.

Q. What does that training involve?

A. Well, it's training -- well, PROAC basically is designed for your parent educators, people that are working in group homes and correctional facilities.

Basically what it is it's to try and diffuse situations before they get out of hand; recognizing what triggers are and how to de-escalate and seg -- because there's a curb, believe it or not, when someone is angry that they go through, especially when they're ready to fight based on Maslow's hierarchy of human needs.

So with that training, basically what we do or what principles were enacted or how to analyze the situation and how to try to de-escalate as best as possible.

The second part of that training is if we do have to restrain, there's certain techniques that are

utilized for protection of the client.

Q. Okay. And do you have any certification to teach that kind of PROAC?

A. Yes. I am certified for training.

Q. And have you -- as part of your duties at the Club Abyss when you became head of security, did you train any security at The Abyss on the principles of the PROAC?

A. I do, but I couldn't formally do it because of the contract -- the way it was designed with PROAC, the primary company and the school district, the training was isolated to district employees.

But what I did was took some of the principles and bring it back to the guys. "Hey, let's take care of the situation this way."

So indirect training is what they received. So that we can deal with situations before they get out of hand.

Q. Okay. And who does the hiring and firing of security at Club Abyss?

A. I do.

Q. And has that been true the entire time that you've been head of security?

A. For the most part. If -- if Michael or Emma see somebody that maybe I've missed because I'm inside or

outside of the venue, they'll let me know. If we have an issue with a certain guy, we'll put him in a different position to see if it works out better, but ultimately it falls on me.

Q. When you're evaluating a candidate or an applicant for a security position at The Abyss, what do you check? What do you do?

A. Well, the initial meeting -- I just talk with them just to kind of see what kind of personality they have, find out what kind of background they have, if they've even done any sort of security, and if they have, what type of security. You know, if they can handle a large crowd.

We had one guy that wanted to work, but he'd honestly only done store security, so he really wasn't geared for what this job prescribed. Nice guy, but just wasn't geared for it.

The other thing, too, is you got to know you can trust this person, make sure that if we're going into a situation, this person's going to be focused and they're not going to freeze.

MR. WARREN: Okay. Your Honor, could you show Mr. Barrow the Exhibit A?

Q. Do you have a copy of Exhibit A already?

A. Yes, I do.

Q. Why don't you give that one to the judge, then.

A. (Complying).

JUDGE LEWIS: Thank you.

MR. WARREN: Let him look at it.

And Exhibit A is a four-page document that's entitled: "The Abyss Security Plan."

Q. Have you reviewed this?

A. Yes, sir.

Q. And did you have a role in its preparation?

A. Yes.

Q. What was that role?

A. Just to identify exactly what it is that we do as far as our security plan and make sure that we don't leave out any details; that someone coming behind me knows what needs to happen to maintain a safe environment.

Q. Okay. Now one of the -- at The Abyss, you said you've been head for security for a year and a half.

So is that beginning in around July/August of '07?

A. Yes.

Q. And you've continued -- you've had that position ever since?

A. Yes.

Q. And you still have it today?
A. Yes, sir.
Q. And in that position, do you work at The Abyss every night that they're open?
A. Yes, sir.
Q. And have you missed any blocks of time away on vacation, away on training, anything like that?
A. I missed -- I missed three nights that we opened because I was at a volleyball tournament in Reno, and I missed part of a night for my son's birthday, but I came in, anyway.
Q. And when you're gone, who fills in for you?
A. It should be Santino. He's my second in command.
Q. And this is Santino Carucci?
A. Yes, sir.
Q. All right. And what nights are the Club Abyss open?
A. Thursday, Friday, Saturday. Sundays, if we -- if we have a high school event, a Sunday.
Q. Okay. And the high school event is just called a teen event?
A. Yes.
Q. What's the age limit for the teen events?
A. It's 14 to 17, with the exception on an

18-year-old if they have a valid high school ID. Because we have seniors that are --

Q. Valid means that they are still presently in the high school?

A. For this year, for example, '08-'09 ID.

Q. If I'm an 18-year-old high school graduate and my ID shows that it was for the last year, do I get in?

A. No, sir.

Q. And when you do the teen events, is there any alcohol available?

A. No, none.

Q. I'm going to have you describe a bit the layout of the club physically. The club is -- has -- was formerly was a movie theater; right?

A. Yes.

Q. So it's a large building?

A. Yes.

Q. Big -- the main room of the building where the main dance floor is or where the dance floor is is a giant room like a movie theater; right?

A. Mm-hmm.

Q. Is that correct? You have to say "yes" for the reporter.

A. Yes.

Q. And the entrance to the club is from where?

A. South Murphy.

Q. Okay. South Murphy Street.

And is Murphy Street generally referred to as downtown Sunnyvale?

A. "Historic Downtown Sunnyvale." That's what the sign says.

Q. There are signs that call it Historic Downtown?

A. Yes.

Q. Besides Abyss, are there other premises on Murphy Street that serve alcohol?

A. Yes, sir.

Q. How many?

A. I would say seven.

Q. All right. And -- and how long is Murphy Street? How many blocks of the street are there if there's seven alcohol places?

A. Well, within, I would say, about a -- one block. One block.

Q. Okay. So when you enter Club Abyss, you enter into a lobby that's like a lobby of a movie theater?

A. Yes, sir.

Q. All right. And how can you get from the lobby to the main dance floor area?

A. There are two distinct hallways to the left

and to your right. If we're facing --

Q. All right. Let me just say. So you can get into the dance floor by going through these hallways?

A. Yes.

Q. If I go to the hallway to my right, what is there?

A. The women's restroom.

Q. If I go to the hallway to the left, what is there?

A. Men's restroom.

Q. Is there anything in the lobby directly when I enter?

A. The coat check.

Q. When I take those hallways and get into the main room, describe the ground floor of the main room, which is where the dance floor is.

A. Okay. If we've gone through the women's room side, when you first come, you're going to see stairways going up to the second floor.

If you look directly in front of you, you're going to see like another subfloor and then you're going to see another subfloor, which is the main dance floor.

Now immediately to your right is our main bar, and then the stairways's up to the second floor.

Q. And on the main floor, in addition to the

dance floor itself, around the perimeter, are there -- are there seating areas?

A. Yes. There are couches.

Q. And are they on the same floor or are they built up on a riser, a little platform?

A. Well, there's -- on the floor that the main bars are, there's like a little riser with a little seat thing and then it drops down and then there's couches.

Q. Okay. And at the very back of the main room, is there a stage?

A. Yes, sir.

Q. Like an elevated stage like you would see in a movie theater?

A. Yes, sir.

Q. All right. And -- so you said there's a main bar and there's a bar on the second floor?

A. Yes.

Q. Does the main bar on the first floor serve alcohol?

A. Not on an 18 and up night.

Q. All right. So tell me about -- so you have a teen event.

A. Yes, sir.

Q. That's on Sundays, generally. And then you have 18 and up.

When are these 18 and up events?

A. Lately it's been Thursday and Friday.

Q. Thursday, Friday.

When you say "18 and up," that implies that there's yet another time with another different age limit; is that right?

A. When I say "18 and up," you may still have 20-year-olds that may come out. So we say 18 and up.

Q. And do you have a 21 and older night?

A. Saturdays.

Q. All right. So the bar on the main floor, the dance floor on an 18 and up event is not serving alcohol; is that right?

A. Correct.

Q. Does it serve anything?

A. Gatorade, Red Bull and water.

Q. All right. Then there were stairways that you can go to a higher level, a second floor?

A. Yes.

Q. And there's another bar there?

A. There is a bar there, yes.

Q. And is there also a dance floor there?

A. Yes.

Q. How big is that dance floor? Relative to this room.

A. Relative to this room. I would say maybe from the light switch to the door.

Q. So maybe fifteen, twenty feet?

A. Yes.

Q. As a square sort of area?

A. Yes.

Q. All right. And there's sofas or chairs there?

A. There's like the little seats, little seats on the side thing.

Q. All right.

A. And the windows.

Q. And can someone on that second floor have a view down on to the dance floor?

A. Yes, sir.

Q. Is it all glassed in?

A. Yes.

Q. And is alcohol served at that bar?

A. At the second floor, yes.

Q. And is alcohol served there all the times that you're open except the teen events?

A. Yes, sir.

Q. Where do you do your -- where do you do ID checking?

A. Okay. There's a primary ID in the front, and then if we have an 18 and up, there's a second ID check

at the top of the stairs. So they're checked again.

Q. And if a person is 21 or older and they go to the second floor and they get a drink at the alcohol bar, can they take that drink down --

A. No.

Q. -- to the main floor?

A. No.

Q. So you have security -- is there one stairway that goes to the second --

A. There's two stairways. We have a guard posted at each one to do IDs.

Now if someone does try to go down, usually that guard will stop and say, "Hey, you can't bring it down."

Usually if someone has snuck it down, either Santino or my roamer will tell them to get it back up stairs. If they don't understand why they can't have it, we'll escort them out.

Q. That's on an 18 and older?

A. Yes.

Q. Is -- the 21 and older, those restrictions don't apply. You can have alcohol on the ground floor as well as the upstairs?

A. Yes, sir.

Q. How many -- you've recently revised the

security plan; right?

A. Yes, sir.

Q. Okay. And part of the revision was to increase the number of security guards.

A. Yes.

Q. Depending on how many patrons are there or expected to be there; right?

A. Yes, sir.

Q. And when I say "recently," I mean this year. This happened this year; right, that revision?

A. Yes, sir.

Q. Let's forget about that revision. Let's go back to 2008. All right?

How many security guards would you have working typically on a Friday night? Did you have a typical number?

A. Friday night, I would -- I like to go with ten unless we're expecting a bigger crowd. Then we go at least twelve to fifteen.

Q. All right.

A. If we know that it's going to be a bigger crowd. If it's close to a holiday or we know that the colleges are out, and of course we go with a bigger staff. But usually ten.

Q. Do those ten people have particular

assignments?

A. Aside from the guys that I usually have doing IDs, no. Sometimes they can be posted on the stage or they're posted on the hallway to help control the line.

The way I try to do training is to be able to put any guard in any particular situation so that we don't have a weak link -- well, as far as saying this guy can only work here. Because it sometimes what we can do.

Q. All right. You mentioned a hallway. What's the hallway?

A. The hallway. When we're -- before we open doors, and once we actually do open doors, if our line extends too far, since something is going on at -- if Fibber's is open, as well.

Q. Fibber's is another bar?

A. We can't let our line extend past their doors, because they're open. So we'll break our line and move our line toward the Tangerine and a Mexican food restaurant.

Q. We've heard other witnesses talk about a public walkway that goes from Murphy Street to the parking lot behind.

A. Yes, sir.

Q. Is that what you're referring to as the hallway?

A. Yes, sir.

Q. So your -- if your line in front of The Abyss is too long and extends -- if you kept it continuous, it would extend in front of another bar.

You break the line and you have the people at the back of the line lining up into this hallway?

A. Yes, sir.

Q. All right. And when -- you said the line forms before you open.

When do you open?

A. We open at ten o'clock sharp.

Q. Do you ever open at 8:30 or 9:00?

A. No.

Q. So all the time you've been head of security, you open at ten o'clock?

A. Ten o'clock.

The only time we've ever opened any time earlier is if -- I want to say like New Year's Eve in preparation for the event, but other than that, no. Ten o'clock.

Q. But in preparation, does that mean you're letting patrons come in earlier?

A. No.

Q. Just other people are coming in to set up --

A. Yes.

Q. -- special decorations or something?

A. Yes.

Q. All right. And when do your security report on-duty?

A. Okay. I have my setup guy. He's there by 10:00, my initial setup guy. I'm there by 9:30 or sooner, but with me during practice, sometimes I can't make it exactly at 9:30, but I try to be there at 9:45 at the latest, and the rest of the staff comes at 9:45.

They get equipped up, they get their positions. That way if I need to let them know any particulars for the event that night, I can kind of brief them so that we're adequately prepared.

Q. You say "equipped up."

What does a security guard do?

A. They get their security jacket, their radio, make sure that their flashlight is working. Any sort of preparation like that as far as being equipped up.

Q. In terms of radios, do your security wear headsets?

A. Yes, sir.

Q. And is everyone -- all security have a headset on?

A. Yes.

Q. Anybody else in the club wearing a headset?

A. The bar manager on 21 up nights, he does.

Q. All right.

A. That way we can communicate if they need help.

Q. Okay. The -- do you position security at certain locations within the club when it's up and running?

A. Yes, sir.

Q. All right. Describe that. Where do you have people working? You've got people at the door?

A. Okay. Once patrons have started coming in, we already have Santino inside, but as we start getting more patrons, we post two people on the stage, two people on the ledge and then two people at the lounge, also.

So basically they can kind of triangulate and see as more bodies come in.

Now, there's also people posted to IDs on the second floor, kind of 18 and up, and then I send -- if we need more bodies in earlier, if it's a really big crowd, then we send more people in. I have people roaming, as well.

Q. And what do you do -- say on a typical Friday night, an 18 and up night from ten o'clock till closing, what are you doing?

A. Well, I'm making sure the front's in order. Try to keep the sidewalk clear so people can walk by.

I'm also inside and out, making sure the party's going as is. Watching my staff, watching the patrons, kind of making sure everything is going smoothly.

Q. All right. On a typical night, do you have direct conversation with Sunnyvale Police?

A. Yes.

Q. And tell us about that.

A. Usually -- either they'll come right before we open doors or a little after we've opened doors and they'll ask me, you know, what type of crowd you have, kind of numbers we're expecting, you know, and I'll let them know at that point what kind of numbers we have, you know, and then they'll let me know if something's going on elsewhere as far as -- like one time there was a party.

Q. Okay.

A. And they said, "There might be problems there, so you might get a late crowd, so just have your guys aware, you know. Just to make sure everything is going smoothly."

Q. Okay.

A. And then let them know if it's, you know -- if it doesn't pick up, you know, we'll probably be shutting down this time. If it doesn't pick up, so you guys are

aware that we're get letting out, things like that.

Q. And do you have a standard closing time?

A. 1:45.

Q. All right. And 1:45, typically are there -- when you're letting your patrons out, are there Sunnyvale Police on the street, on Murphy Street?

A. Typically yes and no. By 1:45, there'll be a couple units posted in the Macy's parking lot.

As far as actually being on the street -- as far as being on the street, only if there's been a problem somewhere at our venues or one of the other venues where they'll actually be on the street.

Usually they'll just wait to see what we do. French Quarter, Scruffy's, they're also letting out.

Q. So of the seven bars, are all of them pretty much closing at about the same time, between 1:30 and 1:45?

A. As far -- well, as far as us, between us, Scruffy's and French Quarters, Fibber's, I've never really noticed their crowd.

With it being or more of a bar, people tend to flow in and out. If their patrons are coming out, they just kind of move with yours. I never noticed Paul and Harvey's. I have a lot of our patrons go the other way.

Q. You mentioned two other bars, Scruffy's.

What's the other one?

A. French Quarter.

Q. Do they have entertainment?

A. I don't know.

Q. Live bands?

A. I don't know. I've never been in either one. I've only passed by.

Q. Is it typical when you're letting your patrons out that their patrons are also exiting?

A. Yes.

Q. Does everyone kind of exit on to Murphy Street?

A. They exit out Murphy, and the macy's parking lot is the most accessible parking lot. All three venues, patrons are going to their cars at the same time.

Q. We've heard descriptions at the Macy's parking lot.

It's with the one end of Murphy Street?

A. Yes.

Q. Where there's a Macy's store and big shopping center?

A. Yes.

Q. Is it your observation that patients at The Abyss predominantly park at the Macy's parking lot?

A. The biggest portion of our group does, but we

also have some people that park in the back parking lot behind the venue.

In that case, then I split my staff in half. Some of my guys go to make sure that those patrons are okay and safe.

Q. Okay. And typically at closing, there are two Sunnyvale patrol cars at the Macy's parking lot?

A. Usually.

Q. And that would be on Thursday night, Friday night, Saturday night?

A. Friday, Saturday.

Q. Okay. Not necessarily Thursday?

A. Not necessarily Thursday. They -- I don't know if maybe they're on calls or what it is.

Q. But typically Friday and Saturday?

A. Yeah.

Q. Do you have security that provide any observation or have any responsibility for checking out the parking lot behind The Abyss?

A. The guard that's posted in the smoking section, that's part of his duty, also, to not only cover the smoking section, but also kind of pay attention to what's happening back there.

Q. So we've talked about the layout of the club when you come in from Murphy Street, but at the back of

the club, there's a parking lot; right?

A. Yes.

Q. And it's a public parking lot?

A. Yes.

Q. It doesn't belong to the Abyss?

A. No. From the markings, they can tell it's basically all the venues that are there, all the restaurants, stores, things like that.

Q. Okay. And The Abyss itself has an outdoor patio at the back of its property; right?

A. Yes.

Q. And that's a smoking section?

A. Yes.

Q. Is that roped off or chained off somehow?

A. Yes.

Q. Because you don't want people going in and out from there.

A. Yeah. We don't allow in and outs.

Q. And what that is there to provide a place for people who want to smoke to be able to go outside in an area that you control without having to worry about them going back in and out?

A. Yes.

Q. I mean, people coming in that way who didn't pay or get their IDs checked.

A. Correct.

Q. And you station -- during the entire time that you're open, is a security guard stationed in this outdoor patio?

A. Yes.

Q. And that outdoor patio is basically part of the parking lot; correct?

A. Well, there's a sidewalk after the patio, but it is in the parking lot, yes.

Q. Right. And the guard that's stationed there has a view of the entire parking lot?

A. Most of it. He has a view of most of it. There's trees and there's also a trash can on the far side towards the -- I want to say Evelyn Street side where Paul and Harvey's side is, but everything else he can see.

Q. Okay. And is it that guard's -- the guard that has -- your security that has that position, is it their responsibility to not only police the smoking area and the patrons, but also to observe the parking lot?

A. Yes.

Q. And if anything is -- if there's anything occurring in the parking lot that they think needs attention, do they tend to it?

A. No. They stay posted. They make the call and

the roamer, whomever is assigned roamer, at the time will go or Santino will go or I will go myself just -- I'll come from the front and check it out.

Q. Okay. Now, is that parking -- is the guard on the smoking patio on-duty -- when does that guard come on-duty?

A. That guard, as soon as he gets there, 9:45, he goes there.

Q. And are you providing any security in the parking lot before 9:45?

A. No.

Q. And when you close, the closing -- you have a standard closing procedure; right?

A. Yes.

Q. So describe for us your standard closing procedure.

A. Okay. On an average night at 9:30, I will send someone to the parking lot. What this person's primary responsibility is is to one, see if Scruffy's and French Quarter's letting out, you know, and if anything's happening with their crowd. One.

Two, also as patrons start coming out, just to kind of make sure they see us and know everything's okay, and observe the parking lot so there are no issues there.

Now, as more groups start coming out, I'll

bring another guard out to post at the hallway, again so he's visible, and as more people come out, we bring our guards out and they move with the crowd.

Let's say we've got people parked in the parking lot, I'll send two guards that way just to make sure people get to their car and move out safely.

We'll send them out to Macy's parking lot to make sure people get to their car.

Q. You use all your guards on the inside to move the patrons out to the front doors; right?

A. Yes.

Q. Are patrons allowed to leave directly from the back doors?

A. No.

Q. So you move them all out to the front on to Murphy Street?

A. Yes.

Q. And then once the club is cleared, there are no customers, no patrons left in the club, the security are all moved out on to the street, as well?

A. Yes.

Q. And then the security follow the patrons to wherever they park their car, whether to Macy's parking lot or to the parking lot in the rear; right?

A. Yes.

Q. You pretty much stay with them until your patrons have cleared those parking lots?

A. What ends up happening, because of other places letting out, also, we get a lot of backlog in traffic, I'll take two of my guards and have them directing traffic so it.

That works out for us, because if not, you're going to have everyone trying to leave at the same time and having problems. For the most part, that's what ends up happening.

Q. The traffic that you're directing is the intersection of Murphy and --

A. Washington.

Q. -- Washington, which is the street that people come out of Macy's parking lot on to?

A. Yes.

Q. Because there's not a lot of traffic flowing down Murphy itself?

A. No.

Q. It's coming from the parking lot on to Washington and then going off?

A. They're making a left. But what tends to be a problem, there's a stoplight on Mathilda and it's designated a no right turn stoplight.

What ends up happening is you end up having

all these cars waiting to go.

Q. And once -- once your security have confirmed that your patrons have gotten out of the rear parking lot, gotten into their cars and left the rear parking lot, what do they do?

A. Well, they check in with me, and basically what I'll do, if our crowd is getting in the car and leaving on their own, right away, I'll send them back to the venue and start breaking down.

Q. And --

A. If we need assistance, they'll go on to the parking lot and help us out.

Q. They'll go down to the Macy's parking lot?

A. Yes.

Q. So is the rear parking lot typically cleared out of your patrons before 2:30?

A. Yes.

Q. When?

A. Pretty quickly. I would say by 2:10 at the latest.

Q. Okay. So you don't keep a guard in the parking lot after everyone's gone?

A. No. Because by then, it's usually our staff that's parked back there.

Q. All right. I notice in your security plan,

you talk about training. There's a section called Security Staff Training, and it says that you train people to deal with unruly patrons and altercations.

Do you have a standard practice of -- so fights will break out in the club; right?

A. Yes.

Q. And do you have a standard response when a fight breaks out?

A. Okay. When a fight breaks out, basically, we -- the call is made. We move in. We separate the two combatants. We bring one out the front and one out the back, and we try to hold them down so we kind of piece together what the situation is or at least de-escalate it, and then we get the patrons on home.

The reason why we separate them is we don't want to bring both parties out the same way and then elevate a situation.

Because what I've noticed that you usually have your aggressor and then you have a person that wants to put on a show.

It's easier to separate the two, let them cool down, and then we can kind of deal with the situation better before it escalates.

Q. And standard -- you know, if it's just a fight, you know, punches thrown and you separate the

people, what do you do? Do you call the police or you send them on their way?

A. We separate them, you know, try to cool them down and get them to their car and send them on their way.

Now, if it's something major. If they've been majorly been injured, then we would call the police.

I did have one time where a young lady said, "I want to press charges." I go, "If you want to call the police, go ahead."

She made the call, but when the officers got there, she was like "I don't want to. I'm not going to press charges." She was more embarrassed than anything that this had happened to her.

Usually we just get them in the car and get them home.

What I'll do is snap people back to reality when I see your ID and kind of talk with them, de-escalate them, get them off that high.

Q. Okay. Now I'd like to take your attention if I could to the night of March 8th, and this is a night when a stabbing occurred at the Club Abyss.

You were on-duty that night?

A. Yes, sir.

Q. And you remember that night?

A. Yeah.

Q. Okay. What -- when are you first aware that there's some incident occurring within the club?

A. I was actually roaming inside the venue and I seen the crowd kind of disburse like something happened, like a fight had happened, and I kind of -- I look and I seen this guy getting pulled by his friend. So made the call for a fight.

My guard also that was on the stage, I noticed that he wasn't there, so I was assuming he's moving in.

I grabbed a guy, the first guy I saw moving and I brought him out and I passed him to Santino and then turned around to go get whereever else, because you never know who's friends with who and who's still fighting inside.

Q. So you grabbed one of the guys that was involved in the fight?

A. Yeah.

Q. And you passed him to Santino?

A. Yes.

Q. Where did that happen?

A. On the lounge -- the second level right before the bar.

Q. Okay. So this little riser level before the -- but on the main floor?

A. Yes.

Q. And when you passed him to Santino, what was your expectation of what Santino was going to do?

A. Bring him to the front.

Q. Okay. At the time -- and you had this guy physically under your control; correct?

A. Yes.

Q. And describe -- describe the guy.

A. Asian guy, slick-backed hair, button up, black pants. It happened pretty quick, because like I said, what keyed me on to him was that his friends were pulling him away -- wait a minute.

Because I still had a crowd of people in front of me, as well. So I couldn't see what happened, because I knew something happened, so they disbursed.

So I grabbed him and I passed him to Santino and I turned back around, and that's --

Q. Okay.

A. -- the last I saw of him.

Q. So you passed him to Santino, and your expectation was Santino's going to take him out?

A. To the front.

Q. Following your standard practice where there's a fight, talk the guy down and let him go.

A. Yes.

Q. That's what you had in mind what was like likely to happen.

Did you ever see that guy again --

A. No.

Q. -- after you passed him to Santino?

A. No, I did not.

Q. After you passed him to Santino, what did you do next?

A. Well, I turned back around because I still hadn't seen Anthony, my other guard that was posted at the stage.

Q. That's Anthony Frasier?

A. Yes.

Q. Okay.

A. So I turned around to go find him because I don't -- I really had been adamant with my guards trying to get into a situation by themselves because you never know who is friends with who inside, and, you know, it can be a problem.

Q. So you want to be close to each other so you can back each other up?

A. Yeah.

Q. So you're looking for Anthony.

What happens next?

A. When I finally find him, he's bringing another

young man to the front, okay. And, you know, then we're escorting him and we get to -- I want to say by the women's room on that side and he states that he's been stabbed.

Q. The customer, the patron?

A. Yes. And I'm like "that can't be," you know. He's like "you guys had -- you don't pat anybody down," and I really didn't think he had been stabbed, and he showed -- he raised his shirt and I seen it and I said, "Anthony, tend to him. Let me make sure everything's okay inside."

Q. Why did you say to Anthony "tend to him"?

A. Because Anthony has a higher first aid training than I do. I've got the standard level one training.

Q. Okay. But you knew that Anthony had higher level --

A. Right.

Q. -- first aid training?

A. Right.

Q. So you left that patron with Anthony to tend to him?

A. Yes.

Q. And then -- you said you went back inside?

A. Yes.

Q. You mean back into the main dance floor?
A. Yeah.
Q. Why did you do that?
A. Because at that point, I don't know -- I didn't know if whoever stabbed this young man was still inside. I had no idea that he was involved with the first person.
Because like I said, I lost sight of Anthony when I made the initial call.
Q. When did -- so -- and you saw when you were with Anthony and this patron, did you see that he, in fact, was bleeding?
A. You could see the blood leaking a little through his shirt, and like he tried to raise his shirt, but he winced in pain. "Anthony, take care of him," and I went back in.
Q. Did you see that patron again?
A. No.
Q. Did you go to the -- do you know where Anthony was tending to him?
A. He should have taken care of it in coat check.
Q. And why in the coat check?
A. Because at that point in the night, that's a lit spot in the venue.
Q. And did you see him with that patron in the

coat check?

A. Yeah, yeah, I did. I did at one point.

Q. And what was happening?

A. He was doing what he needed to do for the first aid. I didn't go in. I didn't stop and check. I merely passed by, because like I said, I was trying to make sure that we were safe inside.

Q. Okay. Did you hear any conversation or anyone -- first of all, did you give any direction to Anthony about whether or not to call an ambulance or 911?

A. No, I did not.

Q. Did you hear anyone else say anything about whether or not to call an ambulance or 911?

A. No.

Q. Did you hear any conversation between Anthony and the patron that he was tending to about whether to call the police or call an ambulance?

A. No.

Q. Once -- once you knew that there had been a stabbing, when -- did you ever make a connection that the person that you had hustled out and passed to Santino might have been involved in that stabbing?

A. Like a little bit after, because I made a call like "is that guy still in front?" the first guy we brought out. My staff said, "No, his friends came out

and they left really quick."

When the officers finally came and they took that statement, that's the same thing I told her.

Q. So when you -- the guy that you had under your control, you passed him to -- to understand, did you have any awareness in any way that a stabbing had occurred as opposed to a fight?

A. No, sir.

Q. And after you became aware of a stabbing, when was the first -- how long was it after that that you made an inquiry as to whether that patron that you escorted out was still around?

A. I would say about three or four minutes. I mean, had I known that it was a stabbing and not a fight, I would never pass the guy.

Q. You would have kept him under your --

A. I would have just brought him to the front, called the police, detained him, did whatever I needed to do to hold him there.

Q. Okay. And you said maybe three or four minutes lapsed between the time that you knew a stabbing had occurred and then you made your inquiry as to whether the guy you had brought out was still around.

What were you doing during those three to four minutes?

A. Basically I passed through the dance floor just to make sure everything residual was going on. I checked the back exits. I checked the -- the stairways. I went through the whole venue.

Q. Okay. And from the time that you first got control of this guy on the dance floor until you passed him to Santino, how much time elapsed?

A. From when I grabbed him the first time? I would say 35, 45 seconds. It was -- the call was made. I saw him, my moved, saw Santino, said, "Here" and turned back around.

Q. Okay. During that time, did -- did anyone say to you "that's the guy. That's the guy"?

A. No. I didn't speak to anybody.

Q. Now, we've heard one witness testify that -- first of all, you're wearing a coat -- is this a P-coat?

A. It's a black jacket, but close to one.

Q. Okay. Is this what you usually wear when you're on-duty?

A. I do wear a P-coat, yes.

Q. This coat or --

A. A different coat.

Q. That's a P-coat?

A. It's similar, but not quite a P-coat.

Q. Okay. And that night, were you wearing your

P-coat?

A. Yes, sir.

Q. And do you wear your P-coat all the time when you're on-duty?

A. Yes.

Q. That's how people know who you are?

A. Yes, sir.

Q. So we've heard one witness testify that there was a guy wearing a P-coat. And

Are you the only guy wearing a P-coat?

A. Yes.

Q. That there was a guy wearing a P-coat who was detaining this suspect, and this other guy who testified said that he was telling the guy with the P-coat that "that's the guy who did the stabbing."

A. No, I never --

Q. Did that happen?

A. No.

Q. Did you have any -- any conversation with anyone about the guy that you had in your control?

A. No.

Q. So you just had him, you were controlling him and you passed him to Santino?

A. Like I said, I seen -- from my vantage point, I see, must be part of the problem. Because I had a

crowd of people still in front of me.

So I made the call. So I reacted, grabbed the guy and had Santino bring him to the front.

Q. Okay. Did -- so you knew that Anthony was tending to one guy who had been stabbed.

Did you ever note that there was a second guy who had been stabbed?

A. No.

Q. Did you ever learn that?

A. This morning when we were going over the case.

Q. When you knew that a stabbing had occurred, did you call the police?

A. No.

Q. Did you know if anyone had called the police?

A. Not to my knowledge.

Q. Did you instruct anyone to call the police?

A. No.

Q. Did you instruct anyone not to call the police?

A. No.

Q. Did you hear anyone give an instruction not to call the police?

A. No.

Q. Did you hear anyone give any instruction not to call an ambulance or emergency medical services?

A. No.

Q. When's the first time that police arrived at The Abyss that night?

A. Oh, God. I don't know what the exact time was.

Q. Well, let me ask you this: After you become aware that the stabbing -- there's been a stabbing, how much time passes before you're aware that there are police at the club?

A. I want to say maybe ten, fifteen minutes.

Q. And are there patrons still in the club?

A. Yes.

Q. Is the party still going on in the club?

A. The party was still going on.

Q. And are the police in the club, in the dance area or are they pretty much talking with folks outside in the lobby or front?

A. Well, they were talking with me. I don't -- honestly I don't remember if they were inside or not at that point.

Q. Okay. So someone starts to talk with you?

A. Yes.

Q. And they're writing down a statement?

A. Taking a statement.

Q. And have you reviewed -- have you seen that

statement that they wrote?

A. No.

Q. Were you -- were you interviewed only one time or more than one time?

A. Just one time.

Q. Do you know who -- do you know who Phong is?

A. Yes.

Q. Okay. What's Phong's job?

A. He's security.

Q. And were you -- did you hire Phong?

A. No. He was there when we -- when we came on board.

Q. When you first came on board?

A. Yes.

Q. Was he there working as security?

A. Yes. Sometimes he does bar back, but primarily does security for us.

Q. Did Phong ever tell you that someone had given him a knife that they'd found?

A. No.

Q. Ever? Did you ever hear that from him?

A. I haven't heard anything about that.

Q. Did Frank Collins ever say anything to you about finding a knife?

A. No.

Q. Did Anthony Frasier ever say anything to you about -- that Frank Collins found a knife?

A. No.

Q. Did the police ever tell you that someone found a knife?

A. When they -- they came back one time. They didn't take a statement. They didn't interview. They asked me some questions, and they said something to that effect, but other than that, nothing else.

Q. When the police told you that, what did you say to them?

A. I said, "Nothing's been brought to my attention. No one on my staff." I know if my guys were told something, they dealt with it appropriately.

MR. WARREN: I want to get into some of these other incidents, but I could use a five-minute break.

JUDGE LEWIS: Okay. All right. Off the record.

MR. WARREN: Thank you.

(Recess taken).

JUDGE LEWIS: Back on the record.

MR. WARREN: Mr. Barrow, I'd like to move away from the night of March 8th and I want to shift now to the -- Sunday, May 25, and this was -- this was a Sunday.

Q. What kind of event do you hold on Sunday?
A. It was a Glo. It's a high school event.
Q. And you called this event Glo?
A. Yes, sir.
Q. And this is -- do you have the age limit for this event?
A. It's 14 to 17.
Q. And do people have to have -- are people checking their IDs to see that they have a high school ID?
A. Yes.
Q. And this event was in May 25 of '08.
Before that date, how many times had you been security for -- I'm going to call it a teen event. For a teen event.
A. Pretty much all the ones we've had.
Q. But how frequently do you have them?
A. We have them. They correspond with every holiday, and then at one point, we were going every Sunday over the summer.
Q. So back into '07 when you become the head of security, you're holding these events --
A. Yes, sir.
Q. -- pretty much every Sunday?
A. Yes.

Q. All right. And there's no alcohol available during that event? We covered that.

A. Correct.

Q. So at any of these events that you've been at doing security before this incident of May 25 of '08, did you ever have any problems?

A. No -- nothing on that scale, no.

Q. That scale. We're talking about a bigger scale that night.

So just typically, what does that event go like?

A. It goes all right. You have some people that have some neighborhood issues, and usually we can get to them before it gets really bad. We'll give them time out.

They're kids and try to de-escalate, and if it's something that you clearly can see that this is not going to be a good idea to let this person back in, "hey, call your parents" before you're not welcome to come back. But "go home, because you don't need that problem."

Q. And most of the patrons for the teen event, are they brought there by their parents?

A. Yes. To our knowledge, their parents are dropping them off.

Q. So when you let them out -- when does that event typically close?

A. We shut down I would say about 11:30 to 11:45.

Q. And when you close down that event typically, does it close down any differently than a regular event?

A. Yes, in the respect we're more -- we have to be a little more "call for your ride. Have your parents meet you there," because it's easier than having a row of cars and parents that are missing their kids now wanting to back up, and we don't want to stop the main flow of traffic.

We bring the kids to the Macy's parking lot. That way the parents can pull up on the backside, or some pull up on the front side. Actually, it's a little easier than the adults.

Q. Okay. So it's an easier event to close down than the --

A. I would say so. The only thing that becomes a headache is just waiting, because you've got some parents that have decided to go shopping or they've gone over to family members' and they just haven't made it back.

Because whenever I make any sort of a contact with a parent, right around this time, you may want to come back, so that they're there ahead of time.

Q. Do you keep your security out with an eye on

the patrons until they've pretty much all been picked up.

A. We stay until the last kids are picked up. What we do is we put guards inside the parking lot to keep the kids from running wild there, and then we also position ourselves just a little off the sidewalk and have the kids stay on the street.

Q. All right. Now, on May 25 of '08, things didn't go as they typically go; right?

A. Yes.

Q. What happened? What caused that?

A. There was an initial fight inside. When we brought the young man out, his friends and family followed.

Once that group spilled out, other people had little issues and they just started going off in multiple spots.

Q. And what was the consequence of that?

A. Pretty much all our patrons were outside, all my staff was outside trying to get control, and PD came out and assisted getting them back in line.

Q. And was that the -- have you had teen events since May 25 of '08?

A. Yes.

Q. Have you gone back to your schedule, regular schedule for those events?

A. Yes.

Q. And have you had any incidents in these later events?

A. No.

Q. You attended a meeting with Emma Nguyen and myself with Captain Verbrugge of the Sunnyvale Police Department; right?

A. Yes.

Q. And what was the purpose of that meeting?

A. One, to go over the security plans to make sure and evaluate that it was correct, I guess, or how Sunnyvale PD wanted to be.

Some of the things we went over was the guard to patron ratio, so we adjusted to what the captain suggested, and just overall just to touch bases, because we have to have an open relationship between Sunnyvale PD and ourselves or it's not going to work right.

Q. Okay. And at that meeting -- and this was a meeting back in November?

A. Yeah. Whenever the date was.

Q. Okay.

A. Yeah.

Q. And at that meeting, did you describe to Captain Verbrugge your view of what happened on this May 25 incident?

A. To my recollection, I don't even think we really went over it. We just more really went over language what a special event was and what nights we were open and our staffing, things like that.

He had some questions, as far as what my guards were wearing and what procedures we did, but not so much that particular event.

Q. Okay. So you have in your hand what's been previously marked as Exhibit A, which is The Abyss security plan; right?

A. Yes.

Q. And this is the plan that's presently in effect; right?

A. Yes, sir.

Q. Okay. And was this plan, the existing plan, was it changed in any way since the meeting with Captain Verbrugge?

A. The only -- the only thing, like I said, we made the adjustment as far as number of staff per patron.

Q. And what was the adjustment?

A. Well, the captain felt we needed more staff to lower -- to lower the number. So like in this case of one guard per every forty people.

Q. All right. And if you have a teen event, is there a different ratio?

A. Well, we've got one guard for every thirty.

Q. So when you're having a teen event, you're going to have more security on hand given the number of patrons --

A. Yes.

Q. -- is that right?

And other than that change in the guard per patron ratio, did Captain Verbrugge provide any other suggestions on how your security plan should be changed?

A. No, but again, like I said, he just said we should communicate with them more if we're expecting a bigger party, things like that. But nothing to my recollection other than that.

Q. Okay. And Sunnyvale recently or at the end of last year, '08 implemented a special event permit process; right?

A. Yeah.

Q. And does this security plan also, as far as you know, comply with the Sunnyvale Police Department special event --

A. As far as I know, yes. I never heard any different after this meeting.

Q. Do you know what a special event is as far as Sunnyvale Police are concerned?

A. Well, they -- what he was saying, it could be

any time we open our doors. But they -- he was -- I don't know the exact language on -- on the law, but they were saying it could be -- it could be any time we open our doors, if we do private party, things of that nature.

Q. Okay. One of the allegations in the ABC's accusation is that on August 10 of '08, two persons were arrested coming out of The Abyss for public drunkenness.

Were you on-duty that night?

A. Yes, sir.

Q. And did you observe the encounter between those patrons and the police?

A. I seen them stop and talk to them, but I didn't know why they stopped them. Because we were busy clearing our crowd out.

So I don't know if maybe they recognized one of the patrons from a previous case.

Q. You don't know why they stopped them?

A. I don't know why they stopped them.

Q. This incident happened at closing time when you were moving all the patrons out?

A. Yes.

Q. What's your -- does -- does your security team have any kind of standard response when you're dealing with an intoxicated patron?

A. Well, what we try to do, one, is try to assess

how intoxicated a person is. If we feel that they're too intoxicated, one, we check their ID again; two, we try to find friends that are with them.

We don't want any friends driving under the influence. We don't want anyone passing out and falling in the bushes.

What we do is we do find a friend. "Hey, we'll keep an eye on your friend, why don't you go get the car, bring it up" to the friend, that way it's safer.

Between the Macy's parking lot and the front door, a lot of things can happen when you're intoxicated, trip, pass out, things of that nature.

Q. What if they're uncooperative?

A. We do the best we can to try to stop them and get them to walk. Now if we don't succeed they don't want to listen, what I've done in the past when -- also if there's the police a parking lot. "Hey, we tried to stop this guy. Maybe you can talk him down."

Q. So you turn them over to the police?

A. If they we're saying, "Hey, you shouldn't be driving. You shouldn't be driving." We can't necessarily take their keys from them, so -- so we refer them to the officer or at least flag an officer down, maybe stop a person before they actually get in the car.

I've seen an officer actually flag a cab down

for someone, you know.

Q. On Murphy Street when the bars close, are there cabs usually there?

A. Yes.

Q. Another incident in the ABC accusation is that on August 13, 2008, an unruly subject was contacted after he threatened security and the customers and the police subsequently arrested him.

Were you on-duty that night?

A. Yes.

Q. Do you remember that incident?

A. Yes, I do.

Q. Why don't you tell us what happened.

A. Well, we hadn't -- I think -- I don't remember the exact time, but this young man was in line and just how he was looking something was off, so I decided to go and talk with him and engage with him.

Q. You personally?

A. Yes. And, you know, in talking to him, either he lost his job or he lost something, but something major had been happening with him.

And I was like "why are you coming to the club if this is going on with you? Maybe this isn't the best place for you to be," and, you know, and in continuing with this conversation with him, he said, "Oh, not

tonight. Maybe some other night, not tonight. This is definitely out of line," and at first with my job, it goes through this process. Guys want to be my friend. People want to be my friend. Come on, come on.

Then it goes from that to racial slurs. Then it goes to "oh, I'll whoop your ass." At one point he said he would stand there and beat up everyone that's coming out of the club.

I said, "No, you need you to go home. I can't let you in here tonight. Look how you're acting," and at that point, I got him a little further down the block.

We got him to the hallway. Like there's a bunch of newspaper stands and apartment guides, things like that, and he started taking off his shirt and he starts to hit those clothes, and I start spotted a patrol car and I kind of flagged him down, explained the situation.

I said, "Can you talk to him? Can you calm him down, you know?" So the officer went to talk to him.

They went across the street and there was a bunch of officers and an ambulance. So I don't know what the conversation was after they took him across the street, but what I did is -- clearly we didn't want this guy inside the venue.

That's what I was worried about. Clearly

something was going to happen, if I felt he got disrespected. Whatever the case, something was already wrong.

Q. Okay.

A. So we denied him entry.

Q. And did you ever hear anything further about that incident?

A. Well, he -- actually, he's been back to the venue a couple times. No problems, no issues, and then I want to say maybe two and a half weeks ago, I think I got a call from a DA and they asked me again about -- about the situation. I explained it to him.

Q. The situation of that night?

A. Of that young man, pertaining to that young man, and, you know, I told them the same thing I told you guys and that was it.

Q. Okay. Another incident that's discussed in the ABC's accusation is an incident on September 7 of '08 in which a person was beaten inside the club.

Were you on-duty that night?

A. Yes.

Q. Tell us what happened in connection with that incident.

A. Okay. Well, I was actually in the back parking lot. We had just brought a group out, because we

were trying to prevent something from happening, and my guard made a call and said, "This guy got jumped inside. He's pretty bad. We're going to bring him on out."

I said, "Bring him to the back so we can kind of see."

I went over there. "We need to call an ambulance for him." We called the ambulance. They took statements.

My guard -- they took a thing with my guard, asked for a description. We -- the description that my front guys got, because I was outside. I didn't see who -- who had assaulted this young man.

Put hands on him and that nature, but we got a description of the vehicle. We relayed that to PD and I guess they caught them a little later.

Q. And did you stay with the patron until the ambulance arrived?

A. Yes. I stayed there. I had initially sent my guard back in, because the event was still going. The officers wanted a statement.

I stayed there and -- I said, "Officer, do you need anything else from me?"

"No. We just need his statement."

Also, his friends were kind of hanging out and I had to kind of tell them "just back up. Let them do

what they need to do first." That's what happened there.

Q. Did you ever hear anything further about that incident?

A. No.

MR. WARREN: Okay. No further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

MR. AGERBEK: Thank you.

RECROSS-EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Mr. Barrow, with regard to the operation of the business, as the head of security, are you kind of familiar with the other aspects that go in in terms of like when entertainment comes to set up and kind of what happens before the club opens?

A. No, no. My primary function is security.

Q. Okay. In the course of walking around in your role as security, do you have occasion to kind of see what's going on with the DJs that come in?

A. When they come in, they're usually with their -- they have their CDs. I always ask for a copy. I ask for a copy, and then they're just hanging out, making sure nothing goes on.

Q. And they're acting pretty much as DJs would?

A. No. Like I said, they're hanging out. They have their CD. They put it in and they hang out.

Q. Okay. Are you saying they just put in one CD and just kind of stand back for the night, or what are they doing?

A. Well, most DJs have more than one CD with them. If they know -- if they've been booked for an hour. I used to DJ when I was a kid.

If you're booked for the whole night, then you're going to bring your CDs.

Q. Your collection?

A. Yeah. If you have a mixed setup, you bring a long enough mix to cover the night, or else you're going to be looping.

Q. Okay. Would you have been working on December 31st of 2007?

A. Yeah.

Q. New Year's Eve?

A. New Year's Eve, yes.

Q. In front of you there's a binder. If you can turn to -- you'll see little numbers in the lower right-hand corner.

You can go in a little further. See those numbers in the lower right-hand corner?

A. Yeah.

Q. Go to page 61.

A. (Complying).

Q. Let's see. Keep going.

JUDGE LEWIS: There you go.

MR. AGERBEK: This looks like a flyer for the club.

THE WITNESS: I've seen it.

MR. AGERBEK: Okay. And there seems to be advertising that there's going to be music on all three floors.

Q. Is that kind of a consistent practice that you would expect on a New Year's Eve?

A. Well, New Year's Eve, not necessarily all three floors -- yeah. We can handle it. The sound system is set up to run all three floors.

Q. Okay. And it looks like it's actually advertising that there's DJs; correct?

A. Yeah, but this particular party, if -- you're saying -- you said 2007; correct?

Q. Yeah. If you look --

A. This flyer was out, but some of this stuff did not happen.

Q. Okay. What didn't happen?

A. Well, the -- some of these VIP packages and some of these -- like all these people that are involved was not -- this -- this particular group eventually booked, but that wasn't the group that was there. They

never came.

JUDGE WARREN: Wait a minute. What page are you looking at?

THE WITNESS: 60.

JUDGE LEWIS: He said 61.

THE WITNESS: Sorry about that.

MR. AGERBEK: I thought you were looking at 61.

THE WITNESS: Sorry about that, guys. 61.

JUDGE LEWIS: They're similar, but they're not the same.

THE WITNESS: Yeah. This says: "Loft 146 at Club Oasis." This is not us.

MR. AGERBEK: Q. You're saying this isn't for you?

A. 61. No. These people -- these people didn't do the New Year's Eve party.

Q. Okay. So on -- okay. Was there DJs -- do you recall whether there were DJs for December 31st, 2007?

A. Oh, God. Off the top of my head, I don't recall.

Q. Do you recall whether there were any women live performance dancers?

A. No live performances.

Q. Okay. Now, a witness has testified that there

were some boxes that were put out on the stage and some women came up and were performing and dancing on the boxes.

A. Boxes, we have no boxes on stage. The only thing that's on stage, we have couches and we have the table set up, but we have no boxes on stage.

Q. Okay. In the time that you've been working there, the two years, does the club typically advertise that they're going to be having DJs at the premises?

A. The club doesn't. Promoters might on their flyers.

Q. Okay. Well, let's take a look at -- okay. Let's look at page 64. Sorry.

A. No problem.

Q. This looks like it's advertising a party on January 1st, 2008. New Year's Day party and at the bottom, it says: "Club Abyss."

Would this be the type of flyer that you're talking about the club would put out or is this something a promoter would put out?

A. A promoter would put out.

Q. Okay. But this would be -- in order to -- but you would permit as the security if the club management tells you "I want to have these DJs come in and they're coming in," you're not going to stop them; correct?

A. From what I understand, they're supposed to have their own CDs. They're supposed to have CDs to -- pre-made mixes. That's why I asked the DJ "can I get a copy of your mix?"

Q. So when you -- when the club is advertising that they're having DJs, the truth is we've used -- you understand what lip-synching is; right?

A. Yeah.

Q. So basically we've kind of coined the term for this hearing called DJ-synching.

A. Okay.

Q. Does that kind of make sense?

A. Yeah. It makes sense where you're going.

Q. So if the club is going to advertise DJs there, they're actually having DJ-synchers there?

A. The mixes -- yeah.

Q. Putting yourself in the role of the consumer and if you saw an advertisement for a club that's saying that they're going to have a DJ there, are you going to feel that you've been misled when you found out that they're just DJ-synching?

A. In all honesty, no. If I'm going to go to a club and -- I'm going to drink and enjoy my friends. If it's a club, I know what music I'm in store for. If I go there and get a bunch of terrible music, I would be

upset.

Q. If you look at page 190 -- I'm sorry. We haven't marked this one yet.

JUDGE LEWIS: What is it?

MR. AGERBEK: Q. 190. This is for Club Abyss; correct?

A. Yes, sir.

Q. And it talks about -- if we look in the middle of the page, Fusion, Mixmaster, DJ Neil, Ciga and DJ Bone, would it be your expectation that these people would be there to be DJs?

A. Well, yeah. Yeah, I would assume they're going to be there.

Q. Okay. You wouldn't expect that there would be pre-mixed music?

A. You know, you almost know that they're always is going to be.

JUDGE LEWIS: Why do you say that, sir?

THE WITNESS: Because there's times unfortunately where some of these DJs, they want to go off and party rather than be professional. So they'll bring a pre-made mix and leave it in there.

Like when I was crossing the bar, that's what DJs did. Especially with a lot of the music.

JUDGE LEWIS: So they bring a pre-recorded

mix?

THE WITNESS: Yeah.

JUDGE LEWIS: And they just throw the CD on and walk away?

THE WITNESS: Yes. There's some DJs that do it.

JUDGE LEWIS: Okay. But most of the DJs, they want to perform?

THE WITNESS: Some of them, yes.

JUDGE LEWIS: Some of them.

THE WITNESS: Something like this, you know, if you knew exactly what I said before, if I knew "oh, I like how this DJ spins," then that's what I go looking for. Especially with an older crowd, "well, I'm going to watch this DJ do his thing."

JUDGE LEWIS: Okay.

MR. AGERBEK: If we look at page 192, this looks to be an advertisement for the club for $2.00 Tuesday.

Q. Are you familiar with that?

A. Yeah. We were running $2.00 Tuesday.

Q. And again there's an advertisement for somebody named DJ Pros and Young Sal.

Who's Young Sal? What's Young Sal?

A. He is a DJ.

Q. So again, when -- your expectation, when you see that as a consumer, when you see an advertisement like this, somebody's going to be there providing some sort of entertainment for you.

When it's pre-mixed or live, it doesn't matter as long as you like what you're hearing?

A. For most people. I know these guys, and if you contrast their styles, Pros is the best. Some people say Sal sucks. Personal choice of what you like.

Q. When the club has Pros or Sal, are they performing on the same floor, on different floors or how does that work?

A. Well, they'll do the CD and then they'll switch, and usually they've got the prompts. There's things that you can put into the CD. Sal in the mix. Not hard to do.

Q. Would these two people be there?

A. Oh, yeah. They're there.

Q. What are they doing?

A. Well, one, they're putting the mixes in and then just observing the party.

Q. Are they talking -- typically when the DJs -- DJs sing at Club Abyss or do they talk to the crowd?

A. They hang out. If we need to get on the mic to get an announcement, we need to do that. If

somebody -- so and so, we need you to come to the front.

Q. Hi. Come on, everybody, let's clap your hands and get going?

A. Actually, we haven't had DJs of that level very much at our event, to be honest with you.

Q. What you're basically saying is the club is buying this person's name and their pre-recorded mix, but it was available in the store that they could go buy and just shove in the machine?

A. Yeah. I mean, in my car, I've got bunches of pre-made mixes.

Q. What's the advantage to the club to advertise that these people are going to be in the house if they're not performing?

A. The thing is, again, if I'm a fan of Pros, for example, I know that I'm going to get this type of music. I know this is the vibe I'm going to get. I know that I'm not going to hear a lot of their style instead of something terrible.

I'm not going to hear Britney Spears out of nowhere. Let's say with DJ Red Alert, I know I'm going to get a whole bunch of old school hip hop, things like that.

Q. Do you consider it entertainment to have the actual individuals there whether or not they're

performing live or to be a pre-mix?

A. I wouldn't say so. I wouldn't say that, because a lot of times the crowd doesn't even pay attention.

If these people were in there dancing, there -- this party is going, but they're also encamped with their friends, with their groups of people.

Like I said, sitting there going hi, what is he going to play next. They're not doing these things.

Q. The security plan that's been marked as Exhibit A, when did that plan come into effect?

A. This is since I've been here. We've always done this.

Q. All of these things?

A. Yes.

Q. And the only thing that you tweaked after the meeting with --

A. With the captain.

Q. -- the captain was the ratios?

A. Yeah. Because we got into the numbers. He expected for my guards to handle on the -- the number of guard per person, per patron ratio. For the most part, that's what we've done.

Q. Okay. So if you could show me in your plan here where it says that the security guards are

patrolling the parking lot prior to opening the doors and, you know, during admission.

A. Well, if it doesn't say it there, what I do, my standard practice is when we have the guys set up out front, once the line is going, I'll send a guard out there. I send them, because --

Q. A guard out where?

A. To the parking lots patrolling.

Q. But I thought you said that the person who was monitoring the smoking area was responsible for the parking lot.

A. Well, on that night, but I said prior to opening.

Q. Okay.

A. Dealing with the line, so you want just period.

Q. Well, okay. I'm just trying to understand.

A. Well, no.

Q. Go ahead.

A. So are you saying when we're getting people in or are you saying as the party is going?

Q. What time -- let's break it down.

A. Thank you.

Q. What time do your security guards typically arrive?

A. I've got one that gets there at 9:00. One that gets there at 9:30. That would be me. The rest get there at 9:45 or any time sooner.

Q. And the one that arrives at nine o'clock, what's his responsibility, his or her responsibility?

A. He begins to set up the front.

Q. The barricades?

A. Set up the barricades.

Once I get there, then I can free him up to do whatever we need him to do and I monitor the front.

Q. So from 9:00 until the other security guards get there -- it's just the two of you from 9:00 to about approximately 9:45ish?

A. Yeah.

Q. So either of the two of you monitoring the parking lot?

A. We try to do the best we can, because the doors are already closed with the exception of the one door for our guys to get in.

Q. Okay. 9:45, the other security guards show up.

How many of them are assigned to the parking lot?

A. Well, we just post one guy to the smoking section and he watches that, as well.

Q. But as you explained earlier, his responsibilities for the parking lot are just to call in problems, not to actually go take care of them; correct?

A. Yeah.

Q. Okay.

A. Because should he leave, that leaves a vulnerable spot. That means someone can access the venue or our patrons.

Q. What time do security guards actually -- on a typical night do they -- are they actually working in the parking lot, assuming no extraneous incident when you get called out? Just kind of regular monitoring.

A. Well, what happens as we go through the initial opening, I'll send -- I'll be sending guys often "go check the parking lot. Make sure things are okay," and as the night goes on and there's no line, the guy that was doing pat-downs, or I'll go myself, or at least be available. Because we don't want anything happening in either of the parking lots.

Q. Okay. And as I understand it, on a typical night, your security guards are done in the parking lot at about 2:10?

A. Yeah. Roughly, yeah.

Q. Has anyone from management ever showed you the Petition for Conditional License that sets out the

conditions regarding security?

A. No.

Q. Okay. If you can turn in that binder to page 55.

A. (Complying) Okay.

Q. Okay. Let's just start with page 56 just to give you some perspective.

A. Okay.

Q. You see it's dated December 5th, 2006. Correct?

A. Yes.

Q. Okay. So if I were to tell you that this document and these conditions were in effect as of December 5th, 2006, if there were provisions relating to security in here, in this whole document, would you have expected as chief of security somebody would have shown them to you?

A. Yes.

Q. Let's look at page 55. Look at the bottom paragraph, number 5.

Go ahead and read that to yourself.

A. (Complying) Okay.

Q. Would it be fair to say that from the time that you've been working there, that nobody has ever showed you this condition?

A. Yeah.

Q. Would it be fair to say that from the time you've been working there as chief of security, that Club Abyss has not been following these procedures?

A. Well, we don't open. Why would we -- I am -- I mean, maybe I don't understand, but if we don't open doors till 10:00 and my staff's not getting there till 9:00, nothing's open till then.

We're supposed to have someone there at eight o'clock even though we're not open?

JUDGE LEWIS: What about the remainder of the condition? Forget the plan.

THE WITNESS: We do have a guy posted in the smoking section, and then we're done -- by 2:10, we're done. We're going and taking our equipment off and getting ready to go home.

MR. AGERBEK: Q. Okay. But based on your practices and what you see in this condition, you feel as chief of security that you're following this condition as it's set out?

A. Well, based on this, no.

Q. Okay. Now, correct me if I didn't hear you right. When you were talking about -- with Mr. Warren about a fight breaks out, how you separate the parties, you take them to separate doors, you try to talk to them

for a while, I thought I heard you say that you try to check the IDs of the people.

Is that correct?

A. Yes.

Q. When -- how long has that procedure been in place that you try to check the IDs?

A. It's since I've been doing security. It's just a tactic.

A lot of times what people will do, they don't want you to have their ID. They don't want to get in trouble. "I'll just go." It's a tactic.

Q. Directing your attention to March 8, 2008, the night of the stabbing.

A. Okay.

Q. And you took this suspect -- well, would Santino Carucci have known the rule that you've just articulated trying to check the IDs?

A. Yes.

Q. Would the two of you have discussed it?

A. Well, the thing -- as far as checking an ID?

Q. You know, when you're trying to calm down a suspect.

Would you have talked to him?

A. You don't do it with every person. You base that based on what's in front of you. If this person's

sitting there huffing and puffing still trying to want to fight or worried about the other person they just got into it with.

Q. Okay. Okay. So the checking of ID procedure, at least in your mind, is in theory in place prior to March 8th, 2008?

A. It's something I've used, yes.

Q. Given the fact that you were passing the person involved in the fight off on March 8th to Santino Carucci, would you have expected him to check the ID of the person?

A. No, no. Because the way -- the way that situation happened, you know, I passed him. Like I say, when I went back, I didn't see my other guard.

Q. Okay.

A. So most likely what Santino would have done is took that gentleman to the front and came back in.

Q. But you don't know what he did?

A. No, because I --

Q. You don't know how long --

A. Yeah.

Q. -- Mr. Carucci had this person under his control?

A. Yeah.

Q. You don't know whether they had a conversation

at all?

A. I don't know.

Q. Okay.

A. After -- like I said, after I passed him, I turned back around.

Q. Okay. And if I understood you correctly, you indicated that on the evening of March 8th, 2008, after you found out that there'd been a stabbing, you personally did not call the police; correct?

A. Right.

Q. And you did not instruct anybody on your staff to call the police; correct?

A. Correct.

Q. Okay. And you just told us that the security plan, Exhibit A, has been in place since you've been there.

If you could take a look at provision 1B, and doesn't this talk about reporting matters to Sunnyvale Police Department?

A. (Complying) Yes.

Q. Wouldn't this stabbing be the type of thing that should have been reported to the Sunnyvale Police Department?

A. Yes, but like I stated earlier, also at the time I thought it was a fight, and Lieutenant Penny -- as

a matter of fact, they sat there and yelled at me. "Why didn't you call us? Why didn't you call us?" After the fact, I could have called and I didn't.

Q. But what I'm asking is: You originally thought it's a fight. Fine. You decided not to call the Sunnyvale PD, although your policy says you're going to. But you didn't, fine.

You said within minutes, you became aware it was a stabbing, yet you still didn't call the police nor did you instruct anyone else to call the police, and it wasn't until ten or fifteen minutes later that the police showed up.

So I'm trying to understand why specifically you would violate your own policy that you said you were involved in drafting.

A. Well, I didn't directly, and the matters of that night, honestly when that happened, I was trying to maintain safety of the venue, also. We still had patrons inside. I wanted to make sure we were safe.

I should have called the police and I didn't.

Q. And wouldn't part of it trying to maintain safety for the patrons inside be calling 911 saying, "We just had a stabbing"?

A. Yes.

Q. You've been in security long enough that when

you get into a situation where you start having weapons involved, it may be beyond the capacity of either you or the staff you have because you're not armed; correct?

A. Correct.

Q. And it would make sense to actually have somebody who is more advance trained the same way you were having Anthony take care of the victim to help control the situation; correct?

A. Yes, sir.

Q. So wouldn't it be reasonable for you, knowing all that and having this policy in effect, to have called 911 that night?

A. Yes. I should have.

Q. Okay. Or instructed someone on your staff to do so?

A. Yes.

Q. But you didn't?

A. No.

Q. Okay. Were you giving any direction not to?

A. No.

Q. Did Mike -- do you know who Mike Nguyen is?

A. Yes.

Q. What's his role?

A. He's our general manager.

Q. Do you report to him?

A. Only when we're discussing issues with what the crowd -- if he happens to know the crowd, things like that.

Q. Did Mr. Nguyen ever tell you not to call the police that night?

A. No.

Q. Had he ever told you prior to that try to keep things under control and not involve the police?

A. No.

Q. Now, you also talked with Mr. Warren about how -- we were talking about the incident where the two people were very intoxicated and got arrested right outside the premises.

A. Yes.

Q. You indicated that your staff tries to keep an eye out for people who are becoming too intoxicated.

Correct?

A. Yes.

Q. What is your practice or policy or is there anything written down that says how you identify people that are too intoxicated?

A. I don't think we have anything written down, but in paying attention, if a person's stumbling, if they're kind of -- the eyes are overly bloodshot, speech or if they're throwing up, things like that, we try to

pay attention to, or even more overaggressive behavior --

Q. Okay.

A. -- as well.

Q. Is this something that your folks try to pick up at the check point or the dance floor or how does that work?

A. The guards are always watching out for that, to make sure it's a safe environment. We're always trying to watch the someone is intoxicated.

Even people that are slumped over and look like they're asleep or passed out, we try to say, "Hey, sir/ma'am, are you okay?" and try to assess the situation.

Sometimes the friends get away and that clues us in that this person's had too much.

Q. Now, for -- are you familiar with -- rephrase this.

Well, for somebody to get to the point where they're passing out or throwing up or staggering or stumbling, as head of security and what you've trained your staff, isn't it something that these types of things should be spotted before they get to that point?

A. We try to. We try to do our best, but, you know, if you've got a friend that's buying X amount of shots and turns around and starts passing a drink, we --

you know -- so it's hard to stop.

We do what we can to stop it, but sometimes it's hard to catch.

Q. Okay. Do you coordinate in any way with the bartenders or the servers to make sure people aren't drinking too much?

A. Yeah. They'll let us know. The bartenders are saying, "Hey, this guy's drinking too much. I'm going to cut them off," because some people when they're drunk, they want to get violent when you tell them they can't have no more.

It depends on what the situation is. If their friends are there at the table, "maybe you should take them home." Unfortunately, what usually happens is the friends don't want to go home.

Q. So other than just kind of -- if you come across somebody who looks like they've had too much to drink from a security standpoint, there doesn't seem to be any mechanisms in place to try to prevent somebody from getting to that point; correct?

A. We try to be vigilant, yes, and the bartenders, they're knowing who they're serving, and like I say, they'll cut someone off.

I've had to do it myself, you know, and honestly, it went to almost violent things done, like

"hey, buddy, calm down," you know.

MR. AGERBEK: Okay. Just one moment, Your Honor.

JUDGE LEWIS: Okay.

MR. AGERBEK: Going back to kind of your security guards, you talked about how pretty much the minimum is ten, bigger nights, you'd have twelve, fifteen. Let's just say that you had twelve on-duty.

Q. How many people would you have stationed inside?

A. Well, initially as the night goes on, it starts off with Santino, and then we go two, four, six, eight, and pretty much I want to say eleven.

Q. Eleven inside.

A. Excuse me. Ten inside, because we still had to keep a person in the front, and I'm in and out.

Q. The person in front, they're kind of monitoring the line?

A. At that point, if everyone was in, there's usually no line. Make sure nobody's trying to come in or do the ins and outs, things of that nature.

Q. So somebody's stationed at the front door.

A. Yes, sir.

Q. One's stationed on the back patio?

A. Yes.

Q. And then the balance would be inside the premises, not at the patio, not at the front door.

A. Yes.

Q. And it sounds like of the ten that would then be stationed inside, how many are roamers?

A. If it's -- if it's a smaller crowd, it's usually just one, but Santino also roams.

What I've instructed them to do is make sure they count on each other so they're not on the same spot at once. That way when I pop in, I can look around and see where these guys are and what they're doing.

Q. And on a typical night, what's your role?

A. Well, to make sure everything is running smoothly.

Q. Okay. And are you doing this -- do you do your management by walking around or are you doing it sitting in an office and getting reports?

A. No. I'm hands-on. I'm also doing security, as well, but if they need help with a pat-down, they'll pat down or IDs, or I'll go in.

If there's a problem in the back, I'll go to the back. If there's a problem in the parking lots, I'll go there.

Q. Since you mentioned the pat-downs, how does that work?

A. We ask the patrons to take everything out of their pockets. We do a hands-on pat-down. Now, after this situation March 8th, we also went to using the wand.

Now, one of the Sunnyvale PD, they also showed our primary pat-down guy some techniques to better pat down patrons.

Q. As of March 8th, how would you describe the pat-down that was taking place? Was it -- let me rephrase that.

Prior to March 8th, 2008, would it be fairly easy to sneak a weapon into the premises if you really wanted to?

A. Prior to? I would say no. My pat-down guys are good, and March 8th was an isolated incident.

MR. AGERBEK: Okay. No further questions.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Thank you, Your Honor.

REDIRECT-EXAMINATION BY MR. WARREN

MR. WARREN: Q. Going back to this March 8th incident, when you first detained this person you thought was in the fight and passed him to Santino, was he under control?

A. Yes.

Q. And did you think he needed talking to?

A. No. He didn't tussle with me. He didn't

argue with me.

Q. He was compliant?

A. Yes.

Q. He was much smaller than you, the person you were passing?

A. Definitely smaller.

Q. Santino's about your size?

A. Bigger.

Q. As you passed him to Santino, was he still compliant?

A. Yes.

Q. Talking about the parking lot in the back. Do you know, do they -- does the city ticket cars parked in that lot after 2:00 AM?

A. I've been told they do, but I have not observed it myself.

Q. And who told you that?

A. Well, it's posted. It's posted. There's signs posted there, and then one time I did see an officer like marking tires, but I think that was for the time limit of parking. This was during the day.

Q. All right. So you don't -- you don't have any security in the parking lot before nine o'clock because you don't have any patrons in the club before nine o'clock; right?

A. Yeah. No one's there.

Q. I mean, when you talked before about the club opening at ten o'clock, this is a regular standard opening time; right?

A. Yes.

Q. You don't have early opening some nights where people flow in as early as 8:00 or 8:30 or 9:00?

A. No.

Q. And at closing when your security have followed patrons who may have gone to the rear parking lot to retrieve their cars, do your security stay in the parking lot until they have all left?

A. Yes.

Q. Where do you park?

A. I park in the back. Well, if I can find parking, I park in the back.

Q. Do you have a parking permit --

A. I did, yes.

Q. -- that allowed you to be there?

A. Yes.

Q. Even past 2:00 AM?

A. Yes.

MR. WARREN: No further questions, Your Honor.

JUDGE LEWIS: Mr. Barrow.

MR. AGERBEK: I actually had a couple redirect based on that. Sorry. Two.

JUDGE LEWIS: It was my turn.

MR. AGERBEK: Sorry.

JUDGE LEWIS: Go ahead. Make it quick.

CROSS-EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. On a typical Friday or Saturday night that's going to be a hopping event, what time do people start showing up? To get in line.

A. To get in line. I've seen people get there as early as 9:00.

Q. Okay. And on teen nights, what time do those events usually start?

A. The Glo?

Q. Yeah.

JUDGE LEWIS: Did you say Glo, G-l-o-w?

THE WITNESS: Yes, sir.

JUDGE LEWIS: I just want to make sure I've heard that. Go ahead.

MR. AGERBEK: Q. What time do the doors open?

A. They open at 7:00.

Q. So there are nights when --

A. But when we have the Glo night, the staff, we all get there earlier.

Q. Okay. And do you station people in the parking lot on those nights?

A. Oh, yeah. Definitely. Yeah. What we don't want is the kids being everywhere.

Q. Okay. And are they stationed in the parking lot the whole night?

A. Not the whole night. Once our patrons make it in, then I bring staff in.

Q. Okay. That was it.

JUDGE LEWIS: Okay. Mr. Barrow, now it's my turn.

THE WITNESS: Okay.

JUDGE LEWIS: You said you've been working at The Abyss for two years.

When did you start? Do you remember the month and year?

THE WITNESS: February.

JUDGE LEWIS: February of '07?

THE WITNESS: Yeah, yeah.

JUDGE LEWIS: Who's your boss?

THE WITNESS: Emma. She's the owner of the club.

JUDGE LEWIS: You're referring to the young lady seated next to Mr. Warren; right?

THE WITNESS: Yes, sir.

JUDGE LEWIS: Who's the owners?

THE WITNESS: As far as I know, Emma.

JUDGE LEWIS: Okay. Do you know a person by the name of Chien T. Duong.

THE WITNESS: No.

JUDGE LEWIS: Do you know a person by the name of Chung Nguyen?

THE WITNESS: No.

JUDGE LEWIS: Never met them?

THE WITNESS: Not to my knowledge, no

JUDGE LEWIS: Okay. Michael, that's Michael Nguyen; right?

THE WITNESS: Yes, sir.

JUDGE LEWIS: Actually, it's an aka. Michael, his first name is Hai, H-a-i, something like that.

THE WITNESS: Yes, sir.

JUDGE LEWIS: Okay. What's his position? At the premises.

THE WITNESS: He's the general manager.

JUDGE LEWIS: General manager.

Is he related to Emma?

THE WITNESS: Not -- I don't -- as far as family?

JUDGE LEWIS: Yeah. Blood relation.

THE WITNESS: I don't know.

JUDGE LEWIS: You don't know. You were never told one way or the other?

THE WITNESS: No.

JUDGE LEWIS: All right. How about Mr. Phong?

THE WITNESS: He was working there when I came, when I --

JUDGE LEWIS: Phong Leong.

THE WITNESS: When I came to Abyss, he was already working.

JUDGE LEWIS: He was already working as security?

THE WITNESS: Yes, sir.

JUDGE LEWIS: And he continued on.

THE WITNESS: Yeah.

JUDGE LEWIS: And he's still there.

THE WITNESS: No.

JUDGE LEWIS: He's not there anymore.

THE WITNESS: No.

JUDGE LEWIS: When did he leave?

THE WITNESS: I don't remember the exact date, but it's been a while.

JUDGE LEWIS: Really? Do you know why he left?

THE WITNESS: No. I wasn't given any details.

JUDGE LEWIS: Okay. Was Mr. Leong a participant in the training that you gave to the security guards regarding their responsibilities and duties on what they should do?

THE WITNESS: No. At that point, he was primarily at the front door for us. He's the one guy that we didn't have to -- he didn't have to cover some of the other things.

He's primarily the front door guy as far as making sure people paid their money and came in.

JUDGE LEWIS: Here's my -- you know, I'm the one who makes the decisions here as far as what happened and I've listened to a lot of people give me a lot of information.

Okay?

THE WITNESS: Yes, sir.

JUDGE LEWIS: And I'm trying to figure out exactly what happened. There was a guy that came in here and testified by the name of Mario Knight.

THE WITNESS: Mm-hmm.

JUDGE LEWIS: Okay. He says that he was a promoter. All right? He went to The Abyss on March the 8th with a couple of friends. A fight broke out. His

friend got stabbed in the leg and right thigh, and there was another person who was stabbed.

Mr. Knight says he helped his other -- one of his other friends take this person who was stabbed out to the -- the car. They carried him out to the car, and at that point in time, he described you to a T. Black P-coat, large male, African-American.

THE WITNESS: Yes.

JUDGE LEWIS: Described you to a T. There was no doubt. You know, he knew who he was talking about. Said that you approached him. You took him back inside and showed Mario Knight the person who Mario saw stab his friend with the knife, and Mario told you "yes, that's him. He's the one who stabbed his friend."

Okay?

THE WITNESS: Yes, sir.

JUDGE LEWIS: And I just heard you testify that hey, that's not what happened. All right?

THE WITNESS: Mm-hmm.

JUDGE LEWIS: Do you have any idea why Mario would make up a story like that?

THE WITNESS: Not really. I don't even know who he is. Like I -- like I've been asked before, this is what happened. I passed this guy to Santino. I don't even recall talking to Mario. I don't even know who he

is.

JUDGE LEWIS: I also heard from a couple witnesses about a female patron who was on the dance floor, put her foot on a knife that was on the dance floor that was used in the stabbing.

One of the security guards picked it up and turned it over to Phong. Turned the knife over to Phong.

When Phong was questioned about the knife later on --

THE WITNESS: Mm-hmm.

JUDGE LEWIS: -- it was like he was in another state when this happened. He knew nothing, don't know nothing, don't see nothing.

THE WITNESS: Okay.

JUDGE LEWIS: Did you ever hear anything about a knife being located on the floor by one of your security guards?

THE WITNESS: No, sir.

JUDGE LEWIS: What would you expect Mr. Phong -- if he is, in fact, working security -- to do with that damn knife --

THE WITNESS: He should --

JUDGE LEWIS: -- if, in fact, it was turned over to him?

THE WITNESS: He should have turned it over

to police.

JUDGE LEWIS: Herein again my dilemma. I have some of your security guards telling me that that's what happened, the knife was found and turned over to Mr. Phong, and then I have statements indicating that no, nothing like that ever happened. So I got to figure out what's going on.

THE WITNESS: To my knowledge, I was never told a knife was found.

JUDGE LEWIS: Okay. Fair enough. Fair enough. Let me make sure I've covered all of my -- the questions that I had, sir.

THE WITNESS: Okay.

JUDGE LEWIS: This person on March the 8th, this person that you turned over to Santino or whatever his name was --

THE WITNESS: Yes.

JUDGE LEWIS: -- would you describe him for me?

THE WITNESS: Asian guy, button up shirt, slick hair, black pants.

JUDGE LEWIS: How big?

THE WITNESS: Smaller than me.

JUDGE LEWIS: All right. That's all I have. Gentlemen.

MR. WARREN: No further questions.

MR. AGERBEK: I do have just a couple.

RECROSS-EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. Who makes the decisions about where security guards are going to be stationed on a particular night?

A. I do. I do, but sometimes Santino, with him being inside, he sees the crowd a little bit earlier than I do inside, so he may switch accordingly. But primarily me.

Q. And you have the authority to hire and fire security guards?

A. Yes, sir.

Q. In -- when you started and became chief of security and you decided the security guards needed training, was it your expectation that all of your security guards would be trained?

A. You would like to have everybody on the same level. You don't want to have people at various levels, because that becomes a risk.

Q. Okay. The weakest link that I talked about earlier?

A. Not necessarily weakest link, but it just becomes a risk. You don't want to be one-dimensional.

Q. Why, then, was Phong one-dimensional? Who

made that decision?

A. I did, because what he was doing there at that point in time, we had no need to move him inside. We had no need. He did that job fine.

Q. But doesn't that become a risk that you can't use him elsewhere as needed?

A. No. We had a big staff at that point.

Q. Is there a reason that you didn't train him the way you trained your other security guards?

A. No.

Q. Did anybody -- did Phong have any kind of special hands-off status?

A. Not to my knowledge, no.

Q. Did you have the authority to fire him?

A. If I needed to, yes.

Q. If -- I guess I'm just trying to understand. If you want everybody kind of similarly trained, cross-trained and to be able to work all suspects, I'm just not understanding why Mr. Leong or Phong was excluded from that process. That doesn't make sense.

A. At that point in time, at that particular point in time, it wasn't -- I didn't have the need to really train.

We had guys that were really good at their position. There was no need to do it, but what started

happening, a couple guys got jobs elsewhere and we started having new staff, and I thought oh, man. It's not balancing out properly.

Q. So --

A. And so I was like well, how do I cover myself and not be so open with new staff? So I thought I should train everybody accordingly.

Q. And was Phong included in that training?

A. At that point, no. He was okay where he was at. I didn't need to move him from there. I didn't want to -- because he wasn't as big as some of my other guys. There was no way I was going to put him inside.

Q. Okay. Was Phong ever given kind of lead status over new security guards?

A. No.

Q. Was -- were new security guards ever told that if they had questions or that they were to report to Phong?

A. No.

Q. Is there a reason that -- assuming that this knife that we've heard testified about was found, that somebody would take it to the front door specifically to give to Phong?

A. I have no idea. Like I said, I wasn't even aware that a knife was found.

Q. Okay. Would there be a reason for Phong to leave his post at the front door on a given night?

A. The only time your front door person is going to leave is if there's something majorly wrong inside, but that front door person should never leave.

MR. AGERBEK: Okay. Thank you.

JUDGE LEWIS: Thank you very much, Mr. Barrow. You are excused, sir.

THE WITNESS: Thank you.

MR. WARREN: Our two remaining witnesses are certainly going to be an hour, probably an hour and a half, so I suggest we take a lunch break, 45 minutes. That worked for everyone yesterday.

JUDGE LEWIS: Very well. Off the record. 45 minutes.

(A luncheon recess was taken at 11:56 AM to reconvene at the same location at 12:41 PM.)

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FEBRUARY 25, 2009 AFTERNOON SESSION 12:40 PM

JUDGE LEWIS: Would you please stand and raise your right hand?

SANTINO MICHAEL CARUCCI

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Please be seated.

State and spell your name for the record.

THE WITNESS: Santino Michael Carucci. S-a-n-t-i-n-o M-i-c-h-a-e-l C-a-r-u-c-c-i.

DIRECT EXAMINATION BY MR. WARREN

MR. WARREN: Q. Okay. Mr. Carucci, you work at The Abyss?

A. Yes.

Q. And how long have you worked there?

A. Twenty months. A little over a year and a half.

Q. And what's your job?

A. I'm an inside supervisor.

Q. For inside --

A. For security.

Q. And who do you report to?

A. Suk, head of security.

Q. What's -- and that's Mr. Barrow?

A. Yes.

Q. What are your duties as the inside supervisor?

A. I'm -- my responsibility is to make sure all the security guards are in their posted positions. I roam, I take customers, I deal with customer issues.

Of course any incidents, fights, arguments, everything inside I deal with.

Q. Okay. Does -- does the security -- do you have a standard practice when there's a fight inside?

A. Yes.

Q. What's that standard practice?

A. Well, the call is made to whoever sees the fight first. We don't have multiple calls. They call it. I'm usually inside.

The only time when I'm not inside is when I roam around upstairs, go to the lobby, separate the combatants. Depending on who's the aggressor.

We try to take the aggressors out front, and the other people that -- I won't say they're aggressors, the other people they fought with or argue with. They go out the back.

Whoever has the front, we tell them to hold them. If they're real belligerent, we make sure they leave.

As soon as I get the call that says this first group has left, then they either walk -- usually the ones

that were not the aggressors, there's no problem with them. So we can just escort them halfway.

If I need to, I escort them all the way to their cars, make sure that the combatants that started it don't circle back around.

Q. You may be a little nervous testifying like this. You're speaking very quickly.

A. I'm sorry.

Q. I just want not to challenge our court reporter, because he's got to get down everything that's said. So if you slow down the pace a little bit --

A. Sure.

Q. Were you working the night of March 8, 2008?

A. Yes.

Q. Okay. And what were you working as that night?

A. Excuse me?

Q. What were you doing that night?

A. I was security.

Q. And were you the head of the security inside that night?

A. Yeah.

Q. Your regular job?

A. Yes.

Q. Did you become aware of something happening in

the dance floor?

A. When I received a call. I heard a call that there's a fight on the dance floor.

Q. How did you hear from call?

A. Through my earpiece.

Q. Is everyone wearing headsets?

A. Yes.

Q. And where were you when you heard the call?

A. I can't say exactly. I know I was in one of the hallways. Because I didn't see -- if I was in the dance floor, I would have seen it.

I had to respond via earpiece. I responded. I got there rapidly.

Q. These are the hallways leading from the dance floor to the dance lobby?

A. To the dance floor.

Q. What did you do when you heard the call on your headset?

A. I ran to the dance floor and then I seen Suk coming up the stairs from the dance floor to the hardwood floor, the lounge area, and he passed off an Asian gentleman to me and I grabbed him, put him in a lock.

Q. Was the person he passed off compliant?

A. As far as -- he wasn't belligerent. He didn't try to fight me or resist me.

Q. Okay.

A. I always hold the people in a fight for their own safety and for my safety.

Q. And when Suk passed this gentleman off to you, did Suk say anything to you?

A. He just said, "He was involved in a fight."

Q. And did you say anything back?

A. Not that I recall. I just grabbed him.

Q. And what did you do?

A. Took him out on the left side of the club. Took him out to the front, and my practice is for me, I stop at the door, and the reason we stop at the door and hand him off is because usually the people that are arguing and fighting, they're mad at us for throwing them out.

So -- they have no problem with the outside guys. The outside guys cool them down. That's why I don't cross that barrier.

Usually I say something like -- for example, if it's a drunk person --

Q. Don't give me a for example. Stay with that night for March 8th.

A. I just passed him off. The guy was in a fight and I just threw them out.

JUDGE LEWIS: Mr. Carucci, slow down the pace

a little bit.

MR. WARREN: Slow down and let us complete the questions and we'll get your answers.

So you passed him off.

Q. Do you know who you passed him to?

A. No, I don't remember who was working that night.

Q. Did you say anything to the person that you passed?

A. I just said, "He was in a fight and just let him go."

Q. And after you passed him, what did you do?

A. I turned around and I heard someone say, "That guy's bleeding." I don't know who said it. I just heard, and I turned and I seen a guy's pants soaked in blood.

Q. When you heard that, are you standing at the front door? When you passed him to someone on the outside, does this literally happen at the front door?

A. Yeah, right. A couple feet out there between the ticket booth and the front door. A little space.

Q. So you passed this guy off, and the next -- and what happened next?

A. I turn around and go back inside and I heard someone say, "That guy has blood."

Q. Where were you when you heard that?
A. Right by the entrance.
Q. All right. How far were you from the guy that you had passed off? Was he still --
A. He was behind me.
Q. He was behind you?
A. Mm-hmm.
Q. So what did you hear?
A. Someone said, "Look, there's blood. That guy has blood." Along the lines that I looked and his pants were soaked in blood.
Q. Okay. So you saw a guy that had blood on his pants?
A. Mm-hmm.
Q. And where was that guy when you saw him?
A. Lobby area. In front of the lobby. Between the coat check and the front door. That's all lobby.
Q. What's the distance?
A. This is the front door. The coat check is maybe about five feet past that door.
Q. So maybe fifteen to twenty feet all together?
A. Give or take.
Q. So you're in that -- that space somewhere.
A. Mm-hmm.
Q. And it's an open space?

A. Mm-hmm.

Q. All right. And what did you do when you saw the blood on the guy's pants?

A. I didn't panic, but I was just -- I looked and I was like "what happened? And he didn't know. He just said like "I'm bleeding."

So I just "let's go to the bathroom." When I took him into the bathroom, he's like "I think I was stabbed or something." He said it like that. "I think I was stabbed or something."

Q. Okay. Was that the first word -- first time you'd heard the word "stabbing"?

A. Yes, I think so.

Q. And that happened when you were already in the bathroom with this guy?

A. Walking him into the bathroom, which is to the left.

Q. And what did you do then?

A. I told him I was trained in first aid, because for my day job, I was trained in first aid. I told him he needs to take his pants off. He said he was embarrassed. "It doesn't matter. We have to take your pants off and we have to apply pressure. We have paper towels. There's also a couple towels off to the side."

I didn't know if it was dirty or not. I

didn't care. "Pull your pants down" and I started to apply pressure.

Once I started to apply pressure, it wasn't a serious wound. The main artery's on the inside. It was in the back of his leg. I just put it back. I told him "you have to hold this on here."

Q. Was there any discussion about calling an ambulance?

A. First I asked him what happened. Like I say, he just said that he felt something hit him. He felt like a hit. He didn't know that he was stabbed. I just assumed.

Obviously there was blood. "Do you need a doctor? Do you need an ambulance?"

"No, my home boys will take me to the doctor." All right. It's out of my hands.

Q. Was there anybody else in the bathroom with you?

A. I think one of his friends were there. Because I tried to keep people out. "The bathroom's closed." People were trying to come in and see. I didn't let no one.

I was down on my knees holding pressure. I yelled, "You ain't coming in the bathroom. Bathroom's closed." I think one of his friends was there. I didn't

know who.

Q. So he said to you that his friends will take him to the hospital?

A. He said home boys will.

Q. Did you say, "I think we should call an ambulance instead"?

A. I didn't hardly -- I don't remember. I don't think I tried to force it on him.

Q. Did you have any concern -- you saw the cut or the wound?

A. Yes.

Q. Did you have any concern that he should have an ambulance rather than have his friends take him to the hospital?

A. I couldn't really decide. I just knew that it wasn't a serious wound. It wasn't gushing blood. I just know that you have to apply pressure, keep pressure on it.

Q. So what happened next?

A. I believe from there, I washed my hands and then I -- I think his friends walked him out, because from there, I walked back into the club to make sure everything was okay.

Q. Did you wash your hands?

A. I didn't have gloves. I didn't have time to

go to the first aid kit. I wasn't panicking. I was just worried at the time. I just washed my hands in the sink.

Q. What did you do with the towels?

A. Paper towels. I threw them in the towels.

Q. And were there any cloth towels in there?

A. Just the ones on his leg that I grabbed from the counter. Just a little dish towel.

Q. Okay. And did you see him as he left the club?

A. I can't say I really did. Like I said, once he walked out of the bathroom, I walked back inside.

Q. And he walked out of the bathroom with his friend?

A. I believe so.

Q. And when you walked out of the bathroom, where did you think he was going?

A. Out the front to the doctor, to the hospital.

Q. When you first heard the word "stabbing," did you say anything, report that to anybody else?

A. No.

Q. Did you say anything over your headset, "we got a stabbing" or anything?

A. No.

Q. Had you heard anybody else report that there'd been a stabbing?

A. Over the radio?
Q. Yeah.
A. No.
Q. Or otherwise.
A. Not that I know. It was loud. People were yelling, but nothing that I can recall.
Q. People were yelling in --
A. You know, like in general, people asking what happened.
Q. People were yelling in alarm or just the general noise?
A. Just like a general. Loud music, people. Everything -- people seeing what's going on.
Q. After you separated from this guy, what did you do next?
A. I went over into the dance floor, back inside.
Q. And why did you go back in the dance floor?
A. That's my job, to go back inside and make sure everything's secure inside.
Q. And did you ever -- did -- was there ever a time when you connected with the guy that Suk had passed to you and you'd passed to the front door as somebody blood's been involved in the stabbing?
A. No. He handed him off. Like I said, there was a fight.

Had I known or suspected it was a stabbing, I wouldn't have even took him out. I would have secured him, held him down and I would have told someone to call the police.

Q. By the time you handed him off to the front door, in your mind, he'd only been involved in a fight?

A. Yes. It was just a fight.

Q. And then within a short time, you then knew that somebody else had been stabbed.

A. (Witness nods head affirmatively).

Q. Right?

A. Right. By the time I was in the bathroom. I figured that.

Q. Did you ever connect the guy you handed off with the stabbing?

A. Maybe in the back of my mind, but like I said, I was worried about the guy and first aid. It didn't cross my mind to call the police or anything.

Q. And did you ever call the police?

A. No.

Q. And you didn't call any ambulance?

A. No.

Q. And tell me -- again, why didn't you call an ambulance?

A. He didn't want an ambulance. He said his

friends were going to take him.

Q. Okay. Did you -- did you initiate the suggestion to him that his friends should take him to the hospital rather than call an ambulance?

A. No.

Q. That came just from the guy?

A. Came from him themselves.

Q. Okay. Did you hear anyone else say that they were calling the police?

A. No.

Q. Did you hear anyone say that they should not call the police?

A. No.

Q. Did you hear anyone say that they should not call for an ambulance or emergency medical treatment?

A. No.

Q. When were you aware -- did you ever become aware that there was a second person who was stabbed?

A. You know, I didn't even realize when -- I know they had someone in the coat check, but I think -- I didn't even figure that out or listen to hear maybe towards the end of the night after they were talking about it.

Q. After the -- after you were -- from the time you were attending to this guy in the men's room, police

did arrive on the scene; right?

A. I guess. I didn't go out to the front after. The next time I had contact with the police was like an hour after the close -- the club closed.

I was called to come back to the club. I don't hang out in the front. If police show up, if they're not inside, I don't see them.

Q. All right. So that night, you didn't see any police -- you personally didn't have any contact with the police until after --

A. I was --

Q. -- you were called back to the club. After closing?

A. Right.

Q. At that time, you gave a statement to the police?

A. Right.

Q. Had you had any other contact with the police involving that incident?

A. I believe it was -- I want to say two weeks after. It would be in the police report. They came to the front of the club and asked for me to come outside, and I went outside and they asked me basically the same questions and I told them -- I gave my statement again, and that was it.

Q. Okay. And do you remember, was there anything different between what you said that first night and the second interview?

A. As far as what I said, no. Everything should have been the same.

I know the officer had mentioned something different, and I told -- I corrected him on something, because he tried to say that there was a call over the radio. I told him that wasn't true.

Q. When you say "a call over the radio," what do you mean?

A. He said that he was told that there was a call over the radio saying not to call the police. I told him that's not true.

Q. When you're referring to the radio --

A. The earpiece.

Q. -- you're talking the security radio?

A. Yes.

Q. That somebody had issued a call over the radio to not call the police?

A. That's what the police officer said. I told him that's not true.

Q. Okay. Do you know who Phong is?

A. Yes.

Q. And is Phong part of the security team?

A. He was at that time.

Q. Was he -- was he part of your responsibility?

A. Yes. Anybody inside is my responsibility.

Q. Did Phong ever tell you anything about finding a knife?

A. No.

Q. Do you know who Frank Collins was?

A. Yes.

Q. And was he part of the inside security?

A. Yes. He was inside.

Q. Did -- did the security working on the inside know that you are the supervisor?

A. Yes.

Q. And did Collins ever talk to you about having found a knife?

A. No.

Q. Did he ever tell you that he turned a knife over to Phong?

A. No.

Q. Did -- did -- Anthony Frasier, was he security?

A. Yes.

Q. Did he ever talk to you about anything that he did that night?

A. No. I never spoke to none of -- none of those

three spoke to me about that incident. After that night, we never discussed it except for when the police talked to me.

MR. WARREN: Okay. I have no further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

CROSS-EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Q. The -- the wound that this customer sustained when you walked him into the bathroom, you'd seen blood on the pants?

A. Yes.

Q. And did he indeed remove their pants after you asked him to?

A. Yes. He pulled them down.

Q. Was he sitting on the ground?

A. He was standing up.

Q. Standing up.

Okay. Was blood rolling down his leg?

A. Yes.

Q. Was blood going on to the floor?

A. I don't know. I can't remember. His pants were soaked.

Q. Okay.

A. Pants were soaked.

Q. You indicated that you grabbed a cloth towel.

Is that like a white terrycloth towel?

A. Yes.

Q. And that's what you used to apply pressure to the wound to try to stop the flow of blood?

A. Yes.

Q. Do you know what happened to that towel?

A. It should have gone to the hospital.

Q. Do you know whether it went to the hospital?

A. I have no idea whether he took it off or not. When he pulled his pants up, he was holding it on the inside. He was holding it for pressure.

Once he walked out the front, I don't know what he did.

Q. Was he wearing baggy pants or tight pants?

A. I believe they were blue, kind of loose. Not too overly baggy.

Q. So there'd be room for the towel inside the pants?

A. Yes.

Q. And were you made aware that later that evening the police conducted a search of the premises?

A. I wasn't made aware. I just know they searched when I got there. I think they got there around 3:30 in the morning. They were searching.

Q. Are you aware that the police found bloody

towels in a garbage bag?

A. Yeah. I seen them going through some bags.

Q. And did you ever see those towels that the police found?

A. No. I just seen them going through the bags and they were talking about evidence or something.

Q. Yeah. So you don't know if the towels that they found were the towels you'd been using?

A. No, I do not.

Q. So you have somebody that's bleeding in the bathroom. You've applied pressure. He says he wants to go to the hospital, so you say okay and you literally wash your hands of the incident and wash your hands of the blood.

What about any other cleanup in the bathroom?

A. Like I told the officer, the only cleanup I did was around the counter. When I washed my hands, blood splattered inside the sink.

I just basically splashed some water on it, threw away the paper towels and went back outside.

Q. What about did you look to see if there was any blood on the floor?

A. No.

Q. No, you didn't look?

A. No. At that point, I wasn't even

concentrating on that.

Q. And why is it that you didn't report the stabbing over the radio?

A. I don't know. To be honest, I don't. I don't know. I just -- like I told -- I actually assumed that once they figured it out, that was it.

We don't reiterate on the calls, like whether we call a fight call, like, for example, I -- since I'm a the supervisor, fight call. "Did you guys detain this guy. Is this guy gone?"

Once I put them outside in the front, my job's done as far as that.

Q. When you were treating the victim in the bathroom and he had pulled his pants down and you saw the wound, did you think it was a stab wound or what did you think it was?

A. I didn't think anything. Like I said, he didn't know what happened. He said he felt like he got hit or punched. He felt like he got stabbed. Two and two together, I assume he got stabbed.

Q. Wouldn't it make sense for you as kind of the security supervisor to put a call out over the radio that "hey, there's somebody that's bleeding in the bathroom," whether you say he's stabbed or not?

A. Well, when they seen me take the guy in the

bathroom, they assumed he was bleeding. As far as the staff call, I just didn't do it.

Q. You say they saw you take the guy in the bathroom.

Who was they?

A. Whoever was in front. Everyone could see me escorting somebody with bloody pants. I just assumed. I assumed at that point. It may have been bad judgment, but --

Q. You say the guy had blue pants on.

Were they kind of a jean material like you have on there?

A. Yeah. I would say jeans.

Q. Have you ever had blood on your jeans?

A. Maybe as a kid.

Q. You personally.

A. Maybe as a kid. Just little scratch your knee or something.

Q. It doesn't show up real well on blue jeans; does it?

A. That did on that night.

Q. Okay.

A. It was soaked.

Q. Could somebody -- well, is the lighting pretty dim in that area?

A. In the lobby, no. The light -- you could see very well in the lobby.

Q. So somebody having a quick glance, there would be no doubt in their mind when they saw this gentleman's blue jeans that had dark coloration on them that it was blood?

A. Well, on that particular instance, I would think yeah, they would know it was blood.

Q. Okay. Wouldn't it be reasonable, then, for the other security guards as protocol -- let me back up.

Let's say you were the person standing at the door and you saw somebody being escorted into the bathroom that appeared to have blood on their pants.

A. Mm-hmm.

Q. You have your headset on and you never hear anybody make a call out "hey, I've got somebody who's bleeding who says he's been stabbed. I need medical" or "I'm providing medical attention" or anything like that.

Wouldn't you then feel like it would be important to share that information so that people know what's going on?

A. I can't say. Because you're saying put me in the front. If I -- if I see somebody like Suk, people know they're an authority figure. If they see somebody with me, they automatically assume that I have charge.

If I see somebody like that, I'm going to assume that I have control of the situation.

The guy at the front door is dealing with tickets? You know what I mean?

Q. What was your state of mind when you were busy treating this individual?

A. Like I said, I wasn't on the verge of panic. Probably just a little bit in shock. That was the first time I had had to administer first aid since I had been trained. All the blood on his leg was a little scary, I guess.

Q. Were you paying closer attention to the treatment you were administering versus listening to what was going on over the radio?

A. I was paying more attention to the treatment.

Q. Okay. Is it possible that people were talking over the radio, either about ambulances or not ambulances or police and that you didn't -- because you were so focused on the victim, you wouldn't have heard it; it didn't register?

A. It's happened before. When fights -- you know, taking care of a fight and people are yelling and screaming and maybe someone's calling on the radio, you don't hear it. It a couple times. Didn't you hear take him out the back. I was taking him out the back. I got

a guy in a head lock. Sometimes earpieces fall out. They're easier to pop out of your ear.

Q. You got an adrenaline rush going. You're not thinking about somebody yapping in your ear?

A. If I'm taking the guy out, I'm taking the guy out. I'm not listening to chatter.

Q. Based on your training and experience as a security guard and being in charge as the inside supervisor, was this the kind of injury that you would expect that the police should be called on?

A. Well, reflecting back on it, yeah.

Q. Now, I understand that you were busy administering treatment to this individual, but did you tell anyone else over the radio to call the police?

A. No, I did not.

Q. Why not?

A. Like I said, it didn't cross my mind.

Q. If you can look at Exhibit A. I think that's that paper in front of you.

A. (Complying).

Q. Have you seen this document before?

A. Yeah, briefly.

Q. When did you first see this?

A. Sometime last year after they drafted it up, I believe. I don't remember when they drafted it. Towards

the end of 2008, I'm sure.

Q. Had you ever seen this document or a document like this that talked about The Abyss security plan prior to March 8th, 2008?

A. No.

Q. Had anybody ever talked to you -- take a look at one -- on the first page, 1B. Take a second to read that to yourself.

A. (Complying).

Q. You've already told me you haven't seen the document.

Did anybody tell you that the practice at the club was to call the Sunnyvale Police Department?

A. No.

Q. Had you ever been provided any training in security or what's expected of you by Suk?

A. Yes.

Q. When was that?

A. I can't recall. It was in a meeting that we have after the club. We'll have like various meetings after everything's shut down and we're inside. Just general meetings. Talk about the night situations, how to deal with situations.

Q. Did you have a meeting the night after this incident?

A. I'm trying to think if we did. I know we discussed a little bit. I can't remember exactly what we talked about.

Q. Do you recall whether there was a -- I'll call it security personnel meeting within a day or two after this incident?

A. I believe -- I think we did.

Q. And did Mike -- do you know who Mike Nguyen is?

A. Yes.

Q. Did Mike Nguyen attend that meeting?

A. I believe so.

Q. And did he discuss the incident with the security staff?

A. I think. I think he did.

Q. Okay.

A. To be honest, I can't remember.

Q. Do you recall if there was a discussion about how the club had intended to keep the information regarding the stabbing in-house, but someone had leaked it to the police department?

A. No.

Q. Okay. In your training that was provided to you by Suk or even any discussions you might have had with him, have the two of you ever discussed what to do

with suspects that you might be removing from the club?

A. Excuse me? Again.

Q. In either training or conversations you've had with Suk, have there ever been discussions as to how to treat patrons that you're removing from the club?

A. Yeah. Probably several times.

Q. Have the two of you ever discussed techniques that you might use to calm the people down?

A. Yes. Me and him personally have discussed that.

Q. Have you ever discussed getting the person's ID so that you can talk to them by their name?

A. Yes.

Q. Have you ever shared this information with any of your other employees, security employees who report to you?

A. Yes. Not in the meetings. Just like in general.

Q. And -- so you never go across the door.

A. Well, I do sometimes.

Q. Generally when you're escorting somebody off the premises, you've indicated you kind of stop at the threshold and hand them off?

A. Yes.

Q. So you really never get the opportunity to do

this identifying who the person is in order to try to calm them down?

A. Yeah, I do. Actually, I'll do that in the lobby or the hallway. If they're belligerent and still trying to fight, there's no way I can do it. I leave that up to the outside.

If they're calm -- a lot of times people stop. They stop, and then I'll put them to the side, get them against the wall.

It's kind of dim in the hallway. As soon as you turn the hallway, there's good lighting in the lobby. I'll put them up against the wall and get their ID.

Q. You don't do that when they're fighting you?

A. There's no way. The only thing is to get them out safely and pass them off to the front.

Q. When -- you indicated that this guy wasn't fighting you and wasn't resisting.

A. No, he wasn't.

Q. Why didn't you try to get his ID?

A. At that time, I just tried to pass him off.

Q. How do you decide in which cases you're going --

A. I went --

Q. Let me finish the question.

How do you decide in which cases you're going

to ask persons for an ID and which cases you're not?

A. I don't know. Sometimes -- I really don't know. Most of the times, I ask for them because I know they're not going to try to hold it back.

Black gentleman, they start getting mouthy. I'll just let them deal with it in the front. It's a person to person basically, actually. It's not necessary. You don't have to ask them for it, but most of the time, I do.

Like I said, it's person to person.

Q. Was there something in particular about this gentleman that you were escorting out that caused you to believe that he wasn't going to cough up his ID?

A. No. I just didn't do it.

Q. Okay.

A. Plus actually, I think -- you know why, also? He wasn't a kid. He wasn't a typical -- he wasn't young. He wasn't like 18 or 19. He was like our Saturday crowd would be, and we tend to treat -- I consider them adults. 18 and up, I don't consider them adults.

For speaking purposes, 21 and up crowd, I consider them adults. They're treated more differently. 18, 19, 20 year olds, they act like children. That's the ones mostly we have issues with.

Q. Now, you're familiar with somebody named

Phong?

A. Yes.

Q. And did he report to you?

A. In general speaking, yeah. Everyone inside has to report to me. I tell them where to go.

Q. People working the door, do they report to you?

A. The door's outside.

Q. So did Phong pretty much always work the door?

A. He worked the door. Then he would come inside. As soon as he comes inside for a position, he's my responsibility. I don't put them on the ledge.

Q. So Phong worked more than just exclusively on the door?

A. Yes. Sometimes he came in to help towards the end of the night. He would just stand on the ledge.

Probably before closing, like the last half hour or so, he just watched the crowd, flashlight on the ledge. I have no use for him on the stage and I have no use for him roaming, because he's kind of small.

Q. Okay. Did -- did you have the authority to hire and fire?

A. No.

Q. Did you have the authority to recommend for hiring or firing?

A. I could recommend.

Q. Did you have the authority to recommend hiring or firing with regard to Phong?

A. No.

Q. Why not?

A. Because I'm not the head of security.

Q. Okay. But you indicate that he works inside at times --

A. Yeah.

Q. -- and therefore you would be responsible, so I'm trying to understand why you would not have authority to recommending hiring or firing.

A. Because I don't have the authority. That's not my authority to hire and fire.

Q. To recommend to fire --

A. To recommend to fire someone?

Q. Yes.

A. I can do that. As far as recommend, verbally saying like "this person's weak" or "he's not following his position. Maybe we need to give him some nights off."

As far as that, whether my advice is taken is a whole different story.

Q. Did Phong have any protected status that had been conveyed to you?

A. What do you mean?

Q. In other words, that he was kind of hands-off in terms of whether anybody could tell him what to do or --

A. Not to my understanding. Nobody special. Even head of security's not special. We all function at one.

Suk's been on the stage for me before, and I mean, he's had to sit there and stand there for hours and watch the stage for me.

When he comes inside, I'm the supervisor. If I need him, he'll go where I tell him to go. Just like me, I'm not above picking up cans on the floor. We're all equal.

Everybody has to function with regard to everybody's position, except as head of security in my position. Nobody can just step in.

Q. Would there be any reason that new employees would be told that if you have any questions, go to Phong versus going to you or going to Suk?

A. No. Not to my understanding.

Q. Okay. Did Phong have any lead status over new employees?

A. No. Not that I know of.

Q. Is there a reason any other security guards

would kind of consider Phong a person they need to report to if an incident came up?

A. No.

Q. Is there any reason that if something -- some form of contraband was found on the premises -- a weapon, narcotics, whatever it might be -- that they would have been instructed to turn it over the Phong?

A. No.

Q. Would they be expected -- if they were inside, would they be expected to turn it over to you?

A. Yes. It's been done before.

Q. What's that?

A. It's been done before. They turned over contraband to me.

Q. Okay. If something unusual happened during a shift and your inside guys were involved in that incident in terms of a response, like we had in the stabbing, would you expect that they would make some report back to you?

A. Yeah. I would assume.

Q. Maybe not at the time because they're dealing with it, but at least afterwards in these briefings you talk about?

A. Yes. If I ask them.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Mr. Warren.

REDIRECT EXAMINATION BY MR. WARREN

MR. WARREN: Q. Was the lighting -- in the bathroom, was the lighting adequate for you to see the wound on the guy's leg?

A. Yes. It's bright.

Q. All right. After the -- after the patron who had been cut left, you were still in the bathroom?

A. No. I would say we left at the same time, basically. He went out through the front and I went inside.

Q. Did you look around the bathroom to see -- you washed your hands and there was blood around the sink from the washing.

Did you look around the bathroom to see whether there was blood on the floor or anywhere else?

A. To be honest, no.

Q. If blood had been on the floor, would you be have been able to see it?

A. If there was blood on the floor and I was paying attention.

MR. WARREN: No further attention, Your Honor.

JUDGE LEWIS: Thank you very much, Mr. Carucci. You are excused.

THE WITNESS: Thank you.

MR. WARREN: Okay. Our next witness is Emma Nguyen.

JUDGE LEWIS: Okay. Raise your right hand, please.

EMMA NGUYEN

having first been duly sworn, thereupon testified as follows:

JUDGE LEWIS: Be seated. State and spell your name, please.

THE WITNESS: E-m-a-n-u-e-l N-g-u-y-e-n.

MR. AGERBEK: So we kind of know, it's my understanding based on the previous conversation we had that Miss Nguyen was not a percipient witness to any of the incidents.

MR. WARREN: She is not a percipient witness to March 8th.

MR. AGERBEK: Okay.

MR. WARREN: And she was working the night the Glo event.

JUDGE LEWIS: Go ahead.

MR. AGERBEK: I just wanted to kind of get an idea.

JUDGE LEWIS: Well, I don't know, either. We'll figure it out as we go.

DIRECT EXAMINATION BY MR. WARREN

MR. WARREN: Q. So Ms. Nguyen, do you work at The Abyss?

A. Yes, I do.

Q. And what's your job?

A. I'm appointed president of the company.

Q. And what's your relationship to the -- there's two individuals named on the alcohol license, Chien Duong and Chung Nguyen.

What's your relationship to them?

A. I'm the fourth daughter.

Q. The fourth daughter. They're your parents?

A. Yes.

Q. And do you have the primary responsibility for the overall operation of the Club Abyss?

A. Yes.

Q. And you'd been present during the testimony of Usiko Barrow; right?

A. Yes.

Q. And he identified himself as the head of security.

A. Correct.

Q. Okay. And is that his job?

A. Yes, it is.

Q. And you were just present during the testimony

of Santino Carucci; correct?

A. Yes.

Q. And he identified himself as a member of the security team and in charge of inside security.

Is that his job?

A. Yes, it is.

Q. And what are your day-to-day duties with respect to Club Abyss?

A. I do everything from management role to janitorial role to security. The ins and outs of the company.

Q. Do you have any role or responsibility, direct responsibility with respect to training security?

A. No, I do not, but I -- but whatever my past experience, I learn from it and I inform the staff what had happened and what we can do in the future to make it better.

Q. All right. And with respect to -- are -- what are your normal hours at Club Abyss? Your work hours at the club.

When do you work there?

A. I come in around 12:00 AM to 6:00 three times a week, and then every night we open.

Q. Okay. And the nights you are open are when?

A. Thursday, Friday and Saturday now, and

summertime, we have Sunday also.

Q. And the Sunday event is the teen event?

A. Correct.

Q. And what are the normal hours that you're open for the customers?

A. Open our door at ten o'clock to 2:00 AM.

Q. And on Sunday, what are your hours for that event?

A. 7:00 PM to 12:00 midnight.

Q. And then you said three nights a week, you come and work at the club from midnight until 6:00 AM?

A. No. 1:00 PM to 6:00 PM.

Q. Okay. From 1:00 PM to 6:00 PM.

And are those three nights, the nights that you're open, Thursday, Friday and Saturday or are they different nights?

A. The same nights.

Q. Thursday, Friday and Saturday. So on a Thursday night when you're open, you open to the public at 10:00?

A. Correct.

Q. And customarily you appear on the scene at 1:00?

A. No. Ten o'clock the latest.

Q. Okay. So you're usually there when the club

opens to the public?

A. Correct. Every time.

Q. Every time. All right. And you'll stay until 6:00 AM?

A. No. We close at 2:00. We get things done by as late as 3:00 AM.

Q. And have you left by 3:00 AM?

A. Yes.

Q. Okay. You're familiar that the ABC has put conditions on the alcohol license?

A. Yes.

Q. And you are personally familiar with that; right?

A. Yes.

Q. And you were part of the process of working with your parents when they signed these conditions?

A. No, I do not. I didn't.

Q. Okay. The conditions that I'm looking at were signed by your parents on December 5, 2006.

A. They were in the room at ABC office by themselves. I was not allowed to get in.

Q. Okay. Were you there at the ABC office with them?

A. No. Michael drove them to the office and sat outside.

Q. Okay. And Michael -- when you refer to Michael, you're referring to Michael Nguyen?

A. Hai, yes.

Q. His first name is Hai, H-a-i?

A. Yes.

Q. And you refer to him as Michael?

A. Correct.

Q. Or Mike, and he's known by that name -- generally by the people who work at The Abyss?

A. Correct.

Q. What's his job?

A. He -- he help me. He help out with the financial statements and payroll at the club.

Q. Okay. Were you present when you heard certain witnesses identify him as the general manager?

A. Yes, I have.

Q. And is that your understanding of his duties?

A. Whether it need to, if I'm very sick, I stay home and I send him in to manage the club.

Q. Okay. But when you're there, what are his responsibilities?

A. He and I work together.

Q. Do you depend on Michael to be your contact with the security?

A. Yes.

Q. Now, the ABC license conditions has as condition number one the provision that "there shall be no live entertainment of any type, including but not limited to live music, disk jockey, karaoke, topless entertainment, male or female performers or fashion shows."

Does The Abyss do advertising in which they identify that certain DJs are going to be at the club?

A. Yes.

Q. And this condition says you're not supposed to have any live entertainment of any type, including but not limited to disk jockies.

How do you comply with this condition if you have DJs?

A. We promote them on the flyers. We do not -- we do not let them play live at the facility.

Q. And how do they -- what do they do at the facility?

A. We inform all -- all of the DJs before coming to the facility they have they have their pre-mixed CD first ready for use.

Q. Do you allow them to get into the DJ booth and put on headphones and appear as if they're working as a DJ mixing music?

A. No, we do not.

Q. This condition was signed in December of '06.
At any time since this condition was signed in December of '06, have you allowed DJs to do -- to mix music live?
A. No. The time technician come in and fix our sound, but there are no live. Sometimes the sound is just off. I think the CD just ran out and they have to run in and put in new CDs, and they have lighting technician on the DJ booth, but there's no live DJ.
Q. Okay. You have -- on the main floor, you have off to -- if I'm facing the stage, you have off to the left side a booth where there's sound equipment; correct?
A. Correct.
Q. And is that an area where a DJ could work?
A. Correct.
Q. And you have sound equipment in that booth.
Do you know what kind of equipment is in there?
A. The -- I think there are two -- a lot of different things. I am not familiar with electrical things at the club, but there are three CD players and many other things. A lot of mixers.
Q. Okay. Do you see there's a lot of equipment, but you don't know specifically what equipment is there?
A. Correct. But I know we bought CD players and

we make sure our DJs are aware of the conditions.

Q. Okay. Have you ever spoken with anybody from the police department about the DJs?

A. Yes. There are time lieutenants come in and -- and greet me. I say, "How are you doing?"

"Do you have a DJ tonight?"

"No, ma'am." I say, "That's the lighting technician and moving the lights around." I ask them "would you like to come and take a look?" They say, "Okay."

And two other officers come up to the DJ booth and go through the facility. She asked the lighting technician. Somebody I don't know, but -- and I show her all the CD that we have and the players, then after that, they walk off.

Q. Okay. Have you ever discussed with anyone at the ABC whether or not you have DJs?

A. No.

Q. It's also -- there's a provision in your -- in the ABC license conditions that "between the hours of 8:00 PM and 2:30 AM, the licensee shall provide licensed uniformed security personnel in the premises and parking lot adjacent to the premises."

Do you understand what they mean by the "parking lot adjacent to the premises"?

A. Yes, I do.
Q. And what's that parking lot?
A. The Macy's parking lot.
Q. The Macy's parking lot?
A. Correct.
Q. Is the Macy's parking lot physically adjacent to the premises?
A. No. It's almost a quarter mile to the left of the building.
Q. Okay. Is there a parking lot that is immediately adjacent to the premises?
A. No. In the rear of it.
Q. Okay. And do you provide any security guards that patrol or observe that parking lot, the one that's to the right of the premises?
A. Not all the time.
Q. What do you mean "not all the time"?
A. We have staff, and sometimes they call and do not show up. That's when we have the absent security.
Q. Okay. You told us that you open to the customers Thursday, Friday and Saturday nights at 10:00 PM.
A. Correct.
Q. When do the customers begin to arrive?
A. Earliest would be around 9:15 to make the

guest list or they arrive.

Q. When they arrive at 9:15 or are on the guest list, can they come in or do they have to wait outside?

A. Not until ten o'clock can they come in.

Q. You understand that the alcohol license for The Abyss is a license which requires you to provide food whenever you're open; right?

A. Correct.

Q. And not just -- not just sandwiches, but food that's prepared on the premises, that you're to have a menu and to appear as if food is available.

A. Correct.

Q. That's been your understanding; correct?

A. Yes.

Q. Have you always had food service at the premises?

A. In the beginning, we had it a hundred percent. There are a lot of difficulties to the -- that we sell food. It has cut back and cut back tremendously.

Q. Were there periods of time when you did not provide food?

A. Yes.

Q. And what's been your practice for the last -- what's your practice today? If ABC sends investigators in there Thursday night, Friday night, Saturday night,

what will they see?

A. We do have a chef and a menu and food to serve.

Q. And how long have you had the chef?

A. About five and a half months.

Q. And what are the hours of the chef?

A. The chef come in at one o'clock to 6:00, and then again 9:00 to 2:00 AM.

Q. So he comes in from 1:00 to 6:00?

A. Correct.

Q. And what does he do then?

A. Prepare food, ordering inventories and preparing food.

Q. Okay. And then from 9:00 till 2:00?

A. He will be cooking and stuff and whatever is ordered from the customers.

Q. Okay. And do you display menus?

A. Menu -- we put it right on the bar and also have bulletin on the wall -- on the walls.

Q. All right. Now, we've heard previous witnesses testify that there are two bars, one on the main level and one on the second level.

A. Correct.

Q. Correct. Do you have menus on the bar at both levels?

A. Yes. On the counters.

Q. And you also have some kind of sign board or something on the wall?

A. Just paper menu taped on the wall.

Q. All right. And how does a customer order food?

A. They will come to the bartenders and ask -- and ask and take a look at the menu or see what's offered on the wall and ask the bartender.

The bartender will send out to the waitress and the waitress will come to the kitchen and order.

Q. Okay. And where do the customers then eat the food?

A. We have small tables on the sides of the dance floors and on the second floor.

Q. Okay. Now, the accusation in this case describes a number of events and incidents that occurred. The first was on this -- what we've come to hear was the stabbing incident on March 8.

Were you present at the premises on March 8?

A. Not in the beginning.

Q. When did you first arrive?

A. About -- about 1:15 or 1:20.

Q. And were there police present when you arrived?

A. Yes. I saw them in the front and while I'm driving in, I saw an ambulance rolling down the street.

Q. Okay. And did you connect the ambulance to your premises?

A. I didn't know what had happened, so I was worried.

Q. Okay. Did anyone tell you what had happened?

A. When I come in -- no. When I come in, I take over security right away, get out a blow horn. Make sure everything is under control and that was about the time customer leave, so I make sure Murphy Avenue is secure and everybody walk to their cars in orderly fashion.

Q. Okay. So when you arrived, the club was closing and patrons were leaving?

A. Right.

Q. And did any of your security tell you what had happened that night, that there'd been a stabbing?

A. Until the end when I sat down and asked security what had happened. I sat down with Anthony Frasier.

Q. Anthony Frasier?

A. Correct.

Q. Who is Anthony Frasier?

A. I met him yesterday here. He's one of the security guards.

Q. And when you say you met him, you don't mean you saw him for the first time?

A. No. After a long time.

Q. Okay. And did Anthony tell you what had happened?

A. What had happened, and he say, "Oh, there was a guy came to me and he say, 'I just got stabbed.' I took him" -- he say he took him to the bathroom.

"I want to get you an ambulance. You're bleeding bad." He said, "No, man. I don't want anybody to get involved."

I say, "Anthony, did you offer him an ambulance?" He say, "Yes," and even the two policemen came and asked me earlier -- one policemen came down on me very hard "you broke the law by not calling the ambulance."

I told -- he said he told the policemen "man, don't tell me what to do. I'm a certified EMS. When an individual refuse an ambulance, you cannot force it on them." The other police officer say he is right.

Q. The conversation you just related between Anthony Frasier and the police officers, did this happen in your presence or is this something that Anthony's telling you about after the fact?

A. After the fact.

Q. Okay. Anybody else talk to you that night about what happened?

A. No. I sat there until we close and I went home.

Q. Did you talk to any police officers -- did you personally talk to any police officers that night?

A. Until I go home to the back door, I saw a lot of police cars at the back door, so I swing back in and ask what had happened, and then the policemen was searching the dumpster, searching the entire club. It was very cold, and I had to go inside.

Q. Did they tell you what was going on?

A. No.

Q. Did you have any contact with the police department after that March 8th incident in which they told you what had gone on as far as they were concerned?

A. No.

Q. Now, were you aware that Mike Nguyen was arrested in connection with that incident?

A. Yes. It was a Saturday night. I think we were open again on Tuesday, and then I was still very sick and then Michael came home and say the captain came down and say, "We will go see a DA and build a case against you."

Q. And Mr. Nguyen was subsequently arrested?

A. Not till a month later.

Q. A month later?

A. Yes.

Q. And do you know what the pending status of the criminal charges are against Mr. Nguyen?

A. The Sunnyvale Police Department have dropped all the charges against him.

Q. Okay. The charges have been dropped?

A. Everything, yeah.

Q. All right. Another incident that's alleged in the ABC accusation is an incident on May 25, which was -- which we've heard from previous witnesses was a teen event.

A. Yes.

Q. In which the patrons were all gathered together -- several hundred patrons were gathered on the street and both Abyss security and the Sunnyvale Police were out in force to keep things controlled and contained.

Were you present at that time?

A. Yes, I was.

Q. All right. Can you describe what happened that you personally saw?

A. I was outside, and then security brought out a couple members -- a couple patrons from the inside and I

saw I think their uncles or family rush over, and we don't want them to rush over in a big group like that, so we held the individuals on the corner.

Q. Hold on. When you say "their uncles or family rushed over," were these people rushing over coming from inside The Abyss?

A. From outside. Sometime the parents drop them off, and then they just hang out in the front, and I think at that time we was also ready to close, so I think family member are also getting ready to pick up their kids.

Q. Okay. Now, before this incident on May 25, The Abyss had done a lot of teen events; right?

A. Every Sunday in the summertime.

Q. All right. Had you ever had problems like this?

A. Never.

Q. So what happened that night that was different?

A. Michael was still in jail. I think I lack a right-hand person. It's very hard for a woman to run security. Sometimes they don't listen to me.

JUDGE LEWIS: Wait, wait, wait. You say Michael was still in jail.

THE WITNESS: Yeah.

JUDGE LEWIS: From March until May 25th?

THE WITNESS: March 8. This -- he didn't get arrested until a month later.

JUDGE LEWIS: From April 25th to May, he was in jail.

THE WITNESS: One month.

MR. WARREN: He was in jail for several months.

THE WITNESS: One month.

MR. WARREN: Q. But Suk was working that night; right?

A. Correct.

Q. And you had a full team of security working that night; right?

A. We did.

Q. So do you have any explanation for what was different that night?

A. It was a holiday, so within his capacity, but -- sometimes just one error that you make can breaks loose.

I asked my staff to keep everybody under control from the inside until we clear the front first, but the fun was not clear on time before -- until the crowd was starting to come out, and that was -- that merged the whole crowd together.

Q. Okay. As a result of that incident, was this the subject of discussions that you had after with Sunnyvale Police?

A. Correct. They asked us to submit a security plan.

Q. Okay. And this was Captain Verbrugge?

A. Yes.

Q. And you met with Captain Verbrugge last November?

A. Yes. And then again two months after that.

Q. Okay. And in the meeting with Captain Verbrugge in November, that was a meeting that you attended personally?

A. I believe it was with you and Suk.

Q. Right. And also present -- I was there and Suk, your head of security was there?

A. Yes.

Q. And when you say "Suk," we're referring to Mr. Barrow?

A. Yes.

Q. And at that meeting, did you present to Captain Verbrugge a written security plan?

A. Yes.

Q. And did you go over that with him at that meeting?

A. Yes.

Q. And after that meeting, did you get any feedback from the Sunnyvale Police Department about the security plan?

A. Not for a long time. Not until New Year's Eve. I call, wish them a happy new year and I know the public safety always worry on a big holidays how he you doing.

I say, "We will have everything under control," and they came in to say hello on new year's eve.

Q. Okay.

A. He say, "I will get back to you soon about the information from our last meeting."

Q. And he did then get back to you?

A. Yeah.

Q. And what was his recommendations with respect to the security plan?

A. That we should increase our ratio of security from forty patrons to one security.

Q. Okay.

A. And he needs to be twenty percent -- thirty people to one.

Q. That was for the teen events?

A. Correct.

Q. We've had marked as Exhibit A a security plan. You're familiar with this?

A. Yes.

Q. And is this security plan the one that's in effect now?

A. Yes.

Q. And does this security plan comply with the ratio of patrons to security staff that the Sunnyvale Police recommended?

A. Yes, and sometimes we have more now.

Q. And have you resubmitted this plan to the Sunnyvale Police Department?

A. Yes.

Q. And have you gotten any further feedback from them?

A. No. Captain Verbrugge had said in a couple weeks, he will sit down and talk to me and will allow the special event permit to go through.

Q. Okay. Have you applied for a special event permit for any particular events?

A. Yes. For every first Saturday of the month.

Q. Every first Saturday?

A. Yes.

Q. And a special event is in your mind what?

A. A, it's for my event that may potentially have

more than five hundred customers come in.

Q. So if your capacity goes to size 500 or more, he wants you to apply for an event for that in advance?

A. Correct. Which right now it's only the first Saturday of the month.

Q. Okay. And you have made that application to Sunnyvale?

A. Yes. Everything has been paid for and only about 45, fifty days now already.

Q. Okay. Another incident mentioned in the accusation is on August 10 of 2008. The Sunnyvale Police arrested two persons coming out of The Abyss for public intoxication.

Were you present at The Abyss when that incident occurred?

A. Yes.

Q. And did you personally witness the patrons coming out?

A. Yes.

Q. Okay.

A. I witnessed they got arrested. I didn't see them coming out.

Q. Okay. When you say you witnessed them being arrested, were they on the sidewalk in front of The Abyss or where were they?

A. A little bit to the left of The Abyss. The policemen were putting handcuffs on them.

Q. Okay. And did you have any conversation with the police officers about what had happened?

A. At the end, one of the gentlemen turned out to be my friend. So I feel really bad and I came over and spoke to one of the lieutenant.

Q. And which lieutenant was that?

A. A Lieutenant Penny.

Q. And what did Lieutenant Penny say?

MR. AGERBEK: Objection. hearsay.

JUDGE LEWIS: I'll allow it.

Go ahead. Go ahead. You can answer.

THE WITNESS: I say, "I was worried," so I asked tomorrow morning. They will call their family to pick them up. He said, "Yeah, one of the guy, but the other guy, he on parole," so he doesn't know when they'll get out. "Are they your friend?"

I say, "The older gentleman." When -- "you better care for who you let into your club."

Earlier we walk in, the gentleman with the tattoo gave us a bad look, so the staff is -- the staff is outside waiting for him to get out, and the next morning --

MR. WARREN: Q. Okay. So that was the

conversation?

A. With the Lieutenant Penny.

Q. The person that he was referring to is the person who was all tattooed up.

Was that the person that was your friend?

A. No, the other gentleman.

Q. And from what Lieutenant Penny told you, he had seen that person earlier?

A. Yes. There were three policemen walk in earlier, and they say he gave them a bad look.

Q. Okay. And did he say they were waiting for him when he came out?

A. Yes.

Q. Was that the person that Lieutenant Penny said was on parole?

A. Yes.

Q. But that was not the person that was your friend?

A. No.

Q. Did you speak with your friend while he was --

A. No. The next day after. I say, "Why did you get" --

Q. But you didn't speak with your friend when he was in custody?

A. He was in the car.

Q. Did you speak with your security about what the problem was?

A. No. It's public intoxication. So it's not a big deal for us to take care. We take care of the physical fight.

Q. Okay. Then there was an incident on August 13 of '08 in which a person was being unruly while waiting in line and he was subsequently -- he was denied entry to the club. He was subsequently arrested.

Were you present at the time of that incident?

A. After he got arrested.

Q. Okay. Then there was the incident on September 7 of '08 in which a person was beaten inside the club.

Were you present at The Abyss when that incident happened?

A. When he brought out to the rear of the building, I was there.

Q. You went out to the rear of the building?

A. Yes.

Q. And how were you alerted to that incident?

A. I saw my security walk out with a few folks and the doorway alert me, so I come over. I ask, "What is wrong, gentlemen?" and one young man say, "The customer inside punch my friend."

Q. Okay. And did you see the fight at all?

A. No.

Q. Did you see the response of your security to the fight?

A. I saw when security brought him out and stood there with him at the back.

Q. And how long did you remain outside?

A. A long time.

The other gentleman was a very -- he was very upset and he wanted to have the suspect and me and himself walk inside and look for the suspect, and five minutes later, he asked, "Did you find him?"

I ask him "you have to help me. Who is he?" And we still have not found him. Walked back to his friend who was on the floor.

Q. And the ambulance later arrived?

A. Correct.

Q. And did you speak with them until the ambulance arrived?

A. I walk off, but when the police and the ambulance arrived, I got back.

MR. WARREN: Okay. I have no further questions, Your Honor.

JUDGE LEWIS: Mr. Agerbek.

CROSS-EXAMINATION BY MR. AGERBEK

MR. AGERBEK: Miss Nguyen, you weren't here yesterday when the ABC investigator testified that when she came into the premises, there was somebody who was acting like a DJ in the sense that they had the headphone up to one ear and they were messing with electronic equipment on the stage acting like a DJ.

Q. Is it your testimony that you never let anybody up there on stage or in the booth doing that kind of thing?

A. When they have technical difficulties, people have to come up and fix it.

Q. So if the lighting person is going up to fix it, why would there be a reason for them to put on the headphone against the ear?

A. Technical is sound, also. Sometimes our music will just stop.

Q. There was also Sunnyvale PD that testified -- basically to the same thing, that they saw somebody on New Year's Eve of 2007 acting like a DJ.

Would that testimony be inaccurate, too?

A. I was not on -- on New Year's Eve of 2007.

Q. Okay. But if that was her testimony, would that be consistent with what you've said, that you never allow anybody up on the DJ booth to act like a DJ?

A. Correct. We never.

Q. Okay. Now, if I also told you that the Sunnyvale PD testified that Mike Nguyen went up to the booth with him and showed "oh, see, this is where we control the sound," that wouldn't be consistent with an observation of somebody having an earphone to -- headphone to their head messing with electronic equipment to show that there were technical difficulties; would it?

A. No.

Q. Okay. And we had one of the security guards -- one of your former security guards testify yesterday that there were being DJ booths set up on each level for December 31st, 2007.

Why would you set up DJ booths if you don't allow anybody to act like a DJ at the club?

A. Each of our level can play different type of music, so each level, you put in the different CD. Downstairs you can have '80s. Upstairs you can have '90s or hip hop, and third floor, we will play separate type.

Q. And you were here when Mr. Barrow testified earlier today and heard that he testified that there were DJs on the premises and in fact he would ask them for copies of their mix; correct?

A. Correct.

Q. And is that consistent with your policy that

you've outlined that you don't allow DJs to act as DJs when Mr. Barrow has testified he sees them up there in that capacity?

A. Everybody come in, have to have the CD ready mixed for them to play.

Q. Do you advertise to members of the public that you're going to have certain DJs present at the club?

A. Yes.

Q. And when you advertise to members of the public that you're going to have DJs at the club, do you inform members of the public that they won't be playing live?

A. No, we do not.

Q. So members of the public think that they're seeing the DJ live in action the way you advertise; correct?

A. Yes.

Q. Wouldn't you characterize that as false misleading advertising to the members of the public?

A. People know. People come in. Our music die. They boo us. They call us names. Everybody knows, they even come in and say, "You have a DJ tonight. I want to bring this singer." We have no live entertainment. Everybody knows The Abyss cannot play live entertainment.

Q. You say when everybody knows that you have

live entertainment.

Why advertise that you have DJs?

A. That's the only way that we can make a living. Maybe times we'll put out in the mix of that DJ. That mix that CDs and always that DJ mix that CD. We don't use the old CDs. Even what they hear is the sound of that DJ.

Q. So you're your testimony is that when you say somebody's going to be mixing on an evening, that the general public automatically knows that means it's pre-recorded music and that the DJs's not doing anything live at the club?

A. Regular folks, everybody knows.

Q. Okay. But what about the average consumer who has, say, moved -- who has never been to your club and wants to go out for a night on the town?

A. And our music is still playing today. Our orders and our drinks are still there. We did not cheat them out of any of their money.

Q. But if they think they're going to be hearing their favorite DJ mixing music live based on your advertisement, aren't you misleading them?

A. We don't say live DJ new. They still hear the type of music. They didn't come in and say, "Oh, man, I didn't expect to listen to the '60s today."

Q. There's a binder in front of you. Let's turn to page 60.

Do you recognize this advertisement?

A. I have seen this later on, yeah.

Q. And on page 61, do you recognize that advertisement?

A. I seen it today, you but on the top, it says: "Loft 140, Club Oasis" and "Electric Rug." That's not our facility.

Q. Let's look at that a little closer. It says: "Loft 146," and right below that, it says: "Main room," doesn't it?

A. Yes.

Q. Next to it, it says: "Club Oasis, second floor."

A. Mm-hmm.

Q. And on the far right, it says: "Electric."

MR. WARREN: "Voodoo Rugaloo."

MR. AGERBEK: Q. Rugaloo. Third floor, and it says: "House music"; correct?

A. Yes.

Q. Is it your testimony that page 61 does not refer to your club?

A. I don't know what it's refer to, but it doesn't say The Abyss. But if it did --

Q. Let's go back to page 60 and look at it very closely. Right below into the bottom section, it says: "For more information, please" -- and I can't read the next word, but right below that, it says: "Big daddy"; correct?

A. Page 60?

Q. Page 60. Bottom third on the left-hand side right below, you know, where it says the VIP packages and there's some white boxes, there's some writing and there's kind of a black line.

It says: "For more information," and right after that, on the left, it says: "Big daddy."

Correct?

A. Yes.

Q. Let's turn to page 61. Let's look at the bottom left-hand side.

Who does that say it's hosted by? Does it say "Big Daddy"?

A. Okay. And --

Q. Okay. And then go back to page 60, and if you look on the right-hand side next to Big Daddy, over on the right, it says: "Boy Wonder"; correct?

A. Mm-hmm.

Q. Let's go to page 61. Up there on the picture on -- it's on the left bottle, the picture on the right,

doesn't it say: "Boy Wonder" there?

A. Yeah.

Q. So -- and given the fact that this is depicting -- it talks on the top on page 61 and, balloon drop and showing champagne bottles, if an officer testified he pulled this up on your website, wouldn't it be reasonable to expect that these two pages actually refer to Club Abyss?

A. Yes, it is. If it is, we gladly accept it.

Q. Okay. And on page --

JUDGE LEWIS: Wait a minute. You do have a website; right?

THE WITNESS: Yes, we do.

JUDGE LEWIS: Go ahead.

MR. AGERBEK: Q. So on page 61 on the left-hand side under the Loft 146 main room section, below the pictures, it says: "Also spinning DJ Reuben R&D J Vicious," doesn't it?

A. Yes.

Q. It doesn't say anything about mixing; does it?

A. It isn't entertainment. Spinning or mixing, it's the same.

Q. And if we look in the Club Oasis section, we see reference to different DJs and also spinning; correct?

A. Correct.

Q. Okay. And since this is advertising an event that took place on December 31st, 2007, you would have been advertising this on your website in advance of December 31st, 2007; wouldn't you? Because the idea is to get people in there for New Year's Eve; correct?

A. Correct.

Q. Let's look at page 64.

This is an advertisement for your club; correct?

A. Yes.

Q. And this is for Tuesday, January 1st, 2008; correct?

A. Yes.

Q. And if you look right in the middle of the page, it says: "Your DJs for the night, DJ Boy Wonder"; correct?

A. Mm-hmm.

Q. And then it says right below that "First live video mixing 2008," doesn't it?

A. That makes the event sound exciting.

Q. Okay. And then below that, we have "DJ Redkid Kid, R-e-d-k-i-d. DJ Louie, DJ Joot Lubinbar and DJ Sauce; correct?

A. Right.

Q. It's your testimony that all these people were not performing live, but they all came in. They were doing pre-mixed Tuesday?

A. Correct. On $2.00 Tuesday, we cannot afford it.

Q. Let's talk about $2.00 Tuesday. Let's go to page 192.

Do you recognize this advertisement?

A. Yes.

Q. And when did you start running $2.00 Tuesday?

A. As soon as we opened in January of 2006.

Q. Okay. So this advertisement -- is this something that's perpetually done or do you no longer do $2.00 Tuesday?

A. We no longer do it.

Q. When did you stop $2.00 Tuesday?

A. Let me see. It's in the end of the summer.

Q. Of 2008?

A. Correct.

Q. Okay. So from January 1 of 2008 through --

A. The end of summer 2008. So I guess in October of 2008 till now, we'll close.

Q. But from January 1 through October 2008, were you running $2.00 Tuesdays?

A. Yes.

Q. And was this the advertisement that you were using on your website?

A. Yes.

Q. Does this advertise that you're going to have a DJ there?

A. We advertise it, but we don't have a DJ.

Q. Okay. And let's look two pages before that at page 190.

Is this an advertisement for your club?

A. Yes.

Q. And this is for Saturday, January 19th, 2008?

A. Mm-hmm.

Q. We need a yes or no for the court reporter.

A. Yes.

Q. Sorry. And are you advertising DJs there?

A. Yes.

Q. Okay. And did you have DJs present for this event?

A. This was after -- this is off of -- it's a promoter flyer, not ours.

Q. Well, who agrees to allow the promoter to put together the advertisement to come no your club?

A. No one. They put it on there themselves.

Q. They don't contact you that they want to put an event on for your club.

A. For each promoter, we pay them 200 more dollars, and then they will come with a guest list and that's how we get them to come in.

Q. You pay the promoter $2.00?

A. $200.

Q. $200.

Q. And so your testimony is this is not from your website?

A. No, sir.

Q. Okay. But the $2.00 Tuesday, on page 192, that is from your website?

A. Yes, it is. The same for the new year, also.

Q. Okay. I was a little confused on your testimony about what you consider the adjacent parking lot. You -- if I heard it correctly, you characterize the Macy's parking lot as the adjacent parking lot; is that correct?

A. Correct.

Q. You don't consider the parking lot right in the back of your club the adjacent parking lot?

A. I do not understand the term, but I know that my responsibility is to guard that parking lot, also.

Q. Okay. When you say "also," does that mean you're guarding the Macy's parking lot, too?

A. Macy's and the rear.

Q. Do you have security between the hours of 9:00 PM and 2:30 AM in those parking lots?

A. Not every time.

Q. What does that mean? Some nights or part of the nights? What does that mean?

A. Certain nights, if the guard's sick or off-duty, that's the night we don't have him.

MR. AGERBEK: All right. I have no further questions.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Nothing further, Your Honor.

JUDGE LEWIS: Miss Nguyen, how is Michael related to you?

THE WITNESS: He was my boyfriend.

JUDGE LEWIS: Was your boyfriend.

THE WITNESS: Right.

JUDGE LEWIS: When did he -- during what time was he your boyfriend?

THE WITNESS: July -- July 2006.

JUDGE LEWIS: Until?

THE WITNESS: Until -- until a few months ago or eight months ago.

JUDGE LEWIS: Okay. Last August, about?

THE WITNESS: Yes.

JUDGE LEWIS: Okay. 898 Dorn Avenue,

Middlesex, New York, what does that mean to you?

THE WITNESS: New Jersey. My parents' and my home.

JUDGE LEWIS: That's where your parents live.

THE WITNESS: And myself.

JUDGE LEWIS: And yourself?

THE WITNESS: Correct.

JUDGE LEWIS: Okay. According to the records that ABC has, your parents are the licensees.

THE WITNESS: Correct.

JUDGE LEWIS: You came in here and said that you are the president of the company. I don't know what you mean by that and I want to find out what you mean by that.

THE WITNESS: My -- my parents' language barriers is very heavy. They cannot communicate, so for anything that need to translate or for their points to come off, they need a strong leader.

JUDGE LEWIS: Miss Nguyen -- and I'm not saying there's anything inappropriate about it, but it sounds like to me they got the license and basically turned this place over to you to run it for them.

Am I right?

THE WITNESS: They're out here presently, but for any deals or business arrangements, unless they agree

to term, I will need to represent them.

JUDGE LEWIS: You run the whole show, though?

THE WITNESS: Myself, manager Nancy Wing and with the help of Michael.

JUDGE LEWIS: Okay. I'm saying your parents are not involved in the operation of The Abyss in any way, shape or form, are they?

THE WITNESS: Any financial agreement, they will have to agree to it.

JUDGE LEWIS: All right. You said about five months ago, you hired a chef.

Is that right?

THE WITNESS: Permanent chef, yes.

JUDGE LEWIS: Permanent chef, yes. Did you bring a menu with you?

THE WITNESS: Today, sir?

JUDGE LEWIS: Yeah.

THE WITNESS: Sorry, I didn't.

JUDGE LEWIS: What's on the menu? What does -- when a customer comes in there at ten o'clock at night after you open, what does the menu consist of?

THE WITNESS: Do we have one? Sorry.

MR. WARREN: No. We don't.

THE WITNESS: Just about everything. Vietnamese cooking.

JUDGE LEWIS: What percentage of your customers are Vietnamese?

THE WITNESS: Saturday, ninety percent. Friday, about forty, and Thursday is about fifteen.

JUDGE LEWIS: Okay. Your parents signed some conditions, all right? It was translated by someone who speaks Vietnamese. This was part of a disciplinary proceeding, okay, but they did sign some conditions, and that appears to be your parents' signature.

I'm going to show you what I got. You can tell me what it appears to be and I'm showing you the page that's been marked 56.

THE WITNESS: May I add the train leader is also an employee of ABC. The train leader, Kathy Tran, is also an employee of ABC.

JUDGE LEWIS: And she signed it as having translated this for your parents. I understand that, ma'am.

What I want to know is the signatures above that, are those the signatures of your parents?

THE WITNESS: Correct.

JUDGE LEWIS: Okay. Now, did your parents ever tell you that "hey, these are conditions on the license and we got to comply with them"?

THE WITNESS: Yes, they did.

JUDGE LEWIS: Okay. All right. You tell me -- I want you to tell me, Miss Nguyen, how this condition, okay, on here, condition number three, it says: "The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food." Okay?

It's normally referred to as the 50/50 condition. It means that if you sell $10,000 worth of alcoholic beverages during a quarter, a three-month period, then the sales of food has to be at least $10,000 for that same period of time.

Do you understand that?

THE WITNESS: Yes, I do.

JUDGE LEWIS: You're open at 10:00 PM three nights a week and you expect me to believe that you are going to sell at least as much food as alcoholic beverages when you only open at 10:00 PM at night?

THE WITNESS: When we open up, we open everyday. Nobody come in to eat. Electrical bill exceed what we ever make. We start selling -- what is it? Authentic food. Nobody buy it. Food we offer. Everything we throw it. Everything goes to waste. You come into the club, it's hotter in the club outside in the summertime. It's so cold in the wintertime.

We started selling hot dogs, even people don't want to buy hot dogs. We give out free food. People

throw it all over the floor.

JUDGE LEWIS: You basically answered my question, Ms. Nguyen.

You can't do it; can you? You cannot sell more food than alcohol.

THE WITNESS: That's why we turn out event -- most of our event are high school and 18 year over where they always drinking water, Gatorade and Red Bull.

Sometimes we only make $40.00 at the bar, because the 18 and over, they don't have money to buy alcohol, and we sell $2.00 beer. That's why it's called $2.00 to come in and $2.00 to buy beer.

In the summertime, we sell food -- the street fair. We sell everything from fried hot dogs to corn to everything, and we paying more -- more money for chef for cleaner than money we're bringing in from food.

JUDGE LEWIS: Well, you know, I understand that you made an attempt. You probably made several attempts.

THE WITNESS: Many. He asked me --

JUDGE LEWIS: You need to try to get people to buy food so that you could comply with the condition.

Am I right?

THE WITNESS: And I don't know the Sunnyvale area very well. We come and speak with our neighbors to

show us things and I have forty weddings a year here. Even my food does not exceed my alcohol. You're going to have to do what's best for you, and we order food left and right.

JUDGE LEWIS: Well, I don't think anyone twisted your parents' arms to applying for a type 47 license at the time of the application.

THE WITNESS: No. It was already a type 47, and when we --

JUDGE LEWIS: And it was transferred then?

THE WITNESS: Correct.

JUDGE LEWIS: Person-to-person transfer.

THE WITNESS: And when we ordered, that was our intention. We have excellent skill and experience in the restaurant. We have no experience in nightclub at all. We say, "Okay. We fail in nightclub. We going to make a full-blown restaurant," but --

JUDGE LEWIS: Okay. Let me ask you something. I should have asked someone this earlier.

Of the nights that you are open, Thursday night, Friday night, Saturday night. Forget the teen night. I don't care about that. But Thursday night, Friday night, Saturday night, which night of those three do you have the least problems?

THE WITNESS: Well, Friday. I -- gate event

is the least problem. But right now, we are very good. You hear the security testify. There's only two police car inside the Macy's parking lot. That's how good we are. We can handle the crowd on our. We never have to stand.

JUDGE LEWIS: Okay. All right. Anything based on any questions, Mr. Warren?

MR. WARREN: Nothing further, Your Honor.

MR. AGERBEK: Nothing further.

JUDGE LEWIS: Ms. Nguyen. Thank you very much. You're excused.

MR. AGERBEK: I am going to ask that certain pages that we've now referred to be marked as exhibits.

JUDGE LEWIS: You know what? If we referred to them, we probably should. Okay.

What do we got?

MR. AGERBEK: We already took care of 63 and 64, which were I think Exhibit 5.

JUDGE LEWIS: Yes.

MR. AGERBEK: And I'll come back to that. We have page 190.

JUDGE LEWIS: Okay.

MR. WARREN: Do you want to identify all these pages as one exhibit?

JUDGE LEWIS: If they're advertisements,

yeah. I just as soon do it that way --

MR. AGERBEK: That's fine.

JUDGE LEWIS: -- than having separate ones.

MR. AGERBEK: 190 and 192.

JUDGE LEWIS: Okay.

MR. AGERBEK: If we want to tack those on to --

JUDGE LEWIS: No. It will be separate.

MR. AGERBEK: Okay. I see what you're saying.

JUDGE LEWIS: Next in order is going to be Exhibit 8. Exhibit 8 is going to consist of the pages Bate stamped 190, 192 and what else?

MR. AGERBEK: That's it.

JUDGE LEWIS: Okay.

MR. AGERBEK: And at this time, I'm going to move to amend the complaint.

JUDGE LEWIS: Hold on.

MR. WARREN: Hold on. Is there a motion to make these two pages, Exhibit 8, admit them in evidence?

MR. AGERBEK: I haven't got there yet. I have to do my motion to amend. I can do it either way.

Yes, I would ask that Exhibit 8 be admitted into evidence.

MR. WARREN: There's a distinction between

these two pages, 190 and 192. The witnesses have testified that 192 is from The Abyss website. The witnesses have testified that 190 is a publication from a promoter.

MR. AGERBEK: And can we make 190 Exhibit 8 and 192 exhibit 9? Then I won't ask to admit 190, Exhibit 8, but ask to admit 192 as Exhibit 9.

MR. WARREN: I have no objection to 192 coming in.

JUDGE LEWIS: Hold it. Exhibit 8 consists of the advertisement Bate stamped 192, period.

MR. AGERBEK: Okay.

JUDGE LEWIS: Is that what you're asking?

MR. AGERBEK: That's fine.

MR. WARREN: No objection.

JUDGE LEWIS: Exhibit 8, number 192, there's no objection. It is received.

MR. AGERBEK: Exhibit 9 would then be page 190, but because we referred to this page, but I will not offer it into evidence.

JUDGE LEWIS: Well, okay. Because I'm not -- if it's not marked, then I'm not going to keep it as part of the record.

MR. AGERBEK: Okay.

JUDGE LEWIS: So -- because we did refer to

it, I will put it on there as such and it's not being offered, so we'll leave it at that. It is marked only.

MR. AGERBEK: And then I would offer into evidence -- I don't remember how Exhibit 5, if that consisted of two pages or just the one page.

JUDGE LEWIS: Exhibit 5 is page 63 and 64.

MR. AGERBEK: Okay. I would offer Exhibit 5 into evidence.

JUDGE LEWIS: Well, I already have it.

MR. AGERBEK: I would offer --

JUDGE LEWIS: Oh, wait a minute.

MR. AGERBEK: I had not offered it into evidence.

JUDGE LEWIS: You're right. I did have that note here.

MR. AGERBEK: I'm now offering it into evidence.

JUDGE LEWIS: You're now offering it. Okay. That's new year's.

MR. WARREN: These consist only of Exhibit pages 64?

JUDGE LEWIS: 63 and 64. Two of them.

MR. AGERBEK: I don't really care about 63.

JUDGE LEWIS: It's already there, Mr. Agerbek.

MR. AGERBEK: I know.

JUDGE LEWIS: You're not going to ruin my exhibit list here.

MR. WARREN: Okay. Our objection on this would be these pages are not from the Abyss' website. These are from the promoter's website.

MR. AGERBEK: There was testimony by Investigator Anadon that he pulled these off their website.

MR. WARREN: Well, perhaps I didn't pursue that, but I expect what he did is he ran a search for Club Abyss, and he pulled these up.

He doesn't know if these are The Abyss' website or the promoter's website. Emma says these are not from her website.

JUDGE LEWIS: Hold on, folks. In the scheme of things, okay. I don't see it being as critical as you guys obviously do based on all of the testimony I've heard and the evidence that I've received in this case.

I'm going to overrule the objection. I'm going to receive Exhibit 63 and 64.

MR. AGERBEK: Exhibit?

JUDGE LEWIS: Page 63 and 64, which is Exhibit 5 and I'll decide what to do with them.

All right.

MR. AGERBEK: And at this time, I'm going to make a motion to amend the pleading based on the evidence presented.

JUDGE LEWIS: Okay. Before you do, Mr. Warren, did you rest after that? I got lost here --

MR. WARREN: Well, yeah.

JUDGE LEWIS: -- in the shuffle.

MR. WARREN: In fact, Your Honor, we had also intended to call as a witness Hai Nguyen, also known as Mike. And we had subpoenaed him to appear. He acknowledged receipt of the subpoena. He confirmed for me his date of birth, his license number.

I have the original subpoena and proof of service here, but he also advised me as he had a week or so ago that he would not be appearing in response to the subpoena because he had been advised by his criminal defense attorney, Nelson McMurray that there was still a potential for criminal charges to be pressed against him arising out of the March 8 incident, and he did not -- he had instructed Mr. Nguyen not to testify in this hearing for fear that it could violate his Fifth Amendment rights.

And I have here a copy of -- I have the original subpoena, proof of service and the letter from his criminal defense attorney instructing him not to

testify at this proceeding.

So we would want him to be here because much of the evidence presented by other witnesses the department has called has stated or attempted to imply that Mr. Nguyen was at the time of the March 8 incident directing staff not to call an ambulance or not to call the police, and if that were true and if you believe that to be true, that could certainly be damaging to the licensees, and without Mr. Nguyen's testimony to rebut that and to explain from his perspective, as well, what was said and what was done by him or other security at the club, I think there's a substantial gap in our evidence.

I have personally spoken with Mr. Nguyen. I have personally spoken with his defense attorney to see if I could persuade them that he should help and close this chapter, appear and testify, and his attorney was unchanged in his instruction to Mr. Nguyen; still believes that there is a potential of real jeopardy for Mr. Nguyen and continued his instruction not to appear.

For that reason, we would ask -- his attorney said that if there was a continuance of this hearing, he would endeavor to get some confirmation from the District Attorney that the District Attorney would grant immunity or have no interest whatsoever in pursuing charges

against Mr. Nguyen so he could give Mr. Nguyen the comfort that he needed that he is not exposed to criminal charges, and Mr. Nguyen said once he had that comfort from his attorney, he'd absolutely be here to testify.

Mr. McMurray also said when I asked what the statute of limitations was, he says he believed in his research that it was two years, and he says information you've been privy to in a previous phone conversation when we talked about a continuance.

JUDGE LEWIS: We did, in fact, have a conference call regarding this issue sometime last week --

MR. WARREN: Right.

JUDGE LEWIS: -- with Mr. McMurray or whatever his name is there.

Has Mr. McMurray contacted the DA since then?

MR. WARREN: He did not confirm for me that he had. I spoke with him after that conference call, told him what the outcome was. He said he would endeavor to, but I have not had any further contact with him in the intervening time.

JUDGE LEWIS: Do you wish to be heard, sir?

MR. AGERBEK: We addressed this issue in the prior conference call, and the fact that it's just not feasible to wait for well over a year, as we discussed in

the conference call.

There's case law -- which I don't have the cites with me -- saying that that's not grounds for the continuance.

Furthermore, I would note that none of the witnesses that testified here today specifically said that Mike Nguyen made statements to them in their presence -- Anthony Frasier, Frank Collins -- about not calling the police, et cetera.

The testimony we have heard is, based on the whole factual circumstances, the police made a determination in their opinion that may have caused them to arrest Mr. Nguyen for charges 148.

He has not been prosecuted on that; apparently has not been convicted of that, so therefore, it's incumbent upon the department to prove that by his actions, he engaged in a violation of Penal Code 6148a1, which we believe we have done by the evidence here today.

JUDGE LEWIS: Well, here's the deal, folks: As I said last week during our conference call, I am unwilling to wait one year -- which would be March the 8th of 2010 before -- to wait for Mr. Nguyen to testify regarding this matter.

I think that I've heard more than enough regarding the incidents that have been involved here in

order to render a decision in this particular case.

These are serious charges. Delaying it for over a year is not the appropriate way to deal with it, as the department does, in fact, have a constitutional duty to protect public welfare and morals.

I am -- I am unwilling to do that. I am not going to do that. Mr. Nguyen didn't want to come here on his own free will. You see other avenues I guess you could have taken.

I'm not saying should have, but Mr. Nguyen is not the licensee in this case, which may be something to consider. He is simply a witness, but in any event, in this case, I'm not willing to wait a year. I'm not going to continue the matter.

You've made your record.

MR. WARREN: I would like to offer just the subpoena and proof of service and this e-mail acknowledging --

JUDGE LEWIS: Okay. We'll mark that as Exhibit B.

MR. WARREN: And the last page is the February 12 letter from his criminal defense attorney --

JUDGE LEWIS: Okay.

MR. WARREN: -- which you've also seen.

JUDGE LEWIS: All right. Exhibit B is --

it's actually four pages, and it consists of the subpoena for Mr. Nguyen, proof of service and e-mail and a letter from the Law Offices of Thomas -- is it Echea? Actually, it's signed by Mr. Nelson McMurray.

All right. That's Exhibit B.

MR. AGERBEK: No objection.

JUDGE LEWIS: And it is received.

What about the security plan, Mr. Warren? I don't show that as having been received.

MR. WARREN: I would offer that in evidence, Your Honor.

JUDGE LEWIS: All right.

MR. AGERBEK: No objection.

JUDGE LEWIS: A is received, also.

Anything else, Mr. Warren?

MR. WARREN: No, Your Honor.

In terms of the accusation that's pled, we rest.

JUDGE LEWIS: Okay.

MR. AGERBEK: At this point, the department is going to move to add three additional counts. It would be subcounts of count 9, and that would be based on the most recent evidence we've had, and I would note that this is being pled in the alternative as this is relating to the disk jockey live entertainment counts.

In other words, after I lay forth what my amendments are.

JUDGE LEWIS: Well --

MR. AGERBEK: If the testimony is believed that disk jockeys were not there and it was not live entertainment, then these allegations would be proved based on the evidence, which is false advertising, which --

MR. WARREN: Oh, Your Honor, false advertising is such a tricky, tricky cause of action.

JUDGE LEWIS: Hold on, folks. Hold on. You said as subcounts to Exhibit 9 --

MR. AGERBEK: To count 9, yes.

JUDGE LEWIS: To count 9?

MR. AGERBEK: Violation of 24200a and b, contrary to the public welfare and our morals, et cetera.

JUDGE LEWIS: Okay. If I understand you correctly, you want to add three additional subcounts that say false advertising?

MR. AGERBEK: Correct. You know, I can spell out exactly which ones -- which incidents we're dealing with.

JUDGE LEWIS: Do you really think that's necessary, sir?

MR. AGERBEK: In the interest of protecting

my client, I feel like I have no obligation to do so, because the testimony has -- from what we heard as such has been directly from the licensee.

JUDGE LEWIS: She's not the licensee.

MR. AGERBEK: I'm sorry. The owner/ operator -- I'm sorry. The operator/manager/president, the person that's running the day-to-day operations saying that we do not have live entertainment, but we're advertising that we have these DJs when, in fact, she's saying "we don't have them."

JUDGE LEWIS: I understand that. I understand what the -- what the investigator said. I understand all that, you know, and the question to be decided is not whether or not the advertising was false, but was there, in fact, live entertainment in violation of the condition.

That's the question --

MR. AGERBEK: Correct.

JUDGE LEWIS: -- to be decided, and I'm going to decide that question.

MR. AGERBEK: Okay.

JUDGE LEWIS: And I don't care how it was advertised or if, in fact, it was advertised.

MR. AGERBEK: Okay. All right.

JUDGE LEWIS: Did I dissuade you?

MR. AGERBEK: I'll -- I won't move to amend at this time.

JUDGE LEWIS: Good move. All right. Now, is there anything else other than closing arguments?

MR. WARREN: No, Your Honor.

MR. AGERBEK: No, Your Honor.

JUDGE LEWIS: Do you guys want to -- why don't we take a five minutes, at least. Especially for our court reporter.

Off the record.

MR. WARREN: Okay.

(Recess taken).

JUDGE LEWIS: Back on the record.

All we have left is closing arguments, and we'll begin with the department.

CLOSING ARGUMENTS BY MR. AGERBEK

MR. AGERBEK: In this case, we've had a stipulation as could count 1 and 4, so I won't address those two.

As to count 2, this is the condition that deals with providing security in the parking lot. We've had testimony from Investigator Anadon that he did not see any security personnel providing security in the parking lot adjacent to the premises, that being the parking lot behind the business, either when he went into

the premises or when he left the premises.

We've had testimony from Mr. Barrow, who's their chief of security, who's never even seen the condition, and pretty much said no, the club's not in compliance with the condition, partly because he didn't know about it, and testified that they do have security on the patio who kind of watches the parking lot, but he can't do anything because people might sneak in, and all sorts of other things might happen, and he can only call it in if something happens.

In fact, security doesn't even show up to. The earliest person shows up at nine o'clock, which is an hour past when the security needs to be there.

So the argument has been made "well, gee, people really don't come in until ten o'clock. Why do we need to provide it that early?"

You have people showing up to get in line at nine o'clock. So therefore, you know, the condition's there. It's supposed to be complied with. It's not being complied with.

Now, it is being complied with on some nights, those being the teen nights, with the doors open at seven o'clock, but it's more just to make sure that kids aren't kids and be unruly.

So therefore, the evidence shows that count 2

has been met.

Count 5 deals with the issue of providing live entertainment. This took place on or about February 28th, 2008.

Investigator Martinez testified that when she came in, it appeared -- it appeared to her that there was a DJ and that he was performing and acting as a DJ and that, you know, this was, in fact, live entertainment, and from all intents and purposes to her, it looked like a DJ was there.

The arguments were made "we're just playing pre-recorded music, and so therefore, it's not live entertainment," but by advertising that you're going to have these DJs present and by them being there, in order to draw in the people, because we need to bring in the people, because that's how we make our money, as testified by Ms. Nguyen, they have live entertainment there.

I mean, if they just advertised we have pre-recorded mix by DJ such and such, they know that they wouldn't have people coming in to see it.

Count 7 also deals with issues regarding Pre-recording live entertainment, and this is for December 31st, 2007.

Officer Rybak testified that he came in, he

saw a DJ and person acting as a DJ; found advertisements that are advertising they're going to have DJs there on the various floors, and then when he was told oh, no. It's just pre-recorded music, we just pop in a player.

He was taken to a booth where the music was supposedly displayed there, and the machines are flashing words in effect "no CD."

As was testified by the officer, it wouldn't be reasonable to think that somebody put their name on the flyer if they're just coming in to DJ-synch, a new term that we've coined in this proceeding.

JUDGE LEWIS: I'm waiting for that one to show up in one of the new Webster's.

MR. AGERBEK: Then what else did we have? We had Mr. Collins who testified that -- well, yeah. They had DJs. He saw the booth set up and such, but he also testified that they had live dancers performing on some boxes.

Mr. Barrow testified that they never had that, but we do have the testimony that there was some form of live entertainment by Mr. Collins in the form of dancers on boxes.

So whether it's a DJ or whether it's live dancers, whether it's somebody who's acting as a DJ so people think he's mixing -- he or she is mixing music,

that is live entertainment.

And we're not talking a robot, a dead body, a Weekend at Bernie's type situation. We have somebody up there who is there to draw the crowd in, keep the crowd growing, help them having a good time, entertain them, give them a show. That is live entertainment.

Next we deal with -- deal with count 8 and 9 simultaneously by breaking down the subcounts by incident.

With regard to count 8, the disorderly house, we have subcount A and B, and on counts 9, counts A, B, C and D, these all deal with an incident of a stabbing -- two stabbings that took place on March 8, 2008.

Mr. Knight testified that he saw the stabbing. He testified that the security guard said, "Don't tell the police," and then later, that when he came back to the premises, the security guard accused him of being a snitch.

There's been no testimony to contradict that. There is -- that would just be something so far out of left field for somebody to make up.

Mr. Knight came across as truthful. He indicated that the person he described as Mr. Barrow who had come with a P-coat was described to a T and pointed out the person who did the stabbing was, and for whatever

reason, the procedures of the security guards, they kept doing the hand-off with the suspect until the suspect got handed off out the door and gone.

We have CSI Osborn who testified that she found the bloody towels on the premises that had been bagged up and tossed away.

We have the testimony of Mr. Frasier who treated the wounds on Mr. Bell. He testified that Mr. Barrow told him not to call for medical.

He also testified that he heard the words "don't call the police" told to him or -- told to the victim, and he also heard "don't call the paramedics."

This testimony is consistent with what Mr. Knight has testified when he's told by the security guard "don't call the police" and then later accused of being a snitch.

Mr. Collins who testified that he found the knife near the incident after being pointed it out by a patron. He turned the knife over to Phong. The knife was never given to the police department.

Mr. Phong apparently never told any of the other superiors or other people involved there, if they're to be believed, that he'd even received the knife.

Then we also have the gestures by Phong when

Mr. Collins is talking to PD, basically cut, be quiet. Don't talk to the police.

We then have the testimony of Officer Zarrilo who met with Phong and basically Mr. Phong went into some sort of fog of I don't know what you're talking about. I don't have a clue. I'm just doing my job here. Basically see no evil, speak so evil, see no evil type of situation.

Then we have Officer Curiel, who based on the traffic stop came across the victim in the car. The victim, who was Mr. Bell -- Mr. Bell has told Officer Curiel that he was dissuaded from calling the police department, again consistent with what we heard from Mr. Knight with regard to his friend, and consistent with what Mr. Frasier had testified to.

Mr. Curiel talked to Phong who also denied receiving a knife. Officer Curiel testified that the small knife wound was consistent with a pocket knife, which is consistent with the knife that was found by -- or ultimately found by Mr. Collins and turned over to Phong, and then we have that they have a second stab victim as called in by the hospital who we've determined to be Mr. Knight's friend, Gavino Srosco.

Mr. Barrow testified "we report it to the PD. I didn't tell anyone to do it." They would have us

believe that the security policy, which the claim has been in effect in some way, shape or form, but only making minor changes based on the ratios was there and they knew about this and they should be calling this type of incident in, but they didn't.

And then we have Santino Carucci who testified "no, I never called the police. I was never told to called the police. I never told anyone else to call the police."

So we have all this testimony of trying to keep the police out of it, and Mr. Frasier testified that the bar was basically trying to cover it up, and that was kind of -- they didn't want to get the police involved, because they were concerned, which is understandable.

How does that relate to the counts? Well, the testimony that we've heard, the evidence that we've presented as to 8A does show that Mr. Nguyen, aka Michael dissuaded the stabbing victims from calling the police, and we also have as part of that subcount A that the security guard Phong Leong destroyed the evidence, to wit the knife, because he never turned it over and he denied knowing anything about it.

That deals also with 9B in that Mr. Nguyen dissuaded victims from calling the police, and 9C, wherein Mr. Leong destroyed evidence at the crime scene.

With regard to 9A, it's clear based on the evidence we've had that there was a pattern of trying to cover up that a stabbing took place and that it involved security personnel and/or management at the premises.

With regard to 8B, this is dealing with -- 8B and 9D as to whether Mr. Nguyen and Mr. Leong delayed -- resisted, delayed or obstructed Sunnyvale Police Department in the performance of their duties.

Here we have basically dissuading the victims to come forward. We have cleaning up and the hiding of the towels. We have the hiding of the knife, the actions by Mr. Leong in trying to get witnesses not to talk to the police.

All of these things tied together show a violation of Penal Code Section 148a1.

With regard to -- moving on now to count 8D and 9F, this involves the incidents on August 10th, 2008. The police officer testified that they did, in fact, apprehend and arrest two individuals who came out of the club who were too intoxicated, drunk in public violation, 647f.

Then we have count 8C and count 9E. This deals with the incident where you had this large unruly crowd that the club was not able to contain. It was one of the teen nights.

They spill out into the street. It forces the Sunnyvale Police Department to bring all their officers code 3 and have to actually call in for mutual aid from Santa Clara PD just to cover other routine calls.

This was a large situation that came out of a -- got out of hand. Basically officers were having to go into riot gear and trying to control the individuals, and again all out of incidents and coming from patrons of Club Abyss.

Then we have the incident on August 13th, 2008. We have an unruly subject in line that the club tried to keep out.

If the department were trying to hang their hat on that count alone, we'd probably be in serious trouble. That goes with 9G.

Recognize that, you know, the club probably was doing what they needed to, but again, what is it that is attracting this type of element to the club? Why are we continually having problems with this club? It all goes towards causing a disorderly house.

And then finally, we have a -- another incident of violence taking place on September 7th, 2008. That would be 8F and 9H, where we have our victim, Brian, who is beaten, kicked while out on the dance floor because he's talking to another girl.

Again, you know, the club is not providing an adequate security, is not maintaining control of the premises where individuals who are looking to go out and just have a nice time.

They can't because, you know -- for fear of getting beat up and kicked.

All told when you look at all of this together, this gives rise to a disorderly house. It also gives rise to a violation of 24200a and b of the Business and Professions Code as well as Article 20, Section 22 of the California State Constitution in that allowing continuance of this license would be contrary to the public welfare and/or morals, and therefore, it is the department's position that the license should be revoked.

JUDGE LEWIS: Mr. Warren.

MR. WARREN: Thank you, Your Honor.

CLOSING ARGUMENTS BY MR. WARREN

MR. WARREN: We have stipulated to counts 1 and 4. With respect to count 2, the condition regarding security guards in the parking lot in its own terms addresses that the purpose is to maintain order therein and prevent activity which would interfere with the quiet enjoyment of the property by nearby by residents.

We have not one wit of testimony that there was ever a failure to maintain order in the parking lot

or that there was any interference with the quiet enjoyment by any nearby residents.

We have heard testimony that the parking lot is under the constant and routine observation of a security guard who's stationed on the rear patio from at least the time the club opens until the time the club closes; that, in fact, the security for The Abyss follows their patrons who go into this rear parking lot and that they remain there and observe until they leave that parking lot.

Yes, that might be at 2:10 and not 2:30, but what would be the purpose of keeping someone standing there until 2:30 when the parking lot is empty and your patrons have all gone home?

I think we should have a measure of common sense applied, if not to the determination that there wasn't a violation, at least to the determination of what an appropriate penalty for that violation should be.

We've seen these types of conditions in other situations, and when people really stop and think about it when they're writing them, they more often will say "until the premises closes" or something like that or "all the patrons are disbursed."

If we had that kind of language here, we would be in compliance, and again, it said we have to have

guards there beginning at 8:00.

Well, our patrons aren't there until 9:00 at the earliest. We may have a technical violation again of not having somebody there between 8:00 and 9:00 or 8:00 and 10:00, but I think certainly the purpose of the condition has been satisfied and the technical violation has not, in fact, resulted in any failure to maintain order or any disturbance to residents or other merchants. We haven't heard anything about problems in the parking lot.

With respect to count 5 and 7 which pertain to the disk jockey, the reality is that we do not have disk jockies performing live, meaning that we do not have persons who are creating the music, watching the crowd, interacting with the crowd and using the mix of the music, which is what the disk jockey does.

The disk jockey is -- when they're performing live is they're using the mix of the music to raise the tempo of the crowd or shift the tempo of the crowd.

That's not happening because the music is pre-mixed. When the advertisements say, you know, it's this disk jockey, what that says to the customer is if they follow this at all, if that has any meaning, it says that that -- the mix of music I'm going to hear is one that's been put together by that person.

If that has a meaning to me and attracts me to the club, that's exactly what they're getting. They're getting a mix by that person, although it's a mix that's been created before they come to the club and it is played without an interaction or a live interaction of the disk jockey that evening.

With respect to count 8 and count 9, this incident of March 8, what we -- what we need to do is put this incident -- in evaluating the credibility of these witnesses, we need to put these witnesses into an overall context, and I think it was Officer Curiel who talked about his experience dealing with the security and the operation of The Abyss for months in advance of this March 8 date, and the security and the management of The Abyss as he knew it was not the kind of operation which would engage in any kind of an intentional cover-up of this kind of an incident.

They had interacted with the police and turned people over to the police who were creating a disturbance before that. They have consistently interacted with the police and turned people over to the police when there's been disturbances after that, as we've seen in some of these other subsequent subcounts of 8 and 9.

This stands out as an anomaly.

Mario Knight's testimony is detailed, it's

precise, it's accurate. I cannot square that in my own mind with what I believe were the facts as to what happened, and I believe the facts were that when this person who was removed from the dance floor, was participating in the fight was within the control and custody of the security, whether it was Mr. Barrow, Mr. Carucci or some unknown security in front outside, no one had identified him as being a perpetrator or in any way involved in a stabbing.

When he was under their control at all times, they believed him to have been in a fight, and as we heard several of the security testify, the standard procedure when there was a fight is to separate the combatants, cool them down, send them on their way and separate paths.

We've heard from the police officers that that's not inappropriate. In fact, many times when the police were called to add assistance when there's been a fight, they'll do the same. They'll calm the people down, send them on their way.

It's not about every fight has to result in an arrest. Every fight has to be reported to the police.

This incident, when that person was in the control of the police -- I mean, in the control of the security, all they knew was that he had been involved in

a fight.

He was compliant. He was not belligerent. They hustled him out the front. They sent him on his way. That's standard procedure. That's not a problem. That's not a sign of a disorderly premises.

With respect to the allegations that there was a cover-up, that we intentionally intended to deprive the stab victims of medical care, we've heard testimony from Mr. Carucci who was personally attending to the victim stabbed in the leg that it was the victim's decision to have his friends take him to the hospital.

He did not want to have an ambulance called, that the wound itself did not appear to be one that caused Mr. Carucci to be concerned that he needed medical care then and there.

Pressure appeared to have stopped the bleeding, and he didn't have a concern about letting the guy go with his friends.

With respect to the victim that was attended to by Mr. Frasier, Mr. Frasier applied the dressings, applied to the more serious wound in the back, seemed to be satisfied that the person should be let go, and it's frankly unclear from his testimony whether the victim was making the decision to get himself to the hospital without an ambulance, but I think -- although Mr. Frasier

testified that he thought he was hearing somebody give directions not to call an ambulance, not to call the police, he says he was hearing those things over his headset in part as well as voices that he could hear away from the headset.

Nobody else has heard that information over their headsets.

Mr. Collins didn't talk about that. Mr. Barrow certainly didn't say that he ever heard that. In fact, he said he never heard any such thing, and Mr. Carucci said the same.

There's a lot of things going on. A lot of people attending to lots of different things in different places separate from one another.

In my mind, it's one of these situations where there were some people who, as they try to think back on it, remember things differently, but I don't think given the overall picture of this club that's painted by all the testimony, that this is a club that has any kind of a record or that the police have any kind of concern that they engage in any sort of pattern or practice of trying to cover up any kinds of incidence of violence.

I think Mr. Barrow was in my mind convincing that if he knew for one moment that the guy he was controlling had stabbed somebody, he would have held him

until the police arrived.

I think Mr. Carucci said exactly the same thing, that they knew instinctively that's a different level of concern than a fight, and they handled him in the customary way, passing him off, getting him out, getting him to the front.

I think their state of mind was this is a fight. This guy was just one of the combatants. We're doing our normal thing, sending him on his way, protecting the crowd, protecting the other people.

There was -- there is evidence that there was a cover-up. There was one arrest. Charges were subsequently dismissed. I don't have any more details than that. That's just what I know.

To the extent that the department thinks these subcounts should be upheld, I note specifically that they are targeting Hai Nguyen as the person who was at fault in this cover-up. This is in subcount A. He's mentioned. Subcount B and count 8, and subcount C and subcount D in count 9.

We are unable to defend against the specifics of that part of the allegation because he is unavailable to us for the reasons I explained in connection with our motion for a continuance.

Reflecting back, I think we've heard from

Mr. Barrow and we've heard from Mr. Carucci just -- even though they didn't believe the person they had under their control had been involved in a stabbing, that just the fact that somebody had been stabbed, if they were to do it all over again, they would have called the police for that reason.

Even without knowing where the -- where the assailant was, and I think that is their pattern and practice now.

When they had the -- the beating that occurred inside the club later -- and this is in subcount F on September 9th -- there was no hesitation to call the police and call for emergency medical assistance.

The person was clearly injured to the degree that they made the judgment that they needed to get on-site medical care. They weren't leaving to him the question of "don't you want to get yourself in the hospital?" They acted completely properly.

In all other instances -- and I think the gloss of the testimony from the police officers particularly, and Your Honor, you made an observation yesterday that you felt that they were very straight-forward in their presentation, and I accept that completely.

I think exactly they were very straightforward

in their presentation, and I think they were describing incidents -- particular incidents and their role and their knowledge in those incidents, and I don't think that there's any one incident, other than March 8th, when any of them suggested in any way or added any kind of a fact that would support the inference that they see The Abyss as a problem that rises to the level of a disorderly premises or a problem that their alcohol license should be close because of the particulars alleged in counts 8 and 9.

I think they see that these are incidents and I think that with the exception of the March 8 incident, I don't think any of them were critical of the way that the club had handled their response to the incident.

Even the teen event, the officer -- I'm blanking her name, but the young woman who was clearly at the end of her nightshift and struggling to stay awake, it seems, was -- had talked about her experience with the teen events preceding that and that they had not been a source of any problems.

The witnesses I think consistently saw that one event again as an anomaly and aberration, and these teen events have been held regularly since. There's no suggestion that they've been -- that they've created problems or are evidence of a disorderly premise.

I think there was just something going on that night with that group of people, that tensions were higher. There's a skirmish here, skirmish there, and because of the frequency, the club's security wasn't able to control it the way they are normally able to control it, and the police officers who were on the scene fairly early also got the same vibe and said, "You know, this is just a big group here. They're young. They're on the street. Let's get more officers out," and that's exactly what happened.

I think the response that devolved since then in the dialogue with the Sunnyvale Police Department on how we're going to help prevent that, we're going to have more security and we're going to continue to work to keep the communications going.

We've had many of these teen events since then, no incidents. We're not heard of any problems with these teen events. We've had many teen events before and we've not heard of any problems.

When I think of a disorderly premise, and when I think of the kinds of accusations you've certainly seen and I've seen alleging a disorderly premise, I see ten times more of a pattern of some kind of -- of indications that the premise attracts an unruly crowd and seems to attract this life and make its living off on unruly

crowd.

We don't have that here. We just don't have that here. We have crowds of 3, 4, 500 three nights a week. We have isolated incidents of spontaneous violence within the club, a beating, a fight, and we have the club security responding to it very, very promptly and controlling it and controlling it very effectively.

The beating in the club on -- on the 7th of September, it happened so quickly, the friend of the -- the victim testified it was thirty seconds before security had it broken up.

I think security were right on it. The people involved fled the club. They had to be caught later. It was the security that provided the information on how to identify them, what vehicle they fled in and completely cooperated with the police and the victims in that situation.

I am just not seeing in this accusation the -- the evidence of a pattern that suggests or should suggest to Your Honor that this is a disorderly premises or that this is a premises which under 24200a and b needs to have its license revoked because it's such a threat to the public welfare.

We have condition violations. We are going to attend to those conditions. I'm convinced that

notwithstanding the difficult market circumstances, you know, we can be creative and this club can even comply with the 50/50 condition.

So my suggestion to you is I think that the appropriate penalty in this case is revocation stayed on probation, and the period of suspension and, you know, I'd suggest collectively for all of these incidents and the condition violations, you know, a twenty- to thirty-day suspension in addition to revocation stayed.

ADDITIONAL CLOSING ARGUMENTS BY MR. AGERBEK

MR. AGERBEK: With regard to count 2, Mr. Warren has indicated oh, their testimony was that we have a guard in the rear who has constant routine observation of the parking lot.

No, what we have is a guard in the rear controlling the smoking area to keep people from sneaking in the back door of the premises who then can occasionally check out into the parking lot to see what's going on.

That's not constant observation or maintaining security in the parking lot. Far from it. It's more trying to keep somebody from sneaking in the back door.

With regard to the live entertainment counts, if the argument's going to be we're going to put out to the general public that we have a DJ, and then when they

got caught having live entertainment, oh, no, we don't really have a DJ. We have a mix of music to be heard that was prepared by this DJ.

Well, that's certainly not the way you're advertising it. That's certainly not the appearance that you're giving to the law enforcement or the investigator that was in there. That's certainly not the appearance that you're showing to your customers.

As Ms. Nguyen said, we need to attract the customers in. We have to say. We're telling this one thing to you people, but ha-ha, we're fooling you. We're not doing this to be in compliance. Ha-ha, we made you think we have a DJ, but we really didn't. That just didn't fly.

I will agree with Mr. Warren that -- with regard to the cover-up aspect of it, you know, the department is not relying on the fact that the suspect in the stabbing ID'd or that their dealings with the subject were other than normal.

But for the one curious fact is that Mr. Carucci decided not to ID the person when he testified, "Oh, yeah, it would have been generally to do my practice to do so."

All of a sudden, when he's pushed on it, "I don't do that on people that are over 21."

That kind of seems too contrived on this, but whether or not Mr. Barrow turned the suspect over to Mr. Carucci who then turned him over to somebody else, that's not the cover-up.

The cover-up is don't tell the police, the hand gestures, the hiding the knife. No, I don't think there was a fight here. I don't know what you're talking about.

It's the -- it's the preventing the law enforcement from doing their duties. It's the cleaning up of the blood, there's no blood here. Nobody cleaned up any blood. We don't know what you're talking about.

It's that whole pattern. It has the stench of cover-up. It's not just this one piece that yeah, maybe we should have hung on to the suspect, but we didn't know that he was involved in the stabbing until we let them get away.

Okay. Fine, we can buy this aspect of it. Don't buy the rest. It just does not make sense.

With regard statements were made over the radio, Mr. Barrow said, "I didn't hear it. Mr. Frasier said, "I heard it." Mr. Barrow admitted that there are times when there's incidents going on, it's so hectic. Take the person out the front. He brought them to the back. What are you doing here? I was too focused. He's

kind of shocked. It's the first time he's got a bleeder and he has to use his first aid training for it.

This is not something he's not really trained to deal with. If you want to leave and go away, fine, kind of washed his hands literally and figuratively and just sent him on his way.

With regard to charges being filed, Mr. Warren said, "Well, the charges were dismissed. "

Well, we have no evidence of that. We've been told that the gentleman was arrested for 1489. We have some hearsay statements by an attorney that they're not going to let somebody come in and testify for fear he may be recharged, but we have no evidence.

Not that it's important in the grand scheme of things whether or not the conduct occurred. I just wanted to make sure we had that on the record.

And then, Mr. Warren has argued that the Sunnyvale PD didn't have a problem with the place and it's just this wonderful, happiest place on earth type thing and that everything's hunky-dory.

But we have Officer Plonka who's a beat officer who testified that the place has been a problem for them. She said that. Now they have to station people there. They have to have people go by. They have to have people ready to deal with it.

So we do have testimony that it's been a problem for Sunnyvale PD.

The last thing, Mr. Warren says we've got this dialogue with Sunnyvale PD, and the only meeting they had was to go over the security plan. That's all the testimony we had.

We didn't have testimony about oh, we're going to have all these future meetings and that this is the schedule we're on and addressing these issues.

No. They had a meeting to review and comment on the security plan. That's it. That's the only evidence we have. Anything else is pure speculation at this point.

And so I would submit that the evidence does support finding of a disorderly house, does support finding that this business is operating contrary to the welfare and morals of the public, and therefore the license should be revoked.

JUDGE LEWIS: Okay. With that, this matter will stand submitted and I will issue my proposed decision. Thank you all very much.

Off the record.

(The hearing concluded at 3:20 PM).

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

I, the undersigned, hereby certify that the discussion in the foregoing hearing was taken at the time and place therein stated; that the foregoing is a full, true and complete record of said matter.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing hearing and caption named, or in any way interested in the outcome of the cause named in said action.

IN WITNESS WHEREOF, I have
hereunto set my hand this
_____day of _____,
2009.

_____

Mark I. Brickman CSR No. 5527