

**LIQUOR AND BEER MEETING
LOCAL LICENSING AUTHORITY
CITY OF GRAND JUNCTION, COLORADO
TWO RIVERS CONVENTION CENTER, 159 MAIN STREET**

MINUTES

WEDNESDAY, AUGUST 18, 1999, 8:00 A.M.

Alternate Hearing Officer Jim Majors

I. **CALL TO ORDER** – The meeting was convened at 8:15 a.m. Those present were Alternate Hearing Officer Jim Majors, Assistant City Attorney John Shaver and Senior Administrative Assistant Christine English.

II. **APPLICATIONS TO RENEW LIQUOR AND BEER LICENSES**

1. Loco Incorporated dba Loco Food Store No. 12, 107 Grand Avenue, 3.2% Beer Off Premise

The application was in order and approved.

2. RCI Denver dba Applebee's Neighborhood Grill & Bar, 711 Horizon Drive, Hotel-Restaurant

Donny Berryhill, manager, was present. The Health Department reported several violations and a reinspection is scheduled for August 27, 1999. The application was approved contingent on a favorable reinspection report from the Health Department.

3. Fishers Liquor Barn, Inc. dba Fishers Liquor Barn, 2438 F Road, Retail Liquor Store

The application was in order and approved.

III. **CHANGE IN CORPORATE STRUCTURE**

1. Fraternal Order of Eagles #595, 1674 Highway 50, Club
Vern Roark, vice president, replaces John McCulley

Ms. English stated there was an error on the agenda. Vern Roark is replacing John McCulley and John McCulley is replacing Steve Dowdy. The application was in order and approved.

2. Albertson's Inc dba Albertson's Food Center #886, 1830 North 12th Street, 3.2% Beer Off Premise

Richard L. King, president – resigned – no replacement anticipated
Joseph B. Scott, director, replaces Warren E. McCain

The application was in order and approved.

IV. **APPLICATION FOR RENEWAL AND DECISION ON CAUSE FOR LATE FILING**

1. La Providencia LLC dba La Bamba Mexican Dining, 2900 North Avenue, Hotel-Restaurant, **License Expires August 12, 1999, Filed Renewal on July 29, 1999**

Laurie Chavez and Fransico Cervantes, La Providencia LLC managing members, were present. Ms. English stated that last year a late renewal application was filed also prior to a transfer of ownership. Ms. Chavez stated the renewal application was never received. Mr. Majors asked Ms. Chavez if the address on the application or the physical address of the establishment had changed. Ms. Chavez stated no it had not. Ms. Chavez stated there have been problems with not receiving their mail in the past. Mr. Majors advised that the law states one must file the renewal application 45 days prior to the expiration date. Since the applicant filed the application before the license expired, good cause could be found. Mr. Majors admonished the applicant to file the renewals in a timely manner in the future. If the renewal application is not received at least 45 days prior to the expiration date, to contact the City Clerk's Office immediately.

The Health Department and the Fire Department reported violations. Reinspections are scheduled. Mr. Shaver recommended approval of the renewal application contingent on favorable reports from the Health and Fire Departments.

The application was in order and approved contingent on favorable reinspection reports from the Health and Fire Departments.

V. APPLICATION FOR SPECIAL EVENTS PERMIT

1. B.P.O. Elks Lodge 575 for a Malt, Vinous and Spirituous Liquor Special Events Permit for "Oktoberfest '99 on October 2, 1999, to be held on Main Street Between 5th and 7th Streets from 10:00 a.m. to 11:00 p.m.

Applicant: B.P.O. Elks Lodge 575
President: Eldon Boh, 1533 Crestview Court, Grand Junction
Event Mgrs: Roy Weaver, 2450 Wellington Court, Grand Junction
Ron Ward, 739 Corral Drive, Grand Junction

Roy Weaver, event manager, was present. Ms. English read into the record the letter received from the Elks Lodge (see attached). The Notice of Hearing had been posted in a timely manner. The application was in order and approved.

2. Latin-Anglo Alliance Foundation Inc. for a 3.2 % Beer Special Events License for "Sixteenth of September" Celebration on September 18, 1999 to be held on Main Street Between 3rd and 4th Street to 2nd and Main Street From Rood Avenue to Colorado Avenue on 3rd Street from 10:00 a.m. to 12 midnight.

Applicant: Latin-Anglo Alliance Foundation Inc.
President: Michael Archuleta, 2652 Hemlock Ct, Grand Junction
Event Mgr: Jose' A. Cruz, 535 Teco Street, Grand Junction

Jose Cruz, event manager, was present. Ms. English read into the record the letter from the Latin-Anglo Alliance Foundation Incorporated (see attached). The Notice of Hearing had been posted in a timely manner. Mr. Cruz stated the location is going to be held at 3rd and Main Street and the hours will be from 10:00 a.m. to midnight. The application was in order and approved.

VI. DECISION – RESOLUTION OF FINDINGS AND DECISION RE: APPLICATION FOR NEW LICENSE

1. Thrifty Payless Incorporated dba Rite Aid #6367, 400 North 1st Street, 3.2% Beer Off Premise

President: Charles Kibler, 120 Woodridge Drive, Harrisburg, PA
V. President/
Director: Frank M. Bergonzi, 1150 Stoney Run Drive, Hummelstown, PA
Secretary: I. Lawrence Gelman, 1430 Appletree Drive, Harrisburg, PA
Treasurer: Joseph S. Speaker, 5 Montego Court, Dillsburg, PA
Director: James E. Krahulec, 781 Dogwood Terrace, Boiling Springs, PA
Director: Elliot Gerson, 538 Bridgeview Drive, Lemoyne, PA

John Stonbraker, attorney, was present. Ms. English read into the record the results of the survey (see attached). The Notice of Hearing was posted in a timely manner and the diagram submitted matched the premises. A Certificate of Occupancy has been received in the City Clerk's Office from the Mesa County Building Department.

Mr. Stonbraker stated he had two (2) witnesses and asked that Mr. Max Scott come forward to testify. Mr. Scott stated his address to be 2902 5th Street, Boulder, Colorado. Mr. Scott stated his company was hired to circulate the petition. The company has circulated approximately 5,000 petitions statewide with 45% of those being for 3.2% beer liquor licenses. Mr. Scott briefly described the process of obtaining the signatures on the petition and verified that the report contained all the findings. There were 94 favorable signatures and 15 opposed. This represented an 84% approval for issuance of the license. Mr. Stonbraker asked that Mr. Scott's report and the original petitions be admitted into evidence and asked if there were any questions for Mr. Scott. The Hearing Officer had no questions for Mr. Scott.

Mr. Stonbraker asked Mr. Matthew Chamberlain, store manager, to come forward to testify. Mr. Chamberlain stated he has been employed with Rite Aid for thirteen (13) months. The store has been open for three (3) weeks. The sales associates, upon first day of hire, view a video which instructs them on the requirements for 3.2% beer sales and they complete a workbook. After this, they are tested prior to being put on a register. The cash register system, upon scanning a beer product, prompts the sales associate to ask for a photo ID prior to the sale. Any one appearing under the age of thirty (30) is asked for a photo ID. The Hearing Officer had no questions for Mr. Chamberlain. Mr. Stonbraker respectfully requested the granting of the 3.2% beer off premise liquor license.

Mr. Shaver stated the reasonable requirements of the neighborhood and the desires of the adult inhabitants of the neighborhood are not being met and recommended approval of the application.

There was no one present in opposition to the license. The application was in order and approved. Mr. Majors requested a resolution be prepared for his signature on this matter.

Mr. Majors requested a break at 8:55 a.m. The meeting resumed at 9:00 a.m.

VII. HEARING ON VERIFIED COMPLAINT

1. IN THE MATTER OF Wigout Productions Incorporated dba Mesa Theatre and Club, Regarding Violation of 12-47-901(a) C.R.S. UNLAWFUL ACTS; Regarding Violation of 12-47-901(5)(a)(I) C.R.S. UNLAWFUL ACTS and Colorado Liquor Regulation 47-900; and, Regarding Violation of Colorado Liquor Regulation 47-900

Mr. Thomas Volkmann, attorney for Wigout Productions Incorporated dba Mesa Theatre and Club, was present along with David Prather, officer and director of Wigout

Productions Inc. Ms. Stephanie Rubenstein, staff attorney, was present representing the City of Grand Junction.

Ms. Rubinstein stated there are three (3) separate counts. The first count is sale of alcohol to a person under 21. Investigator Steven King charged that on January 21, 1999 a person under the age of 21 was served an alcoholic beverage at the Mesa Theatre. The second count is sale to a visibly intoxicated persons, Officer Cal Atkinson and Officer Mike Smith charge that on the evening of January 8, 1999, there were two (2) separate incidents where visibly intoxicated persons had been involved in altercations at the Mesa Theatre. The third count is allegations that the Mesa Theatre has not conducted the premises in a decent, orderly and respectable manner, and had permitted undue noise or other disturbances or activity offensive to the senses of an average citizen. Detective Robert Culver will testify on this count. The Grand Junction Police Department has had to increase the number of officers to that area due to the number of fights and other disturbances at the Mesa Theatre.

Mr. Volkmann waived opening statement but reserved the right to do so later.

Ms. Rubinstein called Investigator Steven King. Officer King was duly sworn in by Mr. Majors.

Mr. Majors: Please state your name.

Officer King: Steven Allen King.

Ms. Rubinstein: Officer King, would you please state what your current occupation is.

Officer King: I am an investigator for the Complex Crime Unit for the Mesa County Sheriff's Department.

Ms. Rubinstein: What was your employment prior to this?

Officer King: I was a patrolman with the Grand Junction Police Department.

Ms. Rubinstein: When did you leave the Grand Junction Police Department?

Officer King: Approximately two months ago.

Ms. Rubinstein: On January 21, 1999, were you employed with the Grand Junction Police Department?

Officer King: Yes, I was.

Ms. Rubinstein: Were you on duty that night?

Officer King: Yes, I was.

Ms. Rubinstein: Could you please explain what your duties were on that evening?

Officer King: It was normal patrol duties. I came on duty about 8:00 p.m. and was doing bar checks at different locations throughout my area of responsibility.

Ms. Rubinstein: Was one of those areas the Mesa Theatre?

Officer King: Yes it was.

Ms. Rubinstein: Did you investigate the Mesa Theatre that evening?

Officer King: Yes I did.

Ms. Rubinstein: Is the Mesa Theatre within the City of Grand Junction, State of Colorado?

Officer King: Yes.

Ms. Rubinstein: What did you observe at the Mesa Theatre on that evening?

Officer King: Mesa Theatre was having an "Over and Under" night which allows both people over the age of 21 and under the age of 21 to be in the bar. I went in to do a bar check. I contacted three people that were in the 21and over area of the bar. All three were drinking Corona beers.

Ms. Rubinstein: Can you explain how the bar was situated on that night to accommodate both persons who were over 21 and under 21.

Officer King: They had an area up in the upper section that had been roped off and also had a doorman at the entrance. Everyone on the other side of this area was supposedly 21 years of age and allowed to drink. Everyone on the other side was under 21 and were just dancing and had access to soft drinks, etc.

Ms. Rubinstein: Were there any markings, or any bands or anything like that which would distinguish which was 21 from a person who was under 21?

Officer King: They were giving out bands for the people who were 21 and up. They were yellow or pink bands that went on people's wrists.

Ms. Rubinstein: The three people you mentioned, what drew your attention to those three people on that evening?

Officer King: They looked young.

Ms. Rubinstein: Were they wearing the bands that you mentioned?

Officer King: Yes, they were.

Ms. Rubinstein: When you approached those three persons, what did you determine their ages were?

Officer King: I approached them and asked them to see some ID. They said they had all ready shown their ID at the door. I advised them that I still needed to see some ID if they were going to be in the bar, in this section. All three were males. Two of them had ID's showing that they were over the age of 21. The third person, Jarrod Williams, said he was over 21 but did not have his ID with him. I talked with him a little bit more about that. I asked him how he had gotten into the bar itself. I also advised him that it was a felony to misrepresent yourself as far as your name and age. That it was a criminal matter. At that point, he advised me that he was 18 and not 21.

Ms. Rubinstein: Were you able to determine if Mr. Williams had any identification indicating he was 21?

Officer King: He had identification indicating he was 18. I believe he probably had a fake driver's license, but I was not able to confiscate that. I wasn't able to find it.

Ms. Rubinstein: Did Mr. Williams have an alcoholic beverage?

Officer King: Yes. I watched him drink a Corona. He and the two guys he was with.

Ms. Rubinstein: Did you issue a summons on that evening?

Officer King: Yes, I issued a summons to Jarrod Williams, for underage possession and consumption of alcohol. I issued a summons to the bartender that gave Jarrod the Corona, and I also contacted the manager/owner, David Prather, and issued him a summons also.

Ms. Rubinstein: How did you determine who the bartender was who had given Mr. Williams the alcohol.

Officer King: From statements that Jarrod Williams had made and the fact that there was only one place in that area serving Corona.

Mr. Volkmann: The evening this occurred, can you estimate how many people were in the Mesa Theatre at the time you entered.

Officer King: It was approximately 10:30 p.m. It was not that busy. I would guess 80 people both over and under the age of 21.

Mr. Volkmann: Prior to entering the Mesa Theatre for a bar check on January 21, had you been in that establishment before doing other bar checks?

Officer King: Yes.

Mr. Volkmann: In any of those bar checks or on the evening of January 21, did you ever take an opportunity to review the process through which patrons are either allowed or refused entry into the bar area where alcohol beverages are served?

Officer King: That evening I stood at the doorway and watched for a few minutes before I went in to see what was going on. I watched the doormen checking ID's.

Mr. Volkmann: Did you watch the process of the issuance of wristbands?

Officer King: I did, but not for very long.

Mr. Volkmann: Was there more than one spot where ID's were checked?

Officer King: No. I think at that point it wasn't busy enough, there was one guy checking ID's and one guy taking the cover charge and handing out wristbands.

Mr. Volkmann: How many people were in the bar area itself?

Officer King: My recollection of the bar area is, there were probably two or three different areas that are bar areas. There is one downstairs, one serving beer in the 21 and up section and there was a mixed drink section up there.

Mr. Volkmann: To your recollection, were there alcoholic beverages being served at the downstairs bar area?

Officer King: No. That was the whole idea was under 21 was downstairs and every one else was up.

Mr. Majors: For the purpose of the Hearing Officer, when you are referring to the downstairs and upstairs areas, the downstairs is the bar that is present when you walk in the doors of the establishment. There is a little lounge below that and the restrooms are there. The upstairs bar is after you have gone into the theatre and walked up to where the projection area used to be for the movie?

Mr. Volkmann: I am assuming both the beer and the mixed drink area you referred to is in the upstairs bar area.

Officer King: That is correct.

Mr. Volkmann: Can you estimate at the time you were talking to Mr. Williams and his friends, how many people were in the upstairs bar area?

Officer King: Ten or fifteen, not many at all.

Mr. Volkmann: Did you ever have Mr. Williams empty all of his pockets in your presence?

Officer King: No. I had him empty his wallet as I was writing him a summons in my car, but no I did not attempt to have him empty his pockets, which is probably why his fake ID got by me.

Mr. Volkmann: Did you ever discuss his fake ID with his companions that evening?

Officer King: I discussed how they had gotten into the bar and how Mr. Williams had gotten into the bar. His statement was the fact that someone had just let him in. I didn't believe that, and his two friends were not going to go against what he was saying to get him in more trouble. They were fairly reluctant in talking to me about him being involved.

Mr. Volkmann: It is a separate offense, is it not, for Mr. Williams to provide a false ID to misrepresent his age in entering a drink establishment?

Officer King: Yes, absolutely. Which is the reason both he and his friends did not want to bring that up.

Mr. Volkmann: As I understand your testimony earlier, Mr. Williams, when you asked him if he were 21, he said in fact that he was, but he did not have identification.

Officer King: Yes.
Mr. Volkmann: Did he also give you a birth date?
Officer King: Yes he did. It struck me as unusual as he gave me the 22nd day of January, making the next day his birthday. It was January 22, 1978 as what he gave as his birth date, off the top of his head.
Mr. Volkmann: When asked how he got in the bar, it was his story that he was just let in by someone?
Officer King: He knew someone downstairs and they knew he was 21 and they just let him in.
Mr. Volkmann: Did you go downstairs to talk to any of the representatives of the Mesa Theatre as to whether or not they knew this fellow and let him in?
Officer King: I remember having a discussion with the head of security for Mesa Theatre. The discussion was that nobody was let in without an ID. If they had a band on, they had shown an ID and were 21. I did not take Jarrod Williams down there and say, "Did you let this guy in?" I actually took him out to my police car, wrote him a summons, talked to him for a little while and then let him go. I then went back into the bar.
Mr. Volkmann: Did you not take Mr. Williams to any of the security or ID check people at Mesa Theatre because you understood Mr. Williams story to be credible, relative to having been let in?
Officer King: Yes.
Mr. Volkmann: I have no further questions.
Mr. Majors: Redirect.
Ms. Rubinstein: Earlier, when Mr. Volkmann asked you if he had watched the employees of Mesa Theatre check ID's, were the employees aware that you were standing there?
Officer King: Absolutely. I was standing pretty much right next to them as they were doing that.
Ms. Rubinstein: As far as Mr. Williams, did you have any evidence that he had a fake ID?
Officer King: None.
Ms. Rubinstein: When he told you he was 21, did he show you an ID indicating he was 21?
Officer King: No, he did not.
Ms. Rubinstein: That is all the questions I have.
Mr. Majors: Re-cross.
Mr. Volkmann: Ms. Rubinstein just asked you whether or not there was any evidence that Mr. Williams had a fake ID and you responded there was not. To focus in on that, you testified earlier that in fact the people checking ID's at the Mesa Theatre told you no one was allowed in without presenting an ID, correct?
Officer King: Correct.
Mr. Volkmann: You had no evidence, similarly, that any one was in fact let in without an ID other than the fact that Mr. Williams was present in the bar and stated to you that he didn't have to present an ID, correct?
Officer King: Correct.
Mr. Volkmann: No further questions.
Mr. Majors: I have a couple questions, Officer King. Counsel will be allowed to ask questions on the basis of the questions I ask. Were you dressed in your patrol uniform that evening?
Officer King: Yes.

Mr. Majors: When you first approached Mr. Williams and asked for an ID, I understood you to say that he said he was 21. Is that correct?

Officer King: Yes.

Mr. Majors: Please tell me again what happened when you asked him for an ID. I am unclear as to what happened with the fake ID after that point. I think you testified that you believed he had a fake ID, but you couldn't locate it. Tell me a little bit more about that.

Officer King: I walked up and asked all three of them for some proof of their age. At that point, the other two gentlemen that had ID were showing it to me and I was looking at it. All three were sitting up along a rail. He was the last one. At that point, it would have been easy for him, if he thought he was going to get caught with a fake ID, to either put it somewhere in the bar, hand it off to one of his friends. My attention at that point was directed towards the driver's licenses of the other two gentlemen that I was talking to. By the time I got to him, his statement was "I am 21, but I don't have my ID with me." I asked him again how he got into the bar and he stated, "They know me here and they just let me in." At that point I felt like I needed to look into that a little bit further.

Mr. Majors: If I recall, you did not ask him to empty his pockets?

Officer King: No. It wasn't until we got out to my patrol car and I was writing him the summons that I had him empty his wallet. But no I did not. At that time there was a lot going on and it was probably a mistake on my part, but I did not go through his pockets.

Mr. Majors: You never located a false ID?

Officer King: No, I never did.

Mr. Shaver: One question. Officer King, did you locate an official identification?

Officer King: He had a Colorado drivers license that showed he was 18. It gave his date of birth as 10/18/80. In my report, there was a drivers license number on the ID. I don't know whether you need it, but I can give that to you if you want.

Mr. Majors: Ms. Rubinstein, Mr. Volkmann, any questions based on my questions?

Ms. Rubinstein: Do you have any evidence that he did in fact get rid of a fake ID?

Officer King: No, I don't. This is all speculation on my part.

Mr. Majors excused the witness.

Ms. Rubinstein called Officer Cal Atkinson. Officer Atkinson was duly sworn in by Mr. Majors.

Ms. Rubinstein: Would you state your name and current occupation.

Officer Atkinson: Officer Cal Atkinson, a police officer for the City of Grand Junction for approximately 3 ½ years. Current duties are as a patrol officer involving routine patrol duties.

Ms. Rubinstein: In your training as a police officer, have you had any opportunity to be trained in determining if a person is visibly intoxicated?

Officer Atkinson: Yes. I went through the Rocky Mountain Institute Traffic Safety School. I graduated from that about 2 ½ years ago.

Ms. Rubinstein: In determining when a person is intoxicated, other than blood tests or breath tests, what indicators do you look for in general?

Officer Atkinson: There are numerous indicators that would lead you to believe that someone is under the influence of alcohol: a strong odor of alcoholic beverage on someone's breath; eyes would be blood

shot, red and watery; speech would be slurred; and, people would be unbalanced.

Ms. Rubinstein: Were you on duty on January 8, 1999?

Officer Atkinson: Yes.

Ms. Rubinstein: Were you called to the Mesa Theatre?

Officer Atkinson: No I was not. I was there on a routine bar check.

Ms. Rubinstein: On that evening, what did you observe at the Mesa Theatre?

Officer Atkinson: It was about 12:30 in the evening. Whenever I work that area of town I try to cut off problems before they happen if I can. At that time, that bar had been receiving a lot of calls for service with a large population going there. I went into the bar about 12:30. There were a lot of people there. It was full.

Ms. Rubinstein: Can you tell me approximately how many people were there?

Officer Atkinson: It is a large bar and I would estimate 300 to 350 people.

Ms. Rubinstein: Could you see how many employees were there? Specifically bartenders?

Officer Atkinson: Quite a few bartenders. There were two when you first walk in the door at the first main bar. When you walk upstairs, there were two more. Maybe they weren't all bartenders but they were helping bring more alcohol to the bar, taking cash and things like that.

Ms. Rubinstein: In the first bar area, you stated there were two bartenders. How many persons were in that area getting drinks at that particular bar?

Officer Atkinson: The bar was packed, to the point where when you walked into the bar you had trouble walking freely. You had stop, walk sideways, say, "Excuse me", maybe making a few feet and trying to work your way around. The bartenders were extremely busy.

Ms. Rubinstein: In the lower area where you said there were 2 bartenders, how many persons were in that area?

Officer Atkinson: I would estimate approximately 45 to 50 people. Some in chairs, some on their feet, some in line. These bartenders were also extremely busy.

Ms. Rubinstein: On that evening, were you called to assist the Mesa Theatre employees with an altercation?

Officer Atkinson: Yes. I was in the main part of the bar overlooking the dance floor area where I could oversee as many people as possible. A security person, who was up on the stage, announced over the P.A. system for security to assist with a fight on the dance floor.

Ms. Rubinstein: Did you assist in this and what did you observe?

Officer Atkinson: I could see before I even looked at the dance floor, there was a main instigator causing the fight. A large group had gathered around him. The whole dance floor was completely full of people. I had to wade through several people to get to the person. There was also some security persons there.

Ms. Rubinstein: Who was the person who was the instigator of the fight?

Officer Atkinson: He was identified as Jack Stanley Derramer.

Ms. Rubinstein: When you attempted to stop the fight, could you explain what happened.

Officer Atkinson: There was a large crowd involved. I could not tell at that time who had been hit and who had not been hit. Since I identified him as the main instigator, I wanted to get a hold of him, restrain him and get him out of the bar. I had a lot of trouble restraining him due to the fact that he would not do what I was telling him.

Ms. Rubinstein: Did you notice whether or not he had been consuming alcohol?

Officer Atkinson: Yes, he appeared extremely intoxicated.
Ms. Rubinstein: How did you determine that?
Officer Atkinson: By trying to talk to him. I was trying to explain to him to let me have his hands, to quit resisting and that he was under arrest and to put his hands behind his back. I had several moments to observe his facial expressions and in talking to him, he had a strong odor of alcohol on his breath. He had poor balance, and his eyes were red and blood shot.

Ms. Rubinstein: At any time that evening, did you see any bartenders serve Mr. Derramer?
Officer Atkinson: No I did not.
Ms. Rubinstein: Explain what happened in the course of you trying to arrest him.
Officer Atkinson: I would be able to get a hold of one hand, put a handcuff on that hand. There was a security person there helping me also. There is a rail separating the dance floor from the area where you can sit at tables. Mr. Derramer had one hand clasped onto the railing and I had one hand behind his back. He refused to give me his other hand. It was a bad situation for me at the time as there were several people around me. Finally I was able to grab the other hand and force it behind his back, put on the other hand cuff and attempt to walk him off the dance floor. He did not walk on his own. He had to be pushed and forced to walk.

Ms. Rubinstein: Why did he have to be forced to walk?
Officer Atkinson: By resisting arrest, obviously. I felt after contacting him that he had consumed enough alcohol that he was out of control.
Ms. Rubinstein: What happened after you left the Mesa Theatre?
Officer Atkinson: Mr. Derramer assaulted one person in the Mesa Theatre. He punched him in the eye, which was the reason for the fight. A security personnel, Ty Bassette, he was assisting me in trying to get Mr. Derramer off the dance floor, he was also a part of the assault. I had a civilian ride-along with me at the time. He had accompanied me into the bar. I transported Mr. Derramer to the jail. He was still out of control, enraged, and while walking into the jail he kicked my civilian ride-along in the groin. Mr. Derramer had to be physically taken to the ground and the detention staff had to come out and assist me in getting him into an uncooperative, isolation cell.

Ms. Rubinstein: Was Mr. Derramer making any statements as to his condition as far as being intoxicated?
Officer Atkinson: No. His condition was not one where he could talk in a reasonable manner. It was obscenities, screaming and yelling and out of control.
Ms. Rubinstein had no further questions.

Mr. Volkmann: Do I understand your testimony to be that on the evening that this Derramer episode occurred, that the bottom bar was open at the Mesa Theatre?
Officer Atkinson: It was a Friday night, not a teen dance night or an over/under night. It was just a regular open bar night. I had only been in the bar approximately 5 minutes when the fight broke out, so I did not have time to really...
Mr. Volkmann: So you didn't notice the bottom bar on the way in or you did notice it?

Officer Atkinson: I did notice the bottom bar for the fact that it took me several minutes to get past it. I usually stop and talk to the bartenders for a few minutes; I ask how everything is going, if they are having a good evening, if they need help with anything. So I talked to the people at the front, looked at the bar, it was extremely busy, and made my way around to the backside.

Mr. Volkmann: Is it your understanding that on the night of the episode, the Mesa Theatre was having, what Officer King called, an over/under night?

Officer Atkinson: I don't recall. I just know it was a Friday evening and it was busy.

Mr. Volkmann: Did you have an opportunity that evening to view how and where the Mesa Theatre representatives were checking identification and things of that sort?

Officer Atkinson: The only identification checking I saw was when you first came in, they had a couple of security people there who were checking ID's.

Mr. Volkmann: Were there any wristbands distributed on the evening of Mr. Derramer's episode?

Officer Atkinson: Not that I saw.

Mr. Majors: Mr. Volkmann, what is the relevancy to this line of inquiry? The officer's testimony does not concern underage wristbands.

Mr. Volkmann: The concern I have is that I think we are on the wrong night. I believe the report Officer Atkinson issued, showed this was at 12:34 in the morning on January 8th, which was Friday. But that was Thursday night and we had another over/under night and the bottom bar wasn't open.

Mr. Majors: Ok, then tailor your questions specifically to that.

Mr. Volkmann: Mr. Derramer was arrested when you took him into custody, correct and criminal charges were filed against him?

Officer Atkinson: Yes, several.

Mr. Volkmann: In connection with the criminal charges filed against Mr. Derramer, was his blood alcohol content ever checked?

Officer Atkinson: No, because he was not charged with an alcohol related charge. He was 21 years of age consuming alcohol at a bar. He was not driving a vehicle.

Mr. Volkmann: Am I safe in assuming that you have no knowledge as to how long Mr. Derramer was in the Mesa Theatre on the evening in question?

Officer Atkinson: I have no idea how long he was in the Mesa Theatre; that is correct.

Mr. Majors: Redirect.

Ms. Rubinstein: There were some questions on the cross-examination as to the date that this event occurred. Are you certain it was Friday night?

Officer Atkinson: No I am not. I just know it was January 8th.

Ms. Rubinstein: Was there any question as to service to persons under 21 that night?

Officer Atkinson: No, the reason I stopped at the bar initially, was that in driving through the downtown area I could tell the bar was full due to the amount of cars parked and the amount of people waiting outside. There was a large group of people gathered outside. I thought it would be a good time to do a bar check.

Ms. Rubinstein: Do you recall what your hours of duty were on that night?

Officer Atkinson: It was a swing shift. I would have gotten off at 3:00 a.m. I would have started at 5:00 p.m.

Ms. Rubinstein: It would have been January 8th at 5 p.m. that you started and ended on January 9th at 3 a.m. Is that correct?

Officer Atkinson: I wrote the report at the time of the arrest and if he was arrested after midnight, I would have put the current date. I could have gone to work on January 7th and after midnight it would have been January 8th.

Mr. Majors: Did you issue a citation to Mr. Derramer and what was the date and time of the citation? If you have that in front of you, you may review that.

Officer Atkinson: I issued Mr. Derramer a citation and I also did an affidavit at the Mesa County Jail. The time of violation was 0057 in the morning on January 8th.

Mr. Majors excused Officer Atkinson.

Ms. Rubinstein called Officer Mike Smith. Officer Smith was duly sworn in by Mr. Majors.

Ms. Rubinstein: Please state your name and current occupation.
Officer Smith: Mike M. Smith, police officer with the City of Grand Junction for approximately 3 ½ years. I am assigned to the patrol division and we are assigned to specific areas of responsibility and answer calls for service.

Ms. Rubinstein: Were you on duty on the evening of January 8, 1999 and was that the same evening that Officer Atkinson had testified about?
Officer Smith: Yes.
Ms. Rubinstein: Were you called to the Mesa Theatre on that evening?
Officer Smith: I don't believe I was called. I have it in my report. Officer Moore and myself were conducting another bar check after Officer Atkinson's incident where he had to take Mr. Derramer off the dance floor. As the crowd was rowdy and somewhat restless, so two of us went in and conducted another bar check.

Ms. Rubinstein: Were you aware of what had happened with Mr. Derramer at the time you made the bar check?
Officer Smith: Yes, I had spoken with Officer Atkinson before he left for the jail with Mr. Derramer. He filled me in on the situation inside the bar, as his feeling was the bar crowd was rowdy and unruly.

Ms. Rubinstein: Have you been trained as an officer of the Grand Junction Police Department to determine if a person is intoxicated?
Officer Smith: Yes I have. As well as Officer Atkinson, I attended the Rocky Mountain Institute of Traffic Safety Advanced Field Sobriety Test course.

Ms. Rubinstein: What are some of the characteristics of persons who are intoxicated other than breath and blood test that you have been trained to perform?
Officer Smith: Persons who have been consuming alcohol have poor balance, somewhat to extremely slurred speech, difficulty understanding and following instructions, blood shot, watery eyes.

Ms. Rubinstein: On the evening of January 8, what did you observe when you arrived at the Mesa Theatre?
Officer Smith: When we arrived, there were numerous people inside and outside of the bar who appeared to be intoxicated. When we entered the bar, Officer Atkinson's assessment of the bar crowd that night was fair in my opinion. It was a rather unruly, large crowd. There seemed to be a lot of commotion inside the bar.

Ms. Rubinstein: How many bartenders did you observe?

Officer Smith: I don't know. I did not really observe any of them. It was not a concern at that time.

Ms. Rubinstein: What happened at the Mesa Theatre that evening?

Officer Smith: Officer Moore and I were standing on the east corner of the bar, before you go into the upper part of the bar, and a young man identified as Andrew Michael Cox came up and began a conversation with us. He was extremely intoxicated. He had very slurred speech; he could not carry on a normal conversation although he was trying. He had extremely poor balance. At my request he walked away from us and started to walk up into the bar area. I told the bouncer that was checking the wristbands that he was not to be served any more. The bouncer responded, "That's fine. We'll just kick him out then." After that, we followed Mr. Cox downstairs. We asked him several times to leave. He would not leave the bar. He began using obscenities and said he would not leave without his coat. We had to physically grab him and take him out of the bar.

Ms. Rubinstein: Were you able to eventually restrain Mr. Cox?

Officer Smith: Yes. One of the bouncers assisted Officer Moore and I by keeping people away from us while we were physically gaining control over him and taking him out of the bar.

Ms. Rubinstein: How much effort did it take to control Mr. Cox?

Officer Smith: It took the two of us. Mr. Cox seems to be a very muscular type kid.

Ms. Rubinstein: Did anything else happen after you left the Mesa Theatre?

Officer Smith: Once we got him outside, we ordered him to leave the premises. He refused with a wide variety of obscenities. At that time Officer McCrillis was driving by, he is no longer employed with us, and we motioned for him to come over. There were numerous people standing outside the bar watching what we were doing and Mr. Cox was becoming more and more belligerent, loud and upset. Officer McCrillis came over and ultimately we decided we would take Mr. Cox into custody at which time he was arrested and there was a large scene.

Ms. Rubinstein: When he resisted arrest, what happened?

Officer Smith: He was physically resisting by flailing about. At one point he pulled away from my grasp and it looked like he was going to strike me in the face. Ultimately I ended up having to strike him to prevent him from striking me.

Ms. Rubinstein: Did you issue a summons to Mr. Cox?

Officer Smith: Yes I did. There were numerous charges. Mr. Cox was charged with third degree trespass by unlawfully remaining on the premises after being asked to leave by the police; disorderly conduct by using obscene language and challenging officers to fight in a public place; obstructing a peace officer for threatening to use physical force and using physical force against us and resisting arrest.

Ms. Rubinstein: Were you aware that evening if both persons who were over 21 and under 21 were allowed in the bar?

Officer Smith: I don't know, but I would assume so however, as I recall, Mr. Cox had a pink wristband on his left wrist. He started to show that to the bouncer when I told the bouncer he was cut off.

Ms. Rubinstein: Did you have any indication that the wristband was for something other than over 21, such as paying a cover, or to get back in?

Officer Smith: I don't know. As I recall, he had a pink wristband.

Ms. Rubinstein: Did you see Mr. Cox being served alcohol that evening by any one?

Officer Smith: No, I did not.

Mr. Majors: Redirect.

Mr. Volkmann: Officer Smith you testified that there was a large crowd in the bar on the morning of January 8. Describe the way the downstairs bar appeared when you entered the premises.

Officer Smith: As Officer Atkinson testified, when you go in the main glass doors on an average night you can take either the left or the right path up to the other area of the bar without much difficulty. On busy nights such as this one, you have to turn your body and squeeze yourself and pull people away from you so they don't bump into you and excuse yourself and it takes several minutes to get up into the upper area.

Mr. Volkmann: Was the music playing at that time? Did you ever make your way in, up the ramp and towards the dance floor?

Officer Smith: Yes. As far as Officer Moore and I got where we had our contact with Mr. Cox was right at the landing, at the top of the ramp where you can either go up to the upper bar or go down to the dance floor.

Mr. Volkmann: Mr. Cox when asked to leave showed the bartender at the upper bar his wristband?

Officer Smith: That was prior to us asking him not to be served more alcohol.

Mr. Volkmann: The bouncer to whom Mr. Cox showed his wrist band was where in the building?

Officer Smith: At the top of the landing before you go to the upper bar, they have got black lights there and usually a bouncer with a flashlight will check for a stamp and that was where he was at.

Mr. Volkmann: So it was at the bottom of the stairs that leads up to the upstairs bar?

Officer Smith: Correct.

Mr. Volkmann: You were within earshot of Mr. Cox's conversation with that bouncer where he asked to be allowed upstairs?

Officer Smith: I don't think there was any conversation. He just walked up and pulled his arm out.

Mr. Volkmann: When you requested the folks at Mesa Theatre cut this gentleman off from any more alcoholic beverages, what was their response?

Officer Smith: The bartenders were very cooperative. We were not asking that Mr. Cox be kicked out at that time, but he voluntarily said, "That is fine. We'll just kick him out."

Mr. Volkmann: Did you have knowledge of how long Mr. Cox was in the Mesa Theatre that evening?

Officer Smith: No I did not.

Mr. Volkmann: How long were you there before Mr. Cox engaged you in this way downstairs?

Officer Smith: Basically, when Officer Moore and I stopped there, it was almost immediately that he came up to us and started the conversation.

Mr. Volkmann: What did he say?

Officer Smith: I don't even know. It was a drunken flurry of..., I wouldn't even venture a guess.

Mr. Volkmann: But you could understand him later when he began hurling the expletives at everyone?

Officer Smith: Absolutely. The conversation was understandable as far as being articulate but it wasn't making sense, it was not coherent.

Mr. Majors: Redirect.

Ms. Rubinstein: Was it a bouncer or a bartender that you requested not to serve Mr. Cox?

Officer Smith: It would have been a bouncer. There is no bar there.

Ms. Rubinstein: You did not tell a bartender that Mr. Cox should not be served?

Officer Smith: No I did not.

Mr. Rubinstein: Were you in your uniform that evening?

Officer Smith: Yes I was.

Ms. Rubinstein: The bouncer agreed not to serve this person based on your request and not his own observation?

Officer Smith: Correct. I told him he was not to be served anymore alcohol at this time and he said, "That is fine. We'll kick him out then."

Mr. Majors: Recross.

Mr. Volkmann: Officer Smith do you have any knowledge at all that Mr. Cox was ever served an alcoholic beverage at the Mesa Theatre?

Officer Smith: No I do not.

Mr. Majors: When you responded to the Mesa Theatre on that evening, did you observe Officer Atkinson on the dance floor trying to restrain Mr. Derramer?

Officer Smith: No I did not. The first time I observed Officer Atkinson, I believe he was escorting Mr. Derramer over to a planter for a period of time to settle down, and ultimately he was placed in Officer Atkinson's patrol car.

Mr. Majors: So the first time you observed them it was on the outside of the Mesa Theatre?

Officer Smith: Correct.

Mr. Majors: When you and Officer Moore had escorted civilian Cox out of the bar and were on the exterior of the Mesa Theatre, you indicated that there was a large gathering of perhaps patrons and other people. Could you describe that for me?

Officer Smith: As we were exiting the bar with Mr. Cox, he was not yet in handcuffs because he was not under arrest, he was being escorted out of the bar for everyone's safety based upon his behavior. There tends to be a gathering of patrons as well as passersby that are interested in what is going on, they congregate outside the bar. They have some nice park benches and a little shelter right outside the bar as well as planters that people sit on. There were approximately 30 to 40 people milling around outside the bar. The people were curious, not abusive towards us. Several of Mr. Cox's friends were trying to save him a trip to jail that night. They were trying to help us by telling him, "Andrew, come on. It's not worth it." "Let's go." "Close your mouth." They were trying to help us. Everybody else was just being neutral.

Mr. Majors: While you were inside Mesa Theatre with Mr. Cox and Officer Moore, did you have any concern for your own safety?

Officer Smith: Not inside the bar so much. Once we got outside the bar and the physical grappling began and when he drew back his fist, of course I was concerned. That is why I ended up striking him first. Inside the bar it was a straight shot up the stairs from the restrooms, we went right over to the wall and began to worm our way out to the door. It was pretty tight quarters but there were two of us.

Mr. Majors: Outside the bar during your altercation with Mr. Cox, did you have any concerns for your personal safety, other than from Mr. Cox?

Officer Smith: There is always that concern with that many people gathered around. You never know if they are going to be for you or whether they are going to turn on you. Of course with 30 to 40 people milling around outside, it is a concern when you are grappling around with somebody, it is in the back of your head-is somebody going to throw a bottle, is somebody going to jump on our backs? It was a concern, but it is always there.

Mr. Majors: Was there a heightened concern that evening, because of the people outside and your wrestling with Mr. Cox?

Officer Smith: That atmosphere and that bar in particular, you are always aware. We have had numerous situations there.

Mr. Majors: Ms. Rubinstein, Mr. Volkmann, any questions based on my questions?

Ms. Rubinstein: Yes. Other than Mr. Cox, were there other people in the crowd who were visibly intoxicated?

Officer Smith: At that time, the 30 to 40 people, I don't know. My focus was not on them. There were bar patrons that were probably intoxicated.

Ms. Rubinstein: What about inside the bar?

Officer Smith: Oh yes. There were numerous people who I would consider to be visibly intoxicated. Without doing a roadside test, in just looking at them I would assume they were intoxicated.

Mr. Volkmann: None of your reports reference any of these patrons who you now have referenced as being intoxicated in the bar, correct?

Officer Smith: Correct.

Mr. Volkmann: On that evening you did not identify who those people were or the extent of their intoxication, correct?

Officer Smith: Correct.

Mr. Volkmann: Similarly, you did not identify who if anyone at the Mesa Theatre served them any alcohol in an intoxicated state, correct?

Officer Smith: Correct.

Mr. Volkmann: You testified there is always a heightened concern for your safety, is that a heightened concern that exists whenever there are 30 to 40 people in the proximity of an arrest? That is something that exists everywhere not just in front of the Mesa Theatre, correct?

Officer Smith: True.

Mr. Volkmann: I assume you have been involved in other arrests where the curiosity turns to fascination and the crowd moves in very close to you, correct?

Officer Smith: Absolutely.

Mr. Volkmann: You testified earlier that there was nothing about this crowd that made it more difficult for you to restrain Mr. Cox. In fact some of his friends who were there attempted to assist you in calming him down so you didn't have to take him away.

Officer Smith: Correct.

Mr. Volkmann: Out in front of the Mesa Theatre, it is a public sidewalk, a public street and the park benches are public facilities, correct?

Officer Smith: Correct.

Mr. Majors excused Officer Smith.

Ms. Rubinstein called Detective Robert Culver. Officer Culver was duly sworn in by Mr. Majors.

Ms. Rubinstein: Please state your name and current occupation.

Detective Culver: Robert Culver, detective, currently assigned to the investigation unit of the Grand Junction Police Department. I am assigned property crimes, and as a collateral assignment, I am assigned to the liquor and tobacco enforcement.

Ms. Rubinstein: Have you had an occasion specifically between September 12, 1998 and February 6, 1999 to investigate the Mesa Theatre?

Detective Culver: Yes.

Ms. Rubinstein: How did that investigation begin?

Detective Culver: It started in a slow fashion. I received numerous complaints from patrol officers and from patrol supervisors. Because of my assignment, reports involving liquor establishments are sent to me for review to determine whether or not we need to complete a liquor investigation or make a contact with that business and try to resolve things without having to come before the liquor authority.

Ms. Rubinstein: Did you in this investigation have any contact with Mr. Prather, the owner?

Detective Culver: I did on November 5, 1998. Detective Ancell and myself went there and met with Mr. Prather and his father. We had a discussion about having received a lot of complaints from the patrol section. They felt the Mesa Theatre needed to do a better job in serving people and take their responsibility of providing alcohol in a more...Let me back up. Basically, make sure they were controlling the bar and that they weren't having people who were intoxicated or who were fighting causing problems both inside and outside the facility.

Ms. Rubinstein: Between the dates of September 12, 1998 and November 5, 1998, how many calls had the Police Department received concerning the Mesa Theatre?

Detective Culver: I need to refresh my memory from my report. There were 13 times.

Ms. Rubinstein: Are you aware what types of things the calls were made for?

Detective Culver: Generally, they were for vandalism to assault, anything ranking from that. They weren't officer calls.

Ms. Rubinstein: On a typical weekend night or weeknight, is it common for a bar to receive a call or two?

Detective Culver: Typical for a bar on one night at 2:30 to get one or two calls, no.

Ms. Rubinstein: Did you have any concerns as far as the number of calls you were receiving for the Mesa Theatre?

Detective Culver: Yes, that was discussed with Mr. Prather when I met with him.

Ms. Rubinstein: Were those calls above average for the number of calls a typical bar would receive?

Detective Culver: I did some research before I went to talk to them, in looking at several of the larger bars in town, it is about double.

Ms. Rubinstein: Are there any characteristics of this particular bar that would explain the number of calls that the Police Department receives?

Detective Culver: At the time, one of the things we discussed with them was the teen night they were holding. That seemed to be the night, Thursday night, which was generating the most complaints. At that point, patrol was directed from their supervisor to go to Mesa Theatre on Thursday night because of the number of problems that were occurring from this.

Ms. Rubinstein: When directed by their supervisor, was this for a bar check?

Detective Culver: A directed patrol or a bar check. What they wanted to do was avoid any problems from occurring.

Ms. Rubinstein: When referring to a bar check, when do bar checks generally occur for bars in the area?

Detective Culver: On a normal routine basis, officers are supposed to conduct bar checks. It can be done when they have time allowed. They can go to any bar and do a bar check. They are checking people there to make sure they are not underage, people are not over intoxicated, the liquor license is valid, those types of situations. I know that in talking to the supervisors at the time, Cheryl Yaws and Tim Grimsby, they were directing their officers to do bar checks at Mesa Theatre.

Ms. Rubinstein: Were the number of bar checks directed patrol for the Mesa Theatre more than for other bars in the city?

Detective Culver: At that time the direction was to do increased enforcement at that bar because of the liquor related problems.

Ms. Rubinstein: On November 5, 1998, when you talked with Mr. Prather, what was his response?

Detective Culver: He was very cooperative and very willing to try and resolve the issues. In fact the night before that he had been on television canceling teen night.

Ms. Rubinstein: To your knowledge, has teen night resumed?

Detective Culver: Yes.

Ms. Rubinstein: After November 5, 1998, when you talked with Mr. Prather, was there any change in the number of calls received by the Police Department for the Mesa Theatre?

Detective Culver: I don't know that the calls were from there to the Police Department. What I know from the dispatch records is, there were calls that resulted in officers going there. Whether or not they all came from the Mesa Theatre, I am not certain of that.

Ms. Rubinstein: Was there any change in the amount of patrol necessary for the Mesa Theatre as a result of your contact with them?

Detective Culver: For a short period of time, when teen night was not happening, there was a decrease in the amount of activity there. At least on Thursday night.

Ms. Rubinstein: Are you aware of when the teen nights ended?

Detective Culver: I don't know.

Ms. Rubinstein: Had you had the opportunity to speak to Mr. Prather again concerning the problems at Mesa Theatre?

Detective Culver: I don't recall any specific times I talked to him after that. I may have but I don't recall. I know I talked to him when I served him for the hearing today and prior to that I don't recall.

Ms. Rubinstein: How many calls for officers were made after the November 5, 1998 date?

Detective Culver: I would have to refer to my notes again. Between November 8 and December 31, 1998, there were an additional eight times the Police Department had been to Mesa Theatre. Five of those eight were for fights or assaults.

Ms. Rubinstein: During the time in question, September 12, 1998 and February 6, 1999, what was the total number of calls to the Police Department from Mesa Theatre?

Detective Culver: Thirty-four.

Ms. Rubinstein: Is this a typical amount of calls to the Police Department for a bar?

Detective Culver: No.

Ms. Rubinstein: What have your concerns been for the Mesa Theatre as far these types of checks and the need of patrol officers?

Detective Culver: What has occurred is, the swing shift and the graveyard shifts have to dedicate officers to solely work at Mesa Theatre. They are sent to Mesa Theatre to control the people that are leaving because of the vandalism, littering, fights and assaults that are occurring outside the business and along Main Street.

Ms. Rubinstein: To your knowledge is this increase of patrol officers to Mesa Theatre due to any requests from Mesa Theatre itself?

Detective Culver: I believe they have talked to different patrol officers and supervisors and asked them to be there and we have offered that to them to do the increased enforcement. They are not hiring any off duty police officers to assist.

Ms. Rubinstein: In your capacity with the police department, do you have the opportunity to do any liquor training?

Detective Culver: Yes.

Ms. Rubinstein: Have you done any liquor training during the time in question?

Detective Culver: Yes I did on December 4, 1998.

Ms. Rubinstein: Were any employees of the Mesa Theatre present at this training?

Detective Culver: Yes, it was at the old City Hall and I know Mr. Prather was there and several of his employees.

Ms. Rubinstein: What sort of issues did you cover in that training?

Detective Culver: My portion of the training covers determining whether or not somebody might have a fake ID, how to identify a lawful identification card; what to do if you have a questionable ID, who to call and how to handle that situation. We watch a film on how to cut people off from being served alcohol in a pleasant and respectful manner. I talked about signs and symptoms of intoxication; we talk about the community trends and how the community of Grand Junction looks at alcohol and the responsibility of serving alcohol.

Ms. Rubinstein: What could Mesa Theatre be doing to control what has been going on in there?

Detective Culver: It is a difficult circumstance. My opinion is the underage issue of mixing the underage patrons with the of age patrons and the mixing of people who are extremely intoxicated with people who may or may not be intoxicated and making sure that they take the responsibility, that when they allow people into the business, that if they are coming from another establishment, they are showing signs of intoxication, they are not let in.

Ms. Rubinstein had no further questions.

Mr. Volkmann: Is it my understanding that you have no knowledge of the source of the calls that triggered the police responses that you identified at the Mesa Theatre?

Detective Culver: I don't have that information with me. Some of them may have come from the people there and some may not have. I can't give you a specific separation of them.

Mr. Volkmann: 'From the people there', you mean representatives of the Mesa Theatre? To your knowledge, there have been some where the Mesa Theatre representatives have called the police relative to some altercation?

Detective Culver: I'll make an assumption that they did.

Mr. Volkmann: But you are not aware of any?

Detective Culver: I do know of at least one that was testified to today by Officer Atkinson was in the business and there was an assault and there was help from the bouncer.

Mr. Volkmann: But in terms of a phone call to the police which prompted a physical response by a police officer or officers to this site, you don't know who made those calls.

Detective Culver: No I don't.

Mr. Volkmann: You testified that the number of calls to the Mesa Theatre to the period of time we are referencing is not typical, correct?

Detective Culver: Yes.

Mr. Volkmann: Are there any other bars in Grand Junction that have the capacity that the Mesa Theatre has in terms of the number of patrons?

Detective Culver: The closest one would be The Pour House on Horizon Drive.

Mr. Volkmann: Do you have any knowledge of what the capacity of the Pour House is?

Detective Culver: I believe it is around 150 or so.

Mr. Volkmann: Do you have any idea what the capacity of the Mesa Theatre is?

Detective Culver: I think it is around 300, but I am not sure.

Mr. Volkmann: Capacity issues are not something that you are called on to enforce, I assume.

Detective Culver: No.

There was no redirect. There was no further evidence from Ms. Rubenstein.

Mr. Majors called for a recess of five (5) minutes at 10:15 am.
The hearing reconvened at 10:20 a.m.

Mr. Volkmann called Holmes Bassette III. Mr. Bassette was duly sworn in by Mr. Majors.

Mr. Volkmann: Mr. Bassette you were referred to by one of the officers earlier as Trey, but you actually operate under the nickname of Trey or Ty, correct?

Mr. Bassette: Ty or Trey.

Mr. Volkmann: At the Mesa Theatre, what is your current position?

Mr. Bassette: At Mesa Theatre, I am employed as head of security. I also work at Poma as an electrician.

Mr. Volkmann: How long have you worked at Mesa Theatre?

Mr. Bassette: Since opening day in September 1998. I started as a bouncer and I became head of security sometime during the winter.

Mr. Volkmann: Were you working the evening testified to earlier concerning Mr. Jarrod Williams on January 21, 1999? I have that you have worked every Thursday night.

Mr. Bassette: Yes.

Mr. Volkmann: Describe the operation of the Mesa Theatre on Thursday nights.

Mr. Bassette: We have a college night where anybody who is college age can attend. We separate the alcohol to the upper stairs area.

Mr. Volkmann: Can the alcohol, once it is served in the upper bar on these college nights, can it be removed from the upper bar area?

Mr. Bassette: It cannot leave the upper bar area at all. The back stairs are blocked off and are attended by a bouncer at the lower end of it. The two stairs that go down are attended by bouncers also.

Mr. Volkmann: Describe the process used on Thursday nights to distinguish those who are able to drink alcohol from those who are not.

Mr. Bassette: On Thursday nights what we do is we first check ID when payment is made at the box office. I do not consider that person within my realm of ID checking, so I have my people check ID's right there at the door. That is just to get in. Then a wristband is issued and an invisible ink stamp is used, you have to be ID checked again. That is a total of three times to have an ID check. There is also random ID checks at the stairs for anybody that the bouncers don't believe should be upstairs. Everyone is empowered to make judgment calls and they are all intelligent people. If they think they need to check someone's ID they do so. We get numerous complaints on how many times people have to show their ID's, but that is how we work it.

Mr. Volkmann: Was that in fact the ID checking process that was in place in January when the Mr. Williams incident occurred or has that process changed?

Mr. Bassette: That process had been improved by adding the invisible ink. At that time we just had the wristbands.

Mr. Volkmann: On the college night, are there any age limits at all on who can physically enter the Mesa Theatre or do you just ignore the ability to drink alcohol for the moment?

Mr. Bassette: You must be at least 18 to get in the premises at all.

Mr. Volkmann: Do you have any recollection of the circumstances surrounding the arrest or citation of Mr. Williams on January 21, 1999 by the Grand Junction Police Department?

Mr. Bassette: Mr. Williams came in very early most likely about 9:30 or 10:00 p.m. which was very early for our crowd. He went through the same procedures that everyone else went through. There were maybe 15 to 20 people in the bar. That is the whole establishment. This individual went through all the proper steps and when we went and talked to his companions, the gentlemen straight up told Mr. Prather and myself that his buddy had a fake ID. Mr. Prather was extremely agitated. I tried to deal with the guy and get Mr. Prather out of there. What it came down to was the guy said he had a fake ID and he ditched it upstairs. I informed the cop of that and no action was taken by the officer to find the fake ID. But he did take care of the gentlemen for us, so as far as I was concerned once the officer steps in it is their responsibility whatever they do to the guy, not mine.

Mr. Volkmann: Did Mr. Williams' friends remain at the bar that evening?

Mr. Bassette: No. We escorted them out for the fact that they went along with something like that, they are not trustworthy individuals and I am not going to baby sit them.

Mr. Volkmann: Describe the process used by the security staff or the bartenders at the Mesa Theatre for turning someone away, or for having an invalid ID.

Mr. Bassette: Invalid ID's we take. Altered ID's we take. David Prather pays us \$5 for any invalid ID's, so we do take ID's like crazy. We take them and keep them; the people do not get them back. Fake ID's we give to the police.

Mr. Volkmann: Do you ever detain the individuals who present the fake ID's or do they just take off?

Mr. Bassette: Only if they get inside. If they get past us and we find out from one of their friends or somebody they know tells us, we go up and check their ID and if it turns out that they are not 21, we detain

them for a moment to get their ID and then escort them out or take whatever means are necessary.

Mr. Volkmann: How often would you estimate the employees at the Mesa Theatre turn away people trying to get in to drink alcohol who are not 21 years old?

Mr. Bassette: We find it is usually best not to try and humiliate the person who is probably waiting in line with friends. If I just take the fake ID and put it in my pocket and stay real low key about it, they will usually pull out their 18-year-old ID and they cruise in and they just have to stay in the lower half. That occurs about three or four times on a college night.

Mr. Volkmann: Do you ever identify these individuals to the police?

Mr. Bassette: On occasion we have because sometimes they will argue. We have called the police on several occasions just to come down and confirm an ID. If the person is willing to stand there and do that, we let them do that.

Mr. Volkmann: How about cutting off patrons from obtaining alcoholic beverages, explain the process the Mesa Theatre staff goes through to cut a patron off.

Mr. Bassette: Again, I am addressing you guys...I am taking this very personal as I am head of security. This is like you are checking out the way I operate. I have no problem with that. I feel that I am always improving the way I do things, in hiring people who are trustworthy and capable of making decisions. Everyone is empowered including Harley the handyman. Everyone can make judgement calls as to whether or not they consider someone to be intoxicated. We also tell people to pace themselves. If someone is going at it pretty hard, bartenders and/or waitresses can make the call. We will go and investigate it. Usually we end up agreeing with them.

Mr. Volkmann: How is your staff trained to address a person who is visibly intoxicated?

Mr. Bassette: I will get involved in the situation. There are a couple of resolutions. You can take off their wristband and confine them to just the downstairs area; you can escort them out; you can cut off; it depends on the situation and the individual's attitude and behavior.

Mr. Volkmann: How would you distinguish between taking their wristband off and cutting them off?

Mr. Bassette: If you are intoxicated you are going to get cut off no matter what. But whether or not you are going to get kicked out or escorted out or confined to the lower half that will be determined on whether or not I determine you are going to be an individual who is going to require further attention later on.

Mr. Volkmann: On non-college nights, how are identifications checked?

Mr. Bassette: You have two identification checks, one at the door and one at the box office. All patrons have to be 21 on those nights. I don't put on as many checks.

Mr. Volkmann: And the same people are identifying the identification as would be checking it on college nights?

Mr. Bassette: Correct. They are still subject to random checks.

Mr. Volkmann: How many people are normally on duty on a non-college night?

Mr. Bassette: On a non-college night, we usually have four to five.

Mr. Volkmann: What is the magnitude of the crowd, if there is a representative crowd, on a non-college night?

Mr. Bassette: Those are usually the disco nights or when there is a rock band, approximately 200.

Mr. Volkmann: How many people are on duty in the security staff on a college night?

Mr. Bassette: On college nights, there would eight to ten individuals minimum.

Mr. Volkmann: What kind of crowd is representative in terms of the number of patrons?

Mr. Bassette: Anywhere from 400 to capacity which is 700 plus.

Mr. Majors: Do you know the exact capacity figures?

Mr. Bassette: No I don't.

Mr. Volkmann: What type of communication system, if any, is used by the bartending and security staff in order to identify who is cut off, who is having his wristband taken off, or any other action that your staff is taking?

Mr. Bassette: The bar staff and the security staff are both given radio communication. All security and the night manager have a flashlight as well. If anybody is having a problem they turn it on which indicates they are having a situation. It can be anything from a person to watch, an intoxicated person or a fight.

Mr. Volkmann: There have been two other circumstances aside from Mr. Williams involving identified individuals testified to here today. One is Mr. Derramer. Do you have any recollection of Mr. Derramer situation, this being on January 8, 1999?

Mr. Bassette: I am very familiar with Jack Derramer and that situation. I was directly involved.

Mr. Volkmann: Would you explain your involvement?

Mr. Bassette: Like Cal said, there was a fight on the dance floor. We responded. I believe there were four security members there at the time. Cal was behind us to the right letting us do our thing. Like he said, Jack would not let go of the railing. While we were informing him that he was trespassing and he needed to leave, Jack Derramer is a rather large gentlemen, a supposed golden gloves boxer, but he is physically fit and we were not able to get his hand off the railing. At which time, Cal came in, saw we were having a little difficulty, stepped in from behind us from his watching position and became involved in it. Wrapped the gentleman's arm, I don't know how he did it, but he got one arm up and the other arm was still on the rail pretty tight. While he was doing that he was informed that he was trespassing, the same thing that we were doing, Jack Derramer turned to me while I was telling him he needed to let go of the railing and spit right in my face. At that time Cal was able to get the other arm, he restrained him physically and forced him out of the establishment.

Mr. Volkmann: Can you estimate how long it took from when there was a call from the disc jockey or someone with a microphone that there was a fight on the dance floor? Approximately how long was it from the time of the call to the time that your four security people responded to it on the dance floor?

Mr. Bassette: To go back, I did forget our DJ does have another visual communication. It was less than a minute.

Mr. Volkmann: On that evening, Thursday night January 7th going into Friday morning January 8th, did you have a problem with Mr. Derramer before this fight occurred?

Mr. Bassette: I had not seen Jack Derramer until at the railing during the fight.

Mr. Volkmann: That evening, to your knowledge, neither you nor your staff at Mesa Theatre had any indication from Mr. Derramer that he was about to engage in this type of activity.

Mr. Bassette: As far as I know, Mr. Derramer could have just walked in.

Mr. Volkmann: The last person who was identified in the testimony today is a gentleman by the name of Cox. His circumstances arose that same night. What knowledge, if any, do you have of Mr. Cox's situation?

Mr. Bassette: As I was listening to Cal and Mike, I recall an individual that was someone we had to ask the police to assist us with. It was basically a problem for the cops. He wasn't really interacting too much with us; the cops were handling the situation. We were there trying to keep everybody out of their way. I don't assume to have the responsibilities or the knowledge of a police officer so I let them do their thing.

Mr. Volkmann: So you were not physically involved in the removal or restraint of Mr. Cox?

Mr. Bassette: I was involved in, I can't be certain, but I'm pretty sure it was me that Mike told, "Hey, that guy needs to be cut off." I just said let's kick him out. Judging from the way he was and the apparent level of intoxication, it was easier to do it that way.

Mr. Volkmann: Focusing on Thursday nights again, how often would you estimate patrons of Mesa Theatre are cut off or have their wrist band removed on Thursday nights?

Mr. Bassette: Last Thursday would be different from a Thursday night in September of 1998. Our guests have learned what our rules are and how things work there. It would be less than it was back then. There are maybe five or six people each night that I am aware of, which are cut off.

Mr. Volkmann: Are non-college nights similar in terms of how many people are cut off? Are there more or fewer?

Mr. Bassette: Non-college nights there are fewer.

Mr. Volkmann: How many times in capacity as the director of security at the Mesa Theatre, have you conversed with Grand Junction Police officers relative to circumstances at the bar?

Mr. Bassette: Just about every Thursday, they come down and hang out with us for several minutes right out front in the bar. It is almost like an informal meeting. I'll go down there because I know they are going to be there and we will chat and talk about things to improve. Last week they came out with cones to help keep the fire lane open. They are always giving us suggestions and we are always asking them for advice. If there are some questions, I go down to the Police Department and talk to the officers in charge. I feel we have a very open communication with the police.

Mr. Volkmann: Officer Culver testified regarding what he perceived to be numerous calls to the Police Department triggering their response to the Mesa Theatre. Have you ever made a call to the Police Department asking them to come to the Mesa Theatre?

Mr. Bassette: Yes. We were told right at the beginning that we need to call for anything. If we needed anything, just to call. So I would call for checking an ID, for just a physical presence, removing people, people that we kicked out that would not leave the front of the place, to fights or whatever. I have called them on several occasions, however after we started tallying and the police pointed

out that we had all these calls, we were basically told don't do that. We scaled back the number of calls. I take care of problems in house; just like I was saying earlier, when they are dealing with individuals, I step back and let them do their thing. I was having them for security and now we don't. We are security. We are responsible for the inside of that place and the area immediately around it. We take care of that whole block. Our volume of calls had decreased.

Mr. Volkmann: Officer Culver made reference to littering and vandalism in the vicinity of the Mesa Theatre. Has either Detective Culver or anyone else from the Police Department discussed vandalism or other off site problems with you or your staff?

Mr. Bassette: Yes, when I went down to the police station, the officer he showed me on the office computer a memo that there was a lot more garbage in that whole block then there was prior to our existence. Since that time, we go out there after we close and walk the whole block; front, back, sides, the whole thing. Since then, when I got back to the officers, they don't seem to have a problem with volume of trash or litter.

Mr. Volkmann: Have you ever attempted to hire off-duty police officers to work as security people at the Mesa Theatre?

Mr. Bassette: Myself, no. Dave, yes. I have attempted to involve the highway patrol. We tried to hire off-duty police officers through the Grand Junction Police Department, but we were denied. Everything was set up and all of a sudden they called back and said, no you can't have them since we are not a special event. Ever since then I started working towards using the highway patrol. I know individuals there and they were willing to do it, they seemed to be kind of excited to do it. As far as I know at this time, it is something we are working on.

Mr. Majors: Cross-examination.

Ms. Rubinstein: We have talked about the college night. Is that the same as teen night? Am I using the right term?

Mr. Bassette: No.

Ms. Rubinstein: Has that ever existed?

Mr. Bassette: Teen night is actually a relatively new event. It is Tuesday night thing that just ended yesterday. It is no alcohol, 18 to 20 year olds are admitted. Only the lower bar is open and parents or supervisors are in free.

Ms. Rubinstein: When we talk about the Thursday night event, that has always been the college night?

Mr. Bassette: It is a college attended only night.

Ms. Rubinstein: But there are persons who are under the age of 21 who are admitted, are there not?

Mr. Bassette; If you are 18 or older you can get into the establishment, not into the bar unless you are 21 or older.

Ms. Rubinstein: Have you stopped the Thursday night event for a period of time?

Mr. Bassette: Yes.

Ms. Rubinstein: Why was that?

Mr. Bassette: That was a management call, not security.

Ms. Rubinstein: Are you aware of when that started up again?

Mr. Bassette: The exact date I don't know. It would have been in the wintertime, maybe. When I started working Thursday nights again and I became head of security.

Ms. Rubinstein: You have said you have been improving your identification check, and you said you did that by using the invisible ink stamp. Had that been in place the evening of the Williams incident?

Mr. Bassette: I don't believe we had the stamp but we were using the wristbands and we also had the multiple ID checks.

Ms. Rubinstein: The stamp occurred after the incident with Mr. Williams?

Mr. Bassette: Correct.

Ms. Rubinstein: You stated that Mr. Williams had been checked for an ID, correct?

Mr. Bassette: Correct.

Ms. Rubinstein: Did you know Mr. Williams prior to that evening.

Mr. Bassette: No. In discussing things with my staff, none of us recalls Mr. Williams.

Ms. Rubinstein: Do you have any specific recollection of carding Mr. Williams in particular that evening?

Mr. Bassette: I know that there were only about 20 people in there, it was still early. I know he had to have gone through our normal procedures. From that point on Mr. Williams becomes an outstanding point in my memory is when the police officer approached him.

Ms. Rubinstein: So your answer would be no, you don't have a specific recollection of checking Mr. Williams identification?

Mr. Bassette; I did not check his ID personally, myself.

Ms. Rubinstein: What kind of training do you have as far as what a fake ID looks like?

Mr. Bassette: The police officers have come down and showed us a couple of things, explained some things, discussed things. It is a continual learning process. We are always getting better with them and we are trying to stay on top of it.

Ms. Rubinstein: Did you go to the training that was offered by Detective Culver in December 1998?

Mr. Bassette: I was never informed of that training by Detective Culver.

Ms. Rubinstein: So you had never seen the fake ID that Mr. Williams may have had?

Mr. Bassette: No my presumption of the fake ID comes strictly from the fact that he was upstairs and from the statements his drinking companion made.

Ms. Rubinstein: You stated that his friends did say he had a fake ID.

Mr. Bassette: His friends did say several times directly to me, that he had ditched his ID.

Ms. Rubinstein: Did you ever find that fake ID?

Mr. Bassette: No I did not.

Ms. Rubinstein: Did you ever look for that ID?

Mr. Bassette: I informed the policemen at the time.

Ms. Rubinstein: Did you ever go look for that ID?

Mr. Bassette; We did look for it. I did not however go through the garbage.

Ms. Rubinstein: So you never found the fake ID.

Mr. Bassette; I did not find his fake ID.

Ms. Rubinstein: You made a statement that you tell persons who are going at it pretty hard to pace themselves. What training do you have to determine whether or not a person is going at it pretty hard in your opinion?

Mr. Bassette: The way I have got the bar set up, I have got individuals everywhere as far as security staff. If they or I notice somebody buying multiple shots and they are by themselves or buying a six-pack of Corona and they are by themselves, or there are just two

of them, that is an obvious sign. They are showing subtle signs of intoxication or whatever, things that Cal or Mike have pointed out, then we will look for those things and just like they do, we try to cut off the problems before they happen.

- Ms. Rubinstein: Let's back up a bit. You stated if a person is buying multiple shots or a person is buying six-packs of beer, is alcohol sold in that number at the Mesa Theatre?
- Mr. Bassette: I am not a bartender.
- Ms. Rubinstein: You just said that they have sales of six beers..
- Mr. Bassette: No, you asked me how we would identify somebody that was going at it hard. If somebody bought six beers, would you think that they were going at it pretty hard?
- Ms. Rubinstein: I would, but my question is, is that how alcohol is sold at the Mesa Theatre? In six numbers.
- Mr. Bassette: Have I ever witnessed that actual event, no.
- Ms. Rubinstein: Where did that statement come from? Is that anything that you are aware..
- Mr. Bassette: I was just trying to answer your question as best I could.
- Ms. Rubinstein: Ok. What training do you have to determine if a person is intoxicated?
- Mr. Bassette: I have no professional schooling or training in that.
- Ms. Rubinstein: Prior to your job at Mesa Theatre, had you been working as security in any other place?
- Mr. Bassette: I worked for KEKB most recently for each of their country community concerts. I worked at a bar called The Underground on their college nights and I worked at Panama City Beach Club.
- Ms. Rubinstein: Your staff, as far as security, do they act as bartenders as well, or are they only there as security?
- Mr. Bassette: They are security. If they need to watch the bar while someone goes to the bathroom, they will stand there but they don't actually do anything.
- Ms. Rubinstein: You stated that the capacity of the bar is about 700, but you are not exactly sure of the exact number?
- Mr. Bassette: Correct. There is a sign in the bar.
- Ms. Rubinstein: And on a non-college night, there would be about 200 persons in the bar?
- Mr. Bassette: It varies from show to show. Sometimes shows will sell out, some don't. But I would say on an average there is about 200 people.
- Ms. Rubinstein: And how about on a college night, how many persons?
- Mr. Bassette; On a college night we have sold that out a couple times too, but I would say it averages at least 400.
- Ms. Rubinstein: What does selling out mean? At what point do you say this event is sold out?
- Mr. Bassette: We keep tallies with two individuals where they determine if we are very close to capacity, we make it one in, one out.
- Ms. Rubinstein: And that would be 700 capacity?
- Mr. Bassette: I would assume so.
- Ms. Rubinstein: Let's talk now about the event that occurred on January 8, 1999. You stated that Mr. Derramer could have just walked in. Did you hear the testimony from Officer Atkinson that this person was visibly intoxicated?
- Mr. Bassette: Correct.
- Ms. Rubinstein: Would you have allowed someone in the bar that was visibly intoxicated?

Mr. Bassette: If we were aware they were intoxicated, we would not allow them in the bar.

Mr. Rubinstein: So if a person came up, slurring their speech, smelling of alcohol, bloodshot eyes you would not let that person in?

Mr. Bassette: No. It would also be a judgement call. You just described someone with diabetes. It is a judgement call. If we assume someone has alcohol on their breath...

Mr. Rubinstein: How often does it happen that someone with those symptoms comes to the bar?

Mr. Bassette: I don't know.

Ms. Rubinstein: Do you have any specific recollection of Mr. Derramer entering into the bar?

Mr. Bassette: My recollection of Mr. Derramer begins with the fight on the dance floor.

Ms. Rubinstein: Do you recall any persons who were in that night at the bar?

Mr. Bassette: No I don't. It was very crowded.

Mr. Rubinstein: Do you have a responsibility as part of your duties, as persons walk into the bar making sure they are not intoxicated?

Mr. Bassette: My responsibility is the bar, the outside of the bar and all the individuals that are contained within that.

Ms. Rubinstein: So if you see someone that you believe in your judgement that is visibly intoxicated, would it be within your duties to not let that person in the bar?

Mr. Bassette: Correct. I also feel it is my duty to make sure they get home even if they are not in the bar.

Ms. Rubinstein: You stated that about five out of 300 persons are cut off on a typical college night. Is that right?

Mr. Bassette: I am aware of at least about five that on an average we actually cut off each college night.

Ms. Rubinstein: In the incident that happened with Mr. Cox, do you have any recollection of how much alcohol he had been served or if he had been drinking prior to or was he visibly intoxicated when he came into the bar prior to the altercation with the officers?

Mr. Bassette: No ma'am. As with Jack Derramer, way back in January, my recollection begins with Mr. Cox being identified by Mike as someone that needed to be cut off.

Ms. Rubinstein: I have no further questions.

Mr. Majors: Redirect.

Mr. Volkmann: Trey, have you or your staff every turned anyone away who was trying to come into the Mesa Theatre because they were visibly intoxicated when they are attempting to enter?

Mr. Bassette: Several times. The officers have given us a few new ways of identifying people that we just don't want to come in.

Mr. Volkmann: And what are the ways of identifying them as being intoxicated?

Mr. Bassette: If they are intoxicated, individuals with certain clothing or signs or whatever, the cops have just given us some new ideas.

Mr. Volkmann: What type of ideas does that consist of?

Mr. Bassette: Like I said, their clothes or ...They basically redefined what I could do without overstepping my legal, what I can do legally.

Mr. Volkmann: Can you estimate on a standard college night, how many people are turned away from the Mesa Theatre before entering because they are apparently intoxicated?

Mr. Bassette: That would be hard for me to say because I don't physically stand at the door all night. My duties keep me everywhere. I would have to guess it is multiple.

Mr. Volkmann: Again focusing on college nights, when does the crowd on college night ordinarily begin to build to the larger numbers you referenced?

Mr. Bassette: We don't get to that until normally until 10:45 or 11:00 p.m.

Mr. Volkmann: Are people under 18 years of age allowed in on a teen night?

Mr. Bassette: Yes.

Mr. Volkmann: But no one under 18 is allowed in on a college night?

Mr. Bassette: Correct.

Mr. Volkmann: I have no further questions.

Mr. Majors: Recross.

Ms. Rubinstein: You said the officers gave you new ways to determine which persons should not be let into the bar, is that for the purpose of looking for persons who are intoxicated or looking for persons who may cause trouble?

Mr. Bassette: It is for our benefit period. They give us new ideas for looking for intoxicated persons and /or people who are liable to cause trouble or people that they know are troublemakers.

Ms. Rubinstein: I have nothing further.

Mr. Majors: Mr. Bassette, I have a couple questions. When Officer Atkinson approached Jack Derramer and was assisting your security personnel, was there a crowd of patrons on the dance floor surrounding the incident that was going on?

Mr. Bassette: Yes there was.

Mr. Majors: When Officer Atkinson was attempting to control Jack Derramer, were there patrons crowding around the officer?

Mr. Bassette: To an extent, yes. We all moved back into a semi-circle and kept everyone away while Cal became involved. We all backed up and kept everyone away in a semi-circle. Then as we worked our way down and out of the establishment, we made a little bubble around them to give Officer Atkinson as little other stuff to deal with as possible.

Mr. Majors: You testified that after you were told the tally of the number of calls from the Police Department, you began scaling back on making those calls. Do you recall the approximate date when you were given that tally of calls?

Mr. Bassette: I would assume it was November. I did notice the first three months there were 22 and the next three months there were 14. I would assume it would have been about them. I clarified what kind of calls to make and what kind of calls not to make.

Mr. Majors: Any questions based on my questions to the witness?

Mr. Volkmann: No.

Ms. Rubinstein: No.

Mr. Majors: The witness is excused.

Mr. Volkmann called David Prather. Mr. Prather was duly sworn in by Mr. Majors.

Mr. Volkmann: Please state your full name.

Mr. Prather: David Prather.

Mr. Volkmann: How are you employed?

Mr. Prather: I am the owner and general manager of the Mesa Theatre and Club.

Mr. Volkmann: Have you been in that capacity since it opened in September 1998?

Mr. Prather: Correct.

Mr. Volkmann: There has been some confusion during Mr. Bassette's testimony as to the capacity of the Mesa Theatre building. Are you familiar with what the actual capacity is?

Mr. Prather: Yes. Our fire capacity is 764. We rarely ever get to that amount. The nights in question, college night, we usually target it around 500. At that point we cut it off and do a one in, one out. Throughout the rest of the night, we might get to 650 or so, knowing that there are only 500 people actually in the building. We have only reached our capacity two times since opening in September and both times have been all age's concerts, which is separate from college night.

Mr. Volkmann: You said you might get to 650 even though there are only 500 in the building. Is that because you keep a running tally?

Mr. Prather: Exactly.

Mr. Volkmann: You heard Mr. Bassette's testimony relative to the process for clearing ID's both on college night and on non-college nights, correct?

Mr. Prather: Correct.

Mr. Volkmann: Was that a complete and accurate statement?

Mr. Prather: For the most part, yes. Since the times in question in January, we have increased our security by ID'ing at the box office window. At that point if the person is under 21, they get a certain colored ticket and if they are over 21 they get another colored ticket. They then walk into the front glass where they are ID'd again, and if they are under 21 they then take the ticket and they proceed to the next person where they are patted down for weapons or alcoholic beverages. If the person is over 21, they take that color ticket inside the building where they get patted down at another station that is blocking off the upstairs bar where another gentlemen is there who ID's them. At this time, it is the general manager of Clifton Liquors. At the stairs you are given the invisible ink stamp which is shows up with the black light that are on the two stairs which lead up to the upstairs bar and also with the wristbands. We were having problems without the black light with the patrons taking off the wristbands and throwing them away in the trashcans. People would go through the trashcans, find the wristbands and tie them on. Hence the point of the black light since it is not transferable.

Mr. Majors: Did the witness testify as to when this black light test was?

Mr. Volkmann: We were just going to get into that. There was some confusion in Mr. Bassette's testimony as to when the black light process was commenced. Do you have any recollection as to when that process was commenced?

Mr. Prather: I believe it was in February. I took a business trip over to Denver and toured two or three clubs with the same capacity as we do, doing the over and under night. In Boulder, Fort Collins and in Denver is where I saw they used this procedure. I got a hold of the general manager and found out where they got their equipment. I purchased the equipment on a Wednesday and the following Thursday it was installed. I couldn't tell you when that was, but I believe it was sometime in February 1999.

Mr. Volkmann: On the topic of the tours you made of these similar clubs, is there any aspect of what they have implemented there that you are not doing in your process?

Mr. Prather: Pretty much. Of the three I saw, we have the ideal building for it with the separation of the upper balcony and the lower one. A couple of the bars actually put a chain link fence down the middle of the bar and cut it off that way.

Mr. Volkmann: In regard to the two different ticket colors, one for someone under 21 and one for someone over 21, when was that process implemented to your recollection?

Mr. Prather: To my recollection, it was probably towards the end of April. What we are finding is they were showing one ID at one window and then going in there and changing their ID's at that point. We do try to contain everybody that we take. Obviously they know they are in trouble because they don't stick around. Within 24 hours, we hand them over to the police officers.

Mr. Volkmann: Do all those false ID's that are confiscated by your staff, do they all come through you eventually in the process?

Mr. Prather: Pretty much. They usually have some. The cops on Main Street are usually there on Thursday nights and we just wait for them to come by and give them to them. Most of them are college kids that are making them with their computers. They are fairly easily detected because they don't have the hologram.

Mr. Volkmann: Do you have any idea how many false ID's you have turned over to the police since opening the Mesa Theatre in September of 1998?

Mr. Prather: I would say over 50.

Mr. Volkmann: Are you working ordinarily on Thursday nights?

Mr. Prather: Absolutely. I'm at the door for the most part with the box office attendants.

Mr. Volkmann: I believe Detective Culver testified that you attended his course.

Mr. Prather: Correct. It was December 4, 1998. All of the waitresses and bartenders received the class. It was offered during the day and as most of my security, this is a part time job, they have other things during the day.

Mr. Volkmann: Has the staff at the Mesa Theatre ever refused entrance to the facility on a Thursday night to someone for being intoxicated?

Mr. Prather: Absolutely. As of the last two or three months, I have personally turned away at least five people on a Thursday night. Most of them after midnight.

Mr. Volkmann: That is five people per night?

Mr. Prather: Per night.

Mr. Volkmann: Have you arranged any conversations with police officers as to what might be prompting these intoxicated people coming to the Mesa Theatre?

Mr. Prather: Yes. We were informed that starting about March or April, Cruisers started a '9 to 12 for \$5 all you can drink' special. So the police officers were aware of that and said we have to be aware that after this point we are going to start to get patrons from their establishment at our doors.

Mr. Volkmann: Is it accurate to say that there is a heightened awareness at your front door now on Thursday night relative to intoxicated people trying to get in?

Mr. Prather: Absolutely.

Mr. Volkmann: Trey testified briefly relative to conversations he had with the Grand Junction Police Department relative to occurrences that should give rise to contacts with the Police Department, and those that should be handled internally. My recollection is that he made a reference to them having a conversation with you. Did you in fact have conversations with the Police Department on that issue?

Mr. Prather: Yes.

Mr. Volkmann: How many of those conversations do you think you might have had?

Mr. Prather: We have good communications with the police officers and on Thursdays they come down and let us know what is going on around town, and what to look out for, known trouble makers that they know of, they let us know that it might not be a bad idea to not let them into the establishment. There would be too many to count the number of conversations I have had.

Mr. Volkmann: Has the Police Department's posture relative to when you should or shouldn't call them changed at all during the time you started operating the Mesa Theatre?

Mr. Prather: As we were a new business in September and we wanted to do everything by the letter of the law, we were told that if in any incidences we needed help that we should call the police office on the non-emergency number which is posted in our box office. We called quite frequently in those first two or three months. Until the instance at the end of October where we discontinued the college night for two months, until January when the college night resumed.

Mr. Volkmann: When college night resumed, was there any change of you policy relative to when to call the Police Department and when not to?

Mr. Prather: We were aware all the amounts of calls was being targeted against our license, so we made an effort to handle things more internally, unless things got out of hand, then we would call for assistance. I think there was also an education process with our patrons and also with the Police Department about what we were trying to do on Thursday nights. Patrons generally learned that they had to act accordingly. I think the police officers were aware that we do have a large amount of people down there. They were aware of it, hence the heightened patrols down on the Main Street area.

Mr. Volkmann: Do you have any knowledge of any of the events involved with Mr. Jarrod Williams citation on January 21, 1999?

Mr. Prather: Yes. I was witness to the event.

Mr. Volkmann: Describe what you witnessed that evening.

Mr. Prather: It was still relatively slow for a Thursday night. The gentlemen that was with Jared Williams I was aquatinted with and with his family. I saw them come in, they went upstairs. I saw the police come in, I was working by the front of the door. I, on occasion, when the police are doing a bar check, walk with them and ask questions and try to assist them. I saw them go upstairs and question the three people. I walked up right next to them and saw that they all had wristbands on which tells me you have to show your ID to get the wristband. I was informed after that that the guy was not 21. I went back up to the guy and I looked at the wristband and I turned it over to make sure it was not tied on and it was not. It was secure so security had put it on.

Mr. Volkmann: Now the guy you went back up to see and whose wristband you check, was Jarrod Williams?

Mr. Prather: Correct.

Mr. Volkmann: So he was still on the premises?

Mr. Prather: Yes he was upstairs and the police officers were still questioning him.

Mr. Volkmann: You notice that his wristband had apparently been put on by one of your staff as opposed to him having put it on himself?

Mr. Prather: It is put on with sticky glue so once you pull it off, you can't put it back on without tying it.

Mr. Volkmann: How many people would you estimate were in the bar area at that time?

Mr. Prather: 15 to 20.

Mr. Volkmann: How many people were on the premises in total at that time?

Mr. Prather: I would say there was another 20 to 30 down below in the under 21 area.

Mr. Volkmann: How long does it take for a person to clear the identification checks that you have in place on Thursday nights?

Mr. Prather: It varies. It can take from two minutes up to fifteen minutes.

Mr. Volkmann: To your knowledge, did any of your staff on January 21, 1999 know Jarrod Williams personally?

Mr. Prather: No. We knew his companion that was with him, he was a family friend and just recently turned 21 so I knew he was 21.

Mr. Volkmann: Are you familiar with Mr. Derramer's situation?

Mr. Prather: Yes.

Mr. Volkmann: Was January 8 the first time he had been there?

Mr. Prater: As far as I know.

Mr. Volkmann: What personal knowledge do you have of what occurred with Mr. Derramer that evening?

Mr. Prather: I was not there. I heard about it afterwards. I did not witness anything on the dance floor. I was probably in the front when that happened. Usually when an event occurs like that we have to cover other areas as the other security covers the situation.

Mr. Volkmann: Do you have any knowledge of when Mr. Derramer entered Mesa Theatre that night?

Mr. Prather: No.

Mr. Volkmann: What about Mr. Cox that same evening?

Mr. Prather: I wouldn't know.

Mr. Volkmann: How many times would you say you have personally called the Grand Junction Police Department relative to circumstances occurring at the Mesa Theatre?

Mr. Prather: From September until February the date in question, I would say 15. At the time, we had different personnel working up at the front office, but it was always the non-emergency number.

Mr. Volkmann: Have you ever refused to implement a procedure recommended to you by the Police Department relative to the operation of your business?

Mr. Prather: Absolutely not.

Mr. Volkmann: I have no further questions.

Mr. Rubinstein: You said you implemented the black light and the invisible ink stamp in February of 1999. And that would be before the incident with Mr. Williams?

Mr. Prather: The reason we implemented it was directly related to the incident with Mr. Williams.

Ms. Rubinstein: So Mr. Williams would not have gotten the invisible ink stamp?
Mr. Prather: Exactly.
Mr. Rubinstein: You stated that you had questioned all your staff as to whether or not they knew Mr. Williams.
Mr. Prather: Not directly. I just knew that nobody spoke up for him saying that he was over 21 or under 21.
Mr. Rubinstein: What would happened as far as discipline if you found out someone had let someone in who was under 21 without checking their ID?
Mr. Prather: They would most likely be terminated.
Ms. Rubinstein: Do bartenders ever make checks at the bar whenever...
Mr. Prather: Yes, we are given the opportunity that if anybody ever has any questions regarding ID, either the security, or the waitress or the bartenders, they are more than allowed to ask for the ID again. Quite frequently they do which results in the patron being ID'd four or five times in the course of an evening.
Mr. Rubinstein: Did you have the opportunity to see Mr. Williams on that evening?
Mr. Prather: Yes.
Mr. Rubinstein: Did you make any determination as to how old you thought he was?
Mr. Prather: These kids look young now a days, and someone can be 30 years old and, I mean, yeah he looked young.
Ms. Rubinstein: You stated that not Mr. Williams himself but one of the other persons that was with Mr. Williams was a family friend of yours. Is that correct?
Mr. Prather: Yeah.
Ms. Rubinstein: Did you personally have any knowledge as to whether or not Mr. Williams showed fake ID to anyone at your bar?
Mr. Prather: The family friend in question did tell me that he did have a fake ID.
Mr. Rubinstein: Did you see this fake ID?
Mr. Prather: No I have never seen the fake ID.
Ms. Rubinstein: As far as the night of January 8, 1999, the incident that occurred with Mr. Derramer and Mr. Cox, you said that you were not there. Does that mean you were not at the bar that evening?
Mr. Prather: No I was in the building. I just was not in the incident. The Cox incident I do remember seeing down in the lower lounge when they escorted him outside. I do not recollect seeing the Derramer fight on the dance floor.
Ms. Rubinstein: After the number of calls that have occurred at the Mesa Theatre, you stated that you stopped the college night around November. Is that correct?
Mr. Prather: It was the end of October, I think around Halloween.
Ms. Rubinstein: You then resumed it again. Would that have been December?
Mr. Prather: January.
Ms. Rubinstein: Right around the time that all these incidents was when the college night was re-instituted?
Mr. Prather: I don't have the correct date. We slowly started instituting it back because we didn't want to come right back with it.
Ms. Rubinstein: You said you had heightened awareness as to over-service in regards to what Cruisers was doing. That occurred around March or April?
Mr. Prather: Yeah. I believe they started their special in March or April.
Ms. Rubinstein: So all this heightened awareness would have occurred after all these events we are talking about?

Mr. Prather: As I said, we were a new business and were learning the different procedures. We are in evolution and I believe we are at the top of our game right now as far as our security.

Ms. Rubinstein: I have no further questions

Mr. Majors: Redirect.

Mr. Volkmann: Nothing further.

Mr. Shaver asked to confer off the record with Mr. Majors at 11:24 a.m.
The meeting resumed at 11:25 a.m.
Mr. Majors gave counsel the opportunity to make closing statements.

Ms. Rubinstein: This morning you have heard testimony as to the three separate counts as to the violation of the liquor code.

The first count was the sale of alcohol to a person under 21. There is much testimony in regard to a fake ID, however, there was never any testimony that anyone ever saw a fake ID and in fact all the witnesses stated it was speculation on their part that there was a fake ID. Mr. Prather just testified that none of his employees knew Mr. Williams, so his story may not be plausible. But at the same time if, he also indicated that that employee would be fired if he admitted to letting someone in who was not 21. The evidence is clear that Mr. Williams had entered into the bar. There is no indication of, no one has any specific recollection of checking an ID of this person and he was drinking a beer, as Investigator King testified, a Corona beer on that evening being under the age of 21. He had been let into the Mesa Theatre under the age of 21 and was allowed to drink in that bar.

As to count two, service to visibly intoxicated persons. There has been no evidence to refute the statement of Officers Atkinson and Smith that these people were visibly intoxicated. There were statements by Mr. Bassette that he could have just walked in and if that were true Mr. Derramer would have been allowed to walk in being visibly intoxicated and the same for Mr. Cox. Both of these persons were in the bar and were extremely antagonistic, visibly intoxicated and still allowed to remain in the bar to the extent that these persons had began fights and had also attacked the police officers that were there. There was testimony that they were not able to speak, they were not able to stand up, that they were unable to function as a sober person could and yet they were still able to be inside the bar. There was no testimony to refute that they were ever refused alcohol except for when an officer had told them that they needed to stop serving these people alcohol or that they needed to make these persons leave.

As to count three of conducting the premises in a decent, orderly and respectable manner, and not permitting undue noise or other disturbances or activities that would be offensive to the senses of the average citizen. Both of the first two charges are more evidence to this claim. Additionally, as you heard from Detective Culver, there have been many calls to the Police Department regarding the number of fights and other incidents at the Mesa Theatre. We are not contending that the Mesa Theatre should not

be calling the Police when they need help. What we are contending is that there needs to be more control. There is no control over the amount of the crowd or the amount of the alcohol. You heard from Officer Atkinson that on the night that he was there, there were two bartenders at each bar serving upwards of 300 persons. It would be difficult, if not impossible, for each bartender to be able to determine how much each person has drunk on an evening and if that person is visibly intoxicated. There is evidence of a lack of staff who are able to control a large crowd and if they are going to continue these sorts of nights, then control is what is necessary. There was also some testimony as to the number of calls that have been received by the Police Department. Between the time of September and February, there were 32 calls from the Police Department. There was testimony from Mr. Bassette that the number of calls had gone down in November. That would have been when the teen night was stopped and resumed up again in January when the calls resumed, when all the incidents in question today occurred.

Mr. Volkmann:

Taking the allegations in the order that they appear in the verified complaint, item #1 is, in light of the evidence, is specifically and exclusively related to Mr. Williams. He is the only person about whom we have heard of anybody obtaining an alcoholic beverage inside this building under the age of 21. As I understood what Ms. Rubinstein said, we couldn't prove that he had a fake ID. I guess in the sense that we don't have our hands on that fake ID, there is some, but not much, merit to that position. The testimony that came in regarding Mr. Williams' evening in the bar is that there were only ten or fifteen people in there. Therefore, implicit in that is that the person checking these ID's only had to check ten to fifteen people at that point in time, not like at 10:00 in the evening. It is difficult to fathom the way in which Mr. Williams could have snuck past these people. In fact, there isn't any allegation that he snuck past them. The only implication in the record is that Mr. Williams, who first misrepresented his age to the officer, then misrepresented his birthday to the officer and then misrepresented the fact that he had an ID that showed he was 18 to the officer, represented to that same officer that somebody at the door let him in. Officer King understandably testified that it was such an inherently incredible story that he didn't even bother the guy at the door with it. Upon hearing that there was a fake ID, folks at the Mesa Theatre looked around for it. They couldn't find it. They said he didn't look through the garbage and he could not find it. Officer King, as I recall, stated he made a mistake, was the term he used, by not having this kid empty his pockets to see if he still had it. All of that in connection with the mechanics of the approval of someone's entering into the bar area is, in fact, evidence of the fact that Mr. Williams did have a fake ID. There is no way that he could have physically gotten in there without it. There is absolutely no up side to anybody letting him in, especially in light of Mr. Prather's testimony, that he would likely be fired, and under circumstances where it's 9:30 in the evening and there are only ten or fifteen people in there, and according to him, "Everyone in there knows I am 21 so they let me in", and then he gives a birth date of the day

after the day that they are talking to him. Again, the only evidence that he didn't have a fake ID is his inherently incredible reference to having been let in because they know him. The mechanism exists to more than adequately check for ID's. Testimony was there that numerous ID's are snagged each week at this place and turned over to the police. Even if this is one that slipped through the net, it is not worthy of punishment. It is not worthy of penalty. The statute as applied states that no revocation or suspension should be based upon an acceptance of fraudulent proof of ID. I think there is ample evidence of fraudulent proof here.

With regard to the second charge, the only people to whom this particular claim lies is Mr. Derramer and Mr. Cox. This is something we have been around the horn with before, but I think on a due process level, the acceptance of generalized testimony regarding intoxicated patrons relative to this allegation doesn't support the charge. We have to have an opportunity to find the people involved or the people who allegedly served them alcohol when they were intoxicated and things of that sort. So the only ones that have been identified to a point where we can actually go to the folks at Mesa Theatre and say have you any recollection of this guy, have you any recollection of this guy, are Mr. Derramer and Mr. Cox. As I understood Ms. Rubinstein, she also said in context of this one, that we can't prove these guys weren't served. That is not the statute. She also said that we can't prove that they didn't come in the place drunk and that is not the statute either. The statute says it is a violation of our license regulations to serve someone who is visibly intoxicated. There is absolutely no evidence in the record that anyone at the Mesa Theatre ever served either one of these characters. In fact, in light of the evidence, people do come from other places and are often times the problems at the door in trying to enter intoxicated. It is not at all out of the question that either or both of these guys just came in, drunk, in fact were never served there, and we have no evidence that they were served there and that is exactly the element of the offense that's charged. The charge only relates to those two people. There is insufficient evidence to support that one either.

Lastly, I would submit that there has been absolutely no evidence of the third claim which I think is purposed to be vague anyway. To say that we haven't conducted the licensed premises in a decent, orderly and respectable manner and permitted profanity, rowdiness, undue noise or other disturbances offensive to senses, there has been no evidence submitted as to what these senses of citizens in the community are. There has been no discussion at all of noise. There has been no discussion at all of profanity. There have been references to the crowd being rowdy, but no specifics provided as to what that means. We are talking a whole bunch of young adults in a place that is playing loud music. One person's "rowdy" may not equal another person's "rowdy". To say that the positions relative to Mr. Derramer and Mr. Cox evidenced this last claim, lacks validity because in both of those circumstances, Mr. Cox was no trouble at all, quite frankly until the police said, "Cut him off", and they cut him off. He got cranky with that. He was just

there, he wasn't a problem for anyone. Mr. Derramer was a problem instantly. But equally instantly the security staff was there trying to take care of it. There is no evidence here that we permitted anything to happen at any point in time that violates anyone's senses, rights or personal space here. What we have here is a circumstance where both these claims regard the same Thursday night, and the Jarrod Williams situation is on another Thursday night. We have a circumstance where the people from Mesa Theatre have said, "We get 300 to 500 people in the building on those nights." Most of those people are going to be young, it is not an event for the rest of us, and so you are going to have circumstances there. There is going to be loud music, dancing, there are boyfriend/girlfriend situations, there are guys who know each other from other circumstances that might have some baggage along, and you are going to have events. I think the whole concept of the third charge is do we foster, promote or even acquiesce in any of these events or do we break them down as soon as they occur? I think the only evidence that has been submitted is we in fact break them down as soon as they occur. The fact remains that when you get 500 human beings in a building and some of them are drinking alcohol, some of these people are not going to maintain control. All that can be done is to take control of the situation, and in each of the cases that represents the basis of this claim, Mesa Theatre took control of the situation, as did the Grand Junction Police Department. It shouldn't serve as the basis for any implications on their license. Thank you Mr. Volkmann. Rebuttal if you choose to.

Mr. Majors:

Ms. Rubinstein:

To reiterate on the first count of serving to a person under the age of 21, Mr. Prather himself stated the person looked young. Once that armband goes on that person's wrist the responsibility for the bar to keep checking the alcohol does not stop. A pink wristband is not identification. Checking identification is identification, and that clearly was not done here. A fake identification is only speculation. The facts are which were given to you by Investigator King was that that person did not have an identification that indicated he was 21. He was in fact served an alcoholic beverage in the Mesa Theatre.

As to the second charge of serving persons who are visibly intoxicated, Mr. Volkmann stated it was not due process that we can't make generalized allegations. In fact we have not made generalized allegations, we made allegations of two very specific persons, Mr. Derramer and Mr. Cox. Mr. Derramer and Mr. Cox, if what Mr. Volkmann says is true, were allowed to remain and go into the bar in a visibly intoxicated state and were only cut off when told to do so by police officers. The control was not maintained by Mesa Theatre. The control was maintained by outside forces, the police department. Whether or not they at that point decided to follow along with the Police Department's recommendation is irrelevant. They are not able to make those determinations on their own prior to that occasion.

As to the third claim, Mr. Volkmann claimed that there is no evidence as to whether or not the bar was rowdy. He stated that

one persons "rowdy" may not be another persons "rowdy". While that may be true, it is not unreasonable to expect that a licensed bar will not have fights, and will not have large groups of persons getting out of control. Both Officers Atkinson and Smith stated that they were, at times, fearful for their safety in their capacity as police officers. That indicates that the bar at that point was out of control. Mr. Volkmann indicated that the Mesa Theatre, in fact, did not foster or acquiesce to this type of behavior. In November they decided to stop the night that was the most problem, that being the college night. However, even though they knew that they had those problems, in January they started those nights right back up again and the problems started again.

Because of all of these reasons and the evidence you have heard today, we would ask that they be found guilty on these three counts. Thank you.

- Mr. Majors: I just have a couple of preliminary questions. Mr. Shaver, the liquor authority has not summarily suspended this license and this isn't the hearing that falls within the 15 days of that suspension is that correct?
- Mr. Shaver: That is correct. There is no adverse action that I am aware of that has been taken other than the filing of the complaint that is at issue this morning.
- Mr. Majors: Mr. Volkmann, your client's license is still in effect and the business is still in operation at this point?
- Mr. Volkmann: Yes.
- Mr. Majors: Is there anything that has been submitted to the clerk that is in the record other than the complaint and the order to show cause?
- Ms. English: No.
- Mr. Majors: I am not going to issue my decision today because of the length of the testimony and my need to review the testimony and also the regulations that are applicable including the statute. I would ask that the clerk provide me with a copy of the complaint and the order to show cause and any other correspondence in this matter that has been given to the licensee.
- Mr. Volkmann: Has this matter been continued for any reason after the complaint was first filed.
- Mr. Majors: I don't believe so. It was difficult scheduling it but I don't think it was continued.
- Mr. Shaver: That is my recollection as well. There were some scheduling difficulties and it was purposely set out far enough in advance to today's date.
- Mr. Majors: When is the renewal of this license?
- Mr. Volkmann: It was just renewed last month.
- Mr. Majors: I will have written findings of fact prepared and given to the parties by Friday, August 27. I will first send a copy to the City Clerk and simultaneously fax one to Mr. Volkmann. By giving it to the City Clerk, it is service to Ms. Rubinstein.
- Mr. Shaver: You do have authority to take up to 30 days for purposes of this and I understand that you want to expedite the decision but I would certainly remind you that it does not have to be done in that prompt

a fashion and that if something should come up, the statute does allow you that additional time.

Mr. Majors: Thank you Mr. Shaver. Is there any other opposition to that from either party if I do take the 30 days?

Mr. Volkmann: No.

Ms. Rubinstein: No.

Mr. Majors: I will try to get it done within the ten days. I will make a short notation in my findings of fact of what the appeal process will be and I am sure Mr. Volkmann will be explaining that to his client.

Mr. Volkmann: I will do so if necessary.

Mr. Majors: All right. Thank you.

VIII. ADJOURNMENT – The meeting was adjourned at 11:45 a.m.

NEXT REGULAR MEETING – September 1, 1999

Received August 12, 1999

To Whom It May Concern:

We had never received any type of forms to know when the liquor license was due. Until you called and told us to come down to pay, we didn't even know it was late, cause on the license it says good till August 12th. If we would have known it was due 45 days before we would have called you to find out where to go pay or else none of this would have happened.

Thank you

La Bamba Mexican Dining
2900 North Avenue
Grand Junction, CO 81501
(970) 255-0845

GRAND JUNCTION LODGE NO. 575

Benevolent and Protective Order of Elks
A Fraternal Organization
249 South 4th Street
PO Box 1987
Grand Junction, Colorado 81502-1987
(970) 243-0675

July 19, 1999

Stephanie Nye, Grand jct city clerk

250 N 5th Street
Grand Jct Colo 81501

Re October Fest October 2, 1999

Dear Stephanie:

The Elks Lodge is requesting a one day liquor license to accommodate the large crowd anticipated for this event.

This request is being made for the following reasons;

This one outdoor event the Elks Lodge hosts annually.

This event is designed for outdoor setting, primarily using The Main Street Shopping Park for a Fair/Festival Atmosphere accommodating vendors, entertainment and activities which could not be held in an indoor facility downtown.

The downtown restaurants – Quincy, Blue Moon, Crystal Caf, rockslid, Etc. do not have the capacity to serve the approximately 8,000 people who attend this event. The facility at two rivers convention center could not be used, since vendor and association sells food, and the policy at two Rivers does not allow food to be brought into the premises. Also Two Rivers could not accommodate all the various activities that make up this event.

Participants in this event include Arts, Crafts, food, commercial/promotional and non-profit vendors., a variety of entertainers perform throughout the day.

This is an outdoor event, using two blocks of the Shopping. Park. The Elks Lodge would like those attending to be able to remain outside to enjoy the festivities.

Refreshments being served include a variety of German food service by the German Club and the Kiwanis club

Sincerely

Roy W. Weaver
Co Chairman

Ms. Stephanie Nye
City Clerk
250 N 5th St.
Grand junction, CO 81501

Dear Ms. Nye,

The Latin-Anglo Alliance Foundation, Inc. is joining Cumulas Broadcasting with organizing a Sixteenth of September Celebration on Main Street Grand Junction. This is the first year and is planned as a yearly event. This year the event is scheduled for September 18, 1999 on Main Street from approximately 10:00 AM til 6:00 PM. Main Street will need to be closed from 5th Street to 7th Street and on 6th Street between Rood Ave. to Colorado Ave.

This activity is planned as an outdoor event because of the anticipated attendance of 5000 or more people. This projection is based on other similar events such as Cinco de Mayo which is held on the same location and draws 5000 or more attendees.

With this number of attendees there is no indoor facility that can safely accommodate this many people. The largest facility in Grand Junction is Two Rivers Convention Center and it cannot handle the number of people we anticipate. In Addition, this activity is planned as an outdoor event.

We ask that we be allowed a Special Event License to sell Beer at this Cumulas Broadcastings special event.

The Cumulas Broadcasting representative is Robert Salazar and should be contacted if further information is needed.

Sincerely,

Jose Cruz
Latin-Angelo Alliance
Activity Co-Ordinator.

Memo To: Local Licensing Authority
From: Christine English, Acting City Clerk
Date: July 29, 1999
Subject: Application by Thrifty Payless Incorporated for a 3.2% Beer License at 400 North 1st Street under the trade name of Rite Aid #6367

Thrifty Payless Incorporated, a corporation, filed an application with the Local Licensing Authority on June 11, 1999, for a 3.2% Beer license, for the sales of 3.2% beer in sealed containers for consumption off the premises at 400 North 1st Street under the trade name of Rite Aid #6367. The application and supplementary documents were reviewed, found to be in order and accepted. The hearing date was originally set for July 21, 1999. At the request of the applicant's attorney, the hearing date was reset for August 4 and then moved to August 18, 1999. The Notice of Hearing was given by posting a sign on the property on July 23, 1999 and by publishing a display ad in The Daily Sentinel on July 23, 1999.

In order to address the reasonable requirements of the neighborhood and the desires of the adult inhabitants of the neighborhood, the applicant conducted a survey and defined the neighborhood as the area bounded by Teller Avenue on the north, Ute Avenue on the south, 5th Street on the east and the Denver Rio Grande Railroad on the west and included both sides of the streets as the outer boundaries. The results of that survey are as follows:

1. If you favor and support this application for a retail 3/2% fermented malt beverage (3.2% beer) license (off premise consumption) because it is your opinion the reasonable requirements of the adult inhabitants of the defined neighborhood are not now being adequately served by existing 3.2% beer of-premise licensed businesses now doing business in the defined neighborhood, and it is your desire this new 3.2% beer off-premise license be issued, please sign and check the favor column to grant the requested license.

YES: 94

2. If you oppose and do not support this application for a retail 3.2% fermented malt beverage (3.2% beer) license (off-premise consumption), please sign and check the oppose column and please write in your reason why you oppose this license application.

NO: 15

Of those opposing the application, some of the reasons given were: don't need more outlets in area, enough trouble with youth as is, not good for the area and don't care for liquor. A representative for the applicant will be present to give testimony on the neighborhood needs and desires.

No letters of opposition or counterpetitions have been filed to date.

The applicant, Thrifty Payless Incorporated, is a corporation. Local criminal history was not found any of the corporate officers. Since the corporation has a Master File in Denver no further processing through C.B.I. was necessary. The City Code Enforcement Department inspected the premises

and reported they are in compliance with the diagram submitted and that the Notice of Hearing was posted as directed. A Certificate of Occupancy has been filed in this office from the Mesa County Building Department.

The number of similar-type outlets in the survey area is as follows:

3.2% Beer - 5(City Market, Loco Food Store #12, Stop N Save, Super Mart Convenience Store, Gay Johnson's)

The number of similar type outlets in a one mile area in addition to the above are:

3.2% Beer - 3(C & F Food Store, Texaco Food Mart, This Is It Grocery)

That concludes this report.

cc: Applicant
John Shaver, Assistant City Attorney
Julia Marston, Grand Junction Police Department
File