GBW | OUR METHOD FOR SUCCESS

HOW DID YOU WIN THAT CASE?

$12 MILLION VERDICT

Keck vs. Bel-Air Bay Club

Failure to properly train employees on how to respond to medical emergencies leads to a multimillion-dollar wrongful death verdict

W.M. KECK
FOUNDATION

Keck Medical
Center of USC
Keck Medicine of USC

Keck
Medicine
of USC

StateFarm
USC
CAL
0
0
Keck Medicine of USC
Continental TIRE
90.00
Coors LIGHT
USC CREDIT UNION
USC CREDIT UNION
HERE TO WIN
FIGHT ON!
Chevron
TDI
R8
A8
A7
A6
A5
A4
A3
Q7
Q5
32
12
33
3

82

5911
THE KECK EFFECT:
Keck Medicine of USC
KeckMedicine.org (800) USC-CARE
1427496
CNG

7835
M
217
THE KECK EFFECT:
MORE SWEET MOMENTS
Keck Medicine of USC
KeckMedicine.org
(800) USC-CARE
BEST HOSPITALS
1135384
CNG

Keck
INSTITUTE FOR SPACE STUDIES

W. M. KECK OBSERVATORY

Maunakea
Island of Hawai`i

The Keck Observatory sits atop Mauna Kea on the Big Island of Hawaii. (Image credit: NASA/JPL)

W. M. KECK FOUNDATION

City of Hope
Columbia University
Howard University
John Hopkins University
The Mayo Clinic
Memorial Sloan-Kettering Cancer Center
Montana State University
Northwestern University
Princeton University
Purdue University
The Salk Institute for Biological Studies
Stanford University
Stony Brook University
Temple University
Texas A&M University
Tulane University
University of Arizona
University of California Berkley
University of California Los Angeles
University of Colorado Boulder
University of Chicago
University of Michigan
University of Notre Dame
University of Texas at Austin
University of Virginia
Vanderbilt University
Washington State University

PRE-TRIAL JURY SELECTION CHALLENGES

- Wealthy Plaintiff
- 74-year-old mom of 48-year-old single son
- No economic damages
- "Tough it out" mentality
- Experiences with heat exhaustion
- Claims that Keck refused a call to 911

WHAT WE LEARNED FROM FOCUS GROUPS

- Defense jurors: People in charge of own health. No need to call 911 if awake.
- Mostly male mentality of "my health is in my hands."
- Men don't see doctor, wait too long, "it's on them."
- Other bad jurors: Minimized prior injuries/cramps
- Women vs. Men

VOIR DIRE QUESTIONS

- Has anyone here been in a situation where you could have called for an ambulance or medical attention, but you chose not to? Thanks for telling me. Why didn't you?

- Has anyone here been in the situation where you called 911 when you might not have needed to? Why did you do that?

VOIR DIRE QUESTIONS

- **Has anyone here been in the situation where someone you felt needed 911 assistance and the person declined?**

VOIR DIRE QUESTIONS

- Show of hands, who here feels that, when it comes to medical emergencies, it's better to be safe than sorry?

CAUSE CHALLENGES

DEALING WITH HOSTILE JURORS

MANAGING OUR STRIKES

GETTING TO THE JURY

LEGAL ISSUES AND MOTIONS

DUTY TO ACT

- *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224 and *Morris v. De La Torre* (2005) 36 Cal.4th 260 that duty includes calling 911 to protect an invitee. The *Morris* Court found "as a general matter a proprietor's special-relationship-based duty to its patrons or invitees includes an obligation to make [a 911] call, or to take other similar minimal measures." (*Id.* at p. 277)

- *Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 337: Criminal cases "analogous" in helping to answer "the distinct but related question" whether a business has an obligation to come to the aid of an injured patron.

DUTY TO ACT

- Timely calling 911 is the minimum
- Standard of Care vs. Burden and Causation

GOOD SAMARITAN

- **Cal. *Health & Safety Code* §1799.102**
- **(1) It is the intent of the Legislature to encourage other individuals to volunteer, without compensation, to assist others in need during an emergency, while ensuring that those volunteers who provide care or assistance act responsibly.**
- **(2) Except for those persons specified in subdivision (a), no person who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct.**

  (c) which reads:

- **Nothing in this section shall be construed to change any existing legal duties or obligations, nor does anything in this section in any way affect the provisions in Section 1714.5 of the Civil Code, as proposed to be amended by Senate Bill 39 of the 2009-10 Regular Session of the Legislature. (Emphasis added).**

ASSUMPTION OF THE RISK

- **Primary (MSJ) vs. Secondary (Comparative fault)**
- **Typically for sports. Defense tried and failed to make this a sports case.**
- **"The risks inherent in the sport not only by virtue of the nature of the sport itself, but also by reference to *the steps the sponsoring business entity reasonably should be obligated to take in order to minimize the risks without altering the nature of the sport.*"**
- **No Primary Assumption of Risk**
- ***Saffro v. Elite Racing, Inc.* (2002) 98 Cal.App.4th 173 – marathon failure to provide hydration**
- ***Morgan v. Fuji Country USA, Inc.* (1995) 34 Cal.App.4th 127 – hit by golf ball.**

MARIJUANA, ALCOHOL, PRIOR MEDICAL CONDITIONS

- *Hernandez v. County of Los Angeles (2014) 226 Cal. App. 4th 1599*
- **Must have a causal connection**
- **Expert opinion required**

Bel-Air Bay Club Ltd. is responsible for any harm caused by the negligence of any of its employees/agents.

The Value of Safety

Better Safe than Sorry

BILL HOWARD
General Manager

DALE PORTEUS
Lower Club Manager

BRENNAN CASSIDY
Athletic Director

RUDY BACON
Head of Security

TROY AUSTIN
Men's Locker Room Supervisor

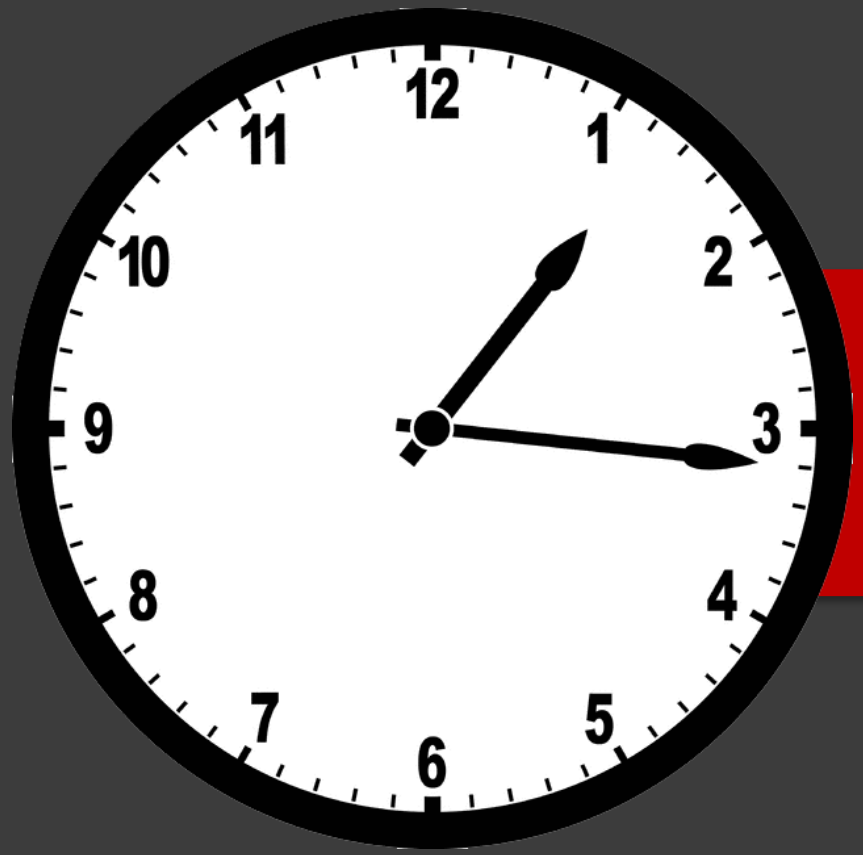
ALEX DAVID
Lifeguard

DAN HARVELL
Locker Room Attendant

JAMES CUMMINGS
Locker Room Attendant

GREENE BROILLET & WHEELER LLP

1:16 PM



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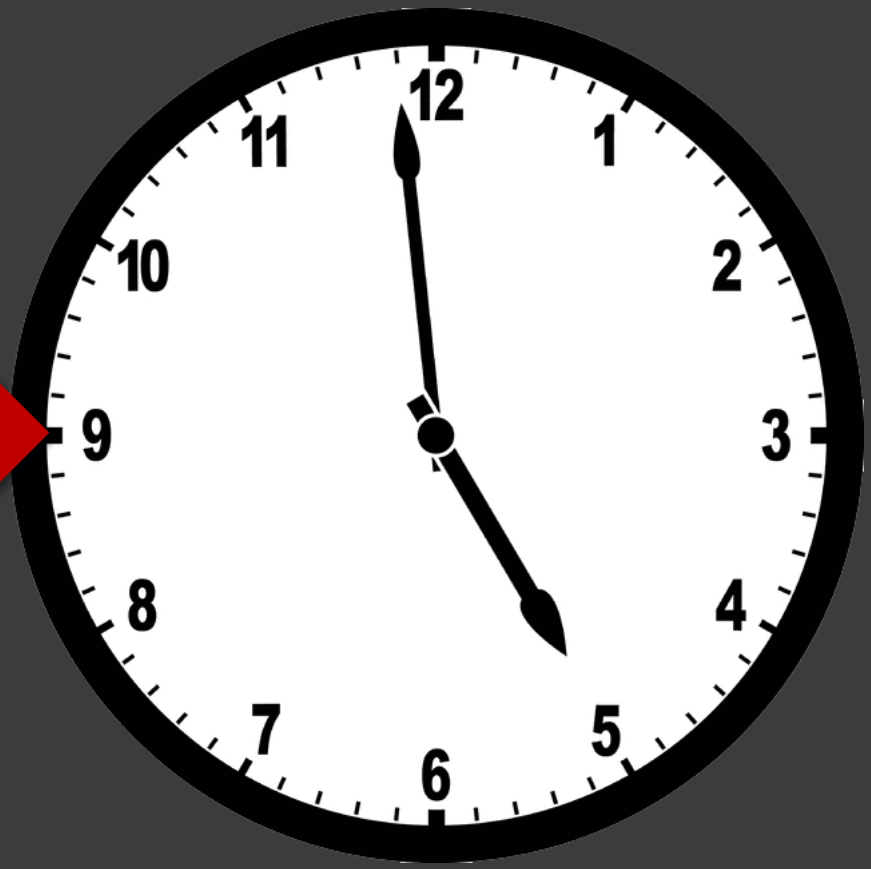


Bel-Air Bay Club Ltd.'s own rules

Bel-Air Bay Club

Pacific Palisades, California

Emergency Procedures Manual

Exhibit 31-01

Bel-Air Bay Club
Pacific Palisades, California

Emergency Procedures Manual

Exhibit 31-18

Heat Exhaustion:

Symptoms:

A. Pale and clammy skin.
B. Pulse is rapid and weak.
C. Victim complains of weakness, headache, or nausea.
D. Victim may have cramps in abdomen or limbs.

Instructions:

1. Have victim lie down with his head level to or lower than his or her body.
2. Move victim to a cool place, but protect him from chilling.
3. Give the victim salt water (1 teaspoon to a quart) if the person is conscious.
4. Call a doctor or paramedic.

American Heart Association Training Workbook

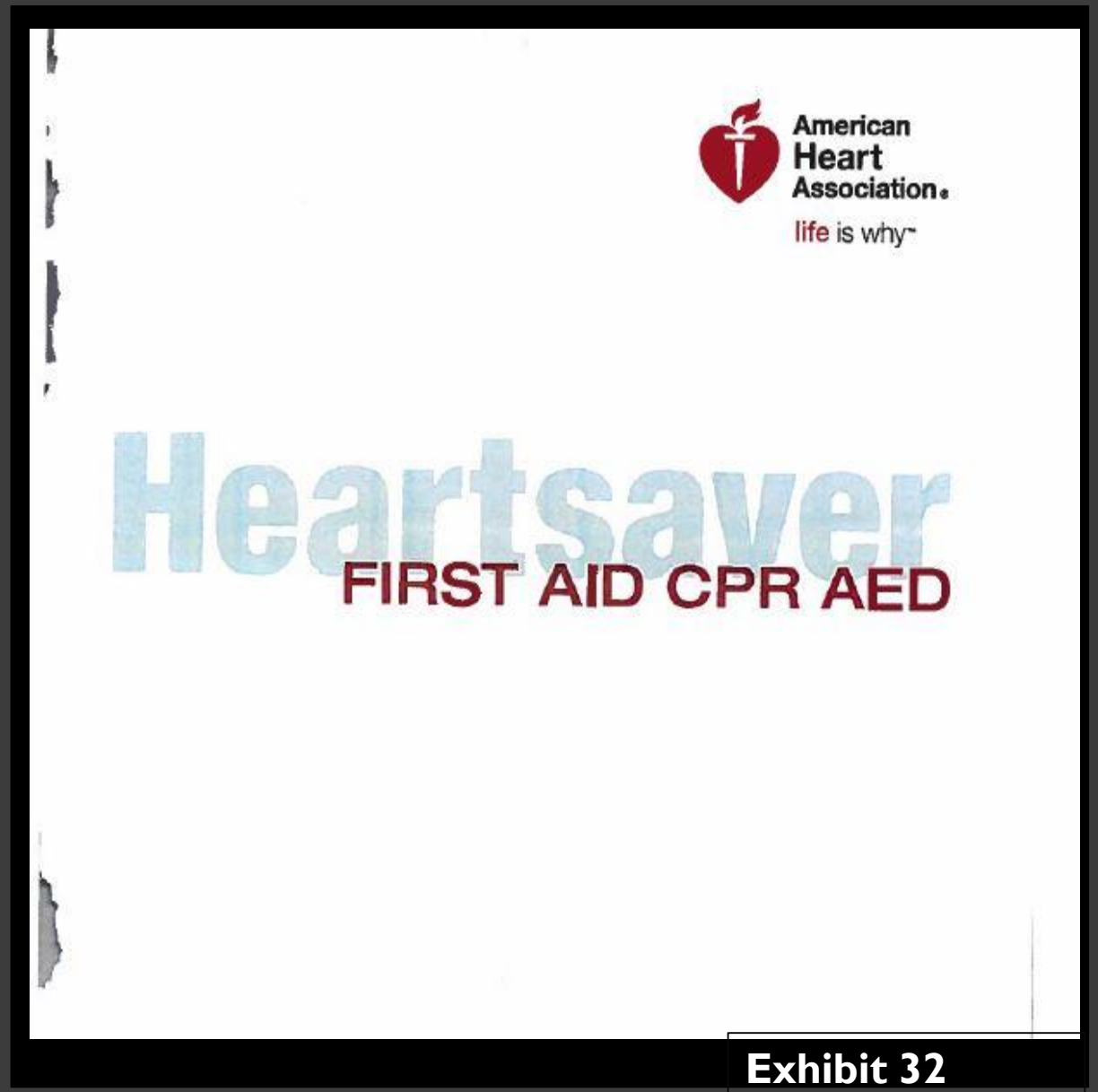

American
Heart
Association.
life is why™
Heartsaver
FIRST AID CPR AED

Exhibit 32

Signs of Heat Cramps

Heat cramps are painful muscle spasms, most often occurring in the calves, arms, stomach muscles, and back.

Signs of heat cramps are

- Muscle cramps
- Sweating
- Headache

Heat cramps are a sign that heat-related problems may continue to get worse if the person doesn't take action.

Actions to Take for Dehydration

If you suspect that a person is dehydrated, contact a healthcare provider right away. The best first aid for dehydration is prevention: make sure a person drinks and eats enough to stay hydrated.

Signs of Heat Exhaustion

A milder condition, such as heat cramps, can quickly turn into heat exhaustion. That's why it's important to recognize and give first aid for heat-related emergencies early.

The signs of heat exhaustion are similar to those of heat stroke:

- Nausea
- Dizziness
- Vomiting
- Muscle cramps
- Feeling faint or fatigued
- Heavy sweating

Actions to Help a Person Who Has Heat Exhaustion

Follow these first aid action steps for heat exhaustion:

Actions to Help a Person Who Has Heat Exhaustion
☐ Get the first aid kit.
☐ Wear PPE.
☐ Phone 9-1-1.
☐ Have the person lie down in a cool place.
☐ Remove as much of the person's clothing as possible.
☐ Cool the person with a cool water spray. If a cool water spray is not available, place cool, damp cloths on the neck, armpits, and groin.
☐ If the person is responsive and can drink, have the person drink something with sugar and electrolytes, such as a sports drink or juice, or water if these aren't available.

When to Phone for Help

Your company may have some instructions about when you should phone the emergency response number (or 9-1-1).

As a general rule, you should phone 9-1-1 and ask for help whenever someone is seriously ill or injured or you are not sure what to do in an emergency.

As a general rule you should phone 9-1-1 and ask for help whenever someone is seriously ill or injured or you are not sure what to do in an emergency.

[redacted]

1:00 PM

1:08 PM

William Keck

9/3/2017 01:10:36.835 PM (PDT)
1:10 PM
William Keck
10. Board Walk

9/3/2017 01:13:53.938 PM (PDT)
1:13 PM
William Keck
10. Board Walk

9/3/2017 01:16:20.064 PM (PDT)
1:16 PM
12. Fitness Terrace

1:30 PM

BILL HOWARD
General Manager

DALE PORTEUS
Lower Club Manager

BRENNAN CASSIDY
Athletic Director

RUDY BACON
Head of Security

TROY AUSTIN
Men's Locker Room Supervisor

ALEX DAVID
Lifeguard

DAN HARVELL
Locker Room Attendant

JAMES CUMMINGS
Locker Room Attendant

GREENE BROILLET & WHEELER LLP

DAN HARVELL TESTIMONY

11/12/19 Page 104:12-18

Q SO YOU FIRST SAW MR. KECK THAT DAY AT ABOUT 1:30, 1:45, SOMEWHERE IN THERE; CORRECT?

A I BELIEVE THAT IS TRUE.

Q AND WHAT YOU SAW WAS HE CAME OVER TO YOU AND TOLD YOU HE WAS CRAMPING AND THAT HE WOULD LIKE YOU TO MASSAGE HIM; CORRECT?

A THAT IS CORRECT.

1:30 PM

2:00 PM

1:30 PM

2:00 PM

2:30 PM

DAN HARVELL TESTIMONY

11/12/19 Page 115:2-12

Q SO WHAT HAPPENED IS -- BECAUSE THE CRAMPS WERE NOT GOING AWAY, EVEN THOUGH YOU WERE MASSAGING HIM -- YOU BEGAN TO BECOME CONCERNED ABOUT WHAT WAS GOING ON; RIGHT?

A I WAS CONCERNED THAT HIS CRAMPS WERE NOT GOING AWAY FAST.

Q AND, IN FACT, YOU WERE ALSO CONCERNED THAT HIS CRAMPS WERE SPREADING FROM ONE CALF TO THE OTHER CALF TO HIS UPPER LEGS AND NOW TO AT LEAST ONE ARM; RIGHT?

A YES.

Rule of Thumb

DAN HARVELL TRIAL TESTIMONY

11/12/19 Page 115:13-17

Q ALL OF THESE THINGS GAVE YOU ENOUGH CONCERN THAT YOU ASKED MR. CUMMINGS, YOUR FELLOW LOCKER ROOM ATTENDANT, WHETHER HE MIGHT CHECK TO SEE IF ONE OF THE MEMBER-DOCTORS WOULD COME AND TAKE A LOOK; RIGHT?

A THAT'S TRUE.

DAN HARVELL TRIAL TESTIMONY

11/12/19 Page 115:18-20

Q AND THAT'S ALSO ABOUT WHEN YOU CONTACTED MR. PORTEOUS TO LET HIM KNOW WHAT WAS GOING ON; RIGHT?

A THAT'S RIGHT.

BILL HOWARD
General Manager

DALE PORTEUS
Lower Club Manager

BRENNAN CASSIDY
Athletic Director

RUDY BACON
Head of Security

TROY AUSTIN
Men's Locker Room Supervisor

ALEX DAVID
Lifeguard

DAN HARVELL
Locker Room Attendant

JAMES CUMMINGS
Locker Room Attendant

GREENE BROILLET & WHEELER LLP

JAMES CUMMINGS TESTIMONY

11/12/19 Page 67:22-28

Q DIDN'T YOU TELL US IN YOUR DEPOSITION THAT YOU TALKED WITH HARVELL ABOUT WHETHER YOU WERE DEALING WITH A SERIOUS CONDITION HERE?

A YES, I DO THINK WE HAD A DISCUSSION, SORT OF.

Q NOW, WHEN YOU SAID "SERIOUS CONDITION," YOU WERE TALKING ABOUT A SERIOUS MEDICAL CONDITION; RIGHT?

A YES, I THINK SO.

JAMES CUMMINGS TESTIMONY

11/12/19 Page 101:6-9

Q YEAH, HE APPEARED TO YOU -- THAT'S ALL WE CAN ASK YOU BECAUSE WE KNOW YOU WEREN'T INSIDE HIS MIND, BUT TO YOU, HE APPEARED TO BE FATIGUED; RIGHT?

A YES.

JAMES CUMMINGS TESTIMONY

11/12/19 Page 60:7-12

Q YOU DIDN'T JUST SAY "9-1-1" TO HIM. YOU SAID, "MAYBE HE NEEDS TO BE IN A HOSPITAL," DIDN'T YOU?

A YEAH, I BELIEVE I SAID SOMETHING ALONG THE LINES OF, I THINK, "DOES HE NEED TO GO TO THE HOSPITAL?" I SHOULD SAY.

JAMES CUMMINGS TESTIMONY

11/12/19 Page 104:20-23

Q YOUR THINKING THAT HE SHOULD GO TO A HOSPITAL WAS BASED ON WHAT YOU WERE LOOKING AT RIGHT IN FRONT OF YOU; RIGHT?

A YES.

1:30 PM 2:00 PM 2:30 PM 2:45 PM **3:00 PM**

DAN HARVELL TRIAL TESTIMONY

11/12/19 Page 153:17-22

Q OKAY. SO OF ALL OF THE PEOPLE, INCLUDING YOURSELF, WHO WERE IN THE VICINITY WHERE MR. KECK WAS LAYING THAT DAY, DID YOU OVERHEAR ANY OF THE PEOPLE SAY, "MR. KECK, WOULD YOU LIKE US TO MOVE YOU OVER TO MR. CASSIDY'S OFFICE WHERE IT'S AIR-CONDITIONED"?

A NO.

Asking to Give First Aid

When you come upon an ill or injured person and the person responds, introduce yourself as a first aid provider before you touch the person. Ask if you may help. Anyone has the right to refuse.

Asking to Give First Aid

- ☐ When you come upon an ill or injured person and the person responds, introduce yourself as a first aid provider before you touch the person.
- ☐ Ask if you may help.
  - If the person agrees, give first aid.

If the person refuses, phone 9-1-1 and stay with him until help arrives.

  - If the person is confused or can't answer, assume the person wants help.

DAN HARVELL TRIAL TESTIMONY

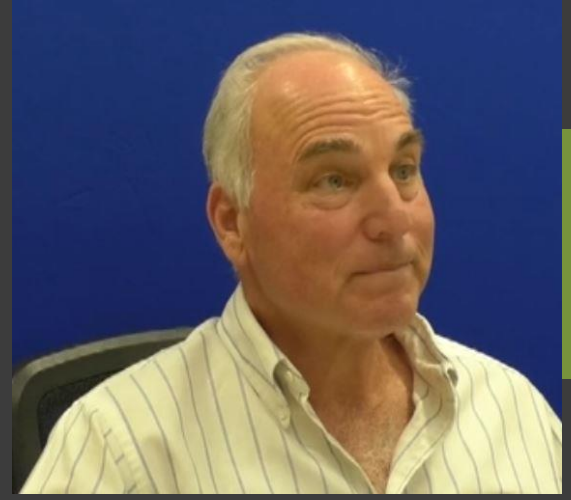
11/12/19 Page 162:10-15

Q SO WHEN THE SUPERIORS CAME IN, DID ANY OF THEM ASK YOU "HOW LONG HAS THIS BEEN GOING ON?"

A NO.

Q DID YOU VOLUNTEER TO THEM HOW LONG THIS HAD BEEN GOING ON?

A I DON'T REMEMBER THAT.



GLEN KOVACS TRIAL TESTIMONY

11/20/19 Page 121:16-19

Q AND YOU WANT TO KNOW HOW LONG THE PERSON HAS BEEN IN THIS CONDITION; CORRECT?

A THAT WOULD BE ONE OF THE QUESTIONS; HOW LONG, WHAT'S BEEN GOING ON, WHAT'S THE SITUATION.

BILL HOWARD
General Manager

DALE PORTEUS
Lower Club Manager

BRENNAN CASSIDY
Athletic Director

RUDY BACON
Head of Security

TROY AUSTIN
Men's Locker Room Supervisor

ALEX DAVID
Lifeguard

DAN HARVELL
Locker Room Attendant

JAMES CUMMINGS
Locker Room Attendant

GREENE BROILLET & WHEELER LLP

BRENNAN CASSIDY TRIAL TESTIMONY

11/13/19 Page 40:16-18

Q YOU DON'T REMEMBER MR. HARVELL TELLING YOU THAT HE HAD OFFERED 9-1-1 TO MR. KECK, DO YOU?

A I DON'T REMEMBER.

BILL HOWARD
General Manager

DALE PORTEUS
Lower Club Manager

BRENNAN CASSIDY
Athletic Director

RUDY BACON
Head of Security

TROY AUSTIN
Men's Locker Room Supervisor

ALEX DAVID
Lifeguard

DAN HARVELL
Locker Room Attendant

JAMES CUMMINGS
Locker Room Attendant

RUDY BACON TRIAL TESTIMONY

11/13/19 Page 159:17-23

17 Q AND WHEN YOU SAW MR. KECK, WHAT WERE YOU
18 THINKING?
19 A WELL, I -- I THOUGHT LIKE I ALWAYS THOUGHT
20 WHEN I SAW HIM IN THE LOCKER ROOM. HE WAS LAYING
21 THERE COOLING OUT. THE ONLY THING THAT DREW MY
22 ATTENTION WAS THEY MOVED THE BENCH, AND DAN GAVE HIM A
23 MASSAGE OF HIS CALF.

GREENE BROILLET & WHEELER LLP

MEMBER MARK TESTIMONY

11/15/19 Page 23:22-24:1

Q OKAY. CAN YOU DESCRIBE WHAT WAS GOING ON.
CAN YOU DESCRIBE WHAT BILLY LOOKED LIKE.
A SO THE FIRST TIME I WENT, MY GENERAL
RECOLLECTION IS THAT HE DIDN'T LOOK GREAT, HE WAS
LYING DOWN -- AND THAT THE TWO PEOPLE FROM THE CLUB --
I THINK THEY HAD SOME LIQUIDS THERE THAT THEY WERE
GIVING HIM -- BUT MY GENERAL MEMORY IS WHEN I FIRST
CAME THROUGH, HE DIDN'T LOOK GREAT.

MEMBER MARK TRIAL TESTIMONY

11/15/19 Page 27:14-18

Q CAN YOU TELL US AFTER YOU ASKED DALE PORTEOUS AND RUDY BACON IF BILLY WAS OKAY, WHAT THE RESPONSE WAS.

A THE RESPONSE WAS SOMETHING ALONG THE LINES OF "HE'S DEHYDRATED, BUT HE'S GOING TO BE FINE."

Why is this happening?

Lack of Adequate Training

Lack of Drills

Lack of Communication

1:30 PM 2:00 PM 2:30 PM 2:45 PM 3:00 PM **3:30 PM**

9/3/2017 03:34:45.822 PM (PDT)
3:34 PM
Rudy Bacon
41. Beach Desk

MEMBER DR. K

Page 20:17-21

Describe for me what you saw about Mr. Keck.

A He appeared in some distress. He was having his legs massaged by the attendant. He was complaining of muscle cramps.

MEMBER DR. K. TESTIMONY

Page 22:17-23:1

Q And why did you go down to the front desk?
A Because I thought the locker room attendant was in over his head in trying to take care of Mr. Keck.
Q What about the situation made you think that the locker room attendant was in over his head?
A Just the level of the -- of Mr. Keck's distress. He was flushed. He looked uncomfortable.
Q When you say "flushed," what do you mean?
A Red, sweaty.

GLEN KOVACS TRIAL TESTIMONY

11/20/19 Page 94:5-7

BUT IF THEY ARE NOT GIVEN PERMISSION, AND THEY ARE GETTING WORSE, THE ANSWER WOULD BE, YES, THEY WOULD WANT TO CALL 9-1-1.

GREENE BROILLET & WHEELER LLP

GLEN KOVACS TRIAL TESTIMONY

11/20/19 Page 122:23-27

Q SO IF THE PERSON, LONG-TERM, IS NOT GETTING BETTER, AND EVEN MORE SO IF THE PERSON IS GETTING WORSE, EVEN IF THEY REFUSE AID, YOU TELL IN YOUR CLASS "CALL 9-1-1 AND LET THEM DEAL WITH IT"; RIGHT?

A WHEN IN DOUBT, I WOULD SAY CALL 9-1-1.

1:30 PM 2:00 PM 2:30 PM 2:45 PM 3:00 PM 3:30 PM **3:45 PM**

BILL HOWARD
General Manager

DALE PORTEUS
Lower Club Manager

BRENNAN CASSIDY
Athletic Director

RUDY BACON
Head of Security

TROY AUSTIN
Men's Locker Room Supervisor

ALEX DAVID
Lifeguard

DAN HARVELL
Locker Room Attendant

JAMES CUMMINGS
Locker Room Attendant

GREENE BROILLET & WHEELER LLP

BRENNAN CASSIDY TRIAL TESTIMONY

11/12/19 Page 182 and 183

Q AND SO WHAT YOU DID WAS A LITTLE BIT BEFORE
4:00 O'CLOCK, YOU WENT BACK TO SEE MR. KECK A SECOND
TIME; RIGHT?
A THAT IS CORRECT.

Q HE WAS STILL SWEATING; RIGHT?
A HE WAS STILL SWEATING.

BRENNAN CASSIDY TRIAL TESTIMONY

11/13/19 Page 39:15-23

"Q. DID IT STRIKE YOU, THOUGH, AS UNUSUAL THAT HE HAD NOT MOVED HIS POSITION IN OVER AN HOUR?

"A. YES.

"Q. WHY DID IT STRIKE YOU AS UNUSUAL?

"A. I WANTED HIM TO BE UP AND MOVING, AT LEAST GET IN THE SHOWER OR COME TO MY OFFICE."

BRENNAN CASSIDY TRIAL TESTIMONY

11/13/19 Page 87 and 88

Q BETWEEN THAT FIRST TIME AND THE SECOND TIME THAT YOU WERE UP THERE, YOU HAD NOT SEEN ANY IMPROVEMENT IN MR. KECK'S CONDITION; RIGHT?

Q YOU HAD NOT SEEN ANY IMPROVEMENT; RIGHT?
A CORRECT.
Q AND HE WAS STILL SWEATING; RIGHT?
A I BELIEVE SO.

BILL HOWARD
General Manager

DALE PORTEUS
Lower Club Manager

BRENNAN CASSIDY
Athletic Director

RUDY BACON
Head of Security

TROY AUSTIN
Men's Locker Room Supervisor

ALEX DAVID
Lifeguard

DAN HARVELL
Locker Room Attendant

JAMES CUMMINGS
Locker Room Attendant

GREENE BROILLET & WHEELER LLP

BILL HOWARD
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JAMES CUMMINGS
Locker Room Attendant

GREENE BROILLET & WHEELER LLP

BRENNAN CASSIDY TRIAL TESTIMONY

11/12/19 Page 185:17-25

Q AND MR. DAVID SAID TO YOU, "I'M THE ONLY LIFEGUARD FOR THIS PARTICULAR POST, AND I CAN'T COME UP THERE RIGHT NOW." RIGHT?

A THAT IS CORRECT.

Q AND THEN HE SAID TO YOU, "IF YOU ARE UNCOMFORTABLE AT ALL, CALL 9-1-1." RIGHT?

A THAT IS CORRECT.

Q DID YOU CALL 9-1-1?

A NO, I DID NOT.

1:30 PM 2:00 PM 2:30 PM 2:45 PM 3:00 PM 3:30 PM 3:45 PM **4:00 PM**

1:30 PM 2:00 PM 2:30 PM 2:45 PM 3:00 PM 3:30 PM 3:45 PM 4:00 PM **4:15 PM**

BILL HOWARD
General Manager

DALE PORTEUS
Lower Club Manager

BRENNAN CASSIDY
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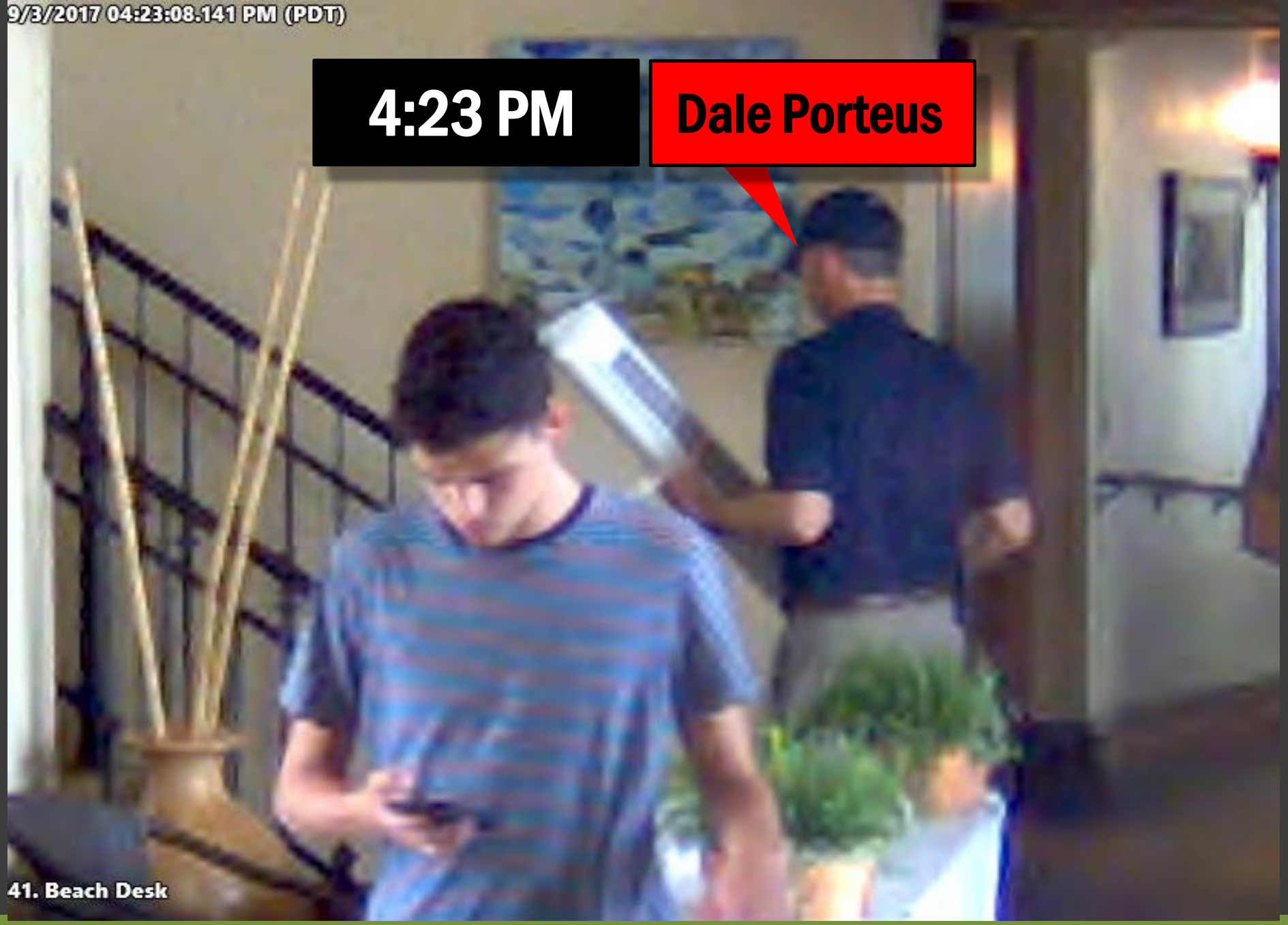
GREENE BROILLET & WHEELER LLP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4:23 PM
Dale Porteus
41. Beach Desk

RUDY BACON TESTIMONY

11/13/19 Page 160:16-20

Q AND WHAT DO YOU REMEMBER ABOUT HIS RESPONSE?
A MR. KECK WAS ALWAYS LAID BACK. HIS RESPONSE WAS LAID BACK. IN FACT, HE WAS LAYING ON THE FLOOR WITH HIS ARM ABOVE HIS HEAD LIKE HE WAS RELAXING, AND SO HE RESPONDED TO ME IN HIS USUAL WAY.

MEMBER MARK TRIAL TESTIMONY

11/15/19 Page 29:11-20

Q OKAY. DESCRIBE FOR ME THE SITUATION IN THE LOCKER ROOM WHEN YOU SAW BILLY THE SECOND TIME.

A SO THE SECOND TIME THAT I WENT TO MY LOCKER -- THIS IS LATER IN THE AFTERNOON -- BILLY WAS STILL THERE, WHICH I -- I JUST NOTED THAT HE WAS STILL THERE. HE WAS LYING ON HIS SIDE. HE LOOKED OUT OF IT THE SECOND TIME. AND BY THE SECOND TIME, THERE WAS A FAN, KIND OF A LARGE FAN THAT HAD BEEN PUT, KIND OF, NEXT -- YOU KNOW, NEAR WHERE RUDY AND DALE AND BILLY KECK WERE.

MEMBER MARK TRIAL TESTIMONY

11/15/19 Page 45:9-15

Q , BETWEEN THE TIME YOU SAW MR. KECK THE FIRST TIME AND WHEN YOU SAW HIM THE SECOND TIME, DID MR. KECK'S CONDITION APPEAR TO IMPROVE IN ANY WAY?

A NO. I THOUGHT HE LOOKED -- HE LOOKED WORSE THE SECOND TIME. I THOUGHT HE REALLY LOOKED OUT OF IT THE SECOND TIME THAT I WAS THERE.

1:30 PM 2:00 PM 2:30 PM 2:45 PM 3:00 PM 3:30 PM 3:45 PM 4:00 PM 4:15 PM **4:30 PM**

DAN HARVELL TRIAL TESTIMONY

11/12/19 Page 126:3-7,15-18, 27

Q AND WHAT YOU DID WAS BECAUSE AT THAT POINT HE WAS STILL SWEATING, YOU PICKED UP A TOWEL AT AROUND 4:30 OR SO AND STARTED FANNING MR. KECK TO TRY TO COOL HIM DOWN; RIGHT?

A THAT IS CORRECT.

Q IT WAS YOUR PERCEPTION, AND THE REASON YOU STARTED FANNING HIM WITH A TOWEL, IT WAS YOUR PERCEPTION THAT FOR THAT WHOLE PERIOD OF TIME, HE NEVER COOLED OFF; RIGHT?

THE WITNESS: YES.

GREENE BROILLET & WHEELER LLP

JAMES CUMMINGS TESTIMONY

11/12/19 Page 100:1-3

Q BUT THREE AND A HALF TO FOUR HOURS LATER,
MR. KECK WAS STILL SWEATING, WASN'T HE?
A YES.

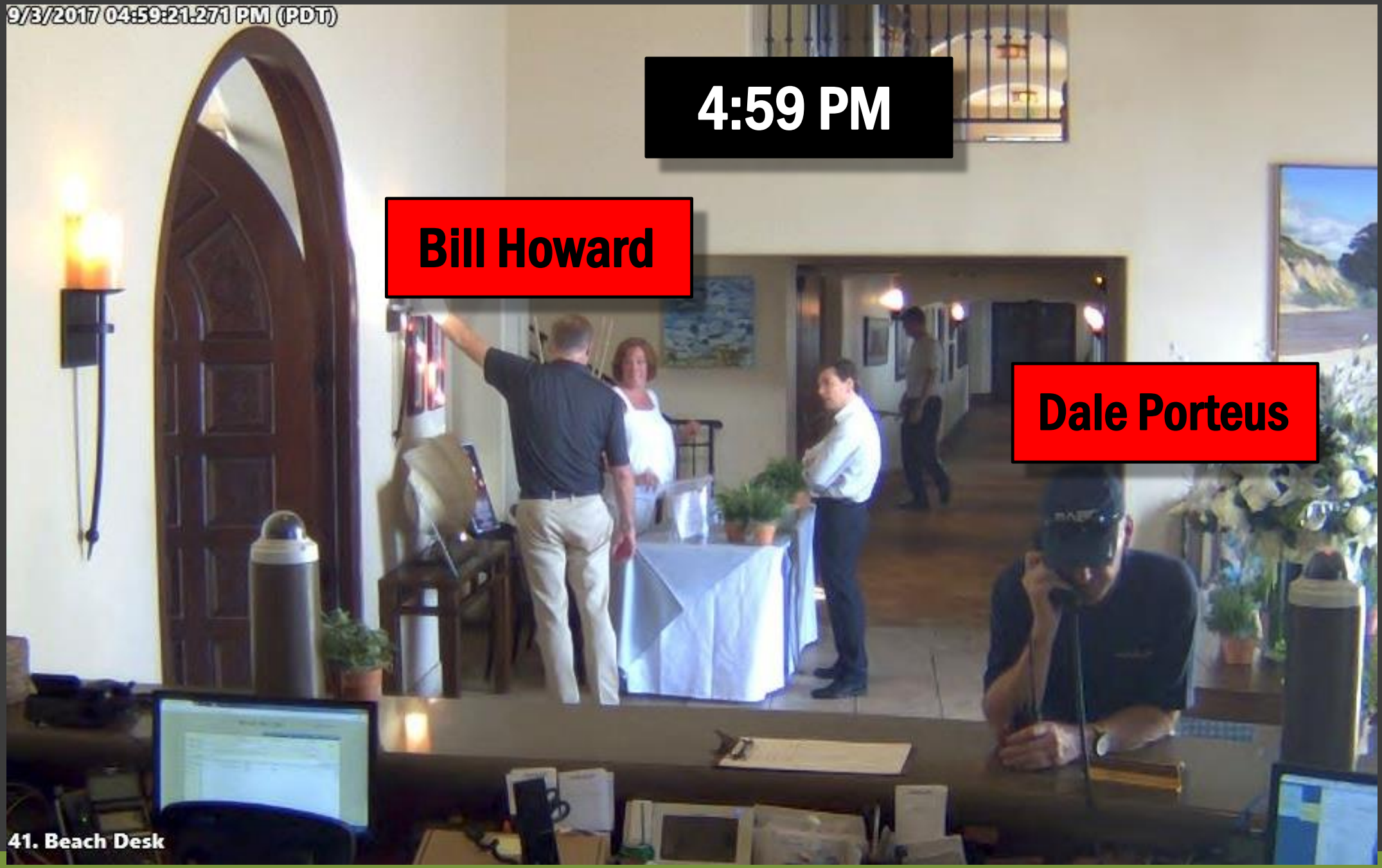
JAMES CUMMINGS TESTIMONY

11/12/19 Page 68:6-11

Q NOW, DID YOU EVER HEAR MR. KECK, WHO HAS NOW PASSED AWAY, DID YOU EVER HEAR HIM ALL DAY THAT DAY REFUSE A CALL TO 9-1-1? DID YOU EVER HEAR HIM SAY THAT?

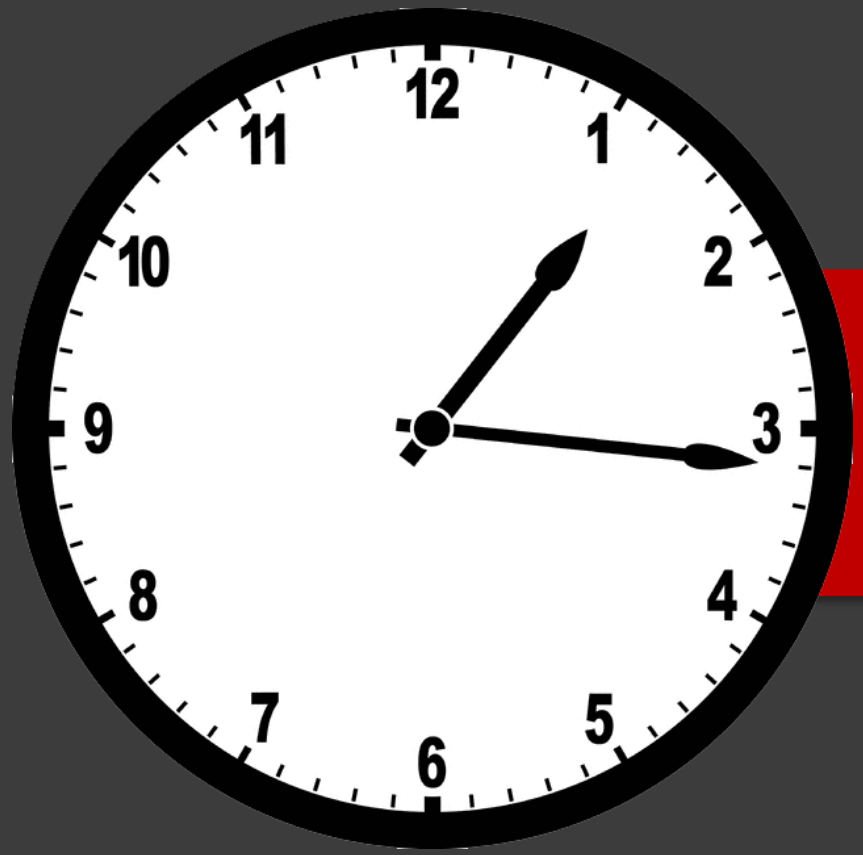
A I NEVER PERSONALLY HEARD HIM REFUSE THE 9-1-1 CALL.

1:30 PM 2:00 PM 2:30 PM 2:45 PM 3:00 PM 3:30 PM 3:45 PM 4:00 PM 4:15 PM 4:30 PM **4:59 PM**


9/3/2017 04:59:21.271 PM (PDT)
4:59 PM
Bill Howard
Dale Porteus
41. Beach Desk

AUDIO

1:16 PM



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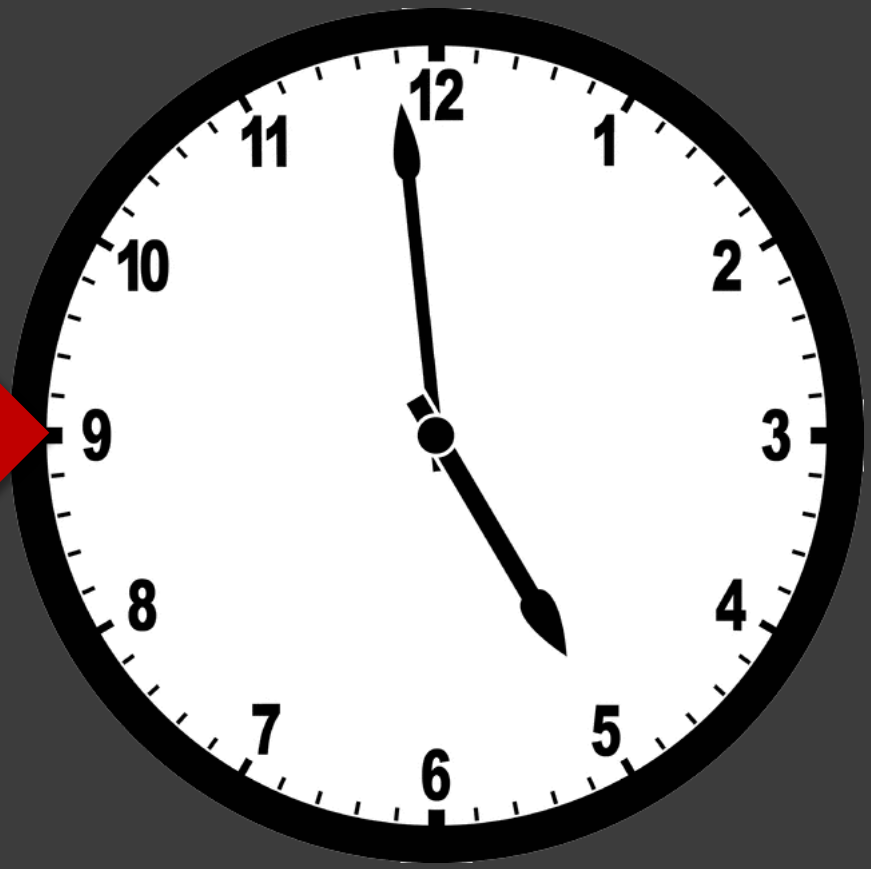

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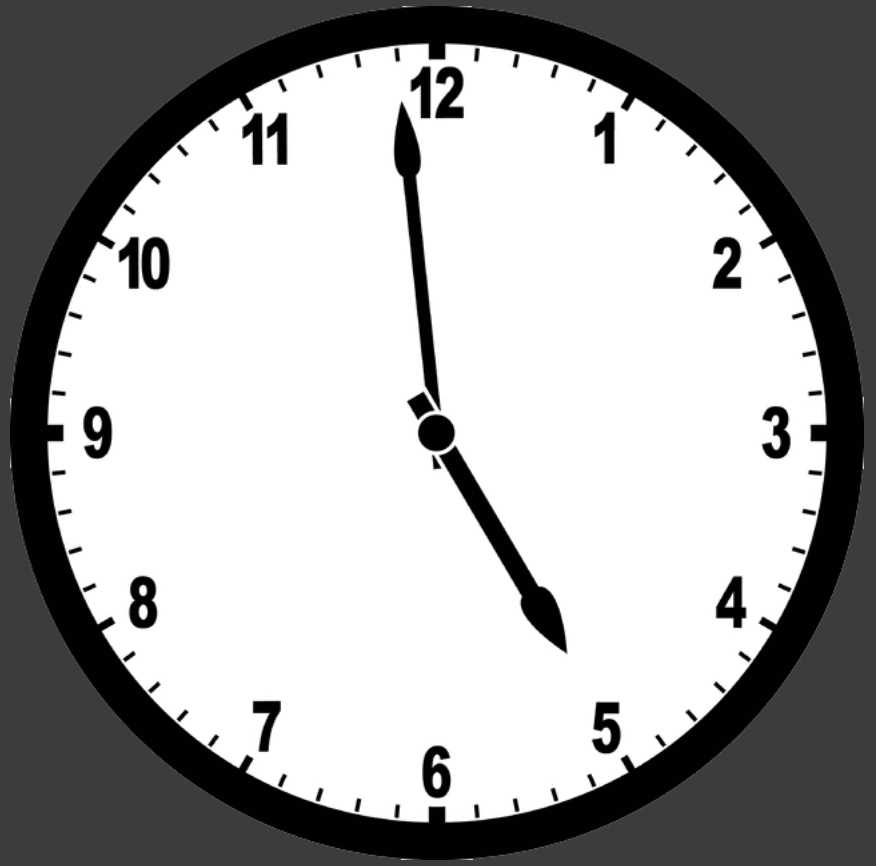
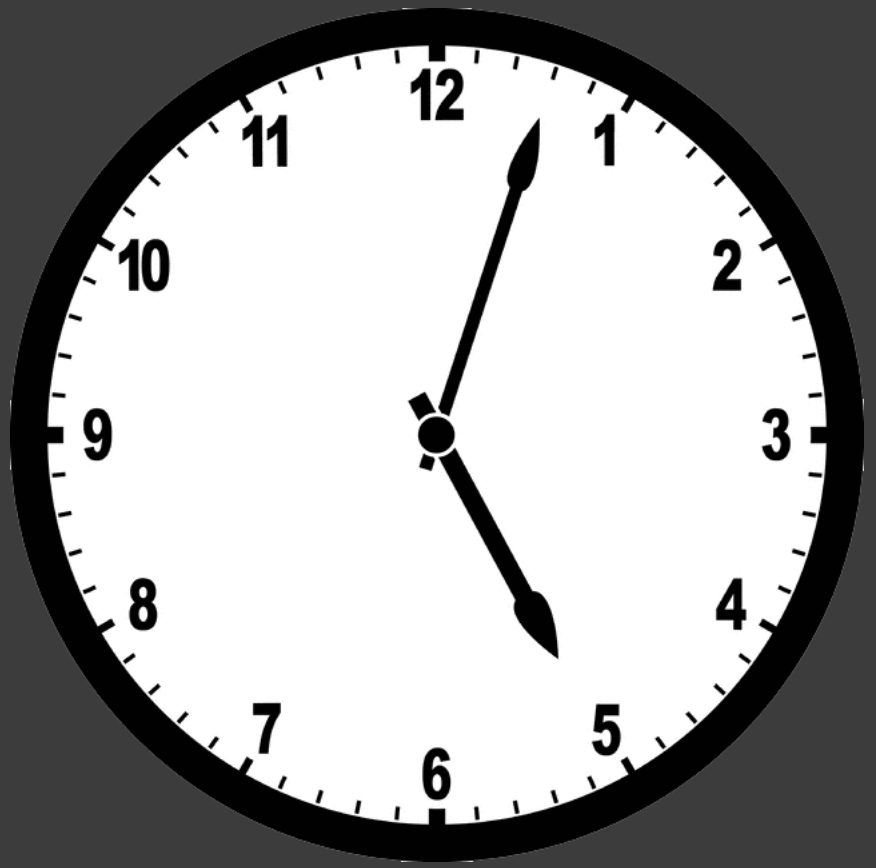
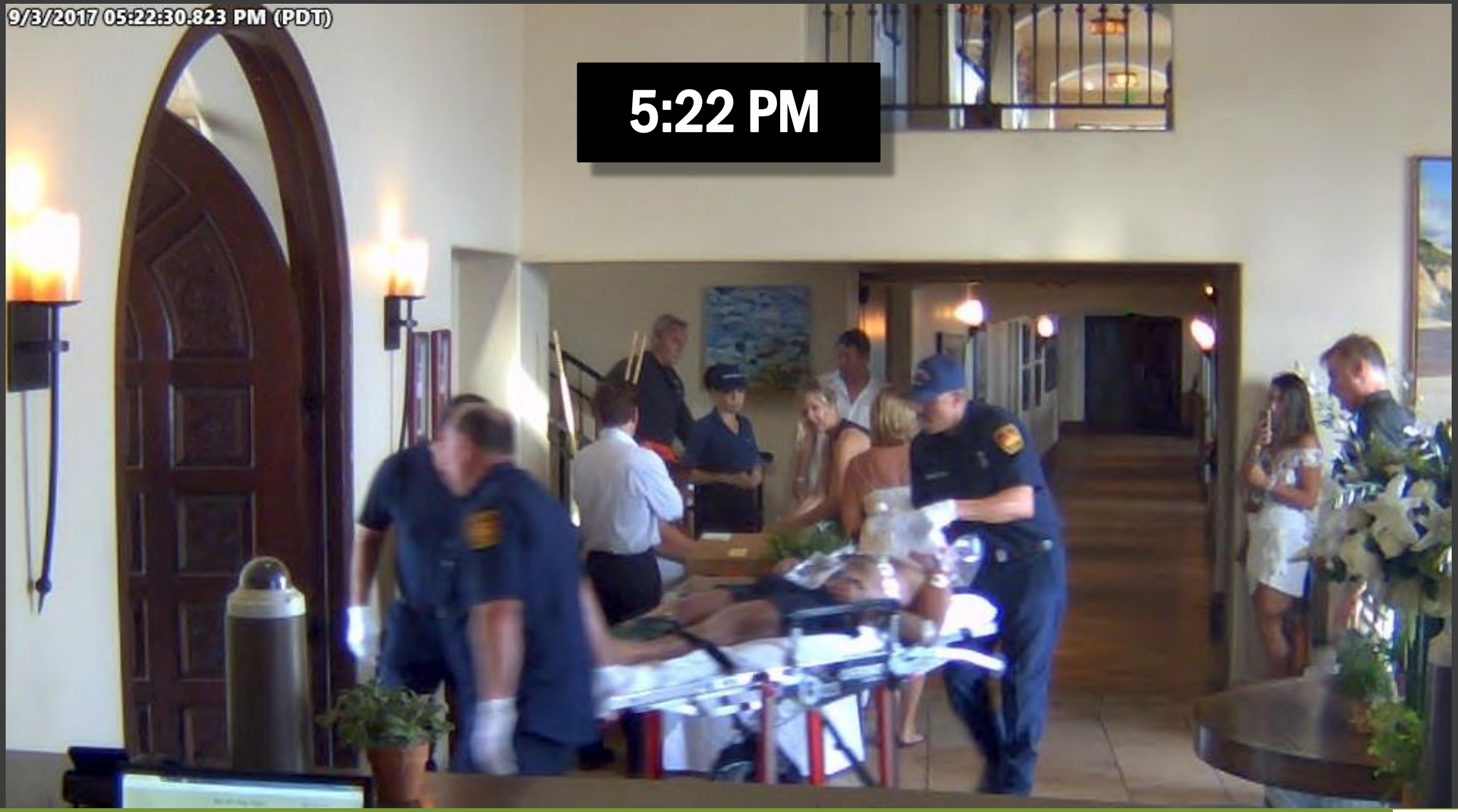


5:03 PM



4 minutes for 911 to arrive

9/3/2017 05:03:46.349 PM (PDT)
5:03 PM


9/3/2017 05:22:30.823 PM (PDT)
5:22 PM

5:34 PM

HYPERKALEMIA

ARRHYTHMIA

5:58 PM

PRONOUNCED

COMPARATIVE FAULT

DAMAGES

The Value of Safety

Keck Video

2 YEARS PAST
14.5 YEARS FUTURE

Exhibit 158-002

FINAL DIAGNOSIS
Autopsy Examination
[Items in brackets indicate clinical diagnoses]

I. ABNORMAL RESULTS OF POSTMORTEM VITREOUS FLUID ELECTROLYTE ANALYSIS

A. ELEVATED POTASSIUM LEVEL: 19 MMOL/L (MEAN EXPECTED VALUE AT 21-24 HOUR POSTMORTEM INTERVAL: 15.75 MMOL/L)

1. [ANTEMORTEM ELECTROCARDIOGRAM SHOWING TALL T-WAVES]

2. [VENTRICULAR ARRHYTHMIA AND CARDIAC ARREST]

B. DECREASED SODIUM LEVEL: 126 MMOL/L (NORMAL: 135-150 MMOL/L)

C. ELEVATED CREATININE LEVEL: 1.7 MG/DL (NORMAL: 0.6-1.3 MG/DL)

D. ELEVATED UREA NITROGEN LEVEL: 30 MG/DL (NORMAL: 8-20 MG/DL)

Histologic examination of the soleus muscle did not reveal features of rhabdomyolysis.

CLINICO-PATHOLOGIC CORRELATION

The findings of elevated creatinine and urea nitrogen levels in vitreous fluid suggest acute kidney injury. As described in Case Summary, the decedent had participated in a racquetball tournament for 3-4 hours and subsequently did not feel well, requiring rest on the locker room floor for 2 hours at a high ambient temperature. This would lead to dehydration, acute kidney injury and electrolyte imbalances as evidenced by decreased sodium and increased potassium levels in vitreous fluid. A likely explanation for the antemortem tall T-waves and subsequent fatal arrhythmias on electrocardiogram was hyperkalemia, although no antemortem blood chemistry studies were performed. It should be noted that no studies exist to evaluate the relationship between postmortem vitreous fluid potassium levels and electrocardiogram abnormalities to support the explanation.

In addition to acute kidney injury, low sodium levels can be seen in the setting of exercise-induced hyponatremia (EAH). This is a condition seen after sustained physical exertion, such as endurance athletic events. Risk factors for the development of EAH include extreme hot or cold environment, excessive drinking at an excess of 1.5L per hour, use of nonsteroidal antiinflammatory drugs, and pre-exercise overhydration. The underlying pathophysiology is thought to be a combination of several factors: sodium loss via sweating, impaired renal water excretion, excessive oral fluid intake, metabolic water production, and inability to mobilize sodium stores. Clinical manifestations associated with EAH range from no symptoms to weakness, dizziness, headache, and nausea/vomiting, to cerebral edema, altered mental status, seizure, pulmonary edema, coma, and death.[1]

Additionally, potassium is rapidly released from muscle during exercise. In a study evaluating the effect of bicycling intensity on potassium balance, a linear relationship was demonstrated between exercise intensity and arterial potassium levels.[2] Interestingly, a small study measuring potassium levels and evaluating electrocardiogram abnormalities in 6 healthy squash players (prompted by documented sudden deaths and ventricular arrhythmias in squash players in the United Kingdom) found rapid potassium shifts but only sinus tachycardia without ventricular arrhythmias.[3]

Other significant autopsy findings are the sequelae of hypertensive disease, including cardiomegaly with left ventricular hypertrophy and renal interstitial fibrosis. The findings of focal mottled necrosis of the myocardium demonstrated by tetrazolium chloride staining, focal left lower lobe pulmonary hemorrhage and rib fractures are thought to be secondary changes from resuscitation efforts.

Liver toxicology was positive only for cyclobenzaprine, which is a muscle relaxant. Although a number of side effects can occur, they usually do not need medical attention. The finding of respiratory bronchiolitis in the lungs is usually seen in the setting of cigarette smoking.

In summary, the immediate cause of death was cardiac arrhythmia secondary to exercise-induced hyperkalemia, hyponatremia and acute kidney injury in the setting of hypertensive disease.

REFERENCES

1. Rosner MH, Kirven J. Exercise-associated hyponatremia. Clin J Am Soc Nephrol. 2007;2:151–61.

2. Vøllestad JI, Sejersted OM, Hallén J. Effect of exercise intensity on potassium balance in muscle and blood of man. The Journal of Physiology. 1994;475:359-68.

3. Struthers AD, Quigley C, Brown MJ. Rapid changes in plasma potassium during a game of squash. Clinical Science. 1988;74:397-401.

Exhibit 158-004

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Histologic examination of the soleus muscle did not reveal features of rhabdomyolysis.

Exhibit 158-004

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DOCTOR FISHBEIN TRIAL TESTIMONY

11/14/19 Page 87:26-88:5

A SO THEY TOOK A SAMPLE OF ONE OF THE CALF MUSCLES CALLED THE SOLEUS MUSCLE, IT'S INSIDE OF THE BIGGER ONE, WHICH IS THE GASTROCNEMIUS MUSCLE. THE OTHER THING, IF SOMEONE HAS RHABDOMYOLYSIS, THE MUSCLE HAS PIGMENT IN IT, SORT OF A REDDISH-BROWN PIGMENT. AND THAT PIGMENT GETS IN THE BLOOD, AND YOU CAN SEE IT IN THE KIDNEYS, AND THERE WASN'T ANY PIGMENT IN THE KIDNEYS.

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DOCTOR FISHBEIN TRIAL TESTIMONY

11/14/19 Page 88:6-10

A PERSON'S URINE WILL ACTUALLY CHANGE COLOR IF THERE'S RHABDOMYOLYSIS, BUT THERE WASN'T ANY PIGMENT IN THE KIDNEY. THERE WASN'T ANY NECROSIS OR CELL DEATH OF THE MUSCLE, SO THERE WAS NO EVIDENCE OF RHABDOMYOLYSIS.

DOCTOR FISHBEIN TRIAL TESTIMONY

11/14/19 Page 88:11-14

Q OKAY. BUT IF YOU'RE DEALING WITH RHABDOMYOLYSIS ANYWAYS, GET HIM TO A HOSPITAL, AND THAT'S STILL A REVERSIBLE CONDITION; CORRECT?

A IT'S A TREATABLE CONDITION, YES.

SAFETY IS NOT IMPROPER ARGUMENT

- *Delgado v. Trax Bar & Grill*, (2005) 36 Cal. 4th 224, 237 stated that it is a, "well established rule that commercial proprietors (because they generally stand in a special relationship with their tenants, patrons, or invitees) are required to maintain land in their possession and control in a reasonably safe condition."

- CACI 1001 which sets out the basic standard of care for a landowner states in part that the Defendants must "keep the property in a reasonably safe condition."

CONCLUSION

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